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ABSTRACT

Although some critics of public education are now questioning the value of compulsory schooling for all children, this concept is deeply ingrained in American history and social values. The first compulsory education law in this country was enacted in 1642 in the Massachusetts Bay Colony. The Puritan notion of education as a moral, social obligation was thus given the sanction of law, a pattern later followed by nineteenth century crusaders for free public education. By 1918, all states had passed school attendance legislation, although until the 1930s, many were unsuccessful in enforcing their compulsory schooling laws. However, as the population increased, and as the demand for well-trained labor grew, the bureaucratic machinery for enforcement was created. Of course, not all elements of American society have supported compulsory public school attendance. Court cases dealing with Consitutional issues have arisen from the opposition of some groups to mandatory schooling. For example, the 1972 Wisconsin v. Yoder ruling by the Supreme Court granted Amish parents exemption for their children from laws compelling public school attendance past the eighth grade. (DS)

A HISTORY OF COMPULSORY EDUCATION LAWS

M. S. Katz

FASTBACK 75

BICENTENNIAL SERIES

Phi Delta Kappa Educational Foundation

2

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FOREWORD

Education is taken for granted in America today to the extent that it is one of our least taught-about social institutions. Indeed, the public schools are in error in not giving far more attention to their important institutional roles—especially in the maintenance of a civically oriented youth and toward the furtherance of a well-functioning free society. The formal study of the struggle for public schooling in the United States should be a part of both the elementary and the secondary school curriculum.

The present generation probably lacks appreciation for our educational system because it is not conversant with the hard-won effort to obtain free public elementary and secondary schooling. The latter was not assured until after the Kalamazoo decision in 1874; the former was strongly and surprisingly opposed in the first half of the nineteenth century by a variety of groups, most of whom would eventually benefit from public education.

Tied to any account of the rise of state supported mass education and the related activities of leaders like Horace Mann, Gideon Hawley, Henry Barnard, Calvin Wiley, and John Swett must be the story of compulsory attendance. Universal educational opportunities could be provided but these would not assure mass education without the means of insuring attendance. The common schools could not provide a well-educated and literate population until laws enforcing the education of all boys and girls were instituted. Following the initial action of Massachusetts in 1852, by 1900 thirty-two states had so provided and finally in 1918 when Mississippi enacted a law, all the states then in the Union had legal attendance requirements.

Dr. Katz became involved in unearthing this long story which has now been reopened by action in several southern states who repealed their compulsory attendance laws as a means of resisting school racial integration. Current consideration of lowering compulsory attendance age limits, as well as the demands of minority groups to educate their children as they see fit, all contribute to a continuing concern over elements of compulsory education. By reviewing the roots of the movement we may come to understand contemporary ramifications.

Richard E. Gross
Stanford, California

THE CONTEMPORARY ISSUE OF COMPULSORY EDUCATION

In the last few years, educational critics have begun to question not only the content of our educational system but also its fundamental principles. Amid a chorus of despairing voices and a plethora of antischooling best sellers, fueled by a controversial recommendation of the National Commission on the Reform of Secondary Education that students be allowed to leave school at age 14, the policy of compulsory education has become an issue of widespread public concern. Underlying it are two larger questions.

. . . To what degree and through what means should the state take part in child rearing?

. . . At what point and on what basis should the child's interests be separated from those of his parents? At what point should he be allowed to make his own decisions about his welfare—both educational and noneducational?

As these questions suggest, the debate about compulsory education laws is inextricably bound up with the larger problem of how young people should be brought up and how their freedom of choice and the quality of their lives might be enhanced.

Having made education into a massive institutional enterprise with expenditures of nearly $85 billion in 1971-72, policy makers now face the task of reexamining the premise underlying this institution and the life-force sustaining it—compulsory school attendance laws. Having institutionalized the normative standard that young people should be in school rather than working, educational policy makers now confront increased numbers of college

and high school graduates without work as well as others whose heightened expectations for rewarding jobs are being frustrated after long sojourns in academia. Finally, amid distressing reports of lower college board scores, increased vandalism, and high percentages of daily absenteeism in urban schools, educational leaders face a growing gap between the ideal of universal education and the realities of compulsory schooling. The dilemma they face is that education is becoming more and more essential in a postindustrial age while schools are reporting widespread failures to educate their students effectively.

"The compulsory system has become a universal trap, and it is no good," said Paul Goodman, speaking out against the system of compulsory schooling in *Compulsory Mis-Education and the Community of Scholars*. "Very many of the youth, both poor and middle class, might be better off," he claimed, "if the system did not exist, even if they had no formal schooling at all." However, in 1962 few people were sympathetic to Goodman's radical anti-compulsory schooling views. These were the days of John Kennedy's "new frontier," and the mood of the land was one of moral optimism. If solutions to social problems could be provided, schools, it was believed, would provide them. A belief that better schooling would improve the opportunities of the poor and the minorities and enhance the quality of society translated itself into massive expenditures on schooling. From the middle of the Kennedy administration (1961-62) to the end of the Johnson administration (1967-68), the total expenditures for education increased from approximately $29 billion to more than $57 billion. Only six years later (1973-74), the educational expenditures rose to an estimated $98 billion.

With the increase in educational expenditures and the enormous financial commitment to schooling, one might wonder why a debate about changing compulsory schooling laws appears. Without doubt, compulsory schooling is entrenched not only in the laws of all the states (except Mississippi), but also in the attitudes of the majority of the population. In a recent Gallup poll, 90 percent favored compulsory school attendance through elementary school. In addition, 73 percent favored compulsory school attendance through high school, even though only five states require compulsory schooling through age 18. Indeed, school attendance through age 18 is so universally accepted that the

900,000 to one million teen-agers who do not complete high school each year are pejoratively labelled dropouts, and a social stigma is attached to their having left school. An article by Gene Maeroff in the New York *Times* titled "Dropouts: Are They Really Better Off at School?" addressed the negative image projected by the media toward high school dropouts:

> A few years ago a public-service ad on television showed some runners, one of them wearing boots made of lead lining up for the start of a race. The race they were about to begin symbolized their lives, and the less than subtle message was that someone who drops out of high school, like the runner in leaden boots, bears a life-long handicap.

Given the monumental expenditures on schooling, the widespread acceptance of compulsory school attendance statutes, and the social stigma attached to dropping out of high school, why has a serious debate about changing compulsory education laws escalated in the past few years? First, national studies have publicized widespread school failures and have contributed to an increased disenchantment with public education in the past decade, exemplified in the titles of such recent best sellers as *Deschooling Society, How Children Fail, Crisis in the Classroom, Death at an Early Age*, and *Our Children Are Dying.* It is reflected as well in the numerous defeats of school bond issues. Second, in 1972 the U.S. Supreme Court ruled in *Wisconsin* v. *Yoder* that the state's compulsory education law was unconstitutional for three Amish defendants whose children had completed eight years of school, because the law infringed upon their right to free exercise of religion. While this ruling carved out a narrow religious exemption for the Amish and would not be easily extended to other groups, Chief Justice Burger's majority decision dealt a severe blow to the concept of the importance of secondary education. Third, in its 1973 report the National Commission on the Reform of Secondary Education recommended that children be allowed to leave school at age 14. The commission couched this recommendation in the solemn language of rights:

> To the rights the courts have already secured for American students, the Commission would like to add another: the right not to be in formal school beyond the age of fourteen. Compulsory attendance laws are the dead hand on the high schools. The liberation of youth and the many freedoms the courts have given to students

within the last decade make it impossible for the school to continue as a teaching institution. The harm done to the school by the student who does not want to be there is measured not only by the incidence of vandalism and assault but also by a subtle and continuous degradation of the educational enterprise.

That this proposal seems imminently reasonable to many educators indicates the distance travelled in the past fifteen years. In the early 1960s Paul Goodman was viewed by many establishment figures as a heretic for speaking of the elementary schools as performing a baby-sitting function; by the 1970s, however, the U.S. Supreme Court in the *Yoder* decision and the National Commission on the Reform of Secondary Education in its report discussed the high school in analogous terms, emphasizing its custodial and its labor-market functions. Likewise, more and more educators are examining the noneducational functions of schools; many have joined the public in questioning the value of schooling for schooling's sake. That they have done so may, indeed, signal a new phase in the debate about compulsory school attendance laws. At this point, no one knows where the debate may lead. Thus, it is not the future of compulsory education laws that this fastback will focus on but their past. By examining the context in which these laws emerged, changed their focus, were institutionalized, and finally were challenged in the courts, the present assault upon them can be better understood.

THE EARLY COMPULSORY EDUCATION LAWS OF MASSACHUSETTS BAY COLONY

Just as many laws codify existing social and moral values, so did the early compulsory education laws in the Massachusetts Bay Colony. Before passage of the laws of 1642 and 1648 in Massachusetts Bay Colony, the concept of compulsory education was embedded in the time-honored parental obligation to bring up one's children properly as good Christians. Unlike today the seventeenth-century notion of education was not restricted to formal instruction provided in schools but included a variety of informal activities that fell under the rubric of child rearing or child training. As members of a religious community struggling for survival in the wilderness, the early Puritan parents and masters had a moral obligation to educate their children and apprentices, thus bringing them up properly as good Puritans. Failure to do so was seen as a serious threat to the moral and economic well-being of the commonwealth.

Fearful that too many parents and masters were neglecting their child-rearing responsibilities, the Puritan elders on June 14, 1642, passed what might be viewed as the first compulsory education law in American history, transforming a moral obligation into a legal one. "Taking into consideration the great neglect of many parents and masters in training up their children in learning and labor," the General Court appointed selectmen 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 prin-

ciples of religion and the capital laws of this country." Thus, the law of 1642 established a group of educational supervisors, the selectmen, charged with the task of judging parental neglect in child rearing and reporting these offenses to the court. Moreover, it established minimal standards by which parents and masters could be judged in their educational responsibilities.

These standards had both an economic and a religious orientation. The economic orientation reflected a concern that children be trained for honest labor and not become part of a nonworking pauper class. This concern was made more explicit in the revised law of 1648, which empowered selectmen to ascertain whether "all parents and masters do breed and bring up their children in some honest lawful calling, labor or employment, either in husbandry, or some other trade profitable for themselves, and the Commonwealth if they will not or cannot train them up in learning for higher employments." In the 1642 law the religious orientation was simply that each child be taught to read the Bible and come to understand the principles of the Puritan faith. The revised law of 1648 had higher, more explicit standards of religious achievement. Parents and masters had to provide deliberate catechism in the principles of religion at least once a week, or failing that, insure that their children and apprentices had learned "some short catechism without book" so that they could answer the questions of parents, masters, or selectmen "when they shall call them to a trial of what they have learned in this kind."

While it is not clear how rigorously the selectmen applied the educational standards of these laws or how frequently or severely individual parents and masters were punished, the laws did represent a systematic legal effort at establishing educational standards and requiring parental supervision. In 1647, another law extended the legal responsibility for educating youth beyond parents and masters to the community. Specifically, the law of 1647 in the Massachusetts Bay Colony required communities of fifty households or more to provide a teacher to instruct children in reading and writing and communities of a hundred or more households to set up a grammar school. During the first ten years after its passage, all eight of the towns having one hundred households had established a grammar school, but only one-third of the towns with fifty families complied with the reading-writing teacher requirement. Thereafter, according to historian

Lawrence Cremin, "As new towns reached the stipulated sizes, they tended to disregard both requirements." Moreover, the revisions of this compulsory school establishment law in 1671, 1683, 1691, and 1701 suggest that it was not effectively enforced.

In Massachusetts Bay Colony, compulsory education laws established two prerogatives of the state: the right to lay down minimal standards for the education of children; and the right to compel the establishment of two minimal educational provisions—teachers and schools. The right to compel attendance at schools was not established until the second half of the nineteenth century.

In the colonial period schools were not the only agency in which children were educated. As Cremin says, schooling, or the processes of formal instruction engaged in by teachers, occurred in many places besides schools.

> What the sources indicate is that schooling went on anywhere and everywhere, not only in schoolrooms, but in kitchens, manses, churches, meetinghouses, sheds erected in fields, and shops erected in towns; that pupils were taught by parents, tutors, clergymen, lay readers, preceptors, physicians, lawyers, artisans, and shopkeepers; and that most teaching proceeded on an individual basis, so that whatever lines there were in the metropolis between petty schooling and grammar schooling were virtually absent in the colonies: the content and sequence of learning remained fairly well defined, and each student progressed from textbook to textbook at his own pace.

It is difficult to generalize about schooling in the colonial period because it is not always clear what constituted a school and because enormous diversity existed in the types of schooling arrangements from one colony to another. However, it is clear that education was not conceived of solely as schooling activities nor restricted to the special province of the schools. Moreover, the three dominant types of schools, Latin grammar schools, English grammar schools, and academies, did not replace the household as the center for deliberate cultural transmission. While the role of formal instruction did become more important in the eighteenth century, the family remained the most important agency in passing on knowledge, skills, and moral values from one generation to the next. Until the middle of the nineteenth century, the duty to educate one's child remained firmly placed with the child's parents or master.

THE TRANSITION TO COMPULSORY SCHOOL ATTENDANCE: THE RISE OF THE COMMON SCHOOL

At the time of its national origins, the United States found itself with no widespread system of public schooling. What did exist was a patchwork of arrangements for schooling that included dame schools, academies, evening schools, Latin grammar schools, English grammar schools, pauper schools, and colleges. More formal education was sponsored and controlled largely by various religious denominations and charitable organizations. Also, schooling seldom extended beyond the elementary subjects; secondary schools were rare, and an extremely small percentage of the population went on to college.

It was not until the second quarter of the nineteenth century that public support and public control of common schools became a dominant institutional pattern. In the forty years from 1820 to 1860, the growth of cities and industrial establishments transformed the social landscape of American life. In 1820, only about 5 percent of the nation's population lived in cities of more than 8,000; by 1860, more than 16 percent lived in these cities. Within decades, small villages mushroomed into industrial meccas. As waves of immigrants poured onto American shores, especially Irish and Germans in the 1830s and 1840s, the heterogeneous character of American life developed a new dimension. The new immigrants fueled the industrial growth of the cities while simultaneously placing new strains on the social fabric. The particular patterns of urban growth and social dislocation resulted in new efforts at imposing what historian Karl Kaestle describes as "systematic solutions on chaotic urban conditions." Kaestle writes of New York City in the period from 1800 to 1850:

The city's population multiplied tenfold from 1800 to 1850, and the tremendous increase in the scale of problems, combined with the alienation and segregation of the well-to-do from the poor, increased people's reliance on institutional solutions to social problems. Reformers tried to rationalize charity, standardize schools, and incarcerate vagrants. These were symptoms of a general effort to impose systematic solutions on chaotic urban conditions.

Housing shortages, urban congestion, and crime seemed to accompany the influx of immigrants to the cities. In addition, immigrants requiring local assistance strained both the financial resources of the cities and the tolerance of many Americans. For example, in 1837 New York City was spending $279,999 for the annual support of its poor, of which about 60 percent were foreign born; by 1860, that number had risen to 86 percent. As the strains of social diversity and the dangers of urban chaos became more widely felt, a new receptivity to a widespread system of publicly supported, publicly controlled common schools emerged.

Gradually, but with increasing momentum in the 1850s, divergent groups and classes joined the movement to establish free, public, nonsectarian common schools. For reformers like Horace Mann and Henry Barnard, the common school movement became a moral crusade. In their view, free publicly supported common schools would unite Christian morality with democratic patriotism; the common school would stamp out the evils of ignorance, crime, vice, and aristocratic privilege; and finally, the common school would not only assimilate the immigrants but also transform them into virtuous, productive American citizens.

Becoming first state superintendent of education in Massachusetts, Horace Mann began a vigorous campaign to promote the cause of free public schooling in the United States. During his twelve years of service from 1837 to 1848, Mann not only expounded his belief in common schools before conventions, teacher institutes, and political audiences, but also wrote twelve annual reports on education in Massachusetts—reports that significantly influenced public opinion throughout the United States. In his *Twelfth Report*, Mann spelled out as he had done so many times before, the unique features of a free system of common schools, a system he fervently believed in:

It knows no distinction of rich and poor, of bond and free, or between those, who, in the imperfect light of this world, are seeking,

through different avenues, to reach the gate of heaven. Without money and without price, it throws open its doors, and spreads the table of its bounty, for all the children of the State. Like the sun, it shines, not only upon the good, but upon the evil, that they may become good, and, like the rain, its blessings descend, not only upon the just, but upon the unjust, that their injustice may depart from them and be known no more.

The impassioned message of Horace Mann and other reformers was clear, the fervor of its delivery unmistakable. Indeed, as the forces of traditional religion waned, the ideology of American public schools acquired the appeal of a religion. Gradually but steadily, publicly supported common schools supplemented and supplanted pauper schools, Sunday schools, private academies, and other forms of privately sponsored formal education.

THE EARLY PERIOD OF COMPULSORY SCHOOL ATTENDANCE LAWS: 1852-1900

It is not surprising that the state that had been the leader in establishing common schools and in securing voluntary attendance passed the first compulsory school attendance law. In 1852, a little more than 200 years after passing the first compulsory education law, Massachusetts required parents to send their children to a public school in their city or town for "at least twelve weeks, if the public schools of such city or town so continue, six weeks of which shall be consecutive." The law itself was largely ineffective as virtually no attempt was made to enforce it, and it was ignored for about two decades in the reports of the state boards and its secretaries. Moreover, the law of 1852 was not immediately imitated by other states, and it was sixty-six years—until 1918—before all of the states in the union had enacted compulsory schooling statues. By 1870 Massachusetts was joined only by the District of Columbia (1864) and Vermont (1867) in passing compulsory school attendance laws.

By 1890, however, the majority of states and territories had passed compulsory attendance laws, and the U.S. Commissioner of Education in his 1888-89 report on school attendance was optimistic that compulsory schooling would become a legislative norm throughout the country.

> The principle of compulsory education is steadily gaining ground. Steps in advance are being taken here and there all the time. Since 1886 no less than sixteen states and territories have either enacted laws for the first time or have made their former laws more stringent. The arguments and discussions of thirty years or more have

been gradually silencing opposition, and public sentiment is slowly crystallizing in the direction of requiring by law all parents to provide a minimum of school instruction for their children. This tendency is unmistakable.

In 1890, twenty-seven states and territories of the union had compulsory attendance laws on the books; by 1900 six more states, New Mexico (1891), Pennsylvania (1895), Kentucky (1896), Indiana (1897), West Virginia (1897), and Arizona (1899), had enacted compulsory school attendance laws. Although the movement for such legislation did not progress early or swiftly in the South, Tennessee's 1905 compulsory school attendance law was soon followed by North Carolina (1907), Virginia (1908), Arkansas (1909), Louisiana (1910), Alabama (1915), South Carolina (1915), and Georgia (1916). Interestingly, the last state to pass a compulsory school attendance law, Mississippi (1918), was the first to repeal it—in 1956.

The compulsory school attendance laws were not uniform, as major variations existed in the minimum period of required attendance, the sanctions attached to truancy, the grounds for truancy, and the basis for exemptions from the laws. In 1897, the minimum number of years required in school ranged from seven to sixteen. In some states the penalty for the truant child was reform school, while in others the burden of criminality was not laid upon truant children. In some states the offense of truancy was judged by the truant officer. In Connecticut in 1897, a week's failure to attend without a valid excuse constituted truancy, and in West Virginia a similar time prevailed. However, in Nevada a far more lenient period of four months of unexcused absence was tolerated before a parent was held in violation of the law. Although most states considered physical and mental disabilities grounds for exemption, other grounds for exemption varied significantly from state to state. Many states allowed for equivalent education, usually defined as "other instruction in school subjects, like period and like quality." Some required examinations as proof of equivalence, while others insisted only on the school being open to public inspection. Still others had even more obscure standards of equivalence. Indeed, the very vagueness of the notion of equivalence made it extremely hard to determine on what basis one might qualify for it.

Although compulsory school attendance laws varied widely in

their specific provisions from one state to another, they did share one thing in common—their unenforceability. In the late 1800s, the early compulsory school attendance laws had become inoperative in virtually all states and were regarded as dead letters. These laws were usually treated indifferently by those to whom they were directed and by those who had the responsibility of enforcing them. In some states no mechanism for enforcing the laws was stipulated in the statutes; in other states, a lack of public school accommodations frustrated the intention of the laws.

The 1888-89 report on school attendance by the United States Commissioner of Education chronicles one account of failure after another. Only the reasons for failure seem to vary from state to state and region to region. In New Jersey, the original compulsory schooling act of 1875 and its successor in 1885 were not enforced because of inadequate classroom accommodations. Similarly, in California the 1874 compulsory schooling law was ineffective according to superintendent Hoitt "partly by the fact that some towns and cities have not sufficient school accommodations for all those who apply for admissions, and partly from indifference and negligence of parents and guardians." New Mexico passed compulsory schooling legislation in 1870 before a public school system had been developed to any considerable degree, and the result was predictable—"compulsion existed only in name." A later law in 1877 was "so defective in wording" that "it did not compel anything or anybody."

In Kansas, 70 percent of the county superintendents reported that the Kansas compulsory schooling law was inoperative, deficient, or dead letter, largely because the people were unwilling to report instances of their neighbors' noncompliance to authorities. Similarly, in Michigan the compulsory school attendance act of 1871 failed because "it was made everybody's business to see that it was enforced, and consequently it was not enforced at all." "All experience goes to show," stated the U.S. Commissioner of Education in his 1888-89 report, "that the complaints of voters or taxpayers have never yet set in motion the machinery for enforcing a compulsory law."

In the western rural states, compulsory school attendance laws were viewed as virtually unenforceable by state superintendents. Declaring Nevada's 1873 compulsory schooling law a dead letter from its inception, State Superintendent W. C. Dovey asserted

that the law was not intended for the rural districts where it was seldom needed. In Wyoming, in spite of an initial attempt at enforcement in Cheyenne, the compulsory schooling acts of 1876 and 1887 became dead letters. This prompted Territorial Superintendent John Slaughter to comment, "The law does not seem applicable to the rural districts, mainly on account of their size, many of them being from ten to fifty miles long and nearly as wide." As a result, he reported, "No general effort was ever made in the country to enforce the law." The Idaho compulsory schooling law of 1887 was passed "under a suspension of the rules and with a hurrah" but was almost impossible to enforce. Perhaps Montana was the best example of the extreme in nonenforcement, as its compulsory schooling act of 1883 stood without a single conviction under the law on the statute books by 1890.

The message of the state superintendents of education to the U.S. Commissioner of Education in 1889 was loud and clear; their compulsory schooling laws were not working. The collected frustration of these superintendents had its source in the gap that existed between the compulsory school attendance laws on the statute books and the legal as well as administrative machinery necessary to enforce these laws. It is interesting to note that some states passed two, three, and even four compulsory school attendance laws without developing the administrative machinery to enforce them adequately. As a result, the last quarter of the nineteenth century witnessed a plethora of compulsory attendance laws and a paucity of enforcement mechanisms. However, it remains difficult to gauge the exact degree of compliance or noncompliance with compulsory laws in the different states. The fact that no school censuses were in operation when most of the states passed compulsory school attendance laws makes it almost impossible to have an accurate account of which children were supposed to be in school. In addition, two historical conditions must be considered: first, there was a high rate of voluntary attendance, especially in elementary schools, even in the early 1800s in many areas; and second, economic investment in public schools increased significantly in the late 1800s, as did the related costs of the foregone income resulting from children and youth remaining in school.

INSTITUTIONALIZING COMPULSORY SCHOOL ATTENDANCE: THE BUREAUCRATIC PHASE: 1900-1930

Between 1900 and 1930, compulsory schooling laws were transformed in many states from symbolic dead letters into reasonably effective statutes. The emergence of effective enforcement mechanisms translated an isolated phenomenon—school attendance—into an integral part of the state's systematic regulation of the conduct of school-aged youth. As a legal rule, compulsory schooling was transformed from a relatively simple statute requiring a fixed period of school attendance into a complex network of interrelated legal rules. This network of rules involved not only requiring school attendance but also hiring truant officers, defining their responsibilities, establishing and supporting truant schools, delegating jurisdictive power, and dealing with a host of child labor regulations. These child labor regulations often established school attendance as a prerequisite for younger children's employment and made employment for other categories of youth impossible during the period of their schooling.

Statistics on school attendance indicate that by 1920, compulsory schooling laws were being more widely complied with, though in many states they were still not rigorously enforced. More than 78 percent of those eligible for enrollment in the public schools were enrolled and 7.7 percent of the total were enrolled in nonpublic schools; thus, fewer than 15 percent of those required to go to school were not enrolled. For the age during which no child employment was permitted, what one writer refers to as the "absolute compulsory age," 90.6 percent

of the school population was attending regularly. In spite of the lack of preciseness surrounding the notion of regular attendance, these statistics suggest that schooling children was becoming established not only as a legal standard but also as a social standard.

By 1920 compulsory schooling legislation tended to include longer schooling periods each year, a required school census, the employment of attendance officers, and the elimination of various common exemptions such as equivalent instruction, mental or physical deficiencies, and poverty from the compulsory attendance statutes. In 1889-90, the total expenditures for elementary and secondary day schools was slightly in excess of $140 million. By 1929-30, that figure had jumped to more than $1.84 billion. In the same period, the average number of days attended by each pupil rose from 86 to 143. In 1900 the mean legal age for leaving school was 14 years and 5 months in states that had such laws. By the 1920s this age had risen close to the present figure—a mean age of 16 years and 3 months. By 1920, thirty-one of the forty-eight states required school attendance until age 16, while one (Delaware) required it until age 17, and five (Idaho, Nevada, Ohio, Oklahoma, and Utah) required it until age 18. Eight states, mostly southern states, required school attendance until age 14 only.

From 1900 to 1930, the establishment of attendance offices in schools, institutionalizing of school censuses, and gradual upgrading in the professional qualifications of truant officers contributed to systematizing the practice of preventing truancy. In time attendance officers not only acquired a vested interest in their own role but also infused their task with a missionary significance. F. V. Bermejo, a champion of the attendance officer's role, said:

> The aim of the attendance service should be to protect the child from any interference in securing his educational birthright. Compulsion for the few willful violators is tolerated, and curative and remedial measures resorted to, but service to the child its watchword, prevention its motto, and regeneration its goal.

In actuality, as state aid became tied to average daily attendance, attendance departments harnessed their administrative machinery to the task of producing a favorable set of figures. These figures would show, among other things, what percentage

of pupils were in attendance, how many parents and children were prosecuted, how many convictions of parents had been obtained, and how many children had been committed to correctional institutions.

Without doubt, the implementation of compulsory schooling laws was connected to the larger forces underlying educational reform in the late nineteenth and early twentieth century. From 1890 to 1930, the public high school took a cataclysmic leap toward becoming the dominant institution of secondary education. Historian C. H. Edson believes the expansion of the high school resulted in a monumental shift of young persons from the career of work to the career of schooling.

> Between 1890 and 1920 a new high school was opened on the average of over one per day, a 467 percent increase for the thirty-year period. Likewise, student enrollments increased 812 percent compared to a nation-wide population increase during the same period of only 68 percent. More important, however, were the figures reflecting the percentage of youth aged 14 to 17 enrolled in the public high schools: from less than 1 percent in 1880, figures swelled to 29 percent by 1920 and 47 percent by 1930. This rapid expansion of the high school constituted an unprecedented shift in the occupations of youth. . . . For the first time in history, millions of young people were going to school rather than going to work; indeed, schooling had replaced work as the "career" of youth.

The idea of sending one's child to school rather than to work not only was legislated and coercively implemented but also was promoted and voluntarily accepted by increasing numbers of people.

Underlying this promotion and acceptance of sending children to school rather than sending them to work was the urbanization of American life and the cultural strains that accompanied it. As the total population in the United States almost tripled between 1860 and 1910 (from 31 million to 91 million), American cities experienced a seven-fold increase, with much of it occurring in the larger metropolises. By 1910 the simplicity and lack of differentiation that often characterized earlier communities was being replaced by the specialization, complexity, and variety that mark urbanized industrial centers. New waves of eastern and southern European immigrants raised fears of crime, vagrancy, and a foreign-speaking pauper class. In response to these fears, schools were promoted as agencies of social control and assimilation.

Although the notion of schools as a means of assimilating and Americanizing the immigrant was not new, its appeal gained force as the concentration of immigrants in large cities grew. The problem of foreign influence and its remedy in compulsory schooling was expressed by one writer in this way:

> Foreign influence has begun a system of colonization with a purpose of preserving foreign languages and traditions and proportionately of destroying distinctive Americanism. It has made alliance with religion and in some measure has gained the support of Protestant and Catholic.
>
> Where now is the corrective?
>
> . . . A compulsory education law has been enacted to protect society from the evil influences of these people who disregard the most common parental and social duty in the care of their children.
>
> Now as to the remedy. Every one, and very certainly every educator, will place the first stress upon the natural, self-commanding, and assimilating power of a public free-school system, and . . . this should be perfected.

Indeed, the rising tide of immigrants into the United States in the 1800s and early 1900s provided ammunition for such rhetorical appeals on behalf of compulsory schooling.

Without doubt, rapid institutional and technological changes placed new strains on urban dwellers, and the influx of immigrants fueled fears of social chaos and the breakdown of the American culture. Likewise, the demands of a growing corporate state cried out for large numbers of punctual, hardworking, and obedient workers. It was in this context that compulsory schooling laws would be both implemented and socially accepted by more and more people in the first three decades of the twentieth century.

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THE LEGAL CHALLENGE TO COMPULSORY SCHOOLING LAWS: FROM PIERCE TO YODER: 1925-1972

How far the states may go in controlling and regulating education was a central issue in two twentieth-century challenges to compulsory school attendance laws—the *Pierce* and *Yoder* cases. In the abstract, one of the clearest areas of conflict over the value of compulsory education legislation involves the question, "Who should exercise the most control over the content and manner of the child's formal education—the state or the parents?" While the intent behind compulsory school attendance laws has not always been to infringe on parental control, it is clear that has been one effect. Thus, in the legal battlefield groups of parents have often been in one camp appealing to a "natural right" to control their children's upbringing, a right they consider essentially immune from state interference, while in the opposite camp the state has argued that it has not only the power but also the right under the legal doctrine of "parens patriae" to do what is necessary to protect the child's welfare, even if such actions diminish parental control.

The issue of parental control came up indirectly in the first major challenge to a compulsory schooling statute in the U.S. Supreme Court in 1925. In the case of *Pierce* v. *Society of Sisters*, a 1922 Oregon law was challenged. The law required all children of school age (8 to 16 years old) to attend public schools. The plaintiffs, a Catholic school administered by the Society of Sisters and a private, nonsectarian college preparatory school, Hill Military Academy, sought and obtained a preliminary in-

junction for the U.S. District Court to enjoin the governor of Oregon from enforcing the statute. The U.S. Supreme Court upheld the lower court's injunction and the state of Oregon was not allowed to compel attendance solely in public schools. In reaching its decision, the court concluded, "The Act of 1922 unreasonably interfered with the liberty of parents and guardians to direct the upbringing and education of children under their control." Although the decision was based upon "substantive due process," an interpretation of the Fourteenth Amendment that has long since been abandoned, the court reinforced the principle of parental control.

In the *Pierce* ruling, the court set a very crucial limit upon the state's power to standardize its instruction for young people—the limit of public schooling. Citing *Meyers* v. *Nebraska* (1923), an earlier case in which a Nebraska statute banning the teaching of foreign languages in both public and private schools was ruled unconstitutional, the court concluded, "The fundamental theory of liberty upon which all governments in the Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only." At the same time it reinforced the right of the state to regulate a multiplicity of categories related to schooling and thus constitutionally sanctioned compulsory school attendance:

> No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.

Limiting the state's power to standardize education through public schooling and recognizing parental freedom in rearing their children, the court raised but did not resolve fundamental legal and social questions. What degree and what forms of standardization of education would unconstitutionally abridge the basic rights of individuals or groups? What forms of standardization would be socially, if not legally, undesirable? In legitimizing the state's power to institutionalize a compulsory system of schooling, the courts sanctioned a systematic transmission of values as well as a formal means of social control. It did not, however,

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provide the state with a carte blanche for imposing a uniform system of beliefs and values upon all students.

The danger of "officially disciplined uniformity" of belief underlies the practice of compulsory schooling. This danger was eloquently addressed in the compulsory flag salute case of *West Virginia State Board of Education* v. *Barnette* (1943). In ruling West Virginia's statute requiring compulsory flag salutes unconstitutional, Justice Jackson sought to banish the specter of "compulsory unification of opinion."

> Free public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party, or faction. . . . As governmental pressure towards unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose whose program public educational officials shall compel youth to unite in embracing. . . . Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

Justice Jackson believed that "individual freedom of mind" could be seriously jeopardized by compulsory rituals within schools, especially when those rituals were a means of standardizing beliefs. It is doubtful that he could have envisioned circumstances in which the compulsory attendance regulation itself would pose a threat not merely to individual freedom of belief but to a group's cultural survival. However, in a 1972 challenge to compulsory schooling laws, *Wisconsin* v. *Yoder*, the Amish claimed that Wisconsin's compulsory school attendance law threatened their cultural survival as an independent religious community and infringed upon their First Amendment right to free exercise of religion, which was made applicable to the states by the Fourteenth Amendment.

In examining the basis of the Amish claim to be exempt from compulsory school attendance beyond the eighth grade, it is important to remember that the function of compulsory school attendance laws is altogether different within Amish society than within the rest of society. As the percentage of young people graduating from high school rose to more than 75 percent by 1974, completing high school is regarded as a prerequisite for a good education, for most decent jobs, and certainly for most reward-

ing careers. For the Amish, on the other hand, secondary schooling is superfluous and even harmful to their simple, nonworldly, nonmodern way of agrarian life. Most Americans accept the normative standard that children between the ages of 14 and 16 should be in school rather than at work; the Amish, by contrast, believe that the place for children at these ages is at home working on the farm. For most Americans, compulsory secondary schooling is a legitimate and well-fortified legal rule, upheld by the courts and reinforced by social standards. For the Amish, it is a coercive and illegitimate law, a requirement that conflicts with their own moral rule prohibiting school attendance beyond the eighth grade. In addition, if followed, it would be a dangerous, if not culturally suicidal, practice, because the Old Order Amish connect compulsory secondary schooling with such notions as removal from family life, corruption by the secular world, and the loss of salvation.

Numbering about 50,000 children and adults in the United States, the Old Order Amish are the most conservative branch of the sect and were so named by their zealous adherence to the traditional practices of the church community. They regulate their lives through a rigid set of unwritten rules, the *Regel und Ordnung*. These unwritten rules dictate the types of clothes they may wear, what tools they may use, and what attitudes toward life are acceptable. As a part of the baptismal rite for young adults, each Amish person must swear unqualified obedience to the moral rules of the church community. Although the *Ordnung* may vary slightly from one Amish community to another, the Old Order Amish generally adhere to the following practices: religious services in the homes of community members, use of horse-drawn carriages, speaking Pennsylvania Dutch (a high German dialect), a plain and simple dress, long hair, and hooks-and-eyes on dresscoats. The Old Order Amish prohibit telephones, automobiles, tractors with pneumatic tires, and most importantly, compulsory school attendance beyond the eighth grade.

The theoretical basis for the Amish taboo against formal education beyond elementary school is rooted in the central Amish principle of maintaining a church community completely separate from the world. As Hostetler and Huntington explain in *Children in Amish Society: Socialization and Community Education*, "The principle of separation conditions the Amishman's

contact with the outside world and colors his view of reality and existence." While the Amish social ideal is a close-knit religious community steadfastly obeying the moral rules of the *Ordnung*, the individual Amish ideal is based on the values of hard work, humility, honesty, and obedience to the church community's strictures. In opposing a higher education or any form of higher learning, the Amish are rejecting critical thinking, reflection, and bookish knowledge as significant values. Living a simple agrarian life without adornment or pretense, the Amish believe that the truth has already been revealed in the Bible and that one educates by example, not by analysis, discussion, or lecture. In their view, education beyond the eighth grade militates against the values of obedience, humility, and submission to the will of God. They associate all forms of higher learning with worldly learning and take quite literally the biblical precept that "the wisdom of the world is foolishness with God." (I Cor. 3:19).

While the theoretical basis upon which the Amish reject any form of higher learning beyond elementary school is important, it must be distinguished from their more concrete opposition to compulsory school attendance in the public schools. The Amish want their children schooled in a way that integrates them into Amish life and socializes them in Amish values. As long as the schools were small (one- or two-room schools), close to the Amish community, largely populated by Amish students, and taught by Amish teachers or at least those sympathetic to Amish culture, the Amish did not resist compulsory schooling laws. Certainly, they do not oppose the moral principle underlying the early Puritan laws of 1642 and 1648—that "parents should bring up their children properly." Likewise, the Amish accept the principle behind compulsory school attendance laws—that "parents should provide a minimum of school instruction to their children." Their opposition is to the content of compulsory schooling laws requiring attendance beyond eighth grade and to the recent consolidation of rural schools. Historian David Tyack says in *The One Best System* the number of one-room schools declined from approximately 200,000 to 20,000 from 1910 to 1960, as "the impetus to consolidate rural schools almost always came from outside the rural community." The consolidated public school, removed from the community and taught by teachers unsympathetic to Amish life, was viewed as immensely dangerous. The

Amish believed that it would expose their children to an alien culture whose emphasis on competition, individual achievement, intellectual curiosity, efficiency, and external rewards (grades) directly conflicts with their own emphasis on values of cooperation, group achievement, self-sacrifice, obedience, and intrinsic satisfaction from methodical work done well. Moreover, the high school would remove Amish children from their participation in community life during the crucial period of adolescence when they must learn the values and roles of an adult Amish person.

In *Wisconsin* v. *Yoder*, the Amish completed a twenty-five year ordeal of legal resistance to compulsory school attendance laws with a victory. Three Amish parents were granted a religiously based exemption from Wisconsin's compulsory schooling law for their children who had completed eight grades of school. While the exemption did not alter the constitutional validity of the statute as a whole, merely carving out an exemption for post-eighth-grade Amish children, the decision did establish another limit to the state's power to compel attendance—the limit of infringing upon religious freedom. In deciding the Amish case, the U.S. Supreme Court recognized how the state's valid interest in compulsory school attendance conflicted with the cultural well-being of the Amish and with their First Amendment right to free exercise of religion. In balancing the interest of the state in a secular regulation against the Amish claim for a religious exemption, the Court ruled that the state of Wisconsin could not justify refusal to exempt the Amish from its compulsory school attendance statute at the secondary level.

While it may not have been his intent, Chief Justice Burger in his majority opinion questioned the rationale underlying compulsory secondary schooling and thus undermined its importance in contemporary society not just for the Amish but for all Americans. Burger cited Thomas Jefferson's belief that "the need for education as a bulwark of a free people against tyranny" did not involve "compulsory education through any fixed age beyond a basic education." Moreover, he cited Jefferson for the belief that "a basic education in the 'Three Rs' would sufficiently meet the interest of the state." If a citizen has learned to read, write, and count, in other words, the state's interests have been met. The rest is superfluous. That secondary schooling is not absolutely necessary, either for the Amish or for other less idiosyncratic

groups, is suggested by Burger's reminder that "compulsory education beyond the eighth grade is a relatively recent development in our history" and that "an eighth-grade education fully satisfies the requirements of at least six states."

The subtle way in which Burger's opinion diminishes the value of compulsory secondary schooling is best revealed in his discussion of the relationship between compulsory school attendance statutes and child labor laws. Burger suggests that child labor laws, especially the Federal Fair Labor Standards Act of 1938, help explain how the age of 16 became established as an arbitrary educational cut-off point for formal instruction in school. However, he also suggests that the two main functions of school beyond the elementary grades are its custodial or child-care function (i.e., it keeps children out of trouble, off the streets, and out of unhealthy, potentially harmful work) and its economic function of keeping "children of certain ages off the labor market and in school." Both of these conclusions undermine the state's policy of requiring compulsory secondary school attendance. It is doubtful that the state can defend its compulsory school attendance statutes very persuasively if the chief functions of high schools are those of a good institutional baby-sitter and an aid to adult employment. Yet Burger's only concession from this basic view is that additional schooling, by keeping children off the labor market, provides opportunities to prepare some for a better livelihood.

THE PRESENT MOMENT IN COMPULSORY SCHOOL ATTENDANCE: WHERE DO WE GO FROM HERE?

While the impact of Chief Justice Burger's remarks on compulsory secondary schooling is not clear, the forceful statements in the 1973 report of the National Commission on the Reform of Secondary Education have provoked serious thought. Their study pointed to a disastrous amount of daily absence in urban schools:

> The coercion of compulsory school attendance is no longer working. Attendance reports from urban school systems show that in many of the large city high schools, fewer than half the enrolled students report regularly. Average daily attendance as a percentage of enrollment runs as low as 45 percent in some urban schools. Among those who come to school, tardiness and class cutting are common. Attendance rates have been deteriorating in suburban schools as well. For example, the percentage of average daily attendance in Florida decreased every year from 1966 to 1972. Spot checks in a number of states indicate that the trend is national and is increasing in severity.

In a March, 1974, article in the *Christian Science Monitor* titled "Truancy—New York Schools Fail to Cope," one official in New York's United Federation of Teachers stated, "In too much of the city there is virtually no enforcement of compulsory education." While the rate of absenteeism was rising, the number of attendance teachers, those officials charged with finding and bringing truants back to school, was decreasing. Thus, in spite of the city's 60,000 to 100,000 daily truants, the number of attendance teachers had dropped in September, 1974, from ten to six, and the attendance-teacher programs had lost 20 percent of their staff.

In any case, high rates of daily absenteeism and widespread truancy in urban schools suggest that compulsory schooling laws are not working. In addition, increased vandalism, reports of the relative failure of compensatory education programs, and the increased costs of schooling have provoked a serious reexamination of the system of compulsory schooling. Are Americans likely to change compulsory schooling laws downwards to age 14, abandon compulsory school attendance, or liberalize the process wherein students are granted exemptions to these statutes? The answer is not clear. What is clear is that in spite of a commitment to education, the rising costs of schooling and growing disenchantment with its results are bringing serious pressure toward fundamental change.

However, one serious obstacle facing those who would downplay the importance of a minimum amount of compulsory school attendance is the substantive connection between attendance and educational credentials. Referring to schools as "certification agencies," Christopher Jencks illuminates the relationship between compulsory attendance and certification:

> Schools serve primarily as selection and certification agencies, whose job is to measure and label people. . . . In America . . . there is no national certification system. Free enterprise fills the gap, with thousands of schools and colleges issuing their own separate diplomas and degrees. The primary criterion for certifying a student is usually the amount of time he has spent in school, not the skills he has learned. This arrangement guarantees schools a captive audience. It also guarantees that young people will be kept out of the labor market. Imagine, for example, what would happen to high school enrollment if states allowed anyone, regardless of age, to take a high school equivalency examination. Most capable students would probably leave high school by the time they were 16. The only way to keep many of these students in school is to make continued school attendance the quickest way to certification.

Very simply put, school attendance remains the easiest means to obtain schooling credentials, which are the prerequisites for most jobs. Even if compulsory schooling laws were abandoned—a very unlikely possibility—the social compulsion for most to remain in attendance throughout high school would produce a state of *de facto* rather than *de jure* compulsory schooling. Those most likely to drop out of high school if compulsory school leav-

ing ages are lowered, the poor and the minorities, are those who can least bear the lack of schooling diplomas. Ironically, while educators are discussing the recommendation of the National Commission on the Reform of Secondary Education to lower the school leaving age to 14, strong social pressures make some degree of higher education "socially compulsory." In 1900, only about one in ten Americans between ages 14 and 17 attended high school; seventy-five years later, about four out of ten young people are enrolling in institutions of higher education and about 75 percent of all 18-year-olds have graduated from high school. The direction at the opposite end of the schooling ladder is similarly toward more and more schooling at earlier ages.

It remains to be seen whether the debate about changing compulsory school attendance laws will broaden to include questions concerning the standardization of education, the freedom of parents to direct the upbringing of their children, the child's rights in making educational decisions, the imposition of values and beliefs through schooling, the noneducational functions of schools, and the relationship between schooling credentials and opportunities for employment.

Indeed, amid the rhetoric of disagreement about school reform and compulsory education, one seldom is reminded of the principle of compulsory education embodied in the early Puritan laws of 1642 and 1648: that children should be educated according to minimal state standards. One seldom hears a clear voice urging citizens to reconsider this principle and its implementation through new legal rules, new options, and new substantive practices. Several questions, not easily answered, seem more fundamental than whether students are allowed to leave school at age 14 or 16: Should the states define minimum standards of educational achievement and not simply award diplomas for dedicated attendance? What should these standards be and how can they be best arrived at? While school attendance has been made compulsory by statute, educating most young people well will not be achieved through compulsion. Perhaps it is time to reexamine what that education might consist of and consider approaches to school reform in light of that. We might then be more likely to reflect upon the desirable achievements the practices of obligatory schooling are designed to produce. Moreover, we might be more likely to experiment creatively with a much wider range of

potentially educative new practices that fall outside of conventional methods of schooling children.

It is hoped that the naive optimism of the educational reformer who views alterations in educational policy as social panaceas can be avoided. Similarly, the modern fashion of viewing the practices of schooling children on a nonvoluntary basis as intrinsically evil can be rejected. The principle of providing a minimum of school instruction to all children can be supported while the period of minimum attendance embodied in a specific law can be a source of disagreement. Likewise, while agreeing with both the principle of compulsory schooling and the law requiring a specific period of school attendance, objections can be made about the practices of preventing truancy. Finally, the principle, the legal rules reflecting it, and the practices of preventing truancy can be approved of, but the concrete, substantive practices of schooling children on a nonvoluntary basis can still be disapproved of. Condemning the way in which children are being educated in a particular school system does not suggest abandoning the principle that parents provide a minimum of school instruction to their children, nor does it suggest altering existing compulsory school attendance legislation.

Having expected miracles from increased schooling, the public has no choice but to live with the limitations of education. If a gap exists between the ideal of universal education and the realities of compulsory schooling, it is no surprise. Rather, concern should focus on how to narrow this gap. Finally, in seeking to free rather than imprison the child, promote growth rather than stunt it, and foster individual welfare rather than harm it, not only the quality of schools but also the quality of the society in which young people are growing up must be improved.

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