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THE HISTORY OF FEDERAL
PROTECTIVE CHILD LABOR
LEGISLATION

by

Nello Paul Gamberdino

A Thesis Submitted to the Faculty of the Institute of Social
and Industrial Relations of Loyola University in
Partial Fulfillment of the requirements
for the Degree of Master of
Social and Industrial
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VITA

Nello Paul Gamberdino was born in Chicago, Illinois, November 12, 1924.

He was graduated from John Marshall High School, January, 1943. After completion of military service from 1943 to 1946, the author attended De Paul University and received his Bachelor of Arts degree in Psychology, June, 1950.

He began his graduate studies at Loyola University in the Fall of 1950.

CHAPTER I

INTRODUCTION

There is, perhaps, no other subject of legislative effort that has brought together a wider range of American interest than that of child labor. Many reasons explain this special interest. One is the fact that child labor being hazardous has led to numerous investigations throughout the years which have shown evidence of heart disease, throat and respiratory infections and other unhealthy conditions among children who work.¹

From the angle of the sociologist, psychologist and the moralist, child labor is viewed as breaking family ties and weakening the social and moral control exerted by the parents. Studies conducted by the Children's Bureau, the United States Department of Labor and the National Child Labor Committee of the surroundings of both urban and rural child workers have repeatedly disclosed that their environment are of times conducive to roughness, crudeness, harshness and in many cases actual delinquency.²

1 For further extensive discussion of unhealthy and dangerous conditions of child labor, see Grace Abbott, "Some Twentieth Century Reports on The Employment of Children," The Child and The State, Chicago, University of Chicago Press, 1938, pp. 358-404.

2 For detail accounts, see Gertrude F. Zimand, Child Labor Facts, National Child Labor Committee, New York, 1940, pp.12-26; also, United States Department of Labor, Bureau of Labor Standards, They Work While You Play, Bulletin No. 124, 1950.

This removal of the child from his home at the important years of his life, that is, his formative years, tends to create a lack of respect for normal controls at a time when children need such regulation.

Moreover, from the viewpoint of the educator, child labor and poor school attendance is recognized as going hand in hand. This fact is substantiated by reports from states with the poorest school attendance that show that they are the same states with the largest proportion of employed child labor.³

From the economic and labor viewpoint, it also permits what might be described as unfair competition with adult labor. This may result in extensive unemployment of adults or in their employment under working conditions that are less satisfactory than they would otherwise be.

In recognition of these various considerations and interests in the problem of child labor, the government has set some limitations on standards for child labor. The main emphasis lying in the premise that children are to be restricted in their participation in labor markets in order that their health, their better social and moral adjustment, and their education may increase their worthy contribution in later life.

³ Children's Bureau, "Child Labor Facts and Figures," United States Department of Labor, 1930, Publication No. 197, pp.22-23.

The purpose of this thesis is to investigate the historical movement that necessitated these goals and finally federal protective child labor legislation. In such a manner then has this thesis been prepared by introducing first the early history of child labor in England; rise of the problem in the United states; a brief explanation of the government's role in protection of the child; a complete chapter on earlier attempts and failures made by the Federal Government to control child labor; and an investigation of the successful Fair Labor Standards Act, the Walsh-Healey Act, and the Sugar Act of 1938; and finally the summary and conclusions. These have been mentioned and investigated because the author feels that they have all had an influence on the employment of children.

DEFINITION OF CHILD LABOR

Problems have been encountered in the definition of child labor and as a result no single age group can be specifically designated as "child labor." The following are some of the definitions that have been offered.

Mr. Fuller in his Child Labor and The Constitution explains child labor as:

...any work of children which interferes with health and normal development (mental as well as physical health and development), which prevents or balks the legitimate expression of the child's natural instincts and desires, which deprives him of proper opportunity for play and for schooling, and of education not⁴ only through formal and wholesome play but through suitable work.

⁴ Raymond G. Fuller, Child Labor and The Constitution, New York, Crowell Co., 1923, p. 3.

Miss Lucy Manning has much of the same meaning in her definition of child labor. She states:

Child labor is the employment of boys and girls when they are too young for hire or when they are employed at jobs unsuitable or unsafe for children of their ages, or under conditions injurious to their welfare. It is any employment, that robs them of their rightful heritage of a chance for healthful development, full educational opportunities, and necessary playtime. It does not mean the school activities of boys and girls nor does it include their home chores and duties.⁵

The Encyclopaedia Americana explains child labor as follows:

...Child labor is difficult to define because what is regarded as labor in one community or under certain conditions is often not so regarded in other communities or under other conditions, neither is there agreement as to the length of childhood. The definition of the term depends upon the state of public opinion and upon the crystallization of that opinion in the form of restrictive and constructive measures for the benefit of children. In the early days of the movement in England to protect children from economic exploitation, the term was understood to apply only to the employment of very young children in mills and mines. Gradually its application was broadened to include the work of children in many other establishments and occupations and the minimum age limit for employment was raised. Today in the United States, not only the employment of children by merchants, manufacturers, and mine operators is considered as child labor, but also independent activity of boys and girls for gain, as in the so-called street trades of newspaper selling, bootblackening and peddling, in which the child is virtually in business on his own account.⁶

For all practical purposes, the regular work of those in the labor force seventeen years of age and under may be regarded as child labor. Such work has been generally accepted as being labor that caused irreparable in-

⁵ Lucy Manning, "Why Child Labor Laws?", United States Dept. of Labor, Bureau of Labor Standards, Bulletin No. 96, 1948.

⁶ The Encyclopedia Americana, "Child Labor", Edward N. Clapper, Americana Corp., New York, 1949, p. 461.

jury to both children and society. Not only are the bodies and minds of these youngsters stunted but crime, violence, hatred, immorality, and all other such social evils are fostered, leading to productive efficiency that is considerably lessened at a time when such efficiency should be at its peak.

PROGRESS TOWARD PREVENTION OF CHILD LABOR

The exploitation of children first became prominent with the rapid industrial changes and by manufacturers whose primary objective was excessive profits no matter what means were to be used. This above all other reasons seems to be the one evil that necessitated protection for the child. Both public and private agencies endeavored to put a law into effect that would not only free the children from this industrial exploitation but which would also give them greater opportunities for education and play. One such organization has been the National Child Labor Committee organized in 1904 to investigate the labor of children, report the abuses, and to promote federal protective child labor legislation.

However, progress was slow on the part of the federal government to protect children. On two occasions laws passed in 1916 and 1919 were declared unconstitutional and an attempted amendment to the federal constitution in 1924 also proved unsuccessful. The successful effort to regulate child labor on a national basis was finally fulfilled by the enactment of the Fair Labor Standards Act in 1938 after a long history of attempts, obstacles and failures. The decision that declared the said Act constitu-

tional⁷ in 1941 has been most important in the history of efforts to control child labor on a federal level.

⁷ United States v. F. W. Darby Lumber Company, 312 US 100, February 3, 1941.

CHAPTER II

EARLY HISTORY OF CHILD LABOR

A. Historic Conditions and Development of Legislation in England.

Although the labor of children was utilized under the domestic system, it was not until the introduction of the labor saving device of machinery and its improvement in methods of production that we see the first signs of distinctive evils in the labor of children.

With the introduction of power machinery in England during the last quarter of the eighteenth century, employment of children increased, for now with machinery, deftness rather than physical strength was required; therefore, labor of children became, in many cases, more productive.¹

These evils of long hours, insufficient wages, over-exertion, lack of educational opportunities, forced neglect of home duties, extremely poor working conditions, and many others, became prevalent in the early factories and mines of England, reaching their greatest intensity in the nineteenth century.

¹ "Child Labor," The New International Encyclopaedia, New York, Dodd Mead and Company, Vol. 5, p. 186, 1922.

Engels² in his book Condition of The Working Class in England in 1844, and Marx³ in his Capital, give an abundance of testimony as to the horrible conditions, physical, mental, and moral which prevailed in England during this period.

The beginning of the present century (19th Century) found children of five, and even of three years of age, in England, working in factories and brick yards; women working underground in mines, harnessed with mules to carts, drawing heavy loads; found the hours of labor whatever the avarice of individual mill-owners might exact, were it thirteen, or fifteen; found no guards about the machinery to protect life and limb; found the air of the factory fouler than language can describe, even could human ears bear to hear the story.⁴

Pauper apprenticeship seems to have been the very first form under which the evils of child labor became serious enough as to call attention to regulation by legislative restriction. From the poorhouses came England's large supply of child labor, where pauper children worked in the mills and factories for a recompense of maintenance. Because of large profits and increased competition in this "new field" of labor, various manufactures increased the hours of employment for their child workers, and decreased the cost of food and shelter until there came into existence not only this evil form of child labor, but virtually "child slavery."

2 Frederick Engels, Condition of The Working Class in England in 1844, London, Swan Sonnenschein and Company, 1892, pp. 141-177; 188-211; 241-251.

3 Karl Marx, Capital, Chicago, Charles H. Kerr and Company, 1906, pp. 241-248; 263-284; 391-400; 466-512; 715-718; 783-786; .

4 Francis A. Walker, Political Economy, New York, Henry Holt and Company, 1887, p. 381.

Manufacturers and parish workhouses made agreements whereby thousands of children were deported to factory towns to work under dire conditions and virtually became slaves. Hodder best describes this condition as:

A horrible traffic had sprung up; child-jobbers scoured the country for the purpose of purchasing children to sell them again into the bondage of factory slaves. The waste of human life in the manufactories to which the children were consigned was simple frightful. Day and night the machinery was kept going; one gang of children working it by day, and another by night, while, in times of pressure, the same children were kept working day and night by remorseless task-masters.⁵

It was not uncommon to find children of five years of age working from thirteen to sixteen hours a day, with barely sufficient food to keep them alive and with no regard to sanitary principles.⁶

Thus it was because of pauper apprentices that in 1802 Sir Robert Peel procured legislation, providing for twelve hours as constituting a day's work.⁷ However, as the factory system developed, the method of apprenticeship was being crowded out; steam was substituted for water power; factories were being built in cities; and machinery was constructed on a large scale. Thus, as more work was being offered, a new phase of child labor arose--that of wage-labor of children who worked at home. Because the Act of 1802 did

5 Hodder, The Life and Work of The Seventh Earl of Shaftesbury, London, Cassell and Company, 1886, Vol. II, p. 86.

6 "Child Labor," The New International Encyclopaedia, p. 187.

7 Thomas S. Adams, and Helen L. Sumner, Labor Problems, New York, Macmillan Company, 1933, p. 22.

not apply to these workers, new legislation and investigation was now to be considered.

In a report of the minutes of evidence, taken on April 25, 1816, before the "Select Committee on The State of The Children Employed in the Manufactories of The United Kingdon," a physician testified that of approximately twenty-three thousand factory hands examined, fourteen thousand were under the age of eighteen.⁸ From this investigation, also disclosing that children of six were found in the factories and fifteen hours of labor was not uncommon for these children, came the passage of the Acts of 1819, 1825 and 1831. The Act of 1831 was the only one of the three Acts that was enforced, and that on few occasions.

The Act of 1819 forbade the employment of children under nine and limited the hours of work to twelve per day for those between nine and sixteen while the Act of 1825 provided a half-day holiday for children on Saturday. The Act of 1831 was the first big step taken in preventing night work for children under twenty-one. It also lowered the hours of work from twelve to eleven.⁹

It was a short time thereafter, in 1833, that another governmental investigation of child labor showed that there had been little improvement of conditions and that abuses had spread to many industries. Because of this report, the Act of 1833 resulted. It provided for factory inspection

⁸ Ibid., p. 22.

⁹ Chambers Encyclopaedia, Oxford University, New York, 1950, p. 400.

and school attendance.

However, it was not until 1842 that one of the most abusive industries, that is, mining, finally came under regulation.¹⁰

In 1848 the hours for children under thirteen were limited to five, to those between thirteen and fifteen, to ten hours. This act is, according to the New International Encyclopaedia, "Regarded as the basis for all modern regulation of child labor."¹¹

Between 1860 and 1901 numerous factory acts were passed in connection with child labor which later were extended to industry.

So we see in England by 1901 better conditions of work and health although this was not the case universally. From the Act of 1916¹² to the Act of 1937¹³ restrictions on child employment were tightened. A forty-eight hour week was established, health and welfare provisions for children were much improved, and the work of examining surgeons was greatly extended. By 1940 England and almost all European nations had laws limiting the working day for children from six to eight hours.¹⁴

10 It was Assistant Commissioner Horner's report on the employment of children in mines and factories one year later which led Elizabeth Barrett Browning to write her famous poem, "The Cry of Children," which can be found in the appendix. Grace Abbott, The Child and The State, Chicago, University of Chicago, Vol. I, 1938, p. 170.

11 New International Encyclopaedia, p. 187.

12 The Police, Factories, etc., Act of 1916, Chambers Encyclopaedia, p. 400.

13 Ibid., p. 400.

14 Columbia Encyclopaedia, Second Edition, Columbia University Press, 1950, p. 377.

The recent introduction of the five-day week and educational benefites to the young workers have come a long way in establishing a most needed code of ethics for the employment of children in England.¹⁵

B. Rise of The Problem in The United States.

The problem of child labor in the United States arose from approximately the same causes and followed much the same line of development as in England, it is well for us to distinguish some important differences.

To begin with, the pauper apprentice problem was for all practical purposes never confronted in the United States; women and girls were generally not employed in mines; from the experience of England the United States has profited as to the building and arranging of factories; industries that employed large numbers of children in England never flourished here; and legislation got off to an earlier start in this country than in England.¹⁶

However, Jernegan lists other differences. As to what made the problem of child labor in the United States less acute than what was found in England, Jernegan states:

...the abundance of free land, the dominance of the domestic system after the industrial revolution was well under way in the mother country, the rather slow introduction of machine processes into American industrial life, and the absence of the same pauper apprentice problem that England had to contend against.¹⁷

¹⁵ Chambers Encyclopaedia, Education Act of 1944, p. 400.

¹⁶ Adams, Labor Problems, p. 25.

¹⁷ Marcus W. Jernegan, Laboring and Dependent Class in Colonial America, Chicago, University of Chicago, 1931

In the United States, the child labor problem did not become really serious until the industrial expansion in the first decade after the Civil War. Nevertheless, shortly after child labor became entrenched as an accepted labor policy of the early American factories, the states using their police power placed certain restrictions on the labor of children. In these efforts they were upheld by the courts which persistently held that the child stands to the states in the position of a ward to his guardian, and that, acting as a guardian, the states may exercise reasonable supervision and control over child labor.¹⁸ But, strange as it may seem, it was not the employment conditions of children but their lack of education which caused the first state law dealing with child labor. In 1813, Connecticut passed a law which required children in factories to be instructed in reading, writing and arithmetic.¹⁹ Restrictions of hours, minimum age regulations and the like followed rather slowly. By 1879 there were seven states which set a minimum age for child employment,²⁰ and twelve states which set maximum hours of work.²¹ At this time, children of Massachusetts eight to eleven, were found working in factories eleven to fourteen hours daily.²² In New York and Penn-

¹⁸ See, for instance: Supreme Court of Oregon in re State v Shorey, 48 Ore. 396; 86 Pac. 881 (1906).

¹⁹ Elizabeth L. Cley, Beginings of Child Labor Legislation in Certain States, p. 90, Vol. VI of Report on Conditions of Women and Child Wage Earners in The United States, Senate Document No. 645, 61st Congress.

²⁰ William F. Ogburn, The Progress and Uniformity of Child Labor Legislation, Columbia University Studies, 1912, Vol. 48, Part 2, Table 12, p. 7.

²¹ Ibid., Tables 30-34, pp. 108-113.

²² The New International Encyclopaedia, pp. 186-189.

sylvania worse conditions existed. In South Carolina and North Carolina were found the largest percentages of child workers.²³

By 1899, twenty-eight states had some type of law protecting child workers,²⁴ and a total of nine had a minimum age of fourteen years.²⁵ However, prior to 1900, the child labor laws generally limited itself to those employed in manufacturing; fixed minimum age at twelve; established ten hours a day as maximum; contained vague requirements as to school attendance and literacy; and as proof of the child's age accepted an affidavit by the parent.²⁶

a. Social and Economic Implications.

The social and economic implications of child labor can never be measured accurately. However, brief mention can be made as to the social costs of child labor. Almost without fail child labor and poor school attendance go together. In 1920, the fifteen states that reported the poorest school attendance were the same ones having the largest number of children employed between the ages of ten and thirteen years.²⁷ Millis and Montgomery report that:

When children leave school at an early age and seek gainful employment, their opportunity for normal physical development and for the period of play that is essential to wholesome development during adolescence is curtailed. Normal family life very often is disrupted.²⁸

²³ Ibid., p. 189.

²⁴ Ogburn, Uniformity of Child Labor Legislation, p. 54.

²⁵ Ibid., Table 13, p. 71.

²⁶ John R. Commons, History of Labor in The United States, 1896-1932, New York, Macmillan Company, Vol III, 1935, p. 405.

²⁷ United States Department of Labor, "Child Labor Facts and Figures," Children's Bureau, 1930, Publication No. 197, pp.22-23.

²⁸ Millis and Montgomery, p. 417.

Frequently, child workers are apt to become juvenile delinquents and public charges when repeatedly thrown into environments that are conducive to harshness, crudity, roughness, and disrespect.²⁹ As Adams and Sumner summarized these consequences of child labor:

The employment of children under fourteen years of age pauperizes the parents and enforces illiteracy upon the children. It is one of the most prolific causes of poverty, pauperism, vice, and crime in adult years, and is, in fact, a grave menace to the peace and prosperity of the social order.³⁰

Rev. Cronin stated the problem of child labor as late as 1951 indicating that many children still work in occupations which endanger their health, morals and educational opportunities.

Work by children is physically dangerous when it taxes their strength and exposes them to sickness or, at least to a stunting of their normal development. ...Child labor is morally dangerous when performed in surroundings which present unusual temptations to crime or vice. From the moral viewpoint, indiscriminate mingling of young boys with older workers in factories would be generally unwise. ...Another drawback to certain forms of child labor is the neglect of education which they involve.³¹

Thus we see that the effect of employment upon the child's health is common knowledge. When children enter industry at the crucial age period of thirteen to eighteen, at which time extensive and rapid physical and mental changes are taking place, they not only hinder their chances of better

29 Dorothy W. Burke, "Youth and Crime," Children's Bureau, United States Department of Labor, Bulletin 196, 1930.

30 Adams and Sumner, Labor Problems, 1905, p. 66.

31 Rev. John F. Cronin, Catholic Social Principles, Milwaukee, Bruce Publishing Co., 1951, p. 325.

earning power in later years, but they also pay a price for physical incapability, and more so, economic dependence.³² Not only have the many investigations shown that the children's wages were wretchedly low, but that they worked under conditions which were easily susceptible to stunted growth, bad morals and disease.³³

However, the employment of young persons continued and sometimes was even approved by public opinion. It was in the famous cotton mills of Samuel Slater, established in 1806 that children from seven to twelve were employed and it was Alexander Hamilton who approved of such practices because he believed these enterprises would render children "more useful and more early useful than they would otherwise be."³⁴

b. The National Child Labor Committee.

Among the first groups to arouse public opinion to the conditions of child labor was the National Child Labor Committee, organized in 1904. A meeting was called in New York by several leading personalities³⁵ of the local child labor movements to attempt to consider forming a national organization.

³² Harry A. Millis and Royal E. Montgomery, Labor Progress and Some Basic Labor Problems, New York, McGraw-Hill Book Co., Vol I, 1938, p.417.

³³ United States Department of Labor, "Child Labor in New Jersey," Children's Bureau, Publication 185, p. 59.

³⁴ See Appendix for text of Hamilton's speech before the 13th Congress. Millis and Montgomery, Labor Progress and Problems, p. 422, 1938.

³⁵ Such well-known personalities as Edgar G. Murphy, chairman of the Alabama Child Labor Committee, and Felix Adler, Mrs. Florence Kelley, and William H. Baldwin, Railroad President and members of the New York Child Labor Committee were present. National Child Labor Proceedings, 1905, p. 153.

In this manner was the National Child Labor Committee formed, with Felix Adler as President and Samuel McCure Lindsay, a professor of sociology at the University of Pennsylvania, as Secretary. Besides individual membership in the newly formed organization, such prominent national groups as the National Consumers' League, The General Federation of Women's Clubs and The American Federation of Labor, co-operated with the National Child Labor Committee.³⁶ By 1910, twenty-five state and local child labor committees, which represented twenty-two states, were co-operating in this new program of the National Child Labor Committee.³⁷

While undertaking the task of abolishing child labor in the United States with moral zeal and definite plans, the National Child Labor Committee studied child labor laws; published reports of investigations; fostered observance of child labor days in schools and churches; distributed information leaflets; organized lobbying activities in states where child labor bills were being put before the legislature; and issued a periodical, at first called The Child Labor Bulletin, then after 1918, The American Child.³⁸

At the very offset, the National Child Labor Committee devised standards for child labor legislation. Their model bill was based on the combined features of the Massachusetts, New York and Illinois laws, but it was not until 1911 that it was recommended to the states by the National

³⁶ Commons, p. 408.

³⁷ National Child Labor Committee's sixth annual report, in *Annals*, Vol. 35, 1910, supplement.

³⁸ Commons, p. 408.

Conference of Uniform State Laws.³⁹ In essence, this bill provided for a minimum age of fourteen for employment in manufacturing and sixteen in mining; eight-hour day; prohibition of night work from seven p.m. to six a.m.; and a documentary proof of age.⁴⁰ Although some states had one or two of the preceding standards, no state in 1904 had a law fulfilling all five standards.

c. Volume of Legislative Activity in the States Prior to Federal Child Labor Legislation.

In the years from 1902 to the time of the passage of the first federal child labor law in 1916, the volume of legislative achievement was voluminous. In 1903 alone, of the eleven states⁴¹ that passed comprehensive child labor laws, five⁴² were southern states which previously had no child labor legislation.

Forty-three states had enacted child labor legislation, either new laws or amendments, between 1902 and 1909. However, in 1900 there were still twenty-four states and the District of Columbia which had no minimum

³⁹ National Child Labor Committee, "Uniform State Child Labor Laws," Proceedings of the seventh annual convention, 1911, p. 17. Article by A. T. Stovall of the Commission on Uniform State Laws.

⁴⁰ Commons, p. 409.

⁴¹ Illinois, New York, Wisconsin, Alabama, Arkansas, North Carolina, South Carolina, Texas, Virginia, Oregon, and Washington. United States Bureau of Labor, "Child Labor in The United States," Vol. VI, Part I, Bulletin 52, 1904, pp. 569-637.

⁴² Alabama, Arkansas, North Carolina, South Carolina, and Texas. Ibid.

age established for employment in factories.⁴³ Only six states remained without such a standard in 1909.⁴⁴ The peak years in the enactment of child labor laws came in 1911 and 1913 when thirty and thirty-one states respectively, enacted either new child labor laws or modified those previously passed.⁴⁵ Twenty-five states took some action in this field in 1915.⁴⁶

However, early legislation seems to have been far from adequate, and above all, enforcement was extremely lax. Therefore, it was not surprising that industry beckoned children in increasing numbers on through the nineteenth century. From the table on page twenty it can be seen that it was not until 1920 that the volume of child labor decreased.

It is noted that only 249,521 persons fourteen and fifteen years of age, or 5.2 percent of those within that age group, were gainfully employed in 1940. This is in comparison to 959,555 or 30.9 percent at the turn of the century, and with 1,094,249 or 30.7 percent in 1910, when the largest number of child workers was reported by the United States Census.

The census of 1930 of geographical and occupational distribution of young workers is very interesting and should be briefly mentioned. This

⁴³ Ogburn, Table 12, p. 71.

⁴⁴ Commons, History of Labor, p. 409.

⁴⁵ Ibid., p. 410.

⁴⁶ Ibid., p. 410.

TABLE I

CHILDREN 14 AND 15 YEARS OLD IN THE LABOR FORCE
1940, AND GAINFULLY OCCUPIED CHILDREN 14 AND 15
YEARS OLD, 1900 TO 1930, BY SEX AND BY PERCENT OF
POPULATION WITHIN THE AGE GROUP 14-15.

YEAR	Gainful Workers or Labor Force [*]			Percent of Total Population within age group 14-15.		
	Total	Male	Female	Total	Male	Female
1900	959,555	678,724	280,831	30.9	43.4	18.2
1910	1,094,249	744,109	350,140	30.7	41.4	19.8
1920	682,785	455,989	266,806	17.5	23.3	11.6
1930	431,790	298,482	133,308	9.2	12.6	5.8
1940	249,521	195,919	53,602	5.2	8.0	2.2

Source: Department of Commerce, Bureau of the Census; Sixteenth Census Reports, Population, Vol. III, 1940.

* Note: The term "gainful workers" was used by the Bureau of Census for all censuses prior to 1940. In 1940 the term "labor force" was substituted for "gainful workers." See page two of the Sixteenth Census, Population, Vol III, 1940.

census gives an extremely uneven picture of the distribution of child workers among the various states. It indicates that only 1.3 percent of all children between the ages of ten and fifteen years were gainfully employed in the East North Central group of states, (Ohio, Indiana, Illinois, Michigan, and Wisconsin), and only 1.4 percent in the three Pacific states. In Ohio and California were found the lowest percentages, 1.0 and 1.1 percent respectively. Two extremes were prevalent; the states in the South Atlantic division, where 915 percent of the children were employed, and in the East South Central Division, where 13.5 percent of child labor was employed. The reason for the East South Central division having such a high percentage was chiefly due to the large number of child workers in cotton production. Mississippi with 24.9 percent, South Carolina with 18.3 percent, Alabama with 17.5 percent and Georgia with 14.7 percent, were the states with the largest percentage of child workers.⁴⁷

The occupational distribution of children gainfully employed in 1920 and 1930 is given in table II on page twenty-two. This table shows that in 1930 more than seventy percent of the country's child workers were engaged in agriculture where their employment was not generally regulated or prohibited by state statutes. However, the Fair Labor Standards Act of 1938 and later amended in 1949 does contain provisions regulating this industry. Nevertheless, it must be remembered that this law is only for interstate commerce

⁴⁷ Fifteenth Census of The United States, 1930, Vol. V, Population, p. 381.

TABLE II

NUMBER AND PERCENTAGE DISTRIBUTION, BY GENERAL DIVISION OF OCCUPATIONS, OF CHILDREN 10 TO 15 YEARS OLD GAINFULLY OCCUPIED, IN THE UNITED STATES, 1920 AND 1930.

General Division of Occupation	1920		1930	
	Number	Percent of child wks in the U.S. 10-15 yrs. of age.	Number	Percent of child wks in the U.S. 10-15 yrs. of age
Agriculture.....	644,174	60.7	469,497	70.4
Forestry and fishing.....	2,472	0.2	1,562	0.2
Extraction of minerals.....	7,191	0.7	1,184	0.2
Manufacturing and mechanical..	185,652	17.5	68,266	10.2
Transportation & communication	18,912	1.8	8,717	1.3
Trade.....	63,724	6.0	49,615	7.4
Public service.....	1,130	0.1	485	0.1
(not elsewhere classified)				
Professional service.....	3,813	0.4	4,844	0.7
Domestic and personal service...	54,006	5.1	46,146	6.9
Clerical occupations.....	79,784	7.5	16,803	2.5
All occupations.....	1,060,858	100.0	667,118	100.0

Source: Fifteenth Census of the United States, Vol.V, Population, p. 348.

and does not affect intrastate transactions. The children employed in agriculture are very common in cotton and tobacco production of the south. Although some of these children are employed in home farm work, they also are confronted with conditions that interfere with normal growth and educational opportunities.⁴⁸

Another important aspect of the child labor problem in the states prior to federal child labor legislation was that of industrial home-work. Millis states that this constituted in some ways the most vicious form of child labor.⁴⁹ This type of work was very conducive for the employment of young children. As the Children's Bureau reported: "those too young to help with the more difficult operations assist with the simpler parts of the work. Almost one-fourth of the children included in the study by the Department of Labor were under ten years of age, and almost four-fifths under fourteen."⁵⁰

One problem of child labor that cannot be overlooked is that pertaining to workers in the streets. The moral and physical environment encompassing children selling newspapers or other such articles is not only harmful but is said to be more conducive to vice and immorality than that of children working in factories and stores. In addition, the majority of

48 Millis and Montgomery, Labors Progress and Problems, p.415.

49 Ibid., p. 426.

50 United States Department of Labor, "Child Labor in New Jersey" Children's Bureau, Publication No. 185, p.58.

the state laws fall short of dealing adequately with this particular phase of the child labor problem.

The average age of the street worker is well under the average age of the child working in the factory; his hours are longer; night work is prevalent and his wages are meager and uncertain.⁵¹

Transient youths presented another rise of the labor problem in the United States. Although there is no accurate information as to the number of boys who left their homes and for what reasons, a study in 1932 by the United States Children's Bureau on the conditions relative to transient boys under twenty-one revealed that the number of wandering youths was several times greater during the depression years than ever before.⁵²

These boys also constituted an acute social problem. However, it was not until the federal government promoted the Civilian Conservation Corps, that large numbers of these youths were adequately provided. Not only was there a breaking of morale upon the youths, but the habits of shiftlessness and instability endangered their physical and moral growth leaving a vacuity upon thousands of lives that otherwise should be at the peak of their productivity.

⁵¹ United States Children's Bureau, "Children Engaged in Newspaper and Magazine Selling and Delivering," Publication No. 227, 1934.

⁵² United States Bureau of Labor Statistics, "Handbook of Labor Statistics," United States Children's Bureau, Bulletin 616, 1936, pp.42-44.

d. Government's Role in Child Labor.

As in all labor disputes and labor problems, the government as the representative of the general public cannot remain indifferent to child employment. The waste and suffering which the employment of children entails compels the government to take cognizance of the problem and in many cases to interfere actively. No government has ever adopted a complete hands-off policy in labor disputes, and justly so should it not adopt such a policy to child labor.

The extent to which the government should interfere with the employment of children is debatable, however, some degree of governmental intervention is necessary and inevitable. The federal congress and the several state legislatures have enacted laws which set forth some of the rules which employers must observe. Both the state and federal government have sought to preserve order, not always very effectively, in the employment of minors and have endeavored to prevent and adjust such troubles. However, upon the government has fallen much of the burden of enforcing child labor legislation.

Nevertheless, whenever there is governmental intervention you will find a great deal of criticism. There are those who are satisfied with the manner in which the several governments in the country have dealt with the problem and diametrically opposed are those who say that it is difficult to find anything to which we can point with pride in our handling of the child labor problem. And the latter group believes that we have not gone

far enough in this country in placing restrictions upon child labor.

Although the general public may know little about the subject and hardly realizes the problems that it presents, the government, on the other hand, not only knows that the relation of government to child labor problems presents a serious public question, but they are constantly confronted with this problem in one phase or another.

Federal legislation is necessary and important, because state regulation of child labor is not adequate. Not only are state laws inadequate, but there is a confusing lack of uniformity. A basic reason for this irregularity of variety of state laws and enforcement is the anxiety of businessmen and officials in one state to retain a labor-cost advantage over competing states. Generally, the laws regulating child labor are too low, that is, some states still permit work below the age of fourteen; an excessive number of hours of work a day; or night work. Therefore, federal standards must be set up to regulate such practices along with regulation for the backward states. In numerous instances, state laws are not effectively enforced. Local authorities find it more difficult to enforce state laws rather than federal laws. This can be readily appreciated since employers would rather be prosecuted under state than under federal laws.

Since the problem of child labor is a national, not a local one, federal regulation is again necessary. Industry itself, without federal regulation, has a propensity toward states having lax child labor laws. There are other reasons why federal legislation is necessary. The right of the

government to protect its children is a fundamental right, for the government exists to protect the weak and develop the young and any delay whatsoever, causes irremedial harm to the present generation. Therefore, there exists a necessity for uniformity which cannot be attained except by centralized regulation.

In view of these aspects of the problem and the widely different views as to how the problem should be met, the author in the succeeding chapter endeavors to present a complete and concise picture of how the government attempted to find a solution to child labor through federal child labor legislation.

CHAPTER III

FEDERAL ATTEMPTS AT CONTROL OF CHILD LABOR

A. The Federal Child Labor Law of 1916.

In the early part of the present century numerous efforts were made to secure the passage by Congress of a federal child labor law. The first bill was introduced by Senator Beveridge on January 23, 1907. The Senator offered his bill as an amendment to one regulating the employment of children in the District of Columbia. In Congress Beveridge stated:

...I do not think that in its broader aspects this (child labor) is a state question at all. I do not intend now to get into the legal part of this argument; but I will say this--that I have so drawn the bill that every "states rights" man can vote for it without violating his constitutional convictions...Mr. President, the next reason why the states can not adequately handle this question is because neither in this nor in any other important question have the states ever succeeded in having uniform laws; and it is clear that this evil can not be remedied unless there are uniform laws upon it.¹

It was at this time that Senator Beveridge spoke for four days in the Senate on the extent of the evils of child labor and the constitutionality of the proposed measure.²

1 Congressional Record, 59th Congress, XLI, Part II, January, 1907 p. 1552.

2 Grace Abbott, The Child and The State, Chicago, University of Chicago Press, 1938, Vol. I, p. 474.

Although the first federal bill was introduced in 1907, it was not until 1916 that Congress enacted a federal child labor law. Census figures of 1910 had shown that child labor was still increasing and this led to renewed efforts for federal legislation.

On September 1, 1916 Congress passed the so-called Keating-Owens Bill which, in part, read:

That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mine or quarry, situated in the United States, in which within thirty days prior to the time of the removal of such product there-from children under the age of sixteen years have been employed or permitted to work, or any article or commodity the product of any mill, cannery, workshop, factory, or manufacturing establishment situated in the United States, in which within thirty days prior to the removal of such product there-from children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen years and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock postmeridian, or before the hour of six o'clock antemeridian.³

The law went into effect on September 1, 1917, one year after its passage. It was administered by the Children's Bureau of the United States Department of Labor and had been in operation only nine months and three days when, on June 3, 1918 it was declared unconstitutional by the Supreme Court of the United States on the ground that in attempting to regulate child labor

³ Keating-Owens Bill, September 1916, 39 Stat. 675, ch. 432, Public Number 249, 64th Congress.

in this manner, Congress had exceeded its constitutional power to regulate interstate commerce.⁴

Nevertheless, the nine months' period during which the bill was in operation was sufficient to prove its usefulness in eliminating children from those industries producing for interstate commerce. With the federal restrictions removed children were re-employed in the southern mills, particularly in North Carolina, and the mill owners rejoiced over the protection given to them by the Supreme Court decision.⁵

The decision in *Hammer v. Dagenhart*, on which the judges divided five to four,⁶ resulted from the appointment by President Wilson in August 1914, of James Clark McReynolds as a member of the Supreme Court. It has been said that the President's Secretary of Interior, Franklin K. Lane, was slated for the vacancy. Lane's viewpoint was very liberal, and had he been appointed he would doubtless have voted with the four dissenting judges and the law would then have been sustained. But President Wilson was impatient with Mr. Reynolds as a cabinet member and he made the fatal mistake of getting rid of him by promoting him to the Supreme Court.⁷

Unfortunately, this decision became the precedent for other opinions of the Supreme Court which narrowly restricted the commerce clause of

4 *Hammer v. Dagenhart*, 247 US 251, June 3, 1918.

5 *Southern Textile Bulletin*, June 6, 1918.

6 *Hammer v. Dagenhart*, 247 US 251 (1918). The majority included Justice Day, who delivered the opinion of the Court, Chief Justice White, and Justices VanDevanter, Pitney, and McReynolds. The dissenters were Justice Holmes, who delivered the dissenting opinion, and Justices McKenna, Brandeis, and Clarke.

7 Abbott, *Child and State*, p. 463.

the Constitution, until in 1937 the court, in sustaining the National Labor Relations Act, gave a new and broader definition of interstate commerce.⁸

It was five years later when a Scripps-Howard newspaper in 1923 published its now famous tragic story of Reuben Dagenhart, the plaintiff of the Hammer v. Dagenhart case. In part, here is how it appeared in Labor on November 17, 1923, at which time Dagenhart was interviewed by a reporter:

"...What benefit did you get out of the suit which you won in the United States Supreme Court?"

"You mean the suit the Fidelity Manufacturing Company won? (It was the Fidelity Company for which the Dagenharts were working.) I don't see that I got any benefit. I guess I'd been a lot better off if they hadn't won it. Look at me! A hundred and five pounds, a grown man and no education. I may be mistaken, but I think the years I've put in the cotton mills have stunted my growth. They kept me from getting any schooling. I had to stop school after the third grade and now I need the education I didn't get. ...But from twelve years old on I was working twelve hours a day; from six in the morning till seven at night, with time out for meals. And sometimes I worked nights besides. Lifting a hundred pounds and I only weighed sixty-five pounds myself."⁹

9. The Federal Child Labor Law of 1919.

The second federal law was enacted on February 24, 1919, when Congress passed as part of the Revenue Act a provision for the levying of a tax of ten percent on the annual net profits of any mill, cannery, work-shop, factory, or manufacturing establishment, or of any mine or quarry employing children in violation of the age and hour standards established by the former federal child labor law.¹⁰

⁸ NLRB v. Jones & Laughlin Steel Corporation, 301 US 1, April 12, 1937.

⁹ Lowell Mellett, "How Sharper Than A Serpent's Tooth It Is To Have a Thankless Child," Scripps-Howard Newspaper Service, Labor, 1923.

¹⁰ Revenue Act of 1918, 40 Stat. 1138, CH 18, Title XII.

This act became effective on April 25, 1919, and was administered by the office of Internal Revenue, United States Treasury Department. However, on May 15, 1922, it was declared unconstitutional by the United States Supreme Court by an eight to one decision. The court held that Congress, under the guise of a tax which on the face of the act is a penalty, may not regulate a matter within the reserved rights of the states.¹¹

C. The National Industrial Recovery Act .

The next step toward federal minimum standards with respect to child labor was made under the National Industrial Recovery Act, passed by Congress on June 16, 1933.¹² The Act provided for the establishment of codes of fair competition by agreement among industries, the National Recovery Administration and the President. These codes while regulating wages and hours of labor for all workers, also provided specific minimum-age standards for child workers. (See Table III on page 32). As can be seen in Table III, a sixteen year minimum age was contained in practically all of the 535 codes established under the Act. This sixteen year minimum was for general employment and about three-fourths of the codes set a minimum age of eighteen years for occupations listed as hazardous or detrimental to the health and welfare of the child.

However, the NIRA was also declared unconstitutional on May 27, 1935 in the famous Schechter case. The court held that the Act attempted to regu-

11 Bailey v. Drexel Furniture Co., 259 US 20, May 15, 1922.

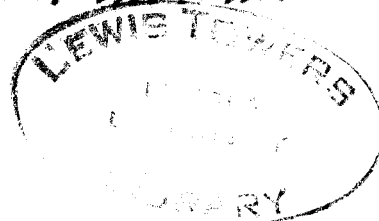
12 NIRA, 48 Stat., 195, Ch 90, Public No. 67, 73rd Congress, 1933.

TABLE III

DISTRIBUTION OF N.R.A. CODES LIMITING EMPLOYMENT
OF MINORS CLASSIFIED BY AGES BELOW WHICH CHILDREN
ARE BARRED FROM EMPLOYMENT.

Ages below Which Minors Are Excluded from Employment	No. of Codes	Per- Cent
Under 16 years, with exceptions.....	13	2.4
Under 16 years.....	79	14.8
Under 17 years.....	3	0.6
Under 18 years.....	13	2.4
Under 16 years general; under 18 in hazardous or un- healthful occupations.....	357	66.7
Under 16 years in certain occupations; under 18 in others.....	63	11.8
Under 16,18, or 21 years, depending upon occupation..	1	0.2
Under 16 years in certain occupations; under 20 in others.....	1	0.2
Under 16 years in certain occupations; under 21 in others.....	4	0.7
Under 16 years in certain occupations; under 17 in others.....	1	0.2
Total.....	535	100.0

Source: Margaret H. Schoenfeld, "Analysis of The Labor Provisions
of NRA Codes," Monthly Labor Review, Vol. XL, March, 1935, p. 591.



late intrastate transactions which lay outside the authority of Congress and that it contained an unconstitutional delegation of legislative power.¹³

D. An Attempted Amendment to The Constitution.

In the meantime, immediately after the first federal law had been declared unconstitutional and as a direct consequence of that decision, a widespread popular demand for the continuance of federal child labor legislation resulted in a proposal for an amendment to the federal constitution which would give Congress unquestioned power to legislate on the subject.¹⁴

The prevailing opinion was that the conditions of child labor still existing in 1923 made this popular demand for an amendment to the constitution necessary. Nearly half a million children under sixteen years of age were employed in non-agricultural occupations according to the United States census.¹⁵ It was shown that state labor officials favored federal action when a large majority of them in reply to a questionnaire testified that the federal laws helped very materially in the enforcement of their state laws, while only three out of twenty definitely said that they did not help.¹⁶

In 1924, therefore, such a proposed amendment was adopted by both houses of Congress and it was submitted to the states for ratification. It

13 Schechter Poultry Corp. v. U.S., 295 US 495, May 27, 1935.

14 Ella Avrilla Merritt, The Child, United States Children's Bureau, Vol. V, March, 1941, p. 9.

15 United States Bureau of Census, Children in Gainful Occupations, 1921, p. 12.

16 National Industrial Conference Board, The Employment of Young Persons in The United States, New York, 1925, pp. 70-71.

should be noted that the amendment, per se, was not a law, but merely an enabling act giving Congress power to pass federal child labor legislation. The proposed amendment is brief. It reads as follows:

Sec. 1. The Congress shall have power to limit, regulate and prohibit the labor of persons under eighteen years of age.

Sec. 2. The power of the several states is unimpaired by this article except that the operation of state laws shall be suspended to the extent necessary to give effect to legislation enacted by Congress.¹⁷

When the measure first came before the state legislatures, progress in ratification was slow. Only four states ratified it during the first two years, and only six states ratified it up to 1933. (See Table IV). With the depression, however, the economic as well as the social undesirability of allowing the children to leave school for employment while millions of adults were idle became more and more obvious. Thus, interest in the amendment was greatly stimulated and twenty-two states ratified from 1933 to the present time, making a total of twenty-eight states that have cast their vote in favor of adding this provision to the basic law of the land. Ratification by eight more states is necessary to make it part of the constitution.¹⁸

The struggle of powerful forces to kill the amendment in 1924 and 1925 was so intense that a full account of this episode seems justified.. The proposed child labor amendment had the same organizations backing it as the two federal bills of 1916 and 1919 had had. (See Table V). Some significant

17 Ella Avrilla Merritt, "Child Labor and The Federal Government," *The Child*, Vol. V, No. 9, March 1941, p. 235.

18 Ibid.

TABLE IV

RATIFICATION OF THE PROPOSED CHILD
LABOR AMENDMENT, BY YEARS

Year	States	Number of States
1924	Arkansas	1
1925	Arizona, California, Wisconsin	3
1927	Montana	1
1931	Colorado	1
1933	Illinois, Iowa, Maine, Michigan, Minnesota, New Hampshire, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Washington, West Virginia	14
1935	Idaho, Indiana, Utah, Wyoming	4
1937	Kansas, Kentucky, Nevada, New Mexico	4
	Total States	28

Source: National Child Labor Committee, Child Labor Facts, 1938,
p. 12.

TABLE V

LIST OF NATIONAL ORGANIZATIONS SUPPORTING THE CHILD
LABOR AMENDMENT

American Association of Social Workers
 American Association of University Women
 American Farm Bureau Federation
 American Home Economics Association
 American Legion
 American Nurses' Association
 Association for Childhood Education
 American Unitarian Association
 Camp Fire Girls
 Central Conference of American Rabbis
 Council of Women for Home Missions
 Federal Council of the Churches of Christ in America
 Fraternal Order of Eagles
 General Federation of Women's Clubs
 Girls' Friendly Society of America
 Methodist Board of Home Missions and Church Extension
 National Federation of Business and Professional Women's Clubs
 National Child Labor Committee
 National Congress of Parents and Teachers
 National Consumers' League
 National Council of Jewish Women
 National Education Association
 National Federation of Settlements
 National Federation of Temple Sisterhoods
 National League of Women Voters
 National Woman's Trade Union League
 Northern Baptist Convention
 Presbyterian Church in the U.S.A.
 The Railroad Brotherhoods
 Reformed Church in America
 Service Star Legion, Inc.
 Women's General Missionary Society of United Presbyterian
 Church
 Young Women's Christian Association

Source: The Federal Child Labor Amendment, National Child Labor Committee, 1940, p. 7.

organizations endorsing it were the National Education Association, The Democratic National Committee, and the Republican National Committee.¹⁹

The opponents of the amendment found a true champion in Nicholas Murray Butler, president of Columbia University, who, in a letter to the New York Times, stated:

The proposed child labor amendment would attack our government at its foundation by once more enormously extending the federal police power to the invasion and destruction of the historic rights of our state and local governments as well as those of the family... The Congress might then send federal agents and inspectors into every home, every family, every school and every church in the land to see what anyone under eighteen years of age was doing and whether he was doing anything which the Congress, under authority of the amendment, had either limited, regulated or prohibited. Nothing more indefensible or inexcusable than the amendment has been brought forward at any time in our nation's history.²⁰

Along with this same thinking were others who took the stand that the next step of the federal government would be to regulate the hours of women and then perhaps of men, leading eventually to too much centralization and ultimately administration inefficiency.

In an answer to President Butler's criticism, two legal authorities stated:

¹⁹ Congressional Record, 68th Congress, 1st Session, Vol. V, 1924, P. 7170.

²⁰ Herman Feldman, Problems in Labor Relations, New York, MacMillan Company, 1937, p. 124.

Under the Constitution, a state, while it can regulate its own child labor, cannot prevent the importation into and sale in the state of the product of child labor in other states, no matter how lax or non-existent the state child labor law of the second state may be. Unless Congress has that power, we are in this country in an extraordinary and lamentable position. The people in each state and the nation are powerless to remedy a condition which places the people of all the states which desire to restrict child labor effectively in such a position that they can do so only at the cost of submitting their manufacturers and other employers of labor to ruinous competition.²¹

Miss Frances Perkins, the then Secretary of Labor, in another defense of the amendment, wrote:

This proposal contains no prohibition or regulation of the employment of children in the amendment itself. It merely gives to Congress authority to legislate in this field (child labor), and any law passed can be changed by a simple majority in any session of Congress. If the Eighteenth Amendment (Prohibition) had been worded as an enabling act like the child labor amendment, its repeal would not have been necessary when the opinion of the country changed. Only places where children are, to use the census language, "gainfully employed," in other words employed at wages for profit, are affected. The amendment gives Congress power only over the labor of children for hire, and nothing else. Therefore, Congress would have absolutely no power to send inspectors into families, schools, or churches any more than it has now.²²

Most important of the organizations defending the "fundamental principles of the constitution" which opposed the amendment, was the Sentinels of The Republic.²³ They opposed "the attempted continuation of a tendency which has been getting stronger and stronger for the last twenty

21 Ibid., p. 125.

22 Ibid.

23 Elizabeth Sands Johnson, "Child Labor Legislation," History of Labor in The United States 1896-1932, New York, Macmillan, 1935, Vol. III, p. 445.

years," to subordinate to federal control all local activities, the police powers of the states, and the private rights of the individual citizen.²⁴

In the ratification campaign the opposition came largely from the same sources as in the congressional stage. Several individuals of prominence in the country, such as Cardinal O'Connell of Massachusetts and N. M. Butler, previously mentioned President of Columbia University, joined in the attack.²⁵ By fall of 1924, both sides had launched campaigns in the states. The country was swept with propaganda. It appeared in newspapers and magazines, editorials, and advertisements, in printed leaflets, and in speeches, at meetings and over the radio. The proposed child labor amendment became one of the most discussed political issues of the year. However, the powers behind the flood of opposition propaganda was the National Association of Manufacturers, the Cotton Textile interests of North Carolina, and the American Farm Bureau.²⁶

One group, the Citizens' Committee to Protect Our Homes and Children, circulated the following leaflet, a copy of which is now kept in the Wisconsin Historical Library:

If this amendment is ratified it will give to Congress, 500 miles away, the power to take away the sovereign rights of the states and destroy local self-government which is the strength of our democracy, to take

²⁴ House of Representatives, Hearings On Proposed Child Labor Amendment, p. 216-217.

²⁵ Johnson, "Child Labor Legislation," History of Labor, p. 446.

²⁶ Ibid.

from you the control of the education of your children and give it to a political bureau in Washington, to dictate when and how your children shall be allowed to work, to subject your children and your home to the inspection of a federal agent. Wise child labor laws are necessary, but the proposed amendment gives the power to Congress to take away the right of parents and to bring about the nationalization of their children. The passage of this amendment would be a calamity to the nation. Don't be deceived. If you love your children put a cross (X) opposite NO on reverendum seven.²⁷

The National Association of Manufacturers also undertook to influence the editorial opinion of Farm Journals. According to Senator Walsh of Montana, Mr. Emery of the National Association of Manufacturers wrote a letter in September, 1924, "to the editors of the Farm Journals throughout the nation urging them to join in his campaign and asserting that the amendment will not affect manufacturers appreciably, but that it is aimed at children on the farms."²⁸

One interesting fact which came out of the ratification campaign was an expose made by Labor, the official organ of the Railroad Brotherhoods, which showed that one organization issuing a large amount of propaganda against the amendment, really represented Southern cotton textile manufacturing interests.²⁹ This organization, the Farmers' States' Rights League, Inc. of Troy, North Carolina, practically flooded western papers, especially agri-

27 Ibid., p. 447.

28 Congressional Record, 68th Congress, 2nd Session, LXVI, Part 2, 1925, p. 1446.

29 Johnson, "Child Labor Legislation," History of Labor, p. 448.

cultural papers with half-page advertisements denouncing the child labor amendment.³⁰

Although the Catholic Church did not officially take any stand on the amendment, some influential Catholics, such as Father John Ryan, strongly favored it,³¹ while the Farmers' States' Rights League circulated statements of Cardinal O'Connell of Boston, opposing it. Elizabeth Johnson states that in this latter fashion "the prestige of the Catholic Church was used to help defeat the amendment."³² Thus have the opponents of the amendment succeeded in preventing ratification by the necessary thirty-six states.

As for the time limit for ratification, the Supreme Court of The United States on June 3, 1939,³³ ruled that only Congress has the power to determine how long an amendment can be subject to ratification. Because of this ruling it becomes possible for additional states to act either favorable or unfavorable or to reverse an action which they had previously given.

It was not until 1938 when the Fair Labor Standards Act was passed that we finally achieved a law to regulate child labor on a national basis, which included provisions that prohibited the shipment in interstate or foreign commerce of goods produced in establishments in the United States in or about which "oppressive child labor" had been employed within thirty days prior to removal of the goods.³⁴

³⁰ Labor, "Labor Exposes The Cotton Mill False Farmer League," January 31, 1925, p. 4.

³¹ Rev. John A. Ryan, D.D., "The Proposed Child Labor Amendment," Catholic World, CXX, November, 1924, p. 166-174.

³² Johnson, "Child Labor Legislation," History of Labor, p. 448.

³³ Coleman v. Miller, 39 SC 972, June 5, 1939.

³⁴ FLSA of 1938, 52 Stat. 1060, Ch. 676, Public No. 718, 75th Cong.

CHAPTER IV

THE FAIR LABOR STANDARDS ACT

A. General Coverage and Administration.

The Fair Labor Standards Act, also known as the Wage-Hour Law, was first enacted in 1938 and remained unchanged until October, 1949. In that year, the act was substantially overhauled, with the primary changes being an increase of minimum wages and corrections of some faults found in the original legislation.

Despite its length and voluminous provisions, it deals essentially with three fields; minimum wages, standard hours of work, and child labor. It applies only to interstate commerce. The Wage-Hour Law has no counterpart in state legislation, unlike the National Labor Relations Act and the Norris-LaGuardia Act which have served as models for some state laws. Bills were introduced in several states¹ in 1951 proposing state Wage-Hour legislation akin to the federal act, but none of these measures was passed.

The Fair Labor Standards Act is a re-enactment of Subsection 3 of Section 7(a) of Title I of the National Industrial Recovery Act.² The NIRA contained no reference to child labor. However, subsection (3) of section

1 Conn., S. 13; Indiana, H.R. 146, S. 115; New York, H.R. 1569, S. 168. Prentice-Hall, Labor Course, p. 7011.

2 48 Stat. 195.

7(a) said:

...that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment³ approved or prescribed by the President.

The "other conditions of employment" was, among other things, meant to mean congressional delegation of power over the employment of minors. The President's re-employment agreement, "A request for voluntary co-operation in the movement to put men to work and increase earnings,"⁴ manifested the administrations understanding of the working of the law and more so, its attitude toward the labor of children. In the first article of the agreement, which was on child labor, the employer pledged himself:

After August 31, 1933, not to employ any person under sixteen years of age, except that persons between fourteen and sixteen may be employed (but not in manufacturing or mechanical industries) for not to exceed three hours per day and those hours between 7 a.m. and 7 p.m. in such work as will not interfere with hours of day school.⁵

By December, 1934, there were 535 industries under the code, and it was soon established that the child labor provisions of the blanket code became a lower limit for the codes of fair competition for industries.⁶ Of the total 535 industries, thirteen or 21.4 percent of the total established a minimum age of sixteen for employment, however, permitting certain exceptions.⁷

³ Underlining mine.

⁴ United States Department of Labor, Bureau of Labor Statistics, Handbook of Labor Statistics, 1936, p. 499.

⁵ National Industrial Recovery Act, 1933.

⁶ Margaret H. Schoenfeld, "Analysis of The Labor Provisions of NRA Codes," Monthly Labor Review, XL, March, 1935, p. 591.

⁷ Schoenfeld, p. 591.

In the 522 remaining codes, the minimum age was sixteen without exemptions, or higher. However, the model standard was generally a prohibition of employment under sixteen. In hazardous or unhealthful occupations, it was eighteen; 78.5 percent of the total number of codes were found in this class. Table III gives the tabular distribution of the minimum age standards of the codes in effect December, 1934. However, when the Schechter case declared the NIRA unconstitutional, the codes of fair competition were consequently discontinued and with them, for the third time, federal regulation of child labor!⁸

As has been pointed out hereinbefore, four major actions of Congress were attempted to regulate child labor before the Fair Labor Standards Act; the Federal Child Labor Law of 1916; the Federal Child Labor Law of 1919; the joint congressional resolution of 1924 proposing an amendment to the constitution of the United States; and the National Industrial Recovery Act of 1933, which by interpretation was to permit nation-wide regulations of child labor. With the passage of the FLSA and with a basic change in the attitude of the Supreme Court of the United States regarding the constitutionality of federal child labor legislation, the power of Congress to enact such legislation applying to interstate commerce has finally been established.

The FLSA undertakes to cover companies and industries engaged in transportation, communications, public utilities, warehousing, storage, con-

⁸ Schechter v. United States, 295 US 495, 1935.

struction, manufacturing and mining.

In comparison with the FLSA of 1938, the new law of 1949 tightens up the restrictions on the employment of child labor. The law now directly prohibits the employment of "oppressive child labor" in interstate commerce or the production of goods for interstate commerce. This is in addition to the prohibition on the shipment in interstate commerce of goods produced in an establishment that used oppressive child labor within thirty days of shipment. The direct prohibition on the use of oppressive child labor closes up the loophole in the old law that made it possible for employers (who had used oppressive child labor to produce goods) to hold the goods for thirty days before shipment.

The new law also limits the employment of child labor in agriculture to hours outside the school hours for the school district in which the minor resides. Under the old law, employment in agriculture was limited only to hours during which minors were not legally required to attend school. This change was made because of the difficulty in administering the restriction due to the variation in school attendance requirements from state to state. The Wage-Hour Administrator had pointed out that under the former language restricting employment in agriculture while "not legally required to attend school", there were many evasions since, in some states, employment in agriculture is a legal excuse for not attending school and in other states, state officials have the authority to excuse children from attending schools. Only one provision in the new law gives the green light to employers using child labor: the old exemption from the child labor restrictions for minors in

motion pictures and theatrical productions has been extended to minors in radio and television productions.

Before the amendment of 1949, children engaged in commerce where no goods were produced were not protected by the law.⁹ Also added to the Act by means of the amendment was the narrowing of the agricultural exemptions so as to apply the child labor standards to children during school hours rather than merely while they were legally required to attend school under the state law. This change was made so as to prohibit the employment of children under sixteen years of age in agriculture during school hours. It was necessary, insofar as for the first time in history rural children were given the same protection from employment that interferes with their opportunity for schooling as city children have had since the originally act was passed in 1938.¹⁰

No change was made in the minimum age standards by the 1949 amendments. Therefore, these remain the same as in the 1938 law: a sixteen year minimum age for most jobs; an eighteen year minimum age for occupations found and declared particularly hazardous, and a fourteen year minimum age for outside school hours in a limited number of jobs. The three minimum ages will be further explained in detail.

With these new amendments came the good procedures for the issuance of employment and age certificates. These are accepted as proof of age under

9 See case of *Western Union v. Lenroot*, 348 Cases 665, March, 1944.

10 William . McComb, "Changes in The FLSA Affect Young Workers," Occupation, The Vocational Guidance Journal, April, 1950, p. 429.

the federal law and are important as a means of preventing illegal employment and setting good standards in the employment of young workers. For minors under eighteen years of age in general employment and for those claiming to be eighteen and nineteen years of age in hazardous jobs, employment or age certificates are recommended.

Age certificates act as a means of preventive child labor for the employer and they also protect the minor from harmful employment which is prohibited for his age. In the enforcement of the law, they serve as an aid to the investigator. In this manner the investigator can check the certificates on file with the employer to determine whether minors are being employed for jobs for which they are under the minimum age.

Employment and age certificates issued under the state child labor laws are accepted under the FLSA as proof of age in forty-four states, the District of Columbia, Puerto Rico, and Hawaii. In the remaining four states, Idaho, Mississippi, South Carolina, and Texas, federal certificates of age are issued by the Wage and Hour and Public Contracts Division.¹¹

The administration of the child labor provisions is under the Secretary of Labor, who has delegated to the Wage and Hour and Public Contracts Division the duty of making investigations to obtain compliance and to the Bureau of Labor Standards the duty of developing standards for regulations and orders

¹¹ Ibid., p. 430.

relating to hazardous occupations, employment of fourteen and fifteen year old children, and age certificates. The enforcement arm of the Department of Labor is the Wage and Hour and Public Contracts Division.¹²

B. Constitutionality of The Act.

In two important United States Supreme Court decisions the Wage-Hour law defended attacks on its constitutionality. In these cases it was held that the placing of wage and hour restrictions on the production of goods for the regulation of interstate commerce is a valid exercise of the commerce clause and that the setting of wage orders for specified industries is not a violation of the constitutional right of due process.¹³

Justice Stone, who wrote the opinion holding the act constitutional,¹⁴ indicated that the reasoning upon which the opinion is based follows the well rooted tradition of the court, from which it had departed in *Hammer v. Dagenhart* in 1918.¹⁵ While referring to the fact that Congress intended the federal act to bar interstate traffic in goods produced under substandard conditions of labor, Justice Stone said:

¹² Ibid., p. 431.

¹³ *United States v. Darby Lumber Co.*, 312 US 100, 1941; *Opp Cotton Mills v. Fleming*, 312 US 657, 1941.

¹⁴ *United States v. Darby Lumber Co.*, 1941.

¹⁵ Ella V Merritt, "Child Labor and Federal Government," The Child, Number 9, Vol. V, March, 1941, p. 236.

The conclusion is inescapable that *Hammer v. Dagenhart* was a departure from the principles which have prevailed in the interpretation of the commerce clause both before and since the decision and that such vitality, as a precedent, as it then had has long been exhausted. It should be and now is overruled.¹⁶

It is recalled that in the *Dagenhart* case the decision was by a bare majority of the Court and over the powerful and now well-known dissent of Justice Holmes. In that dissent, now followed as the law of the land, Justice Holmes stated his feeling that there was no true distinction between the power of the federal government to prevent shipment in interstate commerce of lottery tickets or impure foods and drugs (a power already upheld by the Court) and power to prevent the channels of interstate commerce to the products of child labor.¹⁷ In the words of Justice Holmes:

The act (Federal Child Labor Law of 1916) does not meddle with anything belonging to the States. They may regulate their internal affairs and their domestic commerce as they like. But when they seek to send their products across the state line they are no longer within their rights. If there were no Constitution and no Congress their power to cross the line would depend upon their neighbors. Under the Constitution such commerce belongs not to the States, but to Congress to regulate. ... Instead of being encountered by a prohibitive tariff at her boundaries, the State encounters the public policy of the United States which it is for Congress to express. The public policy of the United States is shaped with a view to the benefit of the nation as a whole.¹⁸

In the opinion in the *Darby Lumber Case*, the Court said:

16 *Darby Lumber Co.*, 1941.

17 *Merritt, The Child*, March, 1941.

18 *Hammer v. Dagenhart*, dissent of Justice Holmes, 1918.

The motive and purpose of the present regulation (FLSA) is plainly to make effective the Congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions, which competition is injurious to the commerce and to the states from and to which the commerce flows.¹⁹

Therefore, we see that in upholding the FLSA as a proper exercise of the Congressional power under the commerce clause, the Supreme Court specifically overruled *Hammer v. Dagenhart* which had declared that Congress was without power to prohibit the interstate shipment of goods produced by child labor.

C. The Three Minimum Ages.

The Bureau of Labor Standards has clarified the question of what constitutes the minimum age below which children cannot be employed under the amended Fair Labor Standards Act. The minimum may be fourteen, sixteen, or eighteen, depending upon the occupation in which the minor is employed and his hours of work.

The act itself defines "oppressive child labor" as the employment of children under sixteen years of age; however, two qualifications are added. This allows the minimum to be raised for some occupations and lowered for others. Where an occupation is found to be particularly hazardous for the employment of children, The Bureau may forbid employment of children under eighteen years of age in that occupation.²⁰ However, the Bureau may lower

¹⁹ U.S. v. Darby Lumber Co., 312 US 100, 1941.

²⁰ Section 3(1) of the amended FLSA.

the minimum age to fourteen years in occupations other than manufacturing and mining, permitting those between fourteen and sixteen years of age employment only under such conditions which will not impair their health or interfere with their education.²¹

Accordingly, these provisions have been established, regulating the minimum age at which children may be employed under the Fair Labor Standards Act and for various occupations as follows:

Eighteen year minimum. Children below the age of eighteen years of age may not be employed in or about plants manufacturing explosives; as operators or helpers on motor vehicles; in most occupations in the logging, sawmilling and coal mining industries; in the operation of power driven woodworking machines; in occupations involving exposure to radioactive substances, and occupations involved in the operation of elevators and other power driven hoisting apparatus.²²

Sixteen year minimum. Children who are below the age of sixteen may not be employed in the following occupations: manufacturing, mining, or processing operations, including occupations that require the performance of any duties in work rooms or work places where goods are manufactured, mined, or other wise processed; occupations which involve the operation or tending of hoisting apparatus or of any power driven machinery other than office machines; public messenger service; and those occupations that are declared hazardous or detrimental to the health or well-being of children between sixteen and eighteen years of age as listed in the paragraph above.

Fourteen year minimum. The minimum age established under the act is fourteen years for all occupations other than those listed under the sixteen and eighteen year minimum groups above. Only under the following conditions may children between fourteen and sixteen be employed:

21 Ibid.

22 This last order and hazardous order No. 8, dealing with metal working occupations and as yet under schedule for issuance, have been established by the 1949 amendment to the FLSA. See "Changes in The FLSA Affect Young Workers," Occupation. The Vocational Guidance Journal, National Vocational Guidance Association, Washington, D.C., April, 1950, p. 429-432.

outside school hours; not more than three hours a day or fourteen hours a week when school is in session; not more than eight hours a day or forty hours a week when school is not in session; and only between seven a.m. and seven p.m. in any one day, except in the distribution of newspapers.²³

There is no minimum age applicable to employment in agriculture outside school hours under the Fair Labor Standards Act or to the following at any time:

Actors and performers in motion picture, theatrical, radio, and television production; employees engaged in delivering newspapers to the consumer; employment by a parent in occupations other than manufacturing, mining, or occupations declared hazardous.²⁴

The notion that the corner newsboy is an independent contractor and that no minimum age should be applicable to him is one notion which is difficult to digest. The young boys who sell and distribute newspapers are not absent from school as much as the farm workers, nor do they work for such long and continuous hours. However, because age and hour limits for newspaper selling and delivering are non-existent in twenty-five states and very inadequate in 11 but four of the remaining twenty-three states, this form of child labor exists and continues on a large scale. Boys between the ages of ten and twelve begin work at five in the morning, and in some states work until eight or nine at night. Newspapers oppose attempts to secure reasonable age and hour limits for newsboys so that they can profit from the "little

²³ See section 3(1) of the amended FLISA, 1949.

²⁴ See sections 3(1), 13(c), and 13(d) of the amended FLISA, 1949.

merchant" system under which they can avoid definition as "employers".²⁵ This enables them to make the newsboys responsible for uncollectable bills and to escape paying workmen's compensation for them if they are injured while at work.

D. The Walsh-Healey Act of 1936 and The Sugar Act of 1948.

In addition to the FLSA, brief mention should be made of the two other federal acts that contain child labor provisions. First, the Public Contracts Act of 1936 (Walsh-Healey Act) requires that any contractor manufacturing or furnishing goods or supplies for the Federal Government in an amount exceeding \$10,000 shall agree, as one of the conditions of his contract with the Government that he will not employ boys under sixteen or girls under eighteen on such work.²⁶ This Act is administered by the Wage and Hour and Public Contracts Division of the United States Department of Labor.

Although the Walsh-Healey Act and the Fair Labor Standards Act supplement each other, they can both be operative at the same time with respect to the same group of employees. That is, those persons engaged in the

²⁵ Florence Taylor, Child Labor Fact Book 1900-1950, New York, National Child Labor Committee, April 1950, p. 19.

²⁶ Act of June 30, 1936, Stat. 2036, 74th Congress, 2nd Session, as amended, 41 US Code, Secs 434-45.

production of goods for commerce are not exempted from the coverage of the Fair Labor Standards Act simply because they are employed in the performance of government contracts which are subject to the Walsh-Healey Act.²⁷

The Constitutionality of the Walsh-Healey Act was upheld by the United States Supreme Court in the case of Perkins v. Lukens Steel Company.²⁸ In this case, action was brought against Frances Perkins, the then Secretary of Labor, by the Lukens Steel Company for an injunction to restrain her from continuing in effect a wage determination made under the provisions of the Walsh-Healey Act. The Supreme Court of the United States held in favor of the Secretary of Labor and dismissed the complaint of the company. The opinion of the Court was that the courts had no power or authority to interfere with the performance of duties of the executive departments of the Government. The Supreme Court also stated that the executive departments have complete and final authority to execute contracts for Government purchase.

The second federal act containing child labor provisions is the Sugar Act of 1948, which provides for payment of benefits to growers of sugar beets and sugarcane who comply with certain conditions. One of these conditions is that such growers do not employ children under fourteen years

²⁷ Circuit Court of Appeals, 8th, Powell v. U.S. Cartridge Co.,
WH Cases 658, 1944,; certorari denied, 339 US 497, 1950.

²⁸ Perkins v. Lukens Steel Co., 310 US 113, 1940.

of age in cultivating and harvesting sugar beets or sugar cane and do not employ children between fourteen and sixteen years of age in such work for more than eight hours a day. Benefit payments are subject to deduction in case a child is employed or permitted to work contrary to such standards. The Sugar Act is administered by the United States Department of Agriculture.

Today child labor is regulated by both State and Federal Governments, and as we have seen, the State child labor laws were in effect for many years before the Federal Government enacted such legislation. An employer must obey both State and Federal laws that apply to his employees. If Federal and State laws are different, the higher standard is the one he must follow. This regulation is found in section eighteen of the Act which reads:

No provision of this act relating to the employment of child labor shall justify non-compliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this act.²⁹

Because Federal child labor provisions are more limited in application than State child labor laws, many employers are required to comply only with the State child labor law. But even with both State and Federal legislation to restrict child labor, there are some kinds of child employment which are not controlled by either State or Federal law, or in which the child is not sufficiently protected. The conclusions and recommendations will indicate some of these.

²⁹ See section 18 of the amended FLSA of 1949.

CHAPTER V

SUMMARY

In the United States every legislative body has had a background of experience in the protection of child labor. Although the first laws dealing with child labor were state laws, stress of regulation was placed on particular abuses. It was not until the industrial coverage of state laws were extended that there occurred a propensity toward combination.

Labor laws became more complete, combining individual regulations into what has often been called "children's codes." Since 1860 there has been a constant increase in the number of states passing regulations affecting the work of minors, particularly in three ways, minimum age limits; maximum hours of work; and compulsory school attendance. By 1948 every state in the union had a compulsory full-time school attendance law; every state had a prescribed minimum age limit for the employment of children, except Wyoming¹ whose state law reads: "for minimum age, no provision except that children whose attendance at school is required by law, shall not be employed at any occupation or service during school hours;" every state limited hours of work; every state placed restrictions on night work except Montana; forty-seven states had special age limits for hazardous occupations, and forty-five

¹ Bureau of Labor Standards, State Child Labor Standards, United States Department of Labor, Bulletin No. 98, January 1, 1949, p. 181.

states required employment certificates of all children under certain ages.²

One of the employments about which legislators consistently concern themselves is that of the protection of children in manufacturing. Table VI illustrates the rise in the number of states and in the minimum age for that particular occupation over a period of eighty-eight years.

On the federal level, Congress has taken five major actions toward the regulation of child labor: The Child Labor Law of 1916; the Child Labor Law of 1919, both being held unconstitutional; the joint resolution of 1924 proposing an amendment to the constitution of the United States, which thus far has been ratified by twenty-eight states; the National Industrial Recovery Act of 1933, interpreted to permit nation-wide regulation of child workers, but also held unconstitutional; and the Fair Labor Standards Act of 1938, amended 1949.

The Walsh-Healey Act of 1936 although having strong effect upon regulation of child labor is restricted inasmuch as the Act only applies to contract work provided by the government. Thus, it could never be held as authority for national control.

Each of these five federal steps involving child labor is to be considered as a move of national policy. The first Federal Child Labor Law provided in substance: a minimum age of sixteen in mines and fourteen in factories, and an eight-hour day and a six-day week for children between

² Bureau of Labor Standards, State Child Labor Standards, United States Department of Labor, Bulletin No. 98, 1949, op. cit.

the ages of fourteen and sixteen in factories. At that time, 1916, only eighteen states had legal minimums of sixteen or older in mines, thirty-eight states had legal minimums of fourteen or older in factories, and twenty-one states provided for an eight-hour day and a forty-eight hour week for minors.³ From Table VII it can be easily seen that the Federal law exceeded the majority of the state requirements in minimum age in mines, and in the forty-eight hour week, six day week provision. However, on one count, minimum age in factories, the law practically coincided with the majority of the states.

The attempted and still pending child labor amendment would delegate to Congress the power to regulate, limit, and prohibit the labor of persons under eighteen years of age. Although it is only an enabling act, whereby, the power of the states is unimpaired, the age limit of eighteen seems to be outside the past experience of the necessary thirty-six states, that number which is imperative for ratification of the Constitutional Amendment. The slow and cautious approach for embracing the amendment can be appreciated by noting that in 1924, when the resolution was passed not more than twelve states had a minimum of eighteen years even in hazardous occupations.⁴

The National Industrial Recovery Act became in part a regulation of child labor. Under the NIRA, the greatest part of the codes of fair com-

³ Children's Bureau, Child Labor Legislation in The United States, United States Department of Labor, Washington, 1915.

⁴ Children's Bureau, Child Labor, United States Department of Labor, Washington, 1929, p. 5.

TABLE VI

LEGAL MINIMUM AGES OF EMPLOYMENT IN MANUFACTURING
INDUSTRIES ESTABLISHED BY STATE LAWS
FOR SELECTED YEARS, 1860-1948

Age	1860	1880	1890	1900	1910	1915	1930	1938	1948
18.....									
17.....									
16.....					1	1	2	11	20
15.....					1	4	5	4	3
14.....									
13.....									
14.....			5	12	30	33	39	32	24
13.....	1	1	4	2	2	1			
12.....	1	2	5	6	8	2			
11.....									
10.....	2	4	3	4					
Total State Laws	4	7	17	24	42	41	46	47	47*

Source: Senate Doc. No. 645 (61st Cong.; 2nd sess.) for years up to 1860; Ogburn, op. cit., for years 1880-1910; Sumner and Merritt, Child Labor Legislation in The United States, (U.S. Department of Labor, Children's Bureau, Industrial Series No. 1, Bureau Publication No. 10, Washington, 1915), for the situation in 1915; Children's Bureau, Child Labor, (1929), for 1930; Coleman, op. cit., and code and supplementary sources listed in No. 30, p.19, for 1938; and Bulletin No. 98, "State Child Labor Standards," Bureau of Labor Standards, U.S. Dept. of Labor, Washington, 1949, for the situation in 1948.

* Wyoming has no minimum age provision, except that children whose attendance at school is required by law, shall not be employed at any occupation or service during school hours,;see page 34, supra.

TABLE VII

A COMPARISON BETWEEN THE FEDERAL CHILD LABOR
LAW OF 1916 AND THE NUMBER OF STATES HAVING
SIMILAR PROVISIONS IN THE YEAR 1916

Federal Child Labor Law of 1916		Number of States having similar provisions in the same year of the law.
Minimum Age in Factories	14	38
Minimum Age in Mines	16	18
48-Hour Week, 6-day Week	For children between ages of 14 and 16.	21

Source: Children's Bureau, Child Labor Legislation in The United States, Washington, 1915.

petition set sixteen as the minimum age limit in general and eighteen as the minimum for dangerous occupations. However, in 1936, "after the codes had come and gone," only eight state laws had minimum age standards of sixteen, and a grand total of thirty-five states still embraced the fourteen year level ! The hazardous occupations were prohibited to those under eighteen years of age in only sixteen states.⁵

With the FLSA came the general age limit of sixteen, with hazardous occupations requiring eighteen years as the minimum. From Table VI can be seen that at the time the measure was passed, only eleven states had sixteen year minimum in manufacturing.

A. Conclusion and Recommendations.

What does the future hold for the young workers ? We have seen that the Federal Government has done much to reduce the abusive conditions of child labor, and we know that there still remains room for improvement. These improvements can be either legislative or non-legislative, both of which are desirable for achieving better standards for education and employment for children.

Florence Taylor suggests the following as the legislative measures

⁵ Orme Phelps, "The Regulation of Child Labor," The Legislation Background of the FLSA, Chicago Press, 1939, p.23.

needed to raise the standards for education and employment of children:

Removal of exemptions from compulsory education laws which permit full time employment under sixteen; extension of all required school terms to nine months and enforcement of school terms to nine months and enforcement of school attendance in all areas.

Adoption of standards recommended for child labor laws by all states; removal of exemptions for agriculture and domestic service.

Extension of coverage of child labor provisions of the Fair Labor Standards Act to commercial agriculture outside of school hours.

Appropriations for enforcement of child labor and compulsory education laws adequate to provide sufficient and competent personnel at adequate salaries.

Federal aid to elementary and secondary schools to help equalize the quality and availability of education.

Federal or state scholarship aid to students unable to complete high school for economic reasons.⁶

The following non-legislative measures are suggested by Miss Taylor:

Adaptation of high school programs to the needs and interests of all students in order to hold them in school at least through the twelfth grade.

Counseling services beginning at the elementary school level to deal with students' school and personal problems before they lead to serious maladjustment and school leaving.

Expansion of work-experience programs under school supervision, including voluntary school and community projects for both younger and older students who need the experience of real work for personal growth and development or for vocational orientation.

Improved and expanded testing and guidance services to help students discover their aptitudes and interests.

Organized assistance in securing placement in suitable and satisfactory employment through the school and the public employment services.

6 Florence Taylor, Child Labor Fact Book, 1900-1950, National Child Labor Committee, April, 1950.

7 Ibid.

Some objections have been made that power to act in the hands of the government is a definite propensity toward nationalization, or even federalization of governmental functions, and that maybe we have gone far enough in that direction as is.

The writer agrees that problems of the states should be solved by the states. It doesn't make for good government function to always be turning to the federal government whenever abuses and neglected tasks have not been corrected. However, child labor involves problems which are national in area and dimensions. It affects the common good and welfare of the country as a whole. Unless all States see their way clear to adopt fair and uniform standards with respect to child labor and also honestly enforce such standards, it may well become the duty of the Federal Government to intercede even to the extent of proposing an amendment to the federal Constitution for the purpose of justly protecting inter-state as well as intra-state child labor. It is the latter sphere, i.e., intra-state child labor, for which no fair and uniform standards have been developed so far and which, therefore still requires careful attention. After all, the United States and her forty-eight States are not alien governments. They co-exist within the same territory. Reasonable protection of child labor within it is their common concern. Thus, unless all forty-eight States remedy the existing defects in due time, it would seem that a good case can be made for the ratification of the pending child labor constitutional amendment. In other words, whether or not the said amendment should be adopted primarily rests upon the

good will of the States and upon their willingness to solve the various problems inherent in child labor on an equitable and uniform basis. If they fail to act or are unwilling to act, they can scarcely complain if the Federal Government takes the necessary steps to insure all American children fair labor standards commensurate with the social notions and ideals of the mid-twentieth century.

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Keating-Owen Bill, September 1916, 39 Stat. 675, ch. 432, Public Number 249, 64th Congress.

National Industrial Recovery Act of 1933, 48 Stat., 195, ch 90, Public Number, 67, 73rd Congress.

Revenue Act of 1918, 40 Stat., 1138, ch 18, Title XII.

Walsh-Healey Act, June 1936, Stat., 2036, 74th Congress, 2nd Session as amended, 41 US Code.

IV COURT CASES

Bailey v. Drexel Furniture Co., 259 US 20, (1922).

Coleman v. Miller, 39 SC 972, (1939).

Hammer v. Dagenhart, 247 US 251, (1918).

NLRB v. Jones & Laughlin Steel Corp., 301 US 1, (1937).

Opp Cotton Mills v. Fleming, 312 US 657, (1941).

Perkins v. Lukens Steel Co., 310 US 113, (1940).

Schechter Poultry Corp. v. U.S., 295 US 495, (1935).

U.S. v. F.W. Darby Lumber Company, 312 US 100, (1941).

U.S. Circuit Court of Appeals, 8th, Powell v. U.S. Cartridge Company, 9 WH Cases, 1949,; certiorari denied, 339 US 497, (1950).

U.S. Circuit Court of Appeals, 2nd, Western Union v. Lenroot, 3 WH Cases 665, No. 247, appeal from the U.S. District Court for the Southern District of New York, March, 1944.

Supreme Court of Oregon in re State v. Shorey, 48 Ore 396; 86 Pac. 881, (1906)

APPENDIX I

THE CRY OF THE CHILDREN

Do you hear the children weeping, O my brothers,
Ere the sorrow comes with years ?

.....

And well may the children weep before you !
They are weary ere they run;
They have never seen the sunshine, nor the glory
Which is brighter than the sun.
They know the grief of man, without its wisdom;
They sink in man's despair, without its calm;
Are slaves, without the liberty in Christdom,
Are martyrs, by the pang without the palm;
Are worn as if with age, yet unretrievingly
The harvest of its memories cannot reap,
Are orphans of the earthly love and heavenly.
Let them weep ! Let them weep !

Elizabeth Barrett Browning

APPENDIX II

AMERICAN STATE PAPERS, DOCUMENTS, LEGISLATIVE AND EXECUTIVE, OF THE CONGRESS OF THE UNITED STATES, FROM THE FIRST SESSION OF THE FIRST TO THE THIRD SESSION OF THE THIRTEENTH CONGRESS, INCLUSIVE (WASHINGTON, 1832) CLASS III, FINANCE, VOL. I.

Communicated to the House of representatives, December 5, 1791 by the Secretary of the Treasury, Alexander Hamilton:

The cotton-mill, invented in England, within the last twenty years is a signal illustration of the general proposition which has been just advanced. In consequence of it, all the different processes for spinning cotton, are performed by means of machines, which are put in motion by water, and attended chiefly by women and children; and by a smaller number of persons, in the whole, than are requisite in the ordinary mode of spinning. And it is an advantage of great moment, that the operations of this mill continue with convenience, during the night as well as through the day. The prodigious effect of such a machine is easily conceived. To this invention is to be attributed, essentially, the immense progress which has been so suddenly made in Great Britain, in the various fabrics of cotton.

This is not among the least valuable of the means, by which manufacturing institutions contribute to augment the general stock of industry and production. In places where those institutions prevail, besides the persons regularly engaged in them, they afford occasional and extra employment to industrious individuals and families, as a resource for multiplying their acquisitions or their enjoyments. The husbandman himself experiences a new source of profit and support, from the increased industry of his wife and daughters, invited and stimulated by the demands of the neighboring manufactories.

Besides this advantage of occasional employment to classes having different occupations, there is another, of a nature allied to it, and of a similar tendency. This is the employment of persons who would otherwise be idle, and in many cases, a burthen on the community, either from the bias of temper, habit, infirmity of body, or some other cause, indisposing or disqualifying them for the toils of the country. It is worthy of particular remark, that, in general, women and children are rendered more useful, and the latter more early useful, by manufacturing establishments, than they would otherwise be. Of the number of persons employed in the cotton manufactories of Great Britain, it is computed that four-sevenths, nearly, are women and children; of whom the greatest proportion are children, and many of them of a tender age (p. 126).