INFORMATION TO USERS

This material was produced from a microfilm copy of the original document. While the most advanced technological means to photograph and reproduce this document have been used, the quality is heavily dependent upon the quality of the original submitted.

The following explanation of techniques is provided to help you understand markings or patterns which may appear on this reproduction.

1. The sign or "target" for pages apparently lacking from the document photographed is "Missing Page(s)". If it was possible to obtain the missing page(s) or section, they are spliced into the film along with adjacent pages. This may have necessitated cutting thru an image and duplicating adjacent pages to insure you complete continuity.

2. When an image on the film is obliterated with a large round black mark, it is an indication that the photographer suspected that the copy may have moved during exposure and thus cause a blurred image. You will find a good image of the page in the adjacent frame.

3. When a map, drawing or chart, etc., was part of the material being photographed the photographer followed a definite method in "sectioning" the material. It is customary to begin photoing at the upper left hand corner of a large sheet and to continue photoing from left to right in equal sections with a small overlap. If necessary, sectioning is continued again — beginning below the first row and continuing on until complete.

4. The majority of users indicate that the textual content is of greatest value, however, a somewhat higher quality reproduction could be made from "photographs" if essential to the understanding of the dissertation. Silver prints of "photographs" may be ordered at additional charge by writing the Order Department, giving the catalog number, title, author and specific pages you wish reproduced.

5. PLEASE NOTE: Some pages may have indistinct print. Filmed as received.

University Microfilms International
300 North Zeeb Road
Ann Arbor, Michigan 48106 USA
St. John's Road, Tyler's Green
High Wycombe, Bucks, England HP10 8HR

78-4778

MROZINSKI, Ronald Richard, 1933-
COMPULSORY EDUCATION: AN HISTORICAL REVIEW OF ITS ORIGINS, GROWTH AND CHALLENGES.

The University of Michigan,
Ph.D., 1977
Education, history

University Microfilms International, Ann Arbor, Michigan 48106

COMPULSORY EDUCATION: AN HISTORICAL REVIEW OF ITS ORIGINS, GROWTH AND CHALLENGES

by
Ronald Richard Mrozinski

A dissertation submitted in partial fulfillment
of the requirement for the degree of
Doctor of Philosophy
(Education)
in The University of Michigan
1977

Doctoral Committee:

Professor George E. Mills, Chairman
Professor Frederick W. Bertolaet
Professor William S. Dunifon
Professor M. Anthony Schork

Dedicated to Stanley F. and Cecelia M. Mrozinski

ACKNOWLEDGMENTS

There are several parties who have been helpful in the preparation of this study. They are as follows:

Dr. Gerald Boicourt of Wayne State University who gave me the first encouragement to continue my studies.

Diane Nowak and Jayne Zauner who took the time to make suggestions for cohesiveness of thought. Donna Burch for directing me to many of the research materials. Helen Candiotti who proves a friend in need is a friend indeed.

Dr. Frank Donahue of The University of Michigan who provided me with many insights into the mechanics of research.

Dissertation committee members, who guided the research effort to a more promising end than would have been obtained without benefit of their assistance.

Rev. John McCarthy of Cleveland, Ohio and James Marsh of Maine who added a dimension to my life when I needed it most.

My family and friends who encouraged and endured with me while I consumated the doctoral program.

TABLE OF CONTENTS

DEDICATION ii

ACKNOWLEDGEMENTS iii

LIST OF TABLES vii

LIST OF APPENDICES viii

LIST OF ABBREVIATIONS. x

CHAPTER

I. INTRODUCTION TO THE PROBLEM 1

Background 1
Problem. 6
Need for the Study 6
Questions for Research 8
Delimitations. 8
Definitions. 10
Sources of Data. 18
Procedures 18
Criticism. 20
Organization 20

II. REVIEW OF RELATED LITERATURE. 23

Overview 23
Review 25
1642 to 1850. 25
1851 to 1918. 34
1919 to 1976. 45
Summary. 55

III. PRESENTATION AND ANALYSIS OF DATA 61

Overview 61
Colonial and early National Period . 61
The old world influence 61
Influences for the law of 1642. . 63
Massachusetts law of 1642 68
Shortcomings of the Act of 1642 . 71
Massachusetts law of 1647 72
Legal provisions in other colonies 74
Educational legislation prior to the Revolution. 75
Effect of the Revolutionary War . 79
Events leading to the enactment of 1787. 80

Northwest Ordinance of 1787. 82
Commentary on the early national period 84
Nineteenth Century Period 86
Beginnings of the Common School Crusade 86
Influence of Politics, Labor and Immigration 87
Horace Mann and compulsory education 90
Massachusetts law of 1852. 93
Federal government involvement . . . 96
The Morrill Act of 1862. 97
Implications for national education policy. 101
Post Civil War 106
The free school fight. 108
Kalamazoo Court case 109
Effects of the Kalamazoo decision. 113
Labor, Industry and Immigration. . .114
Support of the Labor Unions. 115
Analysis and recapitulation. 122
Industrial support 124
Ramifications of Immigration 126
The Landes-Solmon study. 131
Twentieth Century Period. 134
Impetus of cultural pluralism. . . .134
Meyer v Nebraska 1919. 134
Influence of the Ku Klux Klan. . . .135
Oregon referendum. 136
Pierce case. 138
Supreme Court decision in Pierce . .140
Thrust of the Pierce decision. . . .142
State v Williams 144
Significance of the depression . . .145
The Fair Labor Standards Act 147
Impact of the Fair Labor Act 153
Plessey v Ferguson 154
Brown v Board of Education 155
The Decision of the court in Brown 162
The background of the Amish case . .165
State of Wisconsin v Jonas Yoder . .167
Implications of the Amish decision. 169
Strengths, weaknesses and future action. 171
National Commission of 1972. 172
The National Commission's recommendations 174
Inferences for the future. 178

Findings. 182

IV. SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS. .206

Overview. 206

Summary 206

Conclusions 212

Recommendations 216

Suggested Additional Research 218

APPENDICES. 219

BIBLIOGRAPHY. 343

LIST OF TABLES

Table

1 Dates of Enactment of Compulsory Education Laws in the United States, 1852-1918 38

2 Legal Educational Requirements of each of the 13 Colonies and the Date of the First Compulsory Attendance Law of each. 76

3 Date of Enactment of First Compulsory Attendance Law by State through 1918 120

4 Compulsory School Attendance and Work Permit Ages Prior to 1938. 148

5 Compulsory School Attendance Ages in 1945. . .151

6 Primary Individuals, States, Organizations, Amicus Curiae and Districts involved in the Brown Case 156

LIST OF APPENDICES

Appendix

A Massachusetts Law of 1642 219

B Massachusetts Law of 1647 222

C Extent of the Settlement in the Colonies, 1652 (Map) 224

D The Ordinance of 1787 226

E The Old Northwest (Map) 235

F Amendments to the Constitution Amendments I to X and XIV Bill of Rights 237

G Massachusetts School Law of 1852. 241

H The Land Grant of 1862 and the Land-Grant Colleges Morrill Land-Grant Act of 1862 244

I The Land Grants and the Land Grant Colleges 249

J Stuart v School District No. 1. 253

K Periods of Economic Prosperity, Recession and Depression in the United States, 1834 to 1925. 270

L Walter M. Pierce v Society of The Sisters of the Holy Names of Jesus and Mary, 268 U. S. 510 (1925) . . . 273

M Federal Fair Labor Standards Act, 1938. . . . 283

N Brown v Board of Education of Topeka, 347 U. S. 483 (1954) 291

O Compulsory School Attendance Age Limits: 50 States, the District of Columbia, and Puerto Rico, Selected years from 1887 to 1965 302

Appendix

P State of Wisconsin v Jonas Yoder, 406 U. S. 205 (1972) 305

Q National Commission on the Reform of Secondary Education Recommendation No. 28 and Members of the National Commission 336

R Historical Synopsis of Compulsory Education in the United States, 1642-1976. 340

LIST OF ABBREVIATIONS

A. F. L.	American Federation of Labor
A. L. R.	American Law Reports
C. C. C.	Civilian Conservation Corps
C. I. O.	Congress of Industrial Organizations
F. Supp.	Federal Supplement
K. of L.	Knights of Labor
K. K. K.	Ku Klux Klan
L. Ed.	Lawyers Edition
Mich.	Michigan Court Reports
N. A. S. S. P.	National Association of Secondary School Principals
N. W.	Northwestern Reporter
S. Ct.	Supreme Court
Sup. Ct. Rep.	Supreme Court Reports
S. D.	South Dakota
U. S.	United States

CHAPTER I

INTRODUCTION TO THE PROBLEM

Background

Recently and with more frequency, educators and other citizens are finding it necessary to demand changes in compulsory education and attendance laws in the United States. Some advocate the outright abolition of compulsory education and attendance in its present form. There are those who feel that compulsory education has become an universal trap. It takes away the opportunity for choice. Some of our children may be better off with less formal schooling at least under its present structure or in its present setting.

From the beginning of the United States as a nation there were social, political or economic conditions that lent themselves to the establishment of compulsory education. These conditions eventually led to laws being drawn up in the several states. These laws have been refined, expanded, withdrawn or ignored even to the present day.

During the late eighteenth and early nineteenth century forced education was thought to be necessary in order to produce a literate electorate. In the middle of the nineteenth century a concerted effort was made for the formal education of the common man. Later in the nineteenth century and early in the twentieth century increasing industrialization made it incumbent on each of the states to pass compulsory education laws. Society in the last fifty to sixty years has emphasized compulsory education as a means of gaining entrance to an institution of higher education in order to attain greater economic benefits.

As the country grew in size of population and in number of states, it became apparent that there would be a diversity in educational structure throughout the land. The Tenth Amendment of the United States Constitution which in effect gives the states the right to provide their own system of education reads, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."[1]

The fact that there are dissimilar compulsory education laws can be readily seen by those who are

aware of the differences that exist among the several states. Each section of the country and, indeed, each state has had its own political, economic and social conditions that influenced compulsory education laws.

During the development of the public school system in the United States there were several key instances of the aforementioned conditions that dictated some changes in the mandatory education laws. There was, for example, the emergence of child labor as an issue:

> Child labor emerged as a social issue in association with the development of the factory system, first in England and subsequently in other countries.[2]

Some judicial decisions have had a profound effect on compulsory education. The Supreme Court acted from time to time. There have been some important decisions emanating from the courts that had their roots in politics.

> The 1954 Supreme Court Decision Brown v Board of Education made provision for attendance at racially integrated schools. Compulsory attendance laws have since been repealed in Mississippi and South Carolina, and Virginia has made its law dependent upon local option.[3]

Ivan Illich points out that obligatory schooling had its roots in economic, social and political considerations. He felt that these

conditions had a profound effect on the growth of compulsory education.[4]

It is evident from a cursory look at the literature that these conditions have played a major role in the determination of mandatory schooling in this country. It seems school age children have either been threatened by these conditions or it may be that the consequences of competition of these children with adults economically, forced society to consider ways and means to gainfully occupy these children. In either case required education has undergone change in the United States in the past 335 years. The impact of these conditions is considerable.

People were concerned that children be educated in order to be able to assume their proper role in society. As the country grew in democratic principles, the concept that all people have an equal opportunity for life, liberty and the pursuit of happiness was accepted. Along with this acceptance grew the realization that people needed to be educated in order to help contribute to the country's growing needs. The concept that education was the right of all people became more than just a trite phrase. Compelled education seemed to be the means to the

end of an enlightened population.

An understanding of the present mood concerning mandatory education in this country is achieved through a thorough review of the past. In this review an attempt will be made to show how education grew from a simple mandate requiring instruction in religion and law to a complex structure of laws defining how, where, when and if this instruction was to be given. A review of the past will help us to understand better our present educational complexity and give the impetus and background necessary for future judgements in this area.

The role of compulsory schooling in relation to the societies of the past as well as the present will be examined in order that future needs may be more clearly understood. The era of questioning the usefulness of these laws is here. In fact the question asked is whether education beyond certain stages in life should be mandated. A corollary is whether compulsory education is in fact good for the individual, the state or the country.

This coercive form of education has its proponents and opponents. The multiplicity of state laws made the investigative task more

complex. Yet some common standards are observed in the fifty states. Proponents claim this form of education is the insurance of the poor and under-privileged against permanent servitude. Opponents say it is the pandora's box that opens the doors of incompetence, imposes undue taxation and promotes the continuance of an uncontested monopoly in this country by the public school system.

Problem

This study is a multifaceted historical analysis of compulsory education in the United States from its inception in the colonies (1642) through its most recent calendar year (1976). It attempts to synthesize the elements of origin, growth and challenges within a parameter of public necessity. The primary objective of its research will be to review certain historical documentation bearing on compulsory education. The research will attempt to explain an evolving way of life for many people which exercised control over their freedom of choice.

Need for the Study

Education is in a period of strenuous challenge by the demands of a rapidly changing

society. Alvin Toffler sums up this challenge in Future Shock.

> For education the lesson is clear: its prime objective must be to increase the individual's "cope-ability" - the speed and economy with which he can adapt to continual change. And the faster the rate of change, the more attention must be devoted to discerning the pattern of future events.[5]

Education of a forced nature influences the very structure of educational institutions. It appears, as it has appeared at different points in history, that change is imminent. A study of the conditions that led to the enactment of the laws will indicate if change is necessary. A further benefit of this type of study will enable us to decide how to best make these changes and in which direction.

It seems that there have been relatively few studies of this type. Katz in fact when compiling an annotated bibliography in the Phi Delta Kappa fastback entitled, A History of Compulsory Education Laws points to Forest C. Ensigns work of 1921 at the University of Iowa as "The only comprehensive historical study of compulsory education laws in the United States, . . ."[6] The failure of others to investigate these historical forerunners leading to compulsory education will warrant this research.

Ensigns' work in fact dealt with compulsory attendance and child labor and is certainly not an up to date historical reference in 1977.

This investigation may be of some benefit to the Congress, state legislatures, state departments of education and local school boards when they are considering changes in current legislation relative to compulsory education.

Questions for Research

There are four basic questions that will be used to guide the historical research and to telescope the research problem.

1. What were the conditions in the country that led to the proliferation and promulgation of compulsory education laws?

2. How does compulsory education influence the structure of educational institutions?

3. What influence did non-educational groups have in the promotion of required education?

4. What aspects of commonality exist between the states in regard to compulsory education?

Delimitations

There will be some necessary limits to this treatise. It would certainly be difficult to cover

in full measure the obvious wealth of historical material dealing with this subject. There will be five investigative intentions to restrict the scope of this study.

1. This study will focus on compulsory education in the United States. Reference to other areas of the world will be made only if they have bearing on the laws of the states.

2. This study will have a longitudinal dimension extending from 1642 to December, 1976

3. This study will organize and interpret the historical material which this research of compulsory education will yield. It will attempt to explain how and why compulsory education occurred.

4. This study will exclude the attendance factor. Attendance will be used in this work only as it relates to laws that determine compulsory education and not as it relates to presence on a daily basis.

5. This study will not attempt to compare compulsory education among the several states. Nor will it attempt to compare mandatory education in the United States with similar type education in any foreign country.

Definitions[7]

The terms of compulsory education discussion that warrant at least a brief definition are as follows:

1. Action. An ordinary proceeding in a court by which one party prosecutes another for the enforcement or protection of a right, the redress of a wrong, or the punishment of a public offense. In common language, a "suit," or "lawsuit".

2. Allegation. Statement in pleadings, setting forth what the party expects to prove.

3. Amicus curiae. "Friend at court"----one who volunteers or is requested to give information to the court regarding some matter of law in regard to which the judge is doubtful or mistaken; one who has no right to appear in a case but is allowed to file a brief or enter into the argument because of an indirect interest.

4. Annotation. Notes or commentaries in addition to the principal text. A book is said to be annotated when it contains such notes.

5. Appellant. The party who takes an appeal from one court to another.

6. Appellee. The party against whom an appeal is taken.

7. Apportionment. Bill required by Consti-

tution to be passed after every decennial census to determine by ratio per capita the number of representatives sent to Washington by each state.

8. Bill. A written complaint filed in a court.

9. Certiorari. A writ issued by a superior to an inferior court, calling its proceedings up for review.

10. Citations. References to law books. A citation includes the book where the reference is found, the volume number, and section or page numbers. A uniform system of abbreviations in case law has been adopted, but statutory materials differ from state to state according to the official designation accepted by the legislature.

11. Citations, judicial. References to court decisions. Citations in the case materials in this text refer to official state reports and to the National Reporter System. The volume number precedes the abbreviation of the reporter, and the page number follows it. In parentheses is the name of the state where the decision was rendered, and its date. A complete judicial citation includes everywhere that the case may be found, but for school-law work complete parallel citations are unnecessary.

12. Citations, statutory. References to

statutes; where the statute may be found in publicly available form. Statutory citations in this text include the name of the volume, the title and/or chapter, and the section number(s) quoted.

13. Civil action. One brought to recover some civil right, or to obtain redress for some wrong.

14. Class bill or suit. A case in which one or more in a numerous class, having a common interest in the issue, sue in behalf of themselves and all others of the class.

15. Code. A compilation of statutes, scientifically arranged into chapters, sub-headings, and sections, with a table of contents and index.

16. Common school. The term used to designate a school available to all the people on an equal basis.

17. Concurring opinion. An opinion written by a judge who agrees with the majority of the court as to the decision in a case, but has different reasons for arriving at that decision.

18. Constitution. The supreme organic and fundamental law of a nation or state, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and

regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers.

19. Contract. An agreement upon sufficient consideration, to do or not to do a particular thing; the writing which contains the agreement of the parties, with the terms and conditions, and which serves as proof of the obligation.

20. Damages. Pecuniary compensation or indemnity which may be recovered in court by the person ho has suffered loss or injury to his person, property, or rights through the unlawful act, or ommission, or negligence of another.

21. De facto. In fact.

22. De jure. By legal right.

23. Decision. A conclusive judgement.

24. Decree. Order of court of equity announcing the legal consequences of the facts found.

25. Defendant. The party against whom relief or recovery is sought in a court action.

26. Defense. That which is offered and alleged by the defendant as a reason in law or fact why the plaintiff should not recover.

27. Dissenting opinion. The opinion in which a judge announces his dissent from the conclusions held by the majority of the court.

28. Discrimination, unconstitutional. The effect of a statute which confers particular privileges on a class arbitrarily selected and for whom no reasonable distinction can be found.

29. Due process. The exercise of the powers of government in such a way as to protect individual rights.

30. Enjoin. To require a person, by writ of injunction from a court of equity, to perform, or to abstain or desist from, some act.

31. Equitable relief. Decree in court of equity.

32. Ex post facto. After the fact. An ex post facto law is one passed after an act which retrospectively changes the legal consequences of that act. The Federal Constitution prohibits the passage of ex post facto laws, referring to criminal laws only.

33. Ex rel. Abbreviation for ex relatione, meaning on relation or information. For the purpose of this text, it need be explained only as designating a type of court action.

34. Exception. In civil procedure, a formal objection to the action of the court when it refuses a request or overrules an objection, implying that the party excepting does not acquiesce in the court's

ruling and may base an appeal thereon.

35. Executed contract. A completed contract as opposed to one which is executory.

36. In loco parentis. In place of the parent; charged with some of the parents' rights, duties, and responsibilities.

37. In re. Concerning. When used in a title of a court case, it merely designates a type of case.

38. Injunction. A prohibitive writ issued by a court of equity forbidding the defendant to do some act he is threatening, or forbidding him to continue doing some act which is injurious to the plaintiff and cannot be adequately redressed by an action at law.

39. Ipso facto. By the fact itself.

40. Judgment. Decision of the court, usually that part involving the payment of damages.

41. Law. (1) System of principles or rules of human conduct. In this sense it includes decisions of courts as well as acts of legislatures. (2) An enactment of a legislature, a statute.

42. Liability. Legal responsibility.

43. Litigant. A party to a lawsuit.

44. Majority opinion. The statement of reasons for the views of the majority of the members of the

bench in a decision in which some of them disagree.

45. New deal. Term used by Franklin D. Roosevelt in his speech accepting the Democatic nomination for President in 1932, when he spoke of his program as " a new deal" for the American people. Later became the popular term for the extensive social reforms and political philosophy of his administration (1933-1945).

46. Ordinance. A rule or law.

47. Petition. Written application or prayer to the court for the redress of a wrong or the grant of a privilege or license.

48. Plaintiff. Person who brings an action; he who sues by filing a complaint.

49. Pleadings. Formal papers filed in court action including complaint by plaintiff and defendant's answer, showing what is alleged on one side and admitted or denied on the other side.

50. Prayer. The part of the petition in which petitioner requests the court to grant the relief sought.

51. Precedent. A decision considered as furnishing an example or authority for an identical or similar case afterward arising on a similar question of law.

52. Rate-bills. A means of financing schools.

Generally, payment was based on the number of children in school. Goods and land were sometimes used as payment.

53. Relief. The redress or assistance which a complainant seeks from the court; not properly applied to money damages.

54. Remand a case. To send the case back to the court from which it came for further proceedings there, after an appellate decision.

55. Respondent. Defendant in certain kinds of cases.

56. Sixteenth section. The part of each township set aside for education by the Ordinance of 1787.

57. Statute. Act of the legislature.

58. Statutory. Legally enacted.

59. Stipulation. (1) A particular provision in an agreement; (2) an agreement between counsel concerning business before a court.

60. Vested right. A right which has so completely and definitely accured or settled in a person that it cannot be cancelled or impaired.

Sources of Data

The sources of historical research used in this study are literary. They furnish data in varying degrees of relevance and influence in the shaping of these laws. Accordingly, their worth depends on a measure of how intimately any given writer was familiar with compulsory education in some significant aspect of its development. Their value is also determined by the capacity of memory to summon accurate detail.

1. State laws
2. Attorney General's opinions
3. Congressional legislation
4. Case law summaries
5. Supreme Court opinions
6. Books
7. Dissertations
8. Pamphlets
9. Periodical literature
10. Newspapers
11. Letters
12. Special Reports

Procedures

After the uniqueness of this study was confirmed, pertinent material from the Undergraduate, Graduate, Clements and Law libraries at the University

of Michigan was obtained. The libraries at Michigan State University, St. Clair County Community College and the State of Michigan were used to acquire additional relevant material.

Once the review of related literature was completed, there remained the task of researching and organizing certain historical documentation bearing on compulsory education. State law compilations, attorney general's opinions, case law summaries, congressional legislation and supreme court opinions were read in order to ascertain legal parameters of the study.

A thorough examination of certain laws, court opinions, commission reports and records was undertaken in order to infuse the study with the necessary perspective to provide depth for this theme.

Some of the documents chosen for this work were as follows: the laws of 1642 and 1852 in Massachusetts; the Northwest Ordinance, the Morrill Act, and the Kalamazoo decision which led to the growth of compulsory education. In the twentieth century the Pierce Decision, the Federal Fair Labor Standards Act, Brown v Board of Education, the Yoder Decision and the report of the National Commission on Reform of Secondary Education were scrutinized because of their influence.

The historical method of research which was utilized for this study assumed the usual tendencies of fallible human memory: forgetfulness, confusion and embellishment. It was thought to be a more beneficial approach to select certain events in order to demonstrate how they influenced the evolution of compulsory education.

Criticism

Constructive, objective criticism will be applied to the historical analysis of compulsory education. There will be an attempt to see the event in relation to the society and significant events of the time period.

Criticism will be of two forms: external and internal. External criticism will concern itself with the factors that may have influenced the event. The time and place of the occurrence of the event will be examined. Circumstances that may have led to the event will be scrutinized in order to demonstrate its appropriateness for this work. Internal criticism will investigate the meaning of statements contained in the exposition of the event as they relate to the conditions of the time

Organization

Chapter I establishes an historical frame

of reference as well as a procedure for the inquiry. Chapter II reviews the literature of compulsory education within the framework of three chosen time periods. Chapter III provides an interpretive chronology of the subject, relates thematic findings to the original questions for research and analyzes the events in terms of a set of criteria. Chapter IV summarizes the historical analysis of data, cites the conclusions toward which the facts point, speculates on the future of compulsory education and recommends future improvements of mandatory education.

Footnotes

[1]Thomas James Norton, The Constitution of the United States (New York: Committee for Constitutional Government, 1962), p. 226.

[2]Encyclopedia of Educational Research, 1969 ed., s.v. "Attendance."

[3]Ibid., p. 94.

[4]Ivan Illich, Deschooling Society (New York: Harper and Row, 1971), p. 9.

[5]Alvin Toffler, Future Shock (New York: Bantam Books, 1971), p. 403.

[6]Michael S. Katz, A History of Compulsory Education Laws, The Phi Delta Kappa Educational Foundation, Fastback 75 (Bloomington, Indiana: The Phi Delta Kappa Educational Foundation, 1976), p. 36.

[7]The definitions are derived from the glossaries and texts of these sources: John Brubacher, A History of the Problems of Education (New York: McGraw-Hill Co., 1947); B. A. Hinsdale, The Ordinance of 1787 (Akron, Ohio: Educational Monthly Print, 1887), pp. 6-7; B. A. Hinsdale, Horace Mann and the Common School Revival in the United States (New York; Charles Scribner's Sons, 1913); Arthur A. Renzy, A Schoolman in the Law Library (Danville, Illinois: Interstate Printers and Publishers, 1962), pp. 55-62; and Websters Encyclopedic Dictionary (New York: Educational Book Guild, 1957).

CHAPTER II

REVIEW OF RELATED LITERATURE

Overview

Compulsory education in the United States had its beginnings in the middle of the seventeenth century as an educational provision rather than as an attendance provision. Its roots aimed at improving the formal education of the children. However, as the years went on the educational provision became coupled with an attendance provision.

Compulsory education has undergone several changes since the middle of the seventeenth century. Many of these changes were rooted in the social, economic and political activities of the country during these periods of time. These extraneous changes have affected the philosophy of schooling and seem to have perpetuated the adolescent years of youth.

An historical study of compulsory education is a task that demands a survey of the literature in order to ascertain some of these changes. This section will look at the implications social, economic and political activities had on forced

education.

In this review of selected literature, three time frames in which to organize the material were chosen. Although the time frames are somewhat arbitrary they were chosen on the basis of some events occurring during those periods of time that may have brought about changes in obligatory education. The three time frames are as follows: 1642-1850; 1851-1918; 1919-1976. During each of these time frames there seemed to be at least one or more actions that aroused civic clamor, a legislative action or other official mandate for a change in compulsory education.

There will be a review of the social, economic and political effects on mandatory education during these time frames. Each time frame will be examined in order to determine the extent of these effects. It is conceivable that an identification of the experiences of the past with their attenuating circumstances will enable us to make better judgements of our present laws and needs.

Review

1642 to 1850

During this period compulsory education had its beginnings in this country. In 1642, reacting to the unsatisfactory way in which parents were seeing to the education of their children the state enjoined the town selectmen to see to it that the parents were held accountable for the ability of their children to read and understand the principles of religion and the capital laws of the country.[1]

The pressure for the implementation of this law was largely an outgrowth of economic conditions of the time. The parents needed to use their children in what they saw as gainful employment. In order to counteract what they saw as neglect, the state forced the issue of compulsory education by enacting the laws of 1642 and 1647.

> The Law of 1642 provided for compulsory education. But it did not establish schools, nor did it ordain compulsory attendance. Just how its mandates were to be met--or avoided--was left to parental discretion. Here and there, ..., private instruction served satisfactorily; elsewhere the town itself provided for some sort of schooling. Finally, in 1647, the General Court took a more drastic step by compelling every town of fifty householders to make provision for instruction in reading and writing, it being, as the law plainly stated, "one chief project of the old deluder Satan to keep men from

> the knowledge of the Scriptures." The law further stipulated that towns of a hundred householders--and flourishing towns they were--were to furnish instruction in Latin grammar so that youth might be "fitted for the university." Though the law did not actually establish a school, in the end its effect was pretty much the same. What it did call for was the appointment of "one . . . to teach . . . all such children as shall resort to him." More important, his wages were to be paid either "by the parents or masters or by the inhabitants in general . . ." With some modification, the statute was kept in force for the rest of the century, and like its forerunner it became the model for similar lawmaking elsewhere in New England except, once more, in Rhode Island.[2]

Although the laws of 1642 and 1647 seem to form the basis for our present public school system it was still difficult to justify the need for this type of compulsion. These laws seemed to be effectively ignored by the populace for a good period of time. An agricultural community hardly saw education as a necessity when they needed all of the available bodies to produce food for survival.[3]

It must be kept in mind that during the period of early colonization people had brought to the new country many of the old concepts of education that had been prevalent in Europe at that time.

> The laws of 1642 and 1648 sought to buttress traditional family structure and the system of apprenticeship by requiring compulsory literacy and job training, not, it should

> be noted, by compulsory schooling. These laws expressed, as Bernard Bailyn has written, "a sudden awareness, a heightened consciousness of what the family had meant in education, of how much of the burden of imparting civilization to the young it had borne, and of what its loss might mean. . . ."[4]

One of our staunchest founding fathers felt that education was necessary for initiative and freedom. Thomas Jefferson was a proponent of literacy. He knew that a literate person would be able to come to the defense of a free institution; he would be able to produce for the good of the country. Jefferson was interested in the development of a citizenry that could and would be able to participate in the development of a free and moral society.[5]

Thus compulsory education in America during this period began because of the neglect of parents for the education of their children. As the country grew with the migration of Europeans and as the people moved toward freedom from their motherland, so too did we have the leaders of the revolution make a case for the development of a literate electorate. They saw that education insured a citizenry that could make intelligent decisions which in turn would produce a society in which all could be active participants.

At the turn of the nineteenth century the country was settling down from the experience of the Revolutionary War and entering a period of comparative stability. The problems of fighting a war for independence and of setting up the machinery for independent governance which had occupied many persons' energies faded somewhat in the background. Jefferson, a champion for literacy and education, was president and the pressure for and against schools became more apparent. On the one hand we had promoters of the concept of universal literacy, the common school and the elimination of young children from the labor market. On the other hand we had individuals still deeply involved in a rural agricultural economy who needed their children for the work in the fields and on the farms. There was also other opposition to the movement toward mandatory education.

> Compulsory education it was claimed, was monarchial in origin and therefore contrary to the exercise of free institutions. This sort of opposition high-lighted another interesting angle to this legislation. The people who promoted it at first were rarely educators. Rather were they people drawn from laboring and political groups. Indeed, one might say that early child-labor legislation sought the protection of adult rather than child interests. Only later on did the welfare of the child become the predominating consideration.[6]

It becomes somewhat easy to understand that the opposition to compulsory education was based on the real experiences of the people living at this time. They had just finished a war against a monarchial rule and looked askance at those whom they thought were promoting a monarchial form of education. Further, those people were still very much dependent on the soil for their welfare and any move toward the elimination of a good portion of the work force had to be viewed with ill feelings.

However, the people who were pushing for compulsory education pressed until they had accomplished their goal.

> During the Colonial Period, most schools had perpetuated differences of religion, occupation, national origin and social class. During the early national period, despite the desire of the revolutionary educational reformers for a homogeneous citizenry, education continued to be heterogeneous, maintaining much of its sectarian energy and social diversity.[7]

Despite the desire for more homogeneity in the educational process there was the element of heterogeneity. The element that seemed to be a stumbling block was the issue of interference with individual liberty. However, the overriding concern became the issue of democratic freedom. Democratic

freedom was the term being used by the proponents of universal literacy and the associated movement seemed to be the base on which the common school movement was founded.

> The period was one in which the general cause of the common man was in the ascendant. There was a romantic, optimistic belief abroad that man was capable of indefinite perfectability. All that he needed was to assume control over the form and functioning of his social institutions in order to provide the requisite opportunities. Thus the demand for public education was but part of a larger humanitarian movement to modify unsatisfactory institutions, including prisons and slavery. The general optimism was further heightened by unlimited economic opportunities on the frontier. In politics the trend of the times was reflected in an assumption of control of the national government by the common man who ushered himself into office by electing Andrew Jackson president.[8]

Thus the movement toward the compulsory education laws of the mid-nineteenth century were helped by many social, political and economic conditions in the country during the first three decades.

> The crusade began in the settled older regions of the East, where new social conditions--urbanization, industrialism, immigration, and the democratization of politics--were most visible and painful. These new forces unleashed social, political, and economic conflicts, and educational historians have traditionally seen the common school crusade as itself a series of "battles." It is true that many citizens did oppose the common school: taxpayers--

> urban landlords and dirt farmers alike--who could see no reason to educate the children of others; sectarian groups who attacked public schools as godless or covertly Protestant; patrons and proprietors of private schools; laborers who opposed education beyond the three R's as a subsidy of the wealthy; and patricians who clung to an elitism which was going out of style in Jacksonian America. But the remarkable characteristic of the common school crusade was its universality. All types of people--merchant and union organizer, Whig and Democrat, Calvinist and Unitarian, easterner and westerner--joined the cause, often with quite different motives. The movement was more remarkable for the consensus it secured than for the conflict it aroused.[9]

In the country, then, a basic conflict was stirred to prevalance at this time. As may seem to be the case with every controversial topic of interest, each party seemed to have their own vested interest. Jefferson seemed to be interested in promoting the education of a people with the intention of training a selected group to form a nation and move it forward. The politics in this early period changed from the Jeffersonian aristocracy concept to the Jacksonian common man philosophy. During the Jacksonian period the common man was beginning to feel his power. He began to see that education would ensure his possibility of advancement into the upper economic and social classes. Education to the workingman became the ticket to the good

life. They saw it as a relief from the demands of the employers and the ruling class. They saw it as a means to provide more work for the adult community. They also saw it as a means of relieving the long day and hard work for their youngsters. Seeing the educated person as one who had a better opportunity in the new country, the common man worked diligently for the promotion of compulsory public education.

> Labor unions and other groups of industrial workers in the United States demanded public education for the children of urban workers by mid-nineteenth century. Farmers, where organized, were no less interested in education for their children, though they were less effective in making their votes count. One of the first demands of unions was for "equal, universal education." When the cities swelled with immigrants, only a "common school" could make them citizens recognizably American; those who knew no English had to become literate, or at least their children did, if the American economy was not to be held back. But the forces opposing the extension of free, public education were strong. In addition to the argument that it was wrong to take one man's money for the education of another man's children, the public schools were charged with being "Godless" because they were nonsectarian. Horace Mann (1796-1859), first state secretary to a Board of Education, was unsparingly attacked by Protestant divines for being the proponent of a school that was without religion and therefore a threat to the morals of the young. Catholics joined in the criticism on the ground that no public school supported from the general revenue and controlled by a secular state could

> legally teach any sectarian religion. Without such sectarian religion, the Catholic criticism held, there could be no firm foundation for moral instruction, and children would be injured by the lack of ethical, as well as religious, instruction.[10]

The move from the political aristocracy of the Jeffersonian years to the common man philosophy of the Jacksonian years began to infiltrate many of the states. This quest for active participants in a democracy came to fruition during this period but not in the manner envisioned by many of those who had called for the education of the masses. The call for education during this period went beyond the basic literacy requirement. It saw that education could become available for all regardless of their station in life. The rise in strength of the labor unions brought a powerful ally to the movement toward compulsory education in this period. Other individuals and groups began to clamor for universal education. Soon a strong coalition was formed with a united demand. The inevitable result of this pressure for universal education was the passage of laws which would formally establish attendance at school as a right. These laws went even further by attempting to mandate when and how that attendance should be secured.

1851 to 1918

As the United States approached the middle of the nineteenth century the call for universal education became quite pronounced. No longer were the common people ignored when it came to education. With the hiring of Horace Mann and Henry Barnard there began an upsurge in the influence that professional educators had on the process of education. Massachusetts again led the way by passing a state wide law insuring compulsory education. It was the very first law passed by one of the United States. Many other states followed and by 1918 all of the then constituted states had such a law on their books.

> Compulsory education in the United States occurred first in Massachusetts. As far back as 1642 the selectmen were enjoined to compel parents to teach their children themselves or to procure that teaching for them. But the need of compulsory education is not keenly felt in an agricultural population, especially if it is homogeneous, and if newly arrived foreigners are not numerous. Not till the approach of the middle of the nineteenth century did Massachusetts realize the need of enforced attendance. This was one of the matters to which the State Board of Education, created in 1837, gave its attention. In 1842 a child labor law was passed; in 1852 the first law on compulsory attendance appeared. It required of each child from 8 to 14 years of age at least 12 weeks of attendance each year, of which 6 should be consecutive. A fair penalty was imposed, but parents able to prove poverty or inability could be excused. The law seems to have had little force and

> to have claimed little attention. Many of the absentees were children whose parents had lost control of them, so the authorities turned their attention to dealing with truants.[11]

However, at about the time that these laws were passed the country became involved in the slavery question. For a time the issue of compulsory education took a back seat to another burning national issue. During the period of the Civil War there seemed to be a moratorium on the compulsory education question. However, it was not too many years after the war had ended that the Fourteenth Amendment to the Constitution was adopted. This Amendment is part of Appendix F in this work. This Amendment had the effect of setting in motion many of the innovative practices, regulatory attempts and legal battles. The effect of these legal battles has sifted through to our present time.

> The American ideal of a common, ladder system of education had been clearly enunciated by the time of the Civil War. While it was far from realized, there can be little doubt that by 1865 its broader outlines had already appeared in practice. Yet major shortcomings and inequalities were everywhere evident. In spite of elaborate legislation, many states in 1865 still failed to provide school facilities for every child. The fact that one section of the nation lay in the ruin of war obviously aggravated this situation considerably. In other states public high schools were confined to cities, or at best sporadically scattered through richer districts. State universities, in ideal

> established for the people, in practice continued to cater to a small group who could afford the luxury of a higher classical education.
>
> In many respects, these conditions posed the most important educational problem for the generations following the Civil War: to extend and perfect the ideal of universal educational opportunity, and to realize it more effectively in practice. Around these two concerns revolved much of the educational controversy of this period. Furthermore, the attempt to extend the common school ideal soon instigated challenges to the ideal itself, and from an increasing number of sources came questions concerning the state's right to educate at all, its power and responsibility to tax for universal education, and the educability of people in general. Even more so than in the antebellum period, the public school had become a threat to the values of certain groups, and they lashed out bitterly in their opposition to it.[12]

There were many who felt that education was necessary but not so important as to interfere with parental rights. A Roman Catholic clergyman writing in the American Ecclesiastical Review for April, 1892, said, "One must distinguish between free cooperation of the citizens in the cause of education and state compulsion."[13]

Although the cause of free compulsory education had been well enunciated prior to the Civil War, there were those who did not agree that education ought to be free; others stated it ought not to be public; both agreed it ought not be compulsive.

However, the case for free public compulsory education was much stronger than the case presented by the opposition. There began a state by state enactment in one form or another of compulsory education laws. Many of these were spurred by the passage of the Fourteenth Amendment. Other states were moved to the passage of compulsory education laws to provide for the education of the large number of immigrants who reached the United States during the last third of the century. Other states used the abuse of minors by the labor fraternity as their prime motivating force. Others saw it as a means of ensuring full and complete citizenship.

> Strongly indicative of the increasing committment to universal schooling was the growth of compulsory attendance legislation between 1865 and 1918. While it is true that Massachusetts had passed a compulsory attendance measure as early as 1852 and that New York had followed suit a year later, the real extension of the idea awaited the end of the Civil War. By 1900 thirty-two states, embracing most of the North and West, had passed such laws, and with Mississippi's acceptance of the principle in 1918 the idea became universal. Needless to say, there was considerable variation in the provisions of different states. The required length of annual attendance, the compulsory age period, the means of enforcement--all differed from state to state as well as from region to region.[14]

Table 1 will show the dates of establishment of these laws.

TABLE I

DATES OF ENACTMENT OF COMPULSORY EDUCATION LAWS IN THE UNITED STATES 1852-1918

Massachusetts	1852	Rhode Island	1883	Iowa	1902
District of Columbia	1864	Illinois	1883	Maryland	1902
Vermont	1867	North Dakota	1883	Missouri	1905
New Hampshire	1871	South Dakota	1883	Tennessee	1905
Michigan	1871	Montana	1883	Delaware	1907
Washington	1871	Minnesota	1885	North Carolina	1907
Connecticut	1872	Nebraska	1887	Oklahoma	1907
Nevada	1873	Idaho	1887	Virginia	1908
New York	1874	Colorado	1889	Arkansas	1909
Kansas	1874	Oregon	1889	Louisiana	1910
California	1874	Utah	1890	Alabama	1915
Maine	1875	New Mexico	1891	Florida	1915
New Jersey	1875	Pennsylvania	1895	South Carolina	1915
Wyoming	1876	Kentucky	1896	Texas[1]	1915
Ohio	1877	West Virginia	1897	Georgia	1916
Wisconsin	1879	Indiana	1897	Mississippi	1918
		Arizona	1899		

SOURCE: Walter S. Deffenbaugh and Ward W. Keesecker, "Compulsory School Attendance Laws and Their Administration," United States Office of Education Bulletin, 1935, No. 4, (Washington, D. C.: U. S. Government Printing Office, 1935), p. 8.

1. The Texas law of 1873 establishing a free public-school system contained a compulsory school attendance provision. This law was somewhat ineffective and unsatisfactory at that time and was superseded by other legislation in 1876 which omitted the compulsory school attendance provision.

Schools were beginning to cement their role as a panacea of societies' ills. If there were economic problems, part of the solution was to pass child labor laws concomitant with mandatory school legislation. Moses Stambler points this out in the History of Education Quarterly when he set down a chronological account of changes in compulsory education laws and child labor laws in New York City.

> 1886--Child Labor Law of 1886 a) Forbade factory labor for all children under thirteen. b) Provided penalties for violations.
>
> 1889--Child Labor Law of 1889 a) Raised the age of forbidding factory labor for children from thirteen to fourteen. b) No child under sixteen could be employed unless he could read and write.
>
> 1894--Compulsory Education Law of 1894 a) Required full-time school attendance from eight to twelve years of age. b) Required full-time attendance of children from twelve to fourteen, but permitted child under fourteen and over twelve to go to work "under permit" if child had attended 80 consecutive school days during the year. c) Children above fourteen not required to go to school.[15]

Labor, however, was not the only force that was leading the push toward effective legislation. There were other outside influences that put pressure on the various states to include compulsory education legislation in their general laws.

> However, the closing years of the nineteenth century witnessed the beginning of an expansion that was truly phenomenal. By 1900 more than two-fifths of our population

> was already living in urban communities, and with this development of industrialization the conditions surrounding children were vastly changed. Cities were growing up and taking form to accomodate the demands of production and exchange with little or no consideration for the requirements of childhood. More and more the schools were forced to supply experiences regarded as essential for the socialization of youth in the areas of manners and morals, health, recreation, vocation, and civic behavior. This urbanization meant longer years of formal schooling than had ever been necessary in the rural environment.[16]

So we see that the increasing urbanization, industrialization and socialization of many activities was beginning to take its toll on the American concept of education. What started as a desire for literacy and a perfunctory competency, was growing into a demand for education of the masses. However, it was also becoming increasingly important but little noticed that there was an accompanying call for increased attendance. Education was indeed becoming an industry much like the industry it was purported to replace.

> This expansion of the education industry is justified by two basic, seldom questioned assumptions, neither of which seems selfevident. The first is that universal, compulsory school attendance until late adolescence is essential to the conduct of society. All modern industrial societies have adopted a similar policy in requiring school attendance. But this does not of itself tell us whether such compulsory schooling is essential or just apparently inevitable. All we can really

> say is that it is characteristic of modern life, like freeways and air pollution.
>
> The second assumption is that formal instruction in school is so much more beneficial to the student-and through him, to the total society-than anything he might arrange for himself that the state is justified in making it a criminal offense for him to go about any business or pleasure of his own during school hours. The Education Code confers on the people who run schools, with the resources-internal and external-available to them, the authority to prescribe for a decade or more the only lawful path toward maturation that a young person may follow. Yet no school can do more than plan and organize experiences, arranging for some things to happen and preventing others from happening, through the days, months, and years, with the intention of insuring that life will thereby become more instructive in school than it could have been under a freer choice of alternatives. The function of the schools is to socialize the young; and in so doing, they define "youth" as a social category, subject to special surveillance and constraint. It is rather naive to discuss educational reform without recognizing that the schools are, in fact, the chief instrument by which young people are kept in their place, and by which that place is defined. They do so with the mandate of the adult society, which accepts, and acts on, the two assumptions I have stated.[17]

What may have begun as a means of helping to solve economic problems, of promoting democratic citizenship, of solving child labor abuse and of providing for the educational literacy of hundreds of thousands of immigrants also had the beginnings

of a giant industry. This new industry was not immune from these problems.

World War I interfered somewhat with the progress of compulsory education. However, its effect was not as noticeable as that of the Civil War. Primarily this was due to the facts that this war was fought on another shore and the American involvement came almost three years after its beginning and about one year before its culmination.

Cubberley in his Changing Conceptions of Education stated,

> From 1897 to 1907, our country experienced an unprecedented period of industrial development and national prosperity. It was a period marked by the concentration of capital and business enterprises in all fields; undertakings on a scale heretofore unattempted were begun; capital changed from a national to an international basis; "trusts" combinations and associations were formed in all lines of business; the specialization of labor and the introduction of labor-saving machinery took place to an extent before unknown; new inventions destroyed old trades and threw hundreds out of employment; the immigration of people racially further removed from our own stock reached a maximum; city conditions everywhere became even more complex and potentially more dangerous; villages became more urban, and a more cosmopolitan attitude began to pervade our whole life; the frontier practically disappeared; the national feeling was deepened and intensified, and the national government was called upon to do many things for the benefit of the people which it had become clearly evident that the states could not do.[18]

These many influences were to mandate even more to the politicians, economists and the educators the necessity of compulsory education as a panacea for the many social ills of children. The removal of vast numbers of children from the labor market dictated the necessity for finding a useful place for the children. The influx of many immigrants provided the impetus for the further entrenchment of schools as a viable institution for the instruction in the basic rudiments of our language. These and the many other things that were occurring in the early part of the twentieth century made it necessary to find a time usage device to keep children gainfully occupied.

> The school is essentially a time and labor saving device, created-with us-by democracy to serve democracy's needs. To convey to the next generation the knowledge and the accumulated experience of the past is not its only function. It must equally prepare the future citizen for the to-morrow of our complex life. The school must grasp the significance of its social connections and relations, and must come to realize that its real worth and its hope of adequate regard lies in its social efficiency. There are many reasons for believing that this change is taking place rapidly at present, and that an educational sociology, needed as much by teachers today as an educational psychology, is now in the process of being formulated for our use.
>
> Child life is everywhere experiencing to-day a new lengthening of the period of dependence and training. In proportion as our social life becomes broader and more

> complex, a longer period of guidance becomes necessary to prepare the individual for active participation in it. As our industrial life becomes narrower and its processes more concealed, new and more extended training is called for to prepare the future worker for his task, to reveal to him something of the intricacy and interdependence of our modern, social, and industrial life, and to point out to him the necessity of each man's part. With the ever increasing subdivision and specialization of labor, the danger from class subdivision is constantly increasing, and the task is thrown more and more upon the school of instilling into all a social and political consciousness that will lead to unity amid diversity, and to united action for the preservation and betterment of our democratic institutions. The great numbers of aliens who yearly come to our shores and at once become a part of our industrial classes, many of whom are illiterate and few of whom have any real conception of the meaning of democratic life, add new emphasis to this point of view.[19]

So the beginnings of the perpetuation of the adolescent years was noted at this time. In the centuries preceding the twentieth we had compulsory education for many reasons although it was not enforced to any great degree because of the lack of cooperation of many different segments of society. At this time, however there were many more influences on society and the need for some form of child rearing and education became more of a necessity. The concept of education as a requirement for basic literacy, moral values and fundamental knowledge was gradually being eased out of the picture by the necessity for an education that

would meet the needs of a diverse populace. Universal education became the ideal and compulsory attendance and education was the vehicle to achieve that ideal.

1919 to 1976

In the History of Education Quarterly for the summer of 1968, there was a listing and summary of various laws dealing with compulsory education. These laws ranged from the so called milestone years for compulsory education laws to the child labor laws. In essence these laws extended the period of compulsory education from fourteen to sixteen, raised the legal employment age from twelve to fourteen, and provided for issuance and penalties in relation to work certificates. In a few more years laws were passed to ensure census taking, record keeping and attendance.[20] Some of the effects of these laws were to insure a pattern of compulsory universal education in the early part of the twentieth century. What had been a concept now was fast becoming a reality. Robert N. Bush in his work, Education: An Instrument of National Goals, supports the statement when he recognized that a new concept of education was being forged by making education compulsory not only at the elementary level but also at the secondary level.[21]

This requirement for compulsory secondary

education was further compounded by the large immigration from Europe during the period of 1910-1920 and by the further intensive initiative from the burgeoning labor movement. The school was becoming more and more a place for social change and refinement as it was a place for educational fundamentals. With the growing influence and affluence of the labor movement it became more evident that they were closely identifing and allying themselves with the middle class aspirations. A direct result of this seemed to be an acceptance of compulsory universal education as a solution.

At this time in its national history Americans were faced with another crisis that fostered the movement toward compulsory education on a general level. Although the federal government intervened by establishing employing agencies to alleviate the employment problem, the forced education movement continued to grow in strength.[22]

> The great economic depression of 1929 gave further importance to the secondary school as a place for liberal or general education, and this in spite of the current pragmatic approach to the high school curriculum and in spite of its large cargo of vocational subjects. Unemployed youth presented such a serious problem at that time that a special study was made of their social and educational needs. The National Youth Commission, after examining the problem from all angles,

> reported that, while 70 percent of youth wished to enter white-collar occupations, the country could absorb only about 12 per cent in this way. Now, if 50 to 75 per cent of all remaining jobs required little or no technical training, the great majority of high school youth was not going to need to go to high school to prepare for a job. The vocational character of the high school's aim to prepare for life would therefore have to be radically revised. The conclusion that the commission drew was that "The prime function, therefore, of universal secondary education is to provide liberal education for the common life of the whole population."[23]

In this period of time then, it was observed that the concern for obligatory education grew and developed. There were some key developments in this period that enabled this movement to grow. The immigration movement at the early and middle parts of this period provided the country with additional people who were suddenly thrust upon the nation. Provisions needed to be made for their basic assimilation into society and for their indoctrination into the rudiments of the language and culture. Schools seemed to be the most appropriate place to do this.

The labor movement gaining in strength was able to successfully push for the abolition of child labor and the promotion of adult labor. As a result of this departure from the past it became necessary to provide a place of gainful employment for these youngsters. The school seemed to offer the best answer

for this problem.

The great depression that began in 1929 gave a further push to the call of compulsory education in this period. Many saw the necessity for providing a place for the youngsters' proper use of time. Others saw it as an opportunity to provide for their youngsters the education necessary to cope with an increasingly industrial society.

> The predominant reaction of Americans to the Great Depression of the 1930's provides another clue to evolving conceptions of education in America. The reports of such sensitive scholars as E. Wight Bakke, of Yale University, brought home the fact that Americans had learned well the importance of education in a society that had become highly industrialized. Bakke documented what many suspected; namely, that, by and large, unemployed Americans were more likely to blame themselves than the "system" for their unhappy circumstances in those bitter years.24

These circumstances had a direct influence on the development of the present compulsory education situation in this country. Each circumstance provided a whole host of advocates for universal education. Each of these circumstances was in some-way related to a political process, economic upheaval or social circumstance.

During the middle of the 1930's compulsory schooling became more pronounced. The labor unions not only established themselves but also strengthened their

position. Labor unions in many states set the pace and applied the pressure for formal compulsory education. It was a way of opening the labor market to more adult workers. Furthermore, it provided a means for insistence on improved wages and working conditions.

> . . . .a large body of historical research indicates that the system of mass, formal, and compulsory education arose more or less directly out of changes in productive relations associated with the Industrial Revolution, in its role of supplying a properly socialized and stratified labor force.[25]

The pressure put on by labor unions was very well timed. During the 1930's the United States, as well as the rest of the world, was in the throes of a depression. Economies were fluctuating and floundering every day. Technology was the watchword of the day. It became necessary to present some credentials in order to move into many job positions. America was becoming less rural. Industry was springing up everywhere and the standard education was no longer enough.

> Changes in the economy during the 20th century tended to reinforce the predominant position of the school. As technology grew more complex, and modern life became more organized along hierarchial lines, the need for formal schooling increased. It became harder and harder to get ahead without the right educational credentials. And so the idea took hold that schooling guaranteed economic rewards.[26]

Although the position of compulsory education advocates was seen as a mothod of advancing the concepts of equal opportunity, there were some who felt that quality education might be achieved in another way. The involvement of the United States in World War II slowed the demand for compulsory education. In addition it provided a relief for some of the economic problems of the country. However, the economic relief seemed to be offset by the resultant social and political problems that sometimes rise out of global conflict.

By 1950 formal schooling was looked upon by the economic have-nots and the political power seekers as an equalizer with other segments of society. Schools began to take an even more important role in society. Soon it became evident, however, that schools unlike other public domain were controlled by state and federal agencies and saw judicial intervention.[27] L. W. Huber, in his work Compulsory Attendance and Indifferent Pupils, states that, "....some of these problems of indifferent pupils could be alleviated by reassessing our motivations for the compulsory education laws."[28] He suggests that closer attention to hold parents legally responsible, allowing parents a choice of classes and schedules and revision of the work permit age requirement might

provide a partial solution.[29] From the beginning education was much more voluntary and more geared to a rural, agrarian society. As the country grew in size and in economic outlook, the basic character of education changed. What was once a small, tight-knit society grew into a sprawling, versatile society. It became necessary to find ways to provide for the larger numbers and the diverse necessities. Schools became an answer to further opportunity and to further leisure. For other people it seemed to diminish the true meaning of education.

Claude C. Lammers in his article, Compulsory School Attendance: Raise Requirements in the Automated Age?, develops a thesis based on the effect of the automated age on educational requirements. He discusses the question of requiring more mandatory schooling. He concludes that automation does not require more formal education on the part of future workers. Raising the school leaving age would only present the added problem of enforcement; it would also cause standards of classroom conduct to deteriorate. He suggests strengthening the educational program for the disadvantaged, revising curriculum to meet demands of automation and to clarify the role of the school in the changing economy.[30]

Therein may lay partial answer to the problem of compulsory education and attendance--clarification of the role of the school. Should the school be a social agency, a labor provider or an industry in the true hierarchical sense? Or, should it be something else? Does the state, labor unions and private industry have an obligation to take over some of the functions now held by schools? Or does the individual have the right to ascertain for himself when he has fulfilled his educational requirements? The answer to the three questions are not easily attained. Some people feel that schools are too firmly entrenched because compulsory education does not recognize any obligation of the school society to the individual. The individual seems devoid of his rights. In particular his right to freedom of attendance or even choice of school is negated. The student sees standards for buildings, property, behavior and other people but does not see school standards being invoked.[31]

Schools for years have been insulated against those who wish to eliminate them. Schools as seen today may be obsolete in many ways but the services they perform are of such an essential nature to the adult world that any attempt to alter them meets with stiff resistance. Schools today provide babysitting

services albeit high priced; they remove many people from competition in the labor market by providing jobs for teachers, publishers and other contractor types. To alter these institutions in any significant way would undoubtedly jeopardize the calm provided by our institutionally oriented society.[32]

Some people have resisted the compulsory education laws successfully and peacefully. The Amish have for years held that education beyond the eighth grade is not necessary for the people of their culture. Although the decision (Wisconsin v Yoder) reached in the Supreme Court was narrow in its legal decision it had far reaching implications for public education policy of the future.[33]

During the past twenty five years there has been a call for a change in our present method of mass education. In the 1950s, the case was made for more rigorous schooling particularly in the cognitive areas. In the 1960s, came the call for the abolition of the structures inherent in the school programs. People questioned the destruction of the individual in our massed forms of education. Many members of the education fraternity itself questioned the coercive aspects of schools. They contended in increasing numbers, that to have schools for many of the present reasons is a disservice to a significant portion of the population.

James Piatt, in his article Compulsory Attendance Can Be Fatal makes the point that, "The crush of students since the passing of the compulsory attendance law has, in itself, had a negative effect on teaching."[34]

It is a fact that many students find high school irrelevant, intolerable and meaningless. The student who wishes to drop out must have his wish respected. Possibly alternative forms of education or a form of apprenticeship may be the answer for the unwilling person. Society must begin to demand that other industrial forms in society open their eyes to the need for cooperation in education.[35]

Finally Piatt recommends,

> We must remove or modify compulsory education laws now and make education a matter of choice, allowing unwilling students to drop out of school to experience life and its complexities, when they deem it necessary and worthwhile. We must admit to the fact that attendance is nothing more than attendance. Learning is not related to attendance; learning is related to a deep desire for self-realization and personal growth.[36]

The constant social, political and economic upheavals of the 1970s also seem to be contributing to the reexamination of our educational priorities. Social revolution is underway in this country. It is no longer universally acceptable for the young to be separated from the old nor to be placed in an artificial

society for a good portion of a day.[37]

The time seems to be ripe for a change in the concept of schooling. The phasing out of the agrarian society, the revision of the industrial model and the fact of the school becoming caught in the social upheaval may dictate a change in our thinking of school as an industrial force.

The age of schooling [italics mine] seems to be coming to an end. The purpose and the power schools enjoyed during the latter half of the nineteenth century and the first half of the twentieth century is being eroded. No longer is there a blind acceptance of the schooled society. A new age appears on the horizon.[38]

SUMMARY

The compulsory education of youth began in this country in 1642 for the purpose of forcing parents to provide a basic moral, literate and knowledgeable citizenry. Although the intent of the law was noble, many citizens of a rural, agricultural society did not see the need for these laws and did not abide by them.

After the Revolutionary War the need for a literate informed electorate was seen as a top priority by the national leaders. Jefferson's concept of a

literate leadership body grew to include the people as part of a literate electorate during the presidency of Jackson.

In the period immediately following the Civil War the call for compulsory education grew and the pressure began to mount. Labor laws were enacted to ostensibly protect children from abuses in factories, but in essence were the device used to remove children from a large labor force. The large group of immigrants also helped to further the growth of the education industry. Someone had to provide for the basic literacy and competency of these people. Because the immigration numbers rose during the early part of the twentieth century the demand for education expanded along with this phenomena. As the amount of leisure time grew in the twenties so too grew the opportunity for more education. This growth was somewhat diminished by the onslaught of the depression. The late thirties produced the strength of the labor unions, and the further growth of the industrial empire; so too evolved the education industry. After the Second World War the clamor for more education was heard. People began to see education as the great social, political and economic equalizer.

A demand for a change in the educational process and structure was evoked during the sixties and seventies. Further into the seventies that call will continue and a new request for a deschooled society will be heard.

Footnotes

[1]Cyclopedia of Education, 1911 ed., s.v. "Attendance."

[2]Adolphe E. Meyer, An Educational History of the American People (New York:McGraw-Hill Co., 1957), p. 31.

[3]Cyclopedia of Education, 1911 ed., s.v. "Attendance."

[4]David B. Tyack, Turning Points in American Educational History (Massachusetts:Blaisdell Publishing Co., 1967), p. 4.

[5]Paul Goodman, Compulsory Mis-education and The Community of Scholars (New York:Vintage Books, 1964), p. 19.

[6]John S. Brubacher, A History of the Problems of Education (New York:McGraw-Hill Co., 1947), p. 559.

[7]Tyack, Turning Points, p. 120.

[8]Brubacher, Problems, p. 552.

[9]Tyack, Turning Points, p. 121.

[10]Robert Holmes Beck, A Social History of Education (Englewood Cliffs:Prentice Hall, 1965), p. 88.

[11]Cyclopedia of Education, 1911 ed., s.v. "Attendance."

[12]R. Freeman Butts and Lawrence A. Cremin, A History of Education in American Culture (New York: Holt, Rinehart and Winston, 1953), p. 356.

[13]S. G. Messner, "Compulsory Education," American Ecclesiastical Review, April 1892, p. 279.

[14]Butts and Cremin, American Culture, p. 415.

[15]Moses Stambler, "The Effect of Compulsory Education and Child Labor Laws on High School Attendance in New York City, 1898-1917," History of Education Quarterly 8 (Summer 1968): 190-191.

[16]Carroll Atkinson and Eugene T. Maleska, The Story of Education (Philadelphia:Chilton Co.,

1962), p. 106.

[17]Beatrice Gross and Ronald Gross, Radical School Reform (New York: Simon and Schuster, 1969), pp. 140-141.

[18]Elwood P. Cubberley, Changing Conceptions of Education (New York: Houghton Mifflin and Co., 1909), pp. 50-51.

[19]Ibid., pp. 54-56.

[20]Stambler, "Child Labor," pp. 190-191.

[21]Robert N. Bush, "National Goals and the Secondary Schools," in Education An Instrument of National Goals, ed. Paul R. Hanna (New York: McGraw-Hill Co., 1962), p. 135.

[22]Brubacher, Problems, pp. 66-67.

[23]Ibid., p. 453.

[24]Ivar Berg, Education and Jobs: The Great Training Robbery (New York: Praeger Publishers, 1970), p. 4.

[25]Herbert Gintis, "Toward a Political Economy of Education: A Radical Critique of Ivan Illich's Deschooling Society," in After Deschooling, What?, ed. Alan Gartner, Colin Greer, and Frank Riessman (New York: Harper and Row, 1973), p. 61.

[26]Diane Ravitch, "The Public School's Tasks and How They Grew," New York Times, 16 November 1975, sec. 11, p. Ed. 7.

[27]Ibid., p. Ed. 7.

[28]L. W. Huber, "Compulsory Attendance and Indifferent Pupils," Education Digest, May 1957, p. 22.

[29]Ibid., p. 24.

[30]Claude C. Lammers, "Compulsory School Attendance: Raise Requirements in the Automated Age?," Clearing House, January 1963, pp. 289-290.

[31]Edgar Z. Friedenberg, Coming of Age in America (New York: Vintage Books, 1965), p. 42.

[32]George Richmond, "The Society School-An Alternative to the Deschooled Society," Saturday Review, 24 June 1972, pp. 44-45.

[33]Stephen Arons, "Compulsory Education: The Plain People Resist," Saturday Review, 15 January 1972, p. 52.

[34]James G. Piatt, "Compulsory Attendance Can Be Fatal," N. A. S. S. P. Bulletin, 58 (February 1974): 2.

[35]Ibid., p. 3.

[36]Ibid., p. 5.

[37]Judson Jerome, "After Illich, What?," in After Deschooling, What?, ed. Alan Gartner, Colin Greer, and Frank Riessman (New York: Harper and Row, 1973), p. 109.

[38]Ivan Illich, "After Deschooling, What?," in After Deschooling, What?, ed. Alan Gartner, Colin Greer and Frank Riessman (New York: Harper and Row, 1973), p. 5.

CHAPTER III

PRESENTATION AND ANALYSIS OF DATA

Overview

This chapter had three purposes for the historical analysis of compulsory education in the United States. They are: to present an interpretive chronology which identifies each century of development with significant events; to discuss thematic findings to the four original questions for research; and to analyze the events in terms of the previously mentioned criteria.[1]

Colonial and Early National Period

The old world influence

Prior to their coming to the new country[2] the inhabitants of the New England colonies were subjected to many influences. Some of these were subtle and others were obvious. Religion, ethnic, economics, politics, social, environment and intellectual life were just some of the pressures that led to the migration toward unknown shores.

As early as 1524 A. D., Martin Luther[3] called on the councilmen of the towns in Germany

to establish and sustain schools. This was probably the earliest recorded request for formal compulsory schooling for all children regardless of social status.[4] Although this plea was made in the sixteenth century it would be almost two hundred years before it was put into practice in Prussia. Luther, however, did enunciate the principle that the strength of a city would lie in an educated and moral citizen. Furthermore, he stressed that it was not only the right but the duty of the states to establish schools and compel attendance.[5] Through his disciples the message was carried throughout the old country. Although there was no formal acceptance of his dogma in the sixteenth century the point had been made and the idea planted.

Another major influence on the colonists was John Calvin.[6] Through his efforts a number of compulsory public schools were established in Geneva during the sixteenth century. His influence extended to other parts of the old country where in the early part of the seventeenth century other compulsory schools were established.

The colonists were people who were industrious, religious, intelligent and generally well educated. They seemed determined to perpetuate Calvinism and its principles for which they sacrificed living in

their native land in order to be free of religious and political persecutions.

> It is hardly a coincidence, then, that compulsory and public schooling appeared first in America under the aegis of the Calvinist Puritans, particularly in the leading Puritan colony of Massachusetts Bay. While voluntary parental education, and largely private education, prevailed outside of New England, the militant Puritans who founded the Massachusetts Bay Colony were eager to adopt the Calvinist plan for compulsory education in order to ensure the perpetuation of Calvinism and the suppression of possible dissent.[7]

It is not difficult to see that shortly after an increase in numbers and in settlement areas the Puritans found it necessary to provide for the more adequate instruction of the young.

Influences for the law of 1642

There were several factors that influenced the early colonial decrees on compulsory education in this country. These will be investigated in an attempt to develop a satisfactory explanation of the origin and growth of education in the American colonies. All of these factors were in some way related to those which induced the colonists to leave their homeland in the first place.

Religious influences may have been the most important of all of these. The colonists had struggled for years with the leaders of governments

and churches in the old country. Many if not most of the colonists were followers of Calvin and Luther and as such were open to the criticism of those who looked upon them as rebels. They believed in separation of church and state in the classical sense, yet they were staunch in the belief that their children be educated in their religion. They refused to submit to the control of education by religious sects other than their own. In a sense they, through their enactment of the laws of 1642 and 1647, were attempting to control education for the advancement of their religion in the Massachusetts Bay Colony. This may be one of the reasons why the concept of compulsory education did not spread as rapidly to the colonies of Plymouth and Rhode Island. There seemed to be enmity between factions who arrived here from the old country. Puritans and Quakers were at odds. Lutherans and Catholics had just experienced the Reformation. The Anglicans and Presbyterians had diverse views. This antagonism may have led to selective settling pattern in this country and might well have been a cause of the relative rapidity with which certain colonies passed compulsory education laws and others did not.

> The General Court of Massachusetts favored the principle of group settlement because it made easier the enforcement of the

> religious and moral principles involved in the Puritan ideals of a spiritual commonwealth.[8]

Economic conditions were of major importance in the migration and settling of the new country. Economic circumstances appeared to be tightly intertwined with the environment of the colonies. Geography and climate would have a bearing on the distribution of land and population. They would also affect the type of economic organization of the settlers. The fact of hard winters and relatively poor soil may have been a causal factor in the pattern of settling in groups rather than as individuals in the New England area. The people who arrived here from the old country were industrious and hard working. They also came from small group communities that had developed a certain desire to live close to one another. The natural desire for survival under harsh and unknown conditions made it incumbent on these people to seek out and plan land distribution that would make it easier for all concerned to reap the greatest economic benefit for the community.[9]

The ethnic mix of the colonies was certainly a factor in the move toward the mandatory education laws of this period. During the migration to the colonies many countries supplied people. The English, Dutch, Scotch, Irish and Germans were the majority

of immigrants. They brought with them many of their customs, their cultural idiosyncrasies and their ideals. The spirit and determination of a particular colony would be influenced by the mixture of people. It is noteworthy that after a period of settlement the natural intermarriage seemed to play a part in mollifying ethnic discrepancies. Another factor which played an important part during this period was the tendency of similar ethnic elements to settle and remain in certain areas. The English generally settled along the seaboard while the others moved further inland. This type of ethnic distribution made it easier for the English to control the economy, the slavery system and land distribution. Furthermore, they were in a more advantageous position to regulate laws, courts and institutions for learning. The predominant role that ethnic factors played was to a large extent due to the settlement pattern. Those in position of advantage were able to eventually determine the early context of obligatory education.[10]

Political considerations were evident in the new country as they were in the old. It was the perceived notion of the colonists that they were being subjected to undue political duress in Europe. They thought that a new start in a new country may best serve their interests and enable them to rectify

the injustices and persecutions that they felt they were suffering. The increasing control of education by the civil authorities was one of these components. The settlers saw this as undue interference in the private lives of individuals. They saw it as a means of diminishing the perpetuation of their way of life. The system of government was an important factor in the political process. The general organizational unit for local government used at this time was the town. The meetings of the people of the community were called town meetings. This type of meeting purportedly gave individual members of a community the opportunity to wield much influence in the affairs of the town. Since the state gave this group powers of extreme importance, it was only natural that these individual community members had much authority when it came to writing the education laws. The political influence in a town was considerable at this time and was reflected in the laws of colonial days.[11]

Social and intellectual conditions played a large part in the evolution of the education laws of this period. The journey to the new country brought many individuals who had diverse backgrounds among their common goals. Generally, many people who migrated to these shores were well educated men and

women. There were a good number of clergymen who left the old country and were likewise well educated. It is probably because of the level of education that we can recognize certain social statuses and classes. In the colonies the distribution of population in certain social strata became evident. Many of the people living in the colonies were persons who believed in freedom of the press and religion. They had the intelligence and know how to distribute knowledge. They were masters at printing. Some were newspapermen. Others believed that the storing of knowledge in libraries would perpetuate their culture. The gathering of these people in small communities gave them the opportunity to pass along many social as well as intellectual traits. It was the combination of these influences that resulted in the type of educational laws that were passed in the colonies.[12]

Massachusetts law of 1642

Compulsory education in this country had its roots in the Massachusetts law of 1642. This law demonstrated the concern of the citizens of that time that the proper religious education of the children be attended to by the parents. On the fourteenth of June, 1642 the Court of the Colony of the Massachusetts Bay in New England sent forth the

following decree.

> This court, taking into consideration the great neglect of many parents and masters in training up their children in learning, and labor, and other implements which may be profitable to the common wealth, do hereupon order and decree, that in every town the chosen men appointed for managing the prudential affairs of the same shall henceforth stand charged with the care and redress of this evil, so as they shall be sufficiently punished by fines for the neglect thereof, upon presentment of the grand jury, or other information of complaint in any court within this jurisdiction; and for this end they, or the greater number of them, shall have the power to take account from time to time of all parents and masters, and of their children, concerning their calling and imployment of their children, especially of their ability to read and understand the principles of religion and the capital laws of this country, and to impose fines upon such as shall refuse to render such accounts to them when they shall be required; and they shall have power, with consent of any Court or the magistrate, to put forth apprentices the children of such as they shall (find) not to be able and fit to imploy and bring them up.[13]

This law had many implications that have grown to this day. There was concern about the neglect of parents for their children. A board of control was loosely established. Penalties for non-compliance were allowed. An accounting system was alluded to at this time. However, the overriding point to be made was that the parents and masters had to insure the education of children in religion and law.

The law of 1642 had many implications. One of the more important inferences that it had for later laws was its establishment of compulsory education. It is considered to be the first type of reference to mandatory education in this country. The court decreed that a board of control had the authority to account for the way in which the youngsters were educated. This would seem to be analogous to the authority that a board of education today has to insist that children be educated within the parameters of age restrictions. This group also appeared to have the jurisdiction to take steps to levy fines on those who failed to comply with the intent of the law. Further, it seemed that this group of men had the prerogative of taking children from the parents or guardians and apprenticing them to someone who would be willing to insure the proper education of the children. Many of these legal ramifications seem to be in force in 1977. There are ways and means today of forcing parents to see to the education of their children until the legal age. However, the practical aspect of the matter now as it was then is that it is rarely enforced.

Dr. George Martin as stated in Ensign's

work Compulsory School Attendance and Child Labor enunciated six principles of modern public schools that can be derived from the law of 1642 and other legislation. They are as follows: that education is essential to the well being of the state; the obligation to educate rests with the parent; the state may fix standards of education; the funds necessary may be derived from general taxation; and, finally, education greater than elementary may be provided.[14]

Shortcomings of the Act of 1642

Although the Act of 1642 laid the foundation for an American system of education it was not without its shortcomings. Chief among these would seem to be the provision for a certain amount and type of education without specifying means to obtain that education. The education of children prior to the law was in the hands of parents and masters. The difference here was that someone now had the right to accuse and ultimately to fine the offender. The question still remained how could one be sure that the education was received?

Another flaw was its narrowness of purpose. It called for instruction in religion and law. It did not call for the teaching of writing or computation. Neither did it indicate a need to educate for some

specific vocation. The conditions under which the colonists lived probably precluded the necessity for any other than training in religion and law. This narrowness served only to increase the apathy toward any type of formal education. This would be particularly true in an area so heavily dependent on food and shelter production for survival. There seemed to be a feeling that the new law would not provide any more than the colonists already had.

Massachusetts law of 1647

The law of 1642 opened the door for other educational legislation in the colonies. Massachusetts, on November 11, 1647, passed a law which went further in its provisions for obligatory education than the older one did.

This law demanded that each town of fifty or more householders appoint one to teach the children to read and write. It went even further in its demand. If a town increased to one hundred or more householders a grammar school had to be established to prepare the youth for the university. A penalty for non-compliance was established. However, there seems to be no record of any town being particularly hurt by the fine. In fact a few years later the fine was increased.

It is interesting to note that the law of 1647 as the law of 1642 had its inception in the desire of the people to make certain that their fellow town members would be trained in the concepts of their religion. They seemed assured that with knowledge to read and write would come the ability to be able to understand and defend their religion if anyone was preaching other doctrine.

Another interesting by product of this law was the influence that admission to institutions of higher learning had on the grammar schools. They set the standards for the curriculum of these schools with their requirements.

> The grade of the grammar schools instituted by this statute is revealed to some extent in the requirements of admission to Harvard College at that time. As stated in the "laws, liberties, and orders of Harvard College," then in force, candidates for admission were required to give evidence of ability "to read Tully, or such like classical author extempore," to speak and write Latin in both prose and verse, and to decline the Greek paradigms of nouns and verbs.[15]

The law of 1647 in effect closed some of the loopholes of the previous law in Massachusetts. It is important to note that it did specify the type of education. It also specified an amount of education, although it is true that this was somewhat regulated by the admissions requirements of the colleges of that

period. It set up the necessity for a teacher corps and enunciated the principle of local taxation for education.

Legal provisions in other colonies

Legislative growth in the other colonies was to a large extent dependent on the Massachusetts laws. Connecticut, in fact, adopted their law in 1650. It was almost a literal transcript of the Massachusetts law of 1642.[16] Rhode Island was one of the colonies which made no provision for mandatory education. The prevailing mood of the people in this area was that public schools were charitable institutions. Furthermore, the ethnic mix and religious preference of these people were different from those in the Massachusetts Bay Colony. It is possible that the success in one colony as opposed to another would be dependent on several factors. One of these seemed to be the previous education of the settlers in an area. Another was the compactness of the settlers in a particular region. As was observed in the case of Massachusetts the townspeople tended to become a homogenous group because they would pressure unwanted people out of their community.

In Table 2 the colonial education requirement is compared with the date of the enactment of a compulsory

attendance law after each of the thirteen colonies became a state. Generally speaking when there was compulsory education in the colony the earlier the law was written when the colony became a state.

Educational legislation prior to the Revolution

In considering the legislation in the one hundred years prior to the Revolutionary War one must consider events that may have affected the passage of statutes.

Two events stand out in the latter part of the seventeenth century. The breaking out of the Indian wars and the general decline of family government were two notable contributors to a weakening of the enforcement or passage of mandatory education laws. Some of the effects of the Indian wars were property destruction, loss of industry and a rather difficult economic depression.[17] The prime effect that these wars had was to weaken the laws and increase the number of poor. It was as a result of these wars that there was an increase in the number of apprenticeship programs. The general decline of family government was one factor which evoked immediate reaction in some colonies. The reaction was one which attempted to rectify the problem by the passage of laws designed to check many of the evils

Table 2

LEGAL EDUCATIONAL REQUIREMENTS OF EACH OF THE 13 COLONIES AND THE DATE OF THE FIRST COMPULSORY ATTENDANCE LAW OF EACH

COLONY	COLONIAL EDUCATIONAL REQUIREMENT	DATE OF COMPULSORY ATTENDANCE LAW
Massachusetts	Compulsory Education	1852
	Compulsory Schools	
	Educational Clause in Apprenticeship Indenture	
Connecticut	Compulsory Education	1872
	Compulsory Schools	
	Educational Clause in Apprenticeship Indenture	
New Hampshire	Compulsory Education	1871
	Compulsory Schools	
Rhode Island	No Educational Legislation	1883

Table 2-Continued

COLONY	COLONIAL EDUCATIONAL REQUIREMENT	DATE OF COMPULSORY ATTENDANCE LAW
Pennsylvania	Compulsory Education	1895
New York	Compulsory Education Compulsory Schools	1853*
New Jersey	Compulsory Schools	1875
Delaware	Compulsory Education	1907
Maryland	Compulsory Schools	1902
Virginia	Apprenticeship Clause	1908
North Carolina	Apprenticeship Clause	1907
South Carolina	No Educational Legislation	1915
Georgia	No Educational Legislation	1916

SOURCE: Amos B. Carlile, "Compulsory Attendance Laws in the United States; Historical Background," Education Law and Administration, 4 (April 1936): 28

* This was actually a truancy law. The Compulsory Education Law appeared in 1874.

of that time. In addition to the weakening of the moral tone of the period there was a revocation of the charters of the New England colonies and the government was organized on a regional basis. It was not until the end of this regime[18] that the regular government was resumed. Almost immediately the several colonies restored the original legislation.[19]

As the country moved into the eighteenth century the efforts toward obligatory education had a further decline. The emphasis at this point seemed to be on vocational education and the apprenticeship of poor children. It was mentioned earlier that there appeared to be a decline in the attitude for religious education. The influence of the clergy seemed to be weaker. More people had a modicum of education and did not have to be as reliant on the clergy. The country was expanded. The frontier appeared to be moving west and south. The attempt to enforce laws over a greater area was not feasible. The new country was tending toward more democratic forms of government as evidenced by the pronounced movement toward the town system. People were becoming more disenchanted with the central government concept of a king who resided thousands of miles away. There was a demand for increased industrial efficiency. With this demand came a concomitant

necessity for a larger labor force. This force was available through the use of children. Through a combination of many of the above, the movement toward forced education and its enforcement came to a virtual standstill in the first seventy five years of the eighteenth century. It would take a backseat to the drive toward freedom from the government by England.[20]

Effect of the Revolutionary War

Just prior to and during the Revolutionary War the thrust for mandatory education came to a virtual halt. The entire effort seemed to be directed toward the preparation, manning and fighting the war for Independence from England. The need at this time was for every man, woman and child to be working for some phase of the war effort. The Revolutionary War conceived in the minds and hearts of the people was a struggle for freedom. Freedom from political, religious economic and social duress. The Revolution, with those goals in mind certainly seemed a success. The concept of an hierarchical government was dealt a devastating blow. The Americans became determined to replace the sovereign crown with a form of government more responsive to the people. It is well to note that at this time

the influence of the clergy, so often dependent on an hierarchical scheme of government waned. Tyranny, as the Americans saw it was also given a knock. The Revolution in this country is often looked upon as a victory for humanity. The Americans appeared to be determined to set up a form of government that would minimize the effects of the English rule. They were determined it seemed to have a representative government that would emphasize local control, taxation only with the consent of the people and responsibility for education at the smallest level possible. An examination of the Bill of Rights shows the intent of the new government for the protection of individual rights and liberties.[21] These amendments were designed to rectify the wrongs of another form of government.

Events leading to the enactment of 1787

There were certain events that preceeded and affected the Ordinance of 1787. The new government was federal in territory and as such had no claim to any land except as bestowed upon it by the several states. The states seemed to be divided into two groups: the Atlantic group and the states west of the Alleghanies. Both were making claims to the territory

that was still unexplored. After many discussions in Congress the several states sent to and Congress accepted a deed of limitation and cession in 1780. This was the original public domain. It included the boundaries set by the Great Lakes, the Ohio and Mississippi rivers.[22] This was to be one of the three crucial events that culminated in the Ordinance of 1787.

Another event was the desire of many people after the Revolutionary War to colonize and settle in the western part of the country. George Washington in his farewell to the continental army urged his soldiers to seek out the western regions as a place for living that would bring personal independence.[23]

It was shortly before that some of the continental line officers had petitioned for a tract of this land to be set aside as a colony in time to be admitted as one of the confederated states. This group was the foundation of the Ohio Company which was formally organized in 1786 for the purpose of obtaining these lands from the Congress.[24] The purchase offer from the Ohio Company and its representative Dr. Manasseh Cutler[25] would not have been consumated without the Ordinance and the Ordinance would not have been enacted except as a condition of the purchase.[26]

Northwest Ordinance of 1787

The Ordinance of 1787 was an opportunity for the new government to establish itself as a truly democratic force. The intent of the decree was to set apart for common schools the sixteenth section in every newly formed state that came from this territory. On the thirteenth day of July, 1787 the Congress passed the so called Northwest Ordinance. Several states would eventually be formed from this territory. They were Ohio, Indiana, Illinois, Michigan and Wisconsin. This Ordinance eventually applied to the states of Iowa, Minnesota, Nebraska and Oregon.[27] This piece of legislation had its import for education specified in Article III,

> Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged.[28]

It was ten days after the enactment of this legislation that the Congress specified section sixteen in each township for the exclusive use of education. The Ordinance was to have a lasting effect on the American concept of education. The Ordinance not only affected the educational institutions directly but also produced many indirect effects.

> The ordinance in the breadth of its conceptions, its details, and its results has been perhaps the most notable instance of legislation that was ever enacted by the representatives of the American people. It fixed forever the character of the immigration, and of the social, political and educational institutions of the people who were to inhabit this imperial territory,-then a wilderness, but now covered by five great states, and teeming with more than ten million persons, or one fourth of the entire population of the United States.[29]

The importance of this legislation lies in the fact that it was one of the first opportunities that a new nation had to demonstrate the appropriateness of its new form of government. It seemed to set the tone for the direction of a new nation in certain areas. It pointed out to all citizens of the United States and the world the concern of this country for certain rights of individuals and demonstrated the means to attain these rights. Although a compulsory education law had not been passed by any of the newly constituted <u>states</u> [italics mine], it certainly put the Congress on record as favoring schools and education. The Congress saw that good government was dependent on an informed, moral electorate. One definite means to insure that government would have educated people who would be able to interpret the law properly was to promote schools. In line with Article Ten of the Bill of Rights this Ordinance did not specify how education

was to be obtained or structured. This was left to the states. However, it did enunciate clearly that schools and the means of instruction would be encouraged. These latter two elements would be enforced by legislation but not at the expense of one's conscience. Almost two centuries later the Supreme Court would take recognizance of this article with its ruling in the Yoder decision.[30]

Commentary on the early national period

The Ordinance of 1787 set the mood for educational growth in the new nation. The constitutions of many of the newly formed states contained exactly the same proviso for education as Article III of the Ordinance. The several states had the option under the new Constitution for determining the type of educational structure. It was the hope of the revolutionary leaders to develop a homogeneous citizenry but this did not become a reality. The new American citizen was still too sectarian and socially diverse. Education was carried on but too often for the wrong reasons. It was observed that education became a partial panacea for the ills of the time. Education was to become the conduit for the humanitarian. It would be the channel for the education of the poor, for the promulgation of doctrine, simply to keep children off the streets and

in some instances even attempt to advance learning. In other words education during this period of time seemed to be a conglomeration of institutions with no uniformity of purpose.

Thomas Jefferson as quoted in Robert Heslip's work Thomas Jefferson and Education defined what he saw as the role of education in the new nation.

> Consequently the function of education in a democratic state is threefold: to furnish all citizens with the knowledge and training that will enable them to pursue happiness as private persons; to prepare all citizens to exercise their rights of self government; and to provide the knowledge and training that will enable the superiorly gifted citizens to make full use of their intellectual and moral powers, especially with respect to the exigencies of leadership.[31]

Despite the lofty ideals enunciated in Jefferson's position the turn that education took was not that which was envisioned by him. Shortly after his term of office, the War of 1812 was to completely alter industrial organization. Labor was organizing and growing. Out of this movement would evolve a system of education that was contrary in many respects to that envisioned by Jefferson. The labor movement was demanding more leisure time and education for their youngsters. On the other side the manufacturers were demanding more young labor to meet their growing needs. Out of this coalition and

aided by the election of the common man's president, Andrew Jackson, would come the recognition of the struggle for universal compulsory education in the several states.

Nineteenth Century Period

Beginnings of the Common School Crusade

What began at the turn of the century and continued through the middle of the century was a call for a uniform school system. During the early part of the nineteenth century, (1820-1850), there was constant criticism and reform of existing school systems. There were the opponents of free public education at the expense of the taxpayer. There were those who did not want the schools to be charity schools. The natural rights of parents were thought to be eroded. There were implications for black and white racial mixes. Lastly, the common school seemed to be a threat to religious control of learning.[32]

Horace Mann,[33] one of the foremost proponents of the common school did not always espouse the movement. When he saw the apathy on the part of many citizens he dramatically changed his mind.

> In the minds of educators two ideas have long been associated, gratuitous instruction and compulsory instruction. In

> 1840 Mr. Mann did not think compulsion either desireable or practicable. In 1847 he had so far changed his mind as to admit its necessity in the cases of those persons who are insensible to the education of their children. Were he living now, he would be a full convert to coercion.[34]

Other proponents of the common school during this period were such leaders as James Carter, Henry Barnard, and Horace Greeley. They also managed to perpetuate the idea of compulsion.[35]

There seemed to be several factors that may have influenced the movement toward common schools. The movement from a basic agricultural economy to one espousing industrial prowess was certainly important. There was an extension of the right to vote under Jacksonian administration. Temperance reform and the abolition of slavery were among the social and humanitarian movements. Cities showed signs of growth. The labor movement was gaining momentum. In general a democratic form of government was taking root and the common man was demonstrating his power.[36] All of the above ideals served to stimulate the growth of common schools. When these ideals were practiced the flow toward common schools as a part of compulsory education became an accomplished fact.

Influence of Politics, Labor and Immigration

With the swearing in of Andrew Jackson as the

seventh president of the United States the demise of the aristocracy seemed to be secured for a period of time. Jackson's philosophy of government appeared to be politics by popular participation. All of the people would have a voice in this new administration. If every person was directly involved in politics then it seemed reasonable to assume that each person should be educated.

The labor movement mushroomed into a concerted force during this period. The workingmen recognized education as a means to further their status and to achieve equality.[37] They did not seem willing to allow their children to slip into a life of ignorance ever serving the whim of the well to do. They felt that they must break any monopolistic access to education. They felt that they needed to insure republican education. Local control at the lowest level possible was the means to insure that type of education. It became evident to the leaders of the labor movement as well as the rank and file, that the best way to achieve quality education was to insist that the hours of child labor be regulated. In 1832 the labor journals began to report on the working conditions of minor children. They praised the employers who made provision for education during the day and condemned those who did not. It was

the pressure of groups such as this throughout the land who gave the push and then the support for universal education.[38] It was Frank Carlton who observed in his work Economic Influences Upon Educational Progress in the United States, "The vitality of the movement for tax-supported schools was derived not from the humanitarian leaders, but from the growing class of wage earners."[39]

Immediately following the Revolutionary War there seemed to be very little immigration to the new country. However, just as the various conditions influenced the migration to this country in the seventeenth and eighteenth century so too did extraneous factors cause a further migration in the middle third of the nineteenth century. The Irish potato famine and the unrest in Germany brought a new wave of people to these shores. With these immigrants came the concern about their assimilation into the mainstream of the American populace. The care and nurturing of these people into the American way of life became a matter of significance. Educators felt that the public schools would be the best means of turning foreign children into informed citizens. Random education would not be the answer. The teaching of this generation of youth as well as successive generations must be uniform and systematic.

Schools had to be the means to give these children a basic knowledge of the language, culture and ideals in order to further promote the democratic form of government.[40]

Horace Mann and compulsory education

Mann was instrumental in ushering a new period of educational history when he was called by the newly established State Board of Education in Massachusetts to be its secretary. He felt it his duty to determine the extent to which the school laws of the state were operative. He found many of these to be inoperative, ignored or both. Principal among these was attendance at schools. During his tenure as secretary he investigated and made recommendation for many educational innovations. Many of these proposals are included in his yearly reports to the State Board of Education. He was thorough in his work, investigating conditions in schools in Massachusetts, other states and other countries. Some of his reports and recommendations drew the ire of some people. Mann was determined, however, that education was to be available to all children.

In his report of 1847 he demonstrated that he had come full circle when he recommended:

> But this divine result of staying the desolating torrent of practical iniquity by drying up its fountain-head in the bosoms of the young is promised only on the antecedence or performance of certain prescribed conditions. These conditions are the three following:--
> 1. That the public schools shall be conducted on the cardinal principles of the present New-England systems.
> 2. That they shall be taught, for a period of ten months in each year, by persons of high intellectual and moral qualifications; or, in other words, that all the teachers shall be equal in capacity and in character to those whom we now call first-class or first rate teachers. And,
> 3. That all the children in the Commonwealth shall attend school regularly--that is, for the ten months each year during which they are kept--from the age of four to that of sixteen years.[41]

Mann felt that the preparation of youth for their place in society was not something to be taken lightly. Even though he abhorred the idea of compulsion at one point, he was strong in his stance that if parents neglected this duty others must perform it for them.

> On the third point,--that which contemplates the regular attendance of all the children upon the school (with certain specified exceptions), and even their compulsory attendance in a class of extreme cases,--I rely upon legal precedents and analogies; upon the necessity which is imposed upon a republican government, if it means to keep itself republican; and upon the broad principle, that a parent

> who neglects to educate his child up to the point proposed proves that he has taken the parental relation upon himself without any corresponding idea of its solemnity, and thus, by the non-performance of his parental duties, forfeits his parental rights.[42]

He became more convinced by 1848 that education was the great equalizer of the conditions of men. With some eloquence he placed the following passage in his report that undoubtedly was meant to prod the state board as well as the legislature into action.

> Now, surely nothing but universal education can counter-work this tendency to the domination of capital and the servility of labor. If one class possesses all the wealth and the education, while the residue of society is ignorant and poor, it matters not by what name the relation between them may be called: the latter, in fact and in truth, will be the servile dependants and subjects of the former. But, if education be equably diffused, it will draw property after it by the strongest of all attractions; for such a thing never did happen, and never can happen, as that an intelligent and practical body of men should be permanently poor. Property and labor in different classes are essentially antagonistic; but property and labor in the same class are essentially fraternal. The people of Massachusetts have, in some degree, appreciated the truth, that the unexampled prosperity of the State --- its comfort, its competence, its general intelligence and virtue --- is attributable to the education, more or less perfect, which all its people have received: but are they sensible of a fact equally important; namely, that it is to this same education that two-thirds of the people are indebted for not being to-day the vassals of as severe a tyranny, in the form of capital, as the lower classes of Europe are bound to in the form of capital, as the lower classes of

> Europe are bound to in the form of brute force?
>
> Education, then, beyond all other devices of human origin, is the great equalizer of the conditions of men, --- the balance-wheel of the social machinery. I do not here mean that it so elevates the moral nature as to make men disdain and abhor the oppression of their fellow-men. This idea pertains to another of its attributes. But I mean that it gives each man the independence and the means by which he can resist the selfishness of other men. It does better than to disarm the poor of their hostility towards the rich: it prevents being poor.[43]

His persistence and the influence of other individuals and groups in Massachusetts paid off. The legislature of this sovereign state did indeed enact a compulsory education statute.

Massachusetts law of 1852

The state government, striving to establish its leadership in the area of education took heed of the proponents for this law. Notice was not taken of the ideological disputes between the advocates of a non-sectarian school and a sectarian school. Nor was there any heed paid to the cost or method of enforcing this type of legislation.

Prior to the common school crusade Americans were already in the forefront of extensive schooling and functional literacy in the world. There were various forms of support for the schools whether they were sectarian or non-sectarian. The general form of

control was local. However, even in this area there were variations. The faith engendered in public schools at this time was transmitted into public financing. Public expenditures for education rose dramatically between 1850 and 1890. On May 18, 1852 the Senate and House of Representatives in the General Court of Massachusetts approved a landmark bill which prescribed compulsory education. Basically the law stated that parents had the responsibility to see that children under their control between the ages of eight and fourteen years attend a public school in their vicinity for at least twelve weeks, at least six of which were consecutive. The penalty for non-compliance was twenty dollars. The local school committee was charged with the duty of ascertaining, enforcing and reporting violations of the law. Actually the treasurer of the town had the job of prosecution. Limitations and exceptions to the law were spelled out.[44]

Advantages of the law of 1852. This law spelled out the prescribed ages of attendance, weeks of attendance and penalties for failure to meet the exigencies of the law. The statute also fixed in some detail the responsibility for investigation, enforcement and interpretation of the law. This

regulation provided parameters within which individual communities could operate. This maxim had the further advantage of providing a reference point for other states that desired to compel education. It seemed to place the obligation for minimal education competencies in the hands of the parents while providing for means of sanctions.

Disadvantages of the law of 1852. The law of 1852 had loopholes that may have caused its general ineffectiveness. The fact that a child's parents could send the child to another school in another town without actually providing the town committee with written proof of attendance seems to be a weakness in this act. Furthermore, no provision was made by this act for the type of mental or bodily condition that would preclude attendance. In addition poverty ostensibly was a sufficient reason for non-attendance when it seemed to be the intent of the law to make specific provision for the free education of the poor, the ignorant and the immigrant. Finally, one person would be held responsible for the prosecution of those who violated this act. That person happened to be one of the fellow citizens of those whom he was to prosecute. This in itself often led to inadequate enforcement.

Aftermath of the law of 1852. There seemed

to be no great rush on the part of any of the other states to enact a law. In fact the next recorded law was passed in 1867. One of the reasons why there was so much inactivity in this area was the involvement of the nation in the issue of slavery. This issue was to consume the American nation for the next few years and it left little time for the states to deal with the problem of mandatory education.

Federal government involvement

The federal government had a history of inactivity in educational matters. There was the Ordinance of 1787 which provided for education. However, this did not prove to be a statement of national intent in education. George Washington had proposed a national university. However, this thought seemed to fall on deaf ears. The Constitution did not seem to provide for education and the new government seemed unwilling to institute any action. As each new state was admitted to the union, the government insisted that a portion be set aside for education. This was in keeping with the proposed intent of the Ordinance of 1787. Yet this did not in itself set the tone for federal intervention in education. The Surplus Revenue Act of 1837 returned federal monies to the state with

a recommendation that it be used for education. This act was passed during a time of economic downturn and certainly cannot be construed as positive intervention. The fact of the matter was that many states did not use it as the federal government intended.

Early in Lincoln's presidency he signed the Morrill Act. This action by Lincoln provided a brief respite in the apparent non-activity in educational matters by the federal government. The fact that the country was in a Civil War and the willingness of Lincoln to take a position which he considered in the national interest allowed the government to significantly intervene in the area of national education. This was probably one of the most important decisions made for a national education policy since 1787. It would be many years before the federal government would intervene on such a large scale.[45]

The Morrill Act of 1862

Justin Morrill, a Vermont whig began the debate on December 14, 1857 in the national House of Representatives. The debate was to last over five years interrupted at times by the country's involvement in a more burning national issue. His bill basically proposed over six million federal acres worth over seven and one half million dollars

to be apportioned on the basis of the size of each state's congressional delegation. This land and these monies were to be used to establish agricultural and mechanical schools. The bill was maneuvered through the House and Senate where it won minimal pluralities. President Buchanan vetoed the bill and Morrill was unable to produce the necessary two-thirds for override. The bill had sectional opposition and suggestions of partisan politics. Morrill reintroduced his bill in late 1861. The country was in Civil War. The South had seceded. Lincoln was president and committed to support the act. Only a few western congressmen were available as opposition. After many delays and debilitating tactics the act was passed and signed into law.

During the course of the growth of the new republic the state had the primary right to decide on questions of educational import. States rights were important to the South. Their arguments of opposition were based on the lack of authority that the federal government had to interfere with the sovereign state. President Buchanan in his veto message strongly asserted that earlier land grants were designed to stimulate settlement of western lands. Others reasoned that previous land grants were within the purview of the Constitution

because they brought gain to the country.[46]

Morrill carefully and eloquently built a case for the need of the American farmer to have enlightened methods of producing greater yields. He remonstrated that the passage of his bill would provide for a number of well staffed institutions spread around the country.

> Pass this measure and we shall have done----something to enable the farmer to raise two blades of grass instead of one; something for every owner of land; something for all who desire to own land; something for cheap scientific education; something for every man who loves intelligence and not ignorance; something to induce the fathers' sons and daughters to settle and cluster around the old homestead; something to remove the last vestige of pauperism from our land; something for peace, good order and better support of Christian Churches and common schools; something to enable sterile railroads to pay dividends; something to enable people to bear the enormous expenditures of the national government; something to check the passion of individuals and the nation for indefinite territorial expansion and ultimate decrepitude; something to prevent the dispersion of our population, and to concentrate it among the best lands of our country---places hallowed by church spires and mellowed by the influence of time---where the consumer will be placed at the door of the producer; something to obtain higher prices for all sorts of agricultural products, and something to increase the loneliness of the American landscape.[47]

Senator James Harlan of Iowa suggested that the opponents to this bill were men who desired to keep labor in a state of ignorance so they might advance their own interests.

In view of these rather strident arguments the opposition predicted disastrous results based on the hypothesis that speculation, non-resident ownership, and loss of lands to other states would reduce the growth of states with large federal acreages. They felt that those capitalists with large amounts of money would tend to monopolize the lands of the west just as they were monopolizing the industries of the east. The concern that the southern and western congressmen had in 1857 still echoed in the chambers during 1861 and 1862. They had the real fear that land would be held in escrow until greater demand would produce a greater profit. By holding this land it appeared to many of these opponents of the bill that it would severely retard the settlement and economic growth.

The anxiety of the southern-western bloc extended to its concern for the effect of the land grant act on the nation's economy. Many of these politicians had serious misgivings about doing anything that would cause an economic downturn particularly if it would effect their state or their region. They had the feeling that citizens of their area would ultimately be taxed for these lands in some way.

The Civil War issue did not figure as

prominently as it might have, it was still a factor in the arguments used. There was concern that the secessionist states would be allowed to speculate in the western lands. To other opponents it appeared that the newly freed black population would settle the lands. Others had concern that it would interfere with veterans rights under the grants of the Homestead Act. Morrill's argument exhorting the Congress to pass his act in order to keep the states from becoming second best to the Europeans in education, farming and industry was timely. He managed to use sensitive issues as well as economic issues in order to bring pressure to bear on his fellow politicians to pass his act. His arguments were persuasive. The act passed Congress on July 2, 1862.

Implications for national education policy

The act itself apportioned an amount of land on the basis of each Senator and Representative in Congress. The apportionment was based on the census of 1860 and was in the quantity of thirty thousand acres per member of Congress. It did exclude mineral lands from the apportionment.[48]

The interjection of the federal government at this time ended a long period of time of non-federal intervention in education. The Ordinance

of 1787 was the last time that there was serious impact by the federal people. The impact of the Morrill action lay in the fact that the Congress pointed out to the country that it was important to provide for the liberal and practical education of the masses. It provided the means to do so and prescribed the penalties for nonconformity.

This act had another important inference for national policy. A perpetual fund was set up, the interest of which could be used interminably to support, endow or maintain the college of the type described in the act. This statement implied very strongly that the Congress intended to insist that the states look to the fulfillment of their responsibility as specified obliquely in the Tenth Amendment. The other matter of import this act had on national educational policy was that it seemed to set a declaratory tone for the unions' intervention in matters of national welfare. It is true that the government did intervene in 1787 with its declaration for the northwest territories, but the difference here appears to be that the Congress took action that affected states already admitted to the union.

With the establishment of a fund and land for the express purpose of establishing schools for higher education in the practical as well as liberal

arts, the national legislature in effect put itself squarely behind the concept of common school education. Common school education would be transcribed into mandatory education after the war when more and more states enacted legislation of compulsion. The long range effect of the Morrill Act seemed to be the establishment of an indirect national policy approving the means to provide people for study at the colleges established under this act.

The strength of the Morrill Act seems to be in several areas. It established the right of the Congress to intervene in education on a national scale. The act excludes and thereby protects mineral lands for the national interest. It provided funds for the establishment of common education. The act precluded the use of the land and funds for anything except the establishment of colleges. It established a line of responsibility for education when it insisted that the college as well as the governor shall report back to the Congress or its representative. It excluded states in a condition of rebellion with the union. The act of July 2, 1862 took a stand for the advancement of mass education in this country and established the United States as a leader in this area.

Despite the fact that this was intended to

be federal legislation there were several possibilities for evasion. Since the expenses of management were to be paid from the treasuries of the states involved, it was conceivable that those states opposed to the enactment of this law could use this as a means to avoid its execution. Secondly, the states first had to assent to its enactment in their home commonwealth before it would be applicable. This seemed to weaken the national intent of the act. Third, a state which took advantage of this act must provide within five years one college which met the exigencies of the law. The existence of a state of Civil War might have precluded an individual state from fulfilling its honorable intent, yet there was no provision for extenuating circumstances. Fourth, since a state of war existed it seemed rather difficult for states who were involved in its conflict to make an informed decision on a matter of the Morrill Act's import. Fifth, it seemed to shut out the seceeded states from inclusion in its benefits. The Congress nor the president had any idea how long the war would last and no provisions were made for those states who left the union.

The Act of 1862 was a land mark decision for the American people. Politically, it was a well timed piece of legislation. Much of the opposition to it

had been drained from the Congress in the form of the Confederacy. Economically, it seemed to be a boost for the country. Educationally, it appeared to be the means by which the national government told the states that it wanted education on the local level to be strengthened and expanded. The means to absorb these larger numbers was available. Now it was up to the states to ensure that the children of the workingman [italics mine] would have the opportunity to advance themselves in age, grace and wisdom. The stage was set for the demand for extended compulsory schooling beyond what was offered in 1862.

Each state had the opportunity on an equal basis to take advantage of this act. The fact is that most of them did. By 1918 each of the forty-eight states, including those who were in secession with the rest of the country at the time of enactment had made some provision for the receipt and use of the land-grant fund. Each state showed some diversity in the use of their allotments. Some states sold them at a low price others held on to the fund for a period of time and received some real value from it. Today each state applies all of its income for these colleges and does not divert any of the funds for other uses.

Post Civil War

The Civil War provided compulsory education with a brief respite. The nation was too involved with internal conflict that could mean possible dissolution of the union. Except for the Morrill Act which laid the groundwork for higher education on a more general level, there was little heed paid to education. Universal education spread in this country during the nineteenth century in order to provide the basic rudiments. The idea that a well educated person was more apt to provide a stronger industrial economy seemed to pervade the nation. The conflict that ended in 1865 provided the country with the impetus needed to arrive at a consensus about its role as a nation. The states saw during the war effort that compulsion in many areas was effective in production. Compulsion became the means to the end of better living for many Americans.

After the war children were drawn back to industry. Poverty was rampant on the national scene. The South was shorn of its free labor. Other parts of the country were in ruin. People were migrating to the west in large numbers. Conditions of labor were worse than before the war. Child labor laws were generally ignored. Children needed to work to keep a family fed. At this time

there seemed to be a change in the role of the school. Formerly, it was a means of providing a literate electorate that had the basic means to function in industry. Now it was to remove children from unsuitable conditions of labor, to remove competition for jobs and to protect children from the pressing demands of life. At one time children learned as they grew. Now the responsibility for growth and learning fell to the school. The child became an appendage to the family and not a vital part of that family.

Civil War is generally destructive of a nation's wealth and economy. This war was no exception. One of the indirect effects that this war had on education was its dilution of wealth. The South was particularly hard hit. The economic and social system of this section of the country was decimated. However, these facts seemed to have little effect on education. For all practical purposes education seemed unscathed by the war.

Education was to serve as the bridge between different segments of a society. After the war between the states there seemed to be a heightened consciousness of age and conditions of individuals. The social workers of the time sought to promote economic growth and to prevent the dire consequences, as they saw them, of industrial-

ization. Education was seen as the opportunity to build a base of social cooperation and group work. Education could serve as a device for social control of those who were the vagrants of society. The age of mandatory education began to widen. The State of Michigan served as the springboard for the legitimization of the high school as a reservoir for increasing numbers of students.

The free school fight

Immediately after the Civil War the continued objection to the use of rate-bills as a means to obtain funds for the support of public schools led to its demise. The rate-bill form of taxation had its inception in 1827 in Massachusetts. It was to be legislated in most of the states. Soon after its enactment many people saw that it was an inequitable and indeed unjust method of taxation. The arguments for a free public school system, although delayed by the Civil War, finally won. It was shortly after the Civil War that the last rate-bill tax was repealed. The movement toward free public education was in full gear.

In 1842, the city of Detroit, Michigan was declared a school district of the whole. All schools organized within this city were to be public and free to all students between the ages of five and

seventeen.[49] Other districts in Michigan and other states seized on this landmark bill and were demanding this type of support for their schools.

It was in 1821 that the Boston School Committee established the first high school which was known as the English Classical School.[50] The high school took hold almost immediately. The various sections of the country approved the concept of the high school because it was democratic in nature and provided the opportunity for all children to advance on equal terms. It was generally free and it provided courses of studies that affirmed the desires of the local populace for their children. The high school was especially well received in the midwest. Ironically, it was in Michigan where the city of Detroit was declared a free [italics mine] school district that a lawsuit would challenge this decision.

Kalamazoo Court Case

> In Kalamazoo, Michigan, objection was made to paying taxes for the support of a high school on the grounds that it was not properly a part of the system of common schools recognized by law.[51]

The suit was brought to the Supreme Court of the State of Michigan. Justice Cooley was the chief justice and expressed the majority opinion.

The bill in the case was to restrain the

collection of taxes for the support of the high school during the year 1872 and for the payment of salary to the superintendent. The court felt that although this was the intent of the litigants it had a broader context.

> The bill is, consequently, of no small interest to all the people of the state, and to a large number of very flourishing schools, it is of the very highest interest, as their prosperity and usefulness, in a large degree, depend upon the method in which they are supported, so that a blow at this method seems a blow at the schools themselves.[52]

The court further questioned the right of the people to press these charges some thirteen years after the law was placed on the books. It was felt that neither the principles of law nor public policy could justify this action. Turmoil would result. Civic authorities would be virtually restricted beyond reasonable grounds. The court went on to state that they were surprised at the action. They felt that the action was aimed at negating good that had been done.

> When this doctrine was broached to us, we must confess to no little surprise that the legislation and policy of our state were appealed to against the right of the state to furnish a liberal education to the youth of the state in schools brought within the reach of all classes. We supposed it had always been understood in this state that education, not merely in the rudiments, but in an enlarged sense, was regarded as an important practical

> advantage to be supplied at their option to rich and poor alike, and not as something pertaining merely to culture and accomplishment to be brought as such within the reach of those whose accumulated wealth enabled them to pay for it. As this, however, is now so seriously disputed, it may be necessary, perhaps, to take a brief survey of the legislation and general course, not only of the state, but of the antecedent territory, on the subject.[53]

The fact that the law had used certain language that was now being called into question was also reviewed by the court. The court clearly enunciated the fact that people usually passed laws that met the demands of their time. Although each law might not specifically designate support for a complete education from young childhood through adulthood it seemed reasonable to assume that when the need arose it was judicious to do so and the fact became accomplished. The court quoted the constitution of the State of Michigan for 1835.

> Thus stood the law when the constitution of 1835 was adopted. The article on education in that instrument contained the following provisions:
> "2. The legislature shall encourage by all suitable means the promotion of intellectual, scientifical and agricultural improvement. The proceeds of all lands that have been, or hereafter may be, granted by the United States to this state for the support of schools, which shall hereafter be sold or disposed of, shall be and remain a perpetual fund, the interest of which, together with the rents of all such unsold lands, shall be inviolably appropriated to the support of schools throughout the state.

> "3. The legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each school district at least three months in every year; and any school district neglecting to keep up and support such a school may be deprived of its equal proportion of the interest of the public fund."
> The fifth section provided for the support of the university, "with such branches as the public convenience may hereafter demand for the promotion of literature, the arts and sciences," etc. Two things are specially noticable in these provisions: first, that they contemplated provision by the state for a complete system of instruction, beginning with that of the primary school and ending with that of the university; second, that while the legislature was required to make provision for district schools for at least three months in each year, no restriction was imposed upon its power to establish schools intermediate the common district school and the university, and we find nothing to indicate an intent to limit their discretion as to the class or garde of schools to which the proceeds of school lands might be devoted, or as to the range of studies or grade of instruction which might be provided for in the district schools.[54]

It was the opinion of the court that the law, the history, the constitution and the practice in Michigan had been for the continuous advancement of the cause, type and amount of education. They felt that the weight of evidence pointed to a dismissal of the suit.

> If these facts do not demonstrate clearly and conclusively a general state policy, beginning in 1817 and continuing until after the adoption of the present constitution, in the direction of free schools in which education, and at their option the elements of classical education, might

> be brought within the reach of all the children of the state, then, as it seems to us, nothing can demonstrate it. We might follow the subject further, and show that the subsequent legislation has all concurred with this policy, but it would be a waste of time and labor. We content ourselves with the statement that neither in our state policy, in our constitution, or in our laws, do we find the primary school districts restricted in the branches of knowledge which their officers may cause to be taught, or the grade of instruction that may be given, if their voters consent in regular form to bear the expense and raise the taxes for the purpose.[55]

The Kalamazoo case was decided on a unanimous vote and was to have far reaching effects for mandatory education in this country. Those communities who feared legal reprisal were quick to take up the cause for high schools. Growth was phenomenal. Within fifteen years the emergence of high schools increased dramatically.

Effects of the Kalamazoo decision

With the action by the Michigan Supreme Court the trend seemed to be increased activity by the courts. The Supreme Courts began to take a greater interest in economic, social and public welfare legislation. The activity of the courts became more pronounced in this area during the last decade of the nineteenth century. The people began to use this arm of government with increasing frequency particularly if they felt their legislators

were not responsive to their needs.

The Kalamazoo decision was merely another step in the concept of nationalism. This decision seemed to affirm the right of a body of the government to make a decision that was in the interest of the common good. The nation became superior to the states and the state became superior to the will of the individual in the eyes of many of the intellectuals. The right to behave in a locally individualized manner no longer was sacrosanct. Nor did the state hesitate to use legislation to define loyalty. That legislation usually meant compulsion. For a people fleeing the old country to obtain more individual liberty and opportunity it was an ironic twist of fate.[56]

During the last quarter of the nineteenth century and continuing on into the first part of the twentieth century there was a state by state enactment of compulsory education laws. The barrier to post grammar school education had been broken. The opportunity to see to the education of the masses was at hand. Although cognizance was not taken of the quality of compulsory education, there can be no denial of its quantity.

Labor, Industry and Immigration

The period of colonization and revolution

offered little in the way of educational leadership by labor. Up to about 1840 the labor movement seemed more concerned with abuses of child labor and working conditions. With the ushering in of the Andrew Jackson administration there seemed to be some indirect activity on the part of labor for education. It usually went along with the concept of education for citizenship. Some laboring groups appeared to be grasping the notion that education had some value in alleviating the disparity between classes. Basically, at this point interest was just beginning for education. Prior to 1860, however, very little was written about labor's attitude. The Knights of Labor appeared to be one of the earlier labor groups that had some clout. This group did not have an education committee as some of the later organizations did. They seemed to base their education program on an attack of the Civil Service Test and by favoring a military training school.[57]

Support of the Labor Unions

The first annual session of the Federation of Organized Trades and Labor Unions in Pittsburgh, Pennsylvania meeting from December 15-18, 1881 took a strong stand for compulsory education when it declared in its platform,

That we are in favor of the passage of

> such legislative enactments as will enforce by compulsion, the education of children; that if the State has the right to exact certain compliance with its demands, then it is also the right of the State to educate its people to the proper understanding of such demands.[58]

The statement is poignant because it is telling the states that it should take its right to educate seriously. Furthermore it puts the labor movement squarely on record in favor of compulsory education in its very first session. There appears to be several important assertions: if the state sets up a system of schools then it has the right to expect people to attend them; if the state has the right to tax for the support of schools then expectations for educating in them follows; if the state enacts laws then it must provide the means to understand those laws. It is likely that the choice of the word <u>right</u> [italics mine] rather than <u>duty</u> [italics mine] is significant. This seemed to be a proper interpretation of the Bill of Rights which left the right to educate to the states. In 1642, the colonies enacted the law that children should be taught the principles of law and religion. Now some two hundred and forty years later an organization composed of representatives of the several states and Canada were making a similar statement.

Five years later, in 1885, the Federation

was to call again for the enactment of compulsory education. This statement was more strident and the language considerably different.

> We demand the passage of such legislative enactments as will enforce, by compulsion, the education of children up to their fourteenth year, and the prohibition of their employment in factories, workshops, mills, or mines until they have reached that age, for if the State has the right to exact certain compliance with its demands, then it is also the duty of the State to educate its people to the proper understanding of such demands.[59]

This time the statement was in the form of a demand. It specified that children be educated in schools until at least their fourteenth birthday. They demanded the prohibition of labor until age fourteen in mills, factories or mines and the prohibition of labor in any form until that age was reached. There was a dramatic change in the platform of this organization when it said that the state had the duty [italics mine] to educate the people. Two things seemed to happen in the intervening years between 1881 and 1885. The unions appeared to have gained in strength and they appeared to have been effectively ignored by some states. In any event the labor movement was throwing its force into the mandatory education movement.

By this time the labor movement had gained in stature. It was now known as the American

Federation of Labor. At the convention of 1892 it reaffirmed its support for free and compulsory education in Resolution 116.[60] However, by this time more states had enacted obligatory education laws and the necessity for demands seemed to diminish. At the meeting held in Denver, Colorado in 1895 the Federation took a tough stand in regard to coerced education. They called on their members to put pressure on the proper legislators to instigate legislation of this nature in those states who thus far had neglected to do so. They provided a sample law to be used to prod the diffident representatives. They went on to point out that those elected functionaries who failed to comply would be labeled as enemies of education. Labor must have felt confident in their power. It seemed as though they were implying impending political defeat for those recalcitrant enough to oppose labor's wishes.

> Resolved, That it is the sense of this Convention that the compulsory education law shall be strictly enforced in every State in the Union, and wherever there is no such law measures to secure its enactment should be put forth at once.---A. F. of L. Denver Convention.
> In accordance with the above resolution affiliated and friendly organizations are hereby requested to give whatever assistance they possibly can to the enforcement of this law in States where it now exists. Also to endeavor by joint action to secure

> the introduction and enactment of such a law in States where it does not exist. To have it acted upon in a similar manner, in the various States where no compulsory education law has been passed and to facilitate this important reform, the several existing laws have been examined and the one apparently best fitted for general adoption is that now in use in Massachusetts and which is here given in full.
> Organizations taking the matter up can, from this publication easily have an act prepared and presented to their respective legislatures when they meet, and in the meantime ample opportunity is offered to interview prospective legislators as to their standing on this question so that those opposed can be pointed out as enemies to education.[61]

1918 Marked the year in which all of the forty-eight states had enacted compulsory education legislation. Table 3 will show the dates of enactment of the first compulsory education law in each state. The tone at the labor convention of that year reflected this when they changed tactics somewhat and called for the better enforcement of compulsory education laws and the universal establishment of a minimum leaving age at sixteen.[62] The push now was for the scrupulous attention to living the letter of the law. No longer did labor feel that it had to cajole or demand mandatory schooling. With the passage of laws in all of the states they felt they had made their point. They introduced a new concept, however, and that was to move the base age for leaving from fourteen to sixteen. It

Table 3

DATE OF ENACTMENT OF FIRST COMPULSORY ATTENDANCE LAW BY STATE THROUGH 1918

STATE	DATE OF ENACTMENT OF FIRST COMPULSORY ATTENDANCE LAW.	DATE OF ENACTMENT OF PRESENT OR AMENDED LAW.
Alabama	1915	1915
Arizona	1899	1912
Arkansas	1909	1917
California	1874	1911
Colorado	1889	1911
Connecticut	1650	1911
Delaware	1907	1909
District of Columbia	1864	1906
Florida	1915	1915
Georgia	1916	1916
Idaho	1887	1917
Illinois	1883	1909
Indiana	1897	1915
Iowa	1902	1913
Kansas	1874	1907
Kentucky	1893	1918
Louisiana	1916	1916
Maine	1875	1913
Maryland	1902	1916
Massachusetts	1852	1913
Michigan	1871	1917
Minnesota	1885	1911
Mississippi	1918	1918
Missouri	1905	1905
Montana	1883	1913
Nebraska	1887	1913
Nevada	1873	1913
New Hampshire	1871	1917
New Jersey	1875	1914
New Mexico	1872	1915
New York	1853	1917
North Carolina	1907	1913
North Dakota	1883	1917

Table 3 - Continued

STATE	DATE OF ENACTMENT OF FIRST COMPULSORY ATTENDANCE LAW.	DATE OF ENACTMENT OF PRESENT OR AMENDED LAW.
Ohio	1877	1913
Oklahoma	1907	1913
Oregon	1889	1911
Pennsylvania	1895	1911
Rhode Island	1883	1917
South Carolina	1915	1915
South Dakota	1883	1915
Tennessee	1905	1913
Texas	1915	1915
Utah	1890	1905
Vermont	1867	1915
Virginia	1908	1918
Washington	1871	1909
West Virginia	1897	1915
Wisconsin	1879	1907
Wyoming	1876	1909

SOURCE: H. R. Bonner, "Compulsory Attendance Laws," The American School Board Journal 60 (February 1920): 46.

was conceivable that the burgeoning population and growing wealth caused the laborites to effectively close a loophole that would deter full adult employment with the extension of the years of schooling. In 1928, at the forty-eighth annual convention the recommendation was softened. There was a call for good laws, efficient administration and a recommendation for research. Many of the previous recommendations had been met in one form or another and labor was about to venture into other compelling matters that would somewhat cripple its efforts for a period of time. The depression was to sap the strength of labor for a while.[63]

The AFL-CIO had consolidated by 1965. Their position for compulsory education was still very strong.

The statement on education emanating from the convention of 1965 was one of reaffirming the continued support of this group for education.[64] The AFL-CIO, in 1973 reaffirmed its support for free quality education. It took a somewhat new view that secondary education should not be limited to narrow vocational skills. Education should fit youth for total participation.[65]

Analysis and recapitulation

The design of a major segment of the labor

force and its direct involvement in education enabled the concept of forced schooling to become more fully developed. The AFL became the champion of the cause. It is true that labor was able to address itself to many issues other than economic because it probably did not suffer as much as its brethren in other countries. During the expansion of the west, the ability of the leaders of labor and others to move up economically bolstered their steadfast belief in the value of education and served as a regulator for their ambitions.

Once the labor movement came into a position of power it began to ally itself with those groups that would help to bring it into the mainstream of life. It called upon other groups to help in its quest for the good life for itself and its children. The movement became increasingly harsh with those who opposed their efforts in this arena. They called for economic and political pressure to be put on those who did not move quickly enough. Down through the years labor consistently saw education as a means of obtaining economic and social equality. The only discernable changes in its official policy was to continue to insist on refinement of forced education. Labor had indeed put its indelible stamp on education.

Industrial support

Prior to the Civil War the country was generally agrarian and rural in its outlook. It is true that after the War of 1812 America became more industrial but the frontier was being settled and the country was expanding. When the Civil War ended the nation began to expand its industry. The combination of enormous wealth and advanced technology made it possible for people to have increasing amounts of leisure time. It was about this time that the social, humanitarian and labor reforms began to demand an increase in the school leaving age and a tightening of the child labor legislation.

The complexity of life grew with the ever expanding industrial empires. Schools were designated as the means to provide the necessary trained manpower. Until 1890 the frontier was available as a release valve for those dissatisfied with urban living. After this time there was a tendency to seek opportunities in industry, business and other professions. With the added interest and wealth in industry there was a corresponding increase in the influence that industry would wield.[66] Industry saw the usefulness of a system that was paid for to a large extent by others. It saw the

advantages of taking people who were already trained for the particular job they were offering. It made economic sense to utilize these vast resources of people to their advantage.

The Industrial Revolution. Industry took advantage of the shift from small domestic manufacture to the larger machine type manufacture. This shift although advantageous to the industrial empire caused consternation to the parent who was finding it increasingly difficult to beneficially utilize the excess leisure time of a child. The Industrial Revolution indeed was prolonging the social childhood of the person. This Revolution in fact may well have been the single most important influence of industry on education. It made it almost mandatory for the schools to take over the training of jobs formerly accomplished in the home. Compulsion was the means used to get the children to this place of learning. It would be here that they would be taught the virtues of life.[67]

Industry in the middle third of the twentieth century seemed to be drifting toward a policy of less intervention in the process of education. In many cases, giant industrial empires seemed to take over the education of their people. It appeared as though they began to lose faith in

the ability of schools to provide the necessary education for the new technology. Yet industrial empires are pouring more and more money into foundations, grants and scholarships. Most of this money appears to be directed toward higher education. In a sense the implicit support and demand for mandatory education may have waned on one level, but the country saw a complementary increase in its support on a different level. The vast holdings and enormous wealth of industrial empires made it incumbent on them to support compulsory education because it provided industry with a base upon which it could continue its influence.

Ramifications of Immigration

All through the history of this country there are instances of immigration to these shores. The country grew steadily from the seventeenth century. During certain periods of time the migration was greater than at other times. Generally, migration to this country followed on the heels of political persecutions, economic downturn, social injustices or religious harassment. However, prior to the nineteenth century there seemed to be only a modicum of migration. Beginning in 1830 and lasting for the next century immigration was a constant and significant factor in the United States. The

immigrants were very poor and tended to settle in the cities. One of the situations aggravating the influx to the cities was the poor working conditions for the children. Various child labor laws were passed to try to alleviate the condition of the industries. Horace Mann, sensitive to the issue of poverty and ignorance, used his influence as the secretary for the State Board of Education in Massachusetts to promote the passage of the first compulsory education law. For a short while immigration to these shores was slowed. The Civil War interfered with the flow of people seeking relief from oppressive conditions in the old country. After the war a new wave of immigrants came to America. These people were generally from southern and eastern Europe. This generation of immigrants unlike their predecessors were not as well versed in the English language and presented the schools with an entirely different problem. The impact of the immigrants on the cities appeared to be dramatic. The cities complained of deterioration. They blamed this destruction on the new people. All, or at least it seemed that way, of the evils were laid at the feet of these newcomers. Crime, vagrancy, filth, disease, intemperance, illiteracy and ignorance comprised the litany attributed to these

new Americans. Education seemed to be the instrument best suited to Americanize and civilize.[68]

Not only were the cities experiencing difficulty but also the burgeoning labor movement. The children of these immigrants had no compunction, nor did their parents to go to work in the labor market for low wages. Many times these low wages were considerably higher than the living they were eking out in their former homeland. The children displaced the adults from their jobs. The adult immigrant depressed the income levels of others. Labor saw this threat and moved quickly in the 1880s first to favor compulsory education and then to demand it. The rationale was that for the good of the democratic society these people had to be carefully trained for a long period. These city children had to be conscripted to a way of life foreign to them in order to preserve that system of government known as democracy.[69] Alan Thomas stated in his work

> . . .that any society which accepts within its boundries numbers of other societies or cultures, and which attempts to put them on a common basis of understanding and activity, will itself change radically in the process.[70]

The people of the United States did just that. The large numbers of immigrants pressured many diverse elements in the country to quickly and radically

alter their view of the school. Compulsion was contrary to democracy. However, there seemed no other way to protect their vested interests. A state by state enactment of mandatory education followed. The problem of enforcement still lingered on, however, even into the twentieth century. The immigration movement continued well into the twentieth century. The social reformers in particular used any means to create positive social institutions. Fearing that the parents were incompetent to raise their children properly they used whatever state sanctions they could to alleviate unfavorable conditions. Schools became an integral part of that reform. Compulsory education laws at least ensured that action could be taken against recalcitrants. To be sure other socially oriented programs were instituted. These programs again used the unwritten maxim that parents were not capable of providing the necessities for adequate child care. What was once the function of the family unit, education now became synonymous with schooling.[71]

The First World War provided other humanitarians with the opportunity to politicize people. Whenever the country perceived a weakness such as the effects of immigration it reacted swiftly to impose greater pressure for compulsory education.

During the period after the First War the states were better organized in their enforcement. The movement during this period by various pressure groups was to increase the age of attendance in order to compensate for the immigrants still coming to this country. The good will of the American people often went for nought. First of all there seemed to be rather hasty and thus inadequate preparation for the education of the immigrant. Second, the pattern of attendance was generally highly irregular.[72]

The American people frequently expected too much from their ideas. They assumed that what seemed good for the country would work. Frank Thompson, in his book Schooling of the Immigrant, stated it succintly when he said, "We are assuming too much, consequently, when we conclude that the formal schooling of the immigrant will automatically solve the problems of Americanization."[73]

As the heavy part of the movement to this country subsided there appeared to be the reverance of the school as the remedy to social ills. In recent years there has been the call for reevaluation of the institution set up in another generation to rectify conditions that may not exist today. Education became a means to rectify threats to a

standard of government and had accomplished its purpose. Yet there seemed to be a need to perpetuate what some saw as an anachronism. No less a critic than Edgar Friedenberg enunciated these sentiments in his publication The Vanishing Adolescent.

> Our schools act as if America were still a melting pot. This is a strong tradition that developed through the decades when the nation was being built up through immigration.[74]

An addendum to the above might well have been that although many of the conditions that foisted schools on society were gone; society had grown accustomed to the benefits for the adult population and it would be difficult at best to radically alter this American institution.

The Landes-Solmon study

The contributions of labor, industry and immigration were inevitably drawn to economic advancement in one way or another. A rather interesting study was done by two men for the National Bureau of Economic Research.[75] It has the advantage of being done far enough from the time it investigates to be of considerable objectivity.

This study purported to look at the role of law in relation to social change. It seems to be particularly germain here because it attempted to assess the effects of compulsory school legislation

in the United States during the nineteenth and early part of the twentieth century. This period coincides with the analysis of the triumvirate of labor, industry and immigration. They hoped not only to resolve questions on the effectiveness of the laws, but also to provide insights into the general issue of law and social change.[76]

Prior to 1880 the passage of compulsory school legislation resulted in no observable increase in schooling levels. Between 1880 and 1890 there was a positive but non-significant increase in enrollments in those states which enacted laws at that time.[77] The question became, why pass the laws? Landes and Solmon would offer a supply and demand theory. Two forces would be at work on the demand side. Educators saw that the continuance of their job was influenced by a corresponding rise in enrollment and attendance. An increase in the number of educators would increase their power to influence legislators. Members of a community saw the passage of these laws as recognition of their achievement in committing their resources to a humanitarian cause. On the supply side, the demand for a compulsory school law would increase as the number of those opposed to the law decreased and therefore the cost to enact the law would

decrease with the corresponding increase in schooling levels.[78]

In their concluding remarks Landes and Solmon seemed to indicate that all of the efforts on the part of those who pushed, prodded, cajoled and demanded mandatory education legislation may have better placed their endeavors elsewhere.

> Our analysis of compulsory schooling legislation has clearly indicated that these laws did not cause the observed increases in levels of schooling in the late nineteenth and early twentieth century. The main evidence in support of this conclusion was based on a multiple regression analysis of schooling levels across states in 1880 and 1870. Here we observed higher enrollment and attendance rates, more days of attendance per school year, and longer school terms, not only in the 13 states with schooling laws in 1880 but also in these same states prior to enactment of their laws. Therefore, the positive difference in schooling levels in 1880 between states with and without school laws could not be attributed to the presence of these laws since equally positive and significant differences existed before these laws were passed. Additional evidence that supported the conclusion of no causal effect of schooling laws included an analysis of changes in schooling levels from 1870 to 1880 and 1880 to 1890, an examination of trends in schooling in Southern states from 1870 to 1920, and a brief analysis of state differences in enforcement and statutory provisions of school laws in 1890. And finally, although increases in schooling and the enactment of schooling laws might appear to have occurred together in the years 1870 to 1920, our analysis reveals that relatively high levels of schooling, and probably increases in those levels, preceded the passage of compulsory school laws.[79]

It is ironic that the struggle for an obtensibly noble cause seems to be no more than a means of the adult population taking care of their own vested interests.

Twentieth Century Period

Impetus of cultural pluralism

When a society becomes increasingly pluralistic as the United States had during the nineteenth and early twentieth century, there seems to be those who yearn for the status quo; or better they wish to perpetuate their way of life. Some people, those who felt they were the real Americans, needed to pattern others after their own likeness. The schools, because by now they were mandatory in all of the states, seemed to be a logical target for homogenization. The World War, as was the case with other social, political and economic upheavals, brought out those people who were determined to Americanize people in this country. During this period religious and ethnic bias reared its head again.

Meyer v Nebraska 1919

During and immediately after the war years, patriotism reached a zenith. When this was coupled with the heightening nationalism in this country

because of the intense immigration it seemed reasonable to take steps to insure the continuance of these virtues. Some thirty states passed laws requiring instruction in the public schools to be given in English. When Nebraska passed a law of this nature in 1919 a suit was brought. The suit reached the Supreme Court in 1923. The court in essence ruled that the law was unconstitutional under the due process clause of the Fourteenth Amendment.[80] The importance of this case lay in the fact that it attempted to define the line between parental freedom of choice and the authority of the state in areas of public welfare.[81]

Influence of the Ku Klux Klan

The Klan took up the cudgel to defend the common schools so that they would remain common. The history of the Klan seems to be wound up in the gaining of influence through fear. In the early 1920s this was the case. They attacked the churches and church schools as part of their recognized policy of religious intolerance. The Klan, opportunistic as ever used patriotic fervor and nationalistic ardor prevelant in America after the First World War as a tool to further distort their real motives. It is no secret that there was a resurgance of anti-Catholicism in the ranks of the Klan.

The Klan marshalled its forces, backed a gubernatorial candidate in Oregon sympathetic to their views and proposed a referendum on public schools. This referendum would outlaw all school systems except those that were public.[82]

Oregon referendum

A precedent had been set prior to the Oregon referendum of 1922. In Michigan, the people had proposed an amendment to the constitution in 1920 requiring all children to attend public schools. The influence of the Ku Klux Klan seemed to be of major import. However, the measure was to be turned down. Seizing on this background the Klan in Oregon laid the groundwork very carefully. They used every device and political advantage. Walter Pierce, a candidate for governor was campaigning for this office and used the referendum issue to his ultimate election. The voters of the state in November, 1922 approved by a substantial margin to compel all children between the ages of six to sixteen to attend public schools. The law was to go into effect in September, 1926.[83]

In the Salem, Oregon Journal on October 26, 1922 the paper made the following statement;

> ...state monopoly of education was introduced in the campaign for the purpose of stimulating membership in the Ku Klux

> Klan in its appeal to religious prejudice and racial hatred.[84]

The fact that the initiative was passed in 1922 would have the practical effect of closing all private and parochial schools necessitated swift action. The New York Times quickly denounced the action taken in Oregon. They pointed at the Ku Klux Klan leadership in the fight for the passage of the referendum. The editorial said that the state has the right to permit education but not to insist upon abolition of private and parochial schools unless they threaten the efficiency of the public schools.[85] On December 3, 1922 several articles in support or in protest to the Oregon bill were presented. The editorial itself made some poignant remarks. As a newspaper of some significance in the country it put itself on record favoring an appeal of the decision.[86] In the New York Times of December 12, 1922 Archbishop Michael J. Curley of Baltimore denounced the Oregon plan. He saw it as the first step in amending the U. S. Constitution. He went on further in his article to liken this law to a socialistic state.

> The whole trend of such legislation is a state socialism, setting up an omnipotent state that will claim ownership of individuals, body and soul, on the principles of Carl Marx, the German Socialist, whose teachings put into practice have created Soviet Russia.[87]

It is interesting to note the irony of his statement. He associates a right wing organization with a left wing movement. The Ku Klux Klan and its associates would seem to be odd bedfellows with the Marxists. Educators immediately attacked the law on the grounds of religious hatred, unconstitutionality and general intolerance. By and large, however, educators seemed to obscure the legal, moral and religious issues involved. This seemed to be particularly true in Oregon.[88] A Catholic Civil Rights Association was fighting the law. It soon was joined by various private and parochial school groups. The basic tenet of the fight was the Fourteenth Amendment of the Constitution of the United States. In 1924, the Federal Circuit Court granted the petition and the State of Oregon immediately appealed it to the U. S. Supreme Court.[89]

Pierce case.

The Society of the Sisters of the Holy Name of Jesus and Mary were joined by the Hill Military Academy in protest of the Oregon Law. The constitutionality of the law of the right of corporations to relief were the basic tenets of the action. An injunction was brought by the parties against the enforcement of an unconstitutional statute and the fact that bringing action prior to its official date

of obligation was not premature.

The lawyers engaged to argue the case for the State of Oregon before the Supreme Court brought as arguments the following: the federal government has no power to interfere in matters belonging to the states; the Oregon law does not impair the obligation of contracts; the Oregon law does not abridge privileges or immunities, nor does it deprive one of due process; if other compulsory education laws are constitutional then Oregon's is; the law is a function of the police power of the state; the state stands in the place of parents and does not interfere with religious liberty or the doctrine of separation of church and state; the state has the power to compel attendance at some school and may therefore designate the means to that end.[90]

The Society of Sisters had their lawyers argue the following: the suit was brought for equitable relief and not prematurely; the courts of the United States have jurisdiction when a federal constitutional right of a plaintiff was invaded; the legislative power of a state does not include the power to suppress or prohibit private schools; the law impairs obligation of contracts; the conduct of schools is useful and in keeping

with the Fourteenth Amendment; the Oregon law in effect deprives the right to conduct primary schools; it violates parental rights to control children; it is not a legitimate exercise of police power; it impairs the obligation of the appellees contract with the state.[91]

The Hill Military Academy expressed the following views and presented the arguments which follow: no legislative act may interfere with liberty or property unless correcting an evil; a state cannot change the meaning of a law by declaring otherwise; no legislative act may interfere with the rights of an individual unless promoting the public welfare and having a direct relationship to object accomplishment.[92]

Supreme Court decision in Pierce

The court in affirming the decision of the lower court made certain significant points.

Regulatory powers of the state. The states prerogative to reasonably regulate the schools was not questioned. What was called into question was the effect of the act in virtually destroying a system of schools which were in every way meeting the dictum of the state in its regulatory duty.[93]

Parental rights. The rights of parents to

direct and control their children was being impaired by this act in the view of the court. Citing, Meyer v Nebraska, the court indicated that the Act of 1922 unreasonably interfered with these rights. A statement that was to serve generations as a guarantor of individual rights was stated by the court.

> The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the highduty, to recognize and prepare him for additional obligations.[94]

Appellees are corporations. The fact that the litigants were in the true sense a corporation did not preclude their right to due process. Several citations of previous cases showed that the courts had acted in these cases to protect from unreasonable loss. The state had argued that it was within its province to compel attendance at school. The court saw the action as an arbitrary, unreasonable and unlawful exercise of the power of the state.[95]

Prematurity of the lawsuit. The Supreme Court held that the action was not premature. To wait until 1926, when the Act would have officially gone into effect would have caused the appellees to endure irreperable harm. Prevention of impending injury by an unlawful action was in the view of this court a legitimate function.[96]

Thrust of the Pierce decision

The case firmly entrenched the Fourteenth Amendment as a champion for the individual rights of people against the tyranny of a majority. The constitution and the intent of its framers had been upheld. Bigotry was dealt a severe blow, at least temporarily. The significance of the decision was not easily dimmed. In fact, as late as 1972 it would be cited again to uphold the rights of a very different minority. The Fourteenth Amendment had come of age. It would now begin to seriously serve as the spirit for liberalism.[97]

One area in which the court took particular note was the significant and inherent right of the state to compel education for its young. What it would not do, however, is prescribe the setting in which this education could take place. The decision checked the monopolistic tendencies of the law. In effect, the court seemed to be saying that patterns and values should be transmitted by schools but it would not bestow carte blanche rights on one system. The decision enunciated the principle of cultural pluralism.

Compulsory schooling seems to be affecting the First Amendment rights purported to be protected

by Pierce. If Pierce is read with careful scrutiny some principles emerge. The states school-financing system may not provide free education if that education abridges the First Amendment rights of individuals. A literal transcription of the Fourteenth Amendment will negate the permissive choice of education for the wealthy while repressing that choice for the poor. The regulation of non-public schools may not in any way impede or prohibit value impartation unless there is a reasonable and justifiable cause to do so. Such a reason would undoubtedly have to prove that these schools were threatening the existence of the public schools.[98]

Arons in his article, The Separation of School and State: Pierce Reconsidered makes the point,

> As a First Amendment Case, Pierce could be seen as having for its central principle the preservation of individual consciousness from government coercion. The specific application of this principle to educate is that any state constructed school system must maintain a neutral position toward parents' educational choice whenever values or beliefs are at stake. If schools generally are value-inculcating agencies, that fact raises serious constitutional questions about how a state can maintain a sufficiently neutral posture toward values while supporting a system of public education.[99]

The Pierce Case has been involved in many actions concerning schools, beliefs, religious liberties and right to privacy. In recent years

First Amendment implications may begin to suggest that the entire economic and political structure of mandatory education may have to be reconsidered in order to provide for separation of school and state within the context of the First Amendment's separation of church and state. If during this review it is felt that the First Amendment must be correct in this requirement then it follows that the massive system of compulsory education laws will have to be revised to preserve the right of families to obtain equal protection under the law in their quest for adequate education.[100]

State v Williams

In South Dakota, the Supreme Court of that state handed down a decision a few months after the Wall Street crash. In this case the court reversed the decision of a lower court and held that the law requiring attendance at some school between certain ages was constitutional.[101] One of the impacts of this decision was the fact that the Pierce decision was being used on the one hand by the appellant to claim that the South Dakota law was invalid and the court on the other hand to use portions of Pierce to uphold the constitutionality of its law. Furthermore, this decision had some import on the move of the federal government to lend credence to the right of

the states to set minimum and maximum age parameters for compulsory education. It is interesting to note the immediate and extensive effect the Pierce Decision was beginning to have in the country.

Significance of the depression

During the 1920s the United States was riding a crest of decent economic times. Immigration was subsiding somewhat. Industry was feeling the domestic after effects of the war. Labor was increasing its base of power. The American people appeared to be in a rather festive mood.

The stock market collapse in 1929 not only affected the United States but it also affected many countries. Most of the country was wallowing in the depression. The obvious need was to provide meaningful jobs for those who needed them. Family incomes had been devastated. The schools were among the first to come under criticism. What was an amplification and glorification of a community's standing now became the albatross they could and would not afford. The students, particularly those of high school age were needed once again to help supplement the family income. Of course there was also the matter of paying taxes for the schools. Money for education, little of which anyone had, could not be spent for intangibles. Education seemed to be attacked from

every side. Even those who supported education were on the criticism bandwagon. The depression struck real fear in the hearts of many people. Education seemed to be the whipping boy for the frustrations of those who looked at schools as providing no tangible goods for consumption.

With the election of Roosevelt as president, the country began to move in many diverse ways.[102] Among these was the C.C.C. This corps was devised to put large numbers of young people to work in the area of conservation of fields, forests, rivers and lakes. One of the outstanding features of this concept was its inclusion of vocational education as part of its overall program. Concern was caused that this was a device for federal intervention and eventually a takeover of education. The fears were groundless. Early in 1933, people were looking to the future with the aim that it would mean increased security-physical, social and financial. They were of the hope that increased security would mean more leisure time. The concept of additional leisure time would have educational significance. A comprehensive educational program would be necessary to supplant individualism, selfishness and indifference; the attributes which the people had witnessed with the onslaught of the depression. The

attributes that education would be called upon to foster would be service, conciliation and mutual aid.[103]

The impact of the depression was considerable. Social, economic and political changes were in abundance. Legislation to improve the standard of security for the people in order to alleviate their fears was passed. The Social Security Act of 1935 was an example of such a piece of legislation.[104] Labor was increasing in strength and had won a major victory in Michigan with its sit-in strike. Numerous ways were being devised to deal with a depression of that magnitude if it developed again. The American people wanted to be sure at all levels of society that they would not suffer that way again. Table 4 will stipulate compulsory attendance and work permit ages prior to the enactment of the Labor Standards Law.

The Fair Labor Standards Act

The Fair Labor Standards Act passed by Congress in June, 1938 was a comprehensive act regulating wages, hours and child labor.[105] What had been sporadic action on the part of the several states now became the law of the land. Prior to 1938 many of the laws in this arena were of limited range. In some cases the Supreme Court, increasing in its activity, struck down some of these laws as

Table 4

COMPULSORY SCHOOL ATTENDANCE AND WORK PERMIT AGES PRIOR TO 1938

STATE	FULL TIME SCHOOL	WORK PERMIT AGES
Alabama	7-16	14-17
Arizona	8-16	14-16
Arkansas	7-16	14-16
California	8-16	14-16
Colorado	8-16	14-16
Connecticut	7-16	14-16
Delaware	7-17	14-16
Florida	7-16	14-16
Georgia	8-14	14
Idaho	8-18	14-16
Illinois	7-16	14-16
Indiana	7-16	14-16
Iowa	7-16	14-16
Kansas	7-16	14-16
Kentucky	7-16	14-16
Louisiana	7-14	14-16
Maine	7-17	15
Maryland	7-16	14-16
Massachusetts	7-16	14-16
Michigan	7-16	15-16
Minnesota	8-16	14-16
Mississippi	7-17	14-16
Missouri	7-16	14-16
Montana	8-16	14-16
Nebraska	7-16	14-16
Nevada	7-18	14-18
New Hampshire	8-16	14-16
New Jersey	7-16	14-16
New Mexico	6-16	14-16
New York	7-16	14-17
North Carolina	7-14	14-15
North Dakota	7-17	14-16
Ohio	6-18	16-18
Oklahoma	8-18	16-18
Oregon	7-16	14-18
Pennsylvania	8-16	14-16

Table 4 - Continued

STATE	FULL TIME SCHOOL	WORK PERMIT AGES
Rhode Island	7-16	15-16
South Carolina	8-14	14
South Dakota	8-17	14-16
Tennessee	7-16	14-16
Texas	8-14	12-14
Utah	8-18	14-18
Vermont	8-16	14-16
Virginia	7-15	14-16
Washington	8-16	14-18
West Virginia	7-16	14-16
Wisconsin	7-16	14-17
Wyoming	7-17	14-18

SOURCE: U. S. Office of Education, Compulsory School Attendance Laws and Their Administration, by Walter S. Deffenbaugh and Ward W. Keesecker, Bulletin 1935, No. 4 (Washington: U. S. Government Printing Office, 1935), p. 12, Table 2.

unconstitutional. The Congress, acting under its constitutional right to regulate interstate commerce passed this act into law. The act withstood the test of constitutionality. The act brought under its control the regulation of child labor at the national level. Wherever, there were oppressive conditions of child labor then goods produced under these conditions could not be moved. The act provided a minimum age for child labor, and in this way significantly affected compulsory education. It forced the states to set the minimum leaving age in schools in conformity with this act. Table 5 will demonstrate compulsory school age in 1945. (Table 5 can be compared with Table 4 in this section to see the changes in ages in the states prior to this act and after its enactment.) This act and its subsequent amendments appeared to be a means by which the federal government could effectively intervene in education. There was an undeclared national policy on education. That policy was to compel children to attend school at least until they met the standards of this act. The Second World War was to effectively delay the actual impact of this act.

Immediately after the close of the Second World War proposals to strengthen the Fair Labor

Table 5

COMPULSORY SCHOOL ATTENDANCE
AGES IN 1945

STATE	COMPULSORY SCHOOL AGE	STATE	COMPULSORY SCHOOL AGE
Alabama	7-16	Nebraska	7-16
Arizona	8-16	Nevada	7-18
Arkansas	7-16	New Hampshire	8-16
California	8-16	New Jersey	7-16
Colorado	8-16	New Mexico	6-16
Connecticut	7-16	New York	7-16
Delaware	7-17	North Carolina	7-14
Florida	7-16	North Dakota	7-17
Georgia	8-14	Ohio	6-18
Idaho	8-18	Oklahoma	7-18
Illinois	6-16	Oregon	8-16
Indiana	7-16	Pennsylvania	8-18
Iowa	7-16	Rhode Island	7-16
Kansas	7-16	South Carolina	7-16
Kentucky	7-16	South Dakota	7-16
Louisiana	7-15	Tennessee	7-16
Maine	7-16	Texas	7-16
Maryland	7-16	Utah	8-18
Massachusetts	7-16	Vermont	8-16
Michigan	6-16	Virginia	7-16
Minnesota	8-16	Washington	8-16
Mississippi	7-16	West Virginia	7-16
Missouri	7-14	Wisconsin	7-16
Montana	8-16	Wyoming	7-16

SOURCE: U. S. Office of Education, Federal Security Agency, School Census Compulsory Education Child Labor, by Maris Proffitt and David Segal, Bulletin 1945, No. 1 (Washington: U. S. Government Printing Office, 1945), Table 2.

Standards Act were enunciated. The proposed amendments had a sixteen year age as minimum. States were called upon to incorporate this age as the standard. They were also called upon to regulate hours of work, hazardous occupations, and employment age. In the Federal Legislative Service of 1954, the purpose for the proposed standard was spelled out.

> The purpose of the 16-year minimum age standard is to protect children from premature or harmful employment and to give them a chance for schooling, healthful development, and necessary playtime. In this postwar period, when competition for jobs will likely become greater, persons uneducated or physically below par will be handicapped. They may become a burden instead of an asset to themselves and to their communities. The lessening of the unprecedented demand for young workers that existed during the war means that now is a particularly opportune time to obtain this 16-year minimum age standard for employment. Such a standard not only will assure the youth of the country better mental and physical development but will soften the impact of any unemployment by delaying the entrance of young persons into jobs.[106]

Again the concern and influence of labor is felt. The new proposal had the unemployment problem in mind when it called for the delay of young people into jobs. It seems that the schools became the void that would be filled when there is an overabundance of bodies for the labor market. Although this proposal enunciates the chance for schooling, healthful development and necessary playtime, the

fact of the matter was that it was no chance at all but rather a matter of expediency. The amendments of 1949 fulfilled the wishes of those pushing for standardization. As an explanation of conditions of oppressive child labor an important note is observed. Oppressive child labor was defined for purposes of these amendments. When child labor, "is confined to periods which will not interfere with their schooling"[107] then the indirect inference for the place of education in a child's life is understood.

Impact of the Fair Labor Act

As in times of other social and economic crisis the American people were determined to compensate and protect. The war had revealed gross deficiencies in the literacy of Americans called to the service of their country.[108] In their attempt to rectify such conditions they were determined to cause the education of children to be effective. The Fair Labor Act was a means to try and ensure the standardization of education in this country. However, the tendency was to alter or change child labor laws. Social conditions had caused a change in the patterns of docility in the nations children. As Kandel reported,

> "It became increasingly difficult to keep students in school; compulsory attendance laws were violated and the requirements of work permits were ignored."[109]

Despite the efforts of a nation to protect their youth they seemed to look for reasonable alternatives to schooling. The adults wanted to insure equalization of opportunity through the provision of compulsory education laws backed up by child labor sanctions. The leaders of the community saw education as a way to insure concepts of freedom and democracy. A segment of the young people saw education as an infringement on their freedom and democratic rights.[110] As the country moved into the 1950s, 1960s and 1970s it would observe that these alternatives would be tested to the fullest.

Plessey v Ferguson

In 1896, the Supreme Court of the United States ruled that the Fourteenth Amendment does not outlaw segregation so long as equal facilities are provided for each race.[111] Since that time, particularly in the south there were separate schools for blacks and whites. The Brown decision changed that concept. Although the Fourteenth Amendment was passed in 1868 it did not seem to apply in many instances to those people of different racial, ethnic or religious backgrounds. It was

used successfully to strike at ethnic slurs in Meyer v Nebraska discussed earlier. It was used to smite religious intolerance in the Pierce Decision analyzed in another section. Now the amendment would be used again to strike at the third of the bigoted triumvirate, racial segregation in schools.

The decennial census in the middle of the century produced some startling implications for education. Some of these had inference for the Brown case. There was a trend toward universal education; a continued tendency toward compulsory education; the apparent victory for non-sectarian education; recognition of schools as the joint responsibility of the government and the people; faith in standardization of education; staffing schools with females; and the concept of the school as a social agency serving the community.[112]

Brown v Board of Education

The case of the appellants. There were four states and a federal district involved in the suits. There were several individuals and organizations who took part. A list of these will be found in Table 6. The case for the appellants will be considered in total.[113] There were several points made by the various attorneys in their arguments

Table 6

PRIMARY INDIVIDUALS, STATES, ORGANIZATIONS, AMICUS CURIAE AND DISTRICTS INVOLVED IN THE BROWN CASE

INDIVIDUALS	STATES AND DISTRICTS	AMICUS CURIAE
Robert L. Carter	Kansas	Thomas J. Gentry - Arkansas
Thurgood Marshall	South Carolina	Richard W. Ervin - Florida
Spottswood W. Robinson, III	Virginia	Ralph E. Odum - Florida
George E. C. Hayes	District of Columbia	C. Ferdinand Sybert - Maryland
James M. Nabrit, Jr.	Delaware	I. Beverly Lake - North Carolina
Joseph Donald Craven		MacQ. Williamson - Oklahoma
Harold L. Fatzer		John Ben Shepperd - Texas
S. E. Rogers		Burnell Waldrep - Texas
Robert Mc C. Figg, Jr.		Phineas Andritz - American Veterans
Archibald G. Robertson		American Federation of Teachers
J. Lindsay Almond, Jr.		American Jewish Congress
Milton D. Korman		Japanese American Citizens
Louis L. Redding		Congress of Industrial Organizations
Richard W. Erbin		United States of America

SOURCE: Brown v Board of Education of Topeka, 349 U. S. 294, 99 L. Ed. 1083, 75 S. Ct. 753 (1955)

before the Supreme Court.

In the case of Kansas, they claimed that the state had no power under the Constitution to impose racial restrictions and distinctions; the lower court erred and that Plessey v Ferguson was not applicable.

In the case of Virginia it was held that the law violated the Fourteenth Amendment if it based a legislative classification on nonexistant differences; appellants are entitled to equality in all educational processes not just facilities; normal judicial function calls for a declaration that the state may not distinguish on the basis of race or color in the public schools which is a governmental power; the statutory and constitutional provisions cannot be validated under a separate but equal concept; preservation of public peace cannot be used to justify deprivation of constitutional rights; local mores cannot prevail against the Constitution. The lawyers argued further that there should be swift desegregation. It does not hold, they argued that the public welfare would best be served by a gradual desegregation

The appellants in South Carolina presented the following case. This case involved higher education but the constitutional issue was the same.

The Fourteenth Amendment of the Constitution had been violated and relief should be instigated; education encompassed the entire process of mental, physical and moral powers; Plessey v Ferguson is not applicable.

In the case of the District of Columbia the following discourse was filed. This federal district took a tact that was not taken by any of the states. It filed under the Fifth Amendment of the Constitution. They debated that no distinction may be claimed on race or color alone; that final determination of due process is the province of the courts and not Congress; the educational rights are fundamental and may not be abridged; assignment of pupils to schools on the basis of race is unconstitutional. This case requested that the cause be remanded back to the local courts with specific directions for implementation.

The State of Delaware appellants, the fifth petitioner in this case made the following points. Racial segregation inflicts grevious mental injury on black children; there is a violation of the Fourteenth Amendment; the basis of classification is arbitrary.[114]

Amicus Curiae briefs for the Appellants. The United States supported the contention of the appellants in this case and called for the following:

the separate but equal doctrine should be overturned; compulsory racial segregation is unconstitutional; if the case was upheld it should be remanded to the lower courts for expeditious transition to a non-segregated system; that it is within the judicial power to decide that racial segregation is unconstitutional; the Constitution requires that there be equality between persons.[115]

Several individuals either in their own behalf or as a party that was interested in this case filed a brief. The briefs for these amicus curiae had the following arguments. Psychological discrimination violates the equal protection clauses of the Constitution. The right to be free from racial discrimination is found in the Fifth and Fourteenth Amendments. The court should indicate the underlying principles of desegregation which will satisfy the Constitution. There should be no reasonable delay of implementation. Compulsory segregation coupled with compulsory attendance is objectionable. Segregation provides inferior educational opportunities. A decision for integrated schools reinforces declared principles of the United States and shows the colored races our sincerity.[116]

The Case of the States. Kansas argued that since there is no discrimination in facilities,

transportation, curricula or qualifications of teachers the statute does not violate the Fourteenth Amendment. The Board in Topeka, Kansas is carrying out its policy to desegregate and there is no need to appoint an overseer for the project the argument went on. They also felt that the court may permit gradual adjustments in this area. They claimed that it was the duty of the court to ensure a proper balance between needs of the plaintiff and the consequences. They stressed the importance of leaving the implementation up to the local courts and local officials.

South Carolina argued that segregation is not a violation of the Fourteenth Amendment if equal educational opportunities are offered. They pointed out that the Congress and state legislatures did not understand that segregation in public schools would be abolished when it passed the Fourteenth Amendment. If it is decided that segregation violates the Fourteenth Amendment then it does not hold that they should be allowed to choose their own schools. If the court decides against the states then there should be a period of gradual desegregation allowed. The integrity of lower courts should be upheld. There should be no general directions given to the lower courts.

Virginia's lawyers presented the following discourse. Segregation does not offend the Constitution. The action of the state must be viewed in terms of the historical background. The use of psychology to determine that segregated schools are unsatisfactory is unreasonable. Segregation at the high school level is reasonable. There is evidence that the acceptance of the Fourteenth Amendment neither contemplated nor understood the abolition of segregated schools. Permission for gradual segregation was requested if the court ruled in favor of the appellants. Since it normally was not the province of an appellate court to frame decrees; the court if it reversed the decision should remand the case to a lower court.

In the case of the District of Columbia they held that a dual system is not in violation of the Fifth Amendment of the Constitution. Steps have been taken they claimed to desegregate by the next school year and therefore requested no directive of compliance.

Delaware submitted the following brief. If the educators are framing a plan for relief then no master plan need be given. Segregation is valid under the Fourteenth Amendment. It is the duty of the court to strike a balance between the plaintiffs

needs and the consequences thereof. There should be no dismissal of a long and settled interpretation on imprecise testimony. The basis of classification is reasonable and does not violate Plessey v Ferguson. A gradual desegregation should be allowed. The case should be remanded to the lower court for adjudication.[117]

Amicus Curiae for the States. The States of Arkansas, Florida, Maryland, North Carolina, Oklahoma and Texas filed a friend of the court brief. Succintly they said: the court should not order immediate integration; supervision and discretion should lie with the administrative agencies; the court must ensure complete justice to all who are affected by the decision; the courts decision should in no way hinder the public school program.[118]

The decision of the court in Brown

The Chief Justice Warren delivered the opinion of the court. It had several significant aspects which will be reviewed here: There was a fundamental decision that racial discrimination in public education is unconstitutional. The lower courts were remanded the job of appraising the good faith implementation of the decree. The lower courts in effectuating these principles should keep equity to all parties in mind, but must not yield

the vitality of the constitutional principles because of disagreement with them. The court placed the burden of proof for additional time to carry out these mandates on the defendents. However, the court retained jurisdiction until this was accomplished.[119]

Strengths of the decision. The decision was extraordinary from many standpoints. First and foremost was that it outlawed racial segregation. The utter brevity and unanimity were also important. The fact that the states rights judges on the court stood with those who advocated federal supremacy pointed up the preeminence of the U. S. Constitution in cases dealing with individual liberties. The court recognized that both the Fifth and Fourteenth Amendments applied to some ramification of this case. It conceded that the general welfare of certain citizens was at stake. They concluded that in their assessment the doctrine of separate but equal had no place. Any discussion of the Fourteenth Amendment had no real purpose here because segregation of itself was wrong.

Weaknesses of the decision. One of the weaknesses of the decision was its refusal to set a time limit for full compliance. The decision to be flexible and to remand its implementation to the lower courts was notable, but it allowed a waiting

game to be played by certain individuals. The penalties for non-compliance were not spelled out to help prod those who felt they might beat the action by a show of force. By and large certain loopholes were left open. The one that certainly was taken advantage of was the option to rescind their compulsory attendance laws. It would seem that if the courts had the province to strike at segregation then it had the power to freeze these laws for a period of time. The decision allowed certain states to effectively delay desegregation by moving from a de facto to de jure segregation and thus for a time impede its full implementation.

Inference for compulsory education. The court in effect said, that if this country is to have as one of its functions the continuance of education, then it must provide equal opportunity. Education today is one of the most important functions of the state and local governments. Millions of dollars are expended each year to insure the permanence of its mandatory education. These expenditures de facto recognize the importance that the government places on this industry. Mandatory education, increasingly is becoming more important and necessary in our everyday life. It is required for public and private performance,

it enhances cultural values, promotes citizenship and helps one to adjust to his environment. A deprivation of these conditions places a person at a decided disadvantage. If education is obligatory as the several states have said it is, then it ought also to be equal so that each citizen has the opportunity to gain a reasonable existence from its teachings.[120]

The background of the Amish case

The Amish are a religious sect inhabiting many states. Notable among these states are Pennsylvania, Ohio, Indiana and Wisconsin. Briefly, they live a simple life forsaking all but the most necessary contacts with the outside world. They have a staunch belief that education beyond the grade eight is not necessary for their way of life. Nor, they say is it necessary to learn more than what will enable them to perform the daily communal tasks. They are pacifists. They are willing to adapt to the commands of the state as long as those dictums do not interfere with their concept of salvation.

Three court cases had one significant aspect in common. The one important basis of argument in each case was a violation of the Fourteenth

Amendment. Pierce, the 1925 case was famous for its decision that the parents had the right to guide the education of their children. Brown, in 1954 was the famous desegregation case that also interposed the Fifth Amendment. Tinker,[121] in 1966 was argued and decided in the Iowa District Court on the basis of the First Amendment as well. All three cases were used in the arguments pertaining to the Yoder decision. They are important in that they had a common basis for argument as well as having another important bearing for Yoder, each separate yet meaningful for that case.

The Pierce decision was of import in the Yoder case because the decision stated that parents did not have to educate only through state educational facilities. The Brown case demonstrated that education is an important instrument in helping the child to awake to cultural values and to adjust to his environment. Under the Fourteenth Amendment the Amish would have been denied these rights if they continued on in the public school. In Tinker, the case was made that students in or out of school are considered persons under the Constitution. They have obligations and responsibilities. For Yoder this was of consequence because some of the Amish children involved claimed that they too did not see the clear

benefit of continuing in a school that may alter their religious beliefs.

State of Wisconsin v Jonas Yoder

Secondary schooling, the judges agreed contravened the basic religious tenets of both the Amish parent and child. Compulsory schooling was in itself not so compelling that the religious practices of the Amish had to give way. Since non-attendance at school was not against the children's desires, it was the parents right in the exercise of religion and not the children's right, which would determine Wisconsin's power to impose penalties on the parent. Furthermore, it was pointed out that the decision did not abridge the children's right to attend if they wished. In a partial dissent, one of the justices indicated that a review of all the children of the Amish should be taken to be certain that it was their expressed opinion as well as that of their parents.[122]

Position of the state. The state held that the request of the Amish ignored the right of a child to an education. It used the Brown case as documentation. They also said that the state has the right to compel attendance by citing the Pierce case. In addition to the right of control comes the obligation to give proper education to the child. Compulsory

education is not, as claimed, violative of the freedom to worship. The decision in effect grants the Amish an exemption and is an excessive degree of government entanglement.[123]

Position of the respondents. The lawyers for the Amish filed the following brief. The state action, they said was a direct violation of the religious freedom of the Amish. The state does not have the right to define mens' religions. If the state interferes with the right to the free exercise of religion then there must be compelling state interest. They went on to claim that there is no compelling state interest that justifies interference with violation of parental and educational rights which are inseparably linked with free exercise rights. Sincerity of the religious belief is an important factor in a free exercise case. No governmental body has the right to make determinations on truth or doctrinal status.[124] It is important to note that in the respondents position they cited in many instances the cases cited by the State of Wisconsin. There were several parties urging affirmation in this case of the lower court order. Some of these represented other religious groups that had their own educational system and could be construed

as minority. Conspicuous by their absence was the Catholic school system.

Implications of the Amish decision

The decision of the court reaffirmed the Pierce decision which in part stated that parents have an important right to educate their children in the formative years. It is an unwritten dictum in this country and it has high favor among most peoples. A public school education is important but it does not precede parental rights to provide equivalent education. The free exercise clause preceded the requirement of mandatory universal education in this country. It has, along with the prohibition against the establishment of a religion by the government been an overriding principle in many judicial, legislative and executive decisions. Only an absolutely high order interest can suborn this right. Compulsory schooling does not have the right to contravene basic religious tenets and practices. It carries a threat to the free exercise clause of the First Amendment. Religious grounded conduct is not always outside the realm of the protection of the free exercise clause. Compulsory education, a recent development in American history, at one time was satisfied by the completion of

grade eight. The Fair Labor Standards Act of 1938 prohibited labor before sixteen years. The requirement of compulsory education to age sixteen must be viewed as not only providing educational opportunities but also an alternative to undesireable labor which displaced adults. Therefore, it seems the compelling state interest in compulsory education is not so compelling. The interests of parents are prior to the interest of minor children or the state particularly if the parents are in no way harming these children or the state. The decision did not undermine the applicability to compulsory education laws or the power of the state to promote reasonable standards.[125]

A former member[126] of the Old Order Amish Sect observed that there were four implications of the Yoder decision. These were as follows: people in general may challenge a law; this decision could be the first step in the abolition of compulsory education; it may result in a negative tax plan; and it may force educational institutions to take blame for failure.[127]

The Supreme Court again continued its major role in education. The courts opinion that requirements for citizenship education can be satisfied at age fourteen or grade eight is highly significant

and needs careful analysis for the future. The court in effect seemed to strike a blow at compulsory education beyond grade eight. Indirectly then this opinion could have tremendous effect on mandatory schooling in the future.

Strengths, weaknesses and future action

The strength of the decision lies in its reaffirmation of the precedent right of the First Amendment. The Constitution was upheld. It reaffirmed the right of the parent to control the minor child. There were some areas that may in the view of some people be classified as weaknesses. Chief among these is the fact that the opinion of the court despite its disclaimer may have severely weakened the position of compulsory education laws. Secondly, the claim of the attorney's for the State of Wisconsin may not have been too far wrong when they pointed out that the case may have many implications for excessive governmental entanglements. In the future it may be important to scrutinize carefully the possible ramifications of a decision prior to passing judgement. The role of the Supreme Court is becoming increasingly enormous. There have been many cases which have reached the Supreme Court in recent history. A serious reappraisal of the

role of the court in educational matters must be made. It is possible that the future will bring decriminalization of a law that is in essence inoperative. A complete revision of governmental attitudes about the parents rights to discarge their obligations and review of the protection of children's rights seems to be necessary.

National Commission of 1972

If the history of the high school could be examined it would be found that it was filled with strife over its establishment and continuance. In the nineteenth century the high school was met at every turn with hostility and it was not until after the Kalamazoo decision in 1874 that it won begrudging acceptance. Between 1880 and 1940 the high schools were beseiged by criticism against its curriculum, its specialization, and its philosophy. The 1960s and early 70s saw social crisis pervade the schools. Court actions changing the role of the school from loco parentis to a virtual holding institution served to dramatically alter this place of learning.

In July, 1972 the Charles F. Kettering Foundation, deciding that it was time for reforms sponsored a national commission to re-examine the goals, programs and directions of secondary

education.[128] The commission used varying resources. People and places were selected with utmost care to give a breadth of backgrounds and experiences to the final report.

It is no secret that compulsory education laws have long been inexorably tied to the secondary schools. Virtually every state today has a law that mandates the age sixteen as the school leaving age. The fact that many educators see the need for mandatory education pressures the system to continue. They see the necessity to continue these laws because it may mean the demise of their life's work to some extent. The adult community and in particular the labor-industry fraternity insist on its continuance so as to prevent a glut on their market. The American high school, but in particular compulsion until age sixteen or seventeen, has become so much a part of this country's way of life that it would be virtually imposible to change.

In recent years the court system in the United States has taken an active interest in the schools and what is hapening in them. Beginning very early in this country's history the courts have intervened when necessary. However, in 1874 with the Kalamazoo decision there have been many others that have made it difficult to administer

a compulsory law. Many of the decisions of the twentieth century have struck down rules that were in violation of the First, Fifth and Fourteenth Amendments to the U. S. Constitution. Many of these cases have been discussed in some depth in the course of this thesis. The fact of the matter is that the courts in this country have become exceedingly active in matters concerning education.

The charge to the commission was broad in scope but can be summarized by the statement:

> . . . make a comprehensive examination of secondary education and provide the American public with a clear, factual picture of their secondary schools, indicating where and how they can be altered to better serve the nation's young people.[129]

One of the ramifications of this charge turned out to be a recommendation on compulsory education.

The National Commission's recommendations

In recommendation No. 28 the commission said:

> If the high school is not to be a custodial institution, the state must not force adolescents to attend. Earlier maturity--physical, sexual, and intellectual--required an option of earlier departure from the restraints of formal schooling. The formal school-leaving age should be dropped to age fourteen. Other programs should accommodate those who wish to leave school, and employment laws should be rewritten to assure on-the-job training in full-time service and work.[130]

The statement was a virtual bombshell not only to educators but to the public. There were several implications that were apparently not well received. People saw that this type of school was accused of performing a custodial function. To the adults in education this may have seemed as a slap in the face. Here they were working each day for the benefit of children, striving to sell the importance of their product and looking with pride on their accomplishments; and a commission was suggesting that they were leaning toward a baby sitting role. This group went on to suggest that formal schooling was restraining young people from doing other things. Then the coup d' etat was introduced. The commission recommended that the school leaving age be dropped to fourteen. Any educator worth his salt would know that this was a serious blow to the livelihood of the profession. Certainly the general public was aware that this report was recommending other programs. Of course the money for these programs would come from the public coffers. Labor industry and business also were cognizant of the fact that rewriting the employment laws to accomodate these young people would place a strain on their protected area. The impact was immediate and heavy. Several groups criticized or supported this recom-

mendation.

Owen B. Kiernan and the N.A.S.S.P. The N.A.S.S.P. advocated compulsory education to the age of eighteen.[131] It did not accept the commissions report and in particular Recommendation No. 28. Several reasons are advanced for this position and are enumerated here.

> . . . (1) promotes an enlightened electorate which is critically important in a democratic society, (2) mandates quality education to the reception of the diploma or age 18, whichever comes first, (3) protects youth against exploitation, (4) decreases the number of out-of-school, unemployed youth, and in so doing protects the labor market, (5) assists, and to a degree relieves, parental responsibilities especially among the minorities, (6) develops the potential of each individual, and (7) introduces the maturing student to the real world by means of school-community based internships and related programs.[132]

Kiernan indicated that the basic thread throughout these reasons is that in our present society there are few opportunities if any for the under-educated and the unskilled.[133]

The rationale of B. Frank Brown. Brown's contention was that there was one premise for the lowering of the compulsory education age and that was to remove the custodial responsibilities of the high schools.[134] He cited three factors that made it impossible to administer:

> . . . (1) the earlier maturity of youth; (2) numerous legal and quasi-legal rights extended to school-age young people by the courts (especially the Tinker decision in which the Supreme Court conferred constitutional rights on school children); and (3) the change in the attitudes of youth toward authority.[135]

He went on to contend that compulsory schooling was struck down by the Yoder decision. He felt that if it was not applicable to the Amish then it did not apply to other religious groups. Brown made several other succinct observations. He contended that education is no longer synonymous with schooling. Compulsory laws are rarely enforced above the age of fourteen. Young people are flouting the law. He asserts that this is not the proper climate in which to raise young people. Therefore he says either enforce rigidly or abandon quickly the concept of compulsory education to the present ages.[136]

Gordon Cawelti,[137] dissents from the enunciated recommendation of the commission when it advocated dropping the school-leaving age to fourteen. It was his feeling that such a move would have some grim consequences. Chief among these is the fact that this action would not compel schools to improve their programs for youth. In addition, once young people leave their desire to return is often abated. He also restated an argument used very early in the history of compulsory schooling. The argument was

that lower educational requirements would foster an elitism in our society. There is a need, he claimed to set goals for the schools and then work to accomplish these goals.[138]

The report elicited much attention from individuals and groups. It caught the fancy of the national press. After all there were many implications in the report that tended to affect these people. For a while there were many reactions not only from educators but from the general public. However, as with many other substantive reports it seemed to die on the vine.

Inferences for the future

R. Freeman Butts[139] argues that if the commissions' recommendation is put into effect it will harm the educationally disadvantaged and will continue to widen the gap between the haves and the have nots.[140] He supports Robert Hutchins arguments for universal, free compulsory education. He quotes Hutchins from his article that appeared in The Center Magazine which was entitled, "The Schools Must Stay".

> The basic commitment is that of the First Amendment which lays it down that Congress shall make no law abridging the freedom of speech. This provision means that every American is encouraged to express himself on public questions - or on any other subject. The notion is that

> of a self-governing community of self-governing citizens locked in argument. This was the kind of community the founders wanted. They could not hope to have one of this kind without an educated people. They had to have citizens who could think and think for themselves.
>
> Is this a sufficient basis for a political community? I think it is when combined with universal citizenship and universal suffrage. Does it justify compulsory schooling in institutions supported and controlled by the state? I think it does.
>
> Every child must be given the chance to become the kind of citizen the First Amendment demands. The obligation is too important to be left to parents. The community must compel them to allow their children to have this opportunity either by offering the education itself or through institutions it approves.[141]

Butts, would redefine compulsory education as obligatory education. Obligatory education would connote a new form for education he asserts. Parents would have the obligation to see that their children attend school to become good citizens. The obligation of the state would be to provide educational opportunity freely, universally, equally and commonly. The obligation of youth would be to attend and pursue studies leading to good citizenship.[142]

Brown, as he stated in the Phi Delta Kappan for January, 1973, "Recent decisions of the courts have clearly established appropriate limits to the state's control over children. The dictum is for individual discretion in school attendance."[143] This

statement and his role as chairman of the National Commission for the Reform of Secondary Education showed that he was in the forefront of those who advocated the change in compulsory education age. He had the support of the former Health, Education and Welfare Secretary, Wilbur J. Cohen in his quest for lowering the attendance age and viable alternatives.[144] Brown went further, he spelled out certain viable alternatives that would be specific inferences for the future. He proposed that child labor laws be amended and allow business and industry to assume an educational function. He proposed for each year of education a person receives above the age of fourteen he must perform a month of service to his community. He proposed an alternative to forced education. That alternative would combine work, home and education and is patterened after the C.C.C. He proposed an optional learning center which would reduce age isolation, provide opportunities for education, and increase service manpower to communities.[145]

Flaccidity of recommendation 28. The recommendations greatest weakness in analysis is its failure to spell out adequately the means and methods to implement this radical departure from the norm. Furthermore, it obliquely refers to action needed by

state legislatures and Congress. Yet it does not propose how it will get the attention of these august bodies. Once it does get its attention it does not seem to have concrete proposals. The statement that public and private policy must change is nice, but implementation is another matter. The recommendation does not adequately, if at all, answer the objections that it will be a tool in the hands of those who would cause the educational disparity in society to widen. The follow-up to the recommendation is weak and almost non-existent. There seemed to be much that was worthwhile in the report but the implementation of the actions seemed to fall short.

Importance of recommendation 28. The most important aspects of the recommendation can be summed up in some concise statements. The first is that it calls attention to the facts of compulsory educations' custodial role, the necessity for options and the significance of child labor laws for education. The second aspect is that it brought out some healthy alternatives for compulsory education by certain people. Third, it indirectly pointed out the increasingly important role the court system was playing in education. Fourth, it forced American educators and the public to recognize that there was considerable sentiment for the disestablishment of a cherished

American virtue.

Findings

The purpose of this section is to relate the analysis of the data in reference to the themes of inquiry. The findings of the first question for research are presented here.

1. What were some conditions in the country that led to the proliferation and promulagation of compulsory education laws?

Compulsory education is more than a body of laws enacted by the legislatures of the states and signed by the governors; it is in some states an instrument of the constitution as well. Further, the indirect reference to states rights in this area by the Tenth Amendment of the United States Constitution is in itself a powerful conditioning factor for these statutes.

The development of compulsory education in the United States has been affected by three major conditions. All three thread down the years from the inception of compulsory education in this country until the present day.

The first condition, that of political freedom, has been one of the leading if not the original motivation for compulsory education. The colonists had fled the old country to be free of the political pressures that they were being subjected to at that

time. They were oppressed for their religious views and their political views. In fact when they came to this country their first laws were designed so their young would be able to read and comprehend their religion and capital laws. Finally the break with England through the Revolutionary War made the new states wary of federal government interference. The Constitution leaves education as an implied power to the states. The federal government was careful, however, to set the tone for national education when it passed the Northwest Ordinance of 1787. Political differences pervaded the common school movement which culminated in the first state written mandatory education law in Massachusetts during 1852. The Civil War interfered in a strange way with obligatory education. Prior to the secession of the southern states there had been an effective block of the Morrill Land Grant Act. With the secession, the proponents of this act, astute in their political recognition of the realities of the number of no votes available, were able to pass the measure convincingly and thereby assure a continuing and promising place for mass higher education. The desire of the people for education of their young prompted them to continue to put on political pressure during the sixty years after the Civil War. When certain

groups felt that they were not getting the desired response from their legislators they threatened removal from office. Religious and private groups feeling the obvious oppression of their work and way of life used the First, Fifth and Fourteenth Amendments as political tools to get the desired results. In general, wars in the twentieth century had little effect on compulsory education. Whatever effects they had were indirect and only obliquely affected mandatory education.

The second condition which had a profound effect on forced education was economic security. The settlers in this country saw education as a means to diminish the obvious economic difficulties that were so prevalant in the old country when there was a concomitant educational disparity. As the Industrial Revolution began to put its imprint on the new country it had an effect on those whose livelihood was threatened. They responded by pushing for the enactment of child labor laws which would severely limit the use of that labor, would force the establishment of means to occupy children and would protect the adults' right to work.

Depressions generally had little effect on education. These economic downturns would usually produce two reactions for education. First, there

would be a call for more stringent child labor laws. Second, the schools were generally subjected to increased criticism during these periods probably out of fear that taxes for schools would reduce limited funds. This latter criticism was particularly true during the depression years of the 1930s. During this all consuming depression there was a strident insistance on stringent laws that tightened up the loopholes in child labor. The result was the enactment of the Federal Fair Labor Standards Act of 1938 with its ever increasingly tough amendments enacted in the succeeding three decades.

After the Second World War the number of Americans that were continuing their education rose dramatically. Education was a means of upward economic mobility.

The American dream of an educated citizenry seemed to be a reality. The people in this country were looking at education as the panacea for economic inequality. That dream, however, soon developed into a myth. The number of Americans with educational parity made it as difficult for people in this country to attain economic security and upward mobility as lack of education had in former years.

For many people this became the educational disillusionment of the last thirty years. What had

been held out as the ticket to the good life soon became nothing more than a charade. Educational attainment did not seem to coincide with economic expectations.

The third condition and certainly more prevalent in this century is the effect of social diversity. Ethnic conflict certainly has been an important factor ever since people first settled here. Observations of people of certain nationalities settling in certain areas of the country led to the enunciation of laws or lack of laws concerning compulsory education. Racial differences surfaced dramatically by the 1950s leading to the famous school desegregation case. The Brown decision was a landmark and had a tremendous effect on mandatory education when it was ruled that separate but equal did not fulfill the pure intent of the U. S. Constitution particularly when that education was obligatory for all children.

When the country swelled with immigrants which bred poor social conditions; the humanitarians combined forces with other groups to insure that these people had the proper schooling so they would be educated in the ways of the Americans. It was thought that education would certainly cure the tendency toward crime and other forms of anti-social

behavior. In fact as recently as 1972 the National Commission for the Reform of Secondary Education based their recommendation for the lowering of the compulsory education age to fourteen on the premise that schools were fast becoming only a custodial institution.

Cultural differences were another social factor that had impact on these laws. Several times in the history of this country cultural idiosyncrasies surfaced to raise the question of standardized education being necessary to bring these people into the mainstream of American life. Post war hysteria brought calls for imposition of the English language as the only language to be used in schools; or prayer might be outlawed; or the pledge of allegiance would be demanded. All of these and other movements in public education would take advantage of its compulsive nature to exploit the loyalty inferences and cultural differences.

2. How does compulsory education influence the structure of educational institutions?

In the earliest times (1642 and 1647) compulsory education influenced the structure of schools by implying who may go and what might be taught. Subsequent to these times conditions have changed and the influence of mandatory education on these institutions has varied from rigid specifications

to the point of having little impact.

The first laws in the colonies (1642 and 1647) specified religion and law as the necessary subjects. The laws of 1647 went on to specify that after a town had grown to a certain size it must provide a teacher, a place to hold school and even specified how the education would be paid for. In 1787, the setting aside of the sixteenth section provided later exponents of compulsory education with a convenient place to disseminate the education. Compulsory education thereby implicitly affected the necessity for erecting structures on those plots of land. The early advocates of the common schools saw the advantages of providing places for education to a certain age. The earlier schools that were to fall under the jurisdiction of compulsory education were generally limited to the age of fourteen. This restriction as noted in the first state law in 1852, usually mandated that education would be structured through what is presently known as the eighth grade. When the Kalamazoo case was enunciated in 1874 it opened the door for education to be extended beyond the age of fourteen. Furthermore, this decision implied that there could be a corresponding extension of the curriculum. The Morrill Act which preceded this case and really opened the door for the extension of the adolescent years was

ostensibly enacted to provide for the teaching of the agricultural and mechanical arts. Compulsory education would use this governmental action as well to extend both the age of attending as well as encroaching into other educational arenas.

In a series of court cases in the twentieth century the conditions under which mandatory education was to be held were enunciated. In some cases the court dictated what could and what could not be taught. The Pierce case was a landmark decision. It stipulated that the state had the right to compel education but that compulsion did not extend the right to specify in what system it might be taught. The principle of dual but equal compulsory systems was upheld here. The 1954 case (Brown v Board of Education) implied very stringent conditions under which compulsory education could be imposed. The fact of the matter was that since it is the duty of the state to provide education then there must be equal educational opportunity for all. The Brown case dictated that compulsory education in itself valid must be carried out in an atmosphere of equality for all races. As one result of these stipulations some states chose to repeal their laws. The fact that these states had no compulsory education laws for a period of time provided a strange quirk for obligatory education.

It opened a plethora of avenues for education. Without mandatory education many types of schools came into being for a period of time.

In another instance the case for compulsory education was not strong enough to override the implications of the First, Fifth and Fourteenth Amendments. It was argued in Yoder (see Appendix P) that one or two more years of education would not affect the Amish children. Despite the narrowness of this decision it presented compulsory education with a real challenge. Where the age limits had previously dictated the number of years of learning, caused building programs to expand and programs of learning to increase; these same limits became a serious challenge to its continued influence. It was just one short year after this decision was enunciated that a national commission recommended the lowering of the compulsory education age. Along with that recommendation came suggestions of how to alter educational institutions that had benefitted from forced education. Education in the view of these people would take on an entirely new character. There would be more cooperation between education and non-education groups. There would be a change in the concept of where education would be held. There would be a change in the role that obligatory education would take.

Down through the years educational institutions were affected by the mandatory education laws that were passed, withdrawn, criticized or praised. The observation can be made that this form of education certainly stipulated the kinds of people, places and things that happened in this American institution in the last three hundred and thirty-five years.

3. What influence did non-educational groups have in the promotion of required education?

Many non-educational groups have had influence on required education. They fall into the categories of settlers, labor, industry, immigrants, courts, legislative bodies and commissions.

The settlers of course provided the impetus for the enactment of the laws by the hand that they had in their inception. Education was mandated by them in order to preserve their way of life.

The Ohio company which was influential in the enactment of the Northwest Ordinance had an effect on compulsory education. In this Ordinance there was the provision for a place to educate (sixteenth section) and the general promotion of compulsory education in Article III.

Labor, industry and immigration had a profound effect on education particularly from 1870 to 1930. Labor saw education as a means to equalize

opportunity and to provide for a narrowing of the socio-economic gap. At first it requested, then it demanded compulsory education. The strident efforts of labor provided required education with a powerful ally. Industry, recognizing the benefits that it could obtain from mandatory education also put its strength behind this concept. In recent years industries' contribution has been primarily financial. This is particularly true for higher education. This support provides a reason to continue obligatory education during the adolescent years. Immigration was a key factor in the number and strength of these laws. The American public thought it necessary to provide a means to Americanize, humanize, democratize and civilize these people. Education was the means to this end as they saw it. Compulsory education would ensure that these people got to the schools so that the process would take place.

The courts have had intense effects on this concept of education. They have ruled time and again that education was a right and a duty of the state and that this form of education did not violate the Constitution. The courts have increased their activity in education cases in the twentieth century. They have ruled in favor of a dual education system. They have struck down the necessity of teaching

certain languages to the exclusion of others. They have enunciated that education must be equally available to all people. In the past seven years they have somewhat changed their tactics. In former years they have ruled consistently for compulsory education. In 1972, the Supreme Court ruled that compulsory education might not be as necessary to a certain age as it formerly had been thought to be. This case struck at the concept of mandatory education beyond the eighth grade.

As late as 1973, a National Commission as earlier commissions had done made certain recommendations for education. The one that caused the most concern was its call for the dropping of the age of schooling to fourteen. There was an immediate hue and cry from many corners; the chief of these being professional educators. It called to the attention of educators and other pockets of the public that it was possible that compulsory education laws would need a thorough overhaul.

Certainly legislative units have had a weighty influence in this scene of action. From the outset these units whether small or large have had the distinction of enacting these concerns of the people into laws. From the general court in 1642 and 1647 in Massachusetts, to the Congress in its

enactment of the Ordinance of 1787 there have been implications for required education. State legislatures, led again by Massachusetts have provided the compulsory education statutes. During the Civil War, Congress enacted the Land-Grant Act which provided land for the continuance of education beyond the grammar school years. The number of child labor laws which restricted employment and opened more school doors are indicative of legislative activity. The Federal Fair Labor Standards Act was most influential in standardizing the age of compulsion after 1938. The legislatures of the southern states that repealed their obligatory education statutes certainly influenced required education. They demonstrated that education would continue without benefit of law. It seems that the influence for or against compulsory education has come chiefly from non-educational groups.

4. What aspects of commonality exist between the states in regard to compulsory education?

At first glance it would seem that in a country as diverse as the United States there would be no common elements in mandatory education. Nothing seems as far from the truth of the matter. The age limitations of education are among the common aspects of this type of law. Generally speaking all of the states have laws which stipulate the age parameters

of seven through eighteen with the overwhelming preponderance of states stating sixteen as the terminal age of compulsory education.

Many states have used Article III of the Northwest Ordinance as a direct or indirect influence when writing the laws for those commonwealths. The specification of section sixteen as a place to be set aside for education was proclaimed in this same Ordinance. Today it is fact that most states have enacted a similar specification. The fact that all of the states today except Mississippi have compulsory education legislation is certainly an aspect of commonality in the several states. Mississippi had legislation but repealed it in protest of the Brown desegregation case.

The states are dependent to a large extent on child labor laws and the Federal Fair Labor Standards Act of 1938 when enacting or modifying its laws.

Court decisions such as the Pierce case that upheld dual school systems; the Brown case which enunciated the principle that separate does not mean equal seemed to uphold some aspects of the First, Fifth and Fourteenth Amendments. Cases such as these certainly helped to develop uniformity in the mandatory education laws of the several states.

Footnotes

[1]In regard to the first purpose, interpretive comment will be distinguishable from factual material by its occurrence with such language as "probably," "likely," "might well have," "seem," and "appear."

[2]The reference to new country indicates what is presently called the United States. The reference to old country will be a means of designating what we presently know as Europe.

[3]Martin Luther was the German who broke with the Catholic Church in Rome and was instrumental in the promotion of the Protestant Reform. One prominent role that he played was that of an advocate for universal education.

[4]Henry Barnard, ed., The American Journal of Education 11 (December 1857): 429, (Hartford, F. C. Brownell London: Trubner and Co., 1857; Ann Arbor, Mich.: University Microfilms, X1005 Reel 85, n.d.).

[5]John W. Perrin, "The History of Compulsory Education in New England" (Ph. D. dissertation, University of Chicago, 1896), p. 30.

[6]John Calvin was a ruler in Geneva in the mid-sixteenth century and won renown as a reformer.

[7]Murray N. Rothbard, "Historical Origins," in Twelve Year Sentence, ed. William Rickenbacker (La Salle, Illinois: Open Court Publishing Co., 1974), p. 13.

[8]Marcus Wilson Jernegan, Laboring and Dependent Classes in Colonial America, 1607-1783 (Chicago: The University of Chicago Press, 1931), p. 66.

[9]Ibid., p. 66.

[10]Ibid., pp. 60-61.

[11]Ibid., p. 67.

[12]Ibid., p. 62.

[13]Nathaniel B. Shurtleff, ed., Records of the Governor and Company of the Massachusetts Bay

in New England (Boston: Press of William White, Printer to the Commonwealth, 1853), pp. 6-7.

[14]Forest Chester Ensign., "Compulsory School Attendance and Child Labor" (Ph. D. dissertation, Columbia University, 1921), p. 23.

[15]Perrin, "Compulsory Education," p. 20.

[16]Ibid., p. 23.

[17]Jernegan, Colonial America, p. 101.

[18]The regime mentioned here was that of Governor Andros. During this time the territory was under his virtual dictatorship.

[19]Jernegan, Colonial America, p. 103.

[20]Ibid., pp. 114-115.

[21]The First Ten Amendments are called the Bill of Rights in the Constitution of the United States.

[22]B. A. Hinsdale, The Ordinance of 1787 (Akron, Ohio: Educational Monthly Print, 1887), pp. 6-7.

[23]Ibid., p. 9.

[24]Ibid., p. 9.

[25]Dr. Manasseh Cutler was a prime mover in the Ohio Company which sought the purchase of the Northwest Territories. He was a learned man who was a master at diplomacy.

[26]William Frederick Poole, The Ordinance of 1787 and Dr. Manasseh Cutler (Cambridge, Mass.: Welch, Bigelow and Co.; University Press, 1876), p. 31.

[27]Ibid., p. 3.

[28]Richard L. Perry, ed., Sources of Our Liberties (New York: University Press, 1959), p. 16.

[29]Poole, Ordinance, p. 3.

[30]The Yoder decision was the famous First Amendment case heard and ruled on by the U. S.

Supreme Court in 1972 which released the Amish children from compulsory education beyond the eighth grade.

[31]Robert D. Heslip, Thomas Jefferson and Education (New York: Random House, 1969), p. 50.

[32]David Denker, "American Education: A Brief History," Current History 29 (September 1955): 148-149.

[33]Horace Mann was the first secretary to a State Board of Education. He was a vigorous proponent for the common school. He was secretary for Massachusetts.

[34]B. A. Hinsdale, Horace Mann and the Common School Revival in the United States (New York: Charles Scribner's Sons, 1913), p. 296.

[35]Ensign, Compulsory School Attendance, p. 45.

[36]Frank Tracy Carlton, Economic Influences upon Educational Progress in the United States, 1820-1850 (New York: Teachers College Press, 1965), p. 31.

[37]Ibid., p. 87.

[38]David B. Tyack, Turning Points in American Educational History (Waltham, Massachusetts: Blaisdell Publishing Co., 1967), pp. 122-123.

[39]Carlton, Economic Influences, p. 144.

[40]Tyack, Turning Points, p. 123.

[41]Horace Mann, Life and Works of Horace Mann, vol. 4: Annual Reports (Boston: Lee and Shepard Publishers, 1891), p. 174.

[42]Ibid., p. 214.

[43]Ibid., pp. 250-251.

[44]Massachusetts, Acts and Resolves (1852) Chap. 240: 170-171.

[45]John S. Brubacher, A History of the Problems of Education (New York: McGraw-Hill Book Co., 1947), p. 64.

[46]John H. Florer, "Major Issues in the

Congressional Debate of the Morrill Act of 1862," History of Education Quarterly 8 (Winter 1968): 459-464.

[47]Ibid., p. 467.

[48]U. S., Department of the Interior Bureau of Education, The Land Grant of 1862 and the Land-Grant Colleges, by Benj. F. Andrews, Bulletin 1918 No. 13 (Washington: Government Printing Office, 1918), pp. 7-8.

[49]Arthur Raymond Mead, The Development of Free Schools in the United States as Illustrated by Connecticut and Michigan (New York: Teachers College, Columbia University, 1918), p. 88.

[50]Brubacher, Problems, p. 434.

[51]Ibid., p. 434.

[52]Stuart v School District No. 1, 30 Mich. 69 (1874), p. 71.

[53]Ibid., pp. 75-76.

[54]Ibid., pp. 79-80.

[55]Ibid., pp. 84-85.

[56]Charles Burgess, "The Goddess, The School Book and Compulsion," Harvard Educational Review 46 (May 1976): 202.

[57]R. V. Philip Curoe, Educational Attitudes and Policies of Organized Labor in the United States (New York: Teachers College, Columbia University, Bureau of Publications, 1926), pp. 91-92.

[58]Proceedings of the American Federation of Labor, Report of the First Annual Session of the Federation of Organized Trades and Labor Unions of the United States and Canada (Bloomington, Illinois: Pantagraph Printing and Stationery Co., 1881; reprint ed., 1906), p. 3.

[59]Proceedings of the American Federation of Labor, Report of the Fifth Annual Session of the Federation of Organized Trades and Labor Unions of the United States and Canada (Bloomington, Illinois: Pantagraph Printing and Stationery Co., 1885; reprint ed., 1906), p. 3.

[60]Proceedings of the American Federation of Labor, Report of the Twelfth Annual Session of the Federation of Organized Trades and Labor Unions of the United States and Canada (Bloomington, Illinois: Pantagraph Printing and Stationery Co., 1892; reprint ed., 1906), p. 46.

[61]Proceedings of the American Federation of Labor, Political Declarations of the A. F. of L. at Denver, Col. (Indianapolis, Indiana: American Federationist, 1895): p. 32.

[62]Proceedings of the American Federation of Labor, Report of the Thirty Eighth Annual Convention of the A. F. L. (Washington, D. C.: Law Reporter Printing Co., 1918), p. 321.

[63]Proceedings of the American Federation of Labor, Report of the Forty Eighth Annual Convention of the A. F. L. (Washington, D. C.: Law Reporter Printing Co., 1928), p. 308.

[64]American Federation of Labor and Congress of Industrial Organizations, Policy Resolutions of the Sixth Constitutional Convention (Washington, D. C.: n. p., 1966), p. 122.

[65]American Federation of Labor and Congress of Industrial Organizations, Policy Resolutions of the Tenth Constitutional Convention (Washington, D. C.: n. p., 1973), pp. 52-53.

[66]Denker, American Education, pp. 149-150.

[67]Brubacher, Problems, pp. 370-371.

[68]Henry J. Perkinson, The Imperfect Panacea: American Faith in Education, 1865-1965 (New York: Random House, 1968), p. 68.

[69]Ibid., pp. 68-69.

[70]Alan M. Thomas Jr., "American Education and the Immigrant," Teachers College Record 55 (February 1954): 253.

[71]David B. Tyack, "Ways of Seeing: An Essay on the History of Compulsory Schooling," Harvard Educational Review 46 (August 1976): 363-364.

[72]Frank V. Thompson, Schooling of the Immigrant (New York: Harper and Bros., 1920), p. 372.

[73]Ibid., p. 2.

[74]Edgar Z. Friedenberg, The Vanishing Adolescent (New York: Dell Publishing Co., 1959), p. 77.

[75]William Landes was associated with Columbia University and Lewis Solmon with the City University of New York when they were commissioned to do this study funded by the National Science Foundation.

[76]William M. Landes and Lewis C. Solmon, "Compulsory Schooling Legislation: An Economic Analysis of Law and Social Changes in the Nineteenth Century," Journal of Economic History 33 (March 1972): 55.

[77]Ibid., pp. 78-79.

[78]Ibid., pp. 86-87.

[79]Ibid., p. 86.

[80]The due process clause is a part of the Fourteenth Amendment; it states in part, ". . . nor shall any state deprive any person of life, liberty or property without due process of law."

[81]Meyer v Nebraska, 262 U. S. 390, 43 Sup. Ct. Rep. 625, 67 L.Ed. 1042, 29 A. L. R. 1446 (1923), p. 1042.

[82]David B. Tyack, "The Perils of Pluralism: The Background of the Pierce Case," The American Historical Review 74 (October 1968): 84.

[83]Willis Rudy, Schools in an Age of Mass Culture, (Englewood Cliffs, New Jersey: Prentice Hall, 1965), p. 202.

[84]Tyack, Pluralism, p. 78.

[85]New York Times, 12 November 1922, Sec. 2, p. 6.

[86]New York Times, 3 December 1922, Sec. 2, p. 8.

[87]New York Times, 12 December 1922, Sec. 2, p. 7.

[88]Tyack, Pluralism, pp. 82-83.

[89]Rudy, Mass Culture, p. 203.

[90]Pierce v Society of the Sister, 268 U. S. 510, 45 Sup. Ct. Rep. 571, 69 L. Ed 1070 (1926), pp. 1076-1078; Pierce v Hill Military Academy, 268 U. S. 510, 45 Sup. Ct. Rep. 571, 69 L. Ed. 1070 (1926), pp. 1077-78.

[91]Ibid., pp. 1076-1077

[92]Ibid., p. 1077.

[93]Ibid., pp. 1077-78.

[94]Ibid., p. 1078.

[95]Ibid., p. 1078.

[96]Ibid., p. 1078.

[97]Rudy, Mass Culture, p. 204.

[98]Stephen Arons, "The Separation of School and State: Pierce Reconsidered," Harvard Educational Review 46 (February 1976), p. 99.

[99]Ibid., pp. 96-97.

[100]Ibid., p. 102.

[101]State v Williams, 56 S. D. 370, 228 N. W. Rep. 470 (1929), pp. 470-471.

[102]The New Deal was the slogan used by Franklin D. Roosevelt when he was elected to the presidency in 1933. It was used to set the tone of many changes that he would instigate to return the country to economic security.

[103]Howard S. Patterson, "Educational Implications of Recent Economic Changes," School and Society 37 (April 8, 1933): 443-444.

[104]The Social Security Act, passed in 1935 proved to be a landmark piece of legislation. It provided matching funds to be set aside by employers and employees so their future years might be assured.

[105]Fair Labor Standards Act of 1938, U. S. Code, vol. 29, secs. 201-219 (1970).

[106]Wendall Huston, comp., Index Federal Appendix, Education and Welfare, 1954 Federal Legislative Service in School Laws of the Forty-Eight

States 1 (Seattle, Washington: Wendall Huston Publisher, 1947): 1.

[107]Fair Labor Standards, Sec. 203.

[108]I. L. Kandel, The Impact of the War upon American Education (Chapel Hill: The University of North Carolina Press, 1948), p. 41.

[109]Ibid., P. 86.

[110]Helen F. Faust, "Compulsory Public Education" Current History 29 (September 1955): 140-141.

[111]Plessey v Ferguson was the court test in 1896 that enunciated the separate but equal doctrine for school segregation.

[112]Denker, American Education, p. 151.

[113]In total here is construed to mean both the arguments against desegregation and the briefs filed to determine means of relief.

[114]Brown v Board of Education, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (1955), pp. 1085-91 and 1098.

[115]Ibid., pp. 1098-1099.

[116]Ibid., pp. 1102-1104.

[117]Ibid., pp. 1091-1098.

[118]Ibid., pp. 1100-1102.

[119]Ibid., pp. 1105-1106.

[120]Brown v Board of Education, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), p. 880.

[121]Tinker v DesMoines Independent Community School District, 258 F. Supp. 971 (1966), pp. 971-973.

[122]State of Wisconsin v Jonas Yoder, 406 U. S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972), p. 16.

[123]Ibid., pp. 821-822.

[124]Ibid., p. 822.

[125]Ibid., pp. 20-37.

[126]Joe Wittmer is now an Associate Professor of Education at the University of Florida and was a member of the Amish persuasion.

[127]Joe Wittmer, "The Amish and the Supreme Court," Phi Delta Kappan 54 (September 1972): 50.

[128]Report of the National Commission on the Reform of Secondary Education to the Public and the Profession, by B. Frank Brown, chairman (New York: McGraw-Hill Book Co., 1973), p. xiii.

[129]Ibid., p. xiv.

[130]Ibid., p. 21.

[131]Owen B. Kiernan is the executive secretary of the N. A. S. S. P.

[132]Owen B. Kiernan, "Compulsory Education," NASSP Bulletin 59 (September 1975): 64.

[133]Ibid., p. 64.

[134]B. Frank Brown was the chairman of the National Commission for the Reform of Secondary Education.

[135]B. Frank Brown, "Compulsory Education," NASSP Bulletin 59 (September 1975): 66.

[136]Ibid., p. 66.

[137]Gordon Cawelti was the executive secretary of the Association for Supervision and Curriculum Development in 1974.

[138]Gordon Cawelti, "The Reform of Secondary Education: A Review of the Report's Advice to the Public and the Profession," NASSP Bulletin 58 (April (April 1974): 87-89.

[139]R. Freeman Butts is professor of educational foundations at Teachers College, Columbia University.

[140]U. S., Office of Education, Department of Health, Education and Welfare, Discussion Guide, Workshop No. 7 Compulsory Education, American Secondary Schools: New Dimensions for Educating Youth, 25-28 April 1976, p. 13.

[141]Ibid., pp. 12-13.

[142]Ibid., p. 14.

[143]B. Frank Brown, "Forced Schooling" Phi Delta Kappan 54 (January 1973): 324.

[144]Office of Education, American Secondary Schools, p. 6.

[145]Ibid., pp. 7-11.

CHAPTER IV

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Overview

Several documents were key instruments for this study. These can be found in their entirety in the various appendices. Some of these include: the laws of 1642 and 1647 in Massachusetts; the Northwest Ordinance of 1787; Massachusetts law of 1852; the Morrill Act in 1862; the Kalamazoo Case of 1874; the Pierce Case in 1925; the Federal Fair Labor Standards Act of 1938; Brown v Board of Education in 1954; the Yoder v Wisconsin Case in 1972 and the report of the National Commission on the Reform of Secondary Education in 1973.

Summary

The first law that appeared in what constitutes the present United States was written in the Massachusetts Bay Colony in 1642. This law had its forerunners in the old country dating back to Germany during the sixteenth century. The first law stipulated that religion and the capital laws be taught. In 1647 another law was written and this time it stipulated where and by whom this education

would be given. These laws and subsequent laws in the colonies were influenced by a number of factors. Chief among these were patterns of religious intolerance and political oppression that they had suffered in the old country. Some colonies enacted laws sooner than others and this can be attributed to the fact that settlement patterns influenced to a great extent the type of legislation enacted.

During the later part of the seventeenth century and most of the eighteenth century the country was engrossed in internal wars with Indians and was influenced by a decline in family government; in addition they were becoming more involved in a revolution that would soon mean separation from England. All of these facts would contribute to a general apathy about formal education.

Immediately after the Revolutionary War there seemed to be a renewal for education. The Bill of Rights led a resurgance to protection of individual rights and liberties. Many of the country's leaders saw education as a means to perpetuate the new democracy. The Northwest Ordinance of 1787 succinctly stated the intent of the new country for education. It saw schools and instruction as being essential to good government. It went even further and stipulated that a certain

portion of each section of land be set aside for the purpose of education.

In the early part of the nineteenth century the common school movement began to take momentum. Horace Mann, who was to become the first secretary of the first State Board of Education in Massachusetts became the leading proponent of this form of education. Labor, industry and immigration began to play a role in the movement toward common obligatory education. Finally in 1852, the State of Massachusetts in a landmark case provided the machinery for compulsion in this country. The responsibility to see that children would attain the advantages of education remained with the parents. Although this state moved in this area in 1852 it would be a number of years before another state enacted a similar law. The slavery issue and then the fight over it intervened. The period from the middle 50s to the middle 60s of the nineteenth century were inactive years for mandatory education. The year 1862 saw the passage of the Morrill Act which was to have an effect for years to come. It established land-grants for higher education in the agricultural and mechanical arts. The passage of this act was significant because it was an act of federal intervention in education. For a long period of time the

federal government avoided intervening in education because this was a right that ostensibly belonged to the states. The long range effect that this act had on compulsory education was its provision of a place for students to continue their education. Compulsory education laws no longer were terminal points for the masses. Kalamazoo, Michigan was the place where a landmark decision by a State Supreme Court would be handled. This decision had two notable effects on compulsory education. It provided a means for extending the years of compulsion by legitimizing the high school. It also marked a significant step by the courts in the realm of education.

Labor, industry and immigration were to play significant roles during the period of 1870 to 1930. Labor, particularly the American Federation of Labor made some timely declarative statements. In its convention of 1881 it expressed itself in favor of compulsory education legislation. In 1885, it demanded this legislation. During the ensuing years it was to continue in its role of friend of education. Depending on the status of compulsory education it would alternately call for its enaction or refinement. To labor, education was the means to economic and social parity. Industry also

played a major role through its encouragement and support of mandatory education. In the twentieth century this support took on an increasing financial character. The overwhelming immigration to this country put a real burden on the educational system. Economically they were poor. Socially and culturally they were different. The American people saw the necessity to nationalize and civilize these people. They saw that education was the means to do that. By compelling attendance they thought that they would accomplish their objective. The schools became the remedy for social ills.

During the period after the First World War nationalism increased. Loyalty to the country became a concern because of the war and the immigrants. Significant court cases were to develop in the attempt to homogenize the citizenry. The Meyer case settled the issue of mandatory English instruction to the exclusion of other language. The Pierce decision put an end to the efforts of certain groups to strike down the dual school system. The implementation of the Fourteenth Amendment was to have increasing import in future court tests. The implications of the Pierce case transcended the Fourteenth Amendment and seem to have implications for the First Amendment also. The increasing strength of labor and industry

were to be marked by the passage of a federal child labor law embodied in the Federal Fair Labor Standards Act of 1938. The effect of this act was to establish outside parameters for the school leaving age. However, it seemed to be demonstrated that this law as well as other child labor laws was effectively ignored by those who did not realize the value of education.

Kansas, Virginia, South Carolina, Delaware and the District of Columbia were to be part of a most significant court case. The importance of this case was the fact that it outlawed desegregation in schools. The Brown decision declared the earlier case of Plessey v Ferguson of 1896 was invalid. The court held that separate but equal did not fulfill the intent of the First, Fifth and Fourteenth Amendments. Several briefs were filed on behalf of amicus curiae. One, filed by Arthur Goldberg on behalf of the C.I.O. stated that it was particulary objectionable to have compulsory segregation coupled with compulsory attendance. This case in essence said that obligatory education must be equal. The Amish people for years had lived a simple, yet useful life free from all the trappings of modern society. The Supreme Court again would become involved in 1972. The court held that the religious beliefs preempted compulsory education. The First

Amendment guaranteed freedom of religion in its free exercise clause. This decision stated that parents rights are prior rights. One of the aspects of the case that was important was the fact that the court opened the door for further attacks on mandatory education. On the heels of this decision the National Commission on Reform of Secondary Education struck another blow at compulsory education. In recommendation No. 28 of its report is found the call for lowering the compulsory age to fourteen. The implications of this recommendation seemed to be far reaching. There was the call for a change in the role of education. There would be the need to revise child labor laws. There would need to be a change in the cooperation for education.

In the 1960s and 1970s there were increasing attacks on education and particularly the compulsive element. The advocates of deschooling were numerous. The events of the last quarter of a century all pointed to a reevaluation of a cherished American institution.

Conclusions

The conclusions of the study are clustered by facets of development as follows:

Legal Imperatives

1. The flaws of the founding legislation (see Appendix A and B) viewed from the perspective of 1977 were its narrowness of purpose and its weak machinery for enforcement.

2. The federal constitution did not provide for compulsory education, instead it was implied as a state right on the basis of the Tenth Amendment.

3. Legislation other than laws specified strictly for education (see pages 147 to 154 and Appendix M) have had a profound effect on the ascent of compulsory education as a national norm.

4. Laws have been written to produce standardization in the schools so as to alleviate economic and social conditions.

Economic, Social and Political Ramifications

1. Wars and economic depressions have had little direct effect on compulsory education (see pages 79 and 80; 106 to 108; 145 to 147 and Appendix K); their general effect usually meant relative inactivity in this area concomitant with increased criticism.

2. Compulsory education laws were associated with a form of taxation from their inception down to the present time; it is a consequence of their development that the present method of taxation evolved.

3. The mandatory education laws have been used as devices to counter the tendency of capital over labor (see pages 114 to 123).

4. Compulsory education laws have been used as a means of providing social, political and economic freedom and equality for the masses of people who have come to these shores (see pages 126 to 134).

Court Decisions

1. Very few actions such as the Kalamazoo decision in 1874 have opened the way for the extension of the age range covered by obligatory education laws.

2. The courts have become increasingly involved and influential in the interpretation of compulsory education laws; since 1874 the Kalamazoo case, the Pierce decision in 1925, the Brown case in 1954 and the Yoder decision in 1952 served to increase the courts' involvement. (Appendices J, L, N and P will present each of these cases).

3. Prior to the twentieth century court actions took place that were only an interpretation of the law as in the 1874 Kalamazoo decision. However, in this century the courts have acted forcibly in correcting injustices for example in the Pierce, Brown and Yoder decisions.

Advocate Influences

1. Advocates of compulsory education have vacillated between parents rights and states rights.

2. Generally, the promoters of compulsory education have used a supply and demand theory to generate enthusiasm for their product.

3. Some of the advocates of mandatory education have tended toward the preoccupation over the economic benefits that have accrued to the adult population; a result of the removal of a significant portion of the labor force through the passage of these laws.

Competency Factors

1. Investment in compulsory education has been held out as a means to acquire competency skills.

2. The promise of compulsory education as a panacea to close the educational gap between the poor and culturally deprived and the wealthy and enlightened seldom was fulfilled.

General Trends

1. Higher education has had an effect on required education as a result of its entrance requirements, accreditation procedures and the desire of the general populace to continue their education.

2. The federal government intervened in education several times without becoming concerned about interfering in the state's right to control education.

3. This author was unable to find proof that without the present mandatory education laws there would be rampant illiteracy in this country.

Recommendations

It would be in the best interests of the system of compulsory education for the several states and the federal government to act upon the following recommendations in regard to six groups:

Courts

1. The role of the courts should be carefully scrutinized to determine the impact that it should have for education.

2. Courts should act in an advisory capacity to point out the implications in law prior to the promulgation of that law.

Professional Organizations

1. Come to a consensus as to their professions perspective on compulsory education.

2. Resist non-education educational efforts to apply pressures in order to achieve their concept of education.

3. Take an active leadership role in the management and policy making for education.

Legislators

1. Enact laws of mandatory education that will cause other segments of society such as labor and industry to enter into the business of education.

2. Legislate the custodial role of school off the books and replace this role with one that affords each member of society the opportunity to be educated at their own pace and in their proper area.

3. Develop a consensus for national educational goals and then as individual states enact laws that will meet these goals.

Individuals

1. Research compulsory education in the world so that these countries may be compared with the United States system.

2. Call on individual representatives of government to review our educational thrust in light of this country's experience.

3. Insist that competency based skills become a result of the years of required education.

Boards of Education

1. Utilize community resources to provide alternatives for youth while they are bound to a

social system because of law.

2. Provide compulsory schooling for those who wish to receive it and recommend alternative paths to the others.

3. Take a leadership role by insisting that other groups provide jobs and educational alternatives.

Educators

1. Point out to the public their educational responsibility and inform them of the positive and negative aspects of education.

2. Utilize community resources and people to obtain input for policy decisions.

3. Promulgate the necessity for mandatory education in order to achieve a basic education.

4. Demonstrate leadership in order to develop more sharing in policy decisions.

Suggested Additional Research

Research that may develop from this work is as follows: is compulsory education necessary for competency; did child labor laws affect compulsory education; did compulsory education laws cause the public schools to form a monopoly in education; has compulsory education closed the gap between the educationally advantaged and disadvantaged; and what effect did labor unions have on compulsory education.

APPENDIX A

MASSACHUSETTS LAW OF 1642

This Co^{r}t, taking into consideration the great neglect of many parents & masters in training up their children in learning, & labo^{r}, & other implyments which may be proffitable to the common wealth, do hereupon order and decree, that in euery towne ye chosen men appointed for managing the prudentiall affajres of the same shall henceforth stand charged with the care of the redresse of this evill, so as they shalbee sufficiently punished by fines for the neglect thereof, upon presentment of the grand iury, or other information or complaint in any Court within this iurisdiction; and for this end they, or the greater numbe^{r} of them, shall have power to take account from time to time of all parents and masters, and of their children, concerning their calling and implyment of their children, especially of their ability to read & understand the principles of religion & the capitall lawes of this country, and to impose fines upon such as shall refuse to render such accounts to them when they shall be required; and they shall have power, with consent of any Court or the magistrate, to put forth apprentices the children of such as they shall [find] *not to be able & fitt to imploy and bring them up. They shall take x x x x x x x x imploying them x x up, nor shall take co^{r}se to dispose of x themselues; and they are to take care of such as are sett to keep cattle be set to some other imploym^{t} wthall, as spinning upon the rock, knitting, weaving tape, & that boyes & girles be not suffered to converse together, so as may occasion any wanton, dishonest, or immodest behavio^{r}; & for their better performance of this trust comitted to them. They may divide the towne amongst them, appointing to every of the said townesmen a certaine number of families to have special oversight of. They are also to pvide that a sufficient quantity of materialls, as hemp, flaxe, ec^{ra}, may be raised in their severall townes, & tooles & implements provided for working out the same; & for their assistance in this so needfull and beneficiall imploym^{t}, if they meete wth any difficulty or opposition wch they cannot well master by their own power, they may have reco^{r}se to some of the ma^{trats}, who shall take such course for their help & incuragm^{t} as the occasion shall require according to justice; & the said townsmen, at the next Co^{r}t in those limits, after the end of their

year, shall give a breife account in writing of their pceedings herein, pvided that they have bene so required by some Co^{r}t or magistrate a month at least before; & this order to continew for two yeares, & till the Co^{r}t shall take further order.

SOURCE: Nathaniel B. Shurtleff, ed., Records of the Governor and Company of the Massachusetts Bay in New England (Boston: Press of William White, Printer to the Commonwealth, 1853), pp. 6-7.

NOTE: Commonly used contractions in the laws of 1642 and 1647 are listed here: y^{e}, the; y^{m}, them; y^{n}, then; y^{r}, their; y^{s}, this and y^{t}, that.

APPENDIX B

MASSACHUSETTS LAW OF 1647

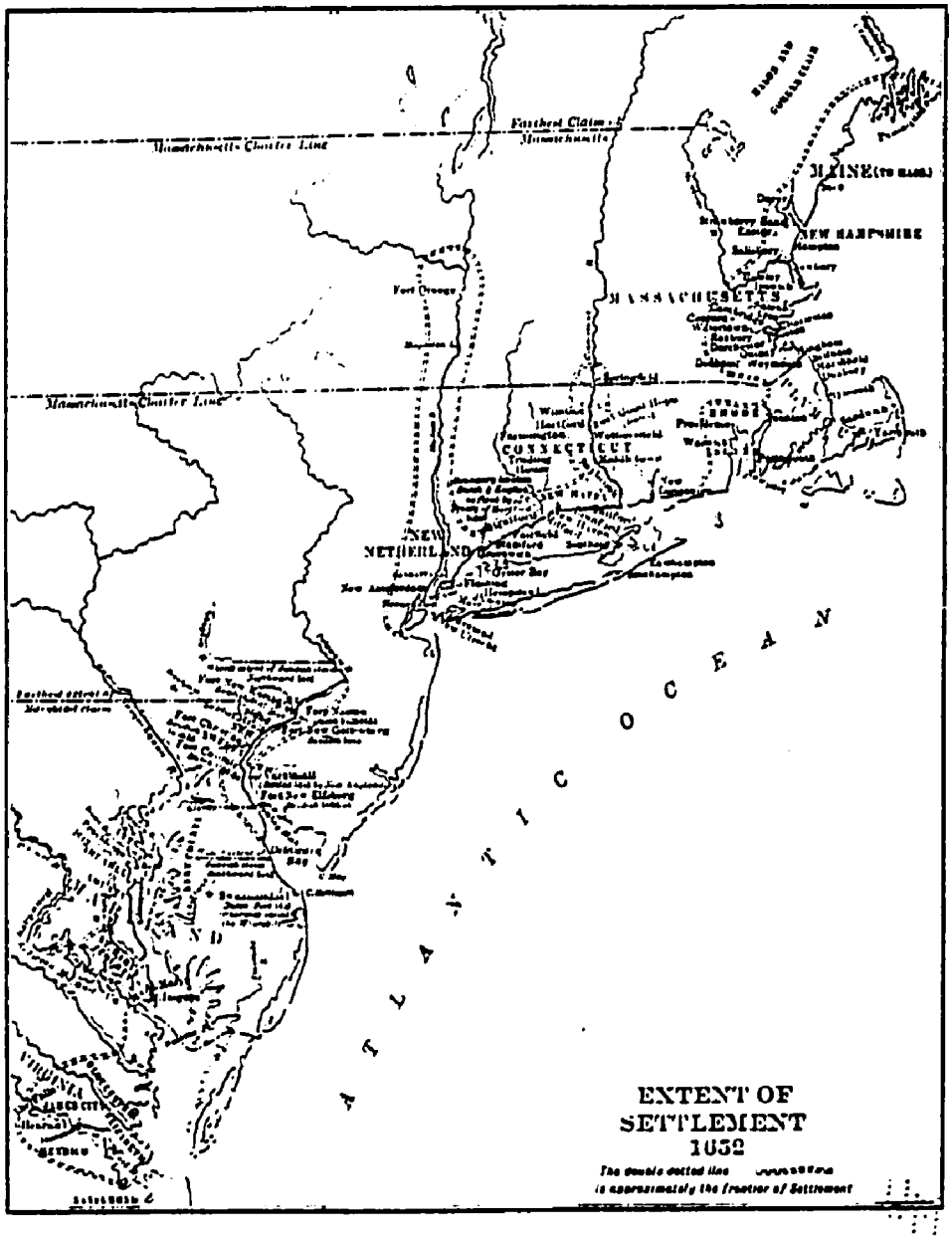
It being one chiefe proiect of ye ould deluder, Satan, to keepe men from the konwledge of ye Scriptures, as in formr times by keeping ym in an unknowne tongue, so in these lattr times by perswading from ye use of tongues, yt so at least ye true sence & meaning of ye originall might be clouded by false glosses of saint seeming deceivers, yt learning may not be buried in ye grave of or fathrs in ye church and commonwealth, the Lord assisting or endeavors,---

It is therefore ordred, yt evry towneship in this iurisdiction, aftr ye Lord hath increased ym number to 50 houshold[rs], shall then forthwth appoint one wth in their towne to teach all such children as shall resort to him to write & reade, whose wages shall be paid eithr by ye parents or mastrs of such children, or by ye inhabitants in genrall, by way of supply, as ye maior part of those yt ordr ye prodentials ye twone shall appoint; provided, those yt send their children be not oppressed by paying much more ym they can have ym taught for in othr townes; & it is furthr ordered, yt where any towne shall increase to ye numbr of 100 families or household[rs], they shall set up a grammer schoole, y mr thereof being able to instruct youth so farr as they shall be fitted for ye university, provided, yt if any towne neglect ye performance hereof above one yeare, yt every such towne shall pay 5 pounds to ye next schoole till they shall performe this order.

SOURCE: Nathaniel B. Shurtleff, ed., Records of the Governor and Company of the Massachusetts Bay in New England (Boston: Press of William White, Printer to the Commonwealth, 1853), p. 203.

APPENDIX C

EXTENT OF THE SETTLEMENT IN THE COLONIES, 1652



SOURCE: Charles McLean Andrews, The American Nation: A History Colonial Self Government New York: Harper and Bros., Publishers, 1904, p.40.

APPENDIX D

THE ORDINANCE OF 1787.

(The Confederate Congress, July 13th, 1787).

AN ORDINANCE for the Government of the Territory of the United States Northwest of the River Ohio

---

Section 1. Be it ordained by the United States in Congress assembled, That the said territory, for the purpose of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Sec. 2. Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to and be distributed among their children and the decendants of a deceased child or grandchild to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower shall remain in full force until altered by the Legislature of the district. And until the Governor and Judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be (being of full age), and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed

for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Sec. 3. Be it ordained by the authority aforesaid, that there shall be appointed, from time to time, by Congress, a Governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

Sec. 4. There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the Legislature, and the public records of the district, and the proceedings of the Governor in his executive department, and transmit authentic copies of such acts and proceedings every six months to the Secretary of Congress. There shall also be appointed a court, to consist of three Judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

Sec. 5. The Governor and Judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time, which laws shall be in force in the district until the organization of the General Assembly therein, unless disapproved of by Congress, but afterwards the Legislature shall have authority to alter them as they shall think fit.

Sec. 6. The Governor, for the time being,

shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Sec. 7. Previous to the organization of the General Assembly the Governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the General Assembly shall be organized the powers and duties of magistrates and other civil officers shall be regulated and defined by the said Assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the Governor.

Sec. 8. For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the Governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the Legislature.

Sec. 9. So soon as there shall be five thousand free male inhabitants of full age in the district, upon giving proof thereof to the Governor, they shall receive authority, with time and place, to elect representatives from their counties or townships to represent them in the General Assembly; Provided, That for every five hundred free male inhabitants there shall be one representative, and so on, progressively, with the number of free male inhabitants there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the Legislature: Provided, That no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years and be a resident in the district or unless he shall have resided in the district three years, and in either case shall likewise hold in

his own right, in fee simple, two hundred acres of land within the same; Provided also, That a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district or the like freehold and two years' residence in the district shall be necessary to qualify a man as an elector of a representative.

Sec. 10. The representatives thus elected shall serve for the term of two years, and in case of the death of a representative or removal from office the Governor shall issue a writ to the county or township for which he was a member to elect another in his stead to serve for the residue of the term.

Sec. 11. The General Assembly, or Legislative Council and a House of Representatives. The Legislative Council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum; and the members of the Council shall be nominated and appointed in the following manner, to wit: As soon as Representatives shall be elected the Governor shall appoint a time and place for them to meet together, and when met they shall nominate ten persons, resident in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress, five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the Council, by death or removal from office, the House of Representatives shall nominate two persons, qualified as foresaid, for each vacancy, and return their names to Congress, one of whom Congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of the Council, the said House shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the Council five years unless sooner removed. And the Governor, Legislative Council and House of Representatives shall have authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the House, and by a majority in the Council, shall be referred to the Governor for his

assent; but no bill or legislative act whatever shall be of any force without his assent. The Governor shall have power to convene, prorogue, and dissolve the General Assembly when, in his opinion, it shall be expedient.

Sec. 12. The Governor, Judges, Legislative Council, Secretary, and such other officers as Congress shall appoint in the district shall take an oath or affirmation of fidelity and of office; the Governor before the President of Congress, and all other officers before the Governor. As soon as a legislature shall be formed in the district, the Council and House assembled, in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government.

Sec. 13. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of States, and permanent government therein, and for their admission to a share in the Federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest.

Sec. 14. It is hereby ordained and declared by the authority aforesaid that the following articles shall be considered as articles of compact between the original States and the people and States in the said Territory, and forever remain unalterable, unless by common consent, to wit:

ARTICLE I.

No person demeaning himself in a peaceable and orderly manner shall ever be molested on account of his mode of worship or religious sentiments in the said Territory.

ARTICLE II.

The inhabitants of the said Territory shall

always be entitled to the benefits of the writs of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the Legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable unless for capital offenses where the proof shall be evident or the presumption great. All fines shall be moderate, and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary for the common preservation to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared that no law ought ever to be made or have force in the said Territory that shall, in any manner whatever, interfere with or affect private contracts, or engagements, bona fide, and without fraud previously formed.

ARTICLE III.

Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

ARTICLE IV.

The said Territory, and the States which may be formed therein, shall forever remain a part of this Confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said Territory shall be subject to pay a part of the Federal debts, contracted or to be contracted, and

a proportional part of the expenses of government to be apportioned on them by congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the Legislatures of the district, or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The Legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and Saint Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ARTICLE V.

There shall be formed in the said Territory not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The Western State in the said territory shall be bounded by the Mississippi, the Ohio, and the Wabash Rivers, a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada, and by the said territorial line to the Lake of the Woods and Mississippi. The Middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The Eastern State shall be bounded by the last-mentioned direct line, the Ohio, Pennsylvania, and the said territorial line. Provided, however, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if

Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever; and shall be at liberty to form a permanent constitution and State government. Provided the constitution and government so to be formed shall be republican, and in conformity to the principles contained in these articles, and, so far as it can be consistent with the general interest of the Confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

ARTICLE VI.

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted. Provided always that any person escaping into the same from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

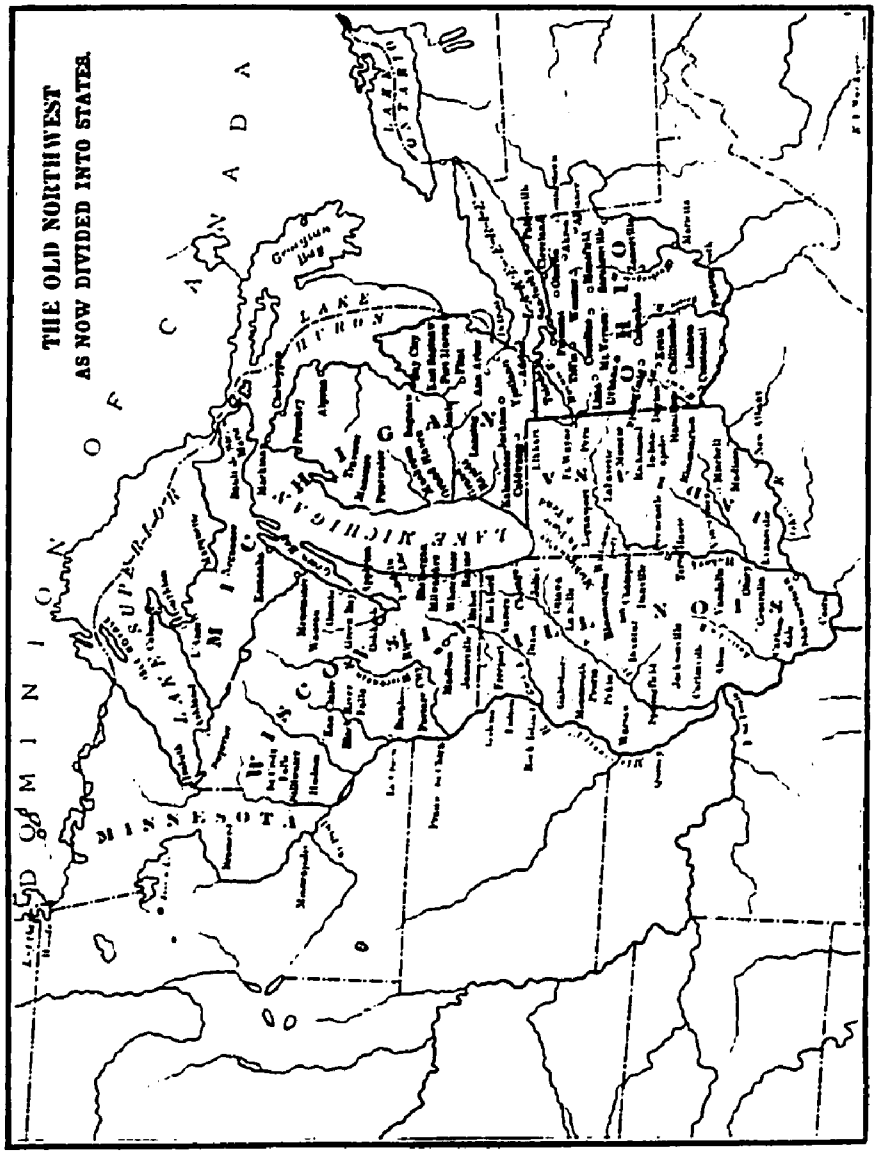
Be it ordained by the authority aforesaid that the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be and the same are hereby repealed and declared null and void.

Done by the United States in Congress assembled, the 13th day of July, in the year of our Lord, 1787, and of their sovereignty and independence the twelfth.

SOURCE: Wager Swayne, The Ordinance of 1787 and The War of 1861 New York: C. G. Burgoyne n. d., pp. 81-90.

APPENDIX E

THE OLD NORTHWEST



SOURCE: Wagner Swayne, The Ordinance of 1787 and The War of 1861 New York: C. G. Burgoyne n. d., p. 1.

APPENDIX F

AMENDMENTS TO THE CONSTITUTION
AMENDMENTS I TO X AND XIV
BILL OF RIGHTS

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT II

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

AMENDMENT III

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of

life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

AMENDMENT XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

SOURCE: Thomas James Norton, The Constitution of the United States (New York: Committee for Constitutional Government, 1941; reprint ed., 1962), pp. 197-207; pp. 235-245.

NOTE: Amendments I to X were effective December 15, 1791. Amendment XIV section 1 which appears here was adopted in 1868.

APPENDIX G

MASSACHUSETTS SCHOOL LAW OF 1852

Chap. 240 An Act concerning the Attendance of Children at School.

Be it enacted by the Senate and House of Representatives, in General Court Assembled, and by the authority of the same, as follows:

Sect. 1. Every person who shall have any child under his control, between the ages of eight and fourteen years, shall send such child to some public school within the town or city in which he resides, during at least twelve weeks, if the public schools within such town or city shall be so long kept, in each and every year during which such child shall be under his control, six weeks of which shall be consecutive.

Sect. 2. Every person who shall violate the provisions of the first section of this act shall forfeit, to the use of such town or city, a sum not exceeding twenty dollars, to be recovered by complaint or indictment.

Sect. 3. It shall be the duty of the school committee in the several towns or cities to inquire into all cases of violation of the first section of this act, and to ascertain of the persons violating the same, the reasons, if any, for such violation, and they shall report such cases, together with such reasons, if any, to the town or city in their annual report; but they shall not report any cases such as are provided for by the fourth section of this act.

Sect. 4. If, upon inquiry by the school committee, it shall appear, or if upon the trial of any complaint or indictment under this act it shall appear, that such child has attended some school, not in the town or city in which he resides, for the time required by this act, or has been otherwise furnished with the means of education for a like period of time, or has already acquired those branches of learning which are taught in common schools, or if it shall appear that his bodily or mental condition has been such as to prevent his attendance at school, or his acquisition of learning for such a period of time, or that the person having the control of

such child, is not able, by reason of poverty, to send such child to school, or to furnish him with the means of education, then such person shall be held not to have violated the provisions of this act.

Sect. 5. It shall be the duty of the treasurer of the town or city to prosecute all violations of this act. (Approved by the Governor, May 18, 1852.)

SOURCE: Massachusetts, Acts and Resolves (1852), Chap. 240, pp. 170-171.

APPENDIX H

THE LAND GRANT OF 1862 AND THE LAND-GRANT COLLEGES

Morrill Land-Grant Act of 1862

An Act Donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be granted to the several States, for the purposes hereinafter mentioned, an amount of public land, to be apportioned to each State a quantity equal to 30,000 acres for each Senator and Representative in Congress to which the States are respectively entitled by the apportionment under the census of 1860: Provided, That no mineral lands shall be selected or purchased under the provisions of this act.

Sec. 2. And be it further enacted, That the land aforesaid, after being surveyed, shall be apportioned to the several States in sections or subdivisions of sections, not less than one-quarter of a section; and wherever there are public lands in a State subject to sale at private entry at $1.25 per acre, the quantity to which said State shall be entitled shall be selected from such lands within the limits of such State; and the Secretary of the Interior is here by directed to issue to each of the States in which there is not the quantity of public lands subject to sale at private entry at $1.25 per acre to which said State may be entitled under the provisions of this act land scrip to the amount in acres for the deficiency of its distributive share, said scrip to be sold by said States and the proceeds thereof applied to the uses and purposes prescribed in this act, and for no other use or purpose whatsoever: Provided, That in no case shall any State to which land scrip may thus be issued be allowed to locate the same within the limits of any other State or of any Territory of the United States; but their assignees may thus locate said land scrip upon any of the unappropriated lands of the United States subject to sale at private entry at $1.25 or less an acre: And provided further, That not more than one million acres shall be located by

such assignees in any one of the States: And provided further, That no such location shall be made before one year from the passage of this act.

Sec. 3. And be it further enacted, That all the expenses of management, superintendence, and taxes from date of selection of said lands previous to their sales and all expenses incurred in the management and disbursement of moneys which may be received therefrom shall be paid by the States to which they may belong, out of the treasury of said States, so that the entire proceeds of the sale of said lands shall be applied, without any diminution whatever, to the purposes hereinafter mentioned.

Sec. 4. And be it further enacted, That all moneys derived from the sale of the lands aforesaid by the States to which the lands are apportioned, and from the sales of land scrip hereinbefore provided for, shall be invested in stocks of the United States or of the States, or some other safe stocks, yielding not less than 5 per centum upon the par value of said stocks; and that the moneys so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished, except so far as may be provided in section fifth of this act, and the interest of which shall be inviolably appropriated by each State which may take and claim the benefit of this act to the endowment, support, and maintenence of at least one college, where the leading object shall be, without excluding other scientific and classical studies and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts in such manner as the legislatures of the States may respectively prescribe in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.

Sec. 5. And be it further enacted, That the grant of land and land scrip hereby authorized shall be made on the following conditions, to which, as well as to the provisions hereinbefore contained, the previous assent of the several States shall be signified by legislative acts:

First. If any portion of the fund invested as provided by the foregoing section, or any portion of the interest thereon, shall by any action or contingency be diminished or lost, it shall be replaced

by the State to which it belongs, so that the capital of the fund shall remain forever undiminished; and the annual interest shall be regularly applied without diminution to the purposes mentioned in the fourth section of this act, except that a sum, not exceeding 10 per centum upon the amount received by any state under the provisions of this act, may be expended for the purchase of lands for sites or experimental farms whenever authorized by the respective legislatures of said States;

Second. No portion of said fund, nor the interest thereon, shall be applied, directly or indirectly, under any pretense whatever to the purchase, erection, preservation, or repair of any building or buildings;

Third. Any State which may take and claim the benefit of the provisions of this act shall provide, within five years, at least not less than one college, as prescribed in the fourth section of this act, or the grant to such State shall cease; and said State shall be bound to pay the United States the amount received of any lands previously sold, and that the title to purchases under the States shall be valid;

Fourth. An annual report shall be made regarding the progress of each college, recording any improvements and experiments made, with their costs and results, and such other matters, including State industrial and economical statistics, as may be supposed useful; one copy of which shall be transmitted by mail free, by each, to all the other colleges which may be endowed under the provisions of this act, and also one copy to the Secretary of the Interior;

Fifth. When lands shall be selected from those which have been raised to double the minimum price in consequence of railroad grants, they shall be computed to the States at the maximum price, and the number of acres proportionally diminished;

Sixth. No State, while in a condition of rebellion or insurrection against the Government of the United States, shall be entitled to the benefit of this act;

Seventh. No State shall be entitled to the benefits of this act unless it shall express its acceptance thereof by its legislature within two years from the date of its approval by the President.

Sec. 6. And be it further enacted, That land scrip issued under the provisions of this

act shall not be subject to location until after the first day of January, 1863.

Sec. 7. And be it further enacted, That land officers shall receive the same fees for locating land scrip issued under the provisions of this act as are now allowed for the location of military bounty land warrants under existing laws: Provided, That maximum compensation shall not be thereby increased.

Sec. 8. And be it further enacted, That the governors of the several States to which scrip shall be issued under this act shall be required to report annually to Congress all sales made of such scrip until the whole shall be disposed of, the amount received for the same, and what appropriation has been made of the proceeds.

Approved, July 2, 1862. (12 Stat.,503.)

SOURCE: U. S., Depratment of Interior, Bureau of Education Bulletin, The Land Grant of 1862 and the Land-Grant Colleges, by Benj. F. Andrews, Bulletin 1918 No. 13 (Washington: Government Printing Office, 1918), pp. 7-8.

APPENDIX I

THE LAND GRANTS AND THE LAND-GRANT COLLEGES

THE LAND-GRANT COLLEGES

NAME OF INSTITUTIONS	DATE OF ORGANIZATION OF THE INSTITUTION	DATE OF RECEIPT OF 1862 LAND-GRANT FUND
Alabama Agricultural and Mechanical College and Polytechnic Institute	Feb. 26, 1872	Feb. 26, 1872
University of Arizona	-------, 1885	June --, 1910
University of Arkansas	Mar. 27, 1871	Mar. 27, 1871
University of California	Mar. 23, 1868	Mar. 23, 1868
Colorado Agricultural College	Feb. 11, 1870	Jan. 27, 1879
Connecticut Agricultural College	Apr. 6, 1881	Apr. 21, 1893
Delaware College	Feb. 6, 1833	Mar. 14, 1867
University of Florida	-------, 1870	-------, 1870
University of Georgia	Dec. 12, 1866	Dec. 12, 1866
University of Idaho	Jan. -, 1889	-------, 1892
University of Illinois	Feb. 28, 1867	Feb. 28, 1867
Purdue University, Indiana	May 6, 1869	May 6, 1869
Iowa State College of Agriculture and Mechanic Arts	-------, 1858	Sept. 11,1862
Kansas State Agricultural College	Feb. 16, 1863	Feb. 16, 1863
University of Kentucky	-------, 1879	-------, 1865
Kentucky Normal and Industrial Institute (colored)	May 18, 1886	May 21, 1897
Louisiana State University and Agricultural and Mechanical College	Apr. 7, 1874	Apr. 7, 1874
University of Maine	Feb. 25, 1865	Feb. 25, 1865
Maryland Agricultural College	-------, 1856	-------, 1864
Massachusetts Institute of Technology	Apr. 10, 1861	Apr. 27, 1863
Massachusetts Agricultural College	Apr. 29, 1863	Apr. 29, 1863
Michigan Agricultural College	Feb. 12, 1855	Feb. 25, 1863
University of Minnesota	Feb. 19, 1851	Feb. 18, 1868

NAME OF INSTITUTIONS	DATE OF ORGANIZATION OF THE INSTITUTION	DATE OF RECEIPT OF 1862 LAND-GRANT FUND
Mississippi Agricultural and Mechanical College	Feb. 28, 1878	Feb. 28, 1878
Alcorn Agricultural and Mechanical College (colored)	May 13, 1871	May 13, 1871
University of Missouri	Feb. 11, 1839	Feb. 24, 1870
Montana State College of Agriculture and Mechanic Arts	Feb. 16, 1893	Feb. 16, 1893
University of Nebraska	Feb. 15, 1869	-------, 1873
University of Nevada	Mar. 7, 1873	Mar. 7, 1873
New Hampshire College of Agriculture and Mechanic Arts	June 7, 1866	June 7, 1866
Rutgers College, New Jersey	Nov. 10, 1766	Mar. 21, 1863
New Mexico College of Agriculture and Mechanic Arts	Feb. 28, 1889	Feb. 28, 1889
Cornell University, New York	Apr. 27, 1865	Apr. 27, 1865
North Carolina College of Agriculture and Mechanic Arts	-------, 1887	-------, 1887
North Dakota Agricultural College	Mar. 9, 1890	Mar. 9, 1890
Ohio State University	Mar. 22, 1870	Mar. 22, 1870
Oklahoma Agricultural and Mechanical College	Dec. 25, 1890	Dec. 25, 1890
Oregon Agricultural College	Feb. 11, 1865	-------, 1870
Pennsylvania State College	Feb. 22, 1855	Feb. 19, 1867
Rhode Island State College	Mar. 23, 1888	May 19, 1892
Clemson College, South Carolina	Nov. --, 1889	Nov. --, 1889
Colored Normal, Agricultural and Industrial College, South Carolina	-------, 1896	-------, 1896
South Dakota State College of Agriculture and Mechanic Arts	-------, 1881	Oct. 1, 1889
University of Tennessee	Sept.10, 1794	Feb. 1, 1868
Agricultural and Mechanical College of Texas	Apr. 17, 1871	Apr. 17, 1871

NAME OF INSTITUTIONS	DATE OF ORGANIZATION OF THE INSTITUTION	DATE OF RECEIPT OF 1862 LAND-GRANT FUND
Agricultural College of Utah	Mar. 8, 1888	Mar. 8, 1888
University of Vermont	Nov. 2, 1791	Nov. 9, 1865
Virginia Agricultural and Mechanical College and Polytechnic Institute	Mar. 19, 1872	Mar. 19, 1872
Hampton Normal and Agricultural Institute (colored)	June 4, 1870	Mar. 19, 1872
State College of Washington	Mar. 28, 1890	Mar. 28, 1890
West Virginia University	Feb. 7, 1867	Feb. 7, 1867
University of Wisconsin	July 26, 1848	Apr. 12, 1866
University of Wyoming	Mar. 4, 1886	-------, 1889

SOURCE: U. S., Department of Interior Bureau of Education Bulletin, The Land-Grant of 1862 and the Land-Grant Colleges, by Benj. F. Andrews, Bulletin 1918 No.13 (Washington: Government Printing Office, 1918) pp. 62-63.

APPENDIX J

Charles E. Stuart and others v. School District No. 1 of the Village of Kalamazoo and others.

Union school districts: High schools: Taxation: Instruction: English language. The right of school authorities in union school districts of this state to levy taxes upon the general public for the support of high schools, and by such taxation to make free the instruction of children in other languages than the English, is sustained.

School district: Organization: User: Acquiescence: Collateral attack. A school district which has assumed to possess and exercise all the rights and franchises of a regularly organized corporation for thirteen years, with entire acquiescence of everybody, is not liable to have the regularity of its organization, or of the legislation under which it acted, called in question thereafter in a merely private and collateral suit.

School districts: Organization: Statute of limitations. Whether or not the statute of limitations (*Comp. L.*, § 3591) applies in terms to this case, where it is not so much the organization of the school district that is questioned, as its authority to establish a high school and levy taxes therefor, it is strictly applicable in principle.

Union school districts: Organization: User: Acquiescence: Presumptions. The organization claimed and asserted by the district being that of a union school district, the presumption of organization arising from its user of corporate powers must be that of such an organization as its user indicates; and whether or not an acquiescence for the statutory period of two years will raise the presumption of regular organization, one of thirteen years certainly will.

State policy: Education: Primary schools: Grade of instruction: Classics: Foreign languages. The state policy of Michigan on the subject of education, and of the territory before the state was organized, beginning in 1817 and continuing down until after the adoption of the present constitution, is reviewed and considered, and the conclusion reached that there is nothing, either in our state policy, or in our constitution, or in our laws, restricting the primary school districts of the state in the branches of knowledge which their officers may cause to be taught, or the grade of instruction that may be given, if the voters of the district consent in regular form to bear the expense and raise the taxes for the purpose, or to prevent instruction in the classics and living modern languages in these schools.

Superintendent: Appointment: District board. The power to make the appointment of a superintendent of schools in a union school district is one that is incident to the full control which by law the district board has over the schools of the district.

Bill to enjoin collection of school taxes: High school: Superintendent. The decree below, dismissing the bill filed in this case to restrain the collection of such portion of the school taxes assessed against the complainants for the year 1872 as have been voted for the support of the high school in the village of Kalamazoo and for the payment of the salary of the superintendent, is affirmed.

Heard July 10 and 15. Decided July 21.

Appeal in Chancery from Kalamazoo Circuit.

Edwards & Sherwood and *G. V. N. Lothrop*, for complainants.

Dwight May and *D. Darwin Hughes*, for defendants.

COOLEY, J.

The bill in this case is filed to restrain the collection of such portion of the school taxes assessed against complainants for the year 1872, as have been voted for the support of the high school in that village, and for the payment of the salary of the superintendent. While, nominally, this is the end sought to be attained by the bill, the real purpose of the suit is wider and vastly more comprehensive

than this brief statement would indicate, inasmuch as it seeks a judicial determination of the right of school authorities, in what are called union school districts of the state, to levy taxes upon the general public for the support of what in this state are known as high schools, and to make free by such taxation the instruction of children in other languages than the English. The bill is, consequently, of no small interest to all the people of the state, and to a large number of very flourishing schools, it is of the very highest interest, as their prosperity and usefulness, in a large degree, depend upon the method in which they are supported, so that a blow at this method seems a blow at the schools themselves. The suit, however, is not to be regarded as a blow purposely aimed at the schools. It can never be unimportant to know that taxation, even for the most useful or indispensable purposes, is warranted by the strict letter of the law; and whoever doubts its being so in any particular case, may well be justified by his doubts in asking a legal investigation, that, if errors or defects in the law are found to exist, there may be a review of the subject in legislation, and the whole matter be settled on legal grounds, in such manner and on such principles as the public will may indicate, and as the legislature may prescribe.

The complainants rely upon two objections to the taxes in question, one of which is general, and the other applies only to the authority or action of this particular district. The general objection has already been indicated; the particular objection is that, even conceding that other districts in the state may have authority under special charters or laws, or by the adoption of general statutes, to levy taxes for the support of high schools in which foreign and dead languages shall be taught, yet this district has no such power, because the special legislation for its benefit, which was had in 1859, was invalid for want of compliance with the constitution in the forms of enactment, and it has never adopted the general law (*Comp. L.*, § *3742*), by taking a vote of the district to establish a union school in accord-

ance with its provisions, though ever since that law was enacted the district has sustained such a school, and proceeded in its action apparently on the assumption that the statutes in all respects were constitutional enactments, and had been complied with.

Whether this particular objection would have been worthy of serious consideration had it been made sooner, we must, after this lapse of time, wholly decline to consider. This district existed *de facto*, and we suppose *de jure*, also, for we are not informed to the contrary, when the legislation of 1859 was had, and from that time to the present it has assumed to possess and exercise all the franchises which are now brought in question, and there has since been a steady concurrence of action on the part of its people in the election of officers, in the levy of large taxes, and in the employment of teachers for the support of a high school. The state has acquiesced in this assumption of authority, and it has never, so far as we are advised, been questioned by any one until, after thirteen years user, three individual tax payers, out of some thousands, in a suit instituted on their own behalf, and to which the public authorities give no countenance, come forward in this collateral manner and ask us to annul the franchises. To require a municipal corporation, after so long an acquiescence, to defend, in a merely private suit, the irregularity, not only of its own action, but even of the legislation that permitted such action to be had, could not be justified by the principles of law, much less by those of public policy. We may justly take cognizance in these cases, of the notorious fact that municipal action is often exceedingly informal and irregular, when, after all, no wrong or illegality has been intended, and the real purpose of the law has been had in view and been accomplished; so that it may be said the spirit of the law has been kept while the letter has been disregarded. We may also find in the statutes many instances of careless legislation, under which municipalities have acted for many years, until important interests have sprung up, which

might be crippled or destroyed, if then for the first time matters of form in legislative action were suffered to be questioned. If every municipality must be subject to be called into court at any time to defend its original organization and its franchises at the will of any dissatisfied citizen who may feel disposed to question them, and subject to dissolution, perhaps, or to be crippled in authority and powers if defects appear, however complete and formal may have been the recognition of its rights and privileges, on the part alike of the state and of its citizens, it may very justly be said that few of our municipalities can be entirely certain of the ground they stand upon, and that any single person, however honestly inclined, if disposed to be litigious, or over technical and precise, may have it in his power in many cases to cause infinite trouble, embarrassment and mischief.

It was remarked by Mr. Justice Campbell in *People v. Maynard, 15 Mich., 470*, that "in public affairs where the people have organized themselves under color of law into the ordinary municipal bodies, and have gone on year after year raising taxes, making improvements, and exercising their usual franchises, their rights are properly regarded as depending quite as much on the acquiescence as on the regularity of their origin, and no *ex post facto* inquiry can be permitted to undo their corporate existence. Whatever may be the rights of individuals before such general acquiescence, the corporate standing of the community can no longer be open to question." To this doctrine were cited *Rumsey v. People, 19 N. Y., 41*, and *Lanning v. Carpenter, 20 N. Y., 447*. The cases of *State v. Bunker, 59 Me., 366; People v. Salomon, 54 Ill., 41*, and *People v. Lothrop, 24 Mich., 235*, are in the same direction. The legislature has recognized this principle with special reference to school districts, and has not only deemed it important that their power should not be questioned after any considerable lapse of time, but has even established what is in effect a very short act of limitation for the purpose in declaring that

"Every school district shall, in all cases, be presumed to have been legally organized, when it shall have exercised the franchises and privileges of a district for the term of two years."—*Comp. L. 1871, § 3501.* This is wise legislation, and short as the period is, we have held that even a less period is sufficient to justify us in refusing to interfere except on the application of the state itself.—*School District v. Joint Board etc., 27 Mich., 3.*

It may be said that this doctrine is not applicable to this case because here the corporate organization is not questioned, but only the authority which the district asserts to establish a high school and levy taxes therefor. But we think that, though the statute may not in terms apply, in principle it is strictly applicable. The district claims and has long exercised powers which take it out of the class of ordinary school districts, and place it in another class altogether, whose organization is greatly different and whose authority is much greater. So far as the externals of corporate action are concerned, the two classes are quite distinct, and the one subserves purposes of a higher order than the other, and is permitted to levy much greater burdens. It is not very clear that the case is not strictly within the law; for the organization here claimed is that of a union school district, and nothing else, and it seems little less than an absurdity to say it may be presumed from its user of corporate power to be a school district, but not such a district as the user indicates, and as it has for so long a period claimed to be. But however that may be, we are clear that even if we might be allowed by the law to listen to the objection after the two years, we cannot in reason consent to do so after thirteen. It cannot be permitted that communities can be suffered to be annoyed, embarrassed and unsettled by having agitated in the courts after such a lapse of time questions which every consideration of fairness to the people concerned and of public policy require should be raised and disposed of immediately or never raised at all.

The more general question which the record presents we

shall endeavor to state in our own language, but so as to make it stand out distinctly as a naked question of law, disconnected from all considerations of policy or expediency; in which light alone are we at liberty to consider it. It is, as we understand it, that there is no authority in this state to make the high schools free by taxation levied on the people at large. The argument is that while there may be no constitutional provision expressly prohibiting such taxation, the general course of legislation in the state and the general understanding of the people have been such as to require us to regard the instruction in the classics and in living modern languages in these schools as in the nature not of practical and therefore necessary instruction for the benefit of the people at large, but rather as accomplishments for the few, to be sought after in the main by those best able to pay for them, and to be paid for by those who seek them, and not by general tax. And not only has this been the general state policy, but this higher learning of itself, when supplied by the state, is so far a matter of private concern to those who receive it that the courts ought to declare it incompetent to supply it wholly at the public expense. This is in substance, as we understand it, the position of the complainants in this suit.

When this doctrine was broached to us, we must confess to no little surprise that the legislation and policy of our state were appealed to against the right of the state to furnish a liberal education to the youth of the state in schools brought within the reach of all classes. We supposed it had always been understood in this state that education, not merely in the rudiments, but in an enlarged sense, was regarded as an important practical advantage to be supplied at their option to rich and poor alike, and not as something pertaining merely to culture and accomplishment to be brought as such within the reach of those whose accumulated wealth enabled them to pay for it. As this, however, is now so seriously disputed, it may be necessary, perhaps, to take a brief survey of the legislation and gen-

eral course, not only of the state, but of the antecedent territory, on the subject.

It is not disputed that the dissemination of knowledge by means of schools has been a prominent object from the first, and we allude to the provision of the ordinance of 1787 on that subject, and to the donation of lands by congress for the purpose, only as preliminary to what we may have to say regarding the action of the territorial authorities in the premises. Those authorities accepted in the most liberal spirit the requirement of the ordinance that "schools and the means of education shall forever be encouraged," and endeavored to make early provision therefor on a scale which shows they were fully up to the most advanced ideas that then prevailed on the subject. The earliest territorial legislation regarding education, though somewhat eccentric in form, was framed in this spirit. It was "an act to establish the Catholepistemiad, or University of Michigania," adopted August 26, 1817, which not only incorporated the institution named in the title, with its president and thirteen professors, appointed by the governor, but it provided that its board of instruction should have power "to regulate all the concerns of the institution, to enact laws for that purpose," "to establish colleges, academies, schools, libraries, museums, atheneums, botanic gardens, laboratories and other useful literary and scientific institutions, consonant to the laws of the United States of America, and of Michigan, and to appoint officers and instructors and instructrices, in, among, and throughout the various counties, cities, towns, townships and other geographical divisions of Michigan." To provide for the expense thereof the existing public taxes were increased fifteen per cent., and from the proceeds of all future taxes fifteen per cent. was appropriated for the benefit of this corporation.—*Territorial Laws, Vol. 2, p. 104; Sherman's School Laws, p. 4.* The act goes but little into details, as was to be expected of a law which proposed to put the whole educational system of the commonwealth into the hands and under the control

of a body of learned men, created and made territorial officers for the purpose of planning and carrying it out; but the general purpose was apparent that throughout the territory a system of most liberal education should be supported at the public expense for the benefit of the whole people. The system indicated was prophetic of that which exists to-day, and is remarkable in this connection mainly, as being the very first law on the subject enacted in the territory, and as announcing a policy regarding liberal instruction which, though perhaps impracticable in view of the then limited and scattered population of the territory, has been steadily kept in view from that day to the present.

This act continued in force until 1821, when it was repealed to make way for one "for the establishment of an university," with more limited powers, and authorized only "to establish colleges, academies and schools depending upon the said university," and which, according to the general understanding at the time and afterwards, were to be schools intermediate the university and such common schools as might exist or be provided for.—*Code of 1820, p. 448; Code of 1827, p. 445.* In 1827 the educational system was supplemented by "an act for the establishment of common schools," which is also worthy of special attention and reflection, as indicating what was understood at that day by the common schools which were proposed to be established.

The first section of that act provided "that every township within this territory, containing fifty families or householders, shall be provided with a good schoolmaster or schoolmasters, of good morals, to teach children to read and write, and to instruct them in the English or French language, as well as in arithmetic, orthography, and decent behavior, for such term of time as shall be equivalent to six months for one school in each year. And every township containing one hundred families or householders, shall be provided with such schoolmaster or teacher for such term of time as shall be equivalent to twelve months for one

school in each year. And every township containing one hundred and fifty families or householders shall be provided with such schoolmaster or teacher for such term of time as shall be equivalent to six months in each year, and shall, in addition thereto, be provided with a schoolmaster or teacher, as above described, to instruct children in the English language for such term of time as shall be equivalent to twelve months for one school in each year. And every township containing two hundred families or householders shall be provided with a grammar schoolmaster, of good morals, *well instructed in the Latin, French and English languages*, and shall, in addition thereto, be provided with a schoolmaster or teacher, as above described, to instruct children in the English language, for such term of time as shall be equivalent to twelve months for each of said schools in each year." And the townships respectively were required under a heavy penalty, to be levied in case of default on the inhabitants generally, to keep and maintain the schools so provided for.—*Code of 1827, p. 448; Territorial Laws, Vol. 2, p. 472.*

Here, then, was a general law, which, under the name of common schools, required not only schools for elementary instruction, but also grammar schools to be maintained. The qualifications required in teachers of grammar schools were such as to leave it open to no doubt that grammar schools in the sense understood in England and the Eastern states were intended, in which instruction in the classics should be given, as well as in such higher branches of learning as would not usually be taught in the schools of lowest grade. How is it possible, then, to say, as the exigencies of complainants' case require them to do, that the term common or primary schools, as made use of in our legislation, has a known and definite meaning which limits it to the ordinary district schools, and that consequently the legislative authority to levy taxes for the primary schools cannot be held to embrace taxation for the schools supported by village and city districts in which a higher grade of learning is imparted.

It is probable that this act, like that of 1817, was found in advance of the demands of the people of the territory, or of their ability to support high schools, and it was repealed in 1833, and another passed which did not expressly require the establishment or support of schools of secondary grade, but which provided only for school directors, who must maintain a district school at least three months in each year.—*Code of 1833, p. 129.* The act contains no express limitations upon their powers, but it is not important now to consider whether or not they extended to the establishment of grammar schools as district schools, where, in their judgment, they might be required. Such schools would certainly not be out of harmony with any territorial policy that as yet had been developed or indicated.

Thus stood the law when the constitution of 1835 was adopted. The article on education in that instrument contained the following provisions:

"2. The legislature shall encourage by all suitable means the promotion of intellectual, scientifical and agricultural improvement. The proceeds of all lands that have been, or hereafter may be, granted by the United States to this state for the support of schools, which shall hereafter be sold or disposed of, shall be and remain a perpetual fund, the interest of which, together with the rents of all such unsold lands, shall be inviolably appropriated to the support of schools throughout the state.

"3. The legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each school district at least three months in every year; and any school district neglecting to keep up and support such a school may be deprived of its equal proportion of the interest of the public fund."

The fifth section provided for the support of the university, "with such branches as the public convenience may hereafter demand for the promotion of literature, the arts and sciences," etc. Two things are specially noticeable in these provisions: *first*, that they contemplated provision by

the state for a complete system of instruction, beginning with that of the primary school and ending with that of the university; *second*, that while the legislature was required to make provision for district schools for at least three months in each year, no restriction was imposed upon its power to establish schools intermediate the common district school and the university, and we find nothing to indicate an intent to limit their discretion as to the class or grade of schools to which the proceeds of school lands might be devoted, or as to the range of studies or grade of instruction which might be provided for in the district schools.

In the very first executive message after the constitution went into effect, the governor, in view of the fact that "our institutions have leveled the artificial distinctions existing in the societies of other countries, and have left open to every one the avenues to distinction and honor," admonished the legislature that it was their "imperious duty to secure to the state a general diffusion of knowledge," and that "this can in no wise be so certainly effected as by the perfect organization of a uniform and liberal system of common schools." Their "attention was therefore called to the effectuation of a perfect school system, open to all classes, as the surest basis of public happiness and prosperity." In his second message he repeated his admonitions, advising that provision be made for ample compensation to teachers, that those of the highest character, both moral and intellectual, might be secured, and urging that the "youth be taught the first principles in morals, in science, and in government, commencing their studies in the primary schools, elevating its grades as you approach the district seminary, and continue its progress till you arrive at the university." This message indicated no plan, but referred the legislature to the report of the superintendent, who would recommend a general system.

The system reported by superintendent Pierce contemplated a university, with branches in different parts of the state as preparatory schools, and district schools. This is

the parent of our present system, and though its author did not find the legislature prepared to accept all his views, the result has demonstrated that he was only a few years in advance of his generation, and that the changes in our school system which have since been adopted have been in the direction of the views which he then held and urged upon the public. And an examination of his official report for 1837 will show that the free schools he then favored were schools which taught something more than the rudiments of a common education; which were to give to the poor the advantages of the rich, and enable both alike to obtain within the state an education broad and liberal, as well as practical.

It would be instructive to make liberal extracts from this report did time and space permit. The superintendent would have teachers thoroughly trained, and he would have the great object of common schools "to furnish good instruction in all the elementary and common branches of knowledge, for all classes of community, *as good, indeed, for the poorest boy of the state as the rich man can furnish for his children with all his wealth.*" The context shows that he had the systems of Prussia and of New England in view, and that he proposed by a free school system to fit the children of the poor as well as of the rich for the highest spheres of activity and influence.

It might also be useful in this connection to show that the Prussian system and that "of the Puritans," of which he speaks in such terms of praise, resemble in their main features, so far as bringing within the reach of all a regular gradation of schools is concerned, the system of public instruction as it prevails in this state to-day. But it is not necessary for the purposes of the present case to enter upon this subject. It must suffice to say that the law of 1827, which provided for grammar schools as a grade of common schools, was adopted from laws which from a very early period had been in existence in Massachusetts, and which in like manner, under heavy penalties, compelled the support

of these grammar schools in every considerable town.—See *Mass. Laws, 1780, p. 39;* compare *General Stat., 1860, p. 215,* § 2.

The system adopted by the legislature, and which embraced a university and branches, and a common or primary school in every school district of the state, was put into successful operation, and so continued, with one important exception, until the adoption of the constitution of 1850. The exception relates to the branches of the university, which the funds of the university did not warrant keeping up, and which were consequently abandoned. Private schools to some extent took their place; but when the convention met to frame a constitution in 1850, there were already in existence, in a number of the leading towns, schools belonging to the general public system, which were furnishing instruction which fitted young men for the university. These schools for the most part had been organized under special laws, which, while leaving the primary school laws in general applicable, gave the districts a larger board of officers and larger powers of taxation for buildings and the payment of teachers. As the establishment and support of such schools were optional with the people, they encountered in some localities considerable opposition, which, however, is believed to have been always overcome, and the authority of the districts to provide instruction in the languages in these union schools was not, so far as we are aware, seriously contested. The superintendent of public instruction devotes a considerable portion of his annual report for 1848 to these schools, and in that of 1849 he says: "This class of institutions, which may be made to constitute a connecting link between the ordinary common school and the state university, is fast gaining upon the confidence of the public. Those already established have generally surpassed the expectations of their founders. Some of them have already attained a standing rarely equaled by the academical institutions of the older states. Large, commodious, and beautiful edifices have been erected in quite a

number of villages for the accommodation of these schools. These school-houses frequently occupy the most eligible sites in the villages where they are located. I am happy in being able to state in this connection that the late capitol of our state, having been fitted up at much expense, was, in June last, opened as a *common school-house;* and that in that house is maintained a free school which constitutes the pride and ornament of the city of the straits." This *common* free school was a union school equivalent in its instruction to the ordinary high school in most matters, and the report furnishes very clear evidence that the superintendent believed schools of that grade to be entirely competent under the primary school law.

It now becomes important to see whether the constitutional convention and the people, in 1850, did any thing to undo what previously had been accomplished towards furnishing high schools as a part of the primary school system. The convention certainly did nothing to that end. On the contrary, they demonstrated in the most unmistakable manner that they cherished no such desire or purpose. The article on education as originally reported, while providing for free schools to be kept in each district at least three months in every year, added that "the English language and no other shall be taught in such schools." Attention was called to this provision, and it was amended so as to read that instruction should be "conducted in the English language." The reason for the change was fully given, that as it was reported it might be understood to prohibit the teaching of other languages than the English in the primary schools; a result that was not desired. Judge Whipple stated in the convention that, in the section from which he came, French and German were taught, and "it is a most valuable improvement of the common school system." The late superintendent Pierce said that in some schools Latin was taught, and that he himself had taught Latin in a common school. He would not adopt any provision by which any knowledge would be excluded. "All

that we ought to do is this: we should say the legislature shall establish primary schools." This, in his opinion, would give full power, and the details could be left to legislation—See *Debates of the Convention, 269, 649.*

The instrument submitted by the convention to the people and adopted by them provided for the establishment of free schools in every school district for at least three months in each year, and for the university. By the aid of these we have every reason to believe the people expected a complete collegiate education might be obtained. The branches of the university had ceased to exist; the university had no preparatory department, and it must either have been understood that young men were to be prepared for the university in the common schools, or else that they should go abroad for the purpose, or be prepared in private schools. Private schools adapted to the purpose were almost unknown in the state, and comparatively a very few persons were at that time of sufficient pecuniary ability to educate their children abroad. The inference seems irresistible that the people expected the tendency towards the establishment of high schools in the primary school districts would continue until every locality capable of supporting one was supplied. And this inference is strengthened by the fact that a considerable number of our union schools date their establishment from the year 1850 and the two or three years following.

If these facts do not demonstrate clearly and conclusively a general state policy, beginning in 1817 and continuing until after the adoption of the present constitution, in the direction of free schools in which education, and at their option the elements of classical education, might be brought within the reach of all the children of the state, then, as it seems to us, nothing can demonstrate it. We might follow the subject further, and show that the subsequent legislation has all concurred with this policy, but it would be a waste of time and labor. We content ourselves with the statement that neither in our state policy,

in our constitution, or in our laws, do we find the primary school districts restricted in the branches of knowledge which their officers may cause to be taught, or the grade of instruction that may be given, if their voters consent in regular form to bear the expense and raise the taxes for the purpose.

Having reached this conclusion, we shall spend no time upon the objection that the district in question had no authority to appoint a superintendent of schools, and that the duties of superintendency should be performed by the district board. We think the power to make the appointment was incident to the full control which by law the board had over the schools of the district, and that the board and the people of the district have been wisely left by the legislature to follow their own judgment in the premises.

It follows that the decree dismissing the bill was right, and should be affirmed.

The other Justices concurred.

SOURCE: Stuart v. School District No. 1, 30 Mich. 69 (1874).

APPENDIX K

PERIODS OF ECONOMIC PROSPERITY, RECESSION AND DEPRESSION IN THE UNITED STATES 1834 TO 1925

(SELECTED TIME PERIODS)

YEAR	CONDITION OF BUSINESS
1834	Mild Depression
1835	Revival; Prosperity
1836	Prosperity
1837	Prosperity; Panic; Recession; Depression
1838	Depression; Slight Revival
1839	Revival; Panic Recession
1840	Depression
1841	Depression
1842	Depression
1843	Depression; Revival
1844	Revival; Prosperity
1845	Brief Recession
1853	Prosperity; Recession
1854	Recession; Depression
1855	Depression; Revival
1856	Prosperity
1857	Prosperity; Panic; Recession Depression
1858	Depression
1859	Revival
1860	Prosperity; Recession
1869	Prosperity; Monetary Difficulties
1870	Recession; Mild Depression
1871	Revival; Prosperity
1872	Prosperity
1873	Prosperity; Panic; Recession
1874	Depression
1875	Depression
1876	Depression
1877	Depression
1878	Depression; Revival
1879	Revival; Prosperity
1880	Prosperity
1889	Prosperity
1890	Prosperity; Recession
1891	Depression; Revival
1892	Prosperity
1893	Recession; Panic; Depression
1894	Deep Depression
1895	Depression; Revival

YEAR	CONDITION OF BUSINESS
1896	Recession; Depression
1897	Depression; Revival
1898	Revival; Prosperity
1899	Prosperity
1900	Prosperity
1905	Prosperity
1906	Prosperity
1907	Prosperity; Panic; Recession; Depression
1908	Depression
1909	Revival; Mild Prosperity
1910	Recession
1911	Mild Depression
1912	Revival; Prosperity
1918	War Activity; Recession
1919	Revival; Prosperity
1920	Prosperity; Recession; Depression
1921	Depression
1922	Revival; Prosperity
1923	Prosperity; Recession
1924	Mild Depression; Revival
1925	Prosperity

SOURCE: Royce Stanley Pitkin, Public School Support in the United States During Periods of Economic Depression (Brattleboro, Vermont: Stephen Daye Press, 1933), p. 12, Table 1; p. 39, Table 15; p. 69, Table 36; p. 101, Table 42; p. 118, Table 49; p. 125, Table 54.

APPENDIX L

WALTER M. PIERCE V. SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY

268 U. S. 510 (1925)

WALTER M. PIERCE V. HILL MILITARY ACADEMY

268 U. S. 510 (1925)

---

[510] WALTER M. PIERCE, as Governor of the State of Oregon, Isaac H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon, Appts.,

v.

SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY. (No. 583.)

WALTER M. PIERCE, as Governor of the State of Oregon, Isaac H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon, Appts.,

v.

HILL MILITARY ACADEMY. (No. 584.)

(See S. C. Reporter's ed. 510-536.)

Constitutional law — requiring attendance at public school — validity.

1. Requiring all children between the ages of eight and sixteen years to attend the public schools unconstitutionally interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.

Constitutional law — right of corporations to relief.

2. That the owners of private schools whose business and property will be destroyed by the enforcement of a statute requiring all children to attend public schools are corporations does not prevent the granting of relief against such enforcement as an interference with constitutional rights.

Injunction — against enforcement of unconstitutional statute.

3. Injunction lies at the suit of a cor-

Note.—As to the validity of class legislation, generally—see notes to State v. Goodwill, 6 L.R.A. 621, and State v. Loomis, 21 L.R.A. 789.

As to constitutional equality of privileges, immunities, and protection, generally—see note to Louisville Safety Vault & T. Co. v. Louisville & N. R. Co. 14 L.R.A. 579.

On right to enjoin acts under an unconstitutional statute as affected by other remedies in case such acts are done—see note to Harley v. Lindemann, 8 L.R.A.(N.S.) 124.

See note to this case as reported in 39 A.L.R. 477, on extent of legislative power with respect to school attendance and curriculum.

poration operating a private school to prevent threatened enforcement of a statute requiring all children to attend public schools, which will destroy its business and property.

Action — time for bringing — when not premature.

4. A suit to enjoin threatened enforcement of a statute requiring all children to attend public schools, to the destruction of the business of complainant, who conducts a private school, is not premature, although the statute does not become effective for two or three years, where patrons have begun to refuse to enter children in private schools, and to withdraw children already entered, so that, if the suit is not brought before the statute takes effect, the injury will be irreparable.

[Nos. 583 and 584.]

Argued March 16 and 17, 1925. Decided June 1, 1925.

APPEALS by defendants from decrees of the District Court of the United States for the District of Oregon in complainants' favor in suits to enjoin threatened enforcement of a statute requiring children to attend public schools. Affirmed.

See same case below, 296 Fed. 928.

The facts are stated in the opinion.

Messrs. **George E. Chamberlain** and **Albert H. Putney** argued the cause, and, with Mr. P. Q. Nyce, filed a brief for appellant Walter M. Pierce, Governor of Oregon:

While it is true that, within their proper field, the Constitution, laws, and treaties of the United States are the supreme law of the land, it is equally true that the Federal government has no power to interfere with a subject of legislation which the United States Constitution left to the states.

Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122; Ex parte Merryman, Taney, 246, Fed. Cas. No. 9,487; Otis v. Parker, 187 U. S. 606, 47 L. ed. 323, 23 Sup. Ct. Rep. 168; Booth v. Illinois, 184 U. S. 425, 431, 46 L. ed. 623, 627, 22 Sup. Ct. Rep. 425; Jones v. Portland, 245 U. S. 217-221, 62 L. ed. 252-255, L.R.A.1918C, 705, 38 Sup. Ct. Rep. 112, Ann. Cas. 1918E, 660; Hebe Co. v. Shaw, 248 U. S. 297, 63 L. ed. 255, 39 Sup. Ct. Rep. 125; Price v. Illinois, 238 U. S. 446-452, 59 L. ed. 1400-1405, 35 Sup. Ct. Rep. 892; Yazoo & M. Valley R. Co. v. Adams, 180 U. S. 1, 45 L. ed. 395, 21 Sup. Ct. Rep. 240.

The Oregon School Law does not impair the obligation of contracts.

Berea College v. Kentucky, 211 U. S. 45, 53 L. ed. 81, 29 Sup. Ct. Rep. 33.

The Oregon statute does not abridge the privileges and immunities of a citizen of the United States.

Slaughter-House Cases, 16 Wall. 36, 21 L. ed. 394; Twining v. New Jersey, 211 U. S. 78, 53 L. ed. 97, 29 Sup. Ct. Rep. 14; Hodges v. United States, 203 U. S. 1, 51 L. ed. 65, 27 Sup. Ct. Rep. 6; Hudson County Water Co. v. McCarter, 209 U. S. 349, 52 L. ed. 828, 28 Sup. Ct. Rep. 529, 14 Ann. Cas. 560; Corfield v. Coryell, 4 Wash. C. C. 371, Fed. Cas. No. 3,230; Wadleigh v. Newhall, 136 Fed. 941.

The Oregon statute does not deprive anyone of property without due process of law.

Mugler v. Kansas, 123 U. S. 623, 31 L. ed. 205, 8 Sup. Ct. Rep. 273; Kidd v. Pearson, 128 U. S. 1, 23, 32 L. ed. 346, 351, 2 Inters. Com. Rep. 232, 9 Sup. Ct. Rep. 6; Clark Distilling Co. v. Western Maryland R. Co. 242 U. S. 311, 61 L. ed. 326, L.R.A.1917B, 1218, 37 Sup. Ct. Rep. 180, Ann. Cas. 1917B, 845; Crane v. Campbell, 245 U. S. 304, 62 L. ed. 304, 38 Sup. Ct. Rep. 98; Madera Waterworks v. Madera, 228 U. S. 454, 57 L. ed. 915, 33 Sup. Ct. Rep. 571; Hadacheck v. Sebastian, 239 U. S. 394, 60 L. ed. 348, 36 Sup. Ct. Rep. 143, Ann. Cas. 1917B, 927; Tanner v. Little, 240 U. S. 369, 60 L. ed. 691, 36 Sup. Ct. Rep. 379; Hebe Co. v. Shaw, 248 U. S. 297, 63 L. ed. 255, 39 Sup. Ct. Rep. 125; Terrace v. Thompson, 263 U. S. 197, 68 L. ed. 255, 44 Sup. Ct. Rep. 15; Munn v. Illinois, 94 U. S. 113, 24 L. ed. 77.

The new Oregon School Law does not deprive any person of liberty without due process of law.

Gusman v. Marrero, 180 U. S. 81, 45 L. ed. 436, 21 Sup. Ct. Rep. 293; Truax v. Raich, 239 U. S. 33, 60 L. ed. 131, L.R.A.1916D, 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917B, 283; Jacobson v. Massachusetts, 197 U. S. 11, 49 L. ed. 643, 25 Sup. Ct. Rep. 358, 3 Ann. Cas. 765; New York v. Miln, 11 Pet. 102, 9 L. ed. 648.

The Oregon School Law does not deny the equal protection of the law.

Walston v. Nevin, 128 U. S. 582, 32 L. ed. 546, 9 Sup. Ct. Rep. 192; Tinsley v. Anderson, 171 U. S. 106, 43 L. ed. 96, 18 Sup. Ct. Rep. 805; Williams v. Arkansas, 217 U. S. 79, 54 L. ed. 673, 30 Sup. Ct. Rep. 493, 18 Ann. Cas. 865.

If the compulsory school laws of the other states of the United States are constitutional, the new Oregon School Law must be held constitutional.

Meyer v. Nebraska, 262 U. S. 390, 67 L. ed. 1042, 29 A.L.R. 1446, 43 Sup. Ct. Rep. 625; Fischer v. St. Louis, 194 U. S. 361, 48 L. ed. 1018, 24 Sup. Ct. Rep. 673.

The constitutionality of the new Oregon Public School Law can be sustained as an exercise of the police power of the state.

Chicago, B. & Q. R. Co. v. Illinois, 200 U. S. 561, 592, 50 L. ed. 596, 609, 26 Sup. Ct. Rep. 341, 4 Ann. Cas. 1175; Bacon v. Walker, 204 U. S. 311, 51 L. ed. 499, 27 Sup. Ct. Rep. 289; Lawton v. Steele, 152 U. S. 135, 38 L. ed. 388, 14 Sup. Ct. Rep. 499; New York v. Miln, 11 Pet. 102, 9 L. ed. 648.

Mr. **Willis S. Moore** argued the cause, and, with Mr. Isaac H. Van Winkle, filed a brief for appellant Isaac H. Van Winkle, Attorney General of Oregon:

The provisions of a corporation charter and of any law pursuant to which a corporation may have entered into valid contracts are subject to modification and annulment under the police power.

Boston Beer Co. v. Massachusetts, 97 U. S. 25, 32, 24 L. ed. 989, 992; Stone v. Mississippi, 101 U. S. 814, 818, 25 L. ed. 1079, 1080; New York v. Miln, 11 Pet. 102, 132, 9 L. ed. 648, 660; Eagle Ins. Co. v. Ohio, 153 U. S. 449, 452, 38 L. ed. 778, 780, 14 Sup. Ct. Rep. 868; Chicago, B. & Q. R. Co. v. Nebraska, 170 U. S. 59, 70, 52 L. ed. 948, 953, 18 Sup. Ct. Rep. 513; Pacific Gas & E. Co. v. Police Ct. 251 U. S. 22, 24, 64 L. ed. 112, 117, 40 Sup. Ct. Rep. 79; Thornton v. Duffy, 254 U. S. 361, 368, 65 L. ed. 304, 309, 41 Sup. Ct. Rep. 137; Chicago L. Ins. Co. v. Needles, 113 U. S. 574, 579, 28 L. ed. 1084, 1087, 5 Sup. Ct. Rep. 681.

As to minors, the state stands in the position of parens patriæ, and may exercise unlimited supervision and control over their contracts, occupations and conduct, and the liberty and right of those who assume to deal with them.

State v. Shorey, 48 Or. 398, 24 L.R.A. (N.S.) 1121, 86 Pac. 881; Stettler v. O'Hara, 69 Or. 519, L.R.A.1917C, 944, 139 Pac. 743, Ann. Cas. 1916A, 217; State v. Bunting, 71 Or. 259, L.R.A. 1917C, 1162, 139 Pac. 731, Ann. Cas. 1916C, 1003; Gibbons v. Gibbons, 75 Or. 503, 147 Pac. 530; Merges v. Merges, 94 Or. 252, 186 Pac. 36; State v. Bailey, 157 Ind. 324, 59 L.R.A. 437, 61 N. E. 730; Sturges & B. Mfg. Co. v. Beauchamp, 231 U. S. 320, 324, 58 L. ed. 245, 249, L.R.A.1915A, 1190, 34 Sup. Ct. Rep. 60; Muller v. Oregon, 208 U. S. 412, 419, 52 L. ed. 551, 555, 28 Sup. Ct. Rep. 324, 13 Ann. Cas. 957; Starnes v. Albion Mfg. Co. 147 N. C. 556, 61 S. E. 525, 17 L.R.A.(N.S.) 602, and note, 15 Ann. Cas. 470, and note; People v. Ewer, 141 N. Y. 129, 25 L.R.A. 794, 38 Am. St. Rep. 788, 36 N. E. 4; Berea College v. Com. 123 Ky. 209, 124 Am. St. Rep. 344, 94 S. W. 623, 13 Ann. Cas. 337; State v. Jackson, 71 N. H. 552, 60 L.R.A. 739, 53 Atl. 1021; Com. v. Roberts, 159 Mass. 372, 34 N. E. 402; State v. Counort, 69 Wash. 361, 41 L.R.A.(N.S.) 95, 124 Pac. 910; Meyer v. Nebraska, 262 U. S. 390, 399, 400, 67 L. ed. 1042, 1045, 1046, 29 A.L.R. 1446, 43 Sup. Ct. Rep. 625; Schouler, Dom. Rel. 5th ed. § 235; 20 R. C. L. 597; Re Turner, 94 Kan. 115, 145 Pac. 871, Ann. Cas. 1916E, 1024; Van Walters v. Children's Guardians, 132 Ind. 567, 18 L.R.A. 432, 32 N. E. 568; State v. Rose, 125 La. 462, 26 L.R.A. (N.S.) 821, 51 So. 496; Re Powell, 6 Okla. Crim. Rep. 495, 120 Pac. 1028; Egoff v. Madison County, 170 Ind. 238, 84 N. E. 155; United States ex rel. Schornbach v. Behrendsohn, 197 Fed. 953; Sturges & B. Mfg. Co. v. Beauchamp, 231 U. S. 320, 324, 58 L. ed. 245, 249, L.R.A.1915A, 1196, 34 Sup. Ct. Rep. 60; Interstate Consol. Street R. Co. v. Massachusetts, 207 U. S. 79, 85, 52 L. ed. 111, 115, 28 Sup. Ct. Rep. 26, 12 Ann. Cas. 557.

The statute does not interfere with the religious liberty of anyone.

Permoli v. New Orleans, 3 How. 589, 609, 11 L. ed. 739, 748; Brunswick-Balke-Collander Co. v. Evans, 228 Fed. 991; People ex rel. Ring v. Board of Education, 245 Ill. 335, 29 L.R.A.(N.S.) 442, 92 N. E. 251, 19 Ann. Cas. 220; Swafford v. Keaton, 23 Ga. App. 238, 98 S. E. 122; State v. Mockus, 120 Me. 84, 14 A.L.R. 871, 113 Atl. 44; Reynolds v. United States, 98 U. S. 145, 164, 25 L. ed. 244, 250; Com. v. Herr, 229 Pa. 132, 78 Atl. 71, Ann. Cas. 1912A, 422; Owens v. State, 6 Okla. Crim. Rep. 110, 36 L.R.A.(N.S.) 634, Ann. Cas. 1913B, 1218; People v. Pierson, 176 N. Y. 201, 63 L.R.A. 192, 98 Am. St. Rep. 666, 68 N. E. 243; Scales v. State, 47 Ark. 476, 58 Am. Rep. 768, 1 S. W. 771; Com. v. Has, 122 Mass. 42; Phillips v. Gratz, 2 Penr. & W. 412, 23 Am. Dec. 83; Wilkes-Barre v. Garabed, 11 Pa. Super. Ct. 355; Smith v. People, 51 Colo. 270, 36 L.R.A.(N.S.) 161, 117 Pac. 612.

The American people as a whole have unalterably determined that there shall be an absolute and unequivocal separation of church and state; and that the public schools shall be maintained and

conducted free from influences in favor of any religious organization, sect, creed, or belief.

Knowlton v. Baumhover, 182 Iowa, 691, 5 A.L.R. 848, 166 N. W. 202; Wilkerson v. Rome, 152 Ga. 762, 20 A.L.R. 1334, and note, 110 S. E. 895; Evans v. Selma Union High School Dist. 193 Cal. 54, 31 A.L.R. 1121, 222 Pac. 801; Donahoe v. Richards, 38 Me. 379, 61 Am. Dec. 272.

The provisions of subdivision "d" of the act conferring upon county superintendents power to determine whether or not a child is being properly taught, and to order such as are not to be sent to public schools, do not invalidate the measure, but relate to a proper exercise of administrative power.

State v. Briggs, 45 Or. 375, 77 Pac. 750, 78 Pac. 361, 2 Ann. Cas. 424; Field & Co. v. Clark, 143 U. S. 649, 692, 36 L. ed. 294, 310, 12 Sup. Ct. Rep. 495; Lee v. Hoffman, 182 Iowa, 1220, L.R.A. 1918C, 933, 166 N. W. 565; State v. Yopp, 97 N. C. 477, 2 Am. St. Rep. 305, 2 S. E. 458; Fischer v. St. Louis, 194 U. S. 361, 369, 48 L. ed. 1018, 1023, 24 Sup. Ct. Rep. 673; Ex parte Fiske, 72 Cal. 125, 13 Pac. 310; Re Spencer, 149 Cal. 396, 117 Am. St. Rep. 137, 86 Pac. 898, 9 Ann. Cas. 1105; Re Weber, 149 Cal. 392, 86 Pac. 809; Eureka City v. Wilson, 15 Utah, 53, 48 Pac. 44; State v. Wolf, 145 N. C. 440, 59 S. E. 40, 13 Ann. Cas. 189.

It being conceded that the state has power to compel attendance at some school, it follows, under familiar principles, that the legislature has a broad discretion in the selection of a means by which the results desired may be brought about.

6 R. C. L. 137; Slaughter-House Cases, 16 Wall. 36, 64, 21 L. ed. 394, 405; United States v. Fisher, 2 Cranch, 358, 396, 2 L. ed. 304, 317; M'Culloch v. Maryland, 4 Wheat. 316, 421, 4 L. ed. 579, 605; Sweet v. Rechel, 159 U. S. 380, 393, 40 L. ed. 188, 194, 16 Sup. Ct. Rep. 43; Home Teleph. & Teleg. Co. v. Los Angeles, 211 U. S. 265, 281, 53 L. ed. 176, 186, 29 Sup. Ct. Rep. 50; 6 R. C. L. 102; Overshiner v. State, 156 Ind. 187, 51 L.R.A. 749, 83 Am. St. Rep. 187, 59 N. E. 468; Atchison, T. & S. F. R. Co. v. Matthews, 174 U. S. 96, 104, 43 L. ed. 909, 913, 19 Sup. Ct. Rep. 609; New York ex rel. Silz v. Hesterberg, 211 U. S. 31, 38, 53 L. ed. 75, 79, 29 Sup. Ct. Rep. 10; Holden v. Hardy, 169 U. S. 366, 397, 42 L. ed. 780, 793, 18 Sup. Ct. Rep. 383.

Mr. **William D. Guthrie** argued the cause, and, with Mr. Bernard Hershkopf, filed a brief for appellee in No. 583:

Suit for equitable relief was not prematurely brought.

International News Service v. Associated Press, 248 U. S. 215, 236, 63 L. ed. 211, 219, 2 A.L.R. 293, 39 Sup. Ct. Rep. 68; Springhead Spinning Co. v. Riley, L. R. 6 Eq. 558; Vicksburg Waterworks Co. v. Vicksburg, 185 U. S. 65, 82, 46 L. ed. 808, 815, 22 Sup. Ct. Rep. 585; Terrace v. Thompson, 263 U. S. 197, 214, 68 L. ed. 255, 273, 44 Sup. Ct. Rep. 15; Walla Walla v. Walla Walla Water Co. 172 U. S. 1, 12, 43 L. ed. 341, 346, 19 Sup. Ct. Rep. 77; American School v. McAnnulty, 187 U. S. 94, 110, 47 L. ed. 90, 96, 23 Sup. Ct. Rep. 33; Kennington v. Palmer, 255 U. S. 100, 101, 65 L. ed. 528, 531, 41 Sup. Ct. Rep. 303.

Courts of the United States have jurisdiction because a Federal constitutional right of the plaintiff-appellee was invaded by the enactment in question.

Chicago & N. W. R. Co. v. Dey, 1 L.R.A. 744, 2 Inters. Com. Rep. 325, 35 Fed. 866; Truax v. Raich, 239 U. S. 33, 38, 60 L. ed. 131, 134, L.R.A.1916D, 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917B, 283; Nebraska Dist. v. McKelvie, 262 U. S. 404, 409, 67 L. ed. 1047, 1050, 43 Sup. Ct. Rep. 628; Terrace v. Thompson, 263 U. S. 197, 215, 216, 68 L. ed. 255, 274, 275, 44 Sup. Ct. Rep. 15; Packard v. Banton, 264 U. S. 140, 143, 68 L. ed. 596, 607, 44 Sup. Ct. Rep. 257; Meyer v. Nebraska, 262 U. S. 390, 67 L. ed. 1042, 29 L.R.A. 1446, 43 Sup. Ct. Rep. 625.

The legislative power of a state in relation to education does not involve the power to prohibit or suppress private schools and colleges.

Los Angeles v. Los Angeles Gas & E. Corp. 251 U. S. 32, 38, 64 L. ed. 121, 126, 40 Sup. Ct. Rep. 76; Green v. Frazier, 253 U. S. 233, 64 L. ed. 878, 40 Sup. Ct. Rep. 499; Adams v. Tanner, 244 U. S. 590, 597-616, 61 L. ed. 1336, 1344-1352, L.R.A.1917F, 1163, 37 Sup. Ct. Rep. 662, Ann. Cas. 1917D, 973; Laurel Hill Cemetery v. San Francisco, 216 U. S. 358, 366, 54 L. ed. 515, 519, 30 Sup. Ct. Rep. 301; Buchanan v. Warley, 245 U. S. 60, 62 L. ed. 149, L.R.A.1918C, 210, 38 Sup. Ct. Rep. 16, Ann. Cas. 1918A, 1201; Meyer v. Nebraska, 262 U. S. 390, 67 L. ed. 1042, 29 A.L.R. 1446, 43 Sup. Ct. Rep. 625; Bartels v. Iowa, 262 U. S. 404, 67 L. ed. 1047, 43 Sup. Ct. Rep. 628; Waugh v. University of Mississippi, 237 U. S. 589, 59 L. ed. 1131, 35 Sup. Ct.

Rep. 720; Heim v. McCall, 239 U. S. 175, 60 L. ed. 206, 36 Sup. Ct. Rep. 78, Ann. Cas. 1917B, 297; Crane v. New York, 239 U. S. 195, 60 L. ed. 218, 36 Sup. Ct. Rep. 85.

The statute impairs the obligation of the contract embodied in the appellee's corporate charter.

Dartmouth College v. Woodward, 4 Wheat. 518, 4 L. ed. 629; Liggett v. Ladd, 17 Or. 89, 21 Pac. 133; Lorntsen v. Union Fisherman's Co. 71 Or. 540, 143 Pac. 621; Berea College v. Kentucky, 211 U. S. 45, 53 L. ed. 81, 29 Sup. Ct. Rep. 33.

Mr. J. P. Kavanaugh also argued the cause, and, with Messrs. Jay Bowerman, Dan J. Malarkey, Hall S. Lusk, E. B. Seabrook, and F. J. Lonergan, filed a brief for appellee in No. 583:

The conducting of schools is a useful occupation, secured and protected by the 14th Amendment to the Constitution of the United States.

Columbia Trust Co. v. Lincoln Institute, 138 Ky. 804, 29 L.R.A.(N.S.) 53, 129 S. W. 113; Berea College v. Kentucky, 211 U. S. 45, 67, 53 L. ed. 81, 90, 29 Sup. Ct. Rep. 33; Meyer v. Nebraska, 262 U. S. 390, 400, 67 L. ed. 1042, 1045, 29 A.L.R. 1446, 43 Sup. Ct. Rep. 625; Smyth v. Ames, 169 U. S. 466, 42 L. ed. 819, 18 Sup. Ct. Rep. 418; Covington & L. Turnp. Road Co. v. Sandford, 164 U. S. 578, 41 L. ed. 560, 17 Sup. Ct. Rep. 198; Gulf, C. & S. F. R. Co. v. Ellis, 165 U. S. 150, 154, 41 L. ed. 666, 667, 17 Sup. Ct. Rep. 255; Southern R. Co. v. Greene, 216 U. S. 400, 416, 54 L. ed. 536, 541, 30 Sup. Ct. Rep. 287, 17 Ann. Cas. 1247; Spring Valley Water Co. v. San Francisco, 165 Fed. 667; Terrace v. Thompson, 263 U. S. 197, 215, 68 L. ed. 255, 274, 44 Sup. Ct. Rep. 15; Buchanan v. Warley, 245 U. S. 60, 74, 62 L. ed. 149, 160, L.R.A.1918C, 210, 38 Sup. Ct. Rep. 16, Ann. Cas. 1918A, 1201; 12 C. J. 1212, § 988; Adkins v. Children's Hospital, 261 U. S. 525, 67 L. ed. 785, 24 A.L.R. 1238, 43 Sup. Ct. Rep. 394; Chicago, M. & St. P. R. Co. v. Wisconsin, 238 U. S. 491, 59 L. ed. 1423, L.R.A.1916A, 1133, P.U.R. 1915D, 706, 35 Sup. Ct. Rep. 869; Nebraska Dist. v. McKelvie, 262 U. S. 404, 67 L. ed. 1047, 43 Sup. Ct. Rep. 628.

The School Law deprives the appellee of its right to conduct its primary schools.

Mugler v. Kansas, 123 U. S. 623, 661, 31 L. ed. 205, 210, 8 Sup. Ct. Rep. 273; Adams v. Tanner, 244 U. S. 590, 593, 61 L. ed. 1336, 1342, L.R.A.1917F, 1163, 37 Sup. Ct. Rep. 662, Ann. Cas. 1917D, 973; Truax v. Raich, 239 U. S. 33, 60 L. ed. 131, L.R.A.1916D, 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917B, 283; Buchanan v. Warley, 245 U. S. 60, 74, 62 L. ed. 149, 160, L.R.A.1918C, 210, 38 Sup. Ct. Rep. 16, Ann. Cas. 1918A, 1201.

The School Law violates the right of parental control over children.

Meyer v. Nebraska, 262 U. S. 390, 400, 67 L. ed. 1042, 1045, 29 A.L.R. 1446, 43 Sup. Ct. Rep. 625; School Bd. v. Thompson, 24 Okla. 10, 24 L.R.A.(N.S.) 221, 138 Am. St. Rep. 861, 103 Pac. 579, 19 Ann. Cas. 1188; School Trustees v. People, 87 Ill. 303, 29 Am. Dec. 55; Denton v. James, 107 Kan. 729, 12 A.L.R. 1151, 193 Pac. 307; Morrow v. Wood, 35 Wis. 59, 17 Am. Rep. 471; Wadleigh v. Newhall, 136 Fed. 941; Hardwick v. Fruitridge School Dist. 54 Cal. App. 696, 205 Pac. 54; Com. v. Armstrong, 1 Clark (Pa.) 146.

The School Law cannot be sustained as a legitimate exercise of the police power.

Lawton v. Steele, 152 U. S. 133, 137, 38 L. ed. 385, 388, 14 Sup. Ct. Rep. 499; Meyer v. Nebraska, 262 U. S. 399, 67 L. ed. 1045, 29 A.L.R. 1446, 43 Sup. Ct. Rep. 625; Adams v. Tanner, 244 U. S. 590, 593, 61 L. ed. 1336, 1342, L.R.A. 1917F, 1163, 37 Sup. Ct. Rep. 662, Ann. Cas. 1917D, 973; Dobbins v. Los Angeles, 195 U. S. 223, 236, 49 L. ed. 169, 175, 25 Sup. Ct. Rep. 18; Connolly v. Union Sewer Pipe Co. 184 U. S. 540, 558, 46 L. ed. 679, 689, 22 Sup. Ct. Rep. 431; New York ex rel. Silz v. Hesterberg, 211 U. S. 31, 39, 53 L. ed. 75, 79, 29 Sup. Ct. Rep. 10; Union Fishermen's Co. v. Shoemaker, 98 Or. 675, 193 Pac. 476, 194 Pac. 854; Meblos v. Milwaukee, 156 Wis. 591, 51 L.R.A.(N.S.) 1009, 146 N. W. 884, Ann. Cas. 1915C, 1102.

The act impairs the obligation of appellee's contract with the state, arising out of its charter.

Dartmouth College v. Woodward, 4 Wheat. 518, 4 L. ed. 629; Carondelet Canal & Nav. Co. v. Louisiana, 233 U. S. 363, 58 L. ed. 1001, 34 Sup. Ct. Rep. 627; Wilmington & W. R. Co. v. Alsbrook, 146 U. S. 279, 36 L. ed. 972, 13 Sup. Ct. Rep. 72; Louisville Gas Co. v. Citizens' Gaslight Co. 115 U. S. 683, 29 L. ed. 510, 6 Sup. Ct. Rep. 265; Liggett v. Ladd, 17 Or. 89, 21 Pac. 133; Lorntsen v. Union Fisherman's Co. 71 Or. 540, 143 Pac. 621; Berea College v. Kentucky, 211 U. S. 45, 53 L. ed. 81, 29 Sup. Ct. Rep. 33; State v. Richmond & D. R. Co. 73 N. C. 527, 21 Am. Rep. 473; Philadelphia, W. & B. R. Co. v. Bowers, 4 Houst. (Del.) 506; Chicago, M. & St. P.

R. Co. v. Wisconsin, 238 U. S. 491, 59 L. ed. 1423, L.R.A.1916A, 1133, P.U.R. 1915D, 706, 35 Sup. Ct. Rep. 869.

Mr. John C. Veatch argued the cause and filed a brief for appellee in No. 584.

No legislative act of the state, no matter how little it may interfere with the liberty or property of the individual, is a valid exercise of the police power of the state unless it is intended to correct an existing evil, or promote some object it is competent for the state to promote; for without that restriction, life, liberty, and property would ever be subject to arbitrary power.

Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192, 57 L. ed. 184, 33 Sup. Ct. Rep. 44; McLean v. Arkansas, 211 U. S. 539, 53 L. ed. 315, 29 Sup. Ct. Rep. 206; Chicago, B. & Q. R. Co. v. McGuire, 219 U. S. 549, 55 L. ed. 328, 31 Sup. Ct. Rep. 259; Atlantic Coast Line R. Co. v. Goldsboro, 232 U. S. 559, 58 L. ed. 726, 34 Sup. Ct. Rep. 364; House v. Mayes, 219 U. S. 270, 55 L. ed. 213, 31 Sup. Ct. Rep. 234; California Reduction Co. v. Sanitary Reduction Works, 199 U. S. 306, 50 L. ed. 204, 26 Sup. Ct. Rep. 100; Chicago, B. & Q. R. Co. v. Illinois, 200 U. S. 561, 50 L. ed. 596, 26 Sup. Ct. Rep. 341, 4 Ann. Cas. 1175.

The legislature cannot change the plain meaning of a statute by giving it a title different from its intent, nor can it, by declaring in so many words that the act is intended to promote education by compelling children to attend the public schools, take the act from the limitations placed upon the police power of the state.

New York ex rel. Silz v. Hesterberg, 211 U. S. 31, 53 L. ed. 75, 29 Sup. Ct. Rep. 10; Lochner v. New York, 198 U. S. 45, 49 L. ed. 937, 25 Sup. Ct. Rep. 539, 3 Ann. Cas. 1133; Mountain Timber Co. v. Washington, 243 U. S. 219, 61 L. ed. 685, 37 Sup. Ct. Rep. 260, Ann. Cas. 1917D, 642, 13 N. C. C. A. 927; Henderson v. New York (Henderson v. Wickham) 92 U. S. 259, 23 L. ed. 543; Adams v. Tanner, 244 U. S. 590, 61 L. ed. 1336, L.R.A.1917F, 1163, 37 Sup. Ct. Rep. 662, Ann. Cas. 1917D, 973; Com. v. Roberts, 159 Mass. 372, 34 N. E. 402.

The power of the state shall not interfere with the rights of the individual, unless such interference is necessary to promote the public welfare, and the restrictions placed upon the individual's rights have a real, substantial, and direct relation to the object to be accomplished.

Adkins v. Children's Hospital, 261 U. S. 525, 67 L. ed. 785, 24 A.L.R. 1238, 43 Sup. Ct. Rep. 394; Truax v. Corrigan, 257 U. S. 312, 66 L. ed. 254, 27 A.L.R. 375, 42 Sup. Ct. Rep. 124; Yick Wo v. Hopkins, 118 U. S. 356, 30 L. ed. 220, 6 Sup. Ct. Rep. 1064; Mugler v. Kansas, 123 U. S. 623, 31 L. ed. 205, 8 Sup. Ct. Rep. 273; Crowley v. Christensen, 137 U. S. 86, 34 L. ed. 620, 11 Sup. Ct. Rep. 13; Murphy v. California, 225 U. S. 623, 56 L. ed. 1229, 41 L.R.A.(N.S.) 153, 32 Sup. Ct. Rep. 697; Adams v. Tanner, 244 U. S. 590, 61 L. ed. 1336, L.R.A.1917F, 1163, 37 Sup. Ct. Rep. 662, Ann. Cas. 1917D, 973; Meyer v. Nebraska, 262 U. S. 390, 67 L. ed. 1042, 29 A.L.R. 1446, 43 Sup. Ct. Rep. 625.

Appellee is clearly entitled to come before the court and ask to be protected in its pursuit of a useful and legitimate business.

Terrace v. Thompson, 263 U. S. 197, 68 L. ed. 255, 44 Sup. Ct. Rep. 15; Vicksburg Waterworks Co. v. Vicksburg, 185 U. S. 65, 46 L. ed. 808, 22 Sup. Ct. Rep. 585; Detroit Creamery Co. v. Kinnane, 264 Fed. 845.

Mr. William A. Williams filed a brief as amicus curiæ:

This statute attempts to extinguish natural rights, infringes the provisions of the Constitution, and is void.

Meyer v. Nebraska, 262 U. S. 390, 67 L. ed. 1042, 29 A.L.R. 1446, 43 Sup. Ct. Rep. 625.

The parent has the common-law, or natural, right to direct the education of the child.

Denton v. James, 107 Kan. 729, 12 A.L.R. 1152, 193 Pac. 307.

The state has no power to abrogate a vested right, or to impair the obligation of contracts.

12 C. J. 956, § 486; Lorntsen v. Union Fisherman's Co. 71 Or. 543, 143 Pac. 621; First Nat. Bank v. Multnomah State Bank, 87 Or. 433, 170 Pac. 534.

Police power cannot be delegated to a board or an individual, to be exercised at discretion.

12 C. J. 911, § 42; Noel v. People, 187 Ill. 587, 52 L.R.A. 287, 79 Am. St. Rep. 238, 58 N. E. 616; 22 Am. & Eng. Enc. Law, 2d ed. 920, note 7.

Messrs. Charles H. Tuttle, Charles E. Hotchkiss, Alexander J. Field, and **Woodson P. Houghton** also filed briefs as amici curiæ.

Mr. Louis Marshall filed a brief for the American Jewish Committee as amicus curiæ.

Mr. Justice **McReynolds** delivered the opinion of the court:

These appeals are from decrees, based upon undenied allegations, which granted preliminary orders restraining [530] appellants from threatening or attempting to enforce the Compulsory Education Act[1] adopted November 7, 1922, under the initiative provision of her Constitution by the voters of Oregon. Judicial Code, § 266. They present the same points of law; there are no controverted questions of fact. Rights said to be guaranteed by the Federal Constitution were specially set up, and appropriate prayers asked for their protection.

The challenged act, effective September 1, 1926, requires every parent, guardian, or other person having control or charge or custody of a child between eight and sixteen years to send him "to a public school for the period of time a public school shall be held during the current year" in the district where the child resides; and failure so to do is declared a misdemeanor. There are [531] exemptions—not specially important here—for children who are not normal, or who have completed the eighth grade, or whose parents or private teachers reside at considerable distances from any public school, or who hold special permits from the county superintendent. The manifest purpose is to compel general attendance at public schools by normal children, between eight and sixteen, who have not completed the eighth grade. And without doubt enforcement of the statute would seriously impair, perhaps destroy, the profitable features of appellees' business, and greatly diminish the value of their property.

Appellee the Society of Sisters is an Oregon corporation, organized in 1880, with power to care for orphans, educate and instruct the youth, establish and maintain academies or schools, and acquire necessary real and personal [532] property. It has long devoted its property and effort to the secular and religious education and care of children, and has acquired the valuable good will of many parents and guardians. It conducts interdependent primary and high schools and junior colleges, and maintains orphanages for the custody and control of children between eight and sixteen. In

[1] Be it enacted by the people of the state of Oregon:

Section 1. That § 5259, Oregon Laws, be and the same is hereby amended so as to read as follows:

Sec. 5259. Children between the ages of eight and sixteen years.—Any parent, guardian or other person in the state of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense; provided, that in the following cases, children shall not be required to attend public schools:

(a) Children physically unable.—Any child who is abnormal, subnormal or physically unable to attend school.

(b) Children who have completed the eighth grade.—Any child who has completed the eighth grade, in accordance with the provisions of the state course of study.

(c) Distance from school.—Children between the ages of eight and ten years, inclusive, whose place of residence is more than 1½ miles, and children over ten years of age whose place of residence is more than 3 miles, by the nearest traveled road, from a public school; provided, however, that if transportation to and from school is furnished by the school district, this exemption shall not apply.

(d) Private instruction.—Any child who is being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school; but before such child can be taught by a parent or a private teacher, such parent or private teacher must receive written permission from the county superintendent, and such permission shall not extend longer than the end of the current school year. Such child must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If, after such examination, the county superintendent shall determine that such child is not being properly taught, then the county superintendent shall order the parent, guardian or other person, to send such child to the public school the remainder of the school year.

If any parent, guardian or other person having control or charge or custody of any child between the ages of eight and sixteen years, shall fail to comply with any provision of this section, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be subject to a fine of not less than $5, nor more than $100, or to imprisonment in the county jail not less than two nor more than thirty days, or by both such fine and imprisonment in the discretion of the court.

This act shall take effect and be and remain in force from and after the 1st day of September, 1926.

its primary schools many children between those ages are taught the subjects usually pursued in Oregon public schools during the first eight years. Systematic religious instruction and moral training according to the tenets of the Roman Catholic Church are also regularly provided. All courses of study, both temporal and religious, contemplate continuity of training under appellee's charge; the primary schools are essential to the system and the most profitable. It owns valuable buildings, especially constructed and equipped for school purposes. The business is remunerative,—the annual income from primary schools exceeds $30,000,—and the successful conduct of this requires long-time contracts with teachers and parents. The Compulsory Education Act of 1922 has already caused the withdrawal from its schools of children who would otherwise continue, and their income has steadily declined. The appellants, public officers, have proclaimed their purpose strictly to enforce the statute.

After setting out the above facts, the Society's bill alleges that the enactment conflicts with the right of parents to choose schools where their children will receive appropriate mental and religious training, the right of the child to influence the parents' choice of a school, the right of schools and teachers therein to engage in a useful business or profession, and is accordingly repugnant to the Constitution and void. And, further, that unless enforcement of the measure is enjoined, the corporation's business and property will suffer irreparable injury.

Appellee Hill Military Academy is a private corporation organized in 1908 under the laws of Oregon, engaged [5:3:3] in owning, operating, and conducting for profit an elementary, college preparatory, and military training school for boys between the ages of five and twenty-one years. The average attendance is one hundred, and the annual fees received for each student amount to some $800. The elementary department is divided into eight grades, as in the public schools; the college preparatory department has four grades, similar to those of the public high schools; the courses of study conform to the requirements of the state board of education. Military instruction and training are also given, under the supervision of an Army officer. It owns considerable real and personal property, some useful only for school purposes. The business and incident good will are very valuable. In order to conduct its affairs long-time contracts must be made for supplies, equipment, teachers, and pupils. Appellants, law officers of the state and county, have publicly announced that the Act of November 7, 1922, is valid, and have declared their intention to enforce it. By reason of the statute and threat of enforcement, appellee's business is being destroyed and its property depreciated; parents and guardians are refusing to make contracts for the future instruction of their sons, and some are being withdrawn.

The Academy's bill states the foregoing facts and then alleges that the challenged act contravenes the corporation's rights guaranteed by the 14th Amendment, and that unless appellants are restrained from proclaiming its validity and threatening to enforce it, irreparable injury will result. The prayer is for an appropriate injunction.

No answer was interposed in either cause, and after proper notices they were heard by three judges (Judicial Code, § 266) on motions for preliminary injunctions upon the specifically alleged facts. The court ruled that the 14th Amendment guaranteed appellees against the [5:3:4] deprivation of their property without due process of law consequent upon the unlawful interference by appellants with the free choice of patrons, present and prospective. It declared the right to conduct schools was property, and that parents and guardians, as a part of their liberty, might direct the education of children by selecting reputable teachers and places. Also, that appellees' schools were not unfit or harmful to the public, and that enforcement of the challenged statute would unlawfully deprive them of patronage, and thereby destroy appellee's business and property. Finally, that the threats to enforce the act would continue to cause irreparable injury; and the suits were not premature.

No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.

The inevitable practical result of enforcing the act under consideration would be destruction of appellees' primary schools, and perhaps all other private

primary schools for normal children within the state of Oregon. Appellees are engaged in a kind of undertaking not inherently harmful, but long regarded as useful and meritorious. Certainly there is nothing in the present records to indicate that they have failed to discharge their obligations to patrons, students, or the state. And there are no peculiar circumstances or present emergencies which demand extraordinary measures relative to primary education.

Under the doctrine of Meyer v. Nebraska, 262 U. S. 390, 67 L. ed. 1042, 29 A.L.R. 1446, 43 Sup. Ct. Rep. 625, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children [535] under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

Appellees are corporations, and therefore, it is said, they cannot claim for themselves the liberty which the 14th Amendment guarantees. Accepted in the proper sense, this is true. Northwestern Nat. L. Ins. Co. v. Riggs, 203 U. S. 243, 255, 51 L. ed. 168, 173, 27 Sup. Ct. Rep. 126, 7 Ann. Cas. 1094; Western Turf Asso. v. Greenberg, 204 U. S. 359, 363, 51 L. ed. 520, 522, 27 Sup. Ct. Rep. 384. But they have business and property for which they claim protection. These are threatened with destruction through the unwarranted compulsion which appellants are exercising over present and prospective patrons of their schools. And this court has gone very far to protect against loss threatened by such action. Truax v. Raich, 239 U. S. 33, 60 L. ed. 131, L.R.A.1916D, 545, 36 Sup. Ct. Rep. 7, Ann. Cas. 1917B, 283; Truax v. Corrigan, 257 U. S. 312, 66 L. ed. 254, 27 A.L.R. 375, 42 Sup. Ct. Rep. 124; Terrace v. Thompson, 263 U. S. 197, 68 L. ed. 255, 44 Sup. Ct. Rep. 15.

The courts of the state have not construed the act, and we must determine its meaning for ourselves. Evidently it was expected to have general application, and cannot be construed as though merely intended to amend the charters of certain private corporations, as in Berea College v. Kentucky, 211 U. S. 45, 53 L. ed. 81, 29 Sup. Ct. Rep. 33. No argument in favor of such view has been advanced.

Generally it is entirely true, as urged by counsel, that no person in any business has such an interest in possible customers as to enable him to restrain exercise of proper power of the state upon the ground that he will be deprived [536] of patronage. But the injunctions here sought are not against the exercise of any *proper* power. Appellees asked protection against arbitrary, unreasonable, and unlawful interference with their patrons, and the consequent destruction of their business and property. Their interest is clear and immediate, within the rule approved in Truax v. Raich, Truax v. Corrigan, and Terrace v. Thompson, supra, and many other cases where injunctions have issued to protect business enterprises against interference with the freedom of patrons or customers. Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, 62 L. ed. 260, L.R.A.1918C, 497, 38 Sup. Ct. Rep. 65, Ann. Cas. 1918B, 461; Duplex Printing Press Co. v. Deering, 254 U. S. 443, 65 L. ed. 349, 16 A.L.R. 196, 41 Sup. Ct. Rep. 172; American Steel Foundries v. Tri-City Cent. Trades Council, 257 U. S. 184, 66 L. ed. 189, 27 A.L.R. 360, 42 Sup. Ct. Rep. 72; Nebraska Dist. v. McKelvie, 262 U. S. 404, 67 L. ed. 1047, 43 Sup. Ct. Rep. 628; Truax v. Corrigan, 257 U. S. 312, 66 L. ed. 254, 27 A.L.R. 375, 42 Sup. Ct. Rep. 124, and cases there cited.

The suits were not premature. The injury to appellees was present and very real,—not a mere possibility in the remote future. If no relief had been possible prior to the effective date of the act, the injury would have become irreparable. Prevention of impending injury by unlawful action is a well-recognized function of courts of equity.

The decrees below are affirmed.

SOURCE: Pierce v. Society of Sisters, 268 U. S. 510 (1925) and Pierce v. Hill Military Academy, 268 U. S. 510 (1925).

APPENDIX M

FEDERAL FAIR LABOR STANDARDS ACT, 1938

Sec.
204. Industry committees.
206. Minimum wages: effective date.
207. Maximum hours.
208. Wage orders.
209. Attendance of witnesses.
210. Court review.
211. Investigations, inspections, and records.
212. Child labor provisions.
213. Exemptions.
214. Learners, apprentices, and handicapped workers.
215. Prohibited acts; prima facie evidence.
216. Penalties; civil and criminal liability.
217. Injunction proceedings.
218. Relation to other laws.
219. Separability of provisions.

§ 201. Short title.

Sections 201–219 of this title may be cited as the "Fair Labor Standards Act of 1938". (June 25, 1938, ch. 676, § 1, 52 Stat. 1060.)

§ 202. Congressional finding and declaration of policy.

(a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of sections 201–219 of this title, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power. (June 25, 1938, ch. 676, § 2, 52 Stat. 1060.)

§ 203. Definitions.

As used in sections 201–219 of this title—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(e) "Employee" includes any individual employed by an employer.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j (g) of Title 12, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, or branch thereof, or group of industries, in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Chief of the Children's Bureau in the Department of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Chief of the Children's Bureau certifying that such person is above the oppressive child-labor age. The Chief of the Children's Bureau shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Chief of the Children's Bureau

determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees. (June 25, 1938, ch. 676, § 3, 52 Stat. 1060.)

§ 204. Administrator.

(a) There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in sections 201–219 of this title referred to as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of $10,000 a year.

(b) The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this chapter and shall fix their compensation in accordance with sections 661–663, 664–673, 674 of Title 5, as amended. The Administrator may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Administrator, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

(d) The Administrator shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by sections 201–219 of this title as he may find advisable. (June 25, 1938, ch. 676, § 4, 52 Stat. 1061.)

§ 205. Industry committees.

(a) The Administrator shall as soon as practicable appoint an industry committee for each industry engaged in commerce or in the production of goods for commerce.

(b) An industry committee shall be appointed by the Administrator without regard to any other provisions of law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one of whom the Administrator shall designate as chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the Administrator shall give due regard to the geographical regions in which the industry is carried on.

(c) Two-thirds of the members of an industry committee shall constitute a quorum, and the decision of the committee shall require a vote of not less than a majority of all its members. Members of an industry committee shall receive as compensation for their services a reasonable per diem, which the Administrator shall by rules and regulations prescribe, for each day actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and other expenses. The Administrator shall furnish the committee with adequate legal, stenographic, clerical, and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the committee.

(d) The Administrator shall submit to an industry committee from time to time such data as he may have available on the matters referred to it, and shall cause to be brought before it in connection with such matters any witnesses whom he deems material. An industry committee may summon other witnesses or call upon the Administrator to furnish additional information to aid it in its deliberations.

(e) No industry committee appointed under subsection (a) of this section shall have any power to recommend the minimum rate or rates of wages to be paid under section 206 of this title to any employees in Puerto Rico or in the Virgin Islands. Notwithstanding any other provision of sections 201–219 of this title, the Administrator may appoint a special industry committee to recommend the minimum rate or rates of wages to be paid under section 206 of this title to all employees in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce, or the Administrator may appoint separate industry committees to recommend the minimum rate or rates of wages to be paid under section 206 of this title to employees therein engaged in commerce or in the production of goods for commerce in particular industries. An industry committee appointed under this subsection shall be composed of residents of such island or islands where the employees with respect to whom such committee was appointed are employed and residents of the United States outside of Puerto Rico and the Virgin Islands. In determining the minimum rate or rates of wages to be paid, and in determining classifications, such industry committees and the Administrator shall be subject to the provisions of section 208 of this title and no such committee shall recommend, nor shall the Administrator approve, a minimum wage rate which will give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands. (June 25, 1938, ch. 676, § 5, 52 Stat. 1062; June 26, 1940, ch. 432, § 3 (c), 54 Stat. 615.)

§ 206. Minimum wages; effective date.

(a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 208 of this title, whichever is lower, and

(4) at any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under section 208 of this title.

(5) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Administrator, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers.

(b) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of sections 201–219 of this title.

(c) The provisions of paragraphs (1), (2), and (3) of subsection (a) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands engaged in commerce or in the production of goods for commerce only for so long as and insofar as such employee is covered by a wage order issued by the Administrator pursuant to the recommendations of a special industry committee appointed pursuant to section 205 (c) of this title. (June 25, 1938, ch. 676, § 6, 52 Stat. 1062; June 26, 1940, ch. 432, § 3 (c), (f), 54 Stat. 616.)

§ 207. Maximum hours.

(a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand hours during any period of twenty-six consecutive weeks,

(2) on an annual basis in pursuance of an agreement with his employer, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall not be employed more than two thousand hours during any period of fifty-two consecutive weeks, or

(3) for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year in an industry found by the Administrator to be of a seasonal nature,

and if such employee receives compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c) In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables, or in the first processing, within the area of production (as defined by the Administrator), of any agricultural or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of subsection (a), during a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged.

(d) This section shall take effect upon the expiration of one hundred and twenty days from the date of

enactment of sections 201–219 of this title. (June 25, 1938, ch. 676, § 7, 52 Stat. 1063.)

§ 208. Wage orders.

(a) With a view to carrying out the policy of sections 201–219 of this title by reaching, as rapidly as is economically feasible without substantially curtailing employment, the objective of a universal minimum wage of 40 cents an hour in each industry engaged in commerce or in the production of goods for commerce, the Administrator shall from time to time convene the industry committee for each such industry, and the industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 206 of this title by employers engaged in commerce or in the production of goods for commerce in such industry or classification therein.

(b) Upon the convening of an industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, may hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under sections 201–219 of this title. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry.

(c) The industry committee for any industry shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of 40 cents an hour) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classification shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee and the Administrator shall consider among other relevant factors the following:

(1) competitive conditions as affected by transportation, living, and production costs;

(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum-wage standards in the industry.

No classification shall be made under this section on the basis of age or sex.

(d) The industry committee shall file with the Administrator a report containing its recommendations with respect to the matters referred to it. Upon the filing of such report, the Administrator, after due notice to interested persons, and giving them an opportunity to be heard, shall by order approve and carry into effect the recommendations contained in such report, if he finds that the recommendations are made in accordance with law, are supported by the evidence adduced at the hearing, and, taking into consideration the same factors as are required to be considered by the industry committee, will carry out the purposes of this section; otherwise he shall disapprove such recommendations. If the Administrator disapproves such recommendations, he shall again refer the matter to such committee, or to another industry committee for such industry (which he may appoint for such purpose), for further consideration and recommendations.

(e) No order issued under this section with respect to any industry prior to the expiration of seven years from the effective date of section 206 of this title shall remain in effect after such expiration, and no order shall be issued under this section with respect to any industry on or after such expiration, unless the industry committee by a preponderance of the evidence before it recommends, and the Administrator by a preponderance of the evidence adduced at the hearing finds, that the continued effectiveness or the issuance of the order, as the case may be, is necessary in order to prevent substantial curtailment of employment in the industry.

(f) Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Administrator finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein. No such order shall take effect until after due notice is given of the issuance thereof by publication in the Federal Register and by such other means as the Administrator deems reasonably calculated to give to interested persons general notice of such issuance.

(g) Due notice of any hearing provided for in this section shall be given by publication in the Federal Register and by such other means as the Administrator deems reasonably calculated to give general notice to interested persons. (June 25, 1938, ch. 676, § 8, 52 Stat. 1064.)

WAGE ORDERS IMPOSED PRIOR TO JUNE 26, 1940, IN PUERTO RICO OR THE VIRGIN ISLANDS

Res. June 28, 1940, ch. 432, § 3 (d), 54 Stat. 616, provided as follows: "(d) No wage orders issued by the Administrator pursuant to the recommendations of an industry committee made prior to the enactment of this joint resolution pursuant to section 8 (this section) of the Fair Labor Standards Act of 1938 shall after such enactment be applicable with respect to any employees engaged in commerce or in the production of goods for commerce in Puerto Rico or the Virgin Islands."

§ 209. Attendance of witnesses.

For the purpose of any hearing or investigation provided for in sections 201–219 of this title, the provisions of sections 49 and 50 of Title 15, (relating to the attendance of witnesses and the production

of books, papers, and documents), are hereby made applicable to the jurisdiction, powers, and duties of the Administrator, the Chief of the Children's Bureau, and the industry committees. (June 25, 1938, ch. 676, § 9, 52 Stat. 1065.)

§ 210. Court review.

(a) Any person aggrieved by an order of the Administrator issued under section 208 of this title may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Administrator be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon the Administrator, and thereupon the Administrator shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by the Administrator when supported by substantial evidence shall be conclusive. No objection to the order of the Administrator shall be considered by the court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of Title 28, as amended.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Administrator's order. The court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect. (June 25, 1938, ch. 676, § 10, 52 Stat. 1065.)

§ 211. Investigations, inspections, and records.

(a) The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and order conditions and practices of employment in any industry subject to sections 201–219 of this title, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of sections 201–219 of this title, or which may aid in the enforcement of the provisions of sections 201–219 of this title. Except as provided in section 212 of this title and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 212 of this title, the Administrator shall bring all actions under section 217 of this title to restrain violations of sections 201–219 of this title.

(b) With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Chief of the Children's Bureau may, for the purpose of carrying out their respective functions and duties under sections 201–219 of this title, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Every employer subject to any provision of sections 201–219 of this title or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of sections 201–219 of this title or the regulations or orders thereunder. (June 25, 1938, ch. 676, § 11, 52 Stat. 1068.)

§ 212. Child labor provisions.

(a) After the expiration of one hundred and twenty days from the date of enactment of sections 201–219 of this title, no producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions prohibited in sections 201–219 of this title shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

(b) The Chief of the Children's Bureau in the Department of Labor, or any of his authorized representatives, shall make all investigations and inspections under section 211 (a) of this title with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 217 of this title to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of sections 201–219 of this title relating to oppressive child labor. (June 25, 1938, ch. 676, § 12, 52 Stat. 1067.)

§ 213. Exemptions.

(a) The provisions of sections 206 and 207 of this title shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator); or (2) any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce; or (3) any employee employed as a seaman; or (4) any employee of a carrier by air subject to the provisions of sections 181–188 of Title 45; or (5) any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or distributing the above products or byproducts thereof; or (6) any employee employed in agriculture; or (7) any employee to the extent that such employee is exempted by regulations or orders of the Administrator issued under section 214 of this title; or (8) any employee employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than three thousand the major part of which circulation is within the county where printed and published; or (9) any employee of a street, suburban, or interurban electric railway, or local trolley or motor bus carrier, not included in other exemptions contained in this section; or (10) to any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products; or (11) any switchboard operator employed in a public telephone exchange which has less than five hundred stations.

(b) The provisions of section 207 of this title shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 304 of Title 49; or (2) any employee of an employer subject to the provisions of sections 1–27 of Title 49.

(c) The provisions of section 212 of this title relating to child labor shall not apply with respect to any employee employed in agriculture while not legally required to attend school, or to any child employed as an actor in motion pictures or theatrical productions. (June 25, 1938, ch. 676, § 13, 52 Stat. 1067; Aug. 9, 1939, ch. 605, 53 Stat. 1268.)

§ 214. Learners, apprentices, and handicapped workers.

The Administrator, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for (1) the employment of learners, of apprentices, and of messengers employed exclusively in delivering letters and messages, under special certificates issued pursuant to regulations of the Administrator, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Administrator shall prescribe, and (2) the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the Administrator, at such wages lower than the minimum wage applicable under section 206 of this title and for such period as shall be fixed in such certificates. (June 25, 1938, ch. 676, § 14, 52 Stat. 1068.)

§ 215. Prohibited acts; prima facie evidence.

(a) After the expiration of one hundred and twenty days from the date of enactment of sections 201–219 of this title, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 206, or section 207 of this title, or in violation of any regulation or order of the Administrator issued under section 214 of this title; except that no provision of this chapter shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this chapter shall excuse any common carrier from its obligation to accept any goods for transportation;

(2) to violate any of the provisions of section 206 or section 207 of this title, or any of the provisions of any regulation or order of the Administrator issued under section 214 of this title;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to sections 201–219 of this title, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

(4) to violate any of the provisions of section 212 of this title;

(5) to violate any of the provisions of section 211 (c) of this title, or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder,

knowing such statement, report, or record to be false in a material respect.

(b) For the purposes of subsection (a) (1) proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods. (June 25, 1938, ch. 676, § 15, 52 Stat. 1068.)

§ 216. Penalties; civil and criminal liability.

(a) Any person who willfully violates any of the provisions of section 215 of this title shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. (June 25, 1938, ch. 676, § 16, 52 Stat. 1069.)

§ 217. Injunction proceedings.

The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 20 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U. S. C., 1934 edition, Title 28, sec. 381),[1] to restrain violations of section 215 of this title. (June 25, 1938, ch. 676, § 17, 52 Stat. 1069.)

[1] So in original. Section 20 of the act mentioned, relating to statutory restriction of injunctive relief, constitutes section 52 of this title.

§ 218. Relation to other laws.

No provision of sections 201–219 of this title or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under such sections or a maximum workweek lower than the maximum workweek established under such sections, and no provision of sections 201–219 of this title relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under such sections. No provision of sections 201–219 of this title shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under sections 201–219 of this title, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under such sections. (June 25, 1938, ch. 676, § 18, 52 Stat. 1069.)

§ 219. Separability of provisions.

If any provision of sections 201–219 of this title or the application of such provision to any person or circumstance is held invalid, the remainder of such sections and the application of such provision to other persons or circumstances shall not be affected thereby. (June 25, 1938, ch. 676, § 19, 52 Stat. 1069.)

SOURCE: Fair Labor Standards Act of 1938. U. S. Code, vol. 29 (1970).

APPENDIX N

*[483]

*OLIVER BROWN et al., Appellants,

v.

BOARD OF EDUCATION OF TOPEKA, Shawnee County, Kansas, et al. (No. 1.)

HARRY BRIGGS, JR., et al., Appellants,

v.

R. W. ELLIOTT et al. (No. 2.)

DOROTHY E. DAVIS et al., Appellants,

v.

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, Virginia, et al. (No. 4.)

FRANCIS B. GEBHART et al., Petitioners,

v.

ETHEL LOUISE BELTON et al. (No. 10.)

(347 US 483, 98 L ed 873, 74 S Ct 686, 38 ALR2d 1180)

SUMMARY OF DECISION

In each of the four cases involved the plaintiffs, Negro children, were denied admission to state public schools attended by white children under state laws requiring or permitting segregation according to race. There were findings below that the Negro and white schools involved had been equalized, or were being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other tangible factors.

In an opinion by WARREN, Ch. J., the Supreme Court unanimously held that the plaintiffs, by reason of the segregation complained of, were deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. The "separate but equal" doctrine announced in Plessy v. Ferguson, 163 US 537, 41 L ed 256, 16 S Ct 1138, involving equality in transportation facilities, under which equality of treatment is accorded by providing Negroes and whites substantially equal, though separate, facilities, was held to have no place in the field of public education.

In view of the complex problems presented by the formulation of the decrees, the cases were restored to the docket for argument by the parties.

SUBJECT OF ANNOTATION

Beginning on page 882

Race discrimination.

HEADNOTES

Classified to U.S. Supreme Court Digest, Annotated

Supreme Court of the United States § 70 — consolidated opinion — racial segregation.

1. Even though cases involving the validity of racial segregation laws are premised on different facts and different legal conditions, the common legal question justifies their consideration together in a consolidated opinion.

Constitutional Law § 17 — Fourteenth Amendment — construction — contemporary history.

2. The legislative history as to the adoption of the Fourteenth Amendment by Congress and its ratification by the states, the then existing practices in racial segregation, and the views of proponents and opponents of the Amendment, although casting some light, are not sufficient to resolve the question whether laws requiring or permitting segregation according to race in public schools violate the equal protection clause of the Amendment.

[*See annotation appended hereto, and annotation reference* 1.]

Constitutional Law § 9; Courts § 775 — construction of Constitution — precedents — new conditions.

3. In determining whether segregation in public schools deprives Negro students of the equal protection of laws guaranteed by the Fourteenth Amendment, the court must consider public education in the light of its full development and its present place in American life throughout the nation; the clock cannot be turned back to the time when the Amendment was adopted (1868) nor to the time when the Supreme Court announced the "separate but equal" doctrine (1896), under which equality of treatment is accorded by providing Negroes and whites substantially equal, though separate, facilities.

[*See annotation appended hereto.*]

Schools § 1 — equal opportunities.

4. Opportunity of education, where the state has undertaken to provide it, must be made available to all on equal terms.

[*See annotation references* 2, 3.]

Civil Rights § 6 — schools — racial segregation.

5. The equal protection clause of the Fourteenth Amendment prohibits the states from maintaining racially segregated public schools, even though the physical facilities and other tangible factors, such as curricula and qualifications and salaries of teachers, may be equal.

[*See annotation appended hereto, and annotation references* 2–5.]

Civil Rights § 6 — schools — separate but equal.

6. The "separate but equal" doctrine announced in Plessy v. Ferguson, 162 US 537, 41 L ed 256, 16 S Ct 1138, under which equality of treatment is accorded by providing Negroes and whites substantially equal, though separate, facilities, has no place in the field of public education.

[*See annotation appended hereto, and annotation references* 2, 3, 5.]

[Nos. 1, 2, 4, and 10.]

Argued December 8–11, 1952. Restored to the docket for reargument June 8, 1953. Reargued December 7–9, 1953. Decided May 17, 1954.

APPEAL by plaintiffs from a judgment of the United States District Court for the District of Kansas denying an injunction against enforce-

ANNOTATION REFERENCES

1. Resort to details of constitutional convention, committee reports, records, etc., as aid in construction of Constitution, 70 ALR 5.

2. Constitutional equality of school privileges as civil right, 44 L ed 262.

3. Equivalence of educational facilities extended by public school system to members of white and members of colored race, 103 ALR 713.

4. Compare 134 ALR 1276 on separation of pupils in recreational or social activities because of race, color, or religion.

5. Separate school for colored children as common or public school within contemplation of constitutional or statutory provision, 113 ALR 713.

ment of a Kansas statute permitting racial segregation in public schools (No. 1). Also

APPEAL by plaintiffs from a judgment of the United States District Ccurt for the Eastern District of South Carolina which denied an injunction abolishing segregation in the public schools of South Carolina (No. 2). Also

APPEAL by plaintiffs from a judgment of the United States District Court for the Eastern District of Virginia denying an injunction against enforcement of provisions in the Virginia Constitution and statutes requiring racial segregation in public schools (No. 4). Also

ON WRIT of Certiorari to review a judgment of the Supreme Court of Delaware affirming a judgment of the Court of Chancery which enjoined state officials from refusing Negro children admittance to the schools for whites (No. 10).

Cases restored to docket for argument as to formulation of decrees.

See same cases below, 98 F Supp 797 (No. 1); 103 F Supp 920 (No. 2); 103 F Supp 337 (No. 4); — Del —, 91 A2d 137, affg — Del Ch —, 87 A2d 862 (No. 10).

Robert L. Carter, of New York City, argued the cause on the original argument and reargument for appellants in No. 1.

Thurgood Marshall, of New York City, and **Spottswood W. Robinson III**, of Richmond, Virginia, argued the cause on the original argument and reargument for appellants in Nos. 2 and 4.

Louis L. Redding, of Wilmington, Delaware, argued the cause on the original argument, and **Jack Greenberg**, of New York City, argued the cause on the original argument and reargument, for respondents in No. 10.

Thurgood Marshall, of New York City, argued the cause on reargument for respondents in No. 10.

Robert L. Carter, Thurgood Marshall, Jack Greenberg, Constance Baker Motley, all of New York City, Spottswood W. Robinson III and Oliver W. Hill, both of Richmond, Virginia, Louis L. Redding, of Wilmington, Delaware, George E. C. Hayes and Frank D. Reeves, both of Washington, D. C., William R. Ming, Jr., of Chicago, Illinois, James M. Nabrit, Jr., of Houston, Texas, Charles S. Scott, of Topeka, Kansas, and Harold R. Boulware, of Columbia, South Carolina, were on the brief for appellants in Nos. 1, 2, and 4, and respondent in No. 10.

George M. Johnson, of Sacramento, California, was on the brief for appellants in Nos. 1, 2, and 4.

Loren Miller, of Los Angeles, California, was on the brief for appellants in Nos. 2 and 4.

Arthur D. Shores, of Birmingham, Alabama, and A. T. Walden, of Atlanta, Georgia, were on the statement as to jurisdiction and a brief opposing a motion to dismiss or affirm in No. 2.

Paul E. Wilson, Assistant Attorney General of Kansas, argued the cause on the original argument and reargument, and, with Harold R. Fatzer, Attorney General of Kansas, filed a brief for appellees in No. 1.

John W. Davis, of New York City, and **T. Justin Moore**, of Richmond, Virginia, argued the cause on the original argument and reargument, for appellees in Nos. 2 and 4.

T. C. Callison, Attorney General of South Carolina, Robert McC. Figg, Jr., of Charleston, South Carolina, S. E. Rogers, of Summerton, South Carolina, and William R. Meagher and Taggart Whipple, both of New York City, were on the briefs for appellees in No. 2.

J. Lindsay Almond, Jr., Attorney General of Virginia, argued the cause on the original argument, and, with Henry T. Wickham, T. Justin Moore, Archibald G. Robertson, John W. Riely, and T. Justin Moore, Jr., all of Richmond, Virginia, filed a brief for appellees in No. 4.

H. Albert Young, Attorney General of Delaware argued the cause on the original argument and reargument, and, with Louis J. Finger, of Wilmington, Delaware, filed a brief for petitioners in No. 10.

Assistant Attorney General J. Lee Rankin, of Washington, D. C., argued the cause on reargument, and, with Attorney General Herbert Brownell, Philip Elman, Leon Ulman, William J. Lamont, and M. Magdelena Schoch, also of Washington, D. C., filed a brief for the United States, as amicus curiae, by special leave of Court in Nos. 2 and 4.

James P. McGranery, former Attorney General, and Philip Elman, both of Washington, D. C., filed a brief for the United States on the original argument, as amicus curiae.

Shad Polier, of New York City, Will Maslow, and Joseph B. Robison, filed a brief for American Jewish Congress, in No. 1, amici curiae.

Edwin J. Lukas, Arnold Forster, Arthur Garfield Hays, Frank E. Karelsen, and Theodore Leskes, all of New York City, and Leonard Haas and Saburo Kido, filed a brief for American Civil Liberties Union et al.

John Ligtenberg, of Chicago, Illinois, and Selma M. Borchardt, of Washington, D. C., filed a brief for American Federation of Teachers.

Arthur J. Goldberg and Thomas E. Harris, both of Washington, D. C., for the Congress of Industrial Organizations, amici curiae.

Phineas Indritz, of Washington, D. C., filed a brief for American Veterans Committee, Inc., amici curiae.

Mr. Chief Justice Warren delivered the opinion of the Court.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions,

Headnote 1 but a common legal question justifies their consideration together in this consolidated opinion.[1]

1. In the Kansas case, Brown v. Board of Education, the plaintiffs are Negro children of elementary school age residing in Topeka. They brought this action in the United States District Court for the District of Kansas to enjoin enforcement of a Kansas statute which permits, but does not require, cities of more than 15,000 population to maintain separate school facilities for Negro and white students. Kan Gen Stat § 72-1724 (1949). Pursuant to that authority, the Topeka Board of Education elected to establish segregated elementary schools. Other public schools in the community, however, are operated on a nonsegregated basis. The three-judge District Court, convened under 28 USC §§ 2281 and 2284, found that segregation in public education has a detrimental effect upon Negro children, but denied relief on the ground that the Negro and white schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers. 98 F Supp 797. The case is here on direct appeal under 28 USC § 1253.

In the South Carolina case, Briggs v. Elliott, the plaintiffs are Negro children of both elementary and high school age residing in Clarendon County. They brought this action in the United States District Court for the Eastern District of South Carolina to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. SC Const, Art 11, § 7; SC Code § 5377 (1942). The three-judge District Court, convened under 28 USC §§ 2281 and 2284, denied the requested relief. The court found that the Negro schools were inferior to the white schools and ordered the defendants to begin immediately to equalize the facilities. But the court sustained the validity of the contested provisions and denied the plaintiffs admission to the white schools during the equalization program. 98 F Supp 529. This Court vacated the District Court's judgment and remanded the case for the purpose of obtaining the court's views on a report filed by the defendants concerning the progress made in the equalization program. 342 US 350, 96 L ed 392, 72 S Ct 327. On remand, the District Court found that substantial equality had been achieved except for buildings and that the defendants were proceeding to rectify this inequality as well. 103 F Supp 920 The case is again here on direct appeal under 28 USC § 1253.

In the Virginia case, Davis v. County School Board, the plaintiffs are Negro children of high school age residing in Prince Edward County. They brought this action in the United States District Court for the Eastern District of Virginia to enjoin enforcement of provisions in the

*[487]

*In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each

*[488]

instance, *they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in Plessy v. Ferguson, 163 US 537, 41 L ed 256, 16 S Ct 1138. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction.[2] Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.[3]

*[489]

*Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices

---

state constitution and statutory code which require the segregation of Negroes and whites in public schools. Va Const, § 140; Va Code § 22-221 (1950). The three-judge District Court, convened under 28 USC §§ 2281 and 2284, denied the requested relief. The court found the Negro school inferior in physical plant, curricula, and transportation, and ordered the defendants forthwith to provide substantially equal curricula and transportation and to "proceed with all reasonable diligence and dispatch to remove" the inequality in physical plant. But, as in the South Carolina case, the court sustained the validity of the contested provisions and denied the plaintiffs admission to the white schools during the equalization program. 103 F Supp 337. The case is here on direct appeal under 28 USC § 1253.

In the Delaware case, Gebhart v. Belton, the plaintiffs are Negro children of both elementary and high school age residing in New Castle County. They brought this action in the Delaware Court of Chancery to enjoin enforcement of provisions in the state constitution and statutory code which require the segregation of Negroes and whites in public schools. Del Const, Art 10, § 2; Del Rev Code § 2631 (1935). The Chancellor gave judgment for the plaintiffs and ordered their immediate admission to schools previously attended only by white children, on the ground that the Negro schools were inferior with respect to teacher training, pupil-teacher ratio, extracurricular activities, physical plant, and time and distance involved in travel. — Del Ch —, 87 A2d 862. The Chancellor also found that segregation itself results in an inferior education for Negro children (see note 10, infra), but did not rest his decision on that ground. Id. 87 A2d at 865. The Chancellor's decree was affirmed by the Supreme Court of Delaware, which intimated, however, that the defendants might be able to obtain a modification of the decree after equalization of the Negro and white schools had been accomplished. — Del —, 91 A2d 137, 152. The defendants, contending only that the Delaware courts had erred in ordering the immediate admission of the Negro plaintiffs to the white schools, applied to this Court for certiorari. The writ was granted, 344 US 891, 97 L ed 689, 73 S Ct 213. The plaintiffs, who were successful below, did not submit a cross-petition.

2. 344 US 1, 141, 891, 97 L ed 3, 152, 689, 73 S Ct 1, 124, 213.

3. 345 US 972, 97 L ed 1388, 73 S Ct 1114. The Attorney General of the United States participated both Terms as amicus curiae.

in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation

Headnote 2 convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time.[4] In the South, the movement toward

*[490]

free common schools, supported *by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost nonexistent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences as well as in the business and professional world. It is true that public school education at the time of the Amendment had advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states; and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court interpreted it as proscribing all state-imposed discriminations against the Negro race.[5]

*[491]

The doctrine of *"separate but equal" did not make its appearance

4. For a general study of the development of public education prior to the Amendment, see Butts and Cremin, A History of Education in American Culture (1953), Pts. I, II; Cubberley, Public Education in the United States (1934 ed), chs II–XII. School practices current at the time of the adoption of the Fourteenth Amendment are described in Butts and Cremin, supra, at 269–275; Cubberley, supra, at 288–339, 408–431; Knight, Public Education in the South (1922), chs VIII, IX. See also H Ex Doc No. 315, 41st Cong, 2d Sess (1871). Although the demand for free public schools followed substantially the same pattern in both the North and the South, the development in the South did not begin to gain momentum until about 1850, some twenty years after that in the North. The reasons for the somewhat slower development in the South (e. g., the rural character of the South and the different regional attitudes toward state assistance) are well explained in Cubberley, supra, at 408–423. In the country as a whole, but particularly in the South, the War virtually stopped all progress in public education. Id., at 427–428. The low status of Negro education in all sections of the country, both before and immediately after the War, is described in Beale, A History of Freedom of Teaching in American Schools (1941), 112–132, 175–195. Compulsory school attendance laws were not generally adopted until after the ratification of the Fourteenth Amendment, and it was not until 1918 that such laws were in force in all the states. Cubberley, supra, at 563–565.

5. Slaughter-House Cases (US) 16 Wall 36, 67–72, 21 L ed 394, 405–407 (1873); Strauder v. West Virginia, 100 US 303, 307, 308, 25 L ed 664–666 (1880):

in this Court until 1896 in the case of Plessy v. Ferguson (US) supra, involving not education but transportation.[6] American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the "separate but equal" doctrine in the field of public education.[7] In Cumming v. County Board of Education, 175 US 528, 44 L ed 262, 20 S Ct 197, and Gong Lum v. Rice, 275 US 78, 72 L ed 172, 48 S Ct 91, the validity of the doctrine itself was not challenged.[8] In more recent cases, all on the graduate school

*[492]

*level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. Missouri ex rel. Gaines v. Canada, 305 US 337, 83 L ed 208, 59 S Ct 232; Sipuel v. University of Oklahoma, 332 US 631, 92 L ed 247, 68 S Ct 299; Sweatt v. Painter, 339 US 629, 94 L ed 1114, 70 S Ct 848; McLaurin v. Oklahoma State Regents, 339 US 637, 94 L ed 1149, 70 S Ct 851. In none of these cases was it necessary to reexamine the doctrine to grant relief to the Negro plaintiff. And in Sweatt v. Painter (US) supra, the Court expressly reserved decision on the question whether Plessy v. Ferguson should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here, unlike Sweatt v. Painter, there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors.[9] Our decision, therefore, cannot turn on merely a

---

"It ordains that no State shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color? The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race,—the right to exemption from unfriendly legislation against them distinctively as colored,—exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race."

See also Virginia v. Rives, 100 US 313, 318, 25 L ed 667, 669 (1880); Ex parte Virginia, 100 US 339, 344, 345, 25 L ed 676, 678, 679 (1880).

6. The doctrine apparently originated in Roberts v. Boston, 5 Cush 198, 206 (1850, Mass), upholding school segregation against attack as being violative of a state constitutional guarantee of equality. Segregation in Boston public schools was eliminated in 1855. Mass Acts 1855, ch 256. But elsewhere in the North segregation in public education has persisted in some communities until recent years. It is apparent that such segregation has long been a nationwide problem, not merely one of sectional concern.

7. See also Berea College v. Kentucky, 211 US 45, 53 L ed 81, 29 S Ct 33 (1908).

8. In the Cumming Case, Negro taxpayers sought an injunction requiring the defendant school board to discontinue the operation of a high school for white children until the board resumed operation of a high school for Negro children. Similarly, in the Gong Lum Case, the plaintiff, a child of Chinese descent, contended only that state authorities had misapplied the doctrine by classifying him with Negro children and requiring him to attend a Negro school.

9. In the Kansas case, the court below found substantial equality as to all such factors. 98 F Supp 797, 798. In the South Carolina case, the court below found that the defendants were proceeding "promptly and in good faith to comply with the court's decree." 103 F Supp 920, 921. In the Virginia case, the court below noted that the equalization program was already "afoot and progressing" (103 F Supp 337, 341); since then, we have been advised, in the Virginia Attorney General's brief on reargument, that the program has

comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its present place in American life

Headnote 3

*[493]

throughout *the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Headnote 4

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

Headnote 5

In Sweatt v. Painter (US) supra, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In McLaurin v. Oklahoma State Regents, 339 US 637, 94 L ed 1149, 70 S Ct 851, supra, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: ". . . his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profes-

*[494]

sion." *Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of Negro children and to deprive

now been completed. In the Delaware case, the court below similarly noted that the state's equalization program was well under way. — Del —, 91 A2d 137, 149.

them of some of the benefits they would receive in a racial[ly] integrated school system."[10]

Whatever may have been the extent of psychological knowledge at the time of Plessy v. Ferguson, this finding is amply supported by modern authority.[11] Any language

*[495]

*in Plessy v. Ferguson contrary to this finding is rejected.

We conclude that in the field of public education the doctrine of "separate but equal" has

Headnote 6

no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.[12]

Because these are class actions, because of the wide applicability of this decision, and because of the great variety of local conditions, the formulation of decrees in these cases presents problems of considerable complexity. On reargument, the consideration of appropriate relief was necessarily subordinated to the primary question—the constitutionality of segregation in public education. We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term.[13] The

*[496]

Attorney General *of the United

10. A similar finding was made in the Delaware case: "I conclude from the testimony that in our Delaware society, State-imposed segregation in education itself results in the Negro children, as a class, receiving educational opportunities which are substantially inferior to those available to white children otherwise similarly situated." — Del Ch —, 87 A2d 862, 865.

11. K. B. Clark, Effect of Prejudice and Discrimination on Personality Development (Midcentury White House Conference on Children and Youth, 1950); Witmer and Kotinsky, Personality in the Making (1952), ch VI; Deutscher and Chein, The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion, 26 J Psychol 259 (1948); Chein, What are the Psychological Effects of Segregation Under Conditions of Equal Facilities?, 3 Int J Opinion and Attitude Res 229 (1949); Brameld, Educational Costs, in Discrimination and National Welfare (MacIver, ed, 1949), 44–48; Frazier, The Negro in the United States (1949), 674–681. And see generally Myrdal, An American Dilemma (1944).

12. See Bolling v. Sharpe, 347 US 497, 98 L ed 884, 74 S Ct 693, post, p 884, concerning the Due Process Clause of the Fifth Amendment.

13. "4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

"(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

"(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?

"5. On the assumption on which questions 4 (a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (b),

"(a) should this Court formulate detailed decrees in these cases;

"(b) if so, what specific issues should the decrees reach;

"(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as amici curiae upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954.[14]

It is so ordered.

14. See Rule 42, Revised Rules of this Court (effective July 1, 1954).

ANNOTATION

Race discrimination—Supreme Court cases

[See US Digest, Anno: Civil Rights §§ 1–13.]

[a] Generally.

This annotation supplements the earlier ones in 94 L ed 1121 and 96 L ed 1291.[1]

In the past the law touching upon race discrimination has been greatly affected by the "separate but equal" doctrine, first announced in Plessy v. Ferguson (1896) 163 US 537, 41 L ed 256, 16 S Ct 1138, by which enforced separation of the races is validated by, and its validity is dependent upon, the equality of the separate facilities.

In a decision which is a landmark in constitutional law, the United States Supreme Court, in Brown v. Board of Education (1954) 347 US 483, 98 L ed 873, 74 S Ct 686, 38 ALR2d 1180, has held that the "separate but equal" doctrine has no place in the field of public education. Although the Supreme Court has not expressly overruled Plessy v. Ferguson (US) supra, the doubt which might be expected to exist with regard to the continued applicability of the separate but equal doctrine in fields other than that of public education has been considerably lessened by the Court's action in such fields.[2]

Moreover, in finding in the Brown Case that segregation of white and colored children in public schools has a detrimental psychological effect upon the colored children, the court expressly rejected any language in Plessy v. Ferguson contrary to this finding. Plessy v. Ferguson, dealing with segregation in trains, contains no language concerning segregation of Negroes in public schools. The only language in the Plessy Case which may be fairly said to be "contrary to this finding" is the following: "Laws permitting, and even requiring their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other . . . . We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it." If this language is rejected, it must be rejected in its totality, and not in its conceivable application to public education only.

The decision in the Brown Case vindicates Mr. Justice Harlan's dissent in Plessy v. Ferguson, where he said: "Our Constitution is color-blind, and neither knows or tolerates classes among citizens."

1. As to racial discrimination in selection of grand or petit jury as prohibited by Federal Constitution, see the United States Supreme Court cases collected in an annotation in 94 L ed 856, supplemented in 97 L ed 1249.

See also Hernandez v. Texas (1954) 347 US 475, 98 L ed 866, 74 S Ct 667, where it was held that exclusion of persons of Mexican descent from jury service amounted to a denial of equal protection.

2. See [d], infra.

SOURCE: Brown v Board of Education of Topeka, 347 U. S. 483 (1954).

APPENDIX O

COMPULSORY SCHOOL ATTENDANCE AGE LIMITS: 50 STATES, THE DISTRICT OF COLUMBIA, AND PUERTO RICO, SELECTED YEARS FROM 1887 TO 1965

STATE	1887	1915	1935	1959	1965
Alabama	----	----	7-16	7-16	7-16
Alaska	----	----	7-16	7-16	7-16
Arizona	----	8-16	8-16	8-16	8-16
California	8-14	7-15	8-16	8-16	8-16
Colorado	----	8-16	8-16	8-16	7-16
Connecticut	8-16	7-16	7-16	7-16	7-16
Delaware	----	7-14	7-17	7-16	7-16
District of Columbia	8-14	8-14	7-16	7-16	7-16
Florida	----	----	7-16	7-16	7-16
Georgia	----	----	8-14	7-16	7-16
Hawaii	----	6-15	6-14	6-16	6-16
Idaho	8-14	8-18	8-18	7-16	7-16
Illionis	7-14	7-16	7-16	7-16	7-16
Indiana	----	7-16	7-16	7-16	7-16
Iowa	----	7-16	7-16	7-16	7-16
Kansas	8-14	8-15	7-16	7-16	7-16
Kentucky	----	7-16	7-16	7-16	7-16
Louisiana	----	8-16	7-14	7-16	7-16
Maine	8-15	7-15	7-16	7-16	7-17
Maryland	----	8-16	7-16	7-16	7-16
Massachusetts	8-14	7-16	7-16	7-16	7-16
Michigan	8-14	7-16	7-16	6-16	6-16
Minnesota	8-16	8-16	8-16	7-16	7-16
Mississippi	----	----	7-17	----	----
Missouri	----	8-16	7-16	7-16	7-16
Montana	8-14	8-16	8-16	7-16	7-16
Nebraska	8-14	7-15	7-16	7-16	7-16
Nevada	8-14	8-16	7-18	7-17	7-17
New Hampshire	6-16	8-16	8-16	6-16	6-16
New Jersey	7-16	7-16	7-16	7-16	6-16
New Mexico	----	7-14	6-17	6-17	6-17
New York	8-14	8-16	7-16	7-16	7-16
North Carolina	----	8-12	7-14	7-16	7-16
North Dakota	10-14	8-15	7-17	7-16	7-16
Ohio	8-16	8-16	6-18	[1]6-18	[1]6-18
Oklahoma	----	8-16	8-18	7-18	7-18
Oregon	----	9-15	8-16	7-18	7-18
Pennsylvania	----	8-16	8-16	8-17	8-17
Puerto Rico	----	8-14	8-14	8-14	8-16
Rhode Island	7-15	7-15	7-16	7-16	7-16
South Carolina	----	----	8-14	----	----
South Dakota	10-14	8-14	8-17	7-16	7-16

STATE	1887	1915	1935	1959	1965
Tennessee	----	8-16	7-17	7-17	7-17
Texas	----	----	7-16	7-16	7-17
Utah	----	8-16	8-18	6-18	6-18
Vermont	8-14	8-16	8-16	7-16	7-16
Virginia	----	[2]8-12	7-15	[2]7-16	[2]7-16
Washington	8-18	8-16	8-16	8-16	8-16
West Virginia	----	8-15	7-16	7-16	7-16
Wisconsin	7-15	7-16	7-16	7-16	7-16
Wyoming	7-16	7-14	7-16	7-16	7-17

SOURCE: U. S., Department of Health Education and Welfare State Law on Compulsory Attendance, by August W. Steinhilber and Carl J. Sokolowski (Washington, D. C.: U. S. Government Printing Office, 1966), p.3 table 2.

NOTE: Where there is no entry, a State had no compulsory attendance law for the year reported. The laws typically permit exemptions for children within the age ranges for several reasons, such as completion of certain grades or under certain conditions, employment.

1 May be changed locally to 7-18.
2 If law is adopted locally.

APPENDIX P

STATE OF WISCONSIN v JONAS YODER

[406 US 205]

STATE OF WISCONSIN, Petitioner,

v

JONAS YODER et al.

406 US 205, 32 L Ed 2d 15, 92 S Ct 1526

[No. 70-110]

Argued December 8, 1971. Decided May 15, 1972.

SUMMARY

The defendants, who were members of the Amish faith, refused to send their children, aged 14 and 15, to public school after the children had completed the eighth grade. In Green County Court, Wisconsin, the defendants were convicted for violating Wisconsin's compulsory school attendance law requiring children to attend school until the age of 16. The Wisconsin Circuit Court affirmed the convictions, but the Wisconsin Supreme Court, sustaining the defendants' claims that their First Amendment right to free exercise of religion had been violated, reversed the convictions (49 Wis 2d 430, 182 NW2d 539).

On certiorari, the United States Supreme Court affirmed. In an opinion by BURGER, Ch. J., expressing the views of six members of the court, it was held (1) that secondary schooling, by exposing Amish children to worldly influences in terms of attitudes, goals, and values contrary to sincere religious beliefs, and by substantially interfering with the religious development of the Amish child and his integration into the way of life of the Amish faith community at the crucial adolescent state of development, contravened the basic religious tenets and practice of the Amish faith, both as to the parent and the child; (2) that since accommodating the religious objections of the Amish by forgoing one, or at most two, additional years of compulsory education would not impair the physical or mental health of the child, nor result in an inability to be self-supporting, or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society, the state's interest in its system of compulsory education was not so compelling that the established religious practices of the Amish had to give way; and (3) that since it was the parents who were subject to prosecution for failing to cause their children to attend school, and since the record did not indicate that the parents' preventing their children from attending school was against the children's expressed desires, it was the parents'

Briefs of Counsel, p 821, infra.

right of the exercise of religion, not the children's right, which had to determine Wisconsin's power to impose criminal penalties on the parent.

STEWART, J., joined by BRENNAN, J., concurring, joined in the court's opinion and stated that the case in no way involved any questions regarding the right of the children of Amish parents to attend public high schools, or any other institutions of learning, if they wished to do so.

WHITE, J., joined by BRENNAN and STEWART, JJ., concurring, joined in the court's opinion on the grounds that it could not be said that the state's interest in requiring 2 more years of compulsory education in the ninth and tenth grades outweighed the importance of the concededly sincere Amish religious practice to the survival of that sect.

DOUGLAS, J., dissenting in part, stated that the religious views of the child whose parent was the subject of the suit were crucial, and that although the judgment below was properly affirmed as to one of the defendants, whose child had testified that her own religious views were opposed to high-school education, the case should be remanded as to the other defendants, so that their children could be given an opportunity to be heard.

POWELL and REHNQUIST, JJ., did not participate.

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

16 AM JUR 2d, Constitutional Law §§ 336–340; AM JUR 2d, Schools (1st ed §§ 156, 159)

US L Ed DIGEST, Constitutional Law §§ 936, 937; Schools § 1

ALR DIGESTS, Constitutional Law §§ 797, 798; Schools § 59

L ED INDEX TO ANNO, Constitutional Law; Schools

ALR QUICK INDEX, Religion and Religious Matters; Schools

FEDERAL QUICK INDEX, Religion and Religious Matters; Schools and School Districts

ANNOTATION REFERENCES

Provisions of Federal Constitution concerning establishment and freedom of religion—Supreme Court cases. 96 L Ed 968, 6 L Ed 2d 1394, 21 L Ed 2d 928.

What provisions of the Federal Constitution's Bill of Rights are applicable to the states. 18 L Ed 2d 1388, 23 L Ed 2d 985.

Religious beliefs of parents as defense to prosecution for failure to comply with compulsory education law. 3 ALR2d 1401.

HEADNOTES

Classified to U. S. Supreme Court Digest, Annotated

Schools § 1 — power of state

1. A state has the power to impose reasonable regulations for the control and duration of basic education.

Constitutional Law § 937 — free exercise of religion — education

2. A state's interest in universal education is not totally free from a balancing process when it impinges on other fundamental rights and interests, such as those specifically protected by the free exercise of religion clause of the First Amendment and the traditional interest of parents with respect to the religious upbringing of their children, so long as the parents prepare the children for additional obligations.

Constitutional Law § 937 — free exercise of religion — school attendance

3. In order for a state to compel school attendance beyond the eighth grade against a claim that such attendance interferes with the practice of a legitimate religious belief, it must appear either that the state does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the free exercise of religion clause.

Constitutional Law § 936 — free exercise of religion

4. Only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.

Schools § 1 — compulsory education

5. However strong the state's interest in universal compulsory education, it is by no means absolute to the exclusion or subordination of all other interests.

Constitutional Law § 937 — religious freedom — education

6. A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the religion clauses of the First Amendment, the claims must be rooted in religious belief.

Constitutional Law § 936 — religious freedom

7. Although a determination of what is a "religious" belief or practice entitled to constitutional protection may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests.

Constitutional Law § 936 — free exercise of religion

8. If claims of encroachment upon the free exercise of religion are asserted by members of a religious faith because of their subjective evaluation and rejection of the contemporary secular values accepted by the majority, their claims do not rest on a religious basis.

Constitutional Law § 936 — free exercise of religion

9. A belief which is philosophical and personal rather than religious does not rise to the demands of the free exercise of religion clause of the First Amendment.

Constitutional Law § 937 — free exercise of religion — school attendance

10. The traditional way of life of the Amish is not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living; the values and programs of the modern secondary school are in sharp conflict with the fundamental mode of life mandated by the Amish religion; secondary schooling, by exposing Amish children to worldly influences in terms of attitudes,

goals, and values contrary to sincere religious beliefs, and by substantially interfering with the religious development of the Amish child and his integration into the way of life of the Amish faith community at the crucial adolescent state of development, contravenes the basic religious tenets and practice of the Amish faith, both as to the parent and the child; compulsory school attendance until the age of 16 for Amish children carries with it a very real threat of undermining the Amish community and religious practice as it currently exists; thus, enforcement of a state's requirement of compulsory formal education after the eighth grade would gravely endanger, if not destroy, the free exercise of Amish religious beliefs.

Constitutional Law § 936 — religiously grounded conduct

11. Activities of individuals, even when religiously based, are often subject to regulation by the states in the exercise of their power to promote the health, safety, and general welfare, or by the federal government in the exercise of its delegated powers; but areas of religiously grounded conduct, as well as religious beliefs, are protected by the free exercise of religion clause of the First Amendment and thus are beyond the power of the state to control, even under regulations of general applicability.

Constitutional Law § 936 — free exercise of religion

12. A regulation neutral on its face may, in its application, nevertheless offend the constitutional requirement of governmental neutrality if it unduly burdens the free exercise of religion.

Constitutional Law § 937 — free exercise of religion — school attendance

13. A state's interest in its system of compulsory education is not so compelling that the established religious practices of the Amish must give way to a state law providing for compulsory secondary school attendance until the age of 16, where accommodating the religious objections of the Amish by forgoing one, or at most two, additional years of compulsory education will not impair the physical or mental health of the child, nor result in an inability to be self-supporting, or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society.

Evidence § 161.5 — presumptions

14. Absent some contrary evidence, it will not be assumed that members of the Amish faith who possess valuable vocational skills and such qualities as reliability, self-reliance, and dedication to work, are doomed to become burdens on society should they determine to leave the Amish faith.

Constitutional Law § 937 — free exercise of religion — school attendance

15. The right of parents to free exercise of religion, not the right of their children, must determine a state's power to impose criminal penalties on the parent for failing to cause the child to attend school, where there is no indication that the parent's preventing the child from attending school is against the child's expressed desires.

Constitutional Law § 937 — free exercise of religion — school attendance

16. More than merely a reasonable relation to some purpose within the competency of the state is required to sustain the validity, under the First Amendment, of a state's requirement of secondary school attendance, where Amish parents' interests of parenthood are combined with a claim that such compulsory attendance violates free exercise of religion.

Constitutional Law § 936 — free exercise of religion

17. The power of a parent to direct the religious upbringing of a child, even when linked to a claim of free exercise of religion, may be subject to limitation if it appears that parental

decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens.

Constitutional Law § 937 — free exercise of religion — school attendance

18. On the basis of the constitutional guaranty of free exercise of religion, the First and Fourteenth Amendments prevent a state from compelling members of the Amish faith to cause their children to attend formal high school until the age of 16.

Constitutional Law § 936 — establishment of religion — exemption from compulsory education

19. A state court decision recognizing an exemption for the Amish from the state's system of compulsory education does not constitute an impermissible establishment of religion, where (1) accommodating the religious beliefs of the Amish cannot be characterized as sponsorship or active involvement, and (2) the purpose and effect of such an exemption are not to support, favor, advance, or assist the Amish, but to allow their centuries-old religious society, which existed in the state long before the advent of any compulsory education, to survive free from the heavy impediment which compliance with the state compulsory-education law would impose; such an accommodation reflects nothing more than the governmental obligation of neutrality in the face of religious differences, and does not represent that involvement of religious with secular institutions which it is the object of the establishment of religion clause to forestall.

Constitutional Law § 937 — free exercise of religion — education

20. Courts must move with great circumspection in performing the sensitive and delicate task of weighing a state's legitimate social concern when faced with religious claims, under the First Amendment, for exemption from generally applicable education requirements.

SYLLABUS BY REPORTER OF DECISIONS

Respondents, members of the Old Order Amish religion and the Conservative Amish Mennonite Church, were convicted of violating Wisconsin's compulsory school-attendance law (which requires a child's school attendance until age 16) by declining to send their children to public or private school after they had graduated from the eighth grade. The evidence showed that the Amish provide continuing informal vocational education to their children designed to prepare them for life in the rural Amish community. The evidence also showed that respondents sincerely believed that high school attendance was contrary to the Amish religion and way of life and that they would endanger their own salvation and that of their children by complying with the law. The State Supreme Courts sustained respondents' claim that application of the compulsory school-attendance law to them violated their rights under the Free Exercise Clause of the First Amendment, made applicable to the States by the Fourteenth Amendment *Held:*

1. The State's interest in universal education is not totally free from a balancing process when it impinges on other fundamental rights, such as those specifically protected by the Free Exercise Clause of the First Amendment and the traditional interest of parents with respect to the religious upbringing of their children.

2. Respondents have amply supported their claim that enforcement of the compulsory formal education requirement after the eighth grade would gravely endanger if not destroy the free exercise of their religious beliefs.

3. Aided by a history of three centuries as an identifiable religious sect and a long history as a successful and self-sufficient segment of American society, the Amish have demonstrated the sincerity of their religious beliefs, the interrelationship of belief with their mode of life, the vital role that belief and daily conduct play in the continuing survival of Old Order Amish communities, and the hazards presented by the State's enforcement of a statute generally valid as to others. Beyond this,

they have carried the difficult burden of demonstrating the adequacy of their alternative mode of continuing informal vocational education in terms of the overall interests that the State relies on in support of its program of compulsory high school education. In light of this showing, and weighing the minimal difference between what the State would require and what the Amish already accept, it was incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption to the Amish.

4. The State's claim that it is empowered, as parens patriae, to extend the benefit of secondary education to children regardless of the wishes of their parents cannot be sustained against a free exercise claim of the nature revealed by this record, for the Amish have introduced convincing evidence that accommodating their religious objections by forgoing one or two additional years of compulsory education will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society.

49 Wis 2d 430, 182 NW2d 539, affirmed.

Burger, C. J., delivered the opinion of the Court, in which Brennan, Stewart, White, Marshall, and Blackmun, JJ., joined. Stewart, J., filed a concurring opinion, in which Brennan, J., joined, post, p 237, 32 L Ed 2d p 37. White, J., filed a concurring opinion, in which Brennan and Stewart, JJ., joined, post, p 237, 32 L Ed 2d p 38. Douglas, J., filed an opinion dissenting in part, post, p 241, 32 L Ed 2d p 40. Powell and Rehnquist, JJ., took no part in the consideration or decision of the case.

APPEARANCES OF COUNSEL

John William Calhoun argued the cause for the petitioner.

William Bentley Ball argued the cause for the respondent.

Briefs of Counsel, p 821, infra.

OPINION OF THE COURT

[406 US 207]

Mr. Chief Justice **Burger** delivered the opinion of the Court.

On petition of the State of Wisconsin, we granted the writ of certiorari in this case to review a decision of the Wisconsin Supreme Court holding that respondents' convictions for violating the State's compulsory school-attendance law were invalid under the Free Exercise Clause of the First Amendment to the United States Constitution made applicable to the States by the Fourteenth Amendment. For the reasons hereafter stated we affirmed the judgment of the Supreme Court of Wisconsin.

Respondents Jonas Yoder and Wallace Miller are members of the Old Order Amish religion, and respondent Adin Yutzy is a member of the Conservative Amish Mennonite Church. They and their families are residents of Green County, Wisconsin. Wisconsin's compulsory school-attendance law required them to cause their children to attend public or private school until reaching age 16 but the respondents declined to send their children, ages 14 and 15, to public school after they completed the eighth grade.[1] The children were not enrolled in any private school, or within any recognized exception to the compulsory-attendance law,[2] and they are conceded to

1. The children, Frieda Yoder, aged 15, Barbara Miller, aged 15, and Vernon Yutzy, aged 14, were all graduates of the eighth grade of public school.

2. Wis Stat § 118.15 (1969) provides in pertinent part:

"118.15 *Compulsory school attendance*

"(1)(a) Unless the child has a legal ex-

be subject to the Wisconsin statute.

[406 US 208]

On complaint of the school district administrator for the public schools, respondents were charged, tried, and convicted of violating the compulsory-attendance law in Green County Court and were fined the sum of $5 each.[3] Respondents defended on the ground that the application

[406 US 209]

of the compulsory-attendance law violated their rights under the First and Fourteenth Amendments.[4] The trial testimony showed that respondents believed, in accordance with the tenets of Old Order Amish communities generally, that their children's attendance at high school, public or private, was contrary to the Amish religion and way of life. They believed that by sending their children to high school, they would not only expose themselves to the danger of the censure of the church community, but, as found by the county court, also endanger their own salvation and that of their children. The State stipulated that respondents' religious beliefs were sincere.

In support of their position, respondents presented as expert witnesses scholars on religion and edu-

---

cuse or has graduated from high school, any person having under his control a child who is between the ages of 7 and 16 years shall cause such child to attend school regularly during the full period and hours, religious holidays excepted, that the public or private school in which such child should be enrolled is in session until the end of the school term, quarter or semester of the school year in which he becomes 16 years of age.

. . . . . .

"(3) This section does not apply to any child who is not in proper physical or mental condition to attend school, to any child exempted for good cause by the school board of the district in which the child resides or to any child who has completed the full 4-year high school course. The certificate of a reputable physician in general practice shall be sufficient proof that a child is unable to attend school.

"(4) Instruction during the required period elsewhere than at school may be substituted for school attendance. Such instruction must be approved by the state superintendent as substantially equivalent to instruction given to children of like ages in the public or private schools where such children reside.

"(5) Whoever violates this section . . . may be fined not less than $5 nor more than $50 or imprisoned not more than 3 months or both."

Section 118.15(1)(b) requires attendance to age 18 in a school district containing a "vocational, technical and adult education school," but this section is concededly inapplicable in this case, for there is no such school in the district involved.

3. Prior to trial, the attorney for respondents wrote the State Superintendent of Public Instruction in an effort to explore the possibilities for a compromise settlement. Among other possibilities, he suggested that perhaps the State Superintendent could administratively determine that the Amish could satisfy the compulsory-attendance law by establishing their own vocational training plan similar to one that has been established in Pennsylvania, Supp App 6. Under the Pennsylvania plan, Amish children of high school age are required to attend an Amish vocational school for three hours a week, during which time they are taught such subjects as English, mathematics, health, and social studies by an Amish teacher. For the balance of the week, the children perform farm and household duties under parental supervision, and keep a journal of their daily activities. The major portion of the curriculum is home projects in agriculture and homemaking. See generally J. Hostetler & G. Huntington, Children in Amish Society: Socialization and Community Education, c. 5 (1971). A similar program has been instituted in Indiana. Ibid. See also Iowa Code § 299-24 (1971); Kan Stat Ann § 72-1111 (Supp 1971).

The Superintendent rejected this proposal on the ground that it would not afford Amish children "substantially equivalent education" to that offered in the schools of the area. Supp App 6.

4. The First Amendment provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."

cation whose testimony is uncontradicted. They expressed their opinions on the relationship of the Amish belief concerning school attendance to the more general tenets of their religion, and described the impact that compulsory high school attendance could have on the continued survival of Amish communities as they exist in the United States today. The history of the Amish

[406 US 210]

sect was given in some detail, beginning with the Swiss Anabaptists of the 16th century who rejected institutionalized churches and sought to return to the early, simple, Christian life de-emphasizing material success, rejecting the competitive spirit, and seeking to insulate themselves from the modern world. As a result of their common heritage, Old Order Amish communities today are characterized by a fundamental belief that salvation requires life in a church community separate and apart from the world and wordly influence. This concept of life aloof from the world and its values is central to their faith.

A related feature of Old Order Amish communities is their devotion to a life in harmony with nature and the soil, as exemplified by the simple life of the early Christian era that continued in America during much of our early national life. Amish beliefs require members of the community to make their living by farming or closely related activities. Broadly speaking, the Old Order Amish religion pervades and determines the entire mode of life of its adherents. Their conduct is regulated in great detail by the Ordnung, or rules, of the church community. Adult baptism, which occurs in late adolescence, is the time at which Amish young people voluntarily undertake heavy obligations, not unlike the Bar Mitzvah of the Jews, to abide by the rules of the church community.[5]

Amish objection to formal education beyond the eighth grade is firmly grounded in these central religious concepts. They object to the high school, and higher education generally, because the values they teach

[406 US 211]

are in marked variance with Amish values and the Amish way of life; they view secondary school education as an impermissible exposure of their children to a "worldly" influence in conflict with their beliefs. The high school tends to emphasize intellectual and scientific accomplishments, self-distinction, competitiveness, worldly success, and social life with other students. Amish society emphasizes informal learning-through-doing; a life of "goodness," rather than a life of intellect; wisdom, rather than technical knowledge; community welfare, rather than competition; and separation from, rather than integration with, contemporarily worldly society.

Formal high school education beyond the eighth grade is contrary to Amish beliefs, not only because it places Amish children in an environment hostile to Amish beliefs with increasing emphasis on competition in class work and sports and with pressure to conform to the styles, manners, and ways of the peer group, but also because it takes them away from their community, physically and emotionally, during the crucial and formative adolescent period of life. During this period, the children must acquire Amish attitudes favor-

5. See generally J. Hostetler, Amish Society (1968); J. Hostetler & G. Huntington, Children in Amish Society (1971); Littell, Sectarian Protestantism and the Pursuit of Wisdom: Must Technological Objectives Prevail?, in Public Controls for Nonpublic Schools 61 (D. Erickson ed 1969).

ing manual work and self-reliance and the specific skills needed to perform the adult role of an Amish farmer or housewife. They must learn to enjoy physical labor. Once a child has learned basic reading, writing, and elementary mathematics, these traits, skills, and attitudes admittedly fall within the category of those best learned through example and "doing" rather than in a classroom. And, at this time in life, the Amish child must also grow in his faith and his relationship to the Amish community if he is to be prepared to accept the heavy obligations imposed by adult baptism. In short, high school attendance with teachers who are not of the Amish faith—and may even be hostile to it—interposes a serious barrier to the integration of the Amish child into

[406 US 212]

the Amish religious community. Dr. John Hostetler, one of the experts on Amish society, testified that the modern high school is not equipped, in curriculum or social environment, to impart the values promoted by Amish society.

The Amish do not object to elementary education through the first eight grades as a general proposition because they agree that their children must have basic skills in the "three R's" in order to read the Bible, to be good farmers and citizens, and to be able to deal with non-Amish people when necessary in the course of daily affairs. They view such a basic education as acceptable because it does not significantly expose their children to worldly values or interfere with their development in the Amish community during the crucial adolescent period. While Amish accept compulsory elementary education generally, wherever possible they have established their own elementary schools in many respects like the small local schools of the past. In the Amish belief higher learning tends to develop values they reject as influences that alienate man from God.

On the basis of such considerations, Dr. Hostetler testified that compulsory high school attendance could not only result in great psychological harm to Amish children, because of the conflicts it would produce, but would also, in his opinion, ultimately result in the destruction of the Old Order Amish church community as it exists in the United States today. The testimony of Dr. Donald A. Erickson, an expert witness on education, also showed that the Amish succeed in preparing their high school age children to be productive members of the Amish community. He described their system of learning through doing the skills directly relevant to their adult roles in the Amish community as "ideal" and perhaps superior to ordinary high school education. The evidence also showed that the Amish have an excellent

[406 US 213]

record as law-abiding and generally self-sufficient members of society.

Although the trial court in its careful findings determined that the Wisconsin compulsory school-attendance law "does interfere with the freedom of the Defendants to act in accordance with their sincere religious belief" it also concluded that the requirement of high school attendance until age 16 was a "reasonable and constitutional" exercise of governmental power, and therefore denied the motion to dismiss the charges. The Wisconsin Circuit Court affirmed the convictions. The Wisconsin Supreme Court, however, sustained respondents' claim under the Free Exercise Clause of the First Amendment and reversed the convictions. A majority of the court

was of the opinion that the State had failed to make an adequate showing that its interest in "establishing and maintaining an educational system overrides the defendants' right to the free exercise of their religion." 49 Wis 2d 430, 447, 182 NW2d 539, 547 (1971).

I

[1, 2] There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education. See, e. g., Pierce v Society of Sisters, 268 US 510, 534, 69 L Ed 1070, 1077, 45 S Ct 571, 39 ALR 468 (1925). Providing public schools ranks at the very apex of the function of a State. Yet even this paramount responsibility was, in Pierce, made to yield to the right of parents to provide an equivalent education in a privately operated system. There the Court held that Oregon's statute compelling attendance in a public school from age eight to age 16 unreasonably interfered with the interest of parents in directing the rearing of their offspring, including their education in church-operated schools. As that case suggests, the values of parental direction of the religious upbringing

[406 US 214]

and education of their children in their early and formative years have a high place in our society. See also Ginsberg v New York, 390 US 629, 639, 20 L Ed 2d 195, 203, 88 S Ct 1274 (1968); Meyer v Nebraska, 262 US 390, 67 L Ed 1042, 43 S Ct 625, 29 ALR 1446 (1923); cf. Rowan v Post Office Dept., 397 US 728, 25 L Ed 2d 736, 90 S Ct 1484 (1970). Thus, a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and -interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children so long as they, in the words of Pierce, "prepare [them] for additional obligations." 268 US, at 535, 69 L Ed at 1078.

[3] It follows that in order for Wisconsin to compel school attendance beyond the eighth grade against a claim that such attendance interferes with the practice of a legitimate religious belief, it must appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause. Long before there was general acknowledgment of the need for universal formal education, the Religion Clauses had specifically and firmly fixed the right to free exercise of religious beliefs, and buttressing this fundamental right was an equally firm, even if less explicit, prohibition against the establishment of any religion by government. The values underlying these two provisions relating to religion have been zealously protected, sometimes even at the expense of other interests of admittedly high social importance. The invalidation of financial aid to parochial schools by government grants for a salary subsidy for teachers is but one example of the extent to which courts have gone in this regard, notwithstanding that such aid programs were legislatively determined to be in the public interest and the service of sound educational policy by States and by Congress. Lemon v

[406 US 215]

Kurtzman, 403 US 602, 29 L Ed 2d 745, 91 S Ct 2105 (1971); Tilton v Richardson, 403 US 672, 29 L Ed 2d 790, 91 S Ct 2091 (1971). See also Everson v Board

of Education, 330 US 1, 18, 91 L Ed 711, 724, 67 S Ct 504, 168 ALR 1392 (1947).

[4, 5] The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion. We can accept it as settled, therefore, that, however strong the State's interest in universal compulsory education, it is by no means absolute to the exclusion or subordination of all other interests. E. g., Sherbert v Verner, 374 US 398, 10 L Ed 2d 965, 83 S Ct 1790 (1963); McGowan v Maryland, 366 US 420, 459, 6 L Ed 2d 393, 418, 81 S Ct 1101 (1961) (separate opinion of Frankfurter, J.); Prince v Massachusetts, 321 US 158, 165, 88 L Ed 645, 651, 64 S Ct 438 (1944).

II

[6-9] We come then to the quality of the claims of the respondents concerning the alleged encroachment of Wisconsin's compulsory school-attendance statute on their rights and the rights of their children to the free exercise of the religious beliefs they and their forebears have adhered to for almost three centuries. In evaluating these claims we must be careful to determine whether the Amish religious faith and their mode of life are, as they claim, inseparable and interdependent. A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief. Although a determination of what is a "religious" belief or practice entitled to constitutional protection may present a most delicate question,[6] the very concept of ordered liberty precludes

[406 US 216]

allowing every person to make his own standards on matters of conduct in which society as a whole has important interests. Thus, if the Amish asserted their claims because of their subjective evaluation and rejection of the contemporary secular values accepted by the majority, much as Thoreau rejected the social values of his time and isolated himself at Walden Pond, their claims would not rest on a religious basis. Thoreau's choice was philosophical and personal rather than religious, and such belief does not rise to the demands of the Religion Clauses.

[10] Giving no weight to such secular considerations, however, we see that the record in this case abundantly supports the claim that the traditional way of life of the Amish is not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living. That the Old Order Amish daily life and religious practice stem from their faith is shown by the fact that it is in response to their literal interpretation of the Biblical injunction from the Epistle of Paul to the Romans, "be not conformed to this world . . . ." This command is fundamental to the Amish faith. Moreover, for the Old Order Amish, religion is not simply a matter of theocratic belief. As the expert witnesses explained, the Old Order Amish religion pervades and determines virtually their entire way of life, regulating it with the

6. See Welsh v United States, 398 US 333, 351-361, 26 L Ed 2d 308, 325-330, 90 S Ct 1792 (1970) (Harlan, J., concurring in result); United States v Ballard, 322 US 78, 88 L Ed 1148, 64 S Ct 882 (1944).

detail of the Talmudic diet through the strictly enforced rules of the church community.

The record shows that the respondents' religious beliefs and attitude toward life, family, and home have remained constant—perhaps some would say static—in a period of unparalleled progress in human knowledge generally and great changes in education.[7] The respondents

[406 US 217]

freely concede, and indeed assert as an article of faith, that their religious beliefs and what we would today call "life style" have not altered in fundamentals for centuries. Their way of life in a church-oriented community, separated from the outside world and "worldly" influences, their attachment to nature and the soil, is a way inherently simple and uncomplicated, albeit difficult to preserve against the pressure to conform. Their rejection of telephones, automobiles, radios, and television, their mode of dress, of speech, their habits of manual work do indeed set them apart from much of contemporary society; these customs are both symbolic and practical.

As the society around the Amish has become more populous, urban, industrialized, and complex, particularly in this century, government regulation of human affairs has correspondingly become more detailed and pervasive. The Amish mode of life has thus come into conflict increasingly with requirements of contemporary society exerting a hydraulic insistence on conformity to majoritarian standards. So long as compulsory education laws were confined to eight grades of elementary basic education imparted in a nearby rural schoolhouse, with a large proportion of students of the Amish faith, the Old Order Amish had little basis to fear that school attendance would expose their children to the worldly influence they reject. But modern compulsory secondary education in rural areas is now largely carried on in a consolidated school, often remote from the student's home and alien to his daily home life. As the record so strongly shows, the values and programs of the modern secondary school are in sharp conflict with the fundamental mode of life mandated by the Amish religion; modern laws requiring compulsory secondary education have accordingly engendered great concern and conflict.[8]

[406 US 218]

The conclusion is inescapable that secondary schooling, by exposing Amish children to worldly influences in terms of attitudes, goals, and values contrary to beliefs, and by substantially interfering with the religious development of the Amish child and his integration into the way of life of the Amish faith community at the crucial adolescent stage of development, contravenes the basic religious tenets and practice of the Amish faith, both as to the parent and the child.

The impact of the compulsory-attendance law on respondents' practice of the Amish religion is not only severe, but inescapable, for the Wisconsin law affirmatively compels them, under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs. See Braunfeld v Brown, 366 US 599, 605, 6 L Ed 2d 563, 567, 81 S Ct 1144 (1961). Nor is the impact of the compulsory-attendance law confined

7. See generally R. Butts & L. Cremin, A History of Education in American Culture (1953); L. Cremin, The Transformation of the School (1961).

8. Hostetler, supra, n. 5, c 9; Hostetler & Huntington, supra, n. 5.

to grave interference with important Amish religious tenets from a subjective point of view. It carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent. As the record shows, compulsory school attendance to age 16 for Amish children carries with it a very real threat of undermining the Amish community and religious practice as they exist today; they must either abandon belief and be assimilated into society at large, or be forced to migrate to some other and more tolerant region.[9]

[406 US 219]

In sum, the unchallenged testimony of acknowledged experts in education and religious history, almost 300 years of consistent practice, and strong evidence of a sustained faith pervading and regulating respondents' entire mode of life support the claim that enforcement of the State's requirement of compulsory formal education after the eighth grade would gravely endanger if not destroy the free exercise of respondents' religious beliefs.

III

Neither the findings of the trial court nor the Amish claims as to the nature of their faith are challenged in this Court by the State of Wisconsin. Its position is that the State's interest in universal compulsory formal secondary education to age 16 is so great that it is paramount to the undisputed claims of respondents that their mode of preparing their youth for Amish life, after the traditional elementary education, is an essential part of their religious belief and practice. Nor does the State undertake to meet the claim that the Amish mode of life and education is inseparable from and a part of the basic tenets of their religion—indeed, as much a part of their religious belief and practices as baptism, the confessional, or a sabbath may be for others.

[11] Wisconsin concedes that under the Religion Clauses religious beliefs are absolutely free from the State's control, but it argues that "actions," even though religiously grounded, are outside the protection of the First Amendment.[10] But our decisions have rejected the idea that

[406 US 220]

religiously grounded conduct is always outside the protection of the Free Exercise Clause. It is true that activities of individuals, even when religiously based, are often subject to regulation by the States in the exercise of their undoubted power to promote the health, safety, and gen-

9. Some States have developed working arrangements with the Amish regarding high school attendance. See n. 3, supra. However, the danger to the continued existence of an ancient religious faith cannot be ignored simply because of the assumption that its adherents will continue to be able, at considerable sacrifice, to relocate in some more tolerant State or country or work out accommodations under threat of criminal prosecution. Forced migration of religious minorities was an evil that lay at the heart of the Religion Clauses. See, e. g., Everson v Board of Education, 330 US 1, 9 10, 91 L Ed 711, 720, 67 S Ct 504, 168 ALR 1392 (1947); Madison, Memorial and Remonstrance Against Religious Assessments, 2 Writings of James Madison 183 (G Hunt ed 1901).

10. That has been the apparent ground for decision in several previous state cases rejecting claims for exemption similar to that here. See, e. g., State v Garber, 197 Kan 567, 419 P2d 896 (1966), cert denied, 389 US 51, 19 L Ed 2d 50, 88 S Ct 236 (1967); State v Harshberger, 103 Ohio App 188, 144 NE2d 693 (1955); Commonwealth v Beiler, 168 Pa Super 462, 79 A2d 134 (1951).

eral welfare, or the Federal Government in the exercise of its delegated powers. See, e. g., Gillette v United States, 401 US 437, 28 L Ed 2d 168, 91 S Ct 828 (1971); Braunfeld v Brown, 366 US 599, 6 L Ed 2d 563, 81 S Ct 1144 (1961); Prince v Massachusetts, 321 US 158, 88 L Ed 645, 64 S Ct 438 (1944); Reynolds v United States, 98 US 145, 25 L Ed 244 (1879). But to agree that religiously grounded conduct must often be subject to the broad police power of the State is not to deny that there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability. E. g., Sherbert v Verner, 374 US 398, 10 L Ed 2d 965, 83 S Ct 1790 (1963); Murdock v Pennsylvania, 319 US 105, 87 L Ed 1292, 63 S Ct 870, 146 ALR 81 (1943); Cantwell v Connecticut, 310 US 296, 303–304, 84 L Ed 1213, 1217, 1218, 60 S Ct 900, 128 ALR 1352 (1940). This case, therefore, does not become easier because respondents were convicted for their "actions" in refusing to send their children to the public high school; in this context belief and action cannot be neatly confined in logic-tight compartments. Cf. Lemon v Kurtzman, 403 US 612, 29 L Ed 2d, at 755.

[12] Nor can this case be disposed of on the grounds that Wisconsin's requirement for school attendance to age 16 applies uniformly to all citizens of the State and does not, on its face, discriminate against religions or a particular religion, or that it is motivated by legitimate secular concerns. A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion. Sherbert v Verner, supra; cf. Walz v Tax Commission, 397 US 664, 25 L Ed 2d 697, 90 S Ct 1409 (1970). The Court must not ignore the danger that an exception

[406 US 221]

from a general obligation of citizenship on religious grounds may run afoul of the Establishment Clause, but that danger cannot be allowed to prevent any exception no matter how vital it may be to the protection of values promoted by the right of free exercise. By preserving doctrinal flexibility and recognizing the need for a sensible and realistic application of the Religion Clauses "we have been able to chart a course that preserved the autonomy and freedom of religious bodies while avoiding any semblance of established religion. This is a 'tight rope' and one we have successfully traversed." Walz v Tax Commission, supra, at 672, 25 L Ed 2d at 703.

[13] We turn, then, to the State's broader contention that its interest in its system of compulsory education is so compelling that even the established religious practices of the Amish must give way. Where fundamental claims of religious freedom are at stake, however, we cannot accept such a sweeping claim; despite its admitted validity in the generality of cases, we must searchingly examine the interests that the State seeks to promote by its requirement for compulsory education to age 16, and the impediment to those objectives that would flow from recognizing the claimed Amish exemption. See, e. g., Sherbert v Verner, supra; Martin v City of Struthers, 319 US 141, 87 L Ed 1313, 63 S Ct 862 (1943); Schneider v State, 308 US 147, 84 L Ed 155, 60 S Ct 146 (1939).

The State advances two primary arguments in support of its system of compulsory education. It notes,

as Thomas Jefferson pointed out early in our history, that some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence. Further, education prepares individuals to be self-reliant and self-sufficient participants in society. We accept these propositions.

[406 US 222]

However, the evidence adduced by the Amish in this case is persuasively to the effect that an additional one or two years of formal high school for Amish children in place of their long-established program of informal vocational education would do little to serve those interests. Respondents' experts testified at trial, without challenge, that the value of all education must be assessed in terms of its capacity to prepare the child for life. It is one thing to say that compulsory education for a year or two beyond the eighth grade may be necessary when its goal is the preparation of the child for life in modern society as the majority live, but it is quite another if the goal of education be viewed as the preparation of the child for life in the separated agrarian community that is the keystone of the Amish faith. See Meyer v Nebraska, 262 US, at 400, 67 L Ed at 1045.

The State attacks respondents' position as one fostering "ignorance" from which the child must be protected by the State. No one can question the State's duty to protect children from ignorance but this argument does not square with the facts disclosed in the record. Whatever their idiosyncrasies as seen by the majority, this record strongly shows that the Amish community has been a highly successful social unit within our society, even if apart from the conventional "mainstream." Its members are productive and very law-abiding members of society; they reject public welfare in any of its usual modern forms. The Congress itself recognized their self-sufficiency by authorizing exemption of such groups as the Amish from the obligation to pay social security taxes.[11]

[406 US 223]

It is neither fair nor correct to suggest that the Amish are opposed to education beyond the eighth grade level. What this record shows is that they are opposed to conventional formal education of the type provided by a certified high school because it comes at the child's crucial adolescent period of religious development. Dr. Donald Erickson, for example, testified that their system of learning-by-doing was an "ideal system" of education in terms of preparing Amish children for life as adults in the Amish community, and that "I would be inclined to say they do a better job in this than most of the rest of us do." As he put it, "These people aren't purport-

11. Title 26 USC § 1402(h) authorizes the Secretary of Health, Education, and Welfare to exempt members of "a recognized religious sect" existing at all times since December 31, 1950, from the obligation to pay social security taxes if they are, by reason of the tenets of their sect, opposed to receipt of such benefits and agree to waive them, provided the Secretary finds that the sect makes reasonable provision for its dependent members. The history of the exemption shows it was enacted with the situation of the Old Order Amish specifically in view. HR Rep No. 213, 89th Cong, 1st Sess, 101–102 (1965).

The record in this case establishes without contradiction that the Green County Amish had never been known to commit crimes, that none had been known to receive public assistance, and that none were unemployed.

ing to be learned people, and it seems to me the self-sufficiency of the community is the best evidence I can point to—whatever is being done seems to function well."[12]

We must not forget that in the Middle Ages important values of the civilization of the Western World were preserved by members of religious orders who isolated themselves from all worldly influences against great obstacles. There can be no assumption that today's majority is

[406 US 221]

"right" and the Amish and others like them are "wrong." A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different.

The State, however, supports its interest in providing an additional one or two years of compulsory high school education to Amish children because of the possibility that some such children will choose to leave the Amish community, and that if this occurs they will be ill-equipped for life. The State argues that if Amish children leave their church they should not be in the position of making their way in the world without the education available in the one or two additional years the State requires. However, on this record, that argument is highly speculative. There is no specific evidence of the loss of Amish adherents by attrition, nor is there any showing that upon leaving the Amish community Amish children, with their practical agricultural training and habits of industry and self-reliance, would become burdens on society because of educational shortcomings. Indeed, this argument of the State appears to rest primarily on the State's mistaken assumption, already noted, that the Amish do not provide any education for their children beyond the eighth grade, but allow them to grow in "ignorance." To the contrary, not only do the Amish accept the necessity for formal schooling through the eighth grade level, but continue to provide what has been characterized by the undisputed testimony of expert educators as an "ideal" vocational education for their children in the adolescent years.

[14] There is nothing in this record to suggest that the Amish qualities of reliability, self-reliance, and dedication to work would fail to find ready markets in today's society. Absent some contrary evidence supporting the

[406 US 225]

State's position, we are unwilling to assume that persons possessing such valuable vocational skills and habits are doomed to become burdens on society should they determine to leave the Amish faith, nor is there any basis in the record to warrant a finding that an additional one or two years of formal school education beyond the eighth grade would serve to eliminate any such problem that might exist.

Insofar as the State's claim rests on the view that a brief additional period of formal education is imperative to enable the Amish to participate effectively and intelligently in our democratic process, it must

12. Dr. Erickson had previously written: "Many public educators would be elated if their programs were as successful in preparing students for productive community life as the Amish system seems to be. In fact, while some public schoolmen strive to outlaw the Amish approach, others are being forced to emulate many of its features." Erickson, Showdown at an Amish Schoolhouse: A Description and Analysis of the Iowa Controversy, in Public Controls for Nonpublic Schools 15, 53 (D. Erickson ed 1969). And see Littell, supra, n 5, at 61.

fall. The Amish alternative to formal secondary school education has enabled them to function effectively in their day-to-day life under self-imposed limitations on relations with the world, and to survive and prosper in contemporary society as a separate, sharply identifiable and highly self-sufficient community for more than 200 years in this country. In itself this is strong evidence that they are capable of fulfilling the social and political responsibilities of citizenship without compelled attendance beyond the eighth grade at the price of jeopardizing their free exercise of religious belief.[13] When Thomas Jefferson emphasized the need for education as a bulwark of a free people against tyranny, there is nothing to indicate he had in mind compulsory education through any fixed age beyond a basic education. Indeed, the Amish communities singularly parallel and reflect many of the virtues of Jefferson's ideal of the "sturdy yeoman" who would form the basis of what he considered as the

[406 US 226]

ideal of a democratic society.[14] Even their idiosyncratic separateness exemplifies the diversity we profess to admire and encourage.

The requirement for compulsory education beyond the eighth grade is a relatively recent development in our history. Less than 60 years ago, the educational requirements of almost all of the States were satisfied by completion of the elementary grades, at least where the child was regularly and lawfully employed.[15]

---

13. All of the children involved in this case are graduates of the eighth grade. In the county court, the defense introduced a study by Dr. Hostetler indicating that Amish children in the eighth grade achieved comparably to non-Amish children in the basic skills. Supp App 9–11. See generally Hostetler & Huntington, supra, n. 5, at 88–96.

14. While Jefferson recognized that education was essential to the welfare and liberty of the people, he was reluctant to directly force instruction of children "in opposition to the will of the parent." Instead he proposed that state citizenship be conditioned on the ability to "read readily in some tongue, native or acquired." Letter from Thomas Jefferson to Joseph Cabell, Sept. 9, 1817, in 17 Writings of Thomas Jefferson 417, 423–424 (Mem ed 1904). And it is clear that, so far as the mass of the people were concerned, he envisaged that a basic education in the "three R's" would sufficiently meet the interests of the State. He suggested that after completion of elementary school, "those destined for labor will engage in the business of agriculture, or enter into apprenticeships to such handicraft art as may be their choice." Letter from Thomas Jefferson to Peter Carr, Sept. 7, 1814, in Thomas Jefferson and Education in a Republic 93–106 (Arrowood ed 1930). See also id, at 60–64, 70, 83, 136–137.

15. See Dept. of Interior, Bureau of Education, Bulletin No. 47, Digest of State Laws Relating to Public Education 527–559 (1916); Joint Hearings on S 2475 and HR 7200 before the Senate Committee on Education and Labor and the House Committee on Labor, 75th Cong, 1st Sess, pt. 2, p. 416.

Even today, an eighth grade education fully satisfies the educational requirements of at least six States. See Ariz Rev Stat Ann § 15-321(B)(4) (1956); Ark Stat Ann § 80-1504 (1947); Iowa Code § 299.2 (1971); SD Comp Laws Ann § 13-27-1 (1967); Wyo Stat Ann § 21.1-48 (Supp 1971). (Mississippi has no compulsory education law.) A number of other States have flexible provisions permitting children aged 14 or having completed the eighth grade to be excused from school in order to engage in lawful employment. E. g., Colo Rev Stat Ann §§ 123-20-5, 80-6-1 to 80-6-12 (1963); Conn Gen Stat Rev §§ 10-184, 10-189 (1964); DC Code Ann §§ 31-202, 36-201 to 36-228 (1967); Ind Ann Stat §§ 28-505 to 28-506, 28-519 (1948); Mass Gen Laws Ann, c. 76, § 1 (Supp 1972) and c. 149, § 86 (1971); Mo Rev Stat §§ 167.031, 294.051 (1969); Nev Rev Stat § 392.110 (1968); NM Stat Ann § 77-10-6 (1968).

An eighth grade education satisfied Wisconsin's formal education requirements until 1933. See Wis Laws 1927, c. 425, § 97; Laws 1933, c. 143. (Prior to 1933, provision was made for attendance at continuation or vocational schools by working children past the eighth grade, but only if

The independence
[406 US 227]
and successful social functioning of the Amish community for a period approaching almost three centuries and more than 200 years in this country are strong evidence that there is at best a speculative gain, in terms of meeting the duties of citizenship, from an additional one or two years of compulsory formal education. Against this background it would require a more particularized showing from the State on this point to justify the severe interference with religious freedom such additional compulsory attendance would entail.

We should also note that compulsory education and child labor laws find their historical origin in common humanitarian instincts, and that the age limits of both laws have been coordinated to achieve their related objectives.[16] In the context of this case, such considerations,
[406 US 228]
if anything, support rather than detract from respondents' position. The origins of the requirement for school attendance to age 16, an age falling after the completion of elementary school but before completion of high school, are not entirely clear. But to some extent such laws reflected the movement to prohibit most child labor under age 16 that culminated in the provisions of the Federal Fair Labor Standards Act of 1938.[17] It is true, then, that the 16-year child labor age limit may to some degree derive from a contemporary impression that children should be in school until that age. But at the same time, it cannot be denied that, conversely, the 16-year education limit reflects, in substantial measure, the concern that children under that age not be employed under conditions hazardous to their health, or in work that should be performed by adults.

The requirement of compulsory schooling to age 16 must therefore be viewed as aimed not merely at providing educational opportunities for children, but as an alternative to the equally undesirable consequence of unhealthful child labor displacing adult workers, or, on the other hand, forced idleness.[18] The two kinds of statutes—compulsory school attendance and child labor laws—tend to keep children of certain ages off the labor market and in school; this regimen in turn provides opportunity to prepare for a livelihood of a higher order than that which children could pursue without education and protects their health in adolescence.

In these terms, Wisconsin's interest in compelling the school attendance of Amish children to age 16 emerges as somewhat less substantial than requiring such attendance
[406 US 229]
for children generally. For, while agricultural employment is not totally outside the legitimate concerns of the child labor laws, em-

one was maintained by the community in question.) For a general discussion of the early development of Wisconsin's compulsory education and child labor laws, see F. Ensign, Compulsory School Attendance and Child Labor 203–230 (1921).

16. See, e. g., Joint Hearings, supra, n. 15, pt 1, at 185–187 (statement of Frances Perkins, Secretary of Labor), pt 2, at 381–387 (statement of Katherine Lenroot, Chief, Children's Bureau, Department of Labor); National Child Labor Committee, 40th Anniversary Report, The Long Road (1944); 1 G. Abbott, The Child and the State 259–269, 566 (Greenwood reprint 1968); L. Cremin, The Transformation of the School, c. 3 (1961); A. Steinhilber & C. Sokolowski, State Law on Compulsory Attendance 3–4 (Dept of Health, Education, and Welfare 1966).

17. 52 Stat 1060, as amended, 29 USC §§ 201–219.

18. See materials cited n. 16, supra; Casad, Compulsory Education and Individual Rights, in 5 Religion and the Public Order 51, 82 (D. Giannella ed. 1969).

ployment of children under parental guidance and on the family farm from age 14 to age 16 is an ancient tradition that lies at the periphery of the objectives of such laws.[19] There is no intimation that the Amish employment of their children on family farms is in any way deleterious to their health or that Amish parents exploit children at tender years. Any such inference would be contrary to the record before us. Moreover, employment of Amish children on the family farm does not present the undesirable economic aspects of eliminating jobs that might otherwise be held by adults.

IV

Finally, the State, on authority of Prince v Massachusetts, argues that a decision exempting Amish children from the State's requirement fails to recognize the substantive right of the Amish child to a secondary education, and fails to give due regard to the power of the State as parens patriae to extend the benefit of secondary education to children regardless of the wishes of their parents. Taken at its broadest sweep, the Court's language in Prince, might be read to give support to the State's position. However, the Court was not confronted in Prince with a situation comparable to that of the Amish as revealed in this record; this is shown by the

[406 US 230]

Court's severe characterization of the evils that it thought the legislature could legitimately associate with child labor, even when performed in the company of an adult. 321 US, at 169–170, 88 L Ed at 654. The Court later took great care to confine Prince to a narrow scope in Sherbert v Verner, when it stated:

"On the other hand, the Court has rejected challenges under the Free Exercise Clause to governmental regulation of certain overt acts prompted by religious beliefs or principles, for 'even when the action is in accord with one's religious convictions, [it] is not totally free from legislative restrictions.' Braunfeld v. Brown, 366 U. S. 599, 603 [6 L Ed 2d 563, 566, 81 S Ct 1144]. The conduct or actions so regulated have invariably posed some substantial threat to public safety, peace or order. See, e.g., Reynolds v. United States, 98 U.S. 145 [25 L Ed 244]; Jacobson v. Massachusetts, 197 U. S. 11 [49 L Ed 643, 25 S Ct 358]; Prince v Massachusetts, 321 U. S. 158 [88 L Ed 645, 64 S Ct 438] . . . ." 374 US, at 402–403, 10 L Ed 2d at 969, 970.

This case, of course, is not one in which any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare has been demonstrated or may be properly inferred.[20] The record is to the contrary, and any reliance

19. See, e. g., Abbott, supra, n. 16, at 266. The Federal Fair Labor Standards Act of 1938 excludes from its definition of "[o]ppressive child labor" employment of a child under age 16 by "a parent . . . employing his own child . . . in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or Well-being." 29 USC § 203(l).

20. Cf. e. g., Jacobson v Massachusetts, 197 US 11, 49 L Ed 643, 25 S Ct 358 (1905); Wright v DeWitt School District, 238 Ark 906, 385 SW2d 644 (1965); Application of President and Directors of Georgetown College, Inc. 118 US App DC 80, 87–90, 331 F2d 1000, 1007–1010 (in-chambers opinion), cert denied, 377 US 978, 12 L Ed 2d 746, 84 S Ct 1883 (1964).

on that theory would find no support in the evidence.

[15] Contrary to the suggestion of the dissenting opinion of Mr. Justice Douglas, our holding today in no degree depends on the assertion of the religious interest of the child as contrasted with that of the parents. It is the parents who are subject to prosecution here for failing to cause their children to attend school, and it

[406 US 231]

is their right of free exercise, not that of their children, that must determine Wisconsin's power to impose criminal penalties on the parent. The dissent argues that a child who expresses a desire to attend public high school in conflict with the wishes of his parents should not be prevented from doing so. There is no reason for the Court to consider that point since it is not an issue in the case. The children are not parties to this litigation. The State has at no point tried this case on the theory that respondents were preventing their children from attending school against their expressed desires, and indeed the record is to the contrary.[21] The State's position from the outset has been that it is empowered to apply its compulsory-attendance law to Amish parents in the same manner as to other parents—that is, without regard to the wishes of the child. That is the claim we reject today.

Our holding in no way determines the proper resolution of possible competing interests of parents, children, and the State in an appropriate state court proceeding in which the power of the State is asserted on the theory that Amish parents are preventing their minor children from attending high school despite their expressed desires to the contrary. Recognition of the claim of the State in such a proceeding would, of course, call into question traditional concepts of parental control over the religious upbringing and education of their minor children recognized in this Court's past decisions. It is clear that such an intrusion by a State into family decisions in the area of religious training would give rise to grave questions of religious freedom comparable to those raised here

[406 US 232]

and those presented in Pierce v Society of Sisters, 268 US 510, 69 L Ed 1070, 45 S Ct 571, 39 ALR 468 (1925). On this record we neither reach nor decide those issues.

The State's argument proceeds without reliance on any actual conflict between the wishes of parents and children. It appears to rest on the potential that exemption of Amish parents from the requirements of the compulsory-education law might allow some parents to act contrary to the best interests of their children by foreclosing their opportunity to make an intelligent choice between the Amish way of life and that of the outside world. The same argument could, of course, be made with respect to all church schools short of college. There is nothing in the record or in the ordinary course of human experience to suggest that non-Amish parents generally consult with children of ages 14–16 if they are placed in a church school of the parents' faith.

21. The only relevant testimony in the record is to the effect that the wishes of the one child who testified corresponded with those of her parents. Testimony of Frieda Yoder, Tr 92–94, to the effect that her personal religious beliefs guided her decision to discontinue school attendance after the eighth grade. The other children were not called by either side.

Indeed it seems clear that if the State is empowered, as parens patriae, to "save" a child from himself or his Amish parents by requiring an additional two years of compulsory formal high school education, the State will in large measure influence, if not determine, the religious future of the child. Even more markedly than in Prince, therefore, this case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition. If not the first, perhaps the most significant statements of the Court in this area are found in Pierce v Society of Sisters, in which the Court observed:

"Under the doctrine of Meyer v Nebraska, 262 U.S. 390, [67 L Ed 1042, 43 S Ct 625, 29 ALR 1446], we think it entirely plain that the Act

[406 US 233]

of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." 268 US, at 534–535, 69 L Ed at 1078.

The duty to prepare the child for "additional obligations," referred to by the Court, must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship. Pierce, of course, recognized that where nothing more than the general interest of the parent in the nurture and education of his children is involved, it is beyond dispute that the State acts "reasonably" and constitutionally in requiring education to age 16 in some public or private school meeting the standards prescribed by the State.

[13, 16, 17] However read, the Court's holding in Pierce stands as a charter of the rights of parents to direct the religious upbringing of their children. And, when the interests of parenthood are combined with a free exercise claim of the nature revealed by this record, more than merely a "reasonable relation to some purpose within the competency of the State" is required to sustain the validity of the State's requirement under the First Amendment. To be sure, the power of the parent, even when linked to a free exercise claim, may be subject to limitation under Prince

[406 US 234]

if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens. But in this case, the Amish have introduced persuasive evidence undermining the arguments the State has advanced to support its claims in terms of the welfare of the child and society as a whole. The record strongly indicates that accommodating the religious objections of the Amish by forgoing one,

or at most two, additional years of compulsory education will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society.

In the face of our consistent emphasis on the central values underlying the Religion Clauses in our constitutional scheme of government, we cannot accept a parens patriae claim of such all-encompassing scope and with such sweeping potential for broad and unforeseeable application as that urged by the State.

V

[18-20] For the reasons stated we hold, with the Supreme Court of Wisconsin, that the First and Fourteenth Amendments prevent the State from compelling respondents to cause their children to attend formal high school to age 16.[22] Our disposition of this case, however, in no way

[406 US 235]

alters our recognition of the obvious fact that courts are not school boards or legislatures, and are ill-equipped to determine the "necessity" of discrete aspects of a State's program of compulsory education. This should suggest that courts must move with great circumspection in performing the sensitive and delicate task of weighing a State's legitimate social concern when faced with religious claims for exemption from generally applicable educational requirements. It cannot be overemphasized that we are not dealing with a way of life and mode of education by a group claiming to have recently discovered some "progressive" or more enlighted process for rearing children for modern life.

[13] Aided by a history of three centuries as an identifiable religious sect and a long history as a successful and self-sufficient segment of American society, the Amish in this case have convincingly demonstrated the sincerity of their religious beliefs, the interrelationship of belief with their mode of life, the vital role that belief and daily conduct play in the continued survival of Old Order Amish communities and their religious organization, and the hazards presented by the State's enforcement of a statute generally valid as to others. Beyond this, they have carried the even more difficult burden of demonstrating the adequacy of their alternative mode of continuing informal vocational education in terms of precisely those overall interests that the State advances in support of its program of compulsory high school education.

---

[19] 22. What we have said should meet the suggestion that the decision of the Wisconsin Supreme Court recognizing an exemption for the Amish from the State's system of compulsory education constituted an impermissible establishment of religion. In Walz v Tax Commission, the Court saw the three main concerns against which the Establishment Clause sought to protect as "sponsorship, financial support, and active involvement of the sovereign in religious activity." 397 US 664, 668, 25 L Ed 2d 697, 701, 90 S Ct 1409 (1970). Accommodating the religious beliefs of the Amish can hardly be characterized as sponsorship or active involvement. The purpose and effect of such an exemption are not to support, favor, advance, or assist the Amish, but to allow their centuries-old religious society, here long before the advent of any compulsory education, to survive free from the heavy impediment compliance with the Wisconsin compulsory-education law would impose. Such an accommodation "reflects nothing more than the governmental obligation of neutrality in the face of religious differences, and does not represent that involvement of religious with secular institutions which it is the object of the Establishment Clause to forestall." Sherbert v Verner, 374 US 398, 409, 10 L Ed 2d 965, 974, 83 S Ct 1790 (1963).

In light of this convincing
[406 US 236]
showing, one that probably few other religious groups or sects could make, and weighing the minimal difference between what the State would require and what the Amish already accept, it was incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption to the Amish. Sherbert v Verner, supra.

Nothing we hold is intended to undermine the general applicability of the State's compulsory school-attendance statutes or to limit the power of the State to promulgate reasonable standards that, while not impairing the free exercise of religion, provide for continuing agricultural vocational education under parental and church guidance by the Old Order Amish or others similarly situated. The States have had a long history of amicable and effective relationships with church-sponsored schools, and there is no basis for assuming that, in this related context, reasonable standards cannot be established concerning the content of the continuing vocational education of Amish children under parental guidance, provided always that state regulations are not inconsistent with what we have said in this opinion.[23]

Affirmed.

Mr. Justice **Powell** and Mr. Justice **Rehnquist** took no part in the consideration or decision of this case.

SEPARATE OPINIONS

[406 US 237]

Mr. Justice **Stewart**, with whom Mr. Justice **Brennan** joins, concurring.

This case involves the constitutionality of imposing criminal punishment upon Amish parents for their religiously based refusal to compel their children to attend public high schools. Wisconsin has sought to brand these parents as criminals for following *their* religious beliefs, and the Court today rightly holds that Wisconsin cannot constitutionally do so.

This case in no way involves any questions regarding the right of the children of Amish parents to attend public high schools, or any other institutions of learning, if they wish to do so. As the Court points out, there is no suggestion whatever in the record that the religious beliefs of the children here concerned differ in any way from those of their parents. Only one of the children testified. The last two questions and answers on her cross-examination accurately sum up her testimony.

"Q. So I take it then, Frieda, the only reason you are not going to school, and did not go to school since last September, is because of *your* religion?
"A. Yes.

"Q. That is the only reason?
"A. Yes." (Emphasis supplied.)

It is clear to me, therefore, that this record simply does not present

23. Several States have now adopted plans to accommodate Amish religious beliefs through the establishment of an "Amish vocational school." See n. 3, supra. These are not schools in the traditional sense of the word. As previously noted, respondents attempted to reach a compromise with the State of Wisconsin patterned after the Pennsylvania plan, but those efforts were not productive. There is no basis to assume that Wisconsin will be unable to reach a satisfactory accommodation with the Amish in light of what we now hold, so as to serve its interests without impinging on respondents' protected free exercise of their religion.

the interesting and important issue discussed in Part II of the dissenting opinion of Mr. Justice Douglas. With this observation, I join the opinion and the judgment of the Court.

Mr. Justice **White**, with whom Mr. Justice **Brennan** and Mr. Justice **Stewart** join, concurring.

Cases such as this one inevitably call for a delicate balancing of important but conflicting interests. I join the opinion and judgment of the Court because I cannot

[406 US 238]

say that the State's interest in requiring two more years of compulsory education in the ninth and tenth grades outweighs the importance of the concededly sincere Amish religious practice to the survival of that sect.

This would be a very different case for me if respondents' claim were that their religion forbade their children from attending any school at any time and from complying in any way with the educational standards set by the State. Since the Amish children are permitted to acquire the basic tools of literacy to survive in modern society by attending grades one through eight and since the deviation from the State's compulsory-education law is relatively slight, I conclude that respondents' claim must prevail, largely because "religious freedom—the freedom to believe and to practice strange and, it may be, foreign creeds—has classically been one of the highest values of our society." Braunfeld v Brown, 366 US 599, 612, 6 L Ed 2d 563, 571, 81 S Ct 1144 (1961) (Brennan, J., concurring and dissenting).

The importance of the state interest asserted here cannot be denigrated, however:

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment." Brown v Board of Education, 347 US 483, 493, 98 L Ed 873, 880, 74 S Ct 686, 38 ALR2d 1180 (1954).

[406 US 239]

As recently as last Term, the Court re-emphasized the legitimacy of the State's concern for enforcing minimal educational standards, Lemon v Kurtzman, 403 US 602, 613, 29 L Ed 2d 745, 755, 91 S Ct 2105 (1971).[1] Pierce v Society of Sisters, 268 US 510, 69 L Ed 1070, 45 S Ct 571, 39 ALR 468 (1925), lends no support to the contention that parents may replace state educational requirements with their own idiosyncratic views of what knowledge a child needs to be a productive and happy member of society; in Pierce, both

1. The challenged Amish religious practice here does not pose a substantial threat to public safety, peace, or order; if it did, analysis under the Free Exercise Clause would be substantially different. See Jacobson v Massachusetts, 197 US 11, 49 L Ed 643, 25 S Ct 358 (1905); Prince v Massachusetts, 321 US 158, 88 L Ed 645, 64 S Ct 438 (1944); Cleveland v United States, 329 US 14, 91 L Ed 12, 67 S Ct 13 (1946); Application of President and Directors of Georgetown College, Inc. 118 US App DC 80, 331 F2d 1000, cert denied, 377 US 978, 12 L Ed 2d 746, 84 S Ct 1883 (1964).

the parochial and military schools were in compliance with all the educational standards that the State had set, and the Court held simply that while a State may posit such standards, it may not pre-empt the educational process by requiring children to attend public schools.[2] In the present case, the State is not concerned with the maintenance of an educational system as an end in itself, it is rather attempting to nurture and develop the human potential of its children, whether Amish or non-Amish: to expand their knowledge, broaden their sensibilities, kindle their imagination, foster a spirit of free inquiry, and increase their human understanding and tolerance. It is possible that most Amish

[406 US 240]

children will wish to continue living the rural life of their parents, in which case their training at home will adequately equip them for their future role. Others, however, may wish to become nuclear physicists, ballet dancers, computer programmers, or historians, and for these occupations, formal training will be necessary. There is evidence in the record that many children desert the Amish faith when they come of age.[3] A State has a legitimate interest not only in seeking to develop the latent talents of its children but also in seeking to prepare them for the life style that they may later choose, or at least to provide them with an option other than the life they have led in the past. In the circumstances of this case, although the question is close, I am unable to say that the State has demonstrated that Amish children who leave school in the eighth grade will be intellectually stultified or unable to acquire new academic skills later. The statutory minimum school attendance age set by the State is, after all, only 16.

Decision in cases such as this and the administration of an exemption for Old Order Amish from the State's compulsory school-attendance laws will inevitably involve the kind of close and perhaps repeated scrutiny of religious practices, as is exemplified in today's opinion, which the Court has heretofore been anxious to avoid. But such entanglement does not create a forbidden establishment of religion where it is essential to implement free

[406 US 241]

exercise values threatened by an otherwise neutral program instituted to foster some permissible, nonreligious state objective. I join the Court because the sincerity of the Amish religious policy here is uncontested, because the potentially adverse impact of the state requirement is great, and because the

2. "No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare." Pierce v Society of Sisters, 268 US 510, 534, 69 L Ed 1070, 1077, 45 S Ct 571, 39 ALR 468 (1925).

3. Dr. Hostetler testified that though there was a gradual increase in the total number of Old Order Amish in the United States over the past 50 years, "at the same time the Amish have also lost members [of] their church" and that the turnover rate was such that "probably two-thirds [of the present Amish] have been assimilated non-Amish people." App 110. Justice Heffernan, dissenting below, opined that "[l]arge numbers of young people voluntarily leave the Amish community each year and are thereafter forced to make their way in the world." 49 Wis 2d 430, 451, 182 NW2d 539, 549 (1971).

State's valid interest in education has already been largely satisfied by the eight years the children have already spent in school.

Mr. Justice **Douglas**, dissenting in part.

I

I agree with the Court that the religious scruples of the Amish are opposed to the education of their children beyond the grade schools, yet I disagree with the Court's conclusion that the matter is within the dispensation of parents alone. The Court's analysis assumes that the only interests at stake in the case are those of the Amish parents on the one hand, and those of the State on the other. The difficulty with this approach is that, despite the Court's claim, the parents are seeking to vindicate not only their own free exercise claims, but also those of their high-school-age children.

It is argued that the right of the Amish children to religious freedom is not presented by the facts of the case, as the issue before the Court involves only the Amish parents' religious freedom to defy a state criminal statute imposing upon them an affirmative duty to cause their children to attend high school.

First, respondents' motion to dismiss in the trial court expressly asserts, not only the religious liberty of the adults, but also that of the children, as a defense to the prosecutions. It is, of course, beyond question that the parents have standing as defendants in a criminal prosecution to assert the religious interests of their

[406 US 242]

children as a defense.[1] Although the lower courts and a majority of this Court assume an identity of interest between parent and child, it is clear that they have treated the religious interest of the child as a factor in the analysis.

Second, it is essential to reach the question to decide the case, not only because the question was squarely raised in the motion to dismiss, but also because no analysis of religious-liberty claims can take place in a vacuum. If the parents in this case are allowed a religious exemption, the inevitable effect is to impose the parents' notions of religious duty upon their children. Where the child is mature enough to express potentially conflicting desires, it would be an invasion of the child's rights to permit such an imposition without canvassing his views. As in Prince v Massachusetts, 321 US 158, 88 L Ed 645, 64 S Ct 438, it is an imposition resulting from this very litigation. As the child has no other effective forum, it is in this litigation that his rights should be considered. And, if an Amish child desires to attend high school, and is mature enough to have that desire respected, the State may well be able to override the parents' religiously motivated objections.

1. Thus, in Prince v Massachusetts, 321 US 158, 88 L Ed 645, 64 S Ct 438, a Jehovah's Witness was convicted for having violated a state child labor law by allowing her nine-year-old niece and ward to circulate religious literature on the public streets. There, as here, the narrow question was the religious liberty of the adult. There, as here, the Court analyzed the problem from the point of view of the State's conflicting interest in the welfare of the child. But, as Mr. Justice Brennan, speaking for the Court, has so recently pointed out, "The Court [in Prince] implicitly held that the custodian had standing to assert alleged freedom of religion . . . rights of the child that were threatened in the very litigation before the Court and that the child had no effective way of asserting herself." Eisenstadt v Baird, 405 US 438, 446 n. 6, 31 L Ed 2d 349, 358, 92 S Ct 1029. Here, as in Prince, the children have no effective alternate means to vindicate their rights. The question, therefore, is squarely before us.

[406 US 213]

Religion is an individual experience. It is not necessary, nor even appropriate, for every Amish child to express his views on the subject in a prosecution of a single adult. Crucial, however, are the views of the child whose parent is the subject of the suit. Frieda Yoder has in fact testified that her own religious views are opposed to high-school education. I therefore join the judgment of the Court as to respondent Jonas Yoder. But Frieda Yoder's views may not be those of Vernon Yutzy or Barbara Miller. I must dissent, therefore, as to respondents Adin Yutzy and Wallace Miller as their motion to dismiss also raised the question of their children's religious liberty.

II

This issue has never been squarely presented before today. Our opinions are full of talk about the power of the parents over the child's education. See Pierce v Society of Sisters, 268 US 510, 69 L Ed 1070, 45 S Ct 571, 39 ALR 468; Meyer v Nebraska, 262 US 390, 67 L Ed 1042, 43 S Ct 625, 29 ALR 1446. And we have in the past analyzed similar conflicts between parent and State with little regard for the views of the child. See Prince v Massachusetts, supra. Recent cases, however, have clearly held that the children themselves have constitutionally protectible interests.

These children are "persons" within the meaning of the Bill of Rights. We have so held over and over again. In Haley v Ohio, 332 US 596, 92 L Ed 224, 68 S Ct 302, we extended the protection of the Fourteenth Amendment in a state trial of a 15-year-old boy. In In re Gault, 387 US 1, 13, 18 L Ed 2d 527, 538, 87 S Ct 1428, we held that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." In In re Winship, 397 US 358, 25 L Ed 2d 368, 90 S Ct 1068 we held that a 12-year-old boy, when charged with an act which would be a crime if committed by an adult, was entitled to procedural safeguards contained in the Sixth Amendment.

[406 US 244]

In Tinker v Des Moines School District, 393 US 503, 21 L Ed 2d 731, 89 S Ct 733, we dealt with 13-year-old, 15-year-old, and 16-year-old students who wore armbands to public schools and were disciplined for doing so. We gave them relief, saying that their First Amendment rights had been abridged.

"Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State." Id., at 511, 21 L Ed 2d at 740.

In Board of Education v Barnette, 319 US 624, 87 L Ed 1628, 63 S Ct 1178, 147 ALR 674, we held that schoolchildren, whose religious beliefs collided with a school rule requiring them to salute the flag, could not be required to do so. While the sanction included expulsion of the students and prosecution of the parents, id., at 630, 87 L Ed at 1633, the vice of the regime was its interference with the child's free exercise of religion. We said: "Here . . . we are dealing with a compulsion of students to declare a belief." Id., at 631, 87 L Ed at 1634. In emphasizing the important and delicate task of boards of education we said:

"That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we

are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes." Id., at 637, 87 L Ed at 1637.

On this important and vital matter of education, I think the children should be entitled to be heard. While the parents, absent dissent, normally speak for the entire family, the education of the child is a matter on which the child will often have decided views. He may want to be a pianist or an astronaut or an oceanographer.

[406 US 245]

To do so he will have to break from the Amish tradition.[2]

It is the future of the student, not the future of the parents, that is imperiled by today's decision. If a parent keeps his child out of school beyond the grade school, then the child will be forever barred from entry into the new and amazing world of diversity that we have today. The child may decide that that is the preferred course, or he may rebel. It is the student's judgment, not his parents', that is essential if we are to give full meaning to what we have said about the Bill of Rights and of the right of students to be masters of their own destiny.[3] If he is harnessed to the Amish way of life

[406 US 246]

by those in authority over him and if his education is truncated, his entire life may be stunted and deformed. The child, therefore, should be given an opportunity to be heard before the State gives the exemption which we honor today.

The views of the two children in question were not canvassed by the Wisconsin courts. The matter should be explicitly reserved so that new hearings can be held on remand of the case.[4]

III

I think the emphasis of the Court

---

2. A significant number of Amish children do leave the Old Order. Professor Hostetler notes that "[t]he loss of members is very limited in some Amish districts and considerable in others." J. Hostetler, Amish Society 226 (1968). In one Pennsylvania church, he observed a defection rate of 30%. Ibid. Rates up to 50% have been reported by others. Casad, Compulsory High School Attendance and the Old Order Amish: A Commentary on State v Garber, 16 Kan L Rev 423, 434 n 51 (1968).

3. The court below brushed aside the students' interests with the offhand comment that "[w]hen a child reaches the age of judgment, he can choose for himself his religion." 49 Wis 2d 430, 440, 182 NW2d 539, 543. But there is nothing in this record to indicate that the moral and intellectual judgment demanded of the student by the question in this case is beyond his capacity. Children far younger than the 14- and 15-year-olds involved here are regularly permitted to testify in custody and other proceedings. Indeed, the failure to call the affected child in a custody hearing is often reversible error. See, e. g., Callicott v Callicott, 364 SW2d 455 (Civ App Tex) (reversible error for trial judge to refuse to hear testimony of eight-year-old in custody battle). Moreover, there is substantial agreement among child psychologists and sociologists that the moral and intellectual maturity of the 14-year-old approaches that of the adult. See, e. g., J. Piaget, The Moral Judgment of the Child (1948); D. Elkind, Children and Adolescents 75–80 (1970); Kohlberg, Moral Education in the Schools: A Developmental View, in R. Muuss, Adolescent Behavior and Society 193, 199–200 (1971); W. Kay, Moral Development 172–183 (1968); A. Gesell & F. Ilg, Youth: The Years From Ten to Sixteen 175–182 (1956). The maturity of Amish youth, who identify with and assume adult roles from early childhood, see M. Goodman, The Culture of Childhood, 92–94 (1970), is certainly not less than that of children in the general population.

4. Canvassing the views of all school-age Amish children in the State of Wisconsin would not present insurmountable difficulties. A 1968 survey indicated that there were at that time only 256 such children in the entire State. Comment, 1971 Wis L Rev 832, 852 n. 132.

on the "law and order" record of this Amish group of people is quite irrelevant. A religion is a religion irrespective of what the misdemeanor or felony records of its members might be. I am not at all sure how the Catholics, Episcopalians, the Baptists, Jehovah's Witnesses, the Unitarians, and my own Presbyterians would make out if subjected to such a test. It is, of course, true that if a group or society was organized to perpetuate crime and if that is its motive, we would have rather startling problems akin to those that were raised when some years back a particular sect was challenged here as operating on a fraudulent basis. United States v Ballard, 322 US 78, 88 L Ed 1148, 64 S Ct 882. But no such factors are present here, and the Amish, whether with a high or low criminal

[406 US 247]

record,[5] certainly qualify by all historic standards as a religion within the meaning of the First Amendment.

The Court rightly rejects the notion that actions, even though religiously grounded, are always outside the protection of the Free Exercise Clause of the First Amendment. In so ruling, the Court departs from the teaching of Reynolds v United States, 98 US 145, 164, 25 L Ed 244, 250, where it was said concerning the reach of the Free Exercise Clause of the First Amendment, "Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order." In that case it was conceded that polygamy was a part of the religion of the Mormons. Yet the Court said, "It matters not that his belief [in polygamy] was a part of his professed religion: it was still belief, and belief only." Id., at 167, 25 L Ed at 250.

Action, which the Court deemed to be antisocial, could be punished even though it was grounded on deeply held and sincere religious convictions. What we do today, at least in this respect, opens the way to give organized religion a broader base than it has ever enjoyed; and it even promises that in time Reynolds will be overruled.

In another way, however, the Court retreats when in reference to Henry Thoreau it says his "choice was philosophical

[406 US 248]

and personal rather than religious, and such belief does not rise to the demands of the Religion Clauses." That is contrary to what we held in United States v Seeger, 380 US 163, 13 L Ed 2d 733, 85 S Ct 850, where we were concerned with the meaning of the words "religious training and belief" in the Selective Service Act, which were the basis of many conscientious objector claims. We said:

"Within that phrase would come all sincere religious beliefs which are

5. The observation of Justice Heffernan, dissenting below, that the principal opinion in his court portrayed the Amish as leading a life of "idyllic agrarianism," is equally applicable to the majority opinion in this Court. So, too, is his observation that such a portrayal rests on a "mythological basis." Professor Hostetler has noted that "[d]rinking among the youth is common in all the large Amish settlements." Amish Society 283. Moreover, "[i]t would appear that among the Amish the rate of suicide is just as high, if not higher, than for the nation." Id, at 300. He also notes an unfortunate Amish "preoccupation with filthy stories," id, at 282, as well as significant "rowdyism and stress." Id, at 281. These are not traits peculiar to the Amish, of course. The point is that the Amish are not people set apart and different.

based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent. The test might be stated in these words: A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition. This construction avoids imputing to Congress an intent to classify different religious beliefs, exempting some and excluding others, and is in accord with the well-established congressional policy of equal treatment for those whose opposition to service is grounded in their religious tenets." Id., at 176, 13 L Ed 2d at 743.

Welsh v United States, 398 US 333, 26 L Ed 2d 308, 90 S Ct 1792, was in the same vein, the Court saying:

"In this case, Welsh's conscientious objection to war was undeniably based in part on his perception of world politics. In a letter to his local board, he wrote:

" 'I can only act according to what I am and what I see. And I see that the military complex wastes both human and material resources, that it fosters disregard for (what I consider a paramount concern) human needs and ends; I see that the means we employ to "defend" our "way of life" profoundly change that way of life. I see that in our failure to

[406 US 249]

recognize the political, social, and economic realities of the world, we, *as a nation*, fail our responsibility *as a nation*.' " Id., at 342, 26 L Ed 2d at 320.

The essence of Welsh's philosophy, on the basis of which we held he was entitled to an exemption, was in these words:

" 'I believe that human life is valuable in and of itself; in its living; therefore I will not injure or kill another human being. This belief (and the corresponding "duty" to abstain from violence toward another person) is not "superior to those arising from any human relation." On the contrary: *it is essential to every human relation.* I cannot, therefore, conscientiously comply with the Government's insistence that I assume duties which I feel are immoral and totally repugnant.' " Id., at 343, 26 L Ed 2d at 320.

I adhere to these exalted views of "religion" and see no acceptable alternative to them now that we have become a Nation of many religions and sects, representing all of the diversities of the human race. United States v Seeger, 380 US, at 192–193, 13 L Ed 2d at 751, 752 (concurring opinion).

SOURCE: State of Wisconsin v Jonas Yoder, 406 U. S., 205 (1972).

APPENDIX Q

NATIONAL COMMISSION ON THE
REFORM OF SECONDARY
EDUCATION

Recommendation No. 28: Compulsory Attendance

If the high school is not to be a custodial institution, the state must not force adolescents to attend. Earlier maturity--physical, sexual, and intellectual--requires an option of earlier departure from the restraints of formal schooling.

The formal school-leaving age should be dropped to age fourteen. Other programs should accommodate those who wish to leave school, and employment laws should be rewritten to assure on-the-job training in full-time service and work.

Members of the National Commission

SAMUEL BASKIN	President, Union for Experimenting Colleges and Universities Yellow Springs, Ohio
PETER CLIFFORD	Executive Secretary, Secondary School Department, The National Catholic Educational Association Washington, D. C.
JASON CONVISER	President, Student Council, East Evanston Township High School Evanston, Illinois
SARAH A. DAVIS	Director, Volunteer and Tutorial Programs, Los Angeles Unified City School District Los Angeles, California
WILLIAM A. DU PRE'E	Principal, Hughes High School Cincinnati, Ohio
D. ROBERT GRAHAM	Senator, 33rd District, Florida State Legislature Tallahassee, Florida

EDWIN B. KEIM	President, National Association of Secondary School Principals Washington, D. C.
C. ALBERT KOOB	President, National Catholic Educational Association Washington, D. C.
LEON LESSINGER	Dean, College of Education, University of South Carolina Columbia, South Carolina
ELIZABETH MALLORY	President, National Congress of Parents and Teachers Chicago, Illinois
MARTIN MAYER	Writer New York, New York
THOMAS C. MENDENHALL	President, Smith College Northampton, Massachusetts
SYLVIA MILAM	Vice President, Honor Society, Hartford Public High School Hartford, Connecticut
JOHN W. PORTER	State Superintendent of Public Instruction Lansing, Michigan
ROBERT L. RIDGLEY	President, Oregon School Boards Association Portland, Oregon
ROSALIE C. RISINGER	Principal, Essex County Vocational and Technical High School and Adult Technical School Newark, New Jersey
CLAUDIA SCHEDLEY	President, State of Ohio Vocational Industrial Clubs of America Valley Forge High School Parma, Ohio
JOHN A. STANAVAGE	Executive Secretary, Commission on Secondary

	Schools, North Central Association of Colleges and Secondary Schools Chicago, Illinois
CAROLYN STEELMAN	Chairman, English Department Crossland High School Camp Springs, Maryland
LOUIS G. ZEYEN	Senior Associate Secretary, American Association of School Administrators; Director, National Academy for School Executives Arlington, Virginia
B. FRANK BROWN	Chairman--Director, Information and Services Program, Institute for Development of Educational Activities, Inc., An Affiliate of the Charles F. Kettering Foundation Melbourne, Florida

STAFF OF THE COMMISSION

W. Arthur Darling	Research & Writing Assistant
Phyllis H. Dexter	Secretary to the Commission
Linda J. Field	Report Coordinator
Emmat F. Frauman	Media Specialist
James R. Ryoland	Administrative Assistant
Linda D. Schmitt	Assistant to the Secretary
Melba F. Smith	Office Manager

SOURCE: Report of the National Commission on the Reform of Secondary Education to the Public and Profession, by B. Frank Brown, Chairman. (New York): Mc Graw-Hill Book Co., 1973), pp. vii-ix; 21.

APPENDIX R

HISTORICAL SYNOPSIS OF COMPULSORY EDUCATION IN THE UNITED STATES, 1642-1976

1642	First compulsory education law in Massachusetts Bay Colony.
1647	DeLuder Satan Act passed further defining compulsory education in Massachusetts.
1786	The Ohio Company was organized for purpose of purchasing Northwest Territory.
1787	Northwest Ordinance passed Congress.
1837	First State Board of Education in Massachusetts.
	Horace Mann was the first Secretary to the Board.
1842	Detroit, Michigan declared a free school district.
1852	Massachusetts was the first state to pass a compulsory education law.
1862	The Morrill Land Grant Act passed Congress.
1874	The Michigan Supreme Court allows taxes to be used for high schools in the Kalamazoo Decision.
1881	Organization of the American Federation of Labor.
1885	A. F. L. demanded compulsory education.
1918	The last of the Forty-Eight States (Mississippi) passed a compulsory education law.
1920	Immigration begins to slow down.
1922	State of Oregon passed a law outlawing parochial and private schools.
1923	The Meyer v Nebraska case is decided.
1925	The Pierce case is brought to court and the plaintiffs are upheld by the Supreme Court.

1929	The world wide economic depression began.
1937	Labor Unions won a major victory at Flint, Michigan.
1938	The Federal Fair Labor Standards Act is passed. It severely regulates Child Labor.
1954	The Supreme Court decides that schools cannot be maintained as separate but equal in the famous Brown decision.
1966	The Tinker case was decided in Iowa, setting a First Amendment precedent for the rights of children.
1972	The Amish case is decided at the U. S. Supreme Court level.
	The National Commission for the Reform of Secondary Education is established.
1973	Work of the National Commission is completed and the report is issued.
1975	The report of the National Commission is continually under scrutiny.
1976	The U. S. Office of Education holds workshops on compulsory education.

SOURCE: The entire bibliography of this study is reflected in the synopsis.

BIBLIOGRAPHY

Abrahamson, Shirley S., ed. et al. Constitutions of the United States, National and State, 2 vols. Dobbs Ferry, New York: Oceana Publications, 1962.

Adamson, John William. Pioneers of Modern Education 1600-1700. Cambridge: University Press, 1921.

American Federation of Labor and Congress of Industrial Organizations. Policy Resolutions of the Sixth Constitutional Convention. Washington, D. C.: n. p., 1966.

American Federation of Labor and Congress of Industrial Organizations. Policy Resolutions of the Tenth Constitutional Convention. Washington, D. C.: n. p., 1973.

Anderson, Lewis F. History of Common School Education. New York: Henry Holt and Co., 1909.

Andrews, Charles McLean. The American Nation: A History Colonial Self Government. New York: Harper and Bros., Publishers, 1904.

Arons, Stephen. "Compulsory Education: America in Mississippi." Saturday Review World. 6 November 1973, pp. 54-57.

Arons, Stephen. "Compulsory Education - The Plain People Resist." Saturday Review, 15 January 1973, pp. 52-58.

Arons, Stephen. "The Separation of School and State: Pierce Reconsidered." Harvard Educational Review 46 (February 1976): 76-104.

Atkinson, Carroll, and Maleska, Eugene T. The Story of Education. Philadelphia: Chilton Co., 1962.

Baker, Robert P. "Compulsory Education in the United States: Big Brother Goes to School." Seton Hall Law Review 3 (1972): 349-385.

Barnard, Henry, ed. The American Journal of Education vol. 11. Hartford, F. C. Brownell London: Trubner and Co., 1857; Ann Arbor, Mich.:

University Microfilms, X1005 Reel 85. n.d.

Barrett, Jay A. Evolution of the Ordinance of 1787. New York: G. P. Putnam's Sons, The Knickerbocker Press, 1891.

Beck, Robert Holmes. A Social History of Education. Englewood Cliffs: Prentice-Hall, 1965.

Bender, John Frederick. The Function of Courts in Enforcing School Attendance Laws. Contributions to Education, No. 262 New York: Teachers College, Columbia University, 1927.

Berg, Ivar. Education and Jobs: The Great Training Robbery. New York: Praeger Publishers, 1970.

Blake, Raymond J. A History of Education Through Time Lines. Palo Alto, California: The National Press, 1962.

Bolmeier, Edward C. Landmark Supreme Court Decisions on Public School Issues. Charlottesville, Virginia: The Michie Co., 1973.

Bonner, H. R. "Compulsory Attendance Laws." The American School Board Journal 60 (February 1920): 46-47.

Brown, B. Frank. "The Reform of Secondary Education." NASSP Bulletin 58 (May 1974) 46-56.

Brown, B. Frank. "Compulsory Education." NASSP Bulletin 59 (September 1975): 61-66.

Brown, B. Frank. "Forced Schooling." Phi Delta Kappan 54 (January 1973): 324.

Brown v. Board of Education, 347 U. S. 483 (1954).

Brown v. Board of Education, 349 U. S. 294 (1955).

Brubacher, John S. A History of the Problems of Education. New York: McGraw-Hill, 1947.

Bunker, Frank Forest. "The Functional Reorganization of the Public School System." Ph. D. dissertation, New York University, 1913.

Burgess, Charles. "The Goddess, the School Book and Compulsion." Harvard Educational Review. 46 (May 1976): 199-216.

Bush, Robert N. "National Goals and the Secondary Schools." In Education an Instrument of National Goals, pp. 134-137. Edited by Paul R. Hanna. New York: McGraw-Hill Co., 1962.

Butler, Vera M. "Education as Revealed by New England Newspapers Prior to 1850." Ph. D. dissertation, Temple University, 1935.

Butts, R. Freeman, and Cremin, Lawrence A. A History of Education in American Culture. New York: Holt, Rinehart and Winston, 1953.

Butts, R. Freeman. "James Madison, the Bill of Rights, and Education." Teachers College Record 60 (December 1958): 121-128.

Calhoun, John William. "Compulsory Education Immunizes Against the Disease of Ignorance." Saturday Review, 15 January 1972, p. 58.

Campbell, Dudley. Compulsory Education. London: John Murray, 1870.

Carlile, Amos B. "Compulsory Attendance Laws in the United States; Historical Background." Education Law and Administration 4(April 1936): 35-37; 78-80; 110-112.

Carlton, Frank Tracy. Economic Influences upon Educational Progress in the United States, 1820-1850. New York: Teachers College Press, 1965.

Carroll, Charles. "The Supreme Court and Compulsory Education." The American School Board Journal 68 (May 1924): 47-48.

Castan, Frances. "Is There a Right Not to Go to School?" Scholastic Teacher, October 1972, pp. 20-24.

Cattell, J. McKeen, ed. "State Laws Relating to Compulsory Education." School and Society 29 (March 2, 1929): 276-277.

Cawelti, Gordon. "The Reform of Secondary Education: A Review of the Report's Advice to the Public and the Profession." NASSP Bulletin 58 (April 1974): 86-93.

Chisholm, Leslie L. "Is Education a Public Expense or an Investment." Education 77 (February 1957): 336-339.

Cohen, Sol, ed. Education in the United States: A Documentary History, 5 vols. New York: Random House, 1974.

Commager, Henry Steele, ed. Documents of American History. New York: Appleton-Century-Crofts, 1958.

"Compulsory Attendance is 'Futile'." Nations Schools 65 (May 1960): 70.

Conant, James B. Shaping Educational Policy. New York: McGraw-Hill, 1964.

Counts, George S. Education and the Promise of America. New York: The MacMillan Co., 1946.

Cremin, Lawrence A. American Education: The Colonial Experience, 1607-1783. New York: Harper and Row, Publishers, 1970.

Cremin, Lawrence A. "Public Education and the Future of America." NEA Journal 44 (January-December, 1955): 9-10.

Cubberley, Ellwood P. Changing Conceptions of Education New York: Houghton-Mifflin, 1909.

Cubberley, Ellwood P. Readings in the History of Education. Boston: Houghton Mifflin Co., 1920.

Cubberley, Ellwood P. Readings in Public Education in the United States. Boston: Houghton Mifflin Co., 1934.

Cubberley, Ellwood P. State and County School Administration. New York: The Macmillan Co., 1915.

Curoe, R. V. Philip. Educational Attitudes and Policies of Organized Labor in the United States. New York: Teachers College, Columbia University, Bureau of Publications, 1926.

Cyclopedia of Education, 1911 ed. S.v. "Attendance".

Denker, David. "American Education: A Brief History." Current History 29 (September 1955): 145-152.

Detroit News. 13 December 1973. sec. F, p. 7.

Dewey, John, and Dewey, Evelyn. Schools of Tomorrow. New York: E. P. Dutton and Co., 1962.

Dexter, Lewis Anthony. The Tyranny of Schooling. New York: Basic Books, 1964.

Dunlop, Knight. "Is Compulsory Education Justified?" American Mercury 16 (February 1929): 211-214.

Education Policies Commission. The Structure and Administration of Education in American Democracy. Washington, D. C.: National Education Association and the American Association of School Administrators, 1940.

Edwards, Newton. The Courts and the Public Schools. Chicago: The University of Chicago Press, 1933; reprint ed. 1955.

Encyclopedia of Educational Research, 1950 ed. S.v. "Attendance".

Encyclopedia of Educational Research, 1960 ed. S.v. "Compulsory Education".

Encyclopedia of Educational Research, 1969 ed. S.v. "Attendance".

Ensign, Forest Chester. "Compulsory School Attendance and Child Labor." Ph. D. dissertation, Columbia University, 1921.

Elliott, Mabel A., and Merrill, Francis E. Social Disorganization New York: Harper and Brothers, 1961.

Everhart, Robert B. "Compulsory Education, Not Compulsory Attendance." NASSP Bulletin 39 (January 1976): 71-76.

Fair Labor Standards Act of 1938. U. S. Code, vol. 29 (1970).

Faust, Helen. "Compulsory Public Education." Current History, 29 (September 1955): 140-145.

Finkelstein, Barbara J. "The Search for Identity: An Institutional Problem?" Intellect 102 (December 1973): 150-151.

Florer, John H. "Major Issues in the Congressional Debate of the Morrill Act of 1862." History of Education Quarterly 8 (Winter 1968): 459-478.

Friedenberg, Edgar Z. Coming of Age in America. New York: Vintage Books, 1965.

Friedenberg, Edgar Z. The Vanishing Adolescent. Boston: Beacon Press, 1959.

Gartner, Alan.; Greer, Colin; Riessman, Frank. After Deschooling, What?. New York: Harper and Row, 1973.

Gillett, Margaret. A History of Education. New York: McGraw-Hill Co., 1966.

Gintis, Herbert. "Toward a Political Economy of Education: A Radical Critique of Ivan Illich's Deschooling Society." In After Deschooling, What?, pp. 29-76. Edited by Alan Gartner, Colin Greer and Frank Riessman. New York: Harper and Row, 1973.

Goodman, Paul. Compulsory Mis-Education and the Community of Scholars. New York: Vintage Books, 1964.

Goodman, Paul. Growing up Absurd New York: Vintage Books, 1960.

Greer, Colin. The Great School Legend. New York: Basic Books, 1972.

Gross, Beatrice, and Gross, Ronald. Radical School Reform. New York: Simon and Schuster, 1969.

Gumbert, Edgar B., and Spring, Joel H. The Super-school and the Superstate: American Education in the Twentieth Century, 1918-1970 New York: John Wiley and Sons, 1974.

Hamilton, Robert, and Mort, Paul R. The Law and Public Education. Chicago: The Foundation Press, 1941.

Hanna, Paul R., ed. Education: An Instrument of National Goals New York: McGraw-Hill Co., 1962.

Hansen, J. Merrell. "Sacred Cows: The Compulsory

Elements of Schooling." Education Leadership, March 1974, pp. 512-515.

Heslip, Robert D. Thomas Jefferson and Education. New York: Random House, 1969.

Hinsdale, B. A. Horace Mann and the Common School Revival in the United States. New York: Charles Scribner's Sons, 1913.

Hinsdale, B. A. The Ordinance of 1787. Akron, Ohio: Educational Monthly Print, 1887.

Holt, John. Freedom and Beyond. New York: E. P. Dutton and Co., 1972.

Honeywell, Roy J. The Educational Work of Thomas Jefferson. New York: Russell and Russell, 1964.

Huber, L. W. "Compulsory Attendance and Indifferent Pupils." Education Digest, May 1957, pp. 22-24.

Huston, Wendall, comp. Index Federal Appendix, Education and Welfare, 1954 Legislative Service in School Laws of the Forty-Eight States, vol. 1. Seattle, Washington: Wendall Huston Publisher, 1947.

Illich, Ivan. "After Deschooling, What?" In After Deschooling, What?, pp. 1-28. Edited by Alan Gartner, Colin Greer, and Frank Riessman. New York: Harper and Row, 1973.

Illich, Ivan. Deschooling Society. New York: Harper and Row, 1971.

Jackson, George Leroy. The Development of School Support in Colonial Massachusetts. New York: Teachers College, Columbia University, 1909.

James, Edmund J. The Origin of the Land Grant Act of 1862. The University Studies vol. 4. No. 1. Urbana: University of Illinois Press, 1910.

Jernegan, Marcus W. "Compulsory Education in the Southern Colonies." The School Review 28 (February 1920): 127-142.

Jernegan, Marcus Wilson. Laboring and Dependent Classes in Colonial America 1607-1783.

Chicago: The University of Chicago Press, 1931.

Jerome, Judson. "After Illich, What?" In After Deschooling, What?, pp. 104-111. Edited by Alan Gartner, Colin Greer and Frank Riessman. New York: Harper and Row, 1973.

Johnson, George Marion. Education Law. East Lansing: Michigan State University Press, 1969.

Johnson, Howard M. "Compulsory Attendance Laws - Are They Outdated?" Phi Delta Kappan, December 1973, pp. 226-232.

Kandel, I. L. American Education in the Twentieth Century. Cambridge, Massachusetts: Harvard University Press, 1957.

Kandel, I. L. History of Secondary Education. Boston: Houghton Mifflin Co., 1930.

Kandel, I. L. The Impact of the War upon American Education. Chapel Hill: The University of North Carolina Press, 1948.

Kane, William T. and O'Brien, John J. History of Education. Chicago: Loyola University Press, 1954.

Katz, Michael S. A History of Compulsory Education Laws. Bloomington, Indiana: The Phi Delta Kappa Educational Foundation, Fastback 75; The Phi Delta Kappa Educational Foundation, 1976.

Katz, Michael B. The Irony of Early School Reform: Educational Innovation in Mid-Nineteenth Century Massachusetts. Boston: Beacon Press, 1968.

Kelley, Earl C. In Defense of Youth. Englewood Cliffs: Prentice Hall, 1962.

Kennedy, Foster. "Compulsory Education - 6 to 60." The Saturday Review of Literature, 10 November 1945, pp. 22-23.

Keppel, Francis. The Necessary Revolution in American Education. New York: Harper and Row, 1966.

Kiernan, Owen B. "Compulsory Education." NASSP

Bulletin 59 (September 1975): 61-66.

Knight, Edgar W. Education in the United States. Boston: Ginn and Co., 1941.

Knight, Edgar W. "15 Highly Significant Years in the History of Education, 1932-47." School Management. 16 (March, 1947): 2.

Knight, Edgar W. Fifty Years of American Education. New York: The Ronald Press Co., 1952.

Knight, Edgar Wallace. The Influence of Reconstruction on Education in the South. New York: Arno Press and the New York Times, 1969.

Knight, Edgar W. Public Education in the South. Boston: Ginn and Co., 1922.

Lammers, Claude C. "Compulsory School Attendance: Raise Requirements in the Automated Age?" Clearing House, January 1963, pp. 286-291.

Landes, William M., and Solmon, Lewis C. "Compulsory Schooling Legislation: An Economic Analysis of Law and Social Change in the Nineteenth Century." The Journal of Economic History 33 (1972): 54-91.

Lee, John J. "Federal Control Over State Educational Policies as Revealed by Supreme Court Decisions." The American School Board Journal 78 (February 1929): 42.

Lieberman, Myron. The Future of Public Education. Chicago: The University of Chicago Press, 1967.

Liebler, C. C. "Court Decisions Affecting the Enforcement of Compulsory Education." The American School Board Journal. 77 (October 1928): 49-50.

Mann, Horace. Life and Works of Horace Mann, vol. 4: Annual Reports. Boston: Lee and Shephard Publishers, 1891.

Massachusetts. Acts and Resolves (1852).

Matzen, John Mathiason. State Constitutional Provisions for Education. New York City: Bureau of Publications Teachers College, Columbia University, 1931.

Mead, Arthur Raymond. The Development of Free Schools in the United States as Illustrated by Connecticut and Michigan. New York: Teachers College, Columbia University, 1918.

Messner, S. G. "Compulsory Education." American Ecclesiastical Review, April 1892, pp. 279-298.

Meyer, Adolphe. An Educational History of the American People. New York: McGraw-Hill Co., 1957.

Meyer v. Nebraska. 262 U. S. 390 (1923).

"Milestones in American Educational History." NEA Journal 42 (February 1953): 97.

Miller, Stephen I. "Alternative School Systems: Jencks Reexamined." Intellect, 101 (November 1972): 102-104.

Moehlman, Arthur Henry. "Universal Education - Our Greatest Contribution to World Culture." Education, 77 (February 1957): 330-335.

Monroe, Paul. Founding of the American Public School System. vol. 1. New York: The MacMillan Company, 1940.

Monroe, Walter Scott. Bibliographies and Summaries in Education to July 1935. New York: The H. W. Wilson Co., 1936.

Moquin, Wayne, ed. Makers of America - The New Immigrants, 1904-1913. Encyclopaedia Britannica Educational Corporation, 1971.

New York Times, 12 November, sec. 2, p. 6; 3, 12 December 1922 sec. 2, p. 8; sec. 2, p. 7.

Norton, Thomas James. The Constitution of the United States. New York: Committee for Constitutional Government, 1941; reprint ed., 1962.

Patterson, Howard S. "Educational Implications of Recent Economic Changes." School and Society 37 (April 8, 1933): 441-446.

Pearl, Arthur. The Atrocity of Education. St. Louis: New Critics Press, 1972.

Perkinson, Henry J. The Imperfect Panacea: American

Faith in Education, 1865-1965. New York: Random House, 1968.

Perrin, John W. "Beginnings in Compulsory Education." Educational Review 25 (January to May 1903): 240-248.

Perrin, John W. "The History of Compulsory Education in New England." Ph. D. dissertation, University of Chicago, 1896.

Perry, Richard L., ed. Sources of Our Liberties. New York: University Press, 1959.

Piatt, James G. "Compulsory Attendance Can Be Fatal." NASSP Bulletin 58 (February 1974): 1-5.

Pierce v. Hill Military Academy, 268 U. S. 510 (1925).

Pierce v. Society of Sisters, 268 U. S. 510 (1925).

Pitkin, Royce Stanley. Public School Support in the United States During Periods of Economic Depression. Brattleboro, Vermont: Stephen Daye Press, 1933.

Poole, William Frederick. The Ordinance of 1787 and Dr. Manasseh Cutler. Cambridge, Mass.: Welch, Bigelow and Co.; University Press, 1876.

Poore, Ben Perley. The Federal and State Constitutions Colonial Charters and Other Organic Laws of the United States, 2 vols. Washington: Government Printing Office, 1878; reprint ed., New York: Burt Franklin, 1924; reprint ed., 1972.

Proceedings of the American Federation of Labor. Political Declarations of the A. F. of L. at Denver, Col. American Federationist 2 (April 1895): 32-33.

Proceeding of the American Federation of Labor. Report of the Fifth Annual Session of the Federation of Organized Trades and Labor Unions of the United States and Canada. Bloomington, Illinois: Pantagraph Printing and Stationery Co., 1885; reprint ed., 1906.

Proceeding of the American Federation of Labor. Report of the First Annual Session of the

Federation of Organized Trades and Labor Unions of the United States and Canada. Bloomington, Illinois: Pantagraph Printing and Stationery Co., 1881; reprint ed., 1906.

Proceedings of the American Federation of Labor. Report of the Forty Eighth Annual Convention of the A. F. L. Washington, D. C.: Law Reporter Printing Co., 1928.

Proceedings of the American Federation of Labor. Report of the Thirty Eighth Annual Convention of the A. F. L. Washington, D. C.: Law Reporter Printing Co., 1918.

Proceedings of the American Federation of Labor. Report of the Twelfth Annual Session of the Federation of Organized Trades and Labor Unions of the United States and Canada. Bloomington, Illinois: Pantagraph Printing and Stationery Co., 1892; reprint ed., 1906.

Punke, Harold H. "Compulsory College for the Competent." Education Digest, April 1966, pp. 41-44.

Ravitch, Diane. The Great School Wars. New York: Basic Books; 1974.

Ravitch, Diane. "The Public School's Tasks and How They Grew." New York Times, 16 November 1975, sec. 11, p. 7.

Reed, Rachel. "A Public High School Teacher Looks At Compulsory Education." Education 60 (January 1940): 306-309.

Reimer, Everett. School is Dead: Alternatives In Education. New York: Anchor Books, 1972.

Reisner, Edward Hartman. Nationalism and Education Since 1789. New York: The MacMillan Co., 1922.

Reisner, Edward Hartman. The Evolution of the Common School. New York: The MacMillan Co., 1930.

Report of the National Commission on the Reform of Secondary Education to the Public and the Profession. By B. Frank Brown, Chairman. New York: McGraw-Hill Book Co., 1973.

Richmond, George. "The Society School - An Alternative to the Deschooled Society." Saturday Review, 24 June 1972, pp. 44-45.

Robertson, Don, and Steele, Marion. The Halls of Yearning. San Francisco: Canfield Press, 1971.

Rothbard, Murray N. "Historical Origins." In Twelve Year Sentence, pp. 11-32. Edited by William Rickenbacker. La Salle, Illinois: Open Court Publishing Co., 1974.

Rudy, Willis. Schools in an Age of Mass Culture. Englewood Cliffs, New Jersey: Prentice Hall, 1965.

Rushdoony, Rousas John. The Messianic Character of American Education. Nutley, New Jersey: The Craig Press, 1963.

Seybolt, Robert Francis. Apprenticeship and Apprenticeship Education in Colonial New England and New York. New York: Teachers College, Columbia University, 1917.

Shurtleff, Nathaniel B., ed. Records of the Governor and Company of the Massachusetts Bay in New England. Boston: Press of William White, Printer to the Commonwealth, 1853.

Silberman, Charles E. Crisis in the Classroom. New York: Vintage Books, 1971.

Slosson, Edwin E. The American Spirit in Education. New Haven: Yale University Press, 1921.

Small, Walter Herbert. Early New England Schools. Boston: Ginn and Co., 1914.

Smith, Patrick Joseph. "Shall Cause the Child to Attend School." American School Board Journal 95 (August 1937): 33.

Smith, Payson, and Wright, Frank W. Education in the Forty-Eight States Staff Study, no. 1. Washington: U. S. Government Printing Office, 1939.

Soper, Wayne. "The Federal Courts and the Public Schools." The American School Board Journal. 79 (October 1929): 37-39.

Southworth, William D. "Compulsory Education, K-14 - Not If But When." American School Board Journal, July 1963, p. 12.

Spencer, Herbert. Social Statics 1851. New York Robert Schallkenbach Foundation, 1954.

Spring, Joel H. Education and the Rise of the Corporate State. Boston: Beacon Press, 1972.

Spurlock, Clark. Education and the Supreme Court. Urbana: University of Illinois Press, 1955.

Stambler, Moses. "The Effect of Compulsory Education and Child Labor Laws on High School Attendance in New York City, 1898-1917." History of Education Quarterly 8 (Summer 1968): 189-214.

State of Wisconsin v. Jonas Yoder. 406 U. S. 205 (1972).

State v. Williams. 56 S. D. 370 (1929).

Stuart v. School District no. 1., 30 Mich. 69 (1874).

Sullivan, James D., comp. A Summary of the Compulsory Attendance and Child Labor Laws of the States and Territories of the United States, N. Y. State Library Bulletin, 114. Albany: N. Y. State Education Department, 1937.

Swayne, Wager. The Ordinance of 1787 and The War of 1861. New York: C. G. Burgoyne n.d.

Thomas, Alan M. Jr. "American Education and the Immigrant." Teachers College Record 55 (February 1954): 253-267.

Thompson, Frank V. Schooling of the Immigrant. New York: Harper and Bros., 1920.

Tinker v. DesMoines Independent Community School District. 258 F. Supp. 971 (1966).

Toffler, Alvin. Future Shock. New York: Bantam Books, 1971.

Tyack, David. "Forming the National Character." Harvard Educational Review. 36 (Winter 1966): 29-41.

Tyack, David B. "The Perils of Pluralism: The Background of the Pierce Case." The American Historical Review 74 (October 1968): 74-98.

Tyack, David B. Turning Points in American Educational History. Massachusetts: Blaisdell Publishing Co., 1967.

Tyack, David B. "Ways of Seeing: An Essay on the History of Compulsory Schooling." Harvard Educational Review 46 (August 1976): 355-389.

Ulich, Robert. A Sequence of Educational Influences. Cambridge: Harvard University Press, 1935.

U. S. Bureau of Education. Compulsory School Attendance. by Walter S. Deffenbaugh. Bulletin 1914 no. 2. Washington: Government Printing Office, 1914.

U. S. Department of Health, Education and Welfare. State Law on Compulsory Attendance, by August W. Steinhilber and Carl J. Sokolowski. Washington, D. C.: U. S. Government Printing Office, 1966.

U. S. Department of the Interior. Bureau of Education Bulletin. Laws Relating to Compulsory Education, by Ward W. Keesecker. Bulletin 1928 no. 20. Washington: U. S. Government Printing Office, 1929.

U. S. Department of Interior. Bureau of Education Bulletin. The Land Grant of 1862 and the Land-Grant Colleges, by Benj. F. Andrews. Bulletin 1918 no. 13. Washington: Government Printing Office, 1918.

U. S. Office of Education. Compulsory School Attendance Laws and Their Administration, by Walter S. Deffenbaugh and Ward W. Keesecker. Bulletin 1935 no. 4. Washington: U. S. Government Printing Office, 1935.

U. S. Office of Education. Federal Security Agency. School Census Compulsory Education Child Labor, by Maris Proffitt and David Segal. Bulletin 1945 no. 1. Washington: U. S. Government Printing Office, 1945.

U. S. Office of Education. Department of Health, Education and Welfare. Discussion Guide, Workshop No. 7 Compulsory Education, American Secondary Schools: New Dimensions for Educating Youth, 25-28 April 1976.

Vassar, Rena L., ed. Social History of American Education, 2 vols. Chicago: Rand McNally, 1965.

West, E. G. Education and the State. London: The Institute of Economic Affairs, 1955.

West, E. G. Education and the Industrial Revolution. New York: Barnes and Noble, 1975.

Winchell, Donald E. "Compulsory High School Education and the National Interest." Education Digest, April 1962, pp. 30-31.

Wittmer, Joe. "The Amish and the Supreme Court." Phi Delta Kappan 54 (September 1972): 50-52.

Zimand, Gertrude Folks, and Walmsley, Genevieve. Child Labor Laws and Child Labor Facts. New York: National Child Labor Committee, n. p., n. d.