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A HISTORICAL REVIEW OF THE ORIGINS, DEVELOPMENTS AND TRENDS
IN COMPULSORY EDUCATION IN THE UNITED STATES, 1642-1984

East Tennessee State University

Ed.D.

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A HISTORICAL REVIEW OF THE ORIGINS, DEVELOPMENTS
AND TRENDS IN COMPULSORY EDUCATION IN THE
UNITED STATES 1642-1984

A Dissertation
Presented to
the Faculty of the Department of Supervision and Administration
East Tennessee State University

In Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

by
David Edward Ramsey
December 1985

APPROVAL

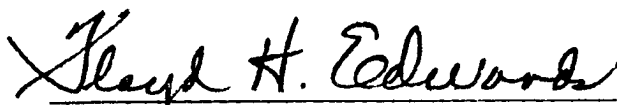
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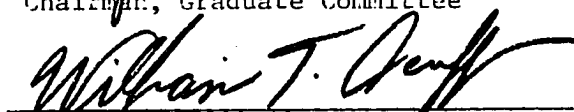
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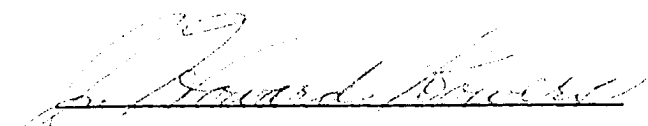
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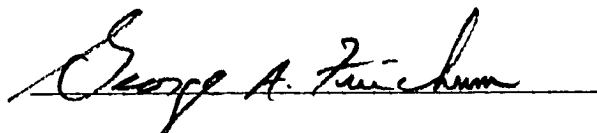
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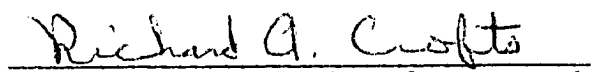
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ABSTRACT

A HISTORICAL REVIEW OF THE ORIGINS, DEVELOPMENTS AND TRENDS IN COMPULSORY EDUCATION IN THE UNITED STATES 1642-1984

by

David E. Ramsey

The purpose of this study was to write a comprehensive historical analysis of compulsory education in the United States from its inception in the colonies through 1984. The study attempts to analyze the elements of the origin, developments, and trends. The majority of the primary sources of this historical study were literary and were taken from numerous sources including United States Supreme Court decisions, congressional legislation, opinions of the Attorney Generals of the United States and various states.

Some of the major conclusions derived from this study were as follows:

1. There had been numerous laws passed to put the issue of compulsory education on a national scale.
2. The courts became more involved and influential in the interpretation of compulsory education laws.
3. Wars and depressions had not had significant effect on compulsory education.
4. Compulsory education laws were used as a means of providing social, economic, and political freedom.
5. The promise of compulsory education to narrow the gap between the poor and wealthy was rarely achieved. Public education did not always afford equal opportunity. For example, per capita expenditures on public education vary from state to state and county to county.

Some of the major recommendations as a result of this study included:

1. The role of the Federal government in public education should be limited.

2. Courts should act in an advisory capacity to constantly review and revise laws relative to education. The role of the courts should be watched carefully so they will not interfere with state laws.

Some of the major findings as a result of this study include:

1. The desire for political freedom had been one of the leading, if not the original motivation, for compulsory education.

2. The 1954 case (Brown v. Board of Education) revealed that compulsory education must be carried out in an atmosphere of equality for all races.

3. Court decisions such as the Pierce Case which upheld dual school systems and the Brown Case which promoted the principle that separate does not mean equal upheld some aspects of the First, Fifth, and Fourteenth Amendments.

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CHAPTER 1

Introduction

Educators and other citizens in recent years found it necessary to demand changes in compulsory education and attendance laws in the United States. Some groups advocated the abolition of compulsory education and school attendance in its present form. Many felt that compulsory education had become a national trap. Compulsory education, according to some, took away the opportunity for choice. Some school children were better off with less formal schooling under its contemporary structure.

Historically, from the beginnings of the United States, there were numerous economic, political, and social conditions which lent themselves to the formation of compulsory education. These conditions eventually led to laws being formulated in several states. These laws had been expanded, refined, withdrawn and even ignored to the present day.

During the late eighteenth and early nineteenth centuries most citizens and educators thought forced education was necessary in order to produce a competent electorate. In the mid-nineteenth century a serious effort was made to formally educate the common man. In the late nineteenth and early twentieth centuries the second industrial revolution made it necessary for each of the states to pass compulsory education laws. Society in the last sixty to seventy years has emphasized compulsory education as a means of gaining entrance to

institutions of higher learning in order to attain a higher standard of living.

As the United States grew in population and in the number of states, it was apparent that there would be a diversified educational structure. Since education was not mentioned in the United States Constitution, the Tenth Amendment had been interpreted as giving the states the responsibility for providing their own systems of education. The Tenth Amendment reads as follows: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."¹

Compulsory education laws were dissimilar from state to state. Each section of the United States and, indeed, each state had had their own political, economic and social conditions which influence compulsory education laws.

When the public school system was developed in the United States, there were several instances of conditions which caused some changes in the mandatory education laws. For example, when the issue of child labor arose as a social, political, and economic problem, it was noted that "Child labor emerged as a social issue in association with the development of the factory system, first in England and subsequently in other countries."²

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

² Oliver R. Gibson, "Attendance," Encyclopedia of Educational Research, ed. Robert L. Ebel, 4th ed. (New York: Macmillan, 1969), pp. 90-97.

Child labor and school census laws were very closely allied to compulsory attendance laws. At the time of this research, all states had child labor laws, and the Federal Fair Labor Standards Act covered the employment of minors in interstate and foreign commerce.

Enforcement of the compulsory school attendance laws with stricter youth employment statutes, more effective accounting procedures, and school census laws had led to considerable growth in school enrollments.³

Some judicial decisions have had a significant effect on compulsory education. The United States Supreme Court acted in various instances. There were some important decisions emanating from the courts which have had their roots in politics.

The 1954 Supreme Court decision, Brown v. The Board of Education of Topeka, Kansas, declared that segregation was inherently unequal. Compulsory attendance laws had since been repealed in the states of Mississippi and South Carolina. The state of Virginia made its law dependent upon local option.⁴

Illich related that compulsory schooling had its origins in economic, social and political considerations. He felt that these conditions at the time of the Puritans had a profound effect on the growth of compulsory education.⁵

³ U.S., Department of Labor, State Child-Labor Standards, U.S. Department of Labor Bulletin, No. 158. (Washington, D.C.: GPO 1960).

⁴ Gibson, p. 94.

⁵ Ivan Illich, Deschooling Society (New York: Harper & Row, 1971), pp. 9-10.

It was evident from the literature which had been written that these conditions have played a major role in the determination of compulsory education in the United States. It appeared that school age children had been threatened by these conditions, or it could have been that the consequences of economic competition of these children with adults forced society to consider ways and means to gainfully occupy these children. In either case, compulsory education had undergone significant change in the United States since 1642. The overall impact of these conditions was considerable.

People were very concerned that children be educated so that they could assume their proper role in society. As the United States grew in principles of democracy, the concept that all people have an equal opportunity for life, liberty, and the pursuit of happiness was accepted. Along with this acceptance grew the realization that people needed to be educated so they could help contribute to the growing needs of the United States. The concept that education was the right of all people became more than a mere statement. Compulsory education seemed to be the means to the complex. However, some common standards were observed in the fifty states. Proponents claimed this form of education is the insurance of the poor and less privileged against permanent servitude. The opponents indicated it was the box which opens the doors of incompetence, imposes undue taxation and promotes the continuance of an uncontested monopoly in this country of the public school system.

The Problem

The problem of this study was to write a comprehensive historical analysis of compulsory education in the United States, including the origin, development and trends, from its inception in the colonies through 1984.

Significance of the Study

Contemporary education was in a period of strenuous challenge by the demands created by a rapidly changing society. Alvin Toffler summed up this challenge in Future Shock:

For education the lesson is clear: its prime objective must be to increase the individual's 'cope-ability'--the speed and economy with which he can adapt to continual change. And the faster the rate of change, the more attention must be devoted to discerning the pattern of future events.⁶

Education, which was of a forced nature, influenced the basic structure of educational institutions. It appeared, as it had appeared at different points in history, that change was imminent. A study of the conditions which led to the enactment of the laws was designed to indicate if change is necessary. Also, another benefit of this type of study was that it would enable educators to decide how to best make these changes and in which direction.

It appeared from a review of the literature that there had been relatively few studies of this type. Michael Katz, in compiling an annotated bibliography in the Phi Delta Kappa Fastback entitled, A History of Compulsory Education Laws (1976), pointed to

⁶ Alvin Toffler, Future Shock (New York: Bantam Books, 1971), pp. 403-04.

Forest C. Ensigns' work of 1921 at the University of Iowa as ". . . the only comprehensive historical study of compulsory education laws in the United States."⁷ The failure of others to investigate these historical forerunners leading to compulsory education warranted this type of research. Ensign's work dealt with compulsory attendance and child labor and was not considered an up-to-date historical reference in 1983.

Methods and Procedures

The purpose of the study was to analyze the origins, growth, challenges, and trends of compulsory education in the United States from the period of 1642 through 1984.

More specifically, the investigator was to determine how the issue of compulsory education had created challenges and trends within the educational field and also how the issue of compulsory education had created political, social, and economic problems within the American society.

A review of the related literature was conducted to determine the significance of the planned study and to provide the researcher with a sound background on the subject of compulsory education. The majority of the primary sources of this historical study were literary and came from the following sources:

⁷ Michael S. Katz, A History of Compulsory Education Laws, Phi Delta Kappa Educational Foundation, Fastback 75 (Bloomington, Ind.: The Phi Delta Kappa Educational Foundation, 1976), p. 36.

1. United States Supreme Court decisions,
2. Congressional legislation,
3. Opinions of the Attorney Generals of the United States and various states,
4. State laws and summaries of case laws,
5. Pamphlets and newspapers,
6. Dissertation abstracts,
7. Books,
8. Periodical literature.

This information was compiled from the libraries of Appalachian State University, East Tennessee State University, and Western Piedmont Community College; the Attorney General's Office of the State of North Carolina; the Institute of Government at the University of North Carolina at Chapel Hill; and from the personal files of Dr. Guy Swain, Supervision and Administration Department, Appalachian State University.

There was a significant amount of information which had a bearing on compulsory education. Most of this information came from attorney generals' opinions, the compilation of state laws, the summaries of case law, Supreme Court decisions, and congressional legislation. Some of the major documents within the realm of this study were the Colonial Law of 1642 in the state of Massachusetts, the 1852 education laws in Massachusetts, the Northwest Ordinance, the Kalamazoo decision, the Pierce decision, the Fair Labor Standards Act, Brown v. The Board of Education of Topeka, Kansas (1954), and the Yoder decision. All of

these acts and decisions either led to the growth of compulsory education or had a significant influence on it.

Using the historical research, the writer intended to objectively measure and criticize the findings, both internally and externally. Internal criticism centered on the significance of the event at its inception. External criticism was concerned with factors which had influenced the event over a relative time era.

The steps involved in the procedure of historical research relative to external and internal criticism were as follows:

1. The problem was defined, and pertinent data were analyzed. The educational significance of the study was presented.
2. The research objectives were stated.
3. The data were collected mainly from primary sources.
4. The data were evaluated both internally and externally.
5. The findings were reported and interpretations and conclusions reached.⁸

Basic Assumptions

1. Government organizations, schools/colleges of education, local boards of education, and other educational organizations needed to be better informed on the history and development of compulsory education.

⁸ Stephen Isaac and William B. Michael, Handbook in Research and Evaluation, 3d ed. (San Diego, Cal.: EDIDs, 1983), pp. 44-45.

2. Compulsory education had a strong influence on the development of the concept that all citizenry in the United States should be educated.

3. Compulsory education in the United States had its origin in a variety of sources.

4. The need for compulsory education was uniformly accepted.

Limitations of the Study

The following limitations of the study were recognized:

1. This study dealt with compulsory education in the United States. Reference was made to other parts of the world only if it had a relationship with the laws of the United States.

2. This study was not concerned with the attendance factor. Attendance was considered only if it related to laws which determined compulsory education.

3. This study did not attempt to compare compulsory education between two or more states.

4. This study did not attempt to compare compulsory education with similar type education in any foreign country.

5. This study interpreted historical material and attempted to explain how and why compulsory education occurred.

6. This study was concerned with child labor only if it related to laws which determined compulsory education.

7. This study was concerned with the issue of taxation only if it related to compulsory education.

Definitions of Terms

The following definitions of terms came from Arthur A. Renzy,
A Schoolman in the Law Library, Danville, Illinois.

Appellees. The party against whom an appeal is taken.

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

Compulsory attendance. The practice now common to all states, territories, and possessions of the United States relative to required school attendance by law. Responsibility is placed on parents in some states.

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

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

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

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

Rate-bills. A means of financing schools. Generally, payment was based on the number of children a family had in school. Goods and land were sometimes used as payment.

Cultural pluralism. A state or condition of society in which members of diverse ethnic, racial, religious, or social groups

maintain an autonomous participation in and development of their traditional culture or special interest.

Fair Labor Standards Act. An Act passed by Congress in June, 1938, which regulated wages, hours, and child labor.

The Society of the Sisters of the Holy Name of Jesus and Mary.
An organization which supported Catholic parochial schools.

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

Research Questions

1. What were the major historical events which formed a basis for the historical roots of education in the United States of America?
2. What conditions were prevalent in the United States which led to the controversy and passage of compulsory education laws?
3. How did compulsory education influence the structure of public schools in the United States?
4. To what extent have non-educational groups influenced the growth of compulsory education?
5. What were the major events which eventually led to state and national Supreme Court decisions relative to compulsory education?
6. What were some twentieth century developments which influenced compulsory education?

Organization of the Study

The study was organized into six chapters. Chapter 1 contains an introduction to the problem, limitations of the study, assumptions,

definitions of the terms, research questions, methods and procedures, and organization of the study.

Chapter 2 contains information on the origins of compulsory education.

Chapter 3 includes data about early developments in compulsory education.

Chapter 4 provides a discussion of compulsory education in the nineteenth century.

Chapter 5 is concerned with compulsory education in the twentieth century.

Chapter 6 contains the summary, conclusions and recommendations.

CHAPTER 2

Origins of Compulsory Education

Historical Roots of Education in the United States

Martin Luther, the founder of the Protestant Reformation, was also a contributor to the early educational field. Luther was considered to be a very extensive writer on education, and his influence upon education has always been a controversial subject. One of the major disputes centers around his attitude toward the higher studies and humanistic cultures, while another deals with his influence relative to the rise of state popular schools. The great humanist Erasmus stated, "Wherever Lutheranism prevails, learning and liberal culture go to the ground."¹ In more recent times Jansen elaborates the same charge. He quotes Luther: "The universities were only worthy of being reduced to dust, nothing more hellish or devilish had ever appeared on earth from the beginning of things or would ever appear."² Jansen further explained the great decline of the universities and schools as due to attacks of Luther and his followers.

¹ Frederick Eby (ed). Early Protestant Educators (New York: AMS Press, 1971), pp. 11-13.

² Lucius Jansen in Early Protestant Educators, ed. Frederick Eby (New York: AMS Press, 1971), pp. 11-13.

Others who viewed Luther critically were Von Dollinger,³ Paulsen,⁴ and Beard.⁵ On the opposite side were favorable estimates of Luther's views toward scientific and liberal culture. Among Luther's admirers were Faulkner,⁶ Harnack,⁷ and Lindsay.⁸

Luther dealt with education directly in many ways, such as sermons, tracts, letters, addresses, table talk, commentaries relative to the scriptures and other writings. Luther was very interested in the teaching of Latin and Greek, not in order to study the ancient classical authors whom he regarded as heathenish, but in order to understand the scriptures in their purity. Luther was not a humanist, yet he did more than anyone else to establish the Latin schools.

³ John Ignatius Von Dollinger, "Die Reformation," in Early Protestant Educators, ed. Frederick Eby (New York: AMS Press, 1971), p. 14.

⁴ F. Paulsen, "Geschichte des gelehr Unterrichts," in Early Protestant Educators, ed. Frederick Eby (New York: AMS Press, 1971), p. 14.

⁵ Charles Beard, "Martin Luther and the Reformation," in Early Protestant Educators, ed. Frederick Eby (New York: AMS Press, 1971), p. 14.

⁶ John Alfred Faulkner, "Luther and Culture," Papers of the American Society of Church History, vol. 8, pp. 149-68.

⁷ A. Harnack, "Martin Luther in Seiner Bedeutung Fur die Geschichte der Wissenschaft under der Bildung," in Reden und Aufsätze, 1904, pp. 160-64.

⁸ T. M. Lindsay, "Luther and the German Reformation," in Early Protestant Educators, ed. Frederick Eby (New York: AMS Press, 1971), p. 14.

Luther did not directly do much for the common schools. He called upon the authorities to suppress the private vernacular schools which had done a considerable amount to overcome illiteracy.⁹

As early as 1524 A.D., Martin Luther called on the councilmen of the towns in Germany to establish and maintain schools. This call probably represented the earliest recorded request for formal compulsory schooling for all children regardless of social status. While this plea was made in the sixteenth century, it would be almost 200 years before it was practiced in Prussia. Luther, however, did promote the principle that the strength of a city would lie in a well-educated and moral citizen. Furthermore, Luther stressed that it was not only the right but also the duty of the states to establish schools and compel attendance. Luther's message was carried throughout the old country by his disciples. Although there was no formal acceptance of his proposal in the sixteenth century, the point had been made and the idea put into peoples' minds.¹⁰

John Calvin was not as broad as Luther in educational interest and sympathies; Calvin was more profound. Though he did not write nearly as much, his influence was as penetrating and widely spread. In the year 1541 Calvin was recalled to Geneva where he built, step by step, "The Rome of Protestantism" and exerted his influence in France, Eastern Germany, Holland, England, and Scotland. Calvin was consistent

⁹ Eby, p. 20.

¹⁰ John W. Perrin, "The History of Compulsory Education in New England" (Ph.D. diss., University of Chicago, 1896), p. 30.

in his view of the establishment of a school. Calvin showed no particular interest in elementary vernacular education. He protested to the Council of Geneva that there were too many small schools, and the number was reduced to four, one for each quarter of the city.¹¹ Calvin required that only those boys who could not learn Latin be allowed to attend these elementary schools. Even then, in the interest of uniformity, he demanded that all pupils in these schools be assembled every Wednesday at the great college so that there might be some form of religious instruction in common. The teachers of the elementary schools were required to be examined and supervised.¹² Through the efforts of Calvin a number of compulsory public schools were established in Geneva during the sixteenth century. His influence extended to other parts of the old country where in the early part of the seventeenth century other compulsory schools were established.

Reaction of Colonists to Puritanism

The colonists were people who were industrious, religious, intelligent and generally well educated. They seemed determined to perpetuate Calvinism and its principles for which they sacrificed living in their native land in order to be free of religious and political persecutions. Therefore, compulsory and public schooling appeared first in America under the realm of the Calvinist Puritans, particularly in the leading Puritan colony of Massachusetts Bay. While it was true that voluntary parental education and private

¹¹ Eby, p. 20.

¹² Eby, 235.

education prevailed outside of New England, the militant Puritans who started the Massachusetts Bay Colony were eager to adopt the Calvinist plan for compulsory education in order to ensure the growth of Calvinism and the suppression of possible dissent.¹³

¹³ Murray N. Rothbard, "Historical Origins," in Twelve Year Sentence, ed. William Rickenbacker (La Salle, Ill.: Open Court, 1974), p. 13.

CHAPTER 3

Early Development in Compulsory Education

Economic, Political, and Social Conditions

Economic conditions were very important in the migration and settling of the new country. Economic circumstances appeared to be closely mixed with the environment of the colonies. Geography and climate had a bearing on the distribution of land and the population, as well as an effect on the type of economic organization of the settlers. The hard winters and relatively poor soil may have been a moderate factor in the pattern of settling in groups rather than as individuals in the New England area. The people who arrived here from the old country were very industrious and hard working. They also came from small group communities which had developed a certain desire to live close to each other. The natural desire for survival under harsh conditions made it incumbent on these people to seek out and plan land distribution which would make it easier for all concerned to reap the greatest economic benefit for the community.¹

The ethnic background of the colonies was certainly a factor in the move toward the mandatory education laws of this period. During the migration to the colonies many countries supplied people. The English, Dutch, Scotch, Irish, and Germans were the majority of immigrants. They brought with them many of their customs, cultural

¹ Marcus Wilson Jernegan, Laboring and Dependent Classes in Colonial America, 1607-1783 (Chicago: University of Chicago Press, 1931), p. 66.

backgrounds and ideals. The spirit and determination of a particular colony was influenced by the mixture of people. After a period of settlement the natural intermarriage seemed to play a part in mollifying ethnic discrepancies. Another factor which played an important part during this period was the tendency of similar ethnic elements to settle and remain in specific areas. The English generally settled along the seaboard area while others moved further inland. This type of ethnic distribution made it easier for the English to control the economy, the slavery system and land distribution. Furthermore, they were in a more advantageous position to regulate the laws, courts and institutions for learning. The predominant role which ethnic factors played was to a large extent due to the settlement pattern. Those in positions of knowledge were able to eventually determine the early context of compulsory education.²

Political considerations were prominent in the new country as they were in the old. It was the perceived notion of the colonists that they were being subjected to undue political duress in Europe. They thought that a new beginning in a new country would best serve their interests and enable them to rectify the injustices and persecutions which they felt they were suffering. The increasing control of education by the civil authorities was one of these components. The settlers saw this as unfair interference in the private lives of individuals. They saw it as a means of diminishing the implementation of their way of life. The system of government was an important factor

² Jernegan, p. 66.

in the political process. The general organizational unit for local government used at this time was the town, and the meetings of the people of the community were called town meetings. This type of meeting seemingly gave individual members of a community the opportunity to show a great deal of influence in the affairs of the town. Since the state gave this group powers of extreme importance, it was only natural that the individual community members had much authority when it came to writing the education laws. The political influence in a town was considerable at this time and was reflected in the laws of colonial days.³

Social and intellectual conditions played a large part in the beginning of the education laws of this period. The journey to the new country brought many individuals who had diverse backgrounds. Generally, many people who migrated to the colonies were well-educated men and women. There were a large number of well-educated clergymen who left the old country. It was probably because of the level of education that we can identify certain social statuses and classes. In the colonies the distribution of population in certain social strata became evident. Many of the people living in the colonies were persons who believed in freedom of the press and religion. They had the intelligence and ability to distribute knowledge. Some were newspapermen who believed that the storing of knowledge in libraries

³ Jernegan, p. 67.

would foster their culture. The gathering of these people in small communities gave them the opportunity to pass along many social, as well as intellectual, traits.⁴

Massachusetts Law of 1642

Compulsory education in the United States had its origins in the Massachusetts law of 1642. This law demonstrated the concern of the citizens of that time that the proper religious education of the children be attended to by their parents. On June 14, 1642, the Court of the Colony of the Massachusetts Bay in New England sent forth the following decree:

This court, taking into consideration the great neglect of many parents and masters in bringing up their children in learning, and labor, and other implements which may be profitable to the common wealth, do hereupon order and decree, that in every town the chosen men appointed for managing the prudential affairs of the same shall henceforth stand charged with the care and redress of this evil, so as they shall be sufficiently punished by fines for the neglect thereof, upon presentment of the grand jury, or other information of complaint in any court within this jurisdiction; and for this end they, or the greater number of them, shall have the power to take account from time to time of all parents and masters, and of their children, concerning their calling and employment of their children, especially of their ability to read and understand the principles of religion and the capital laws of this country, and to impose fines upon such as shall refuse to impose fines upon such as shall refuse to render such accounts to them when they shall be required; and they shall have power, with consent of any Court or the magistrate, to put forth apprentices the children of such as they shall (find) not to be able and fit to employ and bring them up.⁵

⁴ Owen B. Kiernan, "A Defense for Extending Compulsory Education to Age 18," NASSP Bulletin 59 (September 1975): 61.

⁵ Nathaniel B. Shurtleff, ed., Records of the Governor and Company of the Massachusetts Bay in the New England (Boston: Press of William White, Printer to the Commonwealth, 1853), pp. 6-7.

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

The law of 1642 had many implications. One of the more important implications that it had for later laws was its establishment of compulsory education. It was considered to be the first type of reference toward compulsory education in this country. The court decreed that a board had the authority to account for the way in which the children were educated. This seemed to be analogous to the authority that a board of education today has to insist that all children be educated within the parameters of age restrictions. This group also appeared to have the jurisdiction to take steps to levy fines on those who failed to comply with the intent of the law. Further, it seemed that this group of men had the prerogative of taking children from the parents or guardians and apprenticing them to someone who would be willing to guarantee the proper education of the children. Many of these legal ramifications seemed to be in force in 1984. There are ways and means today of mandating parents to see to the education of their children until the legal age. However, the practical aspect of the matter now as it was then was that it was rarely enforced.

Shortcomings of the Act of 1642

Although the Act of 1642 started the foundation for an American system of education, it was not without its shortcomings. Paramount

among these was the provision for a certain amount and type of education without specifying means to obtain that education. The education of children prior to the law was in the hands of parents and masters. The difference was that someone now had the right to accuse and ultimately to fine the offender. The question still remained how could one be sure that the education was received?

Another error was its narrowness of purpose. It called for instruction in religion and law. It did not call for the teaching of writing or computation. Neither did it indicate a need to educate for some specific vocation. The circumstances under which the colonists lived probably precluded the necessity for any other than training in religion and law. This narrowness served only to increase the apathy toward any type of formal education. This was particularly true in an area so heavily dependent on food and shelter production for survival. There seemed to be a feeling that the new law would not provide any more than the colonists already had.

Massachusetts Law of 1647

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

This law demanded that each town of fifty or more householders appoint a person to teach the children to read and write. If a town increased to 100 or more householders, a grammar school had to be established to prepare the youth for the university. A penalty for noncompliance was established; however, there seemed to be no record

of any town being particularly hurt by the fine. In fact, a few years later the fine was increased.

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

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

The influence on the grammar schools, instituted by this statute, was revealed to some extent in the requirements for admission to Harvard College at that time. As stated in the "laws, liberties, and orders of Harvard College," then in force, candidates for admission were required to give evidence of ability "to read Tully, or such like classical author extempore," to speak and write Latin in both prose and verse, and to decline the Greek paradigms of nouns and verbs.⁶

The law of 1647 in effect closed some of the loopholes of the previous law in Massachusetts. It did specify the type of education and an amount of education, although it is true that the amount was

⁶ John W. Perrin, "The History of Compulsory Education in New England" (Ph.D. diss., University of Chicago, 1896), p. 20.

considerably regulated by the admissions requirements of the colleges of that period. The 1647 law set up the necessity for a teacher corps and brought forth the principle of local taxation for education.

Legal Provisions in Other Colonies

Legislative growth in the other colonies was to a great extent dependent on the Massachusetts laws. Connecticut, in fact, adopted a school law in 1650, and it was almost a literal transcript of the Massachusetts law of 1642. Rhode Island was one of the colonies which made no provision for compulsory education. The prevailing mood of the people in this area was that public schools were charitable institutions. Furthermore, the ethnic mix and religious preference of these people were different from those in the Massachusetts Bay Colony. It was possible that the success in one colony as opposed to another was dependent on several factors. One of these seemed to be the former education of the settlers in a particular region. As in the case of Massachusetts, the townspeople tended to become a homogeneous group because they would pressure undesirable people out of their community. In Table 1 the colonial education requirement is compared with the date of the enactment of a compulsory attendance law after each of the thirteen colonies became a state.

Educational Legislation Prior to the Revolution

In considering the legislation in the 100 years prior to the American Revolution the events which may have affected the passage of statutes must be considered. In the last part of the seventeenth century two events which contributed to weakening the passage and enforcement

Table 1
Legal Educational Requirements and Date of First
Compulsory Attendance Law in Each of the
Thirteen Colonies

Colony	Colonial Educational Requirement	Date of Compulsory Attendance Law
Massachusetts	Compulsory Education	1852
	Compulsory Schools	
	Educational Clause in Apprenticeship Indenture	
Connecticut	Compulsory Education	1872
	Compulsory Schools	
	Educational Clause in Apprenticeship Indenture	
New Hampshire	Compulsory Education	1871
	Compulsory Schools	
Rhode Island	No Educational Legislation	1883
Pennsylvania	Compulsory Education	1895
New York	Compulsory Education	1853*
	Compulsory Schools	

Table 1 (Continued)

Colony	Colonial Educational Requirement	Date of Compulsory Attendance Law
New Jersey	Compulsory Schools	1875
Delaware	Compulsory Education	1907
Maryland	Compulsory Schools	1902
Virginia	Apprenticeship Clause	1908
North Carolina	Apprenticeship Clause	1907
South Carolina	No Educational Legislation	1915
Georgia	No Educational Legislation	1916

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

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

of compulsory education laws stand out. They were the beginning of Indian wars and the general decline of family government. Some of the effects of the Indian wars were property destruction, loss of industry and a very difficult economic depression.⁷ As a result of these wars and an increase in the number of poor, there was an increase in the number of apprenticeship programs. The general decline of family government was another factor which evoked immediate reaction was one which attempted to justify the problem by the passage of laws designed to check many of the evils of that time. In addition to the weakening of the moral tone of the period there was a change in the charters of the New England colonies and the government was organized on a regional basis. It was not until the end of this regime that the regular government was resumed. The regime was that of Governor Andros and it was a virtual dictatorship. Almost immediately the several colonies restored the original legislation.⁸

As the country moved into the eighteenth century, the efforts toward compulsory education experienced a further decline. The emphasis at this point seemed to be on vocational education and the apprenticeship of lower class children. There appeared to be a decline in the attitude for religious education, and the influence of the clergy seemed to be less enthusiastic. More people had a knowledge of education and did not have to be as reliant on the clergy. The country had expanded, and the frontier was moving west and south. The attempt to enforce laws over a greater area was not

⁷ Jernegan, p. 103.

⁸ Jernegan, p. 103.

feasible. The new country was tending toward more democratic forms of government as witnessed by the pronounced movement toward the town system. People were becoming more disenchanted with the central government concept of a king who resided thousands of miles away. There was a demand for increased industrial efficiency. With this demand came a concomitant necessity for a larger labor force. This force was available through the use of children. Through a combination of many of the above factors, the movement toward mandatory education and its enforcement came to a virtual standstill in the first seventy-five years of the eighteenth century. It took a backseat to the drive toward freedom from the government of England.⁹

Effects of the Revolutionary War on Education

Just prior to and during the American Revolution the drive for compulsory education came to a virtual halt. The entire effort seemed to be directed toward the preparation, manning and fighting for independence from England. The need at this time was for every man, woman and child to be working for some phase of the war effort. The American Revolution was conceived in the minds and hearts of the people as a struggle for freedom: freedom from political, religious, economic and social controls. The Revolution, with those goals in mind, certainly seemed a success. The concept of an hierarchial government was dealt a devastating blow. The Americans became determined to replace the sovereign kind with a form of government more responsive to the people.

⁹ Jernegan, pp. 114-15.

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

Events Leading to the Enactment of the Ordinance of 1787

There were certain events that preceeded and affected the Ordinance of 1787. The new government was federal in territory and as such had no claim to any land except as bestowed upon it by the several states. The states were divided into two groups: the Atlantic group and the states west of the Appalachians. Both were making claims to the territory which was still unexplored. After many discussions in Congress, the several states sent to Congress, and Congress accepted, a deed of limitation and cession in 1780. This was the original public domain. It included the boundaries set by the Great Lakes, the

Ohio and Mississippi Rivers.¹⁰ This was to be one of the three crucial events that culminated in the Ordinance of 1787.

Another event was the desire of many people, after the Revolutionary War, to colonize and settle in the western part of the country. George Washington, in his Farewell to the continental army, urged his soldiers to seek out the western regions as a place for living that would bring personal independence.¹¹

It was shortly before that some of the continental line officers had petitioned for a tract of this land to be set aside as a colony in time to be admitted as one of the confederate states. This group was the foundation of the Ohio Company which was formally organized in 1786 for the purpose of obtaining these lands from the Congress.¹² The purchase offer from the Ohio Company and its representative, Manasseh Cutler,¹³ would not have been consummated without the Ordinance and the Ordinance would not have been enacted except as a condition of the purchase.¹⁴

Northwest Ordinance of 1787

The Ordinance of 1787 was an opportunity for the new government to establish itself as a democratic force. The intent of the decree

¹⁰ B. A. Hinsdale, The Ordinance of 1787 (Akron, Ohio: Educational Monthly Print, 1887), pp. 6-7.

¹¹ Hinsdale, p. 9.

¹² Hinsdale, p. 9.

¹³ Manasseh Cutler was associated with the Ohio Company which sought the purchase of the Northwest Territories.

¹⁴ William Frederick Poole, The Ordinance of 1787 and Dr. Manasseh Cutler (Cambridge, Mass: Welch, Bigelow and Company; University Press, 1876), p. 31.

was to set apart for common schools the sixteenth section in every newly formed state that came from this territory. On the thirteenth day of July, 1878, Congress passed the Northwest Ordinance. Several states, including Ohio, Indiana, Illinois, Michigan and Wisconsin, were eventually formed from this territory. The Ordinance eventually applied to the states of Iowa, Minnesota, Nebraska and Oregon among others.¹⁵ This piece of legislation had in import for education specified in Article III, which stated that schools and education should forever be encouraged.

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

The Ordinance, in the breadth of its conceptions, details, and results had been perhaps the most notable instance of legislation that was ever enacted by the representatives of the American people. It fixed forever the character of the immigration and of the social, political, and educational institutions of the people who were to inhabit this imperial territory.¹⁶

The importance of this legislation lay in the fact that it was one of the first opportunities that a new nation had to demonstrate the feasibility of its new form of government. It set the tone for the

¹⁵ Poole, p. 3.

¹⁶ Poole, p. 3.

direction of a new nation in certain areas. It pointed out to all citizens of the United States and the world the concern of this country for certain rights of individuals and demonstrated the means to achieve these rights. While a compulsory education law had not been passed by any of the newly constituted states (italics mine), it certainly put the Congress on record as favoring schools and education. The Congress saw that effective government was dependent on an informed, moral electorate. One means to insure that government would have educated people who would be able to interpret the law properly was to promote schools. In line with Article Ten of the Bill of Rights, this Ordinance did not specify how education was to be obtained or structured. This was left to the states. However, it did prove clearly that schools and the means of instruction would be encouraged. These latter two elements were enforced by legislation, but not at the expense of one's conscience. Almost two centuries later the Supreme Court took cognizance of this article with its ruling in the Yoder decision.

Commentary on the Early National Period

The Ordinance of 1787 set the trend for educational growth in the new nation. The constitutions of many of the newly formed states contained exactly the same proviso for education as Article III of the Ordinance. The several states had the option under the new Constitution for determining the type of educational structure. It was the desire of the revolutionary leaders to develop a homogeneous citizenry, but this did not become a reality. The new American citizen was still too sectarian and socially diverse. It was observed that education

became a partial panacea for the ills of the time. Education became the conduit for the humanitarian. It was the channel for the education of the poor, for the promulgation of doctrine, simply to keep children off the streets and in some instances even attempt to advance learning. In other words, education during this period of time seemed to be a combination of institutions with no major purpose.

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

Consequently, the function of education in a democratic state is threefold; to furnish all citizens with the knowledge and training that will enable them to pursue happiness as private persons; to prepare all citizens to exercise their rights of self government; and to provide the knowledge and training that will enable the superiorly gifted citizens to make full use of their intellectual and moral powers, especially with respect to the exigencies of leadership.¹⁷

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

¹⁷ Robert D. Heslip, Thomas Jefferson and Education (New York: Random House, 1969), p. 50.

and aided by the election of the common man's president, Andrew Jackson, came the recognition of the struggle for universal compulsory education in the United States.

CHAPTER 4

Compulsory Education in the Nineteenth Century

Increasing Governmental Activity and Legislation

Beginnings of the Common School Crusade

What began at the turn of the century and continued through the middle of the century was a need for a uniform school system. During the early part of the nineteenth century, 1820-1850, there was constant criticism and reform of existing school systems. There were the opponents of free public education at the expense of the taxpayer. There were those who did not want the schools to be charity schools. The natural rights of parents were thought to be eroded. There were implications for black and white racial mixes. Lastly, the common school seemed to be a threat to religious control of learning.¹

Horace Mann, the first Secretary to a State Board of Education and one of the foremost proponents of the common school, did not always promote the movement. When he saw the apathy on the part of many citizens he drastically changed his mind.

In the minds of educators two ideas have long been associated--gratuitous instruction and compulsory instruction. In 1840 Mann did not think compulsion either desirable or practicable. In 1847 he had so far changed his mind as to admit its necessity in the cases of those

¹ David Denker, "American Education: A Brief History," Current History 29 (September 1955): 143-49.

persons who are insensible to the education of their children. Were he living in 1984, he would be a full convert to coercion.²

Other promoters of the common school during this period were such leaders as James Carter, Henry Barnard, and Horace Greeley. They also managed to perpetuate the idea of compulsion.³

There were several factors which may have influenced the movement toward common schools. The movement from a basic agricultural economy to one promoting industrial prowess was certainly important. There was an extension of the right to vote under Jacksonian administration. Temperance reform and the abolition of slavery were among the social and humanitarian movements. Cities showed signs of growth, and the labor movement was gaining momentum. In general, a democratic form of government was taking root and the common man was demonstrating his power.⁴ All of the above ideals served to stimulate the growth of common schools. When these ideals were practiced the movement toward common schools, as a part of compulsory education, became an accomplished fact.

Horace Mann and Compulsory Education

Mann was instrumental in ushering in a new period of educational history when he was called by the newly established State Board of

² B. A. Hinsdale, Horace Mann and the Common School Revival in the United States (New York: Charles Scribner's Sons, 1913), p. 296.

³ Forest Chester Ensign, "Compulsory School Attendance on Child Labor." Ph.D. dissertation, Columbia University, 1921, p. 45.

⁴ Frank Tracy Carlton, Economic Influences Upon Educational Progress in the United States, 1820-1850 (New York: Teachers College Press, 1965), p. 31.

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

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

But this divine result of staying the desolating torrent of practical iniquity by drying up its fountain-head in the bosom of the young is promised only on the antecedence or performance of certain prescribed conditions. These conditions are the three following: (1) that the public schools shall be conducted on the cardinal principles of the present New England systems (2) that they shall be taught, for a period of ten months each year, by persons of high intellectual and moral qualifications; or, in other words, that all the teachers shall be equal in capacity and in character to those whom we now call first-class or first rate teachers, and (3) that all the children in the Commonwealth shall attend school regularly--that is for the ten months each year during which they are kept--from the age of four to that of sixteen years.⁵

Mann felt that the preparation of youth for their place in society was not something to be taken lightly. Even though he was against the

⁵ Horace Mann, Life and Works of Horace Mann, Vol. 4: Annual Reports (Boston: Lee and Shepard Publishers, 1891), p. 174.

of compulsion at one point, he was strong in his stance that if parents neglected this duty others must perform it for them.

On the third point--that which contemplated the regular attendance of all the children upon the school (with certain specified exceptions), and even their compulsory attendance in a class of extreme cases--reliance is upon legal precedents and analogies. Further, regular attendance is based upon the necessity which is imposed upon a republican government, if it means to keep itself republican and upon the broad principle, that a parent who neglects to educate his child up to the point proposed proves that he has taken the parental relation upon himself without any corresponding idea of its solemnity, and thus, by the non-performance of his parental duties, forfeits his parental rights.⁶

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

Now, surely nothing but universal education can counterwork this tendency to the domination of capital and the servility of labor. If one class possesses all the wealth and the education, while the residue of society is ignorant and poor, it matters not by what name the relation between them may be called; the latter, in fact and in truth, will be the servile dependents and subjects of the former. But, if education be equably diffused, it will draw property after it by the strongest of all attractions; for such a thing never did happen, and never can happen, as that an intelligent and practical body of men should be permanently poor. Property and labor in different classes are essentially antagonistic; but property and labor in the same class are essentially fraternal. The people of Massachusetts have, in some degree, appreciated the truth, that the unexampled prosperity of the State--its comfort, its competence, its general intelligence and virtue--is attributable to the education, more or less perfect, which all its people have received; but are they sensible of a fact equally important; namely, that it is to this same education that two-thirds of the people are indebted for not being today the vassals of as severe a tyranny, in the form of capital, as the lower classes of Europe are bound to in the form of capital, as the lower classes of Europe are bound to in the form of brute force?⁷

⁶ Mann, p. 174.

⁷ Mann, pp. 250-51.

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

Massachusetts Law of 1852

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

Prior to the common school crusade Americans were already in the forefront of extensive schooling and functional literacy in the world. There were various forms of support for the schools whether they were sectarian or nonsectarian. The general form of control was local. However, even in this area there were variations. The faith rendered in public schools at this time was transmitted into public financing. Public expenditures for education in Massachusetts rose dramatically between 1850 and 1890. On May 18, 1952, the Senate and House of Representatives in the General Courts of Massachusetts approved a landmark bill which prescribed compulsory education. Basically the law stated that parents had the responsibility to see that children under their direction between the ages of eight and fourteen years attend a public school in their vicinity for at least twelve weeks, at least six of which were consecutive. The penalty for non-compliance was twenty dollars. The local school committee was charged with the duty of ascertaining, enforcing and reporting violations of the law.

Actually, the treasurer of the town had the job of prosecution. Limitations and exceptions to the law were spelled out.⁸

Advantages of the Law of 1852. This law spelled out the prescribed ages of attendance, weeks of attendance and penalties for failure to meet the exigencies of the law. The statute also mandated in some detail the responsibility for investigation, enforcement, and interpretation of the law. This regulation provided parameters within which individual communities could operate. This maxim had the further advantage of providing a reference point for other states that desired to compel education. It seemed to place the obligation for minimal education competencies in the hands of the parents while providing for means of sanctions.

Disadvantages of the Law of 1852. This law of 1852 had loopholes which may have caused its general ineffectiveness. The fact that a child's parents could send the child to another school in another town without actually providing the town committee with written proof of attendance seemed to be a shortcoming in this act. Furthermore, no provision was made by this act for the type of mental or bodily condition that would preclude attendance. In addition, poverty ostensibly was a sufficient reason for non-attendance when it seemed to be the intent of the law to make specific provision for the free education of the poor, the ignorant and the immigrant. Finally, one person would

⁸ Massachusetts, Acts and Resolves (1852) Chapter 240: 170-71.

be held responsible for the prosecution of those who violated this act. That person happened to be one of the fellow citizens of those whom he was to prosecute. This, in itself, often led to inadequate enforcement.

Aftermath of the Law of 1852. There seemed to be no great rush on the part of any of the other states to enact a law. In fact, the next recorded law was passed in 1867. One of the reasons why there was so much inactivity in this area was the involvement of the nation in the issue of slavery. This issue was to consume the American nation for the next few years, and it left little time for the states to deal with the problem of compulsory education.

Federal Government Involvement

The federal government had a history of inactivity in educational matters. There was the Ordinance of 1787 which provided for education, but this did not prove to be a statement of national intent in education. George Washington had proposed a national university; however, this thought seemed to fall on deaf ears. The Constitution did not provide for education, and the new government seemed unwilling to institute any action. As each new state was admitted to the union, the government insisted that a portion of land be set aside for education. This was in keeping with the proposed intent of the Ordinance of 1787. Yet this did not in itself set the tone for federal intervention in education. The Surplus Revenue Act of 1837 returned federal money to the states with a recommendation that it be used for education. This act was passed during a time of economic downturn and

certainly cannot be construed as positive intervention. The fact of the matter was that many states did not use it as the federal government intended.

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

Post Civil War

The Civil War provided compulsory education with a brief interlude. The nation was too involved with internal conflict which could have caused possible dissolution of the union. Compulsory education spread in this country during the nineteenth century in order to provide the basics. The idea that a well educated person was more apt to provide a stronger industrial economy seemed to capture the national imagination. The conflict which ended in 1865 provided the country with the impetus needed to arrive at a consensus about its role as a nation. The people in the states realized that during the war that compulsion in many areas was effective in production. Compulsion became the means to the end of better living for many Americans.

After the war children were drawn back to industry, and poverty was rampant on the national scene. The South was deprived of its free labor, and other parts of the country were in ruin. People were migrating to the west in large numbers. Conditions of labor were worse than before the war. Child labor laws were generally ignored because children needed to work to keep a family fed. At this time there seemed to be a change in the role of the school. Formerly, it was a means of providing a competent electorate which had the basic means to function in industry. Now it was to remove children from unsuitable conditions of labor, to remove competition for jobs and to protect children from the pressing demands of life. At one time children learned as they grew. Now the responsibility for growth and learning fell to the school. The child became a necessary appendage to the family and not a vital part of that family.

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

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

cooperation and group work. Education could serve as a device for social control of those who were the vagrants of society. The age of compulsory education began to grow. The state of Michigan served as the springboard for the legitimation of the high school as a reservoir for increasing numbers of students.

The Free School Fight

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

In 1842, the city of Detroit, Michigan, was declared a school district on the whole. All schools organized within this city were to be public and free to all students between the ages of five and seventeen.⁹ Other districts in Michigan and other states seized on this landmark bill and were demanding this type of support for their schools.

⁹ Arthur Raymond Mead, The Development of Free Schools in the United States and Illustrated by Connecticut and Michigan (New York: Teachers College, Columbia University, 1918), p. 88.

It was in 1821 that the Boston School Committee established the first high school, which was known as the English Classical School.¹⁰ The high school concept idea took hold almost immediately. The various sections of the country approved the concept of the high school because it was democratic in nature and provided the opportunity for all children to advance on equal terms. It was generally free, and it provided courses of study which affirmed the desires of the local populace for their children. The high school was especially well received in the midwest. Ironically, it was in Michigan where the city of Detroit was declared a free school district that a lawsuit would challenge this decision.

Kalamazoo Court Case

In Kalamazoo, Michigan, objection was made to paying taxes for the support of a high school on the grounds that it was not properly a part of the system of common schools recognized by law.¹¹ The suit was brought to the Supreme Court of the state of Michigan. Justice Cooley was the chief justice and expressed the majority opinion.

The bill in the case was to restrain the collection of taxes for the support of the high school during the year 1872 and for the

¹⁰ John S. Brubacher, A History of the Problems of Education (New York: McGraw-Hill, 1947), p. 434.

¹¹ Brubacher, p. 434.

payment of salary to the superintendent. The court felt that although this was the intent of the litigants it had a broader meaning.

The bill is, consequently, of no small interest to all the people of the state, and to a larger number of very flourishing schools, it is of the very highest interest, as their prosperity and usefulness, in a large degree, depend upon the method in which they are supported, so that a blow at this method seems a blow at the schools themselves.¹²

The Kalamazoo case was decided on a unanimous vote and had far reaching effects for compulsory education in the United States. Those communities which feared legal reprisal were quick to take up the cause for high schools. Growth was outstanding, and within fifteen years the emergence of high schools increased dramatically.

Effects of the Kalamazoo Declaration

With the Kalamazoo decision by the Michigan Supreme Court, the trend seemed to be increased activity by the courts. The Supreme Courts began to take a greater interest in economic, social and public welfare legislation. The activity of the courts became more influential in this area during the last decade of the nineteenth century. The people began to use this arm of government with increasing frequency, particularly if they felt their legislators were not responsive of their needs.

The Kalamazoo decision was merely another step in the concept of nationalism. This decision seemed to confirm the right of a body of the government to make a decision which was in the interest of the

¹² Stuart v. School District No. 1, 30 Michigan 68 (1874).

common good. The nation became superior to the states and the state became superior to the will of the individual in the eyes of many of the intellectuals. The right to behave in a locally individualized manner no longer was the way. Nor did the state hesitate to use legislation to define loyalty. That legislation usually meant compulsion. For a people fleeing the old country to obtain more individual liberty and opportunity, it was an ironic twist of fate.¹³

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

Influence of Non-Educational Groups on Compulsory Education

Labor, Industry and Immigration

The period of colonization and revolution offered little in the way of educational leadership by labor. Up to about 1840 the labor movement seemed more concerned with abuses of child labor and working conditions. With the ushering in of the Andrew Jackson administration, there was some indirect activity on the part of labor for education. It usually went along with the concept of education for citizenship.

¹³ Charles Burgess, "The Goddess, The School Book and Compulsion," Harvard Educational Review 46 (May 1976): 202.

Some labor organizations appeared to be grasping the notion that education had some value in alleviating the disparity between classes. Basically, at this point, interest was just beginning for education. Prior to 1860, however, very little was written about labor's attitude. The Knights of Labor appeared to be one of the earlier labor groups that had some clout. This group did not have an education committee as some of the later organizations did. They appeared to base their education program on an attack of the Civil Service Test and by favoring a military training school.¹⁴

Support of the Labor Unions

The first annual session of the Federation of Organized Trades and Labor Unions in Pittsburgh, Pennsylvania, meeting from December 15-18, 1881, took a strong stand for compulsory education when it declared in its platform that they were in favor of the passage of such legislative enactments as would enforce by compulsion, the education of children; that if the State had the right to exact certain compliance with its demands, then it was also the right of the State to educate its people to the proper understanding of such demands.¹⁵ The statement was important because it was telling the states that they should take their right to educate seriously.

¹⁴ R. V. Phillip Curoe, Educational Attitudes and Policies of Organized Labor in the United States (New York: Teachers College, Columbia University, Bureau of Publications, 1926), pp. 91-92.

¹⁵ Proceedings of The American Federation of Labor, Report of the First Annual Session of the Federation of Organized Trades and Labor Unions of the United States and Canada (Bloomington, Illinois: Pantagraph Printing and Stationery Company, 1881, reprinted edition 1906), p. 3.

Furthermore, it put the labor movement squarely on record in favor of compulsory education in its very first session. There were several important assertions: if the state sets up a system of schools then it had the right to expect people to attend them; if the state had the right to tax for the support of schools then expectations for educating in them follows; if the state enacted laws then it needed to provide the means to understand those laws. It was likely that the choice of the word right rather than duty was important. This seemed to be a proper interpretation of the Bill of Rights which left the right to educate to the state. In 1642, the Massachusetts Colony enacted the law that children should be taught the principles of law and religion. Now some two hundred forty years later an organization composed of representatives of the several states and Canada made a similar statement.

Five years later, in 1885, the Federation called again for the enactment of compulsory education. This statement was more strident and the language considerably different.

We demand the passage of such legislative enactments as will enforce, by compulsion, the education of children up to their fourteenth year, and the prohibition of their employment in factories, workshops, mills, or mines until they have reached that age, for the the State has the right to exact certain compliance with its demands, then it is also the duty of the State to educate its people to the proper understanding of such demands.¹⁶

¹⁶ Proceedings of The American Federation of Labor, Report of the Fifth Annual Session of the Federation of Organized Trades and Labor Unions of Canada (Bloomington, Il.: Pantagraph Printing and Stationery Company, 1892, reprint edition, 1906), p. 46.

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

By this time the labor movement had gained in stature. It was now known as the American Federation of Labor. At the convention of 1892 it reaffirmed its support for free and compulsory education in Resolution 116.¹⁷ However, by this time, more states had passed compulsory education laws and the desire for demands seemed to diminish. At the meeting held in Denver, Colorado, in 1895, the Federation took a strong stand in regard to coerced education. It called on members to put pressure on the legislatures to pass legislation of this nature in those states who thus far had failed to do so. It provided a sample law to be used to prod the indifferent representatives and went on to point out that those elected representatives who failed to comply

¹⁷ Proceedings of The American Federation of Labor, Report of the Twelfth Annual Session of the Federation of Organized Trades and Labor Unions of the United States and Canada (Bloomington, Il.: Pantagraph Printing and Stationery Co., 1892, reprint ed., 1906), p. 46.

would be labeled as enemies of education. Labor leaders must have felt confident in their stand. It appeared as though they were implying impending political defeat for those who would oppose labor's wishes.

Resolved, That it is the sense of this Convention that the compulsory education law shall be strictly enforced in every State in the Union, and wherever there is no such law measures to secure its enactment would be put forth at once.
--A. F. of L. Denver Convention.

In accordance with the above resolution affiliated and friendly organizations are hereby requested to give whatever assistance they possibly can to the enforcement of this law in States where it now exists. Also to endeavor by joint action to secure the introduction of an enactment of such a law in States where it does not exist. To have it acted upon in a similar manner, in the various States where no compulsory education law has been passed and to facilitate this important reform, the several existing laws have been examined and the one apparently best fitted for general adoption is that now in use in Massachusetts and which is here given in full.

Organizations taking the matter up can, from this publication easily have an act prepared and presented to their respective legislatures when they meet, and in the meantime ample opportunity is offered to interview prospective legislators as to their standing on this question so that those opposed can be pointed out as enemies to education.¹⁸

The Landes-Solmon Study

The contributions of labor, industry and immigration were inevitably drawn to economic advancement in one way or another. A very interesting study was done by two men for the National Bureau of Economic Research.¹⁹ It had the advantage of being done far enough from the time it investigated to be of considerable validity.

¹⁸ Proceedings of The American Federation of Labor, Political Declarations of the A.F. of L. at Denver, Colorado (Indianapolis, In.: American Federationist, 1895), p. 32.

¹⁹ William Landes was associated with Columbia University and Lewis Solmon with the City University of New York when they were commissioned to do this study funded by the National Science Foundation.

This study purported to look at the role of law in relation to social change. It was particularly germane here because it attempted to assess the effects of compulsory school legislation in the United States during the nineteenth and early part of the twentieth centuries. This period coincided with the analysis of the achievements of labor, industry and immigration. They hoped not only to resolve questions on the effectiveness of the laws but also to provide insights into the general issue of law and social change.²⁰

Prior to 1880 the passage of compulsory school legislation resulted in no observable increase in schooling levels. Between 1880 and 1890 there was a positive but non-significant increase in enrollments in those states which passed laws at that time.²¹ The question became, why pass the laws? Landes and Solmon offered a supply and demand theory. Two forces were at work on the demand side. Educators saw that the continuance of their job was influenced by a corresponding increase in enrollment and attendance. An increase in the number of educators increased their power to influence legislators. Members of a community saw the passage of these laws as symbolic of their contributions in committing their resources to a humanitarian cause. On the supply side, the demand for a compulsory school law increased as the

²⁰ William M. Landes and Lewis C. Solmon, "Compulsory Schooling Legislation: An Economic Analysis of Law and Social Changes in the Nineteenth Century," Journal of Economic History 33 (March 1972): 55.

²¹ Landes and Solmon, pp. 78-79.

number of those opposed to the law decreased, and therefore the cost to enact the law decreased with the corresponding increase in school levels.²²

In their concluding remarks Landes and Solmon indicated that all of the efforts on the part of those who pushed, prodded, and demanded mandatory education legislation may have better placed their efforts elsewhere. This analysis of compulsory schooling legislation clearly indicated that these laws did not cause the observed increases in levels of schooling in the late nineteenth and early twentieth centuries. The main evidence in support of this conclusion was based on a multiple regression analysis of schooling levels across states in 1870 and 1880. Here was observed higher enrollment and attendance rates, more days of attendance per school year, and longer school terms, not only in the thirteen states with schooling laws in 1880 but also in these same states prior to enactment of their laws. Therefore, the positive difference in schooling levels in 1880 between states with and without school laws could not be attributed to the presence of these laws since equally positive and significant differences existed before these laws were passed. Additional evidence that supported the conclusion of no causal effect of schooling laws included an analysis of changes in schooling levels from 1870 to 1880 and 1880 to 1890, an examination of trends in schooling in Southern states from 1870 to 1920, and a brief analysis of state differences in enforcement and statutory

²² Landes and Solmon, pp. 86-87.

provisions of school laws in 1890. And finally, although increases in schooling and the enactment of schooling laws might appear to have occurred together in the years 1920 to 1970, this analysis revealed that relatively high levels of schooling, and probably increases in those levels, preceded the passage of compulsory school laws.²³

²³ Landes and Solmon, p. 86.

CHAPTER 5

Compulsory Education in the Twentieth Century

Impetus of Cultural Pluralism

Society in the United States became increasingly pluralistic during the nineteenth and early twentieth centuries. There were those who yearned for the status quo; or better, they wished to perpetuate their own ways of life. Some people, those who felt they were the real Americans, needed to pattern others after their own likeness. The schools, because by now they were mandatory in all of the states, seemed to be an obvious target for homogenization. The First World War, as was the case with other social, political and economic upheavals, brought out those people who were determined to Americanize people in this country. During this period religious and ethnic bias reared its head again.

Meyer v. Nebraska 1919

During and immediately after the war years, patriotism reached a new height. When this was coupled with the heightening nationalism in this country because of the intense immigration, it seemed reasonable to take steps to insure the continuance of these values. Some thirty states passed laws which required instruction in the public schools to be given in English. When Nebraska passed a law of this nature in 1919, a suit was filed. The suit reached the Supreme Court in 1923. The court in essence ruled that the law was

unconstitutional under the due process clause of the Fourteenth Amendment.¹ The importance of this case lay in the fact that it attempted to define the line between parental freedom of choice and the authority of the state in areas of public welfare.²

Influence of the Ku Klux Klan

The Klan took up the task to defend the common schools so that they would remain common. In the early 1920s the Klan attacked the churches and church schools as part of their recognized policy of religious intolerance. The Klan, opportunistic as ever, used patriotic fever and the nationalistic feeling prevalent in America after the First World War as a tool to further change their real motives. There was a resurgence of anti-Catholicism in the ranks of the Klan. The Klan organized its forces, backed a gubernatorial candidate in Oregon sympathetic to their views and proposed a referendum on public schools. This referendum banned all school systems except those which were public.³

Oregon Referendum

A trend had been set prior to the Oregon referendum of 1922. In Michigan, the people had proposed an amendment to the constitution in

¹ The due process clause is a part of the Fourteenth Amendment; it states ub oartm ". . . nor shall any state deprive any person of life, liberty or property without due process of law."

² Meyer v. Nebraska, 262 U.S. 390, 43 Sup. Ct. Rep. 625, 67 L.Ed. 1042, 29 A.L.R. 1446 (1923), p. 1042.

³ David B. Tyack, "The Perils of Pluralism: The Background of the Pierce Case," The American Historical Review 74 (October 1968): 84.

1920 requiring all children to attend public schools. The influence of the Ku Klux Klan seemed to be of major importance; however, the measure was turned down. Seizing on this background, the Klan in Oregon laid the format very carefully. They used every device and political advantage. Walter Pierce, a candidate for governor, was campaigning for this office and used the referendum issue in his election. The voters of the state in November, 1922, approved, by a substantial margin, a law to require all children between the ages of six and sixteen to attend public schools. The law was to go into effect in September, 1926,⁴

In the Salem, Oregon Journal on October 26, 1922, the paper made the following statement: ". . . state monopoly of education was introduced in the campaign for the purpose of stimulating membership in the Ku Klux Klan in its appeal to religious prejudice and racial hatred."⁵ The fact that the initiative was passed in 1922 had the practical effect of closing all private and parochial schools and necessitated quick action.

The New York Times quickly denounced the action taken in Oregon. They pointed at the Ku Klux Klan leadership in the fight for the passage of the referendum. An editorial said that the state had the right to permit education but not to demand an abolition of private and parochial schools unless they threatened the efficiency of the

⁴ Willis Rudy, Schools in an Age of Mass Culture (Englewood Cliffs, N.J.: Prentice Hall, 1965), p. 202.

⁵ Tyack, p. 78.

public schools.⁶ On December 3, 1922, several articles in support of or in protest to the Oregon bill were brought forth. As a newspaper of some significance in the country, the Times put itself on record as favoring an appeal of the earlier decision.⁷ In the issue of December 12, 1922, Archbishop Michael J. Curley of Baltimore denounced The Oregon Plan. Curley saw it as the first step in amending the U.S. Constitution and went on further in his article to compare the law to a socialistic state.

Educators immediately attacked the law on the grounds of religious hatred, unconstitutionality and general intolerance. By and large, however, educators appeared to obscure the legal, moral and religious issues involved. This seemed to be particularly true in Oregon.⁸ A Catholic Civil Rights Association was fighting the law. It soon was joined by various private and parochial school groups. The basic format of the fight was the Fourteenth Amendment of the Constitution of the United States. In 1924, the Federal Circuit Court granted the petition, and the State of Oregon immediately appealed it to the U.S. Supreme Court.⁹

Pierce v. Society of Sisters

The Society of the Sisters of the Holy Name of Jesus and Mary was joined by the Hill Military Academy in protesting the Oregon Law. The constitutionality of the law and the right of corporations to

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

⁷ New York Times. 3 December 1922, Sec. 3, p. 8.

⁸ Tyack, pp. 82-83.

⁹ Rudy, p. 203.

relief were the basic formats of the action. An injunction was brought by the parties against the enforcement of an unconstitutional statute and fact that bringing action prior to its official date of obligation was not premature.

The lawyers engaged to argue the case for the State of Oregon before the Supreme Court brought as arguments the following:

The federal government has now power to intervene in matters belonging to the states; the Oregon law does not impair the obligation of contracts; the Oregon law does not abridge privileges of immunities, nor does it deny one of due process; if other compulsory education laws are constitutional then Oregon's is; the law is a function of the police power of the state; the state stands in the place of parents and does not interfere with religious liberty or the doctrine of separation of church and state; the state has the power to compel attendance at some school and may therefore designate the means to that end.¹⁰

The Society of Sisters had its lawyers argue to the following: the suit was brought for equitable relief and not prematurely; the courts of the United States have jurisdiction when a federal constitutional right of a plaintiff was invaded; the legislative power of a state does not include the power to suppress or prohibit private schools; the law impairs obligation of contracts; the conduct of schools is useful and in keeping with the Fourteenth Amendment; the Oregon law in effect deprives the right to conduct private schools; it violates parental rights to control children; it is not a

¹⁰ Pierce v. Society of the Sisters, 268 U.S. 510. 45 Sup. Ct. Rep. 571, 69 L. Ed. 1070 (1926), pp. 1076-78; Pierce v. Hill Military Academy, 268 U.S. 510, 45 Sup. Ct. Rep. 571, 69 L. Ed. 1070 (1926), pp. 1077-78,

legitimate exercise of police power; it impairs the obligation of the appellees' contract with the state.¹¹

The Hill Military Academy expressed the following views and presented the arguments which follow: no legislative act may interfere with liberty or property unless correcting an evil; a state cannot change the meaning of a law by declaring otherwise; no legislative act may interfere with the rights of an individual unless promoting the public welfare and having a direct relationship to object accomplishment.¹²

Supreme Court Decision in Pierce v. Society of Sisters

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

Regulatory powers of the state. The states' prerogative to reasonably regulate the schools was not in question. What was called into question was the effect of the act in virtually destroying a system of schools which was in every way meeting the requirements of the state in its regulatory duty.¹³

Parental rights. The rights of parents to direct and control their children was being impaired by this act in the view of the court.

¹¹ Pierce v. Society of the Sisters, and Pierce v. Hill Military Academy, pp. 1076-77.

¹² Pierce v. Society of the Sisters, and Pierce v. Hill Military Academy, p. 1077.

¹³ Pierce v. Society of the Sisters, and Pierce v. Hill Military Academy, pp. 1077-78.

Citing Meyer v. Nebraska, the court indicated that the Act of 1922 unreasonably interfered with these rights. A statement that was to serve generations as a guarantor of individual rights was stated by the court. The child was not the mere creature of the state; those who nurtured him and directed his destiny had the right, coupled with the high duty, to recognize and prepare him for additional obligations.¹⁴

Appellees are corporations. The fact that the litigants were in the true sense a corporation did not preclude their right to due process. Several citations of previous cases revealed that the courts had acted in these cases to protect them from unreasonable loss. The state had argued that it was within its province to compel attendance at school. The court saw the action as an arbitrary, unreasonable and unlawful exercise of the power of the state.¹⁵

Prematurity of the lawsuit. The Supreme Court held that the action was not premature. To wait until 1926, when the Act would have officially gone into effect, would have caused the appellees to suffer irreparable harm. Prevention of impending injury by an unlawful action was, in the view of this court, a legitimate function.¹⁶

¹⁴ Pierce v. Society of the Sisters, and Pierce v. Hill Military Academy, p. 1078.

¹⁵ Pierce v. Society of the Sisters, and Pierce v. Hill Military Academy, p. 1078.

¹⁶ Pierce v. Society of the Sisters, and Pierce v. Hill Military Academy, p. 1078.

Thrust of the Pierce Decision

The case firmly entrenched the Fourteenth Amendment as a champion for the individual rights of people against the tyranny of a majority. The constitution and the intent of its framers had been upheld. Bigotry was rendered a severe blow, at least temporarily. The significance of the decision was not easily dimmed. In fact, as late as 1972 it was cited again to uphold the rights of a very different minority. The Fourteenth Amendment had come of age. It now began to seriously serve as the Spirit for liberalism.¹⁷

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

Compulsory schooling affected the First Amendment rights purported to be protected by Pierce. If Pierce is read with careful scrutiny, some principles emerge. The states' school-financing system could not provide free education if that education abridged the First Amendment rights of individuals. An actual transcription of the Fourteenth Amendment negated the permissive choice of education for the wealthy while repressing that choice for the poor. The regulation

¹⁷ Rudy, p. 204.

of non-public schools could not in any way impede or prohibit value impartation unless there was reasonable and justifiable cause to do so. Such a reason undoubtedly had to prove that these schools were threatening the existence of the public schools.¹⁸

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

As a First Amendment Case, Pierce could be seen as having for its central principle the preservation of individual consciousness from government coercion. The specific application of this principle to educate is that any state constructed school system must maintain a neutral position toward parents' educational choice whenever values or beliefs are at stake. If schools generally are value-inculcating agencies, that fact raises serious constitutional questions about how a state can maintain a sufficiently neutral posture toward values while supporting a system of public education.¹⁹

The Pierce case has been involved in many actions concerning schools, beliefs, religious liberties and right to privacy. In recent years First Amendment implications began to imply that the entire economic and political structure of mandatory education had to be reconsidered in order to provide for separation of school and state within the context of the First Amendment's separation of church and state. If during this review it was felt that the First Amendment was correct in this requirement, then it followed that the massive system of compulsory education laws had to be changed to preserve the right

¹⁸Stephen Arons, "The Separation of School and State: Pierce Reconsidered," Harvard Educational Review 46 (February 1976): 99.

¹⁹ Arons, pp. 96-97.

of families to obtain equal protection under the law in their quest for adequate education.²⁰

State v. Williams

In South Dakota, the Supreme Court of that state handed down a decision a few months after the Wall Street crash. In this case the court reversed the decision of a lower court and held that the law requiring attendance of some school between certain ages was constitutional.²¹ One of the impacts of this decision was the fact that the Pierce decision was being used on the one hand by the appellant to claim that the South Dakota law was invalid and the court on the other hand to use portions of Pierce to uphold the constitutionality of its law. Furthermore, this decision had some impact on the move of the federal government to lend credence to the right of the states to set minimum and maximum age parameters for compulsory education.

The Background of the Amish Case

The Amish were a religious sect inhabiting many states, in particular, Pennsylvania, Ohio, Indiana and Wisconsin. They lived a simple life, forsaking all but the most necessary contacts with the outside world. They had a staunch belief that formal education beyond the eighth grade was not necessary for their way of life. Nor, they said, was it necessary to learn more than what will enable them to perform the daily communal tasks. They were pacifists. They were

²⁰ Arons, p. 102.

²¹ State v. Williams, 56 S.D. 370, 228 N.W. Rep. 470 (1929), pp. 470-71.

willing to adapt to the commands of the state as long as those dictums did not intervene with their concept of salvation.

Three court cases had one significant aspect in common. The one important basis of argument in each case was a violation of the Fourteenth Amendment. Pierce, the 1925 case, was famous for its decision that parents had the right to guide the education of their children. Brown,²² in 1954, was the famous desegregation case that also interposed the Fifth Amendment. Tinker,²³ in 1966, argued and decided in the Iowa District Court on the basis of the First Amendment as well. All three cases were used in the arguments pertaining to the Yoder decision. They were important in that they had a common basis for argument as well as having another important bearing for Yoder, each separate yet meaningful for that case.

The Pierce decision was of importance in the Yoder case because the decision stated that parents did not have to educate only through state educational facilities. The Brown case demonstrated that education was an important tool in helping the child to awake to cultural values and to adjust to his environment. Under the Fourteenth Amendment the Amish would have been denied these rights had they continued further in the public school. In Tinker, the case was made that students in or out of school were considered persons under the Constitution. They had obligations and responsibilities. For Yoder

²² Brown v. Board of Education, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), p. 880.

²³ Tinker v. Des Moines Independent Community School District, 258 F. Supp. 971 (1966), pp. 971-73.

this was of consequence because some of the Amish children involved claimed that they, too, did not see the clear benefit of continuing in a school that might alter their religious beliefs.

State of Wisconsin v. Jonas Yoder

Secondary schooling, the judges agreed, went against the basic religious tenets of both the Amish parents and child. Compulsory schooling was in itself not so compelling that the religious practices of the Amish had to give way. Since non-attendance at school was not against the children's desires, it was the parents' right in the exercise of religion and not the children's right, which would determine Wisconsin's power to impose penalties on the parent. Furthermore, it was revealed that the decision did not abridge the children's right to attend if they wished. In a partial dissent, one of the justices indicated that a review of all the children of the Amish should be taken to be certain that it was their expressed opinion as well as that of their parents.²⁴

Position of the state. The state held that the request of the Amish ignored the right of a child to an education. It used the Brown case as documentation. They also said that the state had the right to compel attendance by citing the Pierce case. In addition to the right of control came the obligation to give proper education to the child. Compulsory education was not, as claimed, violative of the freedom to

²⁴ State of Wisconsin v. Jonas Yoder, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972), p. 16.

worship. The decision, in effect, granted the Amish an exemption and was an excessive degree of government entanglement.²⁵

Position of the respondents. The lawyers for the Amish filed the following brief. The state action, they said, was a direct violation of the religious freedom of the Amish. The state did not have the right to define men's religions. If the state intervened with the right to the free exercise of religion then there must be compelling state interest. They went on to claim that there was no compelling state interest that justified interference with violation of parental and educational rights which were inseparably linked with free exercise rights. Sincerity of the religious belief was an important factor in a free exercise case. No governmental body had the right to make determinations on truth or doctrinal status.²⁶ It was important to note that in the respondents' position they cited in many instances the cases cited by the State of Wisconsin. There were several parties urging affirmation in this case of the lower court order. Some of these represented other religious groups which had their own educational systems and could be construed as minorities. Conspicuous by its absence was the Catholic school system.

Implications of the Amish Decision

The decision of the court reaffirmed the Pierce decision which, in part, stated that parents have an important right to educate their

²⁵ State of Wisconsin v. Jonas Yoder, pp. 821-22.

²⁶ State of Wisconsin v. Jonas Yoder, p. 822.

children in the formative years. It was an unwritten dictum in this country and it had high favor among most people. A public school education was important, but it did not precede parental rights to provide equivalent education. The free exercise clause preceded the requirement of mandatory universal education in this country. It had, along with the prohibition against the establishment of a religion by the government, been an overriding principle in many judicial, legislative and executive decisions. Only an absolutely high order interest could overturn this right. Compulsory schooling did not have the right to contravene basic religious tenets and practices. It carried a threat to the free exercise clause of the First Amendment. Religious grounded conduct was not always outside the realm of the protection of the free exercise clause. Compulsory education, a recent development in American history, at one time was satisfied by the completion of grade eight. The Fair Labor Standards Act of 1938 prohibited labor before sixteen years. The requirement of compulsory education to age sixteen must be viewed as not only a provision for educational opportunities but also an alternative to undesirable labor which replaced adults. Therefore, the compelling state interest in compulsory education was not so compelling. The interest of parents was prior to the interest of minor children or the state, particularly if the parents are in no way harming these children or the state. The decision did not undermine the applicability to compulsory education laws or the power of the state to promote reasonable standards.²⁷

²⁷ State of Wisconsin v. Jonas Yoder, pp. 20-27.

A former member of the Old Order Amish Sect observed that there were four implications of the Yoder decision. These were as follows: people in general may challenge a law; this decision could be the first step in the abolition of compulsory education; it may result in a negative tax plan; and it may force educational institutions to take blame for failure.²⁸

The Supreme Court again continued its major role in education. The Court's opinion that requirements for citizenship education could be satisfied at age fourteen or grade eight was highly significant and needed careful analysis for the future. The Court in effect seemed to strike a blow at compulsory education beyond grade eight. Indirectly, then, this opinion could have considerable effect on compulsory schooling in the future.

Strengths, Weaknesses and Future Action

The strength of the decision lay in its reaffirmation of the precedent right of the First Amendment. The Constitution was upheld. It reaffirmed the right of the parent to control the minor child. There were some areas which have been, in the view of some people, classified as weaknesses. Chief among these was the fact that the opinion of the Court, despite its disclaimer, may have severely weakened the position of compulsory education laws. Secondly, the claim of the attorneys for the State of Wisconsin may not have been

²⁸ Joe Wittmer, "The Amish and the Supreme Court," Phi Delta Kappan 54 (September 1972): 50.

too far wrong when they pointed out that the case may have many implications for excessive governmental entanglements. For the future it was seen important to scrutinize carefully the possible ramifications of a decision prior to passing judgment. The role of the Supreme Court was becoming increasingly enormous.

Other Twentieth Century Developments Which Influenced Compulsory Education

Significance of the Depression

During the 1920s the United States was riding a wave of decent economic times. Immigration was subsiding somewhat, industry was feeling the domestic after-effects of the war, and labor was increasing its base of power. The American people appeared to be in a celebrative mood.

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

real fear into the hearts of many people. Education appeared to be the whipping boy for the frustrations of those who looked at schools as providing no tangible goods for consumption.

With the election of Roosevelt as president, the country began to move in many diverse ways.²⁹ Among them was the Civilian Conservation Corps. This Corps was set up to put large numbers of young people to work in the area of conservation of fields, forests, rivers and lakes. One of the outstanding features of this concept was its inclusion of vocational education as part of its overall program. Concern was expressed that this was a device for federal intervention and eventual takeover of education. The fears were groundless. Early in 1933, people were looking to the future with the aim that it would mean more leisure time. The concept of additional leisure time had educational importance. A comprehensive educational program was necessary to supplant individualism, selfishness and indifference, the attributes which the people had witnessed with the onslaught of the depression. The attributes that education was called upon to foster were service, conciliation, and mutual aid.³⁰

The impact of the depression was considerable. Social, economic and political changes were in abundance. Legislation to improve the standard of security for the people in order to alleviate their fears

²⁹ The New Deal was the slogan used by Franklin D. Roosevelt when he was elected to the presidency in 1933. It was used to set the tone of many changes that he would instigate to return the country to economic security.

³⁰ Howard S. Patterson, "Educational Implications of Recent Economic Changes," School and Society 27 (April 8, 1933): 443-44.

was passed. The Social Security Act of 1935 was an example of a landmark piece of legislation. It provided matching funds to be set aside by employers and employees so their future years might be assured. Labor was increasing in strength and had won a major victory in Michigan with its sit-in strike. Numerous ways were being devised to deal with a depression of that magnitude if it developed again. The American people wanted to be sure at all levels of society that they would not suffer that way again. Table 2 stipulates compulsory attendance and work permit ages prior to the Labor Standards Law.

The Fair Labor Standards Act

The Fair Labor Standards Act, passed by Congress in June, 1938, was a comprehensive act regulating wages, hours and child labor.³¹ What had been indecisive action on the part of the several states now became the law of the land. Prior to 1938 many of the laws of this arena were of limited range. In some cases the Supreme Court, increasing in its activity, struck down some of these laws as unconstitutional. The Congress, acting under its constitutional right to regulate interstate commerce passed this act into law. The act withstood the test of constitutionality. The act brought under its control the regulation of child labor at the national level. Wherever there were oppressive conditions of child labor, then goods produced under these conditions would not be moved. The act provided a minimum age for child labor, and in this way significantly affected compulsory education. It

³¹ Fair Labor Standards Act of 1938, U.S. Code. 1970, vol. 29, secs. 201-19.

Table 2
Compulsory School Attendance and Work
Permit Ages Prior to 1938

State	Full Time School	Work Permit Ages
Alabama	7-16	14-17
Arizona	8-16	14-16
Arkansas	7-16	14-16
California	8-16	14-16
Colorado	8-16	14-16
Connecticut	7-16	14-16
Delaware	7-17	14-16
Florida	7-16	14-16
Georgia	8-14	14
Idaho	8-18	14-16
Illinois	7-16	14-16
Indiana	7-16	14-16
Iowa	7-16	14-16
Kansas	7-16	14-16
Kentucky	7-16	14-16
Louisiana	7-14	14-16
Maine	7-17	15
Maryland	7-16	14-16
Massachusetts	7-16	14-16
Michigan	7-16	14-16
Minnesota	8-16	15-16
Mississippi	7-17	14-16
Missouri	7-16	14-16
Montana	8-16	14-16
Nebraska	7-16	14-16
Nevada	7-18	14-18
New Hampshire	8-16	14-16
New Jersey	7-16	14-16
New Mexico	6-16	14-16
New York	7-16	14-17
North Carolina	7-14	14-15
North Dakota	7-17	14-16
Ohio	6-18	16-18
Oklahoma	8-18	16-18
Oregon	7-16	14-18
Pennsylvania	8-16	14-16
Rhode Island	7-16	15-16
South Carolina	8-14	14
South Dakota	8-17	14-16
Tennessee	7-16	14-16

State	Full Time School	Work Permit Ages
Texas	8-14	12-14
Utah	8-18	14-18
Vermont	6-16	14-16
Virginia	7-15	14-16
Washington	8-16	14-18
West Virginia	7-16	14-16
Wisconsin	7-16	14-17
Wyoming	7-17	14-18

* Walter S. Deffenbaugh and Ward F. Keesecker, Compulsory School Attendance Laws and Their Administration, U.S. Office of Education Bulletin #4 (Washington: GPO, 1935), p. 12, Table 2.

forced the states to set the minimum leaving age in schools in conformity with this act. Table 3 shows the compulsory school age in each state in 1945. (Table 3 can be compared with Table 2 in this section to see the changes in ages in states prior to this act and after its enactment.) This act and its subsequent amendments appeared to be a means by which the federal government could effectively intervene in education. There was an undeclared national policy on education to require children to attend school at least until they met the standards of this act. The Second World War effectively delayed the actual impact of this act.

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

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

Table 3
Compulsory School Attendance
Ages in 1945

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

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

development but will soften the impact of any unemployment by delaying the entrance of young persons into jobs.³²

Again, the concern and influence of labor was made. The new proposal had the unemployment problem in mind when it called for the delay of young people into jobs. Schools became the gap which would be filled when there was an over-abundance of bodies for the labor market.

Although this proposal enunciated the chance of schooling, healthful development and necessary playtime, the fact of the matter was that it was no chance at all but rather a matter of expediency. The amendments of 1959 fulfilled the wishes of those pushing for standardization. As an explanation of conditions of oppressive child labor an important note was observed. Oppressive child labor was defined for purposes of these amendments. When the child labor "is confined to periods which will not interfere with their schooling"³³ then the indirect inference for the place of education in a child's life was understood.

Impact of the Fair Labor Act

As in times of other social and economic crises, the American people were compelled to compensate and protect. The war had revealed gross deficiencies in the literacy of Americans called to the service of their country.³⁴ In their attempt to rectify such conditions, they were determined that the education of children be effective.

³² Wendell Houston, ed., Index Federal Appendix, Education and Welfare, 1954 Federal Legislative Service in School Laws of the Forty-Eight States 1 (Seattle, Wash.: Wendell Houston Publisher, 1947), 1.

³³ Fair Labor Standards, Sec. 203.

³⁴ I. L. Kandel, The Impact of the War Upon American Education (Chapel Hill: University of North Carolina Press, 1948), p. 41.

The Fair Labor Act was a means to try and ensure the standardization of education in this country. However, the tendency was to alter or change child labor laws. Social conditions had caused a change in the patterns of contentment in the nation's children. As Kandel reported, "It became increasingly difficult to keep students in school; compulsory attendance laws were violated and the requirements of work permits were ignored."³⁵ Despite the efforts of a nation to protect its youth, they seemed to look for reasonable alternatives to schooling. The adults wanted to insure equalization of opportunity through the provision of compulsory education laws backed up by child labor sanctions. The leaders of the community saw education as a way to guarantee concepts of freedom and democracy. A segment of the young people saw education as an infringement on their freedom and democratic rights.³⁶ As the country moved into the 1950s, 1960s and 1970s it observed that these alternatives were tested to the fullest extent.

National Commission of 1972

If the history of the high school were to be examined, it would be found that it was filled with controversy over its establishment and continuance. In the nineteenth century the high school was met at every turn with hostility, and it was not until after the Kalamazoo decision in 1874 that it won begrudging acceptance. Between 1880 and

³⁵ Kandel, p. 86.

³⁶ Helen F. Faust, "Compulsory Public Education," Current History 29 (September 1955): 140-41.

1940 the high school was besieged by criticism of its curriculum, its specialization, and its philosophy. The 1960s and early 1970s saw social crisis pervade the schools. Court actions changing the role of the school from loco parentis to a virtual holding institution served to dramatically alter this place of learning.

In July, 1972, the Charles F. Kettering Foundation, deciding that it was time for reforms, sponsored a national commission to re-examine the goals, programs and directions of secondary education.³⁷ The commission used varying resources. People and places were selected with utmost care to give a breadth of backgrounds and experiences to the final report.

It was no secret that compulsory education laws had long been tied to the secondary schools. In 1984, almost every state had a law that mandated age sixteen as the school-leaving age. The fact that many educators saw the need for mandatory education pressured the system to continue. They saw the necessity to continue these laws because it could have meant the demise of their life's work to some extent. The adult community and, in particular, the labor-industry fraternity insisted on its continuance so as to prevent a glut on the market. The American high school, but in particular compulsion until age sixteen or seventeen, became so much a part of this country's way of life that it was almost impossible to change.

³⁷ B. Frank Brown, Report of the National Commission on the Reform of Secondary Education to the Public and the Profession (New York: McGraw-Hill, 1974).

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

. . . make a comprehensive examination of secondary education and provide the American public with a clear, factual picture of their secondary schools, indicating where and how they can be altered to better serve the nation's young people.³⁸

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

The National Commission's Recommendations

In recommendation No. 28 the commission said that if the high school was not to be a custodial institution, the state must not force adolescents to attend. Earlier maturity--physical, sexual, and intellectual--required an option of earlier departure from the restraints of formal schooling. The formal school-leaving age should be dropped to age fourteen. Other programs should accommodate those who wish to leave school, and employment laws should be rewritten to assure on-the-job training in full-time service and work.³⁹ The statement was a virtual bombshell not only to educators but also to the public. There were several implications that were apparently not well received. People saw that this type of school was accused of performing a custodial function. To the adults in education this may have seemed as a slap in the face. Here they were working each day for the benefit of children, striving to sell the importance of their

³⁸ Brown, Report of National Commission, p. xiv.

³⁹ Brown, Report of National Commission, p. 21.

product and looking with pride on their accomplishments, and a commission was suggesting that they were leaning toward a baby-sitting job. This group went on to suggest that formal schooling was restraining young people from doing other things. Then the coup d'etat was introduced. The commission recommended that the school-leaving age be dropped to fourteen. Any educator would know that this was a serious blow to the livelihood of the profession. Certainly the general public was aware that this report was recommending other programs. Of course, the money for these programs would come from the public coffers. Labor, industry, and business also were cognizant of the fact that rewriting the employment laws to accommodate these young people would place a strain on their protected area. The impact was immediate and heavy. Several groups criticized or supported this recommendation.

Position of National Association of Secondary School Principals.

The National Association of Secondary School Principals (NASSP) advocated compulsory education to the age of eighteen. It did not accept the commission's report and in particular recommendation No. 28. Several reasons were advanced for this position: the high school (1) promotes an enlightened electorate which is critically important in a democratic society; (2) mandates quality education to the reception of the diploma or age 18, whichever comes first; (3) protects a youth against exploitation; (4) decreases the number of out-of-school, unemployed youth, and in so doing protects the labor market; (5) assists, and to a degree relieves, parental responsibilities, especially among the minorities; (6) develops the potential of each

individual; and (7) introduces the maturing student to the real world by means of school-community based internships and related programs.⁴⁰ Owen B. Kiernan, Executive Secretary of NASSP, indicated that the basic threat throughout these reasons was that in our present society there were few opportunities if any for the under educated and the unskilled.⁴¹

The rationale of B. Frank Brown. B. Frank Brown was the chairman of the National Commission for the Reform of Secondary Education. Brown's contention was that there was one premise for the lowering of the compulsory education age and that was to remove the custodial responsibilities of the high schools. He cited three factors that made it impossible to administer: (1) the earlier maturity of youth, (2) numerous legal and quasi-legal rights extended to school-age youth people by the courts (especially the Tinker decision in which the Supreme Court conferred constitutional rights on school children), and (3) the change in the attitudes of youth toward authority.⁴²

He went on to contend that compulsory schooling was struck down by the Yoder Decision. He felt that if it was not applicable to the Amish then it did not apply to other religious groups. Brown made several other close observations. He contended that education was no

⁴⁰ Owen B. Kiernan, "Compulsory Education," NASSP Bulletin 59 (September 1975): 64.

⁴¹ Kiernan p, 64.

⁴² B. Frank Brown, "Compulsory Education," NASSP Bulletin 59 (September 1975): 66.

longer synonymous with schooling. Compulsory laws were rarely enforced above the age of fourteen. Young people were taking advantage of the law. He asserted that this was not the proper climate in which to raise young people. Therefore, he said, either enforce rigidly or abandon quickly the concept of compulsory education to the present ages.⁴³

Gordon Cawelti was the executive secretary of the Association for Supervision and Curriculum Development in 1974. Cawelti dissented from the promoted recommendation of the commission when it advocated dropping the school-leaving age to fourteen. It was his feeling that such a move would have some grim consequences. Paramount among these was the fact that this action would not require schools to improve their programs for youth. In addition, once young people left, their desire to return was often abated. He also restated an argument used very early in the history of compulsory schooling. The argument was that lower educational requirements would foster an elitism in our society. There was a need, he claimed, to set goals for the schools and then work to attain these goals.⁴⁴

The report gained a great deal of attention from individuals and groups. It caught the trend of the national press. After all there were many implications in the report that tended to affect these people. For a while there were many reactions not only from educators

⁴³ Brown, "Compulsory Education," p. 66.

⁴⁴ Gordon Cawelti, "The Reform of Secondary Education: A Review of the Report's Advice to the Public and the Profession," NASSP Bulletin 58 (April 1974): 87-89.

but also from the general public. However, as with many other valid reports, it seemed to die on the vine.

Inferences for the Future

R. Freeman Butts, professor of educational foundations at Teachers College, Columbia University, argued that if the commission's recommendation was put into effect it would harm the educationally disadvantaged and would continue to widen the gap between the have and the have nots.⁴⁵ He supported Robert Hutchins' arguments for universal, free compulsory education. He quoted Hutchins from an article that appeared in The Center Magazine and was entitled, "The Schools Must Say."

The basic commitment is that the First Amendment which lays it down that Congress shall make no law abridging the freedom of speech. This provision means that every American is encouraged to express himself on public questions - or on any other subject. The notion is that of a self-governing citizens locked in argument. This was the kind of community the founders wanted. They could not hope to have one of this kind without an educated people. They had to have citizens who could think and think for themselves.

Is this a sufficient basis for a political community? I think it is when combined with universal citizenship and universal suffrage. Does it justify compulsory schooling in institutions supported and controlled by the state? I think it does.

Every child must be given the chance to become the kind of citizen the First Amendment demands. The obligation is too important to be left to parents. The community must compel them to allow their children to have this opportunity either by offering the education itself or through institutions it approves.⁴⁶

⁴⁵ U.S. Office of Education, Department of Health, Education and Welfare, Discussion Guide, Workshop No. 7 Compulsory Education, American Secondary Schools: New Dimensions for Education Youth, 25-28 April 1976.

⁴⁶ Robert Hutchins, "The Schools Must Say," The Center Magazine (April 1976), p. 12 as cited by R. Freeman Butts as a participant in U.S. Office of Education, Department of HEW, Discussion Guide, Workshop No. 7 Compulsory Education, American Schools: New Dimensions for Education Youth, 25-28 April 1976.

Butts redefined compulsory education as obligatory education. Obligatory education denoted a new form of education, and parents had the obligation to see that their children attended school to become good citizens. The obligation of the state was to provide educational opportunity freely, universally, equally and commonly. The obligation of youth was to attend and pursue studies leading to good citizenship.⁴⁷

Brown stated in the Phi Delta Kappan for January, 1973, "Recent decisions of the courts have clearly established appropriate limits to the state's control over children. The dictum is for individual discretion in school attendance,"⁴⁸ This statement and his role as chairman of the National Commission for the Reform of Secondary Education showed that he was in the forefront of those who advocated the change in compulsory education age. He had the support of the former Health, Education and Welfare Secretary, Wilbur J. Cohen, in his quest for lowering the attendance age and viable alternatives.⁴⁹ Brown went further and spelled out certain viable alternatives that would be specific inferences for the future. He proposed that child labor laws be amended and that business and industry assume the role of an educational function. He proposed that for each year of education a person receives above the age of fourteen he must perform a month of service to his community. He proposed an alternative to compulsory education which would combine work, home, and education and

⁴⁷ U.S. Office of Education, p. 14.

⁴⁸ B. Frank Brown, "Forced Schooling," Phi Delta Kappan 54 (January 1973): 324.

⁴⁹ U.S. Office of Education, p. 6.

was patterned after the Civilian Conservation Corps. He proposed an optional learning center which would reduce age isolation, provide opportunities for education, and increase service manpower to communities.⁵⁰

Weakness of recommendation No. 28. The recommendation's greatest weakness was its failure to spell out adequately the means and methods to implement this radical departure from the norm. Furthermore, it obliquely referred to action needed by state legislatures and Congress. Yet it did not propose how it will get the attention of these august bodies. Once it did get its attention, it did not seem to have concrete proposals. The statement that public and private policy must change was nice, but implementation was another matter. The recommendation did not adequately, if at all, answer the objections that it would be a tool in the hands of those who would cause the educational disparity in society to widen. The follow-up to the recommendation was weak and almost non-existent. There appeared to be much which was worthwhile in the report, but the implementation of the actions seemed to fall short.

Importance of recommendation No. 28. The most important aspects of the recommendation can be summed up in some concise statements. The first was that it called attention to the facts of compulsory education's custodial role, the necessity for options and the significance of child labor laws for education. The second aspect

⁵⁰ U.S. Office of Education, pp. 7-11.

was that it brought out some healthy alternatives for compulsory education by certain people. Third, it indirectly pointed out the increasingly important role the court system was playing in education. Fourth, it forced American educators and the public to recognize that there was considerable sentiment for the disestablishment of a cherished American virtue. Hopkins argued this position when he stated that

Compulsory education in a free society, then, should mean the requirement of adults to provide protection and opportunities, not the requirements of children to learn what adults feel they should learn. Perhaps it is time to rid ourselves of compulsory education laws if they encourage us to try to control our children's lives.⁵¹

Compulsory education was a relatively new societal institution. There were isolated instances of compulsory education as early as the 1600s in such places as Weimar and the Massachusetts Bay Colony, but the great rush to compulsory education in the United States and around the world began little over 100 years ago. The less developed nations of the world were still struggling to establish it.

⁵¹ Richard L. Hopkins, "The Use and Misuse of Compulsory Education," Education 94, No. 2: p. 147.

CHAPTER 6

Summary

Findings

1. What were the major historical events which formed a basis for the historical roots of education in the United States of America?

While there were several people during the time of the Reformation who contributed significantly to the educational field, Martin Luther and John Calvin stand out as the "greatest." While Luther had his share of critics, he still did more than anyone else to establish Latin grammar schools. In the early sixteenth century Luther appealed to the councilmen of the towns in Germany to establish and maintain schools. This was probably the earliest request on record for a formal compulsory education. Luther even went further to emphasize that it was the duty of the states to establish schools and compel attendance.

While Calvin was not as broad as Luther in his educational interests, he was more profound and his influence was widely spread. Calvin was influential in the educational field in East Germany, Holland, England, and Scotland. Calvin was consistent in his views that there were too many small schools. He also was consistent in his view of religious instruction. Calvin was responsible for establishing a number of compulsory public schools in Geneva during the sixteenth century. His influence spread from here to other parts of the old world and finally to the new world,

Calvinism was spread to the new world by the Puritans. The Puritans were very eager to adopt the Calvinist plan for compulsory education to ensure the growth of Calvinism and to suppress dissent.

Most of the colonists in New England believed in the separation of church and state in one aspect, but they held steady to the belief that their children should be educated in their religion. In one aspect the passage of laws in 1642 and 1647 was an attempt to control education for the betterment of religion in the Massachusetts Bay Colony.

The type of local government itself in the New England colonies gave individual members of the community the opportunity to show considerable influence in town affairs. These individuals had a great deal of input when it came to making up education laws. Also, a large number of the clergy from the old world were well educated, and they had great influence on the type of educational laws which were passed.

The ethnic background of the colonists was an important factor in the move toward the mandatory education laws of this era. The majority of the immigrants were English, Dutch, German, Scotch, and Irish. They had diverse backgrounds relative to their customs, culture, and ideals. The dominant role which ethnic factors played was due to a large extent upon the settlement pattern. Those persons in a position of knowledge were eventually able to determine the early context of compulsory education.

Compulsory education in the United States had its origins in the 1642 law in Massachusetts. This law revealed the concern of the citizens that the proper religious education of the children be

undertaken by their parents, The Massachusetts court took into consideration the vast neglect of many parents in bringing up their children in learning, labor, and other areas which were profitable to the commonwealth. While this law was implemented loosely, it did set a precedent for the establishment of further compulsory education laws. Also, certain principles of modern public schools were derived from the 1642 law.

The Massachusetts Law of 1647 went further in its provisions for compulsory education than the 1642 law did, The 1647 law demanded that each town of fifty or more householders appoint a person to teach the children to read and write. Also, if a town increased to 100 or more householders a grammar school had to be established to prepare the youth for the university.

The law of 1647 closed some of the loopholes of the 1642 law. It was noted that the 1647 law did specify the type of education. It also set up the necessity for a teacher corps and introduced local taxation to support education.

The legislative growth in the other New England colonies was to a great extent dependent on the Massachusetts laws. Connecticut adopted its law in 1650, and New Hampshire followed soon thereafter.

As the colonies moved into the eighteenth century there was a trend away from mandatory education because of the Indian wars and the general decline of family government. However, after the American Revolution, the Northwest Ordinance was passed in July, 1787. The intentions were to set apart for common schools the sixteenth section in every newly formed state which came from this territory. The

ordinance was to have a lasting effect on the American concept of education. The ordinance not only affected the educational institutions directly but also produced numerous indirect effects.

2. What conditions were prevalent in the United States which led to the controversy and passage of compulsory education laws?

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

The development of compulsory education in the United States had been affected by three major conditions. All three are concerned with the years from the inception of compulsory education in this country until the present day.

The first condition, that of political freedom, was one of the leading, if not the original, motivation for compulsory education. The colonists had left the old world to be free of the political pressure that they were being subjected to at that time. They were oppressed for their religious views. In fact, when they came to this country their first laws were designed so their young would be able to read and comprehend their religion and basic laws. Finally, the break with England through the Revolutionary War made the new states leery of federal government interference. The Constitution left education as an implied power to the states. The federal government was careful,

however, to set the trend for compulsory education when it passed the Northwest Ordinance of 1787. Political differences pervaded the common school movement which set forth the first state written mandatory education law in Massachusetts during 1852. When certain groups felt that they were not getting the proper response from their legislators, they threatened removal from office. Religious and private groups feeling the obvious oppression of their work and way of life used the First, Fifth, and Fourteenth Amendments as political tools to get the proper effect. In general, wars in the twentieth century had little effect on compulsory education. Whatever effects they had were indirect and only in a minor way affected mandatory education.

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

Depressions generally had little effect on education. These economic downturns usually produced two reactions for education. First, there was a move for more stringent child labor laws. Second, the schools were generally subjected to increased criticism during these

periods usually out of fear that taxes for schools would reduce limited funds. This latter criticism was particularly true during the depression years of the 1930s. During the depression there was a strong insistence on stringent laws which would tighten up the loopholes in child labor. The result was the passage of the Federal Fair Labor Standards Act of 1938 with its ever increasingly tough amendments enacted in the succeeding three decades.

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

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

For many people this became the educational disillusionment of the last thirty years. What had been construed as the ticket to the good life soon became nothing more than a charade. Educational achievement did not seem to coincide with economic expectations.

The third condition and certainly more important in this century was the effect of social diversity. Ethnic conflict certainly has been an important factor ever since people first settled here. Observations of people of certain nationalities settling in certain areas of the country led to the passage of laws or lack of laws concerning compulsory education. Racial differences surfaced dramatically by the 1950s,

leading to the famous school desegregation case. The Brown decision was a landmark and had a tremendous effect on mandatory education when it was ruled that "separate but equal" did not fulfill the pure intent of the United States Constitution, particularly when that education was compulsory for all children.

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

3. How did compulsory education influence the structure of public schools in the United States?

In the early times (1642 and 1647) compulsory education influenced the structure of schools by implying who may go and the subjects which might be taught. Since these times conditions had changed and the influence of compulsory education on public schools had varied from rigid specifications to some cases of having very little influence.

The first laws in the colonies (1642 and 1647) specified religion and law as the necessary proper subjects. In 1787, the setting aside of the sixteenth section provided later exponents of compulsory education with a convenient place to disseminate education. Compulsory education directly affected the necessity for erecting structures on those plots of land. The early supporters of the common schools saw the advantages of providing education to a certain age. The earlier schools, which were to fall under the jurisdiction of compulsory education, were generally limited to children age fourteen and under.

This restriction, as referred to in the first state law of 1852, usually mandated that education was required through what is presently known as the eighth grade. When the Kalamazoo decision was issued in 1874, it opened the door for education to be extended beyond the age of fourteen. Furthermore, this decision indicated that there could be a corresponding extension of the curriculum. Compulsory education used this governmental action to extend both the age of attending as well as the influence to other educational areas.

In a series of court cases in the twentieth century, the conditions under which compulsory education was to be held were enunciated. In some cases the court dictated what could and could not be taught. The Pierce case was a landmark decision. It indicated that the state had the right to compel education but that compulsion did not extend the right to specify which system in which it might be provided. The principle of dual but equal compulsory systems was upheld here. The 1954 case (Brown v. Board of Education) revealed very stringent conditions under which compulsory education could be imparted. Since it was the duty of the state to provide education, there had to be equal educational opportunity for all. The Brown case dictated that compulsory education, in itself valid, must be carried out in an atmosphere of equality for all races. As one result of the provisions some states chose to repeal their laws. The fact that these states had no compulsory education laws for a period of time provided a strange quirk for compulsory education. It opened numerous avenues for education. Without compulsory education many types of schools came into being for a period of time.

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

3. To what extent have non-educational groups influenced the growth of required education?

Many non-educational groups influenced compulsory education. They fell into the categories of settlers, labor, industry, immigrants, courts, legislative bodies and commissions.

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

The Ohio Company which was influential in the passage of the Northwest Ordinance had an effect on compulsory education. This Ordinance provided for a place to educate (sixteenth section) and the general promotion of compulsory education in Article III.

Labor, industry, and immigration had a significant effect on education, particularly from 1870 to 1930. Labor saw education as a means to equalize opportunity and to provide for a narrowing of the socioeconomic gap. At first it requested, then it demanded, compulsory education. The strong efforts of labor provided required education with a powerful ally. Industry, recognizing the benefits which it could obtain from mandatory education, also put its strength behind this concept. In recent years industries' contributions have been primarily financial. This support provides a reason to continue compulsory education during the adolescent years. Immigration was a key factor in the number and strength of school attendance laws. The American public thought it necessary to provide a means to Americanize, humanize, democratize, and civilize these people. Education was the means to this end as they saw it. Compulsory education would insure that these people got to the schools so that the process would take place.

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

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

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

Certainly, legislative units had a considerable influence in this scene of action. From the outset these units, whether small or large, had the distinction of enacting the concerns of the people into laws. From the general court in 1642 and 1647 in Massachusetts to the Congress in its passage of the Ordinance of 1787, there were implications for compulsory education. State legislatures, led again by Massachusetts, provided the compulsory education statutes. The number of child labor laws which restricted employment and opened more school doors are indicative of legislative activity. The Federal Fair Labor Standards Act was most influential in standardizing the age of compulsion after 1938. The legislatures of the southern states which repealed their mandatory education statutes certainly influenced compulsory education.

They demonstrated that education would continue without benefit of law. It appeared that the influence, for or against compulsory education, has come primarily from non-educational groups.

5. What were the major events which eventually led to state and national Supreme Court decisions relative to compulsory education?

Compulsory school attendance laws followed soon after the public tax-supported school achieved dominance by the middle of the nineteenth century. The majority of legislation on compulsion was passed during the last quarter of the nineteenth century, and by 1918 all states had adopted compulsory education.

Compulsory attendance laws themselves surfaced late in the nineteenth century, but the foundation of compulsory attendance laws rests in the late eighteenth and early nineteenth centuries. The rise of the common school established a uniform institutional base controlled and funded by the state. For example, state agencies such as the New York Board of Regents were established in the late eighteenth century in order to supervise and control state schooling. Similarly, Horace Mann, in 1837, called for a superintendent in the Boston schools to administer the growing network of schools, and by the 1850s superintendents in urban school systems increasingly became common. Although these early superintendents had little power other than to collect statistics and write reports, they were able to use their office as a springboard from which they and others expressed concern for reform and advocacy of the Prussian centralized school system.

Other bricks in the institutional wall supported the enactment of compulsory attendance laws. Many states had passed truancy laws

prior to compulsory attendance, and although truancy laws did not enforce attendance at school as much as they served as legal justifications of reducing vagrancy, they did supply the legal precedent for state regulation of attendance. Perhaps most important as a foundation to compulsory attendance laws was the increasing centralization and bureaucratization of school systems, particularly systems in large urban areas. Centralization, the administrative machinery that developed in conjunction with centralization, and standardization all had been evolving piecemeal throughout the nineteenth century, progressing toward eventual systematization. These factors facilitated the eventual implementation of attendance laws, for they provided a relatively firm monolithic, and efficiently controlled base upon which the compulsory attendance laws themselves could be superimposed.

The actual introduction of compulsory attendance laws must be understood in the social context from which they arose. First, the nation was in the midst of a long transition from an agrarian to a predominantly industrialized society. Although the country, in its earliest days, had imported much of its technical knowledge and equipment, self development was more common by the early nineteenth century. This knowledge base, coupled with ready access to virtually unlimited mineral deposits close to major industrial centers, a growing transportation system, and the presence of a plentiful supply of labor all combined to accelerate the pace of industrialization.

The movement of the foreign born into the nation was another major context into which the examination of compulsory education attendance legislation had to be placed. The Northern Europeans--

Germans, Scots, Irish and Scandinavians--all arrived in great waves largely during the early and middle nineteenth century. They were followed by the Southern and Eastern Europeans--Italians, Slavs, Poles, and Russians--who arrived late in the nineteenth and early twentieth centuries. Industrialization, urbanization, and immigration influenced forceful and dramatic social changes in terms of authority relationships between the individual and the state, extant political structures, model family patterns, occupational hierarchies, distribution of properties, and great social disorganization.

The relationship between the color of the father's collar and the amount of schooling has been brought out by numerous historians. Even though education was free and open, all did not make equal use of it. Children from working class families had a median attendance rate of 33 percent, sons of businessmen had median attendance rate of 65 percent, and sons of professionals attended school 80 percent of the time.

Educational statistics and data on literacy during the nineteenth century are very unreliable, but some accurate statistics were brought out. The South lagged far behind the rest of the nation in literacy; and foreign born adult whites were considerably less literate than native born. The white adult foreign born made up a significant portion of the labor force in urban areas in the Northeast. Other percentages show that by 1890 over fourteen million children were in school. By the close of the nineteenth century the typical child could expect to attend school for five years. In the early twentieth

century it could be construed that the United States led the way for massive education.

Public attitudes toward compulsory education appeared to be more positive in the years after 1890. This was true even in the South. Between 1905 and 1918 the enactment of the present or amended compulsory education law of the individual states was brought forth. These laws were the result of urbanization, immigration, the changed attitude of organized labor, and attitudes of the majority of the populace.

The past eighty years or so have been a time of major governmental involvement in American education, particular at the federal level. At the beginning of this century many persons and various organizations, such as the National Society for the Promotion of Industrial Education, were trying to establish programs of vocational education in public secondary schools. Their efforts were finally successful in 1917 with Congressional passage of the Act for Vocational Education, or The Smith-Hughes Act. This Act established a federal board for vocational education which was given responsibility for granting funds to the states and the establishment of programs of studies in agriculture, home economics, trade and industrial subjects. Later, under the provisions of other acts, the Vocational Education Act was expanded to include distributive education and other types of service employment.

By 1920 the basic pattern of American public education was well established, but there were major U.S. Supreme Court and other federal court decisions that created new opportunities and controversies that persist even to contemporary times.

6. What common factors exist between the states in regard to public education and compulsory school attendance?

At first glance it would seem that in a country as diverse as the United States there would be no common elements in compulsory education. Nothing seems as far from the truth of the matter. The age limitations of education are among the common aspects of this type of law. Generally speaking, all of the states had laws which stipulated the age boundaries of seven through eighteen, with the overwhelming number of states stating sixteen as the terminal age of compulsory education.

Many states used Article III of the Northwest Ordinance as a direct or indirect influence when writing the laws for those commonwealths. The specification of section sixteen as a place to be set aside for education was proclaimed in this same ordinance. In 1884 it was a fact that most states had enacted a similar statute. The fact that all of the states except Mississippi had compulsory education legislation was certainly an aspect of commonality in the several states. Mississippi had legislation but repealed it in protest of the Brown desegregation case. The states were dependent to a large extent on child labor laws and the Federal Fair Labor Standards Act of 1938 when enacting or modifying their laws.

Court decisions such as the Pierce case that upheld dual school systems and the Brown case which promoted the principle that separate does not mean equal seemed to uphold some aspects of the First, Fifth, and Fourteenth Amendments. Cases such as these certainly helped to

develop uniformity in the compulsory education laws of the several states.

Based on the research, the following conclusions were drawn:

1. The Massachusetts Laws of 1642 and 1647 viewed from a 1984 perspective were very weak and difficult to enforce.

2. The Federal Constitution of 1789 did not provide for compulsory education. It implied the right of a state to administer education based on the Tenth Amendment.

3. Numerous laws were passed to put the issue of compulsory public education on a national scale.

4. The courts became increasingly more involved and influential in the interpretation of compulsory education laws. The Kalamazoo case of 1874, the Pierce decision of 1925, the Brown decision of 1954, and the Yoder decision of 1972 served to increase the involvement of the court.

5. Prior to the twentieth century, courts tended only to interpret the law as in the 1874 Kalamazoo decision. However, in the twentieth century the courts forcibly acted in correcting abuses such as were rendered in the Pierce, Brown, and Yoder decisions.

6. Wars and depressions had no significant effect on compulsory education.

7. Compulsory education laws were associated with a form of taxation from the early history of this country down to the present time.

8. Compulsory education laws were used as a means of providing social, economic, and political freedom.

9. Compulsory education laws were used as tools to counter the trend of capital versus labor.

10. The promise of compulsory education to close the gap between the poor and wealthy was rarely achieved. Public education does not always afford equal opportunity. For example, the per capita expenditures on public education vary from state to state and county to county.

11. Compulsory education was used as a means to achieve competency skills. Numerous states have adopted standardized tests, particularly in math and reading, to test minimal competency skills.

12. Many promoters of compulsory education took the middle of the road view relative to parents' rights and states' rights.

13. Promoters of compulsory education used the laws of supply and demand to promote enthusiasm for their product.

14. Promoters of compulsory education leaned toward the economic benefits which accrued to the adult population as a result of education.

15. The federal government intervened several times in the educational field without taking into consideration the rights of states. Examples of this are Plessy v. Ferguson (1896) and the Yoder decision.

16. Colleges and universities had an effect on compulsory education as a result of entrance requirements and accreditation procedures.

17. There was no positive correlation between compulsory education and a high degree of literacy in the United States.

The following recommendations are derived from this study:

1. Laws should be passed to legislate the custodial role of the schools off the books.

2. The roles of individuals, educators, boards of education, courts and other legal bodies should be viewed, and the rules should be clarified and redefined so compulsory education develops a leadership which will promote new concepts.

3. Professional organizations should take a more active role in the management and policy making decisions relative to public education. Also, these professional organizations should develop a consensus or establish a norm as to their perspective on compulsory education.

4. Courts do not "revise laws." That is a legislative process, not a judicial one. Who is going to "watch carefully" the role of courts? Courts can "interfere" with state laws, if they deem the laws unconstitutional.

5. The federal government's role in public education should be limited.

6. State legislators should develop a consensus for national educational goals and develop laws to meet these goals. Also, legislators should pass laws relative to compulsory education which will motivate other areas of society to enter into the education "business."

7. The public at large should insist that competency based skills become a result of the years of required education.

8. Compulsory education should be researched throughout the world so the United States of America system can be compared. Our educational experiences should be constantly reviewed.

9. Local boards of education should take a leadership role by encouraging other groups to provide jobs and opportunities.

10. There should be alternatives to compulsory education.

Those who want to receive it should. If it is up to the individual to decide if he wants it, then it is not compulsory.

11. Teachers and administrators should better utilize community resources and improve their working relations with the local communities.. The public should be constantly informed of their educational responsibilities.

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