Chapter 3: From the Workplace to the School-House: Compulsory Attendance Laws, State Authority, and the Institutionalization of the School

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Throughout the nineteenth century, Americans began to articulate education as a state responsibility in new ways. Voluntary school attendance throughout the northeast and Midwest was on average high and literacy widespread in comparison to most countries abroad. Many local communities voluntarily supported schools through combinations of local taxation and other means; in cities, public funds were often dispersed to a variety of private and denominational pauper schools. The common school movement of the first half of the nineteenth century, embodied a change in the organization and support of schools and laid the institutional foundations for the state systems of public schooling we have today. As explored in chapter 1, this institutional development of public schooling occurred in stages throughout the nineteenth century all of which involved financing: first, compulsory local taxation for school support; second, abolition of rate bills for students, which made schools free for all; third, establishment of state school funds and incipient state apparatus; fourth, the prohibition of public aid to sectarian and private institutions, thereby creating the division of public and private schools and providing for public school monopoly of funds. State interest in education and state responsibility to provide free schools common for all became statutory and constitutional law in nearly all northern states before the Civil War and in southern states after it. A fifth crucial step in the institutional development of the public school was the passage of state laws making school attendance compulsory for all children, for through these laws states imposed a responsibility for families to use the schools the state provided them.

State-wide compulsory attendance laws were passed from every state in the Union between 1852 (Massachusetts) and 1918 (Mississippi) which required all children of prescribed ages (usually 8-14) to attend some public or private school for a specified length of time (often 12 weeks). These laws first entered statute books in most states between 1870-1900 amid great proclamations of the value of universal education and the social evils of ignorance. The discovery of the epidemic of illiteracy and its links to pauperism and crime, the visible growth of vagrancy and crime in cities, the positive models of

compulsory education abroad, and the partisan political strategies of parties during Reconstruction combined to make compulsory attendance a potent political strategy. The laws were controversial and even those who proclaimed allegiance to them in principle balked at actually enforcing them in practice. By 1890, the U.S. Commissioner of Education could report that with few exceptions, the laws lie "as dead-letters upon the statute books" and were wholly inoperative. Enforcement languished for a variety of reasons, including defects in the laws, vague or nonexistent enforcement mechanisms, neglect by those charged with enforcing the laws, and public reception ranging from indifference to outright hostility.

Beginning in the Progressive Era, however, old compulsory attendance laws were given new life and new laws were passed in every state of the Union through the rise and growing political mobilization of child welfare reformers and an ideology of the state's responsibility to protect children. Child labor reformers exerted the most direct pressure on local school boards and state legislatures to improve the laws and enhance their enforcement so that all children under 14 could be expelled from the factory and placed in the classroom. While initially divided on the issue of compulsion, professional educators came to embrace and help direct the changes in law and administration, developing new procedures and techniques and urging modification of the laws in response to the myriad ways in which parents, children, and employers sought to evade them. Furthermore, the needs of urban youths and causes of nonattendance that were revealed in the enforcement of the law, created greater demands that a child welfare and prevention approach guide attendance service and that schools continue to adapt their programs and services to better meet the needs of all youths brought into the schools. Northern states, cities, and towns in the Progressive Era developed new practices and innovations in attendance and child labor administration, adjusting them through conversation with one another and providing models and pressure for school officials in rural areas, in the far West, and in the South to follow suit; by the first world war every state in the nation had a compulsory attendance law and child labor regulation.

The first world war provided a major stimulus for state leadership in education, new types of educational endeavors, and system-wide education reform. In the decade after the war, nearly every state significantly raised its educational standards, including extending attendance requirements for all youths

and state oversight over non-public instruction. States experimented with new ways to increase the attendance of youths and improve the operation of attendance services. While some created state level officers to monitor enforcement and most exercised some oversight through the state department of education, most states maintained a system of local enforcement of attendance and worked to aid localities in this service, rather than usurp it. Educational experts and professionals widely believed that local participation and some local control were essential components of school administration. States provided guidance, services, and fiscal support for activities—such as free transportation-- that would help eliminate some of the causes of non-attendance and encourage local communities to police their own attendance more vigilantly.

While compulsory attendance proponents portrayed their efforts as simply extending and improving the operation of laws, over time the laws began to take on a different character as they broadened and deepened state authority over youths. Early supporters of compulsion justified it in terms of disciplining parents who would neglect the education of their children entirely, however over time the compulsory attendance laws served as a mechanism through which a variety of regulations could be attached to children, from compulsory vaccination to English instruction to labor regulations. Furthermore, the state's overwhelming interest in educating youths, the raison d'etre of compulsory attendance, justified and even required a much more active role in state policing of local schools and setting of education standards that could be applied to nonpublic schools as well. Over time, compulsory attendance laws in tandem with restrictions on child labor, worked a profound shift in the boundaries between work and school in the lives of young and served to institutionalize the school as the only legitimate site of education.

Nineteenth Century Origins of Compulsory Attendance Laws

In the decades after the Civil War, the issue of compulsory education was fiercely debated throughout the United States in state legislatures, in educational circles, and in the popular press. While Massachusetts enacted the first state-wide compulsory attendance law in the nation in 1852, no other state

considered the issue until after the Civil War when Reconstruction era politics and concerns fueled a nation-wide discussion of compulsory education and prompted legislation in nearly a dozen states; by 1890 29 states would have compulsory attendance laws. The laws reflected and responded to the anxieties of the period about the nation's political future and social body that engaged widespread public discussion—the re-integration of the South, the expansion of the polity from immigration and freedman, the social and political stability of the nation, the expansion of wage labor and industrial unrest, and the rapid growth of visible social ills in the nation's largest cities. Nearly all voices in the debate over compulsory education proclaimed allegiance to the principle of universal education but fundamental disagreements rose over whether compulsion was necessary and legitimate to achieve that goal. The discussion of compulsion in the nineteenth century reveals much about the intent and limited goals behind early compulsory attendance legislation and offers a stark contrast between it and the requirements for compulsory education that would emerge in the twentieth century.

Massachusetts was the first state in the nation to enact a general, state-wide law making school attendance compulsory and its law developed in response to pressures to improve education, provide some education to factory children, and combat the evils of idleness and vagrancy. Massachusetts was a recognized leader in the common school movement, among the first to require localities to provide common schools from public funds, to establish state oversight of schools, and to set standards to improve the quality of those schools.[1] In the 1840s, Horace Mann, Secretary of the Massachusetts State Board of Education, drew attention to the ill effects of irregular attendance and absenteeism on the schools, a complaint that would be re-iterated by nearly every chief school officer that followed in Massachusetts and lodged by officials in other states. According to Mann's annual report in 1841, irregular attendance and absenteeism retarded the progress of the pupil, frustrated the efforts of the

[1] Carl F. Kaestle, *Pillars of the Republic: Common Schools and American Society 1780-1860*, ed. Eric Foner, *American Century Series* (New York: Hill and Wang, 1983); Carl F. Kaestle and Maris A. Vinovskis, *Education and Social Change in Nineteenth-Century Massachusetts* (Cambridge: Cambridge University Press, 1980); Stanley K. Schultz, *The Culture Factory: Boston Public Schools, 1789-1860* (New York: Oxford University Press, 1973); George H. Martin, *The Evolution of the Massachusetts Public School System* (New York: D. Appleton and Company, 1902).

teacher, disrupted other students, and created great waste in education. Mann made several suggestions on how to cure this evil which focused on making the schoolhouse and the instruction more attractive to students and laid responsibility largely with teachers: they should "inspir[e] a laudable pride in scholars" that would urge them toward constancy, lead by their own example of punctuality, devise ways to stimulate child's curiosity at beginning of school day, and maintain communication with parents.[2] In addition, Mann recommended that schools make regulations excluding tardy pupils or irregular attenders from instruction, a suggestion followed by many schools before compulsory attendance laws rendered this exclusion problematic.[3] Finally, Mann appealed to parents to send their children to school for consecutive periods when they were able and urged them to "tak[e] them wholly from school, the residue of the time" for "six weeks of constant attendance is better than three months scattered promiscuously over a four months' school."[4] Mann's solutions point to the nature of nineteenth century school attendance: it was voluntary and casual, a supplement to other forms of education offered at home, work, and church. While some pupils attended full term (anywhere from 3-6 months in Massachusetts and less in other states), many others attended school in alternating periods with work and would drop in and out at different periods of time. It was not the full-term, consecutive attendance to which we are accustomed today. While in his first years as secretary of the Board of Education Mann stressed that improvements in the school and raising awareness of parents would have the desired effects in curing irregular attendance, at the end of his decade long term he reluctantly acknowledged, although did not support, that some form of compulsion might be necessary to cure irregular attendance.[5]

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[2] *Fourth Annual Report of the Massachusetts Secretary of Education* (1840): 67-73.

[3] The regulations usually stipulated that if students were going to attend, they had to attend regularly and get approval for absences in the period they were attending. They aimed at securing reasonably regular and consecutive attendance during a period, although not necessarily the whole school term and courts generally upheld them as reasonable school regulations before compulsory attendance laws. See *Burdick v. Babcock; Chandler v. Babcock*, 1871 WL 293 (Iowa) (1871); *Ferriter v. Tyler*, 1876 WL 7490 (Vt) (1876); *King v. Jefferson City School Board*, 1880 WL 9741 (Mo) (1880).

[4] *Fourth Annual Report of the Massachusetts Secretary of Education* (1840): 74.

[5] Martin, *Evolution of Massachusetts Public School System;* Forest Chester Ensign, *Compulsory School Attendance and Child Labor: A Study of the Historical Development of Regulations Compelling Attendance and Limiting the Labor of Children in a Selected Group of States* (Iowa City, IO: The Athens Press, 1921), 46-56.

Much of the impetus for Massachusetts's compulsory attendance law did not come from school officials, however, but was rather from pressure outside of the school. Before the Civil War, Massachusetts and other industrial states considered legislation on the issues of education of factory children and truancy which served as important precedents for the first compulsory attendance law that emerged in Massachusetts. While education clauses were standard elements of apprenticeship agreements, the growth of wage labor in northeastern factories and the revelations of widespread child exploitation abroad, spurred newly enfranchised and organizing workers to lobby state assemblies for legislation on behalf of factory children. They were concerned that a segment of factory children were growing up without the benefits of any education at all. Massachusetts, Connecticut, New Hampshire, and Pennsylvania all passed employment-education bills requiring employers to educate children or mandating that all employed youths have attended three months schooling in the previous year.[6] While some manufacturers evinced willingness to comply with the laws and established some instruction within the factories, manufacturer opposition was strong and resulted in weak and non-existent enforcement mechanisms and attempts. In New York for example, a bill in 1849 passed in the House only to be blocked by manufacturing interests in the Senate that would have excluded children *under age 6* from working in factories and limited the employment of children under 12 *without their consent* to eight hours a day. In Massachusetts, legislative maneuvering by manufacturing interests resulted in the assertion of "knowingly" as a major loophole into the enforcement clause, meaning that employers could be fined only if it could be proven they "knowingly" violated the law.[7]

Another and ultimately more pressing concern, however, was the growth of "truants"-- a class of idle urban youths who were neither in work nor in school. Truancy laws preceded general statutes

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[6] Connecticut 1813, 1842, and 1856; Massachusetts 1836, 1842; New Hampshire 1846; Pennsylvania 1848; Rhode Island 1857. In several other states employment laws were passed before general attendance statutes mandating a certain period of instruction in schools for minors as a requirement for employment.

[7] Ensign, *Compulsory School Attendance and Child Labor,* 115-118*;* Edith Abbott, "Child Labor in America Before 1870" in Grace Abbott, *The Child and the State Volume I: Legal Status in the Family, Apprenticeship and Child Labor* (Chicago: University of Chicago Press, 1938), 270-276. Abbott contains texts of some of these early laws, 279-287.

requiring attendance at school in Massachusetts and in other states.[8] "Truancy" as defined by these laws was not simply a child who skipped school but rather an idle youth, largely outside parental control and supervision, who congregated on the streets and evaded the moral authority of both work and school. Truancy laws were like vagrancy statutes and they empowered "truant officers"—usually low-status policemen—to apprehend youths found on the street and compel them to work, school, or an institution. They gave towns the legal authority to make rules and regulations concerning these truants, including the authority to designate institutions for their incarceration and reformation. Massachusetts passed its truancy statute in 1850 and two years later passed a general attendance statute which could be deployed against these problematic youths.[9]

The Massachusetts compulsory attendance law of 1852, the first state-wide general attendance statute in the nation, grew out of these efforts to police truants and require a minimum amount of schooling for factory children. The Massachusetts statute was modeled on Prussian compulsory attendance law and its requirements fairly minimal: it mandated children 8-14 attend 12 weeks of public school attendance, 6 of the weeks to be consecutive, but made exemptions for children who attended private school, received home or other equivalent instruction, or had already attained the "common branches" of reading, writing, and arithmetic. It included exemptions for distance as well as mental or physical handicap and vested enforcement in the town treasurer. The law evoked little discussion by state superintendents at the time or for the next twenty years and no real effort at enforcement was ever made.[10] Other states did not generally acknowledge the law until after the Civil War and even then, when states

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[8] Massachusetts 1850, New York 1853, Connecticut 1865. In many other states truant laws preceded general compulsory attendance laws and were passed after the Civil War.

[9] Ensign, *Compulsory School Attendance and Child Labor,* 46-56; David Tyack and Michael Berkowitz, "The Man Nobody Liked: Toward a Social History of the Truant Officer, 1840-1940," *American Quarterly* 29, (Spring 1977): 31-54.

[10] In 1890, the United States Commissioner of Education wrote that the law was "not mentioned at all, or is barely referred to" for nearly twenty years and my own examination of state superintendent reports supports that conclusion. The chief state school official in Massachusetts did not raise the issue nor were any revisions made to the law until the 1870s when compulsory education became a national discussion. In fact, some towns excluded children from school for excessive absences rather than attempting to coerce them to attend more regularly. "Compulsory Attendance Laws in the United States," in *Report of the Commissioner of Education for the Year 1888-1889* Vol. 1: 472. Note, the report was not published until 1891 and references correspondence with and reports of state superintendents in 1890 as the basis of many of its conclusions, hence my designation of it as "in 1890."

began to look for models for compulsory education, they initially looked abroad rather than at Massachusetts.

No other state passed a general compulsory attendance law like Massachusetts until after the Civil War when the expansion of the polity and national fears about the consequences of ignorance prompted new discussions about the value of universal education and need for compulsion. The 1872 report of Birdsay Grant Northrop, Secretary of the Connecticut State Board of Education, reflects some of the major impetuses behind compulsory education laws in the 1870s and the intellectual debates which laid the groundwork for compulsion as legitimate and necessary response to the national threat of ignorance. In earlier state reports Northrop had expressed reservations about the idea of compulsory education, reflecting a widespread view that compulsion was an illegitimate interference of parental rights and an unwise state policy. Like many other common school supporters, he had argued that the solution to problem of non-attendance must be found in improving the school itself and making it more attractive to parents and children; moral suasion rather than legal compulsion was the proper method for combating irregular attendance. A trip to Europe and investigation of the operation of compulsory attendance laws there changed his mind and in his 1872 report, "Obligatory Education," he strongly endorsed a state-wide compulsory attendance law for Connecticut which was passed the following year.[11] Northrop's report was circulated and discussed in other states and cited by the United States Commissioner of Education in his reports, forming an important part of the emerging national debate over compulsory education. Northrop's conversion to the cause of compulsory education and his reasoning reflect some of the major influences and impetuses in the period.

Northrop grounded many of his arguments on behalf of "obligatory education" on the nation's interest in securing its own political and social stability by distributing the benefits of universal education and literacy to voters and eliminating the pernicious effects of ignorance. According to Northrop, "universal suffrage involves the necessity of universal education. Self-protection is the first law of the

[11] Birdsey Grant Northrop, "Obligatory Education" in *Annual Report of the Board of Education of the State of Connecticut* (1872): 29-48.

State as of individuals. To perpetuate ignorance would be suicidal to the State."[12] Like many before him, Northrop argued that republican government depended on the virtue and intelligence of the people, and he saw mass suffrage as necessitating a wide dissemination of the key elements of education-- basic literacy and morality. He argued that education would "fraternize all" and fuse the many "diverse in race and character" into one polity. His arguments reflected concerns that the recent expansion of the polity, through the extension of suffrage to freedmen, created very pressing problems which required state action on behalf of universal education. According to Northrop, "The extension of the franchise in our country demands a corresponding expansion of the school. To give the ballot to the ignorant would be suicidal to the nation. In the interest of public morality and order, the security of property and life, as well as the safety and perpetuity of our free institutions, every agency should be employed to secure universal education."[13] Others echoed these concerns that mass suffrage required mass education in a democratic republic. The *New York Times,* for example, argued that "a Republic like ours, resting on universal suffrage, is in the utmost danger from such a mass of ignorance at its foundation, and Henry Ward Beecher called compulsory education a "national necessity" in light of universal suffrage.[14] The 1875 cover of *Harper's Weekly* conveyed the idea that compulsory education was necessary to maintain the republic: a school teacher, adorned as lady liberty, stood at a blackboard instructing children of different races with the caption "Compulsory Education—The Safeguard of Free Institutions."[15]

Northrop's arguments reflected a general emphasis during Reconstruction, pushed into public debate by the Republican Party, on the promise of public schooling to safeguard the political stability of the nation by re-integrating the South and elevating the freedmen. As Ward McAfree has shown, public education became a central Republican party issue during Reconstruction and Republicans campaigned throughout the 1870s on a myriad of school issues, championing school expansion in the North and South

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[12] Ibid., 46.
[13] Northrop, "Obligatory Education," 47.
[14] "Compulsory Education" *New York Times* (hereafter cited as NYT) 2/28/1872: 4; Henry Ward Beecher speech quoted in "Compulsory Education" NYT 1/10/1873: 8.
[15] Drawing by J.H. Wales, *Harper's Weekly* 1/16/1875: cover. The teacher appears to be instructing one Native American student, one Chinese student, and two white ethnics that would likely have been identifiable to the audience. A Catholic priest lurks outside the window.

and supporting federal level efforts.[16] Republicans held up the common school as a primary solution to elevating the freedmen and reconstructing the South; education, they argued, would enable freedmen to exercise the franchise intelligently and would eliminate the caste society of the South that held poor whites in ignorance. Public schools were urgently needed to turn the mass of illiterates, both white and black, into voters and citizens. To this end, they made establishment of free public schools a precondition for the re-admittance of Southern states to the Union and Republican leaders in Reconstruction state governments delegated generous resources and state oversight to build up state systems of public schools.[17] In addition, the U.S. Army and Freedman's Bureau established schools for freedmen and northern philanthropists supported educational efforts for African-Americans. The Republican-dominated U.S. Congress also promoted education by establishing the United States Bureau of Education in 1867 to collect and disseminate educational statistics and considered a host of other (unsuccessful) bills throughout Reconstruction to provide federal aid to education, require the establishment of common schools in every state, and forbid public funds for sectarian schools by constitutional amendment. Ultimately these efforts floundered in large part because of traditional defenses of education as a state and local responsibility as well as the hostility of wealthy northern states to subsidizing southern education.[18]

Republican education efforts were not confined to the South, however. As McAfee has shown, Republicans exploited a resurgent nativism and anti-Catholicism in the North by making protection of the "traditional" common school from the Catholic threat a major electoral issue. Defense of the "traditional"

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[16] Ward M. McAfee, *Religion, Race, and Reconstruction: The Public School in the Politics of the 1870s* (Albany, NY: State University of New York Press, 1998).

[17] When Redeemers came back to power throughout the South, they usually moved immediately to scale back public schooling and particularly state oversight and standards through legislation or constitutional amendment. Republicans in Texas, for example, had passed a compulsory attendance law and made requirements for local taxation to support schools that the new Redeemer government repealed. Southern governments generally decentralized the schools and reduced expenditures but none dismantled the schools completely. In the Progressive Era, new forces of change and reform would propel major expansion of southern schools. McAfee, *Religion, Race, and Reconstruction;* Morton Keller, *Affairs of State: Public Life in Late Nineteenth Century America* (Cambridge, MA: Belknap Press, 1977); Terrel Spencer, "Legal Basis of the Public School System in Texas" (Ph.d. diss, University of Chicago, 1945); Edgar W. Knight, *Public Education in the South* (Boston: Ginn and Company, 1922).

[18] For a discussion of different attempts at federal aid, see Gordon Canfield Lee, *The Struggle for Federal Aid First Phase: A History of the Attempts to Obtain Federal Aid for the Common Schools, 1870-1890, Contributions to Education, No. 957* (New York: Bureau of Publications Teachers College, 1949); "Our Educational Outlook" *Scribner's Monthly* Vol. IV (May 1872): 97; McAfee, *Religion, Race, and Reconstruction.*

(i.e. Protestant) cultural values helped to draw support for the party as support for racial policies began to wane and waving the "bloody shirt" became a less sure electoral strategy.[19] Republican-dominated legislatures moved to expand schooling in myriad ways and purge "sectarian" (i.e. Catholic) influences: among other things, they abolished rate bills, funded public universities, passed statutes and constitutional amendments barring public funds to sectarian schools, and passed compulsory attendance laws.[20] As Stephen Provasnik has shown in a suggestive study of Illinois, compulsory attendance entered the legislative realm in Illinois in 1871 not because of grassroots demand or because of lobbying by educators as many scholars have assumed, but rather because of partisan politics and Republican electoral strategies during Reconstruction.[21] The ambivalence and even outright hostility of educators, school boards, and much of the public makes sense in this context and helps explain why the laws were deemed largely unenforceable upon their early passage. Compulsory attendance laws were part of this general Republican defense of the common school, a political response to public anxieties.

As this Republican strategy demonstrated, freedmen weren't the only group that threatened national stability and *political* stability was not the only issue at stake. Another major component of the argument for compulsory attendance rested on the danger posed by immigration and the dangerous effects of ignorance on the social body. The *New York Times* reflected a dominant understanding of the situation

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[19] McAfee, *Religion, Race, and Reconstruction*. McAfee emphasizes two issues as particular important during the 1870s: the defense of Bible reading in the schools (specifically the Protestant King James version) and the conflict over dividing the public school funds—Catholics in many cities tried to get a share of the public funds which prompted many laws and constitutional amendments denying any aid to sectarian schools in the 1870s and 1880s. See also Morton Keller, *Affairs of State;* Lloyd P. Jorgenson, *The State and the Non-Public School 1825-1925* (Columbia, MO: University of Missouri Press, 1987).

[20] Martin Jay Eisenberg, "Compulsory Attendance Legislation in America, 1870 to 1915" (Ph. D. diss., University of Pennsylvania, 1988) found that Republican controlled legislatures were a significant factor in initial passage of compulsory attendance laws. Stephen J. Provasnik, "Compulsory Schooling, From Idea to Institution: A Case Study of the Development of Compulsory Attendance in Illinois, 1857-1907" (Ph.D. dissertation, University of Chicago, 1999). shows, however, that Democrat support grew pretty quickly in the late 1870s (he traces a pivotal shift in Illinois with the 1877 Haymarket Square and other industrial violence). In the 1880s, there were still partisan differences over compulsory education (particularly around the issue of whether statutes should stipulate any authority over private schools which Democrats opposed) but both parties supported compulsory education laws.

[21] Provasnik, "Compulsory Schooling, From Idea to Institution." Provasnik offers one of the few close studies of the politics involved in the passage of a compulsory attendance law; most histories of compulsory attendance focus on the post-1890 expansion of the laws and enforcement and tend to assume that unitary purposes underlie both their initial passage and later enforcement. Provasnik offers provocative analysis that major shift in public opinion occurred near the end of the century and shows that the constituencies in favor of compulsion were not stable. Teachers, for example, opposed the laws throughout much of the 19th century but were crucial to their success in the twentieth century.

when it speculated on the reasons for the national movement for compulsory education in 1872. It reasoned that "our ancestors were only too eager to secure mental training for themselves, and opportunities for the education of their children" but more recently a change had occurred "owing to foreign immigration and to unequal distribution of wealth, large numbers of people have grown up without the rudiments even of common-school education." This ignorance was a danger in a republic for "from this dense ignorant multitude of human beings proceed most of the crimes of the community" and these ignorant masses "are the tools of unprincipled politicians" and "form the 'dangerous classes' of the City." The paper speculated that "the Tweeds and Halls and Sweeneys of this City would never have won their amazing power but for these sixty thousands persons in this City who never read or write."[22] The *New York Times* thus blamed both crime and corrupt machine politics on the "ignorant masses" of the city, which was comprised heavily of immigrants. Likewise Northrop blamed immigration as causing a declension in education and he asserted compulsion as the only way to meet the problem. He reasoned that "the great influx of this foreign element has so far changed the condition of society as to require new legislation to meet the new exigency." Northrop expressed a commonly held belief that most native parents fulfilled their parental responsibilities by sending their child to school, but that immigrants were neglecting this responsibility and hence "those who need education most and prize it least are fit subjects for coercion, when all persuasives are in vain." According to Northrop, this new "foreign element" was less moved by moral suasion and would need compulsion to make them fulfill their parental responsibilities, for "we have imported parents so imbruted as to compel their young children to work for their grog and to beg and steal in the streets when they should be in schools."[23] As Northrop, the *New York Times,* and many others noted, this educational neglect was creating troubling increases in vagrancy and crime in the nation's cities and constituted a social evil which compulsory education must combat.

This linkage between ignorance and crime, often blamed on immigrants, was a central feature of the national debate over compulsory education and was fanned by the 1870 Census figures on illiteracy

[22] "Compulsory Education," NYT 2/28/1872: 4.
[23] Northrop, "Obligatory Education" 34-35.

which alerted the nation to a crisis of ignorance within. Illiteracy statistics were widely used and misused in the debates over compulsion and studies explored the link between illiteracy and criminality, looking at comparative statistics from abroad and at high rates of illiteracy among prisoners.[24] In 1874, the *New York Times* cited US census as disclosing that "illiterate persons produce thirty times as many paupers, and commit ten times as many crimes" and that European censuses "indicated a similar relation between ignorance and pauperism and crime."[25] The State Superintendent of Wisconsin in 1873 reported to the legislature that "crime increases in the ratio of ignorance" and that the census had revealed that "the entirely uneducated man is *nine* times as likely to be a criminal as the average of men who have been taught, and more than *one hundred* times as likely to become a criminal as he who has been thoroughly educated."[26] So powerful was this link between illiteracy and other social ills, that when the 1880 census revealed that Rhode Island had the highest illiteracy rate of any northern state, the public outcry resulted in the passage the of state's first attendance law in 1883.[27] The irresistible conclusion for many observers was that schooling would decrease crime by decreasing illiteracy and extending a moral and restraining influence. As one commentator noted, education is "a restraining force, a moral power, over the appetites and passions of men."[28] The U.S. Commissioner of Education reasoned that basic education in the form of reading, writing, and arithmetic decreases crime because it "deals in the most direct manner with forms of civilization by giving the individual the means of appropriation to himself the wisdom of the human race."[29] So strong was this belief in the curative and moralizing power of education, that *Harper's*

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[24] Edward D. Mansfield, "The Relation Between Crime and Education" in *Report of the Commissioner of Education* (1872): 586-595; Edward D. Mansfield, "The Relation Between Education and Pauperism," in *Report of the Commissioner of Education* (1872): 596- 602; William T. Harris, "Compulsory Education in Relation to Crime and Social Morals" Delivered before the Twelfth Annual Conference of Charities and Correction (Washington D.C. 1885) in *Report of the Commissioner of Education* (1898-1899), Vol. 2: 1311-1318; "Compulsory Education in Pennsylvania," NYT 4/12/1871: 4; "How to Deal with Crime: The Dangerous Classes and Compulsory Education" NYT 5/31/1873: 8.
[25] "Compulsory Education" NYT 12/4/1874, p. 3.
[26] Samuel Fallows, "Special Report on Compulsory Education" in *Annual Report of the Superintendent of Public Instruction of the State of Wisconsin* (1873): 70.
[27] *Report of the Commissioner of Education* (1888-1889): 501.
[28] Mansfield, "The Relation between Crime and Education," 586-7.
[29] Harris, "Compulsory Education in Relation to Crime and Social Morals"1316.

Weekly proclaimed in 1873 that "a system of compulsory education, thoroughly enforced, would relieve our penitentiaries of nearly all their inmates, and leave our vast prisons almost deserted."[30]

Northrop and other commentators singled out foreign parents, and often Catholics specifically, for neglecting the education of their children and contributing to criminality and ignorance. In 1871, Harper's Weekly argued that ignorance was the cause of crime and violence and it placed the blame for ignorance squarely on the shoulders of the "Romish Church" who it charged had perpetuated ignorance and turbulence by ordering their followers out of the public school.[31] Tremendous hostility was generated by a perceived Catholic plot to undermine the free system of public schools, by opposing Bible-reading in the schools, directing Catholic parents to send their children to parochial schools, attempting to secure public moneys for their own schools, and opposing efforts to expand the public schools. A report by the New York City Council on Political Reform which urged a compulsory attendance law in the state, noted that the principle of compulsory education was widely supported by all save Catholics, a sect that was "large, enthusiastic, well drilled, and ably and powerfully led" by a "foreign ruler" who has "ordered the destruction of our free non-sectarian system of popular education."[32]

Compulsory education laws were further justified by Northrop and others on the grounds that European nations had tried them and found them to be successful in promoting universal education and national strength. Northrop argued that universal education had "fraternized the great German nation" and "improved her social life, ennobled her homes, promoted private virtue, comfort, and thrift, and secured general prosperity in peace" as well as "unequaled prestige and power in war."[33] Austria's defeat in the war taught it a valuable lesson and it "adopted the educational system of her conqueror" and compulsory attendance made prominent in the educational reorganization.[34] Other countries were cited as successfully providing obligatory education including France, Sweden, Norway, and Switzerland.

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[30] "Criminals and Paupers," *Harper's Weekly*, 3/29/1873: 243.
[31] *Harper's Weekly*, 1/23/1871: 1197.
[32] Dexter A. Hawkins, "Compulsory Education: Its Necessity—Magnitude of the School Interest" NYT 1/7/1874: 9.
[33] Northrop, "Obligatory Education," 30.
[34] Ibid., 40. He doesn't cite which war, but is presumably talking about the Austro-Prussian or Seven Weeks War in 1866 in which the Prussian Army defeated Austria and annexed some of its territory.

According to Northrop, even England, under its new school law of 1870, was permitting local school boards to enforce attendance and a clear public sentiment was growing to make it "national and universal, instead of permissive."[35] The lessons from abroad were clear for Northrop: first, universal education contributed to strength and success of the nation and second, mass universal education was not possible without some degree of obligation or compulsion.

Throughout the debates over compulsory education, the example of foreign nations loomed large in arguments for compulsory attendance laws. In 1871, *Harper's Weekly* argued that the experience of European states showed that "no system of education is any where successful without the compulsory provision" and Northern Germany, Scandinavia, Denmark, and Holland all offered proof of success.[36] Superintendent Akers of Iowa wrote to the Commissioner of Education in 1886-7 that "there must be a strong presumption in favor of an educational measure in which all the leading nations of the world are enlisted…."[37] While commentators often noted experiments with compulsory education in a variety of countries, two nations offered particularly salient lessons for Americans interested in the subject: Germany and England. American commentators marveled at German, and particularly Prussian, economic and military success and were quick to credit its compulsory education system. Commentators noted that compulsory education had "raised her from a bankrupt and conquered petty kingdom to the ruling empire of Europe, and made her the seat and home of intelligence, industry, and wealth" within only sixty years.[38] The *New York Times* called Prussia's compulsory education its "secret source of strength" and praised "the excellent discipline and immense, well-directed energy shown by the Prussian nation" which was "plainly the results of the universal and enforced education of the people" and the reason it had become the "leading Power of Europe."[39] Germany, and particularly Prussia, offered a model of the transformative power of universal education backed by compulsion. However, the monarchial nature of Prussia made commentators a little cautious to draw too many lessons from its

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[35] Ibid., 42.
[36] *Harpers Weekly*, 12/23/1871: 119.
[37] Superintendent Akers quoted in *Report of the Commissioner of Education*, (1886-7): 176.
[38] Dexter Hawkins, "Compulsory Education: Its Necessity—Magnitude of the School Interest." NYT 1/7/1874, p. 9.
[39] "Education for All" NYT 11/21/1870, p. 4; "Compulsory Education" NYT 2/28/1872, p. 4.

experience. England, on the other hand, offered a powerful model because of its shared political values and traditions. In 1870, England passed the Elementary School Act which was followed with great interest in the United States. In 1871 the *New York Times* reported that England had begun to adopt compulsion because it recognized that "in order to reap all advantages we are entitled to expect from our liberal provision for popular education, we must deny to any parent the liberty of allowing his children to grow up in ignorance."[40] Likewise, the U.S. Commissioner of Education devoted close attention in his 1872 annual report to England's compulsory education under the 1870 act. He concluded that compulsory education was a "crying need" for the nation in 1870 and had resulted already in an increase of 60% in school attendance.[41] The early evidence that compulsory education was having good results and that the English had embraced it, provided a powerful argument for many that similar moves were necessary in the United States.

Thus the general thrust of the Reconstruction era argument for compulsory attendance was that universal education was essential for the political stability of the American republic and social stability of its communities as a way to combat crime and pauperism. Other nations had come to realize that universal education was possible only with some compulsion. Compulsion was particularly needed in the United States because of the "ignorant masses of the Southern States, both black and white" and the recent flood of immigration that had brought selfish "imbruted" parents more eager to send their children to work than to school.[42] Republican-dominated legislatures, and even Democrat led ones in the 1880s, passed compulsory attendance laws as a symbolic political response to these perceived dangers.

While most people shared the same fears and assumptions of the danger posed by ignorance, many opposed compulsion as the solution. Many supporters of public education held to the principle of the voluntary common school and argued that over time it would address the problems; the solution was not compulsion but rather improving the school to attract better attendance. The President of the

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[40] NYT 2/26/1871, p. 4.
[41] *Report of the Commissioner of Education* (1872): clxiv.
[42] "Compulsory Education," NYT 2/28/1872: 4; "Compulsory Education in New York" *Harper's Weekly* 1/16/1875: 58; Northrop, "Obligatory Education," 35.

Maryland Board of Education expressed this view in 1872, arguing "We have not yet done what we could to make schools attractive, interesting and useful; and until that is done, we believe that it is not prudent to use force. We would rather draw then drive; we would rather allure than compel."[43] Furthermore, many opponents argued that compulsory attendance laws were not effective anyway. The Pennsylvania state superintendent argued in his 1871 report that compulsory attendance laws "have not proven very effective in the countries and states where they are now in force" despite what supporters claimed. The superintendent cited Massachusetts as an example and critiqued its law as wholly inoperative. He concluded that "the experience of Massachusetts teaches us that we in Pennsylvania must look in some other direction than in that of a compulsory law to find the remedy we are seeking for the evil of non attendance at school." The superintendent argued that "we must first do what remains to be done in the way of providing good school grounds, good school houses and good teachers for our children, and we have yet much to do in this direction…."[44]

While ceding that non-attendance and truancy were major problems, many leading educators continued to argue that the solution should focus on improving the school and combating the evil of vagrancy and truancy with special laws. Wisconsin superintendent Edward Searing for example, argued that 99% of parents care for their children out of affection, not legal compulsion, and that "for the one percent, who, through extreme poverty, through ignorance, or indifference, or viciousness, allow their children to grow up without any intellectual and moral training… the state may enact a *special* law" but it should not enact a general one which interferes with the liberty of all parents.[45] Likewise the Pennsylvania superintendent stressed that the voluntary system, if necessary, should be supplemented by special laws which specifically targeted the real concerns of compulsion: a truant law, a law preventing employment in mines and manufactures without some provision for their education, and a law legalizing establishment of a home for neglected children in every county. The superintendent reasoned that this

[43] M.A. Newell, *Annual Report* (1872) quoted in Samuel Fallows, "Special Report on Compulsory Education" in *Annual Report of the Superintendent of Public Instruction of the State of Wisconsin* (1873): 57.
[44] J.P. Wickersham, *Annual Report* (1871) quoted in Fallows, "Special Report on Compulsory Education," 67-8.
[45] Edward Searing, "Compulsory Education" in *Annual Report of the Superintendent of Public Instruction of the State of Wisconsin* (1874): lxi.

plan "does not disturb the sacredness of the family" or "break down parental authority, but merely step[s] in to take the parent's place where children either have no parents or none that cared for them."[46]

These arguments urging special laws rather than general ones and defending the traditional realm of parental authority, offered the most potent critique of compulsory attendance laws and they revealed the source of the most opposition to them. Opponents of compulsion charged that that the laws placed too great a limitation on parental authority and were not consistent with American traditions of liberty and democracy. Edward Searing, Wisconsin state superintendent of public instruction, expressed the views of many Americans when he argued in 1874 that compulsory schooling "is essentially opposed to the genius of our free institutions" and is "something essentially un-American." While he considered himself a proponent of free liberal education, "the mere consciousness of the existence of a law actually compelling the attendance of my children would be intolerable. … I want no statute laws telling me how or when to feed, to dress, or to educate my children. If I had been reared under such despotism I might not seriously object to such; but having been reared under free, democratic institutions, I can cheerfully endure no abridgement of the liberty I have enjoyed. I am, as every other true American ought to be, jealous of that liberty."[47] Searing characterized the laws as "despotism" and an "abridgement of liberty" because they interfered with commonly accepted notions of the authority of parents to raise their children according to their own values and beliefs. While courts and legislatures had asserted the state's right to protect orphaned, neglected, or dependent (poor) children, they generally gave wide and nearly unlimited authority to parents to govern their household under normal circumstances.[48] Searing and many others regarded general compulsory attendance laws, even if they were only to be enforced against deviant parents, to be an intolerable interference with their traditional parental rights and prerogatives.

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[46] Wickersham, *Annual Report* (1871) quoted in Fallows, "Special Report on Compulsory Education," 68.
[47] Searing, "Compulsory Education" lx- lxi.
[48] Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill, NC: University of North Carolina Press, 1985; Peter W. Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South* (Chapel Hill, NC: University of North Carolina Press, 1995). This issue will be discussed at greater length in the final section of this chapter.

Much of the defense of parental rights came from a belief that education was the duty of the family and primarily a moral enterprise and reflected a view at odds with the increasing articulation of education as a public responsibility. Oscar Cooper, superintendent of Texas schools argued before the NEA in 1890 that education was "a right inherent in the family and the parent" rather than a duty or privilege delegated by organized society to the parent. Education was important to free institutions and therefore the state should make ample provision for the education of children but it should not interfere with parental authority in doing so. "Let us remember that it is the duty of the Government to provide the schools, and the privilege of the citizen to avail himself of their blessings. Let us make these schools so good, so bright, so winning, that the children will love the schools, so that each child will be a missionary in the cause of education…."[49] Cooper reflected a challenge to the idea of education as foremost about public aims and responsibility and asserted a view of education as a religious, moral, and familial institution, an understanding increasingly at odds with majority sentiment as the Progressive Era dawned and the state asserted greater interest in the education and welfare of children.

The response of Northrop and other proponents of compulsory attendance to attacks that it was un-American and a violation of parental rights, reveals much about the goals and purposes of the early laws. First, Northrop and supporters of compulsory attendance argued that the laws aimed only at parents who were wholly neglecting the education of their children and therefore did not unduly restrict the liberty of most parents. They argued that the state had a well recognized authority to act as *parens patriae* (state as parent) for orphaned, neglected, and dependent (poor) youths and that it was simply utilizing this authority to ensure that children's mental and moral needs were not neglected. Northrop reasoned that when parents starve or neglect their children, the state steps in so why not when he neglects the child's mind? "The State should protect the helpless, especially these, its defenceless wards, who otherwise will be vicious as well as weak."[50] Supporters of compulsory attendance asserted that no parent had the right to deprive children of education. The Superintendent of Kentucky acknowledged that the

[49] Oscar H. Cooper, "Compulsory Laws and Their Enforcement," *National Educational Association Addresses and Proceedings* (1890): 191.
[50] Northrop, "Obligatory Education," 33.

law was only aimed at parents who did not fulfill their parental obligation. "If the parent wished to do right, and educate his child, the law is no terror to him. It only proposes to make the wrong disposed do right. It is a restraint only on the wrong intent."[51] The early laws seemed to justify this interpretation by making ample provisions for equivalent education, at home or in private schools, and courts interpreted them in this way as merely requiring that some education be given without attempting to interfere with what kind. The *New York Times* expressed a mainstream view in 1889 when it declared that "private schools and home instruction are not supplemental to the public school system. They are the primary methods of education and the public schools are supplementary to them and intended to provide for those who are not otherwise provided for."[52]

While proponents of compulsory attendance downplayed the effect it would have on parental authority, they also asserted a second argument that some abridgement of individual liberty on behalf of the public interest was a well-established and legitimate principle. According to Northop, "Now ignorance is as noxious as the most offensive nuisance, and more destructive than bodily contagions. Self-protection is a fundamental law of society."[53] Similarly, the Illinois superintendent of public instruction argued that laws to secure attendance are no more an invasion of private rights than other accepted governmental powers: to take property for public use, to draft men to war, to restrict alcohol consumption, and to regulate hygiene and nuisances. "They are all compulsory, sternly so; they all, in one sense, abridge the personal liberty of the individual citizen; but because the *public good demands them*, they are enforced." He compared ignorance to these other evils which required regulation. "And now when the country is menaced by an evil which no quarantine can avert; when a malady is fastening itself upon the body politic that is beyond the skill of boards of health; when a shadow is settling down upon the country the end whereof may be political death, and the people see it and know it, and there is

[51] Z.F. Smith, *Annual Report* (1871) quoted in Fallows, "Special Report on Compulsory Education," 55.
[52] "The Compulsory Education Bill" NYT 5/21/1889: 4; "Teachers Protest: Private School Instructors On the Compulsory Education Bill" NYT 5/19/1889: 9; Editorial Article 1 (no title) NYT 5/19/1889:4.
[53] Northrop, "Obligatory Education", 33.

but one remedy, why should it not be applied?"[54] According to many arguments, the state already exercised many well-established powers to regulate individuals on behalf of public health or safety, including nuisance regulations and quarantine laws, and hence regulating away ignorance was a legitimate public safety regulation. Furthermore, many argued that compulsory attendance grew out of the state's authority to compel taxation for school support: The Illinois superintendent asked, "If the state has the right to take by authority the citizen's property, has not the citizen the right to demand that the purpose for which this property is taken shall be carried out?"[55]

In addition, Northrop and other proponents of compulsion argued that general statutes were more appropriate than "special laws" and that "compulsion" was really American at heart. Connecticut had a truant-employment law in 1872 when Northrop wrote "Obligatory Education" which required factory children to acquire three months of schooling per year, but Northrop reported that there was much objection to it as "class legislation" which targeted working youths but left alone unemployed children. He argued for a general law, for "the current law has the look of class legislation. Make this law impartial and universal in its application, and you remove the only real objection as yet urged against it."[56] In addition, Northrop argued that compulsory education had a long tradition in America, urged first by Martin Luther and then established in the colonies of Connecticut and Massachusetts. Others would enlarge this argument and argue vehemently throughout the Progressive Era that compulsory attendance was actually Protestant, democratic, and American in origin, rather than monarchial as critics sometimes charged.[57]

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[54] Newton Bateman, *Biennial Report* (1871-2) quoted in Fallows, "A Special Report on Compulsory Education," 50-51.

[55] Richard Edwards, "Compulsory Education," in *Eighteenth Biennial Report of the Superintendent of Public Instruction of the State of Illinois* (1889-1890): lxxxiv.

[56] Northrop, "Obligatory Education" 34.

[57] Critics of compulsion had argued that it originated in Prussia (on which Massachusetts admitted to basing its 1852 law). Scholarship in the Progressive Era would seek to refute this claim, locating the origins of the idea of compulsory education in the Protestant Reformation and in the practice of Puritan Massachusetts and Connecticut (which for these purposes were depicted as "democratic"). For example, John William Perrin, *The History of Compulsory Education in New England* (Meadville, PA: Chautauqua-Century Press, 1896); William Shaw, "Compulsory Education in the United States: Beginnings 1642-1850" *Educational Review* 25 (1903): 240-249.

Finally, Northrop and supporters of compulsory attendance argued that the laws would operate primarily as moral suasion rather than as coercive. Northrop argued that administration should be "kind and paternal" and "the right to enforce will be used mainly as an argument to persuade—an authoritative appeal to their good sense and parental pride."[58] He found in Prussia, where the laws had been in operation for decades, that "the masses everywhere favor it" and "nobody seems to think of it coercion."[59] Many other proponents in the debate reflected this hope—that compulsory attendance laws would build up public sentiment over time. The Wisconsin superintendent cited an English investigation of compulsory education in the continent that reached a similar conclusion to Northrop: The laws achieved more than compulsion for "the duty of parents to attend to the education of their children has been thoroughly instilled into the minds of the people. In Prussia, people laugh at the idea of being *compelled* to send their children to school, because scarcely anyone thinks of disregarding what he know to be a primary duty."[60] Even if compulsion was not applied, proponents argued that the laws were worthwhile to build up public support.

In fact, the statues and early enforcement of laws reflect this concern with building up public sentiment and moral suasion. The statutes provided for local enforcement of laws, often at the initiation of taxpayers from the district, and enforcement operated essentially as local option-- communities determined whether and how much to enforce the law, with some cities using the authority to police truants while other communities were free to ignore the law. The Superintendent of Nebraska argued that the state's compulsory attendance law cannot be enforced as a prescriptive rule of action but its true function "is not to direct officially in the social affairs or education of the individual, but rather to cooperate with and encourage all to receive the benefits of schooling." He was not in favor of "rigid enforcement of the law" but "I am in favor of the law as far as it can be carried out by means of supervision, encouragement, and moral support." While some might criticize the law for not being

[58] Northrop, "Obligatory Education," 39.
[59] Ibid., 30; statements from an un-named Prussian source that Northrop quotes.
[60] Jno. F. Moss, unnamed Report of educational observations in Europe excerpted in Fallows, "Special Report on Compulsory Education," 38.

effective, the superintendent argued that the law was operating just as it should and in counties and cities in which there was local support the subject was discussed and attendance encouraged; "in Nebraska, the law has resulted in just what the local school authorities desired to make of it."[61] Other superintendents expressed similar satisfaction that the laws were operating as they should, some noting the laws were creating good public sentiment and increasing attendance at schools.

In 1891, the United States Commissioner of Education published a survey of the state laws and enforcement of compulsory attendance. Despite all of the discussion of the previous two decades, he found that the laws were "dead letters" and "wholly inoperative" in nearly every state.[62] The truth of the matter was, in most communities, the abstract idea of universal education and of compulsion was much more appealing than the reality of enforcing it upon one's neighbor. As superintendent Aaron Gove noted to the National Educational Association in 1890, "The president of the school board, the justice of the peace, or even the superintendent of schools, living in an American community, hesitates to call upon the might of the law to coerce a neighbor in other than criminal offenses. Hence the laws of this sort remain alive only in the letter."[63] Laws were ignored in most communities for a variety of reasons: neglect of school officials, hostility by teachers and principals, indifference or hostility of parents and local community, lack of clear enforcement mechanisms, defects in the laws themselves.[64]

The discussion of compulsory attendance, the passage of laws amid the partisan politics of Reconstruction and its aftermath, and the limited ways in which the laws were enforced point to the major concerns of the laws. The laws were envisioned to discipline the deviant and neglectful parent and target problematic truants on the street. They aimed less at requiring public school attendance than they did at

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[61] George B. Lane to William T. Harris (letter, 2/12/1890) quoted in "Compulsory Attendance Laws in the United States," in *Report of the Commissioner of Education* (1888-1889) Vol. 1: 523-524.
[62] "Compulsory Attendance Laws in the United States," 470-531.
[63] Aaron Gove, "Compulsory Attendance Laws and Their Enforcement: Discussion" *National Educational Association Addresses and Proceedings* (1890): 192.
[64] In Massachusetts, two investigations reached similar conclusions about these obstacles to the enforcement of the law: George A. Walton, "Report" in *Fiftieth Annual Report of the Board of Education of Massachusetts* (1885-1886): 165-185; "Report" in *Fifty-Ninth Annual Report of the Board of Education of Massachusetts* (1894-1895): 529-601. These problems were also acknowledged by the U.S. Commissioner's examination of the laws, "Compulsory Attendance Laws in the United States," 470-531. Later investigations of compulsory attendance laws would reach similar conclusions. For example, Ensign, *Compulsory School Attendance and Child Labor*.

making some form of education compulsory to prevent dangerous ignorance. However, the laws were also supposed to build up public sentiment over time and exert moral suasion on parents. Many superintendents that wrote to the Commissioner of Education in 1889 disagreed with his sentiment that the laws were a failure. Many cited increases in attendance after the laws were passed despite the lack of any attempt to actually prosecute parents or enforce the law coercively. The Illinois superintendent wrote that the new state law "has already accomplished very great good" and has brought "thousands" of children into the schools in Chicago alone.[65] Many agreed with the superintendent of Nebraska that the laws were operating exactly as they should.

This assessment of compulsory attendance came at the dawn of a new era, however. During the Progressive Era, states would revise their compulsory attendance laws and many communities would take new steps to enforce them, not only against the parent who wholly neglected his child's education, but increasingly to discipline all parents. The next section will explore the impetuses for compulsory attendance administration in the twentieth century, looking at new rationales and pressures for compulsory attendance which worked subtly over time to reshape their very purpose and to insist on education under the auspices of a school.

The Progressive Era Protection of the Child

While the U.S. Commissioner of Education reported in 1890 that the attendance law of nearly every state was inoperable, a 1914 investigation by his department concluded that much progress had been made in the design and administration of laws throughout the nation.[66] By 1920, every state in the Union had a state-wide compulsory attendance law and most had revised the laws to strengthen their enforcement and raise standards of attendance, extending the compulsory period and restricting legal excuses for non-attendance. Scholars interested in compulsory attendance laws have generally portrayed

[65] Superintendent Edwards to William T. Harris (letter 1/27/1890) quoted in "Compulsory Attendance Laws in the United States," 505.
[66] "Compulsory School Attendance," United States Bureau of Education *Bulletin* No. 2 (1914) (hereafter cited as USBE Bulletin).

them in two phases: a symbolic phase lasting until around 1890 in which laws were passed but not enforced and a bureaucratic stage when new techniques of administration led to the increasingly effective enforcement of the laws.[67] This formulation points to the important change that took place in the Progressive Era as large cities developed departments of attendance and most northern states made new commitments to enforcing the laws. However, it assumes to a certain extent that a unitary purpose underlie compulsory attendance from the nineteenth to the twentieth century and that real enforcement lie waiting only for city school systems to develop bureaucracies with the capability to administer the laws. This scholarship has looked exclusively at the largest urban school systems and at changes internal to the school. It ignores the extent to which new commitments originating both inside and outside of the school, and not merely new enforcement mechanisms, underlie the Progressive Era extension of compulsory school attendance and emanated from concrete political, social, and ideological changes in the period.

While the first compulsory attendance laws were passed largely for reasons having to do with policing truancy, meeting the evils of ignorance, and Reconstruction era politics, compulsory attendance laws were often revised and enforced in the Progressive Era for different sets of reasons. Compulsory education won many converts, attracting powerful support from the building coalition of child welfare activists in the Progressive Era which included philanthropies, middle class clubwomen, budding social work and social science professionals. In particular, compulsory education drew strength from the growing and politically savvy anti-child labor movement which united child welfare activists with labor organizations, civic reformers, and religious groups. Combined forces of compulsory education and child labor, were aided at crucial moments by state actors—state Labor Departments, factory inspectors, state superintendents, and State Boards of Education—and secured legal and administrative changes that

[67] David B. Tyack, "Ways of Seeing: An Essay on the History of Compulsory Schooling," *Harvard Educational Review* 46, (Aug. 1976): 355-389; Charles Burgess, "The Goddess, the School Book, and Compulsion," *Harvard Educational Review* 46, (May 1976): 199-216; Robert A. Everhart, "From Universalism to Usurpation: An Essay on the Antecedents to Compulsory School Attendance Legislation," *Review of Educational Research* 47, No. 3 (1977): 499-530; Michael S. Katz, "The Concepts of Compulsory Education and Compulsory Schooling: A Philosophical Inquiry" (Ph. D. diss., Stanford University, 1974); Michael S. Katz, *A History of Compulsory Education Laws* (Bloomington, IN: The Phi Delta Kappa Educational Foundation, 1976); Carl Koch Jr., "A Historical Review of Compulsory School Attendance Laws and Child Labor Laws" (Ed.D. diss, University of Wyoming, 1972); David E. Ramsey, "A Historical Review of the Origins, Developments and Trends in Compulsory Education in the United States 1642-1984" (Ed.D. diss., East Tennessee State, 1985).

simultaneously expelled children from the workplace and compelled them into the school, for advocates of each cause realized its fate rested with the other. It was not mere pragmatism, however, that drew the anti-child labor and compulsory education proponents together. Similar impulses and rationales animated both movements, in particular a new and crucial idea of the Progressive Era that underlie a host of "child-saving movements" ranging from school reform to juvenile justice to anti-cruelty laws : the idea that state action was legitimate and necessary to protect the welfare of children and provide opportunities for each child to develop to his or her fullest potential.

Child labor and compulsory attendance reform went hand in hand in most states. As statutory restrictions and new techniques of labor inspection and certification pushed children out of the workplace, schools continued to adapt their program to attract children to them and professional educators pulled the less willing by guiding statutory and enforcement changes to fine-tune the administration of the compulsory attendance laws. The states that pursued reform of child labor reform and compulsory attendance the earliest were those of the industrializing North and agitation usually centered in the largest urban centers-- New York, Chicago, Philadelphia, Boston. Statutory changes were enacted on state-wide basis and changes in enforcement were often initiated in larger cities and then adapted and spread to smaller cities and towns; once the majority of communities were enforcing the laws, the state used a combination of incentives and penalties to get the rest of the communities, usually rural, to comply. Statutory and administrative changes in compulsory attendance and child labor spread out from the industrial states throughout the North and finally the entire nation, reaching even into the South before the first world war.

The example of New York State offers a window into the dynamics of child labor and compulsory attendance agitation. New York is both a representative and exceptional case in some ways—its statutory and administrative changes were similar to other leading states and served as models to others while at the same time its problems were larger than everyone else's. During the Progressive Era, New York emerged as a national leader in both movements.

In 1874, New York enacted its first general compulsory school attendance laws amid the Reconstruction era debates about ignorance, crime, and literacy. In 1871, the Children's Aid Society of New York City, a charity organization founded in 1853 by minister Charles Loring Brace to aid homeless and pauper children, began to advocate an employment-education bill modeled on that of Massachusetts, Rhode Island, and Connecticut. The organization supported lodging houses for youths, industrial schools which taught classes to working youths, evening classes, and rural summer homes for urban children. The organization's experience with urban youths and its educational mission led its leaders to draft a compulsory education bill, modeled closely on other states,' as a means to bring some education to a class of children growing up dangerously ignorant. The education which the Children's Aid Society advocated was by no means only public, and it urged extension of voluntary and private educational enterprises. [68] While the bill went nowhere in the Assembly in 1871, the Children's Aid Society, under the leadership of Charles E. Whitehead, continued to lobby and was aided in 1874 by civic reformers in the New York Committee on Political Reform. In a report titled "Compulsory Education: Its Necessity—Magnitude of the School Interest," the organization urged passage of a compulsory education bill for the protection of society, pulling upon themes of the national discussion, including the link between pauperism, criminality and ignorance, and the need for society to protect itself through compulsory education.[69] Others were less concerned with factory children than with the growing class of vagrant and semi-vagrant youths found idle on the streets. The *New York Times*, for example, endorsed compulsory education as a means for combating this vicious class and after passage of the law, urged the school authorities to enforce the bill.[70] The bill proved to be a disappointment, however, for school trustees proved willing only to nominally

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[68] "Saving the Little Ones: Far-Reaching Work done by the Children's Aid Society" New York Times 11/24/1880: 2. By 1880, the NYT reported that Children's Aid Societies were established in Brooklyn, Philadelphia, Washington, Chicago, St. Louis, Cleveland, San Francisco, Toronto, and "other towns." C. Loring Brace, "A Tribute to C.E. Whitehead" NYT 3/25/1903: 8; C.E.B., "Factory Children," NYT 1/25/1871: 5; "Factory Children" NYT 4/9/1887: 4; C.G. Poore, "Story of A Crusade for the City Children" NYT 4/29/1928: X20.

[69] Dexter Hawkins, "Compulsory Education: Its Necessity—Magnitude of the School Interest" NYT 1/7/1874: 9; Dexter Hawkins, "Supplement to Old and New: Education Perpetuates a Free State; Decreases Pauperism" *Old and New* Vol. 9 (Feb. 1874): 1; "Enforced Education" NYT 3/3/1874: 4; "Report Upon Compulsory Education" *Harper's Weekly* 1/17/1874: 50-1.

[70] "Compulsory Education in New York" NYT 5/31/1874: 6; Dexter Hawkins, "Compulsory Education: The Law on the Subject What it Requires and how to do it" NYT 9/26/1874: 8; "The New Law—Compulsory Education" NYT 11/16/1874: 4; "Compulsory Education in New York" *Harper's Weekly* 12/5/1874: 991.

enforce the measure, in large part because of the expense that would have been involved; New York City lacked adequate accommodations for the hundreds of thousands of students that already sought voluntary entrance to the school and to seriously enforce the measure would necessitate a massive expansion of school facilities.[71] Forest Ensign, in studying the effect of this 1874 law, has argued that the law might have been enforceable had school trustees decided to enforce it, but "it apparently never commanded any degree of respect, either on the part of those whom it was intended to control or on the part of those whose duty it was to enforce its provisions." School attendance actually *declined* after passage of the law despite a sizable increase in the number of school-age children.[72]

In the 1880s, the issue of child labor gained increasing attention in New York and across the industrial states of the nation as American laborers and philanthropists began to draw parallels between American factories and English ones. The horrific conditions of England's factory system and its widespread exploitation of children was internationally notorious after the early nineteenth century revelations of investigating committees and commissions had publicized the situation. The English Parliament passed a series of laws regulating child labor, including prohibitions on labor for children under 10, maximum hours laws, and restrictions on night work and labor in dangerous trades.[73] By the 1880s, England had revised and tightened its protective labors and improved enforcement, and was

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[71] On enforcement, or lack thereof, see "Compulsory Education: How the Law of May 1874 Will Be Enforced" NYT 12/17/1874: 3; "The Compulsory Education Act" NYT 1/2/1875: 8; "Compulsory Education" NYT 3/23/1875: 2; "Compulsory Education" NYT 4/28/1875: 4; "Compulsory Education" NYT 4/28/1875: 4; "Enforced Education" NYT 1/23/1876:6; "Compulsory Education" NYT 3/6/1875; "The Board of Education" NYT 2/8/1877: 2; "Compulsory Education" NYT 11/1/1878: 4; "Reforms in School Attendance" NYT 4/3/1881:6. The Board of Education made immediate moves to take a census and appoint truant officers to police the streets for idle truants, which the NYT greeted optimistically however by 1875 it was critiquing the Board of Education for ignoring the law. The School Board never made an attempt to police working children or to locate non-attendants not found on the streets, and to the dismay of the New York Times, did not move against children engaged in "street trades." On lack of school accommodations as a problem that plagued NYC throughout much of the Progressive Era, see David B. Tyack, *The One Best System: A History of American Urban Education* (Cambridge, MA: Harvard University Press, 1974).; "Our Deficient School System" NYT 1/19/1895: 4. It was a problem for other states and cities as well. In New Jersey, for example, the state superintendent observed that if every child was compelled to attend school, the number of school houses would have to be doubled, "Educational Matters in New Jersey" NYT 2/21/1874: 4.

[72] Forest Chester Ensign, *Compulsory School Attendance and Child Labor: A Study of the Historical Development of Regulations Compelling Attendance and Limiting the Labor of Children in a Selected Group of States* (Iowa City, IO: The Athens Press, 1921), 121.

[73] For a discussion of English investigations and labor laws as well as excerpts from relevant documents, see Grace Abbott, *The Child and the State Volume I: Legal Status in the Family, Apprenticeship and Child Labor* (Chicago: University of Chicago Press, 1938).

recognized as having the most advanced child labor laws in the world. However, it was also seen as having the largest child labor problem. While American reformers did not argue the U.S. situation was as bad as in England, they warned that the evils of child labor were growing in the United States, and offered glimpses of "innocent suffering" of young child laborers.[74] They bolstered their claims with startling census figures—in 1870 the census collected the first statistics on employees by age and found 739,164 workers under age 15, or one out of every 17 employees. The 1880 census showed a troubling increase, enumerating 1,118,356 employees under age 15, or one out of every 16 workers in the U.S; this number represented 1/6 of the nation's children. Some industries employed particularly large numbers of children; the census showed 1 of every 6 employees in cotton mills was under age 15.[75] In Massachusetts in 1880, children ages 10-14 constituted a shocking 44% of the workforce.[76] Reformers were quick to point out that the census enumeration was likely extremely low because it relied on the voluntary reporting of employers who had reason to under-count and because many child laborers were not technically employees; often employed parents would receive extra wages for the work of their children in mills, in tenements, or sweatshops and the child would therefore not be enumerated as a legal employee.[77]

Labor organizations also decried child labor, arguing it drove down adult wages and contributed to breakdown of the family. Organized labor had supported child labor restrictions since the antebellum period and had succeeded in pressuring legislatures to pass symbolic laws in some states in the 1830s or 1840s but the laws generally lacked any mechanism or intent of enforcement.[78] In the post-Civil War period, many states created state labor bureaus to collect labor statistics as a nod to the growing power of

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[74] David Dudley Field, "The Child and the State" *Forum* (Apr. 1886): 106; Abbott, *The Child and the State*.
[75] "Child Labor in the United States" *American Economic Association Publications* (1890): 28, 30, 31.
[76] Helen Campbell, "Child Labor and Some of Its Results" *The Chautauquan; A Weekly Newsmagazine* Vol. 10 (Oct. 1889): 23.
[77] On census figures as significantly undercounting the problem, see "Child Labor in United States" *Am Econ Ass Pub* (1890): 32; Frederick Boyd Stevenson, "National Effort to Solve Child Labor Problem" NYT 11/27/1904: SM8; Alzina Parsons Stephens, "The Child, The Factory, and The State" in "Child Slavery in America" *Arena* Vol. 10 (June 1894): 117.
[78] Ensign, *Compulsory School Attendance and Child Labor;* Sam Beal Barton, "Factors and Forces in the Movement for the Abolition of Child Labor in the United States" (Ph.D., University of Texas, 1938); Walter I. Trattner, *Crusade for the Children: A History of the National Child Labor Committee and Child Labor Reform in America* (Chicago: Quadrangle Books, 1970).

organized labor as well as a response to the rising anxieties provoked by industrialization and the expansion of wage labor.[79] Massachusetts established the first state labor bureau in the nation in 1869 and by 1890 twenty two states had labor bureaus. They often began as relatively powerless offices but would grow in influence as they were delegated the enforcement of protective labor legislation in the twentieth century. In 1884, New York's new Commissioner of Labor Statistics attempted to conduct an authoritative investigation of child labor in 1884 but found that he was severely hampered in his efforts by a lack of authority to compel unwilling employers to answer questions and submit to visitations. His report therefore had to rely on the voluntary and uncorroborated reports of employers. Even with this significant limitation, he found child labor to be widespread and problematic in the state and offered three major conclusions: first, "the system of child-labor exists in the State in its worst form"; second, "the compulsory education law is a dead letter"; and third, "the condition of the laborers is of a low standard."[80] However, over time, the commissioner of labor statistics would preside over a growing state department of labor that would come to include an army of factory inspectors vested with legal authority to enter and inspect places of employment, dismiss illegal workers, and prosecute employers. These factory inspectors, faced with the difficult day-to-day administration of the child labor laws, would become ardent advocates of compulsory education and use their reports to offer damning evidence of continuing problems and offer recommendations for change.[81] As Grace Abbott noted in a history of

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[79] On the anxieties of industrialization and wage labor, including anxieties about labor unrest, male "wage slaves" and household dependents, see Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (New York: Cambridge University Press, 1998); David Montgomery, *Beyond Equality: Labor and the Radical Republicans, 1862-1872* (New York: Knopf, 1967); William Forbath, *Law and the Shaping of the American Labor Movement* (1991); Christopher Tomlins, *The State and the Unions: Labor Relations, Law, and the Organized Labor Movement in America 1880-1960* (Cambridge, NY: Cambridge University Press, 1993). On the establishment of labor bureaus, see "Child-Labor in the United States" *American Economic Association Publications*. Vol. 5 (Mar. 1890): 25; Ensign, *Compulsory School Attendance and Child Labor;* Barton, "Factors and Forces," Trattner, *Crusade for the Children.* All but five of the 21 bureaus were established in the 1880s. New York's bureau was established in 1883.

[80] New York, *Second Annual Report of the Bureau of Labor Statistics* 1884 quoted in "Child Labor in the United States" *Am Ec Ass Pub*, 27.

[81] Barton, "Forces and Factors," chapter 2; Ensign, *Compulsory School Attendance and Child Labor*. For excerpts of some of these factory reports, see Abbott, *The Child and the State*, 413-460; Edith Abbott and Sophonisba P. Breckinridge, *Truancy and Non-Attendance in the Chicago Schools: A Study of the Social Aspects of the Compulsory Education and Child Labor Legislation of Illinois* (Chicago, IL: University of Chicago Press, 1917), 402-430.

child labor, these factory inspector reports in state after state showed that "working children born in the United States were frequently unable to read and write" and "increased the demand for more schools, compulsory attendance laws, and child labor legislation."[82]

Amid this growing child labor concern among humanitarian and labor reformers, Elbridge Gerry of the New York Society for the Prevention of Cruelty for Children drafted a child labor bill in 1884 with the aid of the New York State Medical Society and the Workmen's Assembly, and incorporating some provisions of earlier Children's Aid Society proposals. Massachusetts and Connecticut had passed post-Civil War child labor bills and other states were considering the issue, but the political power of manufacturing interests in the New York State assembly was strong and they succeeded in blocking the bill.[83] However, the tactics of manufactures helped to arouse and unify groups in favor of protective labor legislation and the bill was re-introduced and successfully passed in 1886, backed by the governor and an aroused public opinion. The new labor bill placed limitations on the hours of women and children, forbade the employment of any child under 13 in manufacturing establishments, required age certificates for all children under 16, fixed penalties for employers who "knowingly" violated the law, and empowered the governor to appoint one chief and one assistant factory inspector with the legal authority to visit and inspect establishments. The law had clear weaknesses from the standpoint of enforcement: it provided only two factory inspectors for the whole state, provided an easy loophole for manufacturers to evade penalties by claiming they did not "knowingly" employ underage children, and did not provide clear standards for certifying and authenticating age. However, it introduced two mechanisms that over time would become the foundation of effective child labor regulation in New York and around the nation: factory inspection and a system of working papers.

In the next two decades, child labor reformers and factory inspectors would continue to advocate and force modifications in the statute in order to extend its reach and tighten its grasp. In 1888, the second annual report of the Factory Inspectors recommended changes in the law that would be enacted in

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[82] Abbott, *The Child and the State*, 263.
[83] Ensign, *Compulsory School Attendance and Child Labor*, 115-169; "Factory Children" NYT 4/9/1887: 4.

the next decade: raising the minimum employment age, extending compulsory education period, and prohibiting employment of children under 16 who could not read and write English.[84] Factory inspection was crucial to enforce the law and inspectors had to be vested with legal authority to enter and inspect places of employment, discharge illegal employees, and prosecute violators. However, factory inspection was meaningless if inspectors had no means of proving that children they found were under the legal age limit or in violation of its compulsory education provisions; statutes therefore required that employers keep certificates on file that offered proof of age and schooling for all employees under 16. What constituted adequate proof would be an issue of legislation in states for decades. As the system of working papers was improved, certification became an indirect means of enforcing compulsory education; in the twentieth century, laws not only specified the minimum age for receiving working papers or required a few weeks of school attendance but increasingly required full term attendance until age 14, completion of particular grades, minimum educational requirements like literacy, and evidence of physical health. In the twentieth century, the path to work for most children would wind through the school.

By the end of the 1880s and throughout the 1890s, in New York and nation-wide, the child labor movement broadened as new groups, crucial to the ultimate success of the cause, entered the fight to restrict child labor and compel school attendance: "progressive" civic reformers and child welfare activists. In the former group were organizations like the City Club, Good Government Club, Public Education Association, and various forces of "good government" who combated machine politics and supported administrative reform city government and in education.[85] In the latter, and ultimately crucial

[84] "The Factory Inspectors: New Legislation Proposed in their Annual Report" NYT 1/19/1888: 3. In 1889 the minimum age for employment in manufacturing establishments was raised to 14 and no child under 16 was permitted to work unless they could read and write simple English; in 1892 law extended from just manufacturing to apply to child laborers in all mills, factories, and workshops. Ensign, *Compulsory School Attendance and Child Labor*, 125-6.

[85] Sol Cohen, *Progressives and Urban School Reform: The Public Education Association of New York City 1895-1954* (New York: Bureau of Publications Teachers College, Columbia University, 1964), chapter 1; Diane Ravitch, *The Great School Wars: A History of the New York City Public Schools*, 2nd ed. (Baltimore, MD: Johns Hopkins University Press, 2000). In education, they sought to purge machine politics and patronage from school administration and centralize the New York City School Board. Over time, the Public Education Association in

group was an assortment of reformers including social settlement workers, consumers leagues, social scientists including child psychologists, religious and humanitarian reformers, and organized clubwomen of different stripes.[86] In his 1921 study of the history of child labor and compulsory education, Forest Ensign credited the entrance of organized women to the cause of child welfare in the 1890s as the key element which transformed child labor into an effective political movement, and subsequent scholars of child labor have agreed that the entrance of child welfare workers, predominantly middle class clubwomen, transformed the struggle.[87] Commentators at the time also recognized the importance of women's groups to child labor laws and other child protection reforms, Judge Ben Lindsey in Colorado, noted juvenile justice expert, crediting a newly enfranchised "voting constituency of mothers" as the reason for the state's advanced laws regarding children including its juvenile court law, child labor law, compulsory education law, anti-cruelty laws, and laws enforcing paternal support.[88] In 1895, the New York Times noted the prominent role of women in the "wave of moral enthusiasm which has swept over this city and aroused many sleeping consciences to a realization of the wretchedness of some of its institutions" that had resulted in major changes in public management and services. It suggested that women direct their attention to the schools where much work needed to be done: "The women of New-

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particular would become a major force for school reform and "progressive education" lobbying for the expansion of school facilities and curriculum, increases in the services of the school, etc.

[86] A look at the organizations that supported a child labor bill in 1909 regulating children in the dangerous trades gives some indication of the types of groups involved and the predominance of women's clubs: State Workingmen's League; Consumer's Leagues of NYC, Buffalo, Rochester, and Syracuse; New York State Child Labor Committee; Association of Neighborhood Workers; Public Education Association; Council of Jewish Women; Girls' Friendly Society; Central Federated Union; Alliance Employment Bureau; Charity Organization Society; Settlement Federation and Mother's Club of Buffalo; Women's Industrial Union; Mayor's Committee on Child Labor (Rochester); and Council of Women's Clubs of Syracuse. "Child Labor Bill Likely to Be Passed" NYT 4/25/1909: 6.

[87] Ensign, *Compulsory School Attendance and Child Labor;* Barton, "Forces and Factors"; Abbott, *Child and the State;* Trattner, *Crusade for the Children* also credit middle class women's organizations as bringing about a decisive shift in the child labor movement. Considering the political power and effective organization of women, as well as the power of "maternalist" ideology, it is not surprising that they would wield particular influence in a crusade to protect children from labor exploitation. A growing body of scholarship has explored both this ideology and the political mobilization of clubwomen, see Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, MA: Belknap Press, 1992); Linda Gordon, *Women, the State, and Welfare* (Madison, WI: University of Wisconsin Press, 1990); Linda Gordon, *Pitied but Not Entitled: Single Mothers and the History of Welfare* (Cambridge, MA: Harvard University Press, 1994); Gwendolyn Mink, *Wages of Motherhood: Inequality in the Welfare State, 1917-1942* (Ithaca, NY: Cornell University Press, 1995); Kriste Lindenmeyer, *"A Right to Childhood": The U.S. Children's Bureau and Child Welfare, 1912-46* (Urbana, IL: University of Illinois Press, 1997).

[88] "Influence of Mother's Vote" NYT 8/10/1904: 6.

York, those who have children in the public schools and these who have not, should unite to insist that the city's children have their rights and be schooled in a manner befitting the metropolis of America, and the ethics of the nineteenth century."[89]

At the insistence of social settlement workers and other social reformers, the New York legislature appointed a committee in 1895, headed by P.W. Reinhard Jr. to investigate the employment of women and children. The Reinhard committee conducted investigations and held public hearings, examining over 250 witnesses, including factory inspectors, health officials, judges, social settlement workers, philanthropists, laborers, and others interested in the problem of child labor; among the witnesses were nationally known child labor activists Elbridge Gerry, Jacob Riis, and Samuel Gompers.[90] The Committee's final report characterized child labor in New York City as "one of the most extensive evils now existing in the city of New York, and an evil which is a constant and grave menace to the welfare of its people" and testified to the inadequacies of the child labor and compulsory education laws, reporting that "These children were undersized, poorly clad, and dolefully ignorant, unacquainted with the simplest rudiments of a common school education, having no knowledge of the simplest figures and unable in many cases to write their own names in the native or any other language."[91] The investigation revealed among other things, the need for improvements and expansion in the factory inspection force and fundamental flaws with the system of work certification. It recommended changes in the requirements for and issuance of working papers that were enacted into law in 1896. Under the old system, evidence of age and ability to read and write English was obtained by parental oath before a notary but it was found that much fraud had occurred through unscrupulous parents and notaries. In 1896 the authority to issue working papers was transferred to boards of health who possessed all the vital statistics that were available. As it turned out, these statistics were very incomplete and boards of health still had to rely

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[89] "The Vital School Topic Its Interest for Women Should Be of First Importance" NYT 1/20/1895: 18.
[90] "Children in the Sweat Shops: Need of More Inspectors Shown to Assemblymen" NYT 4/21/1895: 17; "Working Boys and Girls: Instructive Session of the Reinhard Assembly Committee" NYT 12/8/1895: 17; "Reinhard Committee Ready to Report" NYT 1/13/1896: 9.
[91] "Report and Testimony Taken Before the Special Committee of the Assembly Appointed to Investigate the Condition of Female Labor in the City of New York" in Grace Abbott, *The Child and the State*, 424-8; "Factories of New York" NYT 1/18/1897: 3

usually on parental affidavit or physician's statement of age in the absence of documentary proof; birth certification was not widespread. In 1903 when a new law sought to target this problem, it was estimated that more than half of all parental affidavits were false.[92] A major focus of child labor advocates in the early twentieth century would be to develop systems of universal birth registration so that evidence of age could be established more precisely and the parental affidavit, a source of much abuse and law evasion, could be eliminated.[93]

With the entrance of "child saving" progressive reformers, the critique of child labor expanded. Discussions would continue to hit old notes about the physical and moral dangers factory labor posed and tug at the conscience of the public with gruesome stories of stunted and disfigured children working in dangerous and miserable conditions.[94] Likewise, labor-centered critiques that children's employment drove down adult wages and de-stabilized the family would continue and grow, some arguing that child labor inverted the household by allowing parents to be idle and live off the exploitative labor of their children.[95] These traditional arguments increasingly tied the welfare of the children to the welfare and progress of the nation itself. As Alice Woodbridge, secretary of the New York Working Women's Society argued, "Upon the weak shoulders of our child laborers depends to a great extent the welfare of

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[92] "Child Labor Decreasing" NYT 2/15/1904: 14; "Child Labor Law Evaded: Age Stated in Affidavits of Parents Unlike That Given at School" NYT 10/6/1901: 1. Parental affidavit was accepted to verify age under most child labor laws but experience invariably taught states to look for other methods when possible.

[93] The U.S. Children's Bureau took a leading role in birth registration, conducting birth registration drives with the aid of the General Federation of Women's Clubs, Mothers Congress, U.S. Census Bureau, Daughters of American Revolution, Association of Collegiate Alumnae, and other women's clubs. James A. Tobey, *The Children's Bureau: Its History, Activities, and Organization*, *Institute for Government Research Service Monographs of the United States Government No. 21* (Baltimore, MD: Johns Hopkins Press, 1925); Kriste Lindenmeyer, *"A Right to Childhood": The U.S. Children's Bureau and Child Welfare, 1912-46* (Urbana, IL: University of Illinois Press, 1997); Nancy Pottisman Weiss, "Save the Children: A History of the Children's Bureau 1903-1918" (Phd diss, University of California, 1974); "Many States Keep Vital Statistics: Prior to 1900 Record of Deaths Not Compiled By Census Bureau. Births Since 1915 Only" NYT 7/17/1916: 9. Factory inspectors reports were full of descriptions of the difficulties of determining age and the prevalence of false affidavits. For excerpts of factory reports, see Abbott, *The Child and the State*, 413-460; Abbott and Breckenridge, *Truancy and Non-Attendance*, 402-430.

[94] A great example is the collection of essays that make up "Child Slavery in America" *Arena* Vol. 10 (June 1894): 117. Also Elinor H. Stoy, "Child-Labor" *The Arena* Vol. 36 (Dec 1906): 584-91.

[95] Jane Addams, "Child Labor as a Factory in the Increase of Pauperism" NYT 10/4/1903: 26; Alice L. Woodbridge, "Child Labor an Obstacle to Industrial Progress" in "Child Slavery in America" *Arena* Vol. 10 (June 1894); A.A. Chevaillier, "White Child Slavery—A Symposium" Vol. 1 (Apr 1890): 598-601. This critique of parents living off of children's wages was often heard in connection with southern mill labor and was so widespread the Georgia legislature passed a law in 1903 that made it illegal for parents to be idle and life off the wages of their children. "Hits at Home: Georgia Legislature Provides Punishment for Idle Parents Who Live on Earnings of children" NYT 7/31/1903: 1.

the nation…."[96] Likewise in a poem titled "Child Labor," Larana Sheldon linked national strength and the physical welfare of children: "Wherever little children toil for bread/ Through force, parental wantonness or need/ The Country's veins and arteries must bleed/ And its vitality snap, thread by thread."[97] Charles Spahr warned that "We cannot afford for the temporary gain from the labor of children to impair the foundation of our national superiority." Since the supreme end of the state is "the production of manhood, child labor that saps physical vigor and dwarfs mental growth must be regarded as a criminal waste of the nation's best resources."[98] Similarly, an essay titled "The National Disgrace—Child Labor" argued that children are "the blood of the nation, and unless this drain is stopped, and the destruction of the rising generation put an end to, we shall ruin ourselves as a people, and lay the foundations for a great submerged and degenerate population."[99] These and similar statements about national progress as tied to the welfare of individuals littered arguments for child labor restrictions.

Yet reformers would also begin to ground arguments against child labor in newer conceptions of the inherent rights of children and the responsibility of the state to protect their welfare. These arguments can be seen in an 1890 publication of the American Economic Association, titled "Social Aspects of Child-Labor." The essay argued that one of the greatest evils of child labor was "the great injustice done to the children themselves," not only in terms of the physical suffering but the "utter absence of all those childish pleasures, which should be connected with the childhood of everyone." The author argued that "the children have rights, which the State is bound to respect: their right is to play and make merry, to be at school, to be players, not workers." Furthermore, according to the author, "Every child has a moral right to maintenance and education, and to be allowed an opportunity to obtain a proper physical constitution, and a religious, moral, and intellectual development to enable it to prepare itself for its own future wants and happiness." While the author recognized that in reality all men are not born free and

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[96] Alice L. Woodbridge, "Child Labor an Obstacle to Industrial Progress" in "Child Slavery in America" *Arena* Vol. 10 (June 1894).
[97] Larana Sheldon, "Child Labor" NYT 7/8/1913: 6.
[98] Charles B. Spahr, "Child Labor in England and the United States" *The Chautauquan: A Weekly Newsmagazine* 30 (Oct. 1899): 43.
[99] Austin Lewis, "The National Disgrace—Child Labor" *Overland Monthly and Out West Magazine* Vol. XLVIII (Sept. 1906): 9.

equal, it argued that it should be the goal of the state to achieve this ideal as close as possible and provide social opportunity and "as far as possible let all start equal in the race." Ultimately, it argued, "It is this lack of opportunity which is the greatest wrong to the children" for child labor causes some children to "start heavily handicapped."[100] This argument echoed similar views increasingly heard among professional educators that in a democracy, every child should have an equal opportunity to receive an education.

This concern with children's rights and opportunities pervaded not only discussions of child labor but also compulsory education and linked the two pursuits as two sides of the same coin. Charlotte Perkins Gilman argued that "every child has a personal right to his full growth, that he may become a perfect citizen."[101] Similarly, Charles Spahr argued that children in factories "have been robbed of their childhood and robbed of their educational opportunities that should be the birthright of every American boy and girl."[102] For Gilman, Spahr and many other reformers, part of the problem of child labor was that it denied children the opportunities for personal growth and education that should be part of childhood. Educator T.P. Twiggs, argued this point forcefully before the National Education Association that "the absolute and inherent heritage of every American child is to be a child and enjoy the privileges of childhood."[103] These and other child labor advocates urged that state restriction of child labor and expansion of educational opportunities was in the interests of democracy and should be among the pre-eminent goals of the state. Helen Campbell expressed the sentiment of many activities when she explained that the goal of state was "to give the largest opportunity to the individual, and develop a citizen whose life shall be part of its own progress and value."[104] Compulsory education advocates, who had often had to counter charges that the laws were "un-American" and un-democratic, countered in the

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[100] "Social Aspects of Child-Labor" *American Economic Association Publications* Vol. 5 (Mar. 1890): 59-70.
[101] Charlotte Perkins Gilman, "Child Labor in the United States—Discussion" *American Economic Association Publications* Vol. 8 (Feb. 1907): 260, 261
[102] Charles B. Spahr, "Child Labor in England and the United States" *The Chautauquan: A Weekly Newsmagazine* 30 (Oct. 1899): 43.
[103] T.P. Twiggs, "The Federal Child-Labor Bill," *National Education Association Addresses and Proceedings* (1917): 831.
[104] Helen Campbell, "White Child Slavery: A Symposium" *The Arena* Vol. 1 (Apr 1890): 591.

Progressive Era that the laws were fundamentally democratic because they expanded opportunities for children. In 1890 the Illinois state superintendent argued that "the compulsion that dictates the belief of a man is a trammel upon his mental freedom; but the compulsion that prevents one human being from keeping another human being in ignorance, really promotes an enlargement of individual liberty."[105] The United States Bureau of Education argued more boldly in 1914 that "compulsory education is in its spirit and purpose both modern and democratic, in that it is destructive of all artificial class distinctions and aims to give all as nearly an even start in life as possible."[106] Proponents of the laws sought to bolster their claims with new examinations of the "origins" of compulsory education in Protestantism and democracy, locating it in the teachings of Martin Luther and the Puritan colonies of New England.[107] Supporters of compulsory attendance articulated an different conception of the true meaning of "democracy" than their opponents, and one which would come to define twentieth century discussions—democracy not as local self-government or the liberty of parental autonomy but rather democracy as the enlargement of individual opportunity.

This new legitimacy given to state protection of children and new recognition of children's individuality and rights was a new and powerful change, and can be seen in changes in law, in emerging new ideas of child psychology and child development, in a range of "child saving" reforms which

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[105] Richard Edwards, "Compulsory Education" in *Eighteenth Biennial Report of the Superintendent of Public Instruction of the State of Illinois* (1889-1890): lxxxv.

[106] William Hand, "Need of Compulsory Education in the South," in "Compulsory Attendance" USBE Bulletin No. 2 (1914): 105

[107] Critics of compulsion had argued that it originated in Prussia (on which Massachusetts admitted to basing its 1852 law). A host of scholarship in the Progressive Era sought to refute this claim, locating the origins of the idea of compulsory education in the Protestant Reformation and in the practice of Puritan Massachusetts and Connecticut (which for these purposes were depicted as "democratic"). John William Perrin, *The History of Compulsory Education in New England* (Meadville, PA: Chautauqua-Century Press, 1896); John Perrin, "Beginnings in Compulsory Education" *Educational Review* 25 (1903): 240-249; William Shaw, "Compulsory Education in the United States: Beginnings 1642-1850" *Educational Review* 3 (May 1892): 444-449; Marcus W. Jernegan, "Compulsory Education in the American Colonies" *School Review* 26 (Dec. 1918): 731-749; 27 (Jan. 1919): 24-43. Textbooks on the history of American education incorporated the idea, Ellwood P. Cubberley, *Public Education in the United States: A Study and Interpretation of American Educational History*, 2nd ed. (Cambridge, MA: Riverside Press, 1934). and it has continued to influence scholarship on compulsory education since so even more recent dissertations nod in sometimes problematic ways to the beginnings of compulsory education in the colonies and seek to explain why the idea lie dormant until Massachusetts "revived it" in 1852, see Michael S. Katz, "The Concepts of Compulsory Education and Compulsory Schooling: A Philosophical Inquiry" (Ph. D. diss., Stanford University, 1974); Carl Koch Jr., "A Historical Review of Compulsory School Attendance Laws and Child Labor Laws" (Ed.D. diss, University of Wyoming, 1972); David E. Ramsey, "A Historical Review of the Origins, Developments and Trends in Compulsory Education in the United States 1642-1984" (Ed.D. diss., East Tennessee State, 1985).

included juvenile justice, new laws on dependency and custody, anti-cruelty statutes concerning children, school expansion and reform, among others.[108] Broadly, Progressive reformers sought to protect a realm of childhood, even from their own parents if need be, and they asserted a greater state interest in doing so, for they argued that the nation prospered—socially, politically, and economically-- only when its children prospered intellectually and physically and were able to develop to their full potential. Grace Abbott, recognized in 1938 that a wholly new view about children and the state had taken hold after 1900. According to her, "a new conception of the obligation of the state to provide general protection for children" found expression in the US and other nations and leaders in child welfare movement began to see the problem as national and one of equality of opportunity for all children.[109] George H. Chatfield of the New York Bureau of Attendance expressed this idea in a speech before the National Education Association in 1917, in which he argued the nation's survival was predicated on the "preservation of the right to opportunity for each individual within the measure of his abilities" and compulsory education had as its goal, "the preservation of the right to opportunity, and of the maintenance and raising up of standards of living, thru the training of all our human resources to their greats capacity in greater detail."[110] Embedded within this view was a much broader conception of the state's responsibilities and its legitimate functions generally and also a specifically enhanced role in relation to children. The state had asserted its right to act as *parens patriae* (state as parent) for neglected, abandoned, or dependent children since colonial times but had deferred to common law doctrines of parental dominion in most families, but in the twentieth century it moved to assert itself as protector of *all* children.[111]

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[108] Kriste Lindenmeyer, *"A Right to Childhood"*; Anthony M. Platt, *The Child Savers: The Invention of Delinquency* (Chicago: University of Chicago Press, 1969); Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (New York: Cambridge University Press, 2003); Lawrence A. Cremin, *The Transformation of the School: Progressivism in American Education, 1876-1957* (New York: Alfred A. Knopf, 1961); Grossberg, *Governing the Hearth;* Bardaglio, *Reconstructing the Household*; Florence Kelley, "On Some Changes in the Legal Status of the Child Since Blackstone" *The International Review* (Aug. 1882): 83-98; Trattner, *Crusade for the Children.*

[109] Abbott, *The Child and the State,* 265.

[110] George H. Chatfield, "What Provisions Should a Compulsory Education Law Include" *National Education Association Addresses and Proceedings (*1917): 827.

[111] In a provocative article, John Boli-Bennett and John W. Meyer argue that this movement for "state-managed childhood" was international in scope by looking at national constitutions between 1870 and 1970 and rose from the state's responsibility to manage social progress and socialization. John Boli-Bennett and John W. Meyer, "The

Child labor activists became ardent supporters of compulsory education as a solution to the problems of child labor, and schools, rather than work, as the appropriate domain for children. On the one hand, expelling children from work left a very pragmatic problem, particularly in cities: if children are not engaged in work, how do you prevent the children from becoming idle? Many factory inspectors noted that they were expelling children from factories only to set them loose upon the streets. The New Jersey State labor inspector reported in 1883 that "about 3,000 children will be thrown out of work by the new law, and as there is no effective compulsory education law... half of these children will be thrown on the streets, instead of being sent to school."[112] Other factory inspectors feared enforcing the child labor law until education laws were strengthened, lest a bigger problem be created with vagrancy and idleness than existed with child labor. Furthermore, factory inspectors found that their jobs were made more difficult without enforcement of the education provisions. Chief factory inspector Florence Kelley noted that the labor law was nullified "if the child is not kept in school, but drifts from one workshop into another, or from the factories into the streets"; the solution, she concluded must be to make prosecution of parents a mandatory duty of school boards for employers are being held responsible but not parents. [113] According to Kelley, "until there are schools for all the children, and a compulsory education law that is enforced, the factory inspectors cannot keep all the children under 14 years out of factories and workshops."[114] At the same time, schooling was not simply a pragmatic solution. As work, once deemed an essential moral and educative agency, was rendered increasingly problematic by industrialization, child labor reformers found in schools a substitute—a new agency for moral and personal development.[115] As will be explored later, this invested schools with greater responsibilities and contributed to major changes in school program.

Ideology of Childhood and the State: Rules Distinguishing Children in National Constitutions, 1870-1970," *American Sociological Review* 43, (Dec. 1978): 797-812.

[112] "The Child Labor Law in New Jersey," NYT 7/10/1883: 5.

[113] *Third Annual Report of the Factory Inspectors of Illinois, 1895* in Abbott and Breckenridge, *Truancy and Non-Attendance*, 422.

[114] *Fourth Annual Report of the Factory Inspectors of Illinois 1896* in Abbott and Breckenridge, *Truancy and Non-Attendance*, 426.

[115] Daniel T. Rodgers, *The Work Ethic in Industrial America, 1850-1920* (Chicago: University of Chicago Press, 1974).

This burgeoning discussion of child welfare, political pressure of child labor reform, and a growing cadre of professional educators interested in the problem contributed to demands for a stronger compulsory attendance law. In 1887 as the child labor laws were being strengthened in New York and Massachusetts and Connecticut were beginning to modify their compulsory education laws, state superintendent of public instruction Andrew Draper initiated an investigation of compulsory school attendance in the state and found that the administration of it wholly unsatisfactory. He took the issue up in his annual reports, urging modification of the law including expansion of the compulsory period and the mandatory establishment of truant officers and state oversight; his recommendations were embodied in a bill passed by the Assembly in 1889 but vetoed by the Governor.[116] The governor did not oppose compulsory education, and recommended passage of modified bill. In 1894 local superintendents, the State Teachers Association, and child labor activists, including state factory inspectors, all backed a new compulsory education bill which was passed in 1894. The new act required all children 8-12 to attend school for the full session, unemployed children 12-16 to attend the full session, and working children ages 12-14 to attend 80 days. The law imposed penalties for noncompliant parents and employers, made the appointment of truant officers obligatory except in rural communities, and authorized the appointment of a state officer to monitor local enforcement and withhold half of public school money from any district that refused to enforce the act.[117] Unlike the previous compulsory education act, school officials in many areas made immediate moves to at least partially enforce the law. In 1896, a small sensation was caused by school officials in Hempstead and Flushing when they secured warrants for the arrest of over a dozen parents who had failed to send their children to school. The *New York Times* reported "this is the first time such extreme measures have been taken to enforce the compulsory education law."[118]

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[116] In 1890, Draper reported that only a little more than half of the children in the state of school age were enrolled in public school and daily attendance was only about one-third of school age children. "Compulsory Education" NYT 1/5/1890: 4. The Governor objected to provisions for truant schools and responded to critiques from private school interests and parents that the bill extended illegitimate state authority over private schools; Editorial Article 5 (no title), NYT, 1/26/1889: 4; "The Compulsory Education Bill" NYT 5/21/1889: 4; "Teachers Protest: Private School Instructors On the Compulsory Education Bill" NYT 5/19/1889: 9; Editorial Article 1 (no title), NYT 5/19/1889: 4.
[117] Text of law cited in Ensign, p. 129-30; "The New Compulsory Education Law" NYT 5/15/1894: 4.
[118] "To Enforce the Compulsory Education" NYT 2/21/1896: 9; "Their Children Must Attend School" NYT 3/21/1896: 2.

Despite the fanfare of the law's tougher enforcement and the predictions that it, together with the factory law, would enact much change, persistent obstacles existed to real enforcement in much of the state, particularly in New York City. In addition to the continuing problem of school accommodations, there were problems of administering the complicated provisions relating to work and school—the law established different standards of attendance for different ages and since it did not require full term, simple accounting became difficult.[119] Furthermore, many supporters and opponents of stricter attendance laws argued that the schools did not adequately meet the needs of all students, particularly this new class of student that it was aimed to compel into the school. This twin issues—of proper school accommodations and of reforming the school curriculum to meet more diverse needs of students—drove education reform in New York and other places in the Progressive Era and became the goal of reformers such as the Public Education Association and General Federation of Women's Clubs in the first two decades of the twentieth century.[120] In the early 1900s for example, the Public Education Association became an ardent supporter of the "new education," offering programs and lobbying the School Board to provide an expanded curriculum including vocational studies, offer child welfare services, and open up the schools for community use.[121] Public school supporters sought to reform the schools in such a way that they would attract children and their parents.

In the first decade of the twentieth century, child labor exploded nationally and New York was again at the center of it. In 1902, at the suggestion of Florence Kelley and Lillian Wald, a subcommittee of the Neighborhood Workers' Association of New York City conducted an investigation into child labor and found the condition of child workers had not improved much since the Reinhold Committee. It established the New York Child Labor Committee with a full-time paid secretary and investigator, and initiated a campaign for new child labor laws and enforcement that drew in support from a range of

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[119] "The Problem of Truancy" NYT 1/16/1899: 2.

[120] In early twentieth century, NYC schools attempted ways to provide accommodations, including part-time schooling. In 1908 it was reported that 50,000-52,000 children had to be content with part-time schooling (three hours a day instead of five). "New York City's Schools and What They Cost: The Greatest System in the Country, Costing Annually Something Like $50,000,000, It is Unable to Accommodate All Children Seeing an Education Here" NYT 9/13/1908: SM10.

[121] Cohen, *Progressives and Urban School Reform,* chapter 3.

experienced and respected leaders in child welfare work.[122] The New York Child Labor Committee began a massive publicity campaign which drew on all the same tropes of the evils of child labor and also appealed to state pride by proclaiming that New York's child labor problem was even greater than that of the backward South. New York City School Superintendent William H. Maxwell, for example, told an audience of educational scholars that "child slavery thrives here in greater proportion than in the South."[123]

In addition to raising public awareness and opinion on the issue of child labor and education, the New York Child Labor Committee also prepared a series of bills for the New York legislature in 1903 which were adapted into a law and served as the foundation of a new era in child labor and compulsory education administration marked by much greater commitment and machinery of enforcement. The labor law centered around requirements for working papers and stipulated in precise terms the documentary proof needed to apply for working papers for all children under 16. It also incorporated suggestions by child labor advocates and the State Association of Public School Superintendents that the compulsory school requirements be changed to require 130 days attendance for all children 7-14, thereby harmonizing the ages of labor and education bills.[124] When the State Labor Department was deemed slow in executing

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[122] The committee was composed heavily of social settlement workers and leaders in local and national Consumers' League as well as reformers, academics, and a few businessmen. Notable members included Robert Hunter (head of University Settlement), Lillian Wald (Henry Street Settlement), Mary Simkhovitch (Greenwich House), Pauline Goldmark (National Consumers League), Felix Adler (Columbia professor and head of Ethical Culture movement), James G. Phelps Stokes (settlement house founder and philanthropist), William Baldwin (president of Long Island Railroad), V. Everit Macy (director of Title Guarantee & Trust Company), Paul M. Warburg and Jacob A. Schiff (partners in Kuhn, Loeb Investment Banking Company).

[123] "New York's Child Labor Worse than South Carolina" NYT 2/1/1903: 3; "Child Labor in New York: Dr. Adler Calls Conditions Here Worse Than the South" NYT 3/17/1902: 9; "Child-Labor Investigators Collect Facts for Crusade" NYT 2/1/1903: 25. This tactic was used successfully in other states as well. For example, Florence Kelley spoke to Quakers in Pennsylvania and told them in 1903 that "child labor conditions are worse in Pennsylvania than in any other State, and worse than in any European country, not excepting Russia." "Child Labor Discussed: Pennsylvania Quakers Hear Their State Has More of it Than the Whole South" NYT 6/6/1903: 1.

[124] Law required all children under 16 to have certificate issued by department of health. Applicants had to submit school record showing attendance and ability to read and write English, documentary proof of age with specifications for types authorized, requirements that issuing officer examine the child as to literacy and physical health, and require a physician's examination if health or fitness appeared doubtful. It also provided penalties for false statements. Ensign, *Compulsory School Attendance and Child Labor,* 134; "Child Labor Bill Signed" NYT 4/16/1903: 6; "Last of the Child Labor Bills" NYT 4/22/1903: 3; "Child Labor in New York" NYT 1/12/1903: 8; "More Schooling for Children" NYT 2/7/1903: 5; "More Schooling for Children: Superintendent Maxwell Asks for Extension of the Compulsory Education Law" NYT 3/6/1903: 5; "Bills Signed by Gov. Odell: Measures Changing

the law, the New York Child Labor Committee successfully campaigned for the dismissal of the Commissioner in 1905.[125] Furthermore, the organization, through a force of volunteers, actively pursued enforcement of the law by conducting its own inspections and reporting complaints to the State Dept for investigation and prosecution. The child labor law was harmonized with education law and agreement reached between school and health officials; the Board of Health agreed to send names of all pupils who had applied for work certificates and been refused so that the truant officers could see that they remained in school and the State Department of Labor would send the names of children found illegally employed to the Board of Education so that truant officers could investigate.[126]

Child labor advocates were aided by the Municipal Court decision in *City of New York v. Chelsea Jute Mill* which declared the 1903 law constitutional and upheld the conviction of an employer for hiring an underage girl on a false affidavit. In this test case, a twelve year old girl was found working for a jute bag manufacturer. When she was hired at age 11, she told the forelady she was over sixteen and produced an affidavit sworn by her father in front of the commissioner of deeds. However, she and her parents admitted that she was only twelve and testified to that fact, her age being undisputed at trial. The employer challenged the constitutionality of the statute and claimed it "an unwarranted, illegal, and unconstitutional deprivation of the liberties of the defendant" without citing any particular state or federal constitutional provision. The court dismissed the constitutional claim by citing case law and legal authorities as to the rules regarding police power of states, none of which it found violated by the child labor law. In fact, it referenced investigations and medical authorities on the evils of child labor and declared that "In the light of such overpowering evidence the Legislature might, indeed, have been charged with criminal neglect of the welfare of the people, had it failed to act as it did." The employer also claimed exemption from liability on account of good faith and lack of intent to violate the statute

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the Compulsory Education, Assessment, and Other Laws are Approved" NYT 5/9/1903: 6. In 1909, the law would require "full term" attendance.

[125] "Child Slavery Charge A Libel, Says M'Mackin: Commissioner's Defense Against Robert Hunter's Attack" NYT 2/9/1905: 5; "Child Labor Charges Lead to Warm Attack" NYT 2/10/1905: 5; "Do Not Want Williams to Succeed M'Mackin" NYT 3/12/1905: 6.

[126] "Child Labor Decreasing: Result of New Law Shown by Committee's Report" NYT 2/15/1904: 14.

however the court also dismissed that defense, arguing "The defendant was not active in its quest after the age of the child. It was passive. It complacently received the affidavit of the father upon that point" and made no further inquiries despite the fact that "to the most casual observer the very appearance of the child refuted her statement." The court noted that the girl showed the effects of long hours of work in "her maldevelopment and stunted growth" and called her "a living picture of the results of child labor in a factory at a delicate age, when womanhood and manhood are in a state of development." The court concluded in a statement that put all employers on notice, that "The employer acts at his own peril. The fact of employment makes him liable." According to the Court, to find otherwise would be to "render the statute nugatory" and "put a premium on perjury to obtain employment." In this case, the court declared in no uncertain terms that it would convict employers found in violation of the law and no longer allow "good faith" as a defense, thereby closing a major loophole in the enforcement of the law.[127]

In the years between the new labor and education laws in 1903 and the beginning of WWI, New York State continued to modify its statutes, improve its enforcement through experience, and build up greater public sentiment in favor of the laws. The New York Child Labor Committee remained an important force in the state for improvement of the child labor situation and the state department of Labor continued to grow in size and effectiveness. In 1911, the public outcry over the Triangle Shirtwaist fire led to a fundamental reorganization of the labor department and a massive expansion of its powers to enforce the labor laws, including the new ability to pass and enforce its own by-laws and regulations. From 1909 to 1913 the number of children ages 14-16 employed in factories decreased by 80% and illegal employment was estimated at slightly less than 8%.[128]

The decrease of child labor, particularly among children 14-16, can be attributed not only to changes in the labor laws but also to rapid improvements in New York schools that made them, according to some commentators, the best schools in the country. The first two decades of the twentieth century

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[127] *City of New York v. Chelsea Jute Mills*, 85 N.Y.S. 1085 (1904); "Compulsory School Law Held as Valid: Court Imposes Fine for Violating its Age Provisions" NYT 3/25/1904: 8.
[128] *Report of the New York Commissioner of Labor* (1913), 511 quoted in Ensign, *School Attendance and Child Labor*, 147.

marked a period of major curricular and service expansion in the public schools, particularly in New York City and other urban systems, as they responded to pressures by civic groups, employers, professional educators, and parents to make the school program more broad and varied in order to meet the needs and interests of a wider array of pupils and attract them to the schools.[129] New state laws investing attendance officers with greater legal authority and requiring on-going enumeration of the school-age population, contributed to advances in attendance service. As will be explored in the next [omitted] section, the child welfare perspective came to dominate attendance service as emphasis shifted from policing truants to preventing non-attendance through a treatment of its underlying causes, and as school officials improved attendance administration in responses to these causes.

The example of New York has shown that the expanding child welfare movement, and specifically the crusade against child labor, infused compulsory attendance laws with new constituencies and gave pressure to improve and give teeth to the laws. Women's clubs, labor inspectors and departments, labor organizations, philanthropies, social workers, school superintendents and teachers, civic reformers, and religious organizations supported the restriction of children's work and the expansion of children's schooling in the period. Pressure often came from outside the schools themselves but school officials increasingly came to direct and define changes in attendance administration, as will be explored in the next section. The administration of child labor laws created direct and indirect pressures for improvements in the administration of compulsory attendance: requirements for working papers stipulated increasingly higher educational prerequisites and school officials were given a role in issuing them; the expulsion of children from factories created immediate need for a custodial institution; the need for education in schools was greater when work became a doubtful and even dangerous educative

[129] Lawrence A. Cremin, *American Education: the Metropolitan Experience 1876-1980* (New York: Harper & Row, 1988); Lawrence A. Cremin, *The Transformation of the School: Progressivism in American Education, 1876-1957* (New York: Alfred A. Knopf, 1961); Samuel Train Dutton and David Snedden, *The Administration of Public Education in the United States*, rev. ed. (New York: The Macmillan Company, 1916); Edward A. Krug, *The Shaping of the American High School*, 2 vols., vol. 1 (New York: Harper & Row, 1964); Diane Ravitch, *The Great School Wars: A History of the New York City Public Schools*, 2nd ed. (Baltimore, MD: Johns Hopkins University Press, 2000); David B. Tyack, *The One Best System: A History of American Urban Education* (Cambridge, MA: Harvard University Press, 1974).

institution. Yet as child labor restriction pushed, schools pulled, reforming their programs and offering services designed to appeal to different needs and interests. Underneath both child labor reform and expansion of compulsory education was a growing idea that the welfare of children was an important state responsibility which required special state protections for all children and that an important component of this welfare was the protection from employment and guarantee of educational opportunity.

New York child labor and child welfare activists became crusaders in a nation-wide movement for child labor restriction; while they continued to lobby for modifications in the law and enforcement in New York, they began to turn their attention elsewhere. After 1900, the problem of southern cotton mills became a national discussion as industrialization in the area caused a rapid increase of unregulated child labor in much the same way it had done in nineteenth century New England. An indigenous southern movement for child protection, aimed at the white child in the cotton mills, began to grow which included women's clubs, ministers, educators, and a growing number of southern "progressive" reformers.[130] In 1901, Edgar Garner Murphy, an Alabama reformer and later leader in the Southern Education Board, founded the Alabama Child Labor Committee with a membership which included leading ministers, judges, politicians, and educators of the state to lobby for a child labor law; when they were successful in 1903, Murphy turned his attention outside the state and proposed the creation of a national organization to coordinate state and local efforts. The New York Child Labor Committee took a leading role in turning the idea into an organizational reality, and in 1904 the National Child Labor Committee (NCLC) was born at a first meeting in New York City. Founding members included Florence Kelley, Edward Garner Murphy, Jane Addams, Felix Adler, Lillian Wald, former President Grover Cleveland, Cardinal Gibbons of Baltimore, Judge Ben Lindsey, Senator Ben Tillman, Georgia Governor Hoke Smith, and Rev. Owen Lovejoy as well as other judges, politicians, academics, philanthropists, reformers, and businessmen.[131]

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[130] William A. Link, *The Paradox of Southern Progressivism 1880-1930* (Chapel Hill, NC: University of North Carolina Press, 1992).

[131] "The Nation and Child Labor" NYT 4/24/1904: 6. According to Barton, "Factors and Forces," 183, the founding members included 18 individuals associated with philanthropic, social or settlement organizations, 7 ministers, 7 political office holders, 6 industrialists, 5 bankers and brokers, 4 judges and lawyers, 5 college professors, 4 editors and publishers, 2 labor officials, 4 club officials, and 2 college trustees. See also Trattner, *Crusade for the Children.*

The New York Times proclaimed the organization had shown "marked good judgment" and "zeal" and was "the best instrumentality we know of to study the question impartially and intelligently."[132] The NCLC, stated its chief purpose as "to develop a national sentiment or the protection of children and to make the power of public sentiment felt in all localities, to raise the standard gradually in the different communities, and to have a standard established where none exists at present…."[133] The New York Times summed up its goal as "to secure as much schooling and as little unwholesome labor of children of school age as possible."[134]

The National Child Labor movement's earliest activities centered around a state and regional approach, lobbying state governments to tighten child labor laws and pressuring state labor departments to step up enforcement. The NCLC pursued an "industrial approach," targeting for investigation and publicity regional industries which were found to be the worst employers of child labor: canning, mining, glass manufacturing, and cotton mills. The organization conducted massive public awareness campaigns which included investigations and published reports, national and local conferences, and public lectures. . In 1910, for example the NCLC secured the services of Lewis Hine and for six years he traveled the South, photographing and documenting child labor in southern textile mills. Some of the NCLC activities were coordinated with and performed by local and state organizations, such the committee of ministers headed by Bishop David Greer that organized an annual "Children's Day" at the behest of the NCLC on which churches and synagogues discussed the evils of "child slavery."[135] However a few years of experience convinced many leaders at the National Child Labor Committee that the problem of child labor could not be combated through state legislation alone. The southern cotton mill became a vivid lesson on the failures of the state approach. In most southern states, legislators, manufacturers, and

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[132] "National Child Labor Committee" NYT 2/13/1905: 6.
[133] *The Annals* Vol. 25 (1905): 159 quoted in Barton, "Factors and Forces," 184.
[134] "The Child Labor Movement" NYT 2/19/1905: 6.
[135] "Pulpits All Over Land to Keep Children's Day: Intended to Create Sentiment Against Child Labor" NYT 1/31/1906: 11; "Fight on Child Labor: Dr. Silverman Fires the First Gun—Bishop Greer Heads Campaign" NYT 2/5/1906: 9. "Child Labor Sunday" was kept by churches and other organizations in January for several years thereafter. "Child Labor Sunday Here: Special Sermons Will be Delivered in Many Churches Today" NYT 1/23/1916: 13; "Child Labor Sunday today: Churches and Other Organizations Will Conduct Observance" NYT 1/28/1917: 18.

workers opposed child labor regulation in large part for fear that strong protective labor legislation would drive industry to other states and stall the slow engine of economic redevelopment in the area. Manufacturers also created a powerful lobby in state capitols, and succeeded in blocking reform efforts, sometimes by dubious means; in Georgia in 1903, a legislative committee investigated charges that mill lobbyists had paid legislators for votes and resorted to getting some drunk before important votes.[136] In most cases, manufacturers simply succeeded in blocking legislation or inserting clauses to render it ineffective. Child labor advocates came to recognize that in order to root out child labor in some places, it would be necessary to root it out everywhere at the same time as England and other nations had done.

From 1906 to 1916 federal bills for the restriction of child labor were introduced into every session of Congress and after initial hesitation, the NCLC backed federal legislation as the best solution to the problem of child labor. In 1906, Senator Beveridge introduced a federal child labor bill and a divided NCLC endorsed it.[137] Also in that year, the NCLC formulated a proposal for a federal Children's Bureau and secured endorsement of President Roosevelt; it would take six more years for a bill to pass Congress and establish the bureau but when it did, key child labor activists would serve in the bureau and foster a close relationship with the NCLC.[138] Furthermore, the NCLC lobbied Congress for a Congressional investigation of the condition of women and children's labor, which Congress authorized in 1909 and resulted in massive public hearings and discussion as well as voluminous evidence of the need for reform. Public sentiment grew for federal legislation as continued investigations and exposes revealed the continuing labor exploitation of children in some regions and industries at the same time it was being effectively eliminated in others. In 1912 the Progressive Party made federal child labor legislation a part of its national platform and in 1914 the proposed Palmer-Owen bill, making child labor illegal in all

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[136] "Got Legislators Drunk: Georgia Investigating Committee Hears of Methods of Lobbyists-- $500 for a Vote" NYT 8/7/1903: 2. On other manufacturers' efforts, see for example "Child Labor Bill Shelved: Manufacturers' Opposition Kills the Georgia Measure" NYT 8/8/1913: 1; "Denies Child Labor Tales: Southern Editor Tells Reformers to Mind Their Own Business" NYT 1/7/1915: 10; "Child Labor in Georgia" NYT 8/17/1914: 6.

[137] The switch to a strategy of federal action was not without controversy in the organization and some members who opposed the organization's official endorsements withdrew from it. Thereafter, the organization pursued a policy of supporting federal legislation.

[138] Lindenmeyer, *Right to Childhood;* Weiss, "Save the Children,"; Trattner, *Crusade for the Children.*

industries engaged in interstate commerce, received the endorsement of a range of groups: in addition to all the usual labor and child welfare suspects, it also received crucial support from the American Medical Association and Federal Council of Churches of Christ in America. Lillian Wald called the proposal evidence of "the accumulation of public sentiment" and "an expression of the moral conscience of the whole nation as affecting the protection of children."[139] The measure become deadlocked in Congress with Southern Democrats wielding a strong position of opposition and President Wilson took up the issue, helping to pass through the 1916 the Owen-Keating bill, containing essentially the same provisions; enforcement of the bill was delegated to the U.S. Children's Bureau which administered it for nine months before the Supreme Court declared it unconstitutional. Child labor advocates responded by passing another Congressional Bill, the Child Labor Tax Law, based on federal taxing power but it too was declared unconstitutional, prompting a movement in the 1920s for a child labor constitutional amendment.[140]

Despite the failure of federal legislation, the pressure exerted by the growing national movement caused southern states to pass and strengthen child labor and compulsory attendance laws in the decade before WWI, many passing their first laws on both subjects. In some states it was clearly a defensive move to try to stave off federal action and the passage of laws marked only the beginning in a long struggle to enforce them. However, in some states like Alabama with the state's Child Labor Committee and growing educational movement, the strengthening indigenous movement for education and labor reform began to exert real influence.[141] Proponents for education reform and compulsory attendance, cited the growing literacy gap between the North and South and evils of widespread illiteracy among native-born whites. Imbued with growing professionalization in education and influenced by national

[139] "The Children's Bill: Proposed Federal Law Responds to the Nation's Sentiment" NYT 2/26/1914: 8.
[140] In *Hammer v. Dagenhart,* 247 US 251 (1918) the Supreme Court declared that it was an unconstitutional use of federal interstate commerce power. In 1919 child labor advocates passed the Child Labor Tax Law based instead on the federal taxing power. In 1921, the court found it too unconstitutional in *Bailey v. Drexel Furniture Company*, 259 US 20 (1922). See Abbott, *The Child and the State,* 461-563 for an analysis of the federal regulation of child labor and the texts of the bills, court decisions, and related documents. For complimentary accounts of the federal movement, see Barton, "Factors and Forces," and Trattner, *Crusade for the Children.*
[141] Link, *Paradox of Southern Progressivism;* William F. Ogburn, "Progress and Uniformity in Child-Labor Legislation: A Study in Statistical Measurement" (Ph. D. diss., Columbia University, 1912); Samuel Powell Walker, "History of Compulsory Education in the South" (M.A. thesis, University of Chicago, 1922).

movements for child welfare, they directed a major new move to reform southern schools in the decade before and after WWI. During that time, state legislatures, with the aid in many instances of philanthropic assistance, increased the size and powers of state departments of education and undertook major investigations of the state school system with an eye to reform. In the revelations of illiteracy that followed the war, they would step up these efforts, pouring much greater resources into the improvement of school buildings, instruction, administration, and school support throughout the state.[142]

Yet southern education advocates, and compulsory attendance proponents, faced serious obstacles. Among them was the economic situation of the South; both the continued financial hardships and hostility to tax increases as well as the hopes pinned to new industrial development and desire not to impinge upon it in any way. In addition, traditional southern traditions of local control and suspicion of state authority caused many to resist efforts to expand and compel schooling. However, the issue which provoked perhaps the most resistance was deep-seated hostility to black education and a willingness, demonstrated time and again, to sacrifice white education to prevent it. In Georgia, for example, a compulsory education bill floundered upon this fear that compulsory education would raise the aspirations of African-Americans, opponents in the legislature charging that "it would force the negroes into the schools, give them a better education than the whites, and make them more useless than ever."[143] Southern progressive reformers, educators a chief group among them, sought to invert these fears and use them to argue for both child labor and compulsory education. They argued that factory labor, from which African-Americans were largely excluded, was "killing the whole white race of the South."[144] Education

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[142] Judith Sealander, *Private Wealth and Public Life: Foundation Philanthropy and the Reshaping of American Social Policy from the Progressive Era to the New Deal* (Baltimore: Johns Hopkins Press, 1997); Knight, *Public Education in the South;* Link, *Paradox of Southern Progressivism;* Walker "History of Compulsory Education in the South."

[143] "Keep Negroes Ignorant: Georgia Legislature Adjourns Without Providing for Their Education." NYT 8/12/1909: 1. James D. Anderson, *The Education of Blacks in the South, 1860-1935* (Chapel Hill, NC: University of North Carolina Press, 1988); Link, *Paradox of Southern Progressivism.*

[144] "New York's Child Labor Worse than South Carolina" NYT 2/1/1903: 3. Racialized language was part of child labor effort in both North and South. The critiques of "white child slavery" reflected fears that the white children (both native born and immigrants) were being ruined by the factory system and contributing to declension and "race suicide." Speakers and writers often reminded their audiences that the evils of child labor were being borne by white children. Florence Kelley, for example, told Pennsylvania Quakers that there was a wall paper in manufacturer in Bristol where "children carry paper moist with dyestuffs until they look like Apache Indians."

reformers dismissed the argument against compulsory attendance on the grounds that it would awaken the aspirations of black children was "ill-informed as to the actual situation" for as South Carolina high school inspector William Hand noted, "The negro child needs no compulsory law to put him into school. He is already there wherever and whenever possible. No matter what a man's views on negro education, his admiration is challenged by the zeal and eagerness of the negro child to go to school." Hand offered statistics that showed a steady decline in black illiteracy from 1890-1910 while white illiteracy remained at a near constant and high level compared to other sections of the country.[145] The not-so-subtle lesson was that white southern children had better start going to school.

In both education and child labor, however, Southern states would generally continue to lag behind northern states, in some places by decades, but the pressure by other states and from reformers within, would prove irresistible and by World War One every state in the nation would have a compulsory education law and a child labor law. For this reason, the South in many ways serves as the exception that proves the rule—education and child labor reform made much slower inroads but the fact that they did at all says much about the power of the national pressures underway. For the most part, Southern laws went through similar processes of gradual improvement in many of the same ways as other regions had, but they perhaps unsurprisingly lagged behind northern states by a decade or more at any given point. Enforcement, bolstered by growing state leadership but still tied to local community will, would continue to be tempered by local sentiment and prejudices in the postwar period.

Changes in the Local Administration of School Attendance Laws to 1920

While child labor laws were usually enforced by state labor departments in the Progressive Era, the administration of compulsory attendance laws was decentralized, authority delegated to thousands of

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"Child Labor Discussed: Pennsylvania Quakers Have Their State Has More of It Than the Whole South." NYT 6/6/1903: 1. A New York Times editorial in 1902 expressed outrage at recent investigations that showed that this child labor was not merely among Southeastern Europeans "who have no civilization, no decency, no anything but covetousness, and who would with pleasure immolate their offspring on the shrine of the golden café" but among "Irish-Americans" as well. "Child Labor in Coal Mines" NYT 12/17/1902.

[145] William H. Hand, "The Need of Compulsory Education in the South" in "Compulsory School Attendance" USBE Bulletin No. 2 (1914): 99-110.

local school districts in each state ranging in size from a single classroom to a complex urban system with hundreds of schools. Some localities took advantage of state authority delegated to them in attendance laws to actively police school attendance in the Progressive Era. In large and medium size cities, the ideological and political forces that propelled statutory changes and greater support for compulsory education were often concentrated with greatest force. Local consistencies pressured city school boards and state legislators to enforce the laws and build attendance departments. In wrestling with the problems of attendance administration, attendance officers developed procedures and techniques that would be adopted in modified form by smaller cities, villages, and counties and which often found expression in state statutory changes. These experiments with methods were directed by practical experiences with administration and responded to attempts of parents and children to evade compulsion as well as the root causes of irregular attendance. Over time, school administrators and attendance officers came to embrace a view of attendance service as treatment and prevention, rather than policing, a problem first and foremost about adjusting the school to meet the needs of the child rather than as simply a problem of coercing them into it.

In 1890, only two states made any real effort to enforce the attendance laws according to the U.S. Commissioner of Education, and they offered two very different models from which states in the Progressive Era could chose. Connecticut had pursued a policy of state enforcement of attendance and child labor laws, appointing two state agents with responsibility for inspecting factories and investigating non-attendance, a force that would grow over time. State agents sought the voluntary cooperation of factories and of parents but were not unwilling to prosecute violations. In 1890, the agents prosecuted 32 parents and 16 employers for violation of the law, committed 30 truants to institutions, and reported that they had sent 601 illegally absent children to school.[146] The Commissioner of Education estimated that year that "Connecticut is the only State where such fine or imprisonment has ever been enforced."[147]

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[146] *Annual Report of the Board of Education of the State of Connecticut Together with the Annual Report of the Secretary of the Board* (1890): 47.
[147] "Compulsory Attendance Laws in the United States," *United States Bureau of Education Commissioner's Report* (1888-1889): 491.

Massachusetts, on the other hand, provided for enforcement by local school communities rather than the state board of education. Every local school committee was empowered and then required to appoint a truant officer and over time this officer's legal authority was enhanced as he was given authorized to investigate absences and initiate prosecutions independent of school board approval. Local school committees were also empowered and then required to designate institutions as truant schools for the education and reformation of habitual truants. When many local school boards remained resistant to appointing truant officers or institutions, the legislature authorized the state department of education to withhold school appropriations from resistant communities which provoked compliance in name at least.[148] The state legislature also required an annual enumeration of all school-age children—a "school census"—for purposes of determining how many school-age children were not enrolled in school.[149] While the state legislature and state department of education would continue to prod and encourage local communities to enforce the law through statutory changes, local school officials would ultimately be the ones who determined how enthusiastically enforcement was pursued.

The Massachusetts model of local enforcement, rather than Connecticut's centralized system, was adopted by all of the states in the Progressive Era. Local control in education was a well-established principle and legislatures were loathe to bypass localities and enforce at the state level for fear of the hostility it would generate. Furthermore, many believed that enforcement, even by state agents, was not really possible without local cooperation and this would be better generated through local enforcement which could register and build community public opinion. Attendance director George Chatfield cited

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[148] An investigation found that many school communities complied in name only by designating an existing institution as the truant school (like the prison or poorhouse) and designating some school officer as the ex-officio truant officer. In those districts, no truants would actually be sent to the truant school and the truant officer would wholly neglect his duties. "Report" in *Fiftieth Annual Report of the Board of Education of Massachusetts* (1885-1886): 163-185.

[149] Ensign, *Compulsory School Attendance and Child Labor,* 46-86; George H. Martin, *The Evolution of the Massachusetts Public School System: A Historical Sketch* (New York: D. Appleton and Company, 1902); John William Perrin, *The History of Compulsory Education in New England* (Meadville, PA: Chautauqua-Century Press, 1896). In 1873 truant officers were made the agents of the school board and the authority to prosecute under attendance laws taken from town treasurer and given to them to act when directed by school committees; in 1898 truant officers were given authority to take action after five days absence without authorization of school board. In 1873 towns were required to designate places for confinement of truants and in 1876 annual school census required. At the same time all of these changes in school law occurred, child labor laws were being strengthened.

this well established principle at the 1917 National Education Association meeting, arguing that "local educational authority rather than the chief educational authority should assume the burden of enforcement; otherwise local sentiment and support may easily be alienated." While progress might be slower, in the end the "results will be more permanent in character."[150] Still many other legislators were not willing to enforce the law too strictly anyway, for they saw a major difference between restrictions on child labor and requirements that children attend school. The former regulation was aimed at simply excluding children from unhealthy and dangerous factory labor and imposed penalties on employers for breaking the law. Attendance laws, however, struck much more centrally into the sphere of the home and parental authority and imposed penalties and obligations on parents for choices they made about raising their children.

This emphasis on local enforcement meant that during the Progressive Era, localities were empowered and sometimes prodded to develop attendance procedures throughout the North, but attendance services did not develop uniformly throughout the region or throughout states. Cities were the first to develop real commitments, techniques, and procedures to enforcing attendance, in large part because of organized constituents there who pressured for such reform. As seen in the example of New York City in the previous section, civic reformers and child welfare advocates pressured the New York City school board to increase accommodations, make curriculum adjustments to meet student needs, and improve the machinery of attendance enforcement. Likewise, civic groups in other large cities exerted pressure for vigorous local enforcement of the laws. In Philadelphia, for example, when the city school board was slow to administer the state's first attendance law in 1895, reformers in the Public Education Association and Civic Club organized to investigate the situation, offer recommendations, and lobby the school board and state legislature for changes, including the establishment of an attendance department in

[150] George H. Chatfield, "What Provisions Should a Compulsory-Education Law Include From the Viewpoint of Aim and the Viewpoint of Enforcement?" *National Education Association Addresses and Proceedings* (1917): 828.

the board of education to centralize census taking, attendance investigations, and working paper procedures.[151]

In the nation's largest northern cities—including New York City, Chicago, Philadelphia, Pittsburgh, Boston, Detroit, Cleveland, Denver—growing school bureaucracies developed specialized departments of attendance to centralize all the services related to attendance. They employed a director, large clerical staff, and fleet of attendance officers and usually administered all aspects of attendance, including investigating absences, conducting school censuses, and issuing documents for work certification. The Bureau of Compulsory Education of the City of Philadelphia, for example, performed all three functions and by 1913 had a staff of sixteen clerks and 38 attendance officers assigned into 10 attendance districts over which they investigated absences. The central attendance office not only oversaw their efforts but was responsible for issuing employment certificates, overseeing all court cases, and tabulating all results for monthly reports.[152] In smaller cities and in towns and villages, attendance service often consisted of one individual—the attendance officer—who performed similar tasks in less formalized and bureaucratized ways.[153] Large urban systems, while certainly the exception and not the rule in the era, do offer a vantage point from which to see the conflicts and issues in local enforcement played out in some of the most extreme forms and to view some of the advances and experimentation that defined local enforcement.

Attendance administration was a constant process of adjusting techniques of child accounting and adjusting the school itself to meet the challenges posed by children and their parents. The development of administrative practices and statutory changes reflected constant engagement with the ways in which people sought to evade the law and with the experiences of enforcement. Opposition to attendance

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[151] *Compulsory Education Prepared for the Public Education Association of Philadelphia and the Department of Education of the Civic Club* (Philadelphia: Burk & McFetridge Co. Printers, 1898). This work was presented at the associations on November 20, 1897 and November 22, 1897 and revised for printing in January 1898. Both organizations continued to lobby for a city compulsory education department which was established in 1901.
[152] Howard W. Nudd, *A Description of the Bureau of Compulsory Education of the City of Philadelphia Showing How Its Organization and Administration Bear Upon the Problems of Compulsory Education in the City of New York* (New York: Public Education Association of the City of New York, 1913).
[153] F. V. Bermejo, *The School Attendance Service in American Cities* (Menasha, WI: George Banta Publishing Company, 1923).

service, was registered much less often in open challenges to the law, but in a myriad of ways in which parents, children, employers, and even school officials sought to evade their responsibilities under it. Furthermore, commitment to enrolling all school-age children in school necessitated major changes in the schools themselves, beginning with a massive expansion of school accommodations. It furthermore required that school adjust in order to meet the needs of pupils brought into it by force.

The first problem that confronted city school boards who desired to administer the compulsory attendance law was the need to discover school-age children who did not enroll in school. Truant officers operated at first by simply arresting students they found idle on the streets but in order to effectively administer the system it was recognized that better efforts of detection would be necessary. In many cities, the tightening of the administration of child labor laws and the efforts to bring it in harmony with school laws greatly aided in this process. In New York City, for example, the 1903 triad of child labor laws and new attendance law mandated better communication between school and labor personnel; factory inspectors were required, for example, to furnish the names of all children expelled from factories for illegal employment to truant officers who would follow up to make sure the children enrolled in school. Previously, there was no mechanism for making sure that these children ended up in school. This communication increased the efficiency of both—it helped to ensure that children would not simply seek illegal employment in another factory and it helped to locate children who should by law be in school.[154]

The most effective development in finding non-attending students, however, was the development of the school census as a tool for attendance enforcement. In most states in the late nineteenth and early twentieth century, an annual school census of all school-age children in the state became mandatory as a mechanism by which state aid could be distributed. Census taking, which left much to be desired, was often delegated to local government officials rather than to school authorities

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[154] Ensign, *Compulsory School Attendance and Child Labor,* 134; "Child Labor Decreasing: Result of New Law Shown by Committee's Report," NYT 2/15/1904: 14. Florence Kelley, as chief factory inspector in Illinois reported several times on this problem of coordination between factory inspectors and school officials and the ways in which children tried to exploit lack of coordination; *First Annual Report of the Factory Inspectors of Illinois* (1893) quoted in Abbott and Breckenridge, *Truancy and Non-Attendance,* 406-7; *Second Annual Report of the Factory Inspectors of Illinois* (1894) quoted in Abbott and Breckenridge, *Truancy and Non-Attendance,* 407-9; *Third Annual Report of the Factory Inspectors of Illinois* (1895) quoted in Abbott and Breckenridge, *Truancy and Non-Attendance,* 423-4.

who would have had greater interest in ensuring the accuracy of the enumeration. An 1895 investigation by the Massachusetts State Board of Education, for example, found that school censuses systematically undercounted children and identified some of the problems that plagued census-taking in most localities. Most census takers simply used current school enrollment or previous census lists to compile the annual census each year; they therefore simply counted children already known and had no method to discover other children not attending.[155] Problems in census-taking would persist in many places well into the 1920s, but Massachusetts and other leading states began a two-pronged approach toward improving the census and bringing it into the service of school attendance: first, they began efforts to improve the efficacy of the census itself by experimenting with new methods and more closely monitoring the process; second, they began to use the census as a basis of comparison for discovering gaps in the school registers. In their efforts to improve the efficacy of the census itself, cities began to experiment with new census methods and procedures: they mandated house to house canvasses; required individual pupil cards to be created with detailed information about children and their families; mandated proof of age rather than simply parental statement; utilized data from other sources like moving companies and tax officers to identify movements in and out of districts. In addition, states began to take a more active role in proscribing census procedures and preparing census forms and instructions, in order to guarantee greater uniformity and promote more accuracy. In many large cities, the census-taking authority was transferred to the city attendance department to ensure it was taken more conscientiously and even outside of large cities attendance officers were often given supervision of census-taking.[156]

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[155] "Report" in *Fifty-Ninth Annual Report of the Board of Education of Massachusetts* (1894-1895): 533-535. The report noted that some communities admitted to making no census at all. It found that methods varied considerably between towns as did accuracy, in some cases census numbers actually reported hundreds fewer than were enrolled in school and presumably missed hundreds more not enrolled at all.

[156] On the different problems involved in school census taking and the innovations that states and cities employed to improve the accuracy of the census, see Leonard P. Ayres, *Child Accounting in the Public Schools* (Cleveland, OH: The Survey Committee of the Cleveland Foundation, 1915); F. V. Bermejo, *The School Attendance Service in American Cities* (Menasha, WI: George Banta Publishing Company, 1923); Frederick Earle Emmons, *City School Attendance Service, Contributions to Education, No. 200* (New York: Bureau of Publications Teachers College, Columbia University, 1926); Edward Clinton Bixler, *An Investigation to Determine the Efficiency with Which the Compulsory Attendance Law is Enforced in Philadelphia (*Ph.d diss, University of Pennsylvania, 1913); Paul B. Habans, "The Factors of An Adequate School Census—How They May Be Realized" *National Educational Association Addresses and Proceedings* (1917): 835-837; Maris M. Proffitt and David Segel, *School Census,*

In addition to improving the census procedures, larger cities began to experiment with ways to utilize the census for the enforcement of attendance. Earlier censuses could be used to reveal disparities between school age population and enrollment in the schools but were often not conducive for actually finding unenrolled pupils: among other things, they enumerated a larger group of students than was actually compelled to attend school (often ages 6-21), were prone to inconsistency in spelling of names, and tended to arrange the information by geography rather than alphabetically which made finding students on the rolls of public and private schools a very time consuming process. In order to address these weaknesses, many cities experimented with new programs of "child accounting" and continuous census. In the continuous census, one massive school census was taken by door-to-door canvassing and was continuously updated as students entered and left the reach of compulsory education, either by aging or moving to another district. The information collected in the census was transferred into a complicated system of record keeping which included student information cards for each pupil that were constantly updated.[157] In 1911 New York mandated the continuous census in its three first class cities—New York City, Buffalo, and Rochester—and several other states followed suit. Before WWI, many of these efforts were deemed unsatisfactory but the experiences of cities with "child accounting" laid the basis for a post-war expansion of "pupil personnel management." The continuous census was adjusted and expanded through wartime experiences with personnel management, business models, and an emerging university discipline devoted to the subject. It spread from the largest cities to cover entire states, as some states

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Compulsory Education, Child Labor: State Laws and Regulations USBE Bulletin No. 1 (1945). Arch O. Heck, *Administration of Pupil Personnel: A Book on Pupil-Accounting Written from the Point of View of the Classroom Teacher* (Boston: Ginn and Company, 1929). Heck reported that still in 1929 there were problems with census enumerators in some places that held the job for multiple years and relied on memory, old census sheets, and telephone calls to make the new census from their living rooms.

[157] Bermejo, *School Attendance Service in American Cities;* Emmons, *City School Attendance Service;* Heck, *Administration of Pupil Personnel;* Arthur B. Moehlman, *Child Accounting: A Discussion of the General Principles Underlying Educational Child Accounting Together With the Development of a Uniform Procedure* (Detroit, MI: Friesema Bros. Press, 1924).

experimented with a state-wide continuous census and modeled their growing state attendance departments on city attendance departments.[158]

The continuous census required the creation of a vast and uniform system of record keeping and constant vigilance to maintain its upkeep. City attendance departments developed bureaucratic forms and procedures in order to manage the task of child accounting and reduce ways in which children evaded the law. One example is the creation of transfer procedures for children who were transferring between public schools in the city, between public and private schools, and between schools in and outside the district. Grace Abbott and Sophisona Breckenridge found in their study of truancy in Chicago that some students transferred between schools to evade attendance, taking advantage of poor record keeping; some youths even registered at multiple school simultaneously and then would shift attendance to escape the truant officer. Many other pupils, while not escaping schooling entirely would take several weeks off of school during the transfer, over 20% missing three or more weeks.[159] Other researchers noted that many cities did not have good procedures for following up on transfers and would simply remove students from the rolls when informed that they were transferring to a new school and not check up to make sure they had enrolled at that school; if the new school authorities were unaware of their arrival, pupils could evade weeks or months of school before being discovered. In order these types of loopholes, city attendance departments had to develop bureaucratic forms and procedures to create communication between new and old schools—including special forms for notifying schools of intent to transfer, confirmation of enrollment at new schools, and notification to the state.[160] Furthermore, effective administration required the cooperation of private schools or else students could evade compulsory attendance by moving between public and private schools or falsely claiming that they attended a private school. Some states mandated this cooperation—Connecticut for example required that the rolls of private schools be kept

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[158] In 1935, five states mandated continuing census and in many other states where an annual census was required, cities exceeded the minimum standard and established their own continuous censuses. Ward Keesecker and Walter S. Deffenbaugh, "Compulsory School Attendance Laws and Their Administration" USBE Bulletin No. 4 (1935).
[159] Abbott and Breckinridge, *Truancy and Non-Attendance,* 107-111.
[160] Heck, *Administration of Pupil Personnel;* Bermejo, *The School Attendance Service in American Cities,* 105-111; Emmons, *City School Attendance Service,* 78.

open—but in the absence of state direction most cities worked out functional relationships with private schools to monitor the enrollment of the private schools and ensure that attendance of pupils at the private schools met the terms of the law. In some cities, the attendance department served the private schools as well, investigating causes of absence.[161]

Despite advances in theory and practice, censuses continued to draw criticism from investigators as inaccurate and widely divergent between communities; the improvement of the census would be a continual project for states during the postwar period. Many clung to the annual census outside of large cities despite the urging of university experts and high level professionals to move to the permanent continuing census. In smaller communities, the work involved in maintaining the census was deemed too time-consuming and less necessary. While improvements were made in census taking that allowed more effective comparisons with school enrollment, the annual census simply could not be used as effectively to discover unenrolled youths. However, the problem of youths who completely evaded school continued to decline over time, due to a combination of pressures including labor restriction, social pressure, and growing consensus that children under 14 belonged in school.

In addition to finding pupils, attendance service confronted a second major problem that required new administrative experimentation and institutional solutions: the misfit. In Massachusetts, the problem of the hardened "habitual truant" who operated largely outside of parental control was early recognized by state law and towns were required to provide institutions for their incarceration. In fact, in Massachusetts and in most states much of the intent of the early attendance laws was to police these problematic youths who rejected the authority of the school, the home, and the workplace and constituted a social and moral danger on the streets. While some of these truants could be brought under the authority of the school, a small but problematic minority remained unrepentant and uncontainable within

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[161] Bermejo, *The School Attendance Service in American Cities*, 35. Bermejo studied 346 small to mid size cities in all regions of the nation and found that 245 reported that the attendance service included non-public schools and 101 said no; most of those reporting no were in smaller cities and in the South or West. Notably, most of the state laws were silent on the subject so the extension of attendance service to non-public schools was done through local arrangement and cooperation. See also Samuel Train Dutton and David Snedden, *The Administration of Public Education in the United States*, rev. ed. (New York: The Macmillan Company, 1916), 497-8; Ellwood P. Cubberley, *State School Administration: A Textbook of Principles* (Cambridge, MA: Riverside Press, 1927).

the normal school. To deal with these tough cases of "willful" truants, many cities created special "Parental Schools." Youths could be committed to parental schools with approval of parents or by order of a judge for a period of several months to several years. Parental Schools were reformatory custodial institutions which sought to separate the truant child from the environment that produced him and instill habits and discipline; once reformed, the child would be placed on probation and sent back to a regular school.[162] For example, the Chicago Parental School was located on 110 acres of farmland in the northwest area of the city. The school offered manual training and ordinary school subjects and was a working farm where boys could maintain their own plot of land and work with animals. Just over half of boys remained 4-6 months and when they were released they were placed on probation for a year and re-integrated into the normal school. Recidivism was fairly high, however, and many found themselves sent back for another stay. In Chicago and elsewhere, the Parental School was the extreme solution for only the most hardened cases.[163]

Many cities also developed special solutions within the normal school system to discipline the mild truant and delinquent child who didn't warrant as drastic a measure as full custody. School officials came to recognize during the Progressive Era that milder truants and "incorrigible" youths posed significant challenges to attendance service that demanded institutional solutions. If students that misbehaved were simply expelled, it would provide incentives for students who did not want to be in school to act out, and if they were retained in normal classrooms it disrupted the progress of other students and generated hostility by teachers to compulsory attendance. As a solution, school systems developed special classes and special ungraded schools to remove disruptive pupils from regular classes and segregate them where they could be given greater attention and discipline. The special classes often

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[162] Abbott and Breckenridge noted that children from a good home, even if persistently truant or extremely incorrigible were rarely sent to Parental Schools but children from "bad" homes, even if the offense was less severe, were more likely to be sent. The theory underlying the Parental School was that it provided discipline and a good environment that the children lacked at home. Abbott and Breckenridge noted that there eventually children had to be sent back to the bad homes and therefore the work was sometimes undone. Abbott and Breckenridge, *Truancy and Non-Attendance,* 157.

[163] Abbott and Breckenridge, *Truancy and Non-Attendance*, 165-176. The parental school was opened in 1902 and could hold up to 320 boys at a time (40 each in 8 cottages located on the 110 acre farm). Between January 1902 and June 1915, 4198 boys were committed to the Parental School.

had a more vocational and manual training focus, which was believed to contribute both moral training and discipline as well as appeal to student's interests. This was particularly useful for students who misbehaved or evaded school out of frustration with their slow progress in school. Often these special classes were effective and students could either remain in them or be mainstreamed back into the regular school program. A textbook in school administration in 1916 judged these classes essential for attendance enforcement for they took the child of "wayward and vicious conduct" and "so educates him by special means as to reform him and to equip him with habits and standards which, with some continue oversight, will give a satisfactory state toward right social living."[164] If students remained unreformed, however, many states altered the laws regarding truancy to allow unruly pupils to be committed to Parental Schools for repeatedly violating school rules, even if they did not evade school and fit the definition of "habitual truant" under the law.[165]

In addition, there was a tremendous problem with what to do with children who were exempted from school for work but who left their jobs. As will be discussed in the next section, many states began to raise the age requirements for non-working pupils. In New York, for example, the compulsory attendance period was extended to age 16 but work exemptions were permitted for youths 14-16. A youth that secured a work exemption at 14 could work for only a short time or not get a job at all and be freed from the compulsory attendance period. Many children did just that and in the 1910s the issue of idle youths 14-16 evading work and school began to receive greater public attention, resulting in many places in demands that better procedures be secured for monitoring children out of school on work exemptions.[166] While children not working but under the age of 16 should get sent back to school under

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[164] Dutton and Snedden, *Administration of Public Education,* 445-6; Ellwood P. Cubberley, *Public Education in the United States: A Study and Interpretation of American Educational History* (Boston: Houghton Mifflin Co., 1919), 365-406.

[165] Abbott and Breckenridge, *Truancy and Non-Attendance,* 172-174.

[166] "School Law Evaded by 43,000 Children" NYT 6/2/1914: 10; "School and Work: Numbers of Pupils With Working Papers Not Accounted For" NYT 6/7/1914: C4; "Children at Work Under Legal Age: School Census Board Found Hundreds of Them, Also Illiterate Foreigners," NYT 7/30/1911: XX5; "Ruses of the Wily Youths Who Want Working Papers" NYT 7/2/1911: SM13. One thing states started to do to address some of the problems of evasion with work certificates, was requiring that students secure written "promises of employment" before they could be issued work papers and insisting that employers mail work certificates back to school officials, rather than give them to students, at the termination of employment. There was a particularly big problem with girls 14-16

the terms of the law, many school officials believed that these children were not easily integrated back into the classroom because they upset the routine of the school. Furthermore, few children who left school for work were eager or willing to re-enter the school and their independence was viewed by some teachers a s potential threat to classroom discipline.[167] Some cities merely ignored the problem and made few efforts to find these children. Others sought to develop systems of discovering when children had been released from work, such as requiring employers to mail the work certificates of discharged youths back to school officials, and develop special programs for them, including special part-time classes with a vocational and practical emphasis designed to appeal to the interests of the working child. Public and private evening schools and part-time schools flourished in the Progressive Era in large urban centers; in 1916 an administration textbook reported that 314,000 youths attended evening schools, a larger number than were enrolled in high schools in those cities.[168] As will be explored in the next section, these schools became increasingly popular and some cities and states experimented with making these "continuation" schools compulsory for students to age 16 and even to age 18 for unemployed and working children.[169]

Many proponents of compulsory education believed that dealing with these problematic cases was absolutely essential for the operation of the law. If willful truants were allowed to evade school or disciplinary problems were simply expelled, it would undermine the entire system and provide incentives for children who didn't like school to misbehave. Furthermore, the existence of segregated classes or schools so that classroom teachers did not have to deal with major disciplinary problems, eliminated some

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securing exemptions for schooling to work at home (for which they did not need working papers) but then securing work in factories by claiming they were over 16 (and hence above the age for working papers and many labor restrictions).

[167] Abbott and Breckenridge, *Truancy and Non-Attendance*, 339-345. The problem of re-integrating them was both this problem of their independence but also a practical problem of where to place them in the school program—they would have missed schooling while out for work and could therefore not be put with others of their age and if they entered in the middle of the term they were force to repeat work or were far behind the other pupils.

[168] Dutton and Snedden, *Administration of Public Education*, 481. They noted an interesting gender difference: part-time schools had twice as many males as females while public high schools had 3 girls for every 2 boys. Many of these evening classes, they noted, were aimed at foreign-born and recent immigrants.

[169] As will be explored in the next section, only two states made attendance at them compulsory before WWI: Wisconsin in 1911 and Massachusetts (in Boston only) in 1913 although a few other cities experimented with the idea. Immediately after the war, 23 states would authorize or require cities to establish continuation schools and make attendance of youths compulsory at them where they existed. Ensign, *Compulsory School Attendance and Child Labor*.

of the objections that teachers and principals had to the enforcement of compulsory education and contributed to their growing support, a support that was necessary if the laws were to be enforced. The Parental Schools and the special classrooms, however, also point to an important trend in city school administration: an emerging emphasis on reform and on child welfare rather than simply a desire to police youths and a growing recognition that the problem of attendance was foremost one of adjusting the school to better meet the needs of pupils of differing interests and abilities.

This emphasis on child welfare and adjustment developed as school officials confronted the third major problem in school attendance: once they enrolled students, how did school officials decrease the number of unnecessary absences and get children to attend school regularly? Irregularity of attendance was decried as one of the largest evils confronting schools, for it produced major waste and inefficiency and could thwart the very aims of the state in compelling children to attend in the first place. In 1910, average daily attendance was only 71% of children enrolled while in 1918 it had to increased to 75% but as U.S. Bureau of Education statistician H.R. Bonner noted, this essentially meant that the average child is absent 25% of the time, that about one-quarter of all school children "play hokey" every day, and that about "23 cents out of every dollar spent on public education is as good as wasted."[170] Furthermore, the average figures obscured a much bigger problem in some regions; the state superintendent of South Carolina, for example, reported that average attendance was only 67% of those enrolled and he estimated that with lost time of individuals and the effect on class progress, between one-third and one-half of all school taxes were simply wasted.[171] Irregular attendance was blamed for causing children to fall behind in school and repeat grades, slowing the progress of the entire class, and wasting taxpayer money on

[170] W.S. Deffenbaugh, "Compulsory Attendance Laws in the United States," USBE Bulletin No. 2 (1914): 26; H.R. Bonner, "Waste in Education," *American School Board Journal* 63, (July 1921): 33-5; 124.
[171] John F. Bender, "Irregular Attendance--Its Effect and Reduction," *American School Board Journal* 75, (Dec. 1927): 45-46. A General Education Board study of Maryland in 1916 found that 65.3% of enrolled students were in average daily attendance but if one figured average daily attendance in relation to the entire school-age population, only 47.1% of children were in average daily attendance. It should be noted that Maryland had a compulsory attendance law but the GEB found it wholly unenforced. Abraham Flexner and Frank P. Bachman, *Public Education in Maryland: A Report to the Maryland Educational Survey Commission* (New York: General Education Board, 1916).

under-utilized school facilities. Bonner noted that there were more children repeating first grade in 1918 than enrolled in all high schools in the nation.[172]

The development of special procedures to monitor and investigate absences of enrolled students and to discipline irregular attendance comprised the bulk of the energy of city attendance departments and formed the basis of attendance service. Ideally the system worked as follows: teachers submitted daily logs of attendance to the school principal and students without valid excuses were reported to the attendance department for investigation. The attendance department investigated each absence by contacting parents to inquire about reasons for non-attendance; no further action was taken if the absence was judged to be lawful, such as illness. If the absence was unlawful, parents were issued a warning or were visited by the attendance officer. Every effort was made by attendance officers to persuade parents to return their children to school and maintain more regular attendance. If parents refused to send the child to school or the child was found to be outside of parent's control, then as a final resort the attendance officer could initiate a prosecution and the case would be brought to court where the child could be sent to an institution or parent fined or jailed. However, in reality, the boundaries between "lawful" and "unlawful" excuses were sometimes hard to judge, the imposition of penalties by courts was inconsistent, and the utility of "persuasion" was limited by the realities of poverty and real family hardships.

Cities with well developed attendance departments established their own procedures and standards for how often absences were reported, what constituted a lawful excuse, and what steps were taken. Many states, particularly in the decades before and after WWI, profited by the trial and error of cities and incorporated into statutes some of the standards and procedures that emerged in practice and applied them to areas of the state with less developed attendance service. For example, by 1928 some states explicitly required teachers to keep accurate attendance logs, report absences within a certain

[172] Bonner, "Waste in Education," 34. Also H. R. Bonner, "The Conviction of Legislators for Failure to Enact Effective Compulsory Attendance Laws," *American School Board Journal* 66, (Feb. 1923): 45-48.

amount of time, and proscribed penalties for neglect of duty.[173] Statutes also laid out specific requirements for how quickly attendance officers must act once absences were reported, established timetables for when non-attendance must cease after warnings were delivered, and proscribed penalties for failure attendance officers who neglected their duty.[174] These provisions were generally based on the experience of cities that found that these types of clear standards and procedures were necessary for vigorous enforcement.

In investigating absences and attempting to regularize attendance, attendance officers employed persuasive measures whenever possible. Often, attendance officers simply served warnings on parents or "educated" them about the differences between lawful and unlawful absences. Abbott and Breckenridge found in their study of Chicago for example, that children were often kept home for what they regarded as trifling matters such as running errands or helping with housework which could be performed outside of school hours. They found that the problem was exacerbated in immigrant neighborhoods where "it is easy for these parents to make sacrifices for the children to go to school, but not easy to grasp all at once the American standard of education, which means regular attendance for at least seven years, no matter how soon the elementary arts of reading and writing may be acquired."[175] They found a host of trivial reasons for which parents kept their children home for one or more days: to help neighbors move, watch new construction in the neighborhood, care for a sick horse, help with washing or other home chores, act as interpreter, or because they overslept. Likewise, in a study of attendance in the smaller cities and villages of New York State, Whittier Hanson found that a large number of absences were caused by parents who took their children with them for out-of town visits during the school term or wanted them to

[173] By 1928, 11 states required that principals or teachers reported absences "immediately" while 12 more states laid out requirements for weekly or monthly reporting. All but 11 states specified who was responsible for reporting truancy and non-attendance and to whom they should be reported. 16 states provided a penalty for principals or teachers who failed to report truancy and non-attendance. Ward Keesecker, "Laws Relating to Compulsory Education" USBE Bulletin No. 20 (1928): 15-19.

[174] Ibid., 30-31. Twenty-seven states defined when truancy had to cease after warning delivered; 18 proscribed penalties for attendance officers who failed to act; 17 states required the attendance officer to act "immediately" when absences were reported.

[175] Abbott and Breckenridge, *Truancy and Non-Attendance*, 123.

do work at home.[176] Attendance officers found many examples of illegal absences caused by parental neglect or lack of respect for attendance law. It was simply necessary, attendance officers believed, in many of these cases to impress upon parents the evils of irregular attendance and the consequences of treating attendance too lightly.

The court's willingness to impose penalties was an extremely important factor in the success of an attendance department. Even though most attendance departments rarely resorted to the courts, most found that the threat of prosecution was crucial to secure compliance at earlier stages. If parents and children knew that ultimately there was little chance of suffering penalties for non-compliance, they were free to violate the attendance law with impunity. Nearly all communities found initial attempts to enforce attendance laws impeded by judges who were unwilling to interfere with parental control or sympathetic to the plight of poor parents who claimed they needed the labor of their children. Ensign and others have noted that this pattern was evinced nearly everywhere in early stages. In early twentieth century New York City, for example, many reformers complained that magistrates were not doing their job by imposing penalties under the law and it was undermining the entire attendance service.[177] Observers in other cities noted a similar period of initial resistance by courts and many villages and counties voiced similar complaints in the postwar period as attendance service spread to rural areas. Over time, however, courts in most places proved increasingly willing to impose penalties on parents and in large cities became strong allies of city attendance departments. An education researchers in 1927 observed attendance cases in New York and Philadelphia over several months and found that the vast majority of

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[176] Whittier Lorenz Hanson, *The Costs of Compulsory Attendance Service in the State of New York and Some Factors Affecting Cost, Contributions to Education, No. 158* (New York: Teachers College, Columbia University, 1924).

[177] In New York City, proponents of compulsory attendance critiqued the willingness of magistrates to impose penalties in the first decade of the twentieth century: "J.K. Paulding, "Magistrates Make Truants: Failure to Fine Delinquent Parents at the Root of the Evil" NYT 4/15/1906: 8; Martha Lincoln Draper, "Urge More Fines Under Truancy Rule" NYT 3/30/1907: 8. In 1908-9 for example, 912 cases were brought for violation of attendance law in NYC and of those 235 were fined, 15 imprisoned and 653 discharged (71.5%). *New York Globe* 11/13/1909 cited in Ensign, *Compulsory School Attendance and Child Labor*, 142. The problem was also noted in Chicago and in other cities, Abbott and Breckenridge, *Truancy and Non-Attendance;* Dutton and Snedden, *Administration of Public Education.*

parents brought before the court were found guilty.[178] This change, particularly in cities, was caused by several developments. First, attendance convictions increased because of the growing precision of the statutes and well-settled precedents on compulsory attendance as well as growing public opinion on the legitimacy of compulsory attendance laws and labor restrictions. Second, the growth of "socialized justice" in many of the special courts where these cases were heard, at least in mid to large cities, in which judges sought to use penalties to discipline parents and elicit compliance with the attendance law; many judges, for example, placed parents on probation or imposed a heavy fine that was suspended until more unexcused absences accumulated.[179] Third, city attendance departments became extremely proficient at making cases. Attendance departments gained experience at gathering evidence and making strong cases against parents and they entered into functional relationships with the court which included an understanding that only the most hardened cases would be brought to court. Finally, the proliferation of "Parental Schools" and reformatory institutions gave judges an attractive solution to the problem of the willful truant; earlier judges had often balked at committing youths to institutions because those provided could be a worse solution than truancy itself.[180] This struggle for court enforcement was one that would be enacted in community after community during the first four decades of the twentieth century; in nearly

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[178] John Fredrick Bender, *The Functions of the Courts in Enforcing School Attendance Laws*, *Teachers College, Columbia University Contributions to Education No. 262* (New York: Bureau of Publications Teachers College, Columbia University, 1927), 139. Bender found that 55% of parents simply pled guilty, 29% entered "no plea" because they claimed to have a good reason and usually placed on probation, and almost 16% pled "not guilty" but of those pleading not guilty, 90% were found guilty by the judge. Hence the vast majority of cases reaching the courts in Philadelphia and New York City were being fined, jailed, or placed on probation or suspended sentence. Very few parents were acquitted.

[179] Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (New York: Cambridge University Press, 2003). Willrich examines the ideology and practice of socialized justice in Chicago. Many of his observations seem to hold true for attendance cases. Not only did Juvenile and specialized Family Courts secure jurisdiction over attendance cases, but judges often imposed penalties or placed parents on probation in ways that were intended to discipline their behavior. For example, Bender found that a large percentage of parents were found guilty but their sentences suspended, to be re-instated if the child racked up more unexcused absences. Bender observed that the proceedings for attendance were often very informal, parents having no legal representation, and generally unable to wage any kind of defense against well-prepared and experienced city attendance departments.

[180] Often in the early operation of the laws, cities or towns would simply designate an existing institution as the truant school, such as the jail or poorhouse. A Massachusetts investigation found that most judges were unwilling to commit youths to those institutions and this same problem was noted in Chicago and other cities before the establishment of Parental Schools. The problem often persisted for girls because many of the Parental Schools were for boys only because the problem of male truancy was quantitatively much larger. In the Progressive Era, reformers urged and many cities built Parental Schools for girls as well. Abbott and Breckenridge, *Truancy and Non-Attendance*, 165-177; "Report" in *Fiftieth Annual Report of the Board of Education of Massachusetts* (1885-1886): 171-177.

all communities, initial efforts at enforcement were met by hostility of judges but over time this hostility was overcome and they imposed penalties.[181]

Although the law or regulations of the attendance department usually defined it, the issue of what constituted a lawful absence or unlawful absence could be extremely difficult in operation. As Abbott and Breckenridge found in their study of Chicago, there were many cases of absence that were technically illegal but which attendance officers, for reasons of both compassion and practicality, were forced to recognize. For example, in their home visits to absent children, they found that "it is astonishing how important the shoe problem is as a factor in non-attendance" and recounted many examples of children kept at home because they didn't have money for coats or shoes. In one case cited, a 13 year old boy was kept out of school for a week because his only pair of shoes had fallen apart and his father didn't have enough money to buy the boy another pair until he received his weekly paycheck. Other families had no paycheck on the horizon and had to apply to public or private charities for aid before the child could be returned to school.[182] Many other children were found at home caring for ill family members or young children. One 10 year old Polish girl, who had missed 56 half-days within 6 months, was found in a small basement apartment caring for her bed-ridden mother. The father had deserted the family and the mother, who worked as a washerwoman, had fallen so ill she had to keep the girl at home to care for her. Likewise, they found an 11 year old girl at home caring for a father who was a chronic invalid, a newborn baby, six younger siblings, and a sick mother. While both girls' absences were technically illegal, attendance officers could not really compel them to abandon their family responsibilities and attend school under the circumstances. In both cases, the situation was brought to the attention of local charities in the hopes that they could help provide some help that would enable the children to return to school in the near future.[183]

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[181] After large cities largely overcame initial hesitation by judges to impose penalties, smaller cities and villages faced similar problems. Emmons investigated smaller cities and villages and complained in 1926 that many judges still took too "sentimental a view" and did not give enough cooperation. He cited many cases of judges imposing fines but suspending the fine if attendance improved. Emmons, *City School Attendance Service*, 111.
[182] Abbott and Breckenridge, *Truancy and Non-Attendance*, 136-138.
[183] Ibid., 134-5.

Attendance officers, faced with case after case of extreme poverty and families who were barely getting by, did what they could to alert the proper authorities and bring aid, but were daily confronted with the reality that no amount of persuasion could solve many cases of irregular attendance. Abbott and Breckenridge recognized that "poverty is only too frequently the real excuse for non-attendance."[184] In many of the immigrant neighborhoods they noted that where "it is a perpetual struggle to give the children enough to eat and wear, there is inevitably a great waste of the children's schooling that does not occur in more prosperous sections of the city. Sickness occurs among the children that could be avoided if better care were possible; sickness of others in the home, and other family exigencies due to poverty impose a heavy burden of care upon the children, which is met by sacrificing school attendance."[185] Poor children were more likely to live in unhealthy neighborhoods, fall ill from preventable diseases, lack suitable supplies for school, and have family emergencies that interfered with school attendance. They saw case after case of children who were legally absent for illnesses that could have been prevented or treated if not for poverty, including children who missed weeks at a time because their parents could not afford the medical treatments required to cure them.

The problem of poverty, and what responsibility the state had to alleviate the financial burden of keeping children in school and out of work, was a major feature of the Progressive Era discussions about compulsory attendance and child labor as well as a practical problem of enormous proportions. Columbia University sociologist Frank Giddings asked the National Educational Association in 1905: "Is it right to take a strong, overgrown boy thirteen years of age, from money-earning employment, and force him to attend school, when, by so doing, we compel a widowed mother to apply to private or public relief agencies for help, thereby making her, and perhaps the boy also, a pauper?" Giddings argued the only answer is that "in such cases adequate public assistance should be given, not as charity, but as a right."[186] Few went as far as Giddings to argue for public aid as a right, but many proponents of compulsory

[184] Ibid., 136.
[185] Ibid., 128.
[186] Franklin H. Giddings, "The Social and Legal Aspects of Compulsory Education and Child Labor" *National Educational Association Addresses and Proceedings* (1905): 112.

education did argue that states should not allow poverty to prevent non-attendance and should do more to protect every child's "educational inheritance."[187] Many child welfare advocates critiqued exemptions for poverty, arguing that poor children were the ones who most needed to be in school and should be provided relief in order to enable their attendance. Some argued that in the long-run, this would be a good public investment for "the benefit arising from the labor of a child under 14 years of age is short-lived, as his earning capacity is small" and he will not develop as more than an unskilled laborer, whereas if he is able to attend school "his earning capacity and his ability to advance are increased, thus taking him out of the ranks of a class verging upon pauperism."[188] Others expressed sentiments similar to Abbott and Breckenridge that "No one wishes to judge these poor people for yielding to the hard pressure of circumstance, but it is clearly wrong that in such cases the heaviest costs should be paid by the child…"[189] In terms similar to those used to defend child labor restriction and expansion of compulsory attendance, child welfare reformers argued that poor children had the right to an education which could enable them to develop to their fullest and potentially escape the cycle of poverty and society had an interest in allowing them to do so.

During the Progressive Era, many states permitted or required local school boards to provide free textbooks and clothing to needy children. Others encouraged networks of private charities and philanthropies to enable poor families to send their children to school by providing scholarships or basic supplies. While a few authorized direct public payments, in the forms of mothers' pensions, most states stopped far short of kind of aid that Giddings and Abbott and Breckenridge recognized was needed to alleviate the root cause of most irregular attendance. The fear that public aid would create dependence,

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[187] H.R. Bonner, "Compulsory Attendance Laws" *American School Board Journal* 59 (Dec. 1919): 37-39, 103; 60 (Jan 1920): 39-40; 60 (Feb. 1920): 46-7, 106. Quote from (Jan 1920): 40.
[188] Deffenbaugh, "Compulsory School Attendance Laws" (1914): 16.
[189] Abbott and Breckenridge, *Truancy and Non-Attendance*, 135; Dutton and Snedden, *Administration of Public Education*, 497 also argue that poor children should not be deprived of "educational heritage." See also, William Estabrook Chancellor, "Poverty and Education: A Superintendent Calls Present Law a 'Social Hypocrisy'" Letter to editor, NYT 12/5/1910: 8; "Maxwell's 'Fads' Approved: Child Labor Committee Officer Finds Hope in New Education," NYT 8/17/1905:7; "Truancy Law Bad, Prison Board Says: Unfair to Poor, Who Cannot Send All Their Children to School," NYT 2/14/1910: 11.

the critique that it was too "socialist," and the prohibitive cost were all too strong.[190] Yet urban schools did develop programs and services aimed at reducing some of the impact of poverty on school attendance by promoting children's health in schools. Before the post-WWI mania on health policies in schools, many urban school systems developed free medical inspection, health education programs, physical education, free lunches, school baths, and school gardens as ways to improve the health and attendance of youths.[191] However, as Ensign and other educators and child reformers recognized, poverty would continue to limit the impact of attendance service: "Until a way is found to relieve the necessity which drives a child too early to bread-winning labor, at the same time preserving the self respect of both the child and family, poverty, whether recognized as legal cause for exemption or not will serve to shorten the desire period in schooling."[192]

As attendance departments developed and responded to problems of non-attendance, and particularly confronted the harsh reality of urban poverty, they developed over time an emphasis on casework, social welfare, and prevention rather than on simply policing and prosecuting truancy. The emerging emphasis on compulsory attendance administration as a form of social welfare was much discussed by emerging professionals and would become a defining feature of attendance service at state and county levels after WWI. Bermejo noted that "the aim of attendance service should be to protect the child from any interferences in securing his educational birthright. Compulsion for the few willful violators is tolerated and curative and remedial measures resorted to, but serve to the child is its

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[190] The *New York Times,* for example, argued that the tendency for child welfare workers to demand more liberal provisions for support of poor children was a "dangerous tendency" because it would necessitate a very large increase in public expenditures and because it risked "extreme demoralization of the parents" if they were freed from the care of their offspring and the responsibility to exercise "industry, prudence, and self-denial." "The New Child Labor Law," NYT 10/2/1906: 8.

[191] Bryce E. Nelson, *Good Schools: The Seattle Public School System, 1901-1930* (Seattle, WA: University of Washington Press, 1988).; David B. Tyack, *The One Best System: A History of American Urban Education* (Cambridge, MA: Harvard University Press, 1974).; Selwyn K. Troen, *The Public and the Schools: Shaping the St. Louis System, 1838-1920* (Columbia, MO: University of Missouri Press, 1975). Troen in particular emphasizes that the expansion of compulsory attendance forced schools to confront the problem of urban youth and their welfare and led to expanded school services including lunch program, physical exams, baths, open air summer schools, after-school recreational and vacation programs.

[192] Ensign, *Compulsory School Attendance and Child Labor,* 237.

watchword, prevention its motto, and regeneration its goal."[193] Commentators recognized that a new type of attendance officer was needed for this new type of attendance service, one with greater experience with casework and social adjustments, a "social worker who will seek to coordinate the home, the school an the community by an understanding and experience with such a profession demands."[194] Emmons asserted that "the attendance officer is not merely an officer of the law, walking his bat, but a friend seeking the means of enabling the school to do as much as possible for the child."[195] As part to this growing effort to re-imagine attendance as child welfare work, attendance officers worked to raise their own professional standards and ideology, creating a national organization for attendance officers, invoking language of social work, and raising salaries and standards for entry into the profession.[196] This heightened professionalism in attendance service remained confined largely to mid-to large size cities during the 1910s and 1920s, with smaller cities, villages, and rural districts continuing to offer low salaries and only part-time work. As will be explored in the next section, the growth of county level attendance service would allow greater professionalization there in the post-war era, but the reality often fell far short of the ideal of attendance officer as child welfare specialist.

As part of this effort to bring child welfare work and adjustment into attendance service, many cities experimented with a new official to supplement the attendance officer. The "visiting teacher" movement grew up in the Progressive Era as an attempt to address the issue of adjusting the home and school through more intensive social case-work approach. Visiting teachers were generally trained in both social work and in teaching and were viewed as specialists who could focus on difficult cases and help both the family and the school make adjustments for the welfare of the child. Visiting teachers might help a family obtain medical care, employment, poor relief, or child care services in order to facilitate regular attendance of school-age children in the family. They might work with teachers and

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[193] Bermejo, *The School Attendance Service in American Cities*, 162.
[194] Emmons, *City School Attendance Service*, 160.
[195] Ibid., 87-8.
[196] David Tyack and Michael Berkowitz, "The Man Nobody Liked: Toward a Social History of the Truant Officer, 1840-1940," *American Quarterly* 29, (Spring 1977): 31-54.

school officials to place children in special classes or school programs.[197] In 1906-7 three pioneer cities appointed visiting teachers (Boston, Hartford, and New York) and by 1921, twenty-eight cities had a total of 98 visiting teachers.[198] Visiting teachers were not designed to supplant truant officers but to work on cases referred to them as particularly difficult.

In both the work of attendance officers and visiting teachers, the emphasis on child welfare and "adjusting the school" led to major expansions of school services, but also intensified demands that school adapt its curriculum and structure to meet the needs of youths. As Ellwood Cubberley noted in history of public education, a "new center of gravity" in the school: the child's needs and child welfare.[199] Emmons noted that "no matter what the cause may be, it is now a recognized fact that the school can aid the truancy problem by a better adaptation of its educational offering to the needs of the normal and sub-normal child."[200] One text on school administration noted that it was the "logical outcome" of full-term compulsory attendance that the school would have to provide "a large number of different types of educational opportunities, through which every boy and girl in the community may find in the school a type of education suited to his or her peculiar needs." It judged that "The whole question of compulsory attendance is tied up closely with the problems of flexible promotion, adjustment of instruction to individual needs, provision of special-type schools, reorganization of the work of the upper grades, increasing the opportunities for vocational training, and, as a result, materially increasing both the efficiency and cost of public education."[201] If schools were going to require long periods of attendance, they were going to have to focus on ways to meet the needs of the children required to be there.

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[197] Abbott and Breckenridge, *Truancy and Non-Attendance*, 226-244.
[198] Bermejo, *The School Attendance Service in American Cities*, 151-2. In 1922 there were 98 of them in 28 cities in 15 states: largest number in New York (17), Boston (15), and Minneapolis (14), with most other cities just having 1 to 3.
[199] Ellwood P. Cubberley, *Public Education in the United States: A Study and Interpretation of American Educational History* (Boston: Houghton Mifflin Company, 1919), 368
[200] Emmons, *City School Attendance Service*, 115.
[201] Ellwood P. Cubberley, *Public School Administration: A Statement of the Fundamental Principles Underlying the Organization and Administration of Public Education* (New York: Houghton Mifflin Company, 1916), 366-367. See also William H. Holmes, "The Individual Child and School Administration," in Clyde Milton Hill, ed., *Educational Progress and School Administration* (New Haven, CT: Yale University Press, 1936).

This emphasis on prevention, child welfare, and the need for school adjustment originated in large school systems and emerged out of daily confrontations with the needs of youths brought into the schools and asked to stay there for long periods of time. It led to an increasing school responsibility and a more flexible emphasis on aid rather than on punishment in attendance service. These ideas would expand in the postwar period and be incorporated into growing state and county attendance activities. States, like city school systems, found that commitment to improving attendance created vast new responsibilities. The next section will explore the expansion of state oversight and state aid on behalf of improving attendance in local schools, and the attempts to extend these services into rural communities.

The same basic problems that confronted large city systems—discovering non-attendants, devising ways to monitor absences and correct irregular attendance, handling the disciplinary problems, meting out punishments when necessary—also confronted smaller cities and villages throughout the nation. Smaller cities and villages often pursued the problem of compulsory attendance with conscientiousness, adapting some of the methods found in larger cities for their own circumstances. In the early 1920s, several research studies conducted of the attendance service in smaller cities offered valuable insight into the administration of compulsory attendance laws there. They showed that smaller cities and villages also hired attendance officers, but they were more likely to work only part-time in attendance service, were less well paid, and tended to have lower educational and professional qualifications than their counterparts in larger cities. These attendance officers spent most of their time investigating absences as reported by teachers and principals, and like their large city peers relied largely on persuasion and appeals to parents rather than the force of law. They were less tied to formal procedures and had much less elaborate systems of record keeping. In smaller cities and in towns, attendance officers were more likely to be hampered in their work by hostile school committees, lack of public support, reluctant judges, or their own fear of alienating neighbors. Convictions of parents for violating the attendance law, for example, were much lower in smaller cities and in villages. However,

the studies also showed that these attendance activities were steadily raising the rates of attendance and building up public support. [202]

In rural areas, enforcement of compulsory attendance was even more impeded by local sentiment and often suffered from lack of independent officers charged with enforcement. Rural districts suffered from particular difficulties: often there was no way to provide for disciplinary problems or habitual truants other than exclusion from the school; distance and weather were much greater factors in non-attendance and irregular attendance; farm labor and home work caused much illegal absence and were generally accepted as legitimate reasons for non-attendance by communities; sentiments of local rights and parental autonomy were more carefully guarded, especially in the absence of large immigrant populations; and rural districts did not have special officers charged with enforcement of the attendance law.[203] Rural districts which didn't need a full-time or even part-time attendance officer tended to vest enforcement with some other official, such as a school janitor or a police officer. However, experience showed that when attendance was not one of the primary concerns or responsibilities, it was usually neglected. In rural districts, most community members did not regard irregular attendance as a real problem and thus even if the districts had the capabilities to enforce attendance, there was not the public support or political will to do so. Most rural children attended some school voluntarily and many communities did not feel the need to regularize or regulate that attendance. Consequently, before WWI it was widely recognized that compulsory attendance enforcement was weak in rural districts—some commentators concluded it was simply not a problem while others began to evince concerns about it.[204] As educators continually decried "the rural school problem" in the 1920s and 1930s, they would seek solutions to problems of rural non-attendance, turning increasingly to state oversight and to state aid to

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[202] Hanson, *The Costs of Compulsory Attendance Service in the State of New York;* Emmons, *City School Attendance Service;* Bermejo, *The School Attendance Service in American Cities* .

[203] Hanson, *The Costs of Compulsory Attendance Service in the State of New York,* 72. The percentage of illegal absences for rural youths in New York state was ten times greater than in second class cities.

[204] The Ohio School Survey Commission, for example, reported that "truancy is very common in rural districts" and that "many rural and village districts do not attempt to enforce the compulsory attendance law." It reported that rural districts did not view it as a problem but recommended the appointment of truant officers for districts that didn't have them and county oversight, a solution that was increasingly embraced for rural areas in the post-war period as will be explored in the next section. *Report to the Governor by the Ohio State School Survey Commission* (Columbus, OH: The F.J. Heer Printing Co., 1914), 261-2.

both consolidate rural schools and improve their administration, including the administration of attendance.

State Administration and the Extension of Compulsory Attendance, 1919-1940

In the two decades after WWI, state legislatures and state education departments moved in a variety of ways to broaden the reach of compulsory school attendance and deepen its grasp. Through statutes, state legislatures extended the compulsory schooling period by lengthening the ages covered, increasing the term length, and making work exemptions more difficult to obtain. Many states broadened the reach of the school even over working adolescents that had been exempted from full-time schooling by requiring them to attend special part-time "continuation" schools. At the same time that state legislatures extended the laws, they moved to exercise greater authority over compulsory school attendance administration by establishing county and state level oversight and creating combinations of incentives and penalties to urge local communities to enforce the laws. Much of the activity was directed at improving and advising local enforcement rather than usurping it; like in many other areas of school policy, educational professionals, politicians, and general public sentiment supported the idea that any effective education policy must rest on local initiative and local support. To this end, some states built attendance divisions in their state education departments, however, a much larger number, supported the development of county-level enforcement and used state funding to encourage more vigorous local enforcement, to promote child welfare, and to eliminate reasons for non-attendance.

What caused this post-war expansion and deepening of state oversight? The first world war and its massive draft mobilization provided a major stimulus by placing a premium on healthy, educated, productive citizen effort and revealing deficiencies that threatened national vigor. The Army Draft statistics, like those of illiteracy and criminality during Reconstruction, "shocked the American people into a new sense of need" for better education, revealing startling amounts of illiteracy, poor health, and physical defects among draft-age men. Commentators in the 1920s and 1930s viewed the war and the draft statistics specifically as a watershed moment which propelled many different post-war educational

efforts, including medical inspection, new physical and health education programs, literacy clubs, and greater vocational guidance in schools. To many, the war revealed the failings of local enforcement of compulsory attendance and need for both elevated standards and greater state commitment to enforcement.[205] Furthermore, the war mobilization provided impetus for new forms of "personnel management" techniques and services, and psychologists and social scientists experimented with new methods during the war to test, assess, sort, and assign individuals based on interests and abilities into different vocational assignments that would be adopted for use in government and schools after the war.[206]

In addition, the broadening and deepening of compulsory attendance in the post-war period was aided by the intensification of child labor fight and its spread to new industries located outside of the largest towns and cities. When the second federal child labor bill was declared unconstitutional by the Supreme Court in 1921, it prompted the creation of a national lobby for a child labor constitutional amendment. Initiated by Samuel Gompers of the American Federation of Labor, the Permanent Committee for the Abolition of Child Labor, succeeded in lobbying Congress to pass the amendment in 19234 and send it to the states for ratification.[207] The movement stalled in the states, however, when a coalition of foes which included Catholic leaders, southern manufacturers, anti-feminists, patriotic societies, and opponents of amending the constitution, mobilized in opposition and blocked ratification in key states. The postwar period also saw the child labor movement turn toward agriculture for the first time, attacking the exploitation of children and families by commercialized and mechanized agriculture. Farm labor continued to enjoy legitimacy as a source of character formation and education, long after

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[205] Irvin Simon Noall, "Administration of Compulsory School Attendance" (Ed.D., University of California, 1935), 6; Helen V. Bary, "The Trend of Child Welfare Work" *The North American Review* CCXIII (Apr. 1921): 494-501; Ellwood P. Cubberley, *State School Administration: A Textbook of Principles* (Cambridge, MA: Riverside Press, 1927); William A. Cook, *Federal and State School Administration* (New York: Thomas Y. Crowell Company, 1927).

[206] Arch O. Heck, *Administration of Pupil Personnel: A Book on Pupil-Accounting Written from the Point of View of the Classroom Teacher* (Boston: Ginn and Company, 1929), 7; Arthur B. Moehlman, *Child Accounting: A Discussion of the General Principles Underlying Educational Child Accounting Together With the Development of a Uniform Procedure* (Detroit, MI: Friesema Bros. Press, 1924).; Paul Davis Chapman, *Schools as Sorters: Lewis M. Terman, Applied Psychology, and the Intelligence Testing Movement, 1890-1930* (New York: New York University Press, 1988).

[207] Anna Y. Reed, "Child-Labor Legislation—A Point of View" *Elementary School Journal* 23 (Dec. 1922): 282.

other forms of child labor were rendered problematic by industrialization, and efforts to regulate it met with great hostility. While careful to avoid critiquing the family farm, child labor reformers published exposes of labor exploitation in large-scale commercialized farming in efforts to urge regulation. In 1922, for example, the National Child Labor Committee published an expose of beet farming in Michigan depicting maimed and stunted children working long hours in harsh conditions which garnered national attention, in large part because of its timing immediately after the Supreme Court declared the second federal child labor bill unconstitutional.[208] The Michigan legislature conducted a farcical investigation to discredit the report and charged the National Child Labor Committee with creating propaganda, bowing to political power of farmers and general public hostility to prohibiting labor idealized as moral. Some states with strong labor laws and labor departments did begin to address the issue, however, and Wisconsin, for example passed a 1925 Rural Child Labor law asserting the state's right to inspect and regulate farm labor.[209]

New Deal programs and the emergency of the Great Depression aided the fight against rural child labor and intensified support for greater compulsory education laws and enforcement. The Depression proved a major stimulus to attendance efforts because it expelled thousands of children and adolescents from the workforce and resulted in record levels of attendance at the schools, particularly for adolescents aged 14-18.[210] States used the opportunity provided by the Depression to extend the compulsory education period upward into late adolescence. At the same time, however, the Depression resulted in an increase in illegal child labor and in non-attendance by younger children which led to a resurgent public support for national child labor reform. The National Recovery Act of 1933 prohibited labor of children

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[208] For a good account of the ratification struggle and analysis of the opposition see Sam Beal Barton, "Factors and Forces in the Movement for the Abolition of Child Labor in the United States" (Ph.D., University of Texas, 1938); Abbott, *The Child and the State;* Trattner, *Crusade for the Children.* Some of the opponents were old foes of child labor restriction (such as southern manufacturers) but many of the groups that got involved with blocking the amendment were general foes of growing federal action or of amending the constitution. Barton offers particularly interesting analysis of anti-feminists and a coalition of groups that were in favor of banning any further constitutional amendments.

[209] Abbott, *The Child and the State*, 1938), 564-569, 586. Abbott includes the text of the Wisconsin law as well as state labor department reports and investigations of agricultural labor in other states including California, Ohio, and Colorado.

[210] David Tyack, Robert Lowe, and Elisabeth Hansot, *Public Schools in Hard Times: The Great Depression and Recent Years* (Cambridge, MA: Harvard University Press, 1984).

under 16 in most of its regulated industries and according to the editor of *American Child* was responsible for making states "anxious to insure the permanence of these standards *on a national uniform basis.*"[211] The child labor amendment, which had languished in ratification in the 1920s, was revived in 1933 by the states and bolstered by public opinion which supported restrictions of labor of children at a time when many men could not find work. In 1933, fourteen states ratified the amendment, bringing the total to 20, however the forces of opposition that had united in the 1920s to block ratification re-united and succeeded in slowing the progress. In the first half of 1934, eight states considered and rejected ratification. Although a poll in 1937 found that ¾ of Americans supported the child labor amendment, the opposition, described by one commentator as "strategically entrenched and politically powerful," succeed in blocking ratification; after 1933 only four more states ratified and the amendment once again died.[212] While the child labor amendment failed and the National Recovery Act was declared unconstitutional, federal efforts to restrict child labor did not end, and in the 1930s and 1940s federal legislation would prohibit businesses receiving federal aid or engaging in interstate commerce to employ youths under 14 or 16. In the 1937 Sugar Act, for example, payments were refused to businesses employing children under 14, while the Fair Labor Standards Act of 1938 and later wartime policies adopted a 16 year minimum on child employment. The U.S. Children's Bureau worked with state labor departments to see that the requirements were enforced and thus federal legislation exerted pressure to adopt more stringent child labor laws across industries, including agriculture.[213]

The shortage of jobs during the Depression and other structural changes in the labor market also contributed to a growing sense that children should spend more time in school. Many observers argued that working adolescents were entering "blind-alley jobs"-- low-paying jobs with little room for advancement or long-term future.[214] Longer periods of training would allow youths to gain greater skills,

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[211] *American Child* January 1934, p. 1; quoted in Barton, "Factors and Forces," 13.
[212] Barton, "Factors and Forces," 356.
[213] Abbott, *Child and the State*, 557-9, 588-92; Trattner, *Crusade for the Children;* Barton, "Factors and Forces"; Lindenmeyer, *A Right to Childhood.*
[214] Arch O. Heck, *A Study of the Ohio Compulsory Education and Child Labor Law, Bureau of Educational Research Monographs No. 9* (Columbus, OH: Ohio State University, 1931); Abbott and Breckenridge, *Truancy and*

make better vocational decisions, and open up greater avenues of choice. Furthermore, the schools exerted great "pull" during the 1920s and 1930s as they continued to expand their programs and services, even amid the fiscal pressures of the Depression. As more and more youths attended school for longer and longer, it worked to normalize schooling rather than work as appropriate domain for youths and deepen the appeal, and reality, of education as an avenue of mobility or at least a sorter of those who would seek mobility. As ideas of child welfare, and educational opportunity spread, so did greater schooling and greater compulsion in schooling.

Finally, the growing professionalization of education contributed to postwar developments in compulsory attendance, for professional school administrators and education scholars crucially supported and directed the changes in state oversight and attendance administration. Experts in state departments of education played leading roles in statutory and enforcement changes as did large city school superintendents. In addition, the burgeoning field of school administration at the university level provided an important impetus for attendance service. University scholars not only provided idealized models and procedures to implement in attendance service but initiated and conducted major studies of attendance which were used to guide reform efforts. In 1931, for example, Ohio State University, the State Teachers Association, and the State Department of Education initiated a study of the state's attendance law because the legislature was due to reconsider the issue, in order to defend its 18 year upper age limit against criticisms.[215] As will be explored in the next chapter, the linkage of experts in school administration research and professionals in practice was a powerful mechanism for state and national level education reform in the period.

The growing pressures of child welfare ideas which were embodied in these attempts to decrease child labor and increase school attendance contributed to continual improvements in attendance laws and enforcement in the urban North as well as new reach into rural areas and into the South and West. The

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Non-Attendance, 317-345; "Child Labor in the United States—Discussion" *American Economic Association Publications* 8 (Feb. 1907): 260-267; Jane Addams, "Child Labor as a Factor in the Increase of Pauperism" NYT 10/4/1903: 26.

[215] Heck, *A Study of the Ohio Compulsory Education and Child Labor Law*.

example of Utah, offers a window into the post-war expansion and deepening of compulsory attendance administration and the role of state leadership in the process. In 1919, Utah passed a new compulsory attendance law that raised the compulsory attendance age to 18 but granted work exemptions to pupils over 14 with the requirement that they attend part-time continuation school for 144 hours per year. At the time of its passage, the law was the most ambitious in the nation, surpassing even California and New York which had slowly and gradually been extending the compulsory age and part-time schooling requirements upward. With the new law and its administration, Utah was both in advance of most states and also a reflection of widespread trends that would come to define the post-WWI era of attendance administration. Utah, as a sparsely populated Western state with large agricultural regions, offers an examination of three key postwar trends: first, the lengthening of the compulsory period; second, the extension of compulsory attendance to rural areas; third, the expansion of state oversight and guidance to encourage local compliance and prevent non-attendance.

Irvin Noall, an education scholar and former Utah State Education Department expert, examined the administration and effects of the 1919 attendance law and observed that the law was passed "with little or no preparatory work other than the enthusiasm to do better by our young people which swept over the country during and after the War."[216] Utah was not alone in this enthusiasm. The war placed a premium on increasing the intellectual and vocational capacities of individuals and by 1923, twenty-three states had passed some form of part-time schooling law and nearly every state had raised its educational requirements and embarked in new directions.[217] In 1911, Wisconsin had become the first state in the nation to initiate a state-wide program of compulsory part-time continuation schools, making the establishment of the vocational schools mandatory in communities over 5000 and attendance of all

[216] Irvin Simon Noall, "Administration of Compulsory School Attendance" (Ed.D., University of California, 1935), 149.

[217] Ibid., 6; Keesecker, "Laws Relating to Compulsory Education,"(1928): 8-10. In many states the laws made the establishment of continuation schools mandatory on districts over a particular size and then made attendance at the schools mandatory where they were established. In contrast, before the war, only Massachusetts and Wisconsin had state-wide compulsory part-time schooling although a few cities in other states had begun to experiment with it compulsory continuation schools as well. Many cities had voluntary systems of public and private part-time schooling, including day and evening classes.

working youths 14-16 compulsory for 5 hours per week.[218] Part-time continuation schools were deemed a progressive education reform because they would help to provide additional educational opportunities to working youths in a more flexible environment adapted to their special needs and interests. The Director of Evening and Continuation Schools in New York City articulated the goal and promise behind part-time continuation schools: they were "the working boy's high and trade school. It helps the youth to make an intelligent choice of occupation, teaches him how to secure advancement and supervises his start at work…."[219] Similarly, Nicholas Murray Butler, president of Columbia University, argued "For millions of children it [continuation school] will provide the capstone of educational attainment and some promise of economic security through occupational skill acquired under competent guidance" while for society it will provide "insurance against political incompetence, economic wastefulness, and that restlessness and discontent, growing out of ignorance, which often breed anarchy and national disruption."[220] Continuation schools would serve a dual role of extending the educational reach of the school and soothing the entrance of the adolescent into the workforce.

Utah's compulsory attendance law, with its requirements for part-time schooling of all children under 18, was thus an extension of but not radical departure from the practice of other states. In many ways, Utah had pursued progressive educational policies throughout its short history. Since its statehood in 1896, Utah had aggressively pursued a policy of school consolidation and by 1915 had abolished the district system and finalized a system of centralized county administration which was relatively

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[218] The schools were established after over a decade of agitation for greater industrial education in and outside of the regular public schools. In 1909 a legislative commission sent investigators to Europe to study continuation schools there and the system that was built in Wisconsin was borrowed largely from Germany. John Flokstra Lambert, "The Legal Basis of School Organization and Administration in Wisconsin" (Ph.d diss, University of Chicago, 1944); Yu-Sheng Huang, "Development and Operation of Compulsory School Attendance Laws in the North-Central States" (M.A. thesis, University of Chicago, 1922). Massachusetts also sent investigators abroad when it conducted a study of the issue of industrial education, as did the city of Chicago; both exploring Germany's system of continuation schools in particular. Marvin Lazerson, *Origins of the Urban School: Public Education in Massachusetts, 1870-1915* (Cambridge, MA: Harvard University Press, 1971); Julia Wrigley, *Class Politics and Public Schools: Chicago 1900-1950* (New Brunswick, NJ: Rutgers University Press, 1982). The 1911 Wisconsin law required 5 hours attendance per week for 6 months and required employers to reduce hours of the minor in order to attend school; in 1917 the law was modified to require all working children 14-17 to attend 8 hours per week for 8 months per year. Ensign, *School Attendance and Child Labor*, 221-2.

[219] Morris E. Siegel, "Continuation Schools: Objectors are Urged to Acquaint Themselves With the System" Letter to editor, NYT 12/17/1926: 22.

[220] Nicholas Murray Butler quoted in "They Are Here to Stay" NYT 3/13/1928: 28.

advanced.[221] Yet, as Irvin Noall commented in his study of the law, Utah was in many ways a strange place to attempt such a bold experiment. Despite the wartime zeal for education, the state had an "unprepared public opinion" for the law and lacked enough teachers or high school facilities to accommodate all the youths required to attend school, a philosophy and program of studies adapted to meet needs of early school-leavers, and experience with part-time schooling. Noall noted that "Some decried the new law as stupid and the work of dreamers or fools. How could any state so situated as to school facilities and wealth hope to carry out the mandates of the law? The people did not want it, and the schools were not prepared for such a responsibility."[222] States like New York and California had been building up public support and school capacities slowly over time.

The State education department and school officials recognized that "any effort to force the issue of compulsory attendance for a hurried achievement of the ends of the law would have resulted in a popular protest to its standards" and so instead a policy of gradual application of the law was pursued in its first five years.[223] During that time, special state aid was used to expand high school accommodations, develop part-time schools in cities like Salt Lake City and Ogden, and enhance attendance service. The consolidated system of county administration, the small homogenous population which valued education, and the already high pre-war attendance standards enabled Utah to rapidly expand its school accommodations in the five years and recruit older students by invitation and persuasion. High school enrollment had been on the rise before the war already, but the new law resulted in major increases in both enrollment and average daily attendance: by 1924, the high school enrollment had more than doubled from its 1918 level and almost tripled the level of high school enrollment of 1914.[224]

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[221] John Clifton Moffitt, "The Development of Centralizing Tendencies in Educational Organization and Administration in Utah" (Ph.D. diss, University of Chicago, 1940).; Noall, "Administration of Compulsory School Attendance"; Lerue W. Wright, "Utah" in *Education in the States: Historical Development and Outlook* edited by Jim B. Pearson and Edgar Fuller (Washington DC: National Education Association of the United States, 1969): 1223-1259.

[222] Noall, "Administration of Compulsory School Attendance," 12.

[223] Ibid.," 149-50.

[224] At the start of the 1914-15 school year, high school enrollment was 8727; in 1918-9 year: 10,360 enrolled; in 1924-5: 24,836. Data taken from annual statistical reports of school districts in Noall, "Administration of Compulsory School Attendance," 15, 54. The same chart showed an even higher increase in average daily attendance. By 1932, high school enrollment would almost double again, reaching 40,611; the enrollment of

Despite the impressive increases in enrollment, many school officials believed that the law was still not reaching all the pupils it should, and in 1924, a careful state-directed census was taken of children in and out of school in eighteen school districts in order to assess the extent of the problem. The survey found that over 11% of children 14-17 were not in school, some absent legally on work permits but subject to the new law and a surprisingly large number found illegally absent and not working. High school principals, superintendents, and boards of education were shocked by the amount of retardation and non-attendance revealed by the census and called for a modification of the law, some urging its repeal while others sought help or relief from legal responsibility when honest enforcement efforts had been made. Many school officials were troubled by the extent of non-attendance that continued despite the fact that they had "already made a conscientious effort to secure enrollment and attendance through announcements, invitations, and persuasion" and wondered if secondary schools had reached a natural limit of attendance.[225] The state department of education, at the behest of school trustees and officials throughout the state, formulated a set of principles to guide attendance service and identified four major areas of weakness in the existing administration of the law: first, persuasion was the only method used to secure attendance; second, child accounting practices were inadequate; third, school practices were based on full-term attendance and did not make adequate adjustment for seasonal labor and part-time attendance; fourth, little had been done "in providing differentiated curricular for students of low ability or for students with non-collegiate objectives."[226] Relying heavily on the results of a University of California study, the Utah state department of education recommended a program which included new child accounting methods throughout the state with special procedures for checking enrollment, issuing work permits, providing attendance exemptions, and laying out procedures for investigating absentees among other things. In addition it recommended some major changes in instruction at high schools with

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elementary school students actually decreased somewhat during the same period, suggesting that the expansion of high school enrollment was not due to simple natural increase of population.

[225] Ibid., 16-18.

[226] Ibid., 21.

the goal of enrolling as many students for as long as possible in the regular day schools and creating special classes for non-standard pupils with new employment placement and guidance services.[227]

Seven of the county school districts, representing 21% of state's school population, volunteered to implement the state's recommended program. These districts were among the largest in the state and were located in agricultural sections with a lot of seasonable labor that disrupted attendance for older students and created a recognized need for program modifications. In each high school in these districts, a full time coordinator was hired to head the program and given responsibility for special classes and new accounting. The unenrolled youths in these districts, which comprised both working youths who were required to attend part-time schooling and those who were simply legally unaccounted for, was estimated at 992, compared to a high school enrollment of 4667.[228] Coordinators embarked on a vigorous effort to account for these missing pupils, either to excuse them for recognized legal reasons or to bring them into school. At the same time, they designed special courses for the working youths designed to appeal to their particular needs and interests, including classes like agriculture, mechanics, citizenship, shop, sewing, and business practices. Coordinators were told to adapt the class to the needs and interests of the pupil, which they did in different ways. One coordinator, for example, tried to teach a traditional English course but found the class didn't respond. He simplified the course of study with no success and then adapted the class to focus on reading and discussing articles from *Literary Digest* which also failed to elicit interest. Finally, the coordinator turned to reading Frontier stories to the class which prompted vigorous debates and discussions in the class about problems of character, conduct, and social relations. In many cases, Noall noted, the success of the special classes had more to do with the personality and skill of the teacher than the subject matter.[229] The coordinators worked first to attract students voluntarily and through suasion, including home visitation and special services like employment placement and supervision, and when suasion failed they turned to compulsion through the courts.

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[227] Ibid., 20-21, chapter 4.
[228] Ibid., p. 24.
[229] Ibid., chapter 4 contains many similar vignettes and examples.

Over time, greater levels of compulsion were applied in executing the law as coordinators and attendance officers resorted to the court when persuasion and personal appeals were not successful. When the law first went into operation, school authorities had problems with the Juvenile Court declining to enforce penalties; some localities gave up even sending cases to court. However, in Utah, as in other states, school officials found that effective attendance administration relied on the availability of court imposed penalties, even if rarely resorted to, as punishment.[230] The power of this mechanism was demonstrated in Alpine District in 1925, when persuasive measures proved ineffective to gain the attendance of 30 unwilling children. The school officials took one case to court as a test case, timing it to coincide with the visit of the Utah state superintendent. The judge found the parent guilty of failing to send the child to school and imposed a penalty designed to secure the child's attendance rather than simply punish the parent: 90 days in jail and $200 fine for the parent, to be due the first day the child was absent without the approval of the school principal. The next day 27 children went to school and the penalty never had to be called.[231] In a much larger number of cases, however, school officials found their efforts at punishment thwarted by judges unwilling to enforce penalties. Frustration with the situation led to an agreement on attendance procedure by the state school administrators, court representatives, and the secretary of the Juvenile Court Commission. School officials agreed to pursue persuasion as the primary method of enforcement and to only bring the most hardened cases before the courts with documentation of the procedures followed and the courts agreed to assume responsibility at that point and complete the case. This resulted in a decrease of cases brought before courts and an increase in convictions. For the most part, however, school officials relied overwhelmingly on persuasion, rather than force, and they showed a willingness to be flexible with older pupils who were needed for short periods of seasonal farm labor. Noall praised this flexibility and argued that "rigid enforcement of attendance" for older pupils creates hardships for families and children and leads to public resentment.[232]

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[230] Bender, *The Functions of the Courts in Enforcing School Attendance Laws;* Ensign, *Compulsory School Attendance and Child Labor*; Bermejo, *Attendance Service in American Cities* .
[231] Noall, "Administration of Attendance," 139.
[232] Ibid., 154.

The results of the program were praised as worthwhile by the majority of those involved after five years. Coordinators were able to secure enrollment of a very large proportion of the students that had been out of school entirely and to account for nearly all youths. A small number remained out of reach for a variety of reasons that were mirrored in rural areas throughout the nation—girls married and were exempted from law, courts were sometimes resistant to uphold penalties, parents made special appeals to school board members who were their creditors, merchants, or landlords, and in some cases the students were so notorious that they were unwelcome in school.[233] Many students, even those compelled to attend, reported that they approved of the program and surveys found that a majority of parents, teachers, and principals rated the project "worthwhile."[234] Noall's study was filled with testimonials by children who had had been compelled to attend part-time school and had flourished in its flexible environment and come to embrace schooling after years of detesting it. In one community, he reported 75 young people who had been compelled to attend part-time schooling returned voluntarily the next year and 13 of them even graduated with honors from the regular school program. Another girl who had quit school and challenged the coordinator to send her back was treated kindly and "given choices" rather than disciplined as she expected. She agreed to return and brought her truant sister with her, and both went on to finish high school and graduate from college. Noall acknowledged that "many students are unresponsive and do not yield to the efforts of school authorities" but "one is likely to never know the inner changes his influence effects because pride and inhibitions prevent gracious recognition of such service."[235] When compared with non-participating districts, the counties participating in the program showed striking results—higher levels of high school enrollment and graduation, better ability to account for every child, more pupil personnel adjustments, including incorporating late entrants into the regular program of the high school. In 1929 when the legislature was considering a proposal by tax reduction advocates to

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[233] Noall notes that of 1701 who had been unaccounted for in census, within a year only 139 remained unaccounted for. 940 were exempted from attendance and the rest brought into part-time school. Noall, "Administration of Compulsory School Attendance," 46.

[234] 3/5 of parents, 2/3 of regular teachers, ¾ of special teachers, and 9/10 of principals rated the project "worthwhile" as opposed to "doubtful" or "not worthwhile". Noall, "Administration of Compulsory School Attendance," 40-46.

[235] Ibid., 140-43.

reduce the compulsory attendance period, it sent out a letter to the school administrators of the state. While they acknowledged challenges in the operation of law, according to Noall, the response "was almost a complete endorsement of the principle of compulsory attendance and uniform state-wide child accounting to eighteen years of age" and the change was rejected by the legislature.[236] The conclusion Noall drew from Utah was that "when the school program and policies are right, the difficulties in securing attendance gradually decrease and thus require less attendance enforcement machinery as the program proceeds."[237]

Over time the system of child accounting and special part-time classes was extended from districts voluntarily participating to the rest of the state, although not all chose to participate in the state program of coordinators with equal vigor. Schools reported different degrees of flexibility in the regular school program with accommodating late entrants and slow pupils, some more willing than others to provide special services and adjustment. In some schools, late entrants were enrolled in all classes with little adjustment. In others, schools developed special winter term classes for part-time or "unadjusted" pupils in special subjects and generally with a more vocational focus. In the best schools, late entrants or "unadjusted pupils" were enrolled in a combination of special and regular classes based on the amount of school missed and the aptitude of the particular pupil; bright students were directed toward particular subjects and teachers while slower pupils steered toward practical arts, social studies, and English which were deemed easier to catch up in upon late entrance to school. The goal in all cases was to enroll students in regular classes to the greatest extent possible. Through state guidance, encouragement, and aid most high schools in the state therefore adjusted their curriculum through regular and special classes to meet needs of older pupils, integrating them into the full-time regular school program whenever possible and providing special classes when not. Statewide child accounting improved so that by the early 1930s the state was accounting for over 99.5% of school-age children.

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[236] Ibid., 136.
[237] Ibid., 151.

Utah offers an instructive example of three major and related postwar developments in attendance administration, all related to the state's role in extending and deepening compulsory school attendance: first, the lengthening of the compulsory period which included significant expansions of the secondary school program and part-time schooling; second, the extension of compulsory attendance service to rural areas, and with it the need to offer additional aid and services to rural schools; finally, the expanding state oversight and guidance offered directly and indirectly to localities to encourage compliance with the law. In addition, Utah demonstrates some of the challenges and promises of rural enforcement and local effort.

While a few other states followed Utah's lead in extending the compulsory period to 18 immediately after the war, most other states followed a slower and more cautious course in extending their compulsory schooling period. In each state, the first compulsory attendance statute nearly always placed the upper limit at age 14, the endpoint of elementary schooling for pupils who progressed at a normal rate through schools. During the Progressive Era, some of the more advanced states modified the compulsory period to extend it to pupils 14-16 not working; all contained exemptions for work at age 14 and many allowed exemption for graduation for the elementary school course.[238] While states were beginning to add educational prerequisites to the requirements for work certificates, by 1918 the standard was still quite low: only five states required completion of elementary school grades, most states containing either very low standards-- basic literacy or fourth-grade education—or none at all.[239] In effect, the vast majority of fourteen year olds that wanted to leave school could do so with little difficulty.

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[238] By 1914, 13 states made the compulsory period to 16 for students not working and 2 other states made that the upper limit in cities while having a lower age limit in rural areas. In 1918, 29 states required non-working youths age 14-16 to attend school. Deffenbaugh, "Compulsory School Attendance," (1914); H. R. Bonner, "Compulsory Attendance Laws." In 1918 22 states explicitly made graduation from elementary school grounds for exemption while others permitted it in practice. With the growth of the high school, however, many states modified their laws to name high schools as part of the "common school" system (24 states by 1918) while in other states courts began to rule that high schools were part of the common school system. The main cases were *Commonwealth v. Levey*, 1912 WL 3934 (Pa.Quar.Sess.) (1912); *State v. O'Dell*, 118 N.E. 529 (Ind, 1904); *Miller v. State*, 134 N.E. 209 (Ind., 1922). The issue was pretty controversial throughout the Progressive Era, but basically settled by the end of the 1920s as the high school became available as part of the basic education program in most places.

[239] Bonner, "Compulsory Attendance Laws," 40. The five states with the highest requirements were New York, Washington, California, Idaho, and Kansas.

In the postwar period, however, the upward extension of the age limit and the raising standards for securing work permits, made it much more difficult for fourteen year olds to leave school in most places. By 1928, only 8 states had the upper limit of their compulsory period as less than 16 and 10 states had raised the limit to 17 or 18.[240] In addition, a few states raised the ages at which work exemptions could be granted along with this age extension; in Ohio, for example, youths could not secure work permits and school exemptions until age 16.[241] Furthermore, 17 states made completion of the elementary school course a requirement for the securing of work permits by 1928 and 21 states by 1935.[242] This meant that fourteen year olds had to complete eight years of schooling and progress through it at a normal rate, in order to secure a work permit at age 14. While this might not seem a great impediment, in actuality a sizable number of pupils were behind in school one or more years under a system very different than the age-promotion used today. In Utah, for example, the 1924 school census found that boys were on average 2.7 years retarded in school progress and girls were on average 2 years behind. This would mean that under this requirement an average Utah boy could not secure work certification until he was 16 or 17 and at that time would still be subject to part-time schooling requirements until age 18.[243] In addition, as Utah shows, many states added additional part-time schooling responsibilities that could extend compulsory schooling much further. In 1928, 11 states required part-time compulsory schooling for working children under 18, requiring anywhere from 4-8 hours per week while 17 additional states required compulsory part-time schooling for working youths until age 16 or 17 under

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[240] The states with the lowest standards were nearly all Southern. The five states that required attendance until age 14 in 1928 were Georgia, Louisiana, North Carolina, South Carolina, and Texas. Three states required attendance until age 15: Virginia, Arkansas, and Oregon. In the ten states with the highest standards, Western and Mid-Western states were well represented: Idaho, Ohio, Oklahoma, Nevada, and Utah required attendance to age 18 while North Dakota, South Dakota, Maryland, Delaware, and Maine required attendance until age 17. Keesecker, "Laws Relating to Compulsory Education," (1928): 5. The change from 1928-1935 was less dramatic: 6 states still had upper age limits below 16 while 11 states had them over 16. Deffenbaugh and Keesecker, "Compulsory School Attendance Laws and Their Administration" (1935): 11.

[241] By 1928, five states set higher limits for work exemptions: Ohio and Oklahoma age 16, while Maine, Michigan, and Rhode Island set the age at 15. Keesecker, "Laws Relating to Compulsory Attendance"(1928): 36-70.

[242] Ibid., 11. 12 more states required completion of 6th or 7th grade. In 1935, 12 more states required completion of 6th or 7th grade. Deffenbaugh and Keesecker, "Compulsory School Attendance Laws and Their Administration," (1935): 15-17

[243] Noall, "The Administration of Attendance," 16-18. This problem of "laggards" and "overage" pupils was reported as widespread and troubling and studies proliferated in the 1910s and 1920s as to causes and cures for this evil.

specific conditions.[244] Six states even extended the compulsion past age 18, most to age 21, for young people who could not read and write English.[245]

Furthermore, school-leaving at 14 was rendered more difficult in the 1930s by the shortage of jobs during the Depression; many states stipulated that students secure promises of employment before securing work permits. The lack of available jobs meant that some students could not claim work exemptions and were forced to remain in school, even with the requisite age and schooling credentials, and this was exacerbated by federal requirements that businesses employ no child under 16. During the Depression, high school attendance reached record highs and many states used the opportunity to extend the compulsory period further. New York state, for example, raised its school-leaving age to 16 in 1935 for all youths. The New York Times speculated that the law would not have passed had it not been for such high levels of high school attendance already and the impact of the economic crisis and NRA rules banning labor under 16. It heralded the opportunity provided to expand compulsion, reasoning the bill "is the best approach to the permanent prevention of child labor in general." It was quick to point out however, that the measure was designed "primarily not to keep them from labor, but to give all equal opportunity of preparation, so far as that is humanly possible." The expansion of high schooling, it reflected, was the elevation of democratization to a new level and "one of the most encouraging movements in the history of education in any State or in any country of the world."[246]

However, the upward extension of the compulsory age limit and increasing requirements for work certification only tell part of the story. At the same time they extended the age limit upward, states extended the compulsory period downward as well and they increased the amount of schooling required during that time. The United States Bureau of Education reported that in 1914, the majority of states had

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[244] Some of the states exempted youths from part-time schooling requirements once they completed 8th grade while others did not. Michigan required attendance until age 17 and all the rest until age 16. Keesecker, "Laws Relating to Compulsory Education" (1928): 8-9.

[245] All states hinged on basic literacy in English. States set the upper age of compulsion at part-time schools as follows: California, age 20; Massachusetts, New Hampshire, Rhode Island, and South Dakota age 21; Utah age 35. Ibid., 8-9.

[246] "School Leaving Age" NYT 2/7/1935: 18; bill passed Senate in 1935 with representatives of large industries urging its defeat on account of the added cost it would bring to state's school bill: "Rise in School Age Is Voted by Senate: Measure Setting 16 Years as Limit for Compulsory Attendance in New York Passed" NYT 3/6/1935: 13; "Raising the School Age" NYT 4/26/1935: 18.

set the minimum age of compulsion at age 8, but in 1934 the majority of states had lowered this age to 7, with two states even requiring attendance beginning at age 6.[247] Furthermore, while early statutes stipulated attendance in terms of weeks or months, after the war nearly all states moved to require full term attendance and to increase the length of that school term. By 1935, all but 9 states required full term schooling and at that time twenty-five states had *minimum* school terms required by law of 8 months or more.[248] When one compares the number of years of required attendance and the amount of months required each year, one sees a major increase in compulsory attendance over time. In 1898, by contrast only Massachusetts and Connecticut required full term attendance and the school term was about 6 months, with every other state requiring only weeks, usually 6-12 weeks. By 1918, twenty-eight states required full-term attendance but school terms were still much shorter on average than they would be in the postwar period; only 12 states had terms of eight months or greater.[249] Consequently, students under compulsory attendance laws in the postwar period were required to attend school a much greater length of time than their counterparts around 1900 or even 1918 and schooling had truly become a full-time responsibility for most children.

This upward extension of the compulsory period was not without controversy. Even ardent supporters of compulsory attendance for young children divided on the subject of compulsion for older adolescents. Where was the line to be drawn separating childhood and adulthood, dependence and compulsion from independence and choice? Some critics argued that children over 14 were old enough to decide whether to work or go to school. Many others evinced concerns that holding children out of the labor marked too long was more harmful than beneficial. One letter to the editor of the *New York Times*

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[247] Deffenbaugh and Keesecker, "Compulsory School Attendance" (1935), 11. In 1914, 25 states required attendance beginning at age 8, 1 state at age 9, and the remaining 16 with laws at age 7. In 1934 in contrast, 30 states required attendance beginning at age 7, 16 states at age 8, and two states at age 6 (New Mexico and Ohio). Deffenbaugh, "Compulsory Attendance Laws (1914).

[248] Deffenbaugh and Keesecker, "Compulsory School Attendance" (1935), 13. The states with less than full term was as follows: Arkansas 100 days; Georgia 6 months; Iowa 24 consecutive weeks but district could require full term; Louisiana 140 days; Mississippi 80 days; Oklahoma 2/3 term; South Carolina 80 days but district could require full term; Texas 120 days; Utah 20 weeks.

[249] *Report of the Commissioner of Education* (1897-1898) Vol. 2: 1700; most Massachusetts towns, for example, kept a minimum school term of 24 weeks, *Fifty Ninth Annual Report of the Board of Education of Massachusetts* 1894-5: 584-5; Bonner, "Compulsory Attendance Laws," 39, 103.

noted that "Children, of course, should not be put to work at too tender an age, but just why any one should want to keep the children unemployed after 14 years of age is very strange. When will they learn to work if not when they are young?"[250] Many others expressed similar fears that children needed to be taught habits and virtues of work. Another letter to the *New York Times* linked juvenile delinquency to too much school and not enough work for youths: "Can it be that our institutions go too far and keep many children in school and away from work, until they have acquired habits of idleness and sporty living, or the distaste for the trade of an artisan or for factory work or labor or exacting business of any sort?"[251] Education and child labor reformers shared these same fears and as the compulsory period extended they incorporated greater and greater elements of work into the curriculum, in manual training and vocational studies and in projects like school gardens.[252]

The extension of the compulsory education period was also controversial because many believed it kept from work many youths who could gain much greater use from work than school. Abraham Deutsch, a school administrator in New York, argued that "No one denies the right of the school to claim the time of the child for the purpose of training him, but the time so spent must be profitable for the child. If it is not, it is for the school to relinquish him." Deutsch offered many examples to support his point, including the case of "H.F." a fifteen year old boy who fell very behind in school and in his discouragement, took to bad habits including "loafing about and smoking cigarettes" and was brought to Children's Court for incorrigibility. While on probation, he was permitted to leave school for work and "he became a differently behaved person," for "steady work undoubtedly effected a reformation in this boy's character."[253] Many others similarly argued that in the case of "over-age" adolescent boys who were behind years in their studies, work could provide a better avenue of education than the failure they

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[250] Robert P. Hunter, "Extent of Child Labor" Letter to Editor NYT 11/23/1913: C6.
[251] T.N. Haus, "Juvenile Laws and Crime: The Great Increase in Delinquency in Recent Years is Attributed to the Keeping of the Child from Useful Work" Letter to the editor, NYT 5/3/1925: X14.
[252] The National Child Labor Committee constantly asserted that it aimed to keep children from unhealthy child labor but fully supported educative children's work and placed the responsibility for it with the school. Owen R. Lovejoy, "Legislative Prohibitions of Child Labor" *American Child* I (May 1919): 58 quoted in Anna Reed, "Child Labor Legislation—A Point of View" *Elementary School Journal* 23 (Dec. 1922): 277; Raymond G. Fuller, "Play Needs and Work Needs of Children" *American Child* II (Feb. 1921):356-7 quoted in Reed, "Child Labor Legislation," 278.
[253] Abraham Deutsch, "A Phase of Compulsory Education," *School Review*, 25 (Feb. 1917): 81.

were experiencing in school, a conclusion that researchers in the emerging field of "subnormal youths" also reached.[254] As Deutsch noted, "we would very much desire every child to receive as much academic training as possible, but as it was somewhere naively stated, 'You can't put a five-dollar education into a five-cent head and some must be manual laborers.'"[255] In addition, the part-time schooling laws could cause hardship for youths with good jobs. In a 1928 case, for example, a 17 year old boy who worked in a law office and attended night school in preparation for law school was convicted for violating the part-time compulsory schooling law which required day-time attendance, despite the threat of his employer that attendance at the day school would result in the loss of his job.[256]

The second major trend of the post-war period exemplified by attendance administration in Utah, was the extension of the machinery of attendance enforcement into rural areas in new ways. Utah, with its school districts already organized along county lines, employed county level attendance officers and empowered cities to appoint their own attendance officers, and were aided in their efforts by the special high school coordinators. While most other states did not go as far as Utah in county administration, as explored in the last chapter, state laws increasingly encouraged and then mandated the development of county or township level supervision of district schools in rural areas and invested them with authority to administer policies or services best performed by more expert personnel or more centralized apparatus. In the postwar period, one of the ways that states enhanced the efficacy of rural attendance administration was by authorizing or mandating that county superintendents or county boards of education appoint attendance officers. By 1928, 21 states had provisions for selection of attendance officers by county school authorities.[257] The county attendance service operated in different ways in different states: in

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[254] Reed, "Child-Labor Legislation," 280-1.
[255] Deutsch, "A Phase of Compulsory Education," 86.
[256] *People v. Braunstein*, 248 N.Y. 308, 162 N.E. 89 (1928). "Compulsory Law on Schools Upheld: Court Finds Continuation School Attendance Provision is Constitutional" NYT 4/3/1928: 35. There was a similar case in Wisconsin—a 16 year old female bookkeeper, who held a good job with room for advancement and took classes at a business college, was required to attend day continuation school despite the fact that it would cost her the job in *State v. Freundenberg*, 163 N.W. 184 (Wis 1917). In both cases, courts admitted that for these youths work was better than school but found that the laws admitted of no exceptions and the laws were within the legislature's police power; challenges to the law would have to be addressed to the legislature and not the courts.
[257] Keesecker, "Laws Relating to Compulsory Education" (1928), 20-22. In contrast, only four states authorized county superintendents or boards of education to appoint truant officers in 1914, Deffenbaugh, "Compulsory

some, county attendance service was aimed to provide enforcement for districts without their own truant officers; in others, district attendance officers predominated but were subject to county oversight; in still others, county attendance officers were the primary means of enforcement but districts permitted to appoint additional officers; finally, in some states county attendance officers completely supplanted and replaced district enforcement.

County level attendance service in theory, if not always in practice, did much to reduce the causes for rural non-enforcement and encourage better attendance enforcement. In the first place, county attendance service enlarged the sphere of administration enough that officers were not as hampered by neighborhood politics nor confronted as often with prosecuting their immediate friends and neighbors. In states with district school boards and county oversight, county attendance officers were separated from the machinery and accountability of local district school politics. Furthermore, county administration was much more likely to encourage attendance service even if local sentiment remained somewhat hostile. The reformist agenda of county superintendents could ignite local controversy at times if they sought to raise the attendance standards against the objections of community or at least some of its key leaders. In Missouri, for example, a 1929 statute authorized the county superintendent to appoint county attendance officers to enforce the attendance law in districts without their own truant officers. The county superintendent of Phelps County appointed a truant officer but the county court notified him that it would not pay for his services. The county attendance officer began work and put in a claim for payment which the appeals court upheld under the new law, finding that the county court did not have the power to order the new official not to act.[258] Many other appellate cases reflected animus between county education officials and other county officers. In a 1935 Indiana case, the county council and board of commissioners refused to appropriate funds for the salary of a county attendance officer appointed by the

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Attendance Laws"(1914), 38-55. By 1945, 27 states would have county oversight. Maris M. Proffitt and David Segel, "School Census, Compulsory Education, Child Labor: State Laws and Regulations" USBE Bulletin No. 1 (1945):10-11.

[258] *Bowman v. Phelps County*, 330 Mo 826, 51 S.W.2d3 (1932).

county superintendent; as in the Missouri case, the court required the county officials to allocate the funds for the attendance officer, dismissing the claim that it violated "local rights."[259]

County level administration also tended to improve rural enforcement because the sphere of administration was often enlarged enough that the county could employ attendance officers with higher qualifications, offer better pay, and provide more regularized part or full-time employment than would be possible in rural districts. In small districts, attendance officers, when appointed, were usually ex-officio officers which meant that the duty was exercised by someone that already had other full-time responsibilities such as a school janitor or sheriff. Consequently, research and experience showed that these ex-officio officers often neglected their attendance responsibilities and were rarely able to devote the time or attention to the job that was required and when they did it was simply in a policing capacity.[260] County attendance administration, however, offered the opportunity for full or part-time employment. Higher county salaries also allowed counties to raise the standards for attendance officers in order to try to approximate the welfare services and casework approach of cities. In Maryland, for example, the state legislature created county level administration of attendance in 1916 and gave the county superintendent oversight. Counties were able to hire better trained attendance officers and in 1922 the legislature established high minimum qualifications for county attendance officers—two years normal school training or better—and provided state aid for their salary.[261]

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[259] *Stone v. Bossong*, 208 Ind. 65, 194 N.E. 642 (1935). During the Progressive era, there were similar conflicts over whether counties had to allocate county founds to pay assessors when a state law required the county assessors to take the school census. Courts found that the county did have to pay, see *In Re Liability of County for Pay of Assessors*, 1896 WL 3871 (Pa.Atty.Gen) (1896) and *Brinker v. Northampton County*, 6 Del.Co. 446 (Pa. 1896). In addition, conflicts between county education officials are also evident in *Quernheim v. Asselmeier*, 296 Ill. 494, 129 N.E. 828 (1921) in which the county board of education (comprised of laymen) authorized the county superintendent (professional educator) to appoint an attendance officer and then abruptly changed its mind. In *State ex rel. Douglass v. Board of Public Instruction of Duval County*, 98 Fla 66, 123 So. 540 (1929) the Florida court found that the state law authorizing county boards of education to appoint and remove attendance officers was unconstitutional because it violated constitutional rules for the election of officers; this opinion ran counter to the general trends of upholding state delegation of powers to county school officials as state officers.

[260] Hanson, *Costs of Compulsory Attendance Service in the State of New York;* Bermejo, *The School Attendance Service in American Cities;* Bermejo, *City School Attendance Service.*

[261] John Leslie Lawing, *Standards for State and Local Compulsory School Attendance Service* (Maryville, MO: Forum Print Shop, 1934), 7. Eight other states also proscribed requirements for attendance officers while other gave the state department of education authority to prescribe qualifications or certify attendance officers. In addition, some cities prescribed qualifications that exceeded those required by the state. In most states, however,

Closely related to the extension of attendance service to rural areas, was the third major trend of the post-war era exemplified by Utah: the state department of education played a major role, directly and indirectly, in expanding this attendance service throughout the state. In Utah, the state department of education performed an essential role in aiding and guiding localities in their enforcement of the law: it initiated the census and proscribed procedures for improving child accounting; it formulated principles and developed a model program for part-time schooling and adjustment services in high schools; it provided funding to aid communities build and support high schools; it interceded when county judges were refusing to impose penalties under the law and helped formulate a solution.

Other states offered similar but unique mixes of state guidance and oversight in attendance service. Some states experimented with creating special state officers or attendance divisions dedicated to the task. Connecticut continued to build its state department of education and enforce the compulsory attendance and child labor laws directly with state officers but still no other states, save the small state of Delaware, followed suit.[262] In a 1934 study of state attendance services, John Lawing found that while Connecticut was a recognized leader in education and provided generously for schools, its attendance record left something to be desired; he ranked it 21st in terms of efficiency of attendance service for the year 1926, the lowest ranking of any New England state. He judged that the best method of enforcement was not direct state enforcement, for it produced "a passive attitude toward enforcement by the local officers" but rather a combination of local enforcement guided by state leadership. According to Lawing, "Local officers will not enforce the law properly unless they feel that they must, and for that reason there should be state supervisors with authority to compel them to do their duty."[263] Lawing reflected a general sentiment among educational scholars and leaders that while state leadership was crucial for local

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qualifications continued to be determined by the appointing agent, often the superintendent, but were steadily raised over time, even in smaller cities and counties. Deffenbaugh and Keesecker, "Compulsory School Attendance Laws" (1935), 31-7.

[262] After unsuccessful attempts at local enforcement, Delaware legislature in 1921 charged the state department of education with enforcement of compulsory attendance law and gave it the power to direct and supervise all visiting teachers throughout the state. Lawing found that the state was achieving good results but argued that the state was the size of many counties and therefore operated more like a good county system than a state system. Connecticut stood as the only state of any size to attempt direct state enforcement and it was the object of continued critique by others.

[263] Lawing, *Standards for State and Local Compulsory School Attendance Service,* 52, 79-80.

educational efforts, states should not usurp too much direct control lest they undercut local responsibility for the schools and stifle local initiative and experimentation.[264]

Instead of direct state enforcement, some states experimented with creating specialized divisions or bureaus within the state department of education to supervise and encourage local attendance efforts. New York was the first state to do so, and in 1904 the Board of Regents created a bureau of child accounting and attendance in the state department of education with a director and one clerk charged with overseeing attendance in the state. The office was expanded in 1917 with the addition of 2 field assistants and thereafter continued to expand so that by 1935, the office had a full time staff of ten.[265] The New York child accounting and attendance bureau was charged with the administration of the compulsory education law and supervision of work permits. It was required to supervise attendance work of local school authorities and cooperate with local attendance officers and other groups concerned with the welfare of children. In addition, the Commissioner of Education was vested with strong oversight authority, empowered to withhold one-half of public moneys from any city or district "which in his judgment, willfully omits and refuses to enforce the provisions of this article…."[266] In its administration of the law, the bureau engaged in a range of activities in the 1920s and 1930s designed to aid local compliance: it prepared and issued directions for securing attendance, proscribed procedures for appointment of attendance officers, prepared forms to be used in attendance service, held conferences for attendance workers, interpreted laws for enforcement and advised local officials, reported on attendance conditions in the state, visited local school districts to consult with local officers, and carried on continuous campaign for public support for educational and welfare reforms to promote good

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[264] Chapters 1 and 2 will treat this issue at greater length. See for example, George Dayton Strayer Jr., *Centralizing Tendencies in the Administration of Public Education: A Study of Legislation for Schools in North Carolina, Maryland, and New York Since 1900* (New York: Bureau of Publications, Teachers College, 1934); George H. Chatfield, "What Provisions Should a Compulsory-Education Law Include from the Viewpoint of Aim and the Viewpoint of Enforcement?" *National Education Association Addresses and Proceedings* (1917): 828; Cubberley, *Public School Administration*.

[265] Lawing, *Standards for State and Local Compulsory School Attendance Service*, 7; Deffenbaugh and Keesecker, "Compulsory School Attendance Laws" (1935), 54. Staff included one director, one assistant director, 1 secretary, 4 field supervisors, and 3 clerks.

[266] *Organization and Functions of the New York State Education Department*, No. 1118, June 15, 1937. (New York: University of the State of New York Press, 1937) quoted in David Segel and Maris M. Proffitt, "Pupil Personnel Services as a Function of State Departments of Education," USBE Bulletin No. 6, Monograph No. 5 (1940): 27.

attendance.[267] Other states followed suit in the post war period and by 1940, eleven states reported to the United States Office of Education that they had distinct divisions with attendance responsibilities.[268] County-level administration of attendance served similar functions of oversight and guidance in many other states.

Most states without official state divisions of attendance or state attendance officers, such as Utah, nonetheless exerted great influence over attendance in the state through a variety of powers and authority vested in it. Nearly every state department of education was delegated broad authority to see that the state's school laws were enforced and the United States Bureau of Education reported in 1940 that this meant that "probably no State department of education is without sufficient legal authorization, either of a general or specific character, to enable it to exercise a strong influence for the enforcement of the compulsory school attendance law."[269] Most states required attendance officers or superintendents to submit regular reports on attendance in the district or county and could exercise a variety of powers if the attendance was believed to be lax or suspect, including the power of removal of truant officers or the withholding of state funds. Nearly every state directed the school census in the state, with responsibilities including furnishing forms and procedures, compiling results, checking reports for accuracy, and distributing state funds.[270] Furthermore, state departments of education often exercised authority as advisors on school matters and interpreters of school law. A 1924 Pennsylvania case, for example, involved one of these state superintendent constructions of the law, the courts reviewing his decision about whether a child could be legally excused from school because of illness in the family.[271] In these and myriad other ways, as evidenced by Utah, states offered guidance and advise, persuasion and pressure, for the enforcement of the attendance law.

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[267] Segel and Proffitt, "Pupil Personnel Services," 27-32; "New York" in *Education in the States: Historical Development and Outlook*, 861-96.
[268] Ibid., 12-14. State departments with special bureaus devoted to education included: Alabama, California, Connecticut, Delaware, Florida, Indiana, Kentucky, Maryland, New Hampshire, New York, Pennsylvania.
[269] Ibid., 35.
[270] Segel and Proffitt, "Pupil Personnel Services," 36-42.
[271] *Commonwealth v. Mufford,* 6 Pa. D. & C. 781 (1924).

One of the ways in which most states exercised the greatest influence over attendance, however, was in the distribution of state funds. Some states, like Indiana, moved away from distribution based on school-age population to distribution on the basis of average daily attendance in order to encourage higher levels of attendance. When school money was distributed by school-age population it gave school officials no incentive to increase attendance and in fact may have served as a disincentive because schools received the same amount of money whether or not children were attending school. By tying funding to average daily attendance, state departments of education made it in the best interests of local schools to enroll more students and maintain high levels of attendance throughout the term.[272] Other states like New York and Georgia were given the authority to withhold state school funds from school districts that did not comply with the law.

Yet many state efforts were directed less at policing local enforcement than at aiding localities in removing some of the obstacles to good attendance. Distance was often a major obstacle to attendance in rural communities, one study finding that it was the most important factor in irregular and non-attendance for rural youths.[273] In most states, statutes enabled and then increasingly made mandatory free transportation for pupils over 2 miles from school and in many states special state funds were distributed for the purpose. By 1940, 28 states gave state aid for transportation of pupils in order to encourage school consolidation and eliminate distance as a reason for non-attendance in rural areas.[274] Most other states either permitted or required local schools to provide free transportation. Likewise, states increasingly removed poverty exemptions from statutes and required localities to provide free textbooks, clothing, and aid to needy families. In 1928, 33 states had mandatory laws relating to educational relief for dependent

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[272] Segel and Proffitt, "Pupil Personnel Services," 9-11. Education researchers and reformers often urged states to adopt average daily attendance as a method of state fund apportionment. A research study of Texas, for example, attributed distribution based on school-age pupils as providing a clear disincentive for school officials to enforce the attendance law. Terrel Spencer, "Legal Basis of the Public School System in Texas" (Phd diss, University of Chicago, 1945).

[273] George H. Reavis, *Factors Controlling Attendance in Rural Schools, Teachers College, Columbia University Contributions to Education No. 108* (New York: Teachers College, Columbia University, 1920).

[274] Timon Covert, "Financing of Schools as a Function of State Departments of Education," USBE Bulletin No. 6, Monograph No. 3 (1940): 14-15.

and neglected children while 14 more had permissive legislation.[275] This state aid often took the form of requirements for local boards of education to provide free textbooks and clothing for the needy but in some states the department of public welfare gave special state scholarships or distributed mothers' pensions, often with requirements that women keep their children in school in order to receive the payments.[276]

State requirements and state funding were also used to eliminate the number of pupils claiming exemptions for disabilities and illness. Nearly all compulsory attendance laws contained exemptions for mentally and physically disabled children, but states in the postwar period began to tighten the administration of these exemptions, allowing fewer students to claim them and asserting the educability of many classes of physically and mentally handicapped students. Many states had supported states institutions for deaf and blind students since the nineteenth century but they expanded the institutions and made attendance increasingly compulsory for those and other special students in the twentieth century. In addition, states authorized and sometimes funded special classes in localities; by 1940, twenty-one states gave special aid for the education of "atypical children" which encompassed not only the blind and deaf but often "feeble-minded," "crippled," and "tubercular" students as well.[277] In addition to providing education for special children that would once have been merely exempted from attendance requirements, states also moved to reduce the incidence of disability and disease through preventable causes. Motivated in large part by the draft revelations of WWI, states began to encourage and mandate a variety of health programs in schools which sought to improve the health of pupils and reduce non-attendance through illness. Health programs included a variety of state-sponsored programs including compulsory

[275] Keesecker, "Laws Relating to Compulsory Education," (1928), 11-12. By 1928, only 18 states still had poverty exemptions while at one time nearly every state did. However, an additional twelve states maintained indefinite provisions related to exemption (such as "any reason satisfactory to local school authorities" that could and was used to excuse cases of extreme poverty.
[276] Ibid., 12-13, 36-70. Sometimes this "poor relief" simply took the form of provisions for poor children to be committed to institutions that would provide for their care and education.
[277] Covert, "Financing of Schools," 14-15.

vaccination, medical inspection in schools, school lunch and milk programs, physical education classes, and health education.[278]

The use of state funds to reduce causes of non-attendance reflected the intensification and spread of a trend underway since the Progressive Era in shifting the emphasis in attendance service from policing to prevention. This emphasis had been developing in the attendance bureaus of the largest cities which raised the standards of attendance service and hired special "visiting teachers" to act as social workers, but in the postwar period this emphasis on prevention and treatment spread to state and county level attendance services. Pennsylvania's education department, for example, officially adopted the idea of attendance service as social welfare work. In its manual to attendance officers, it declared that the job of home and school visitors "not only concern herself with the fact of nonattendance or irregular attendance and employment but also interests herself in the educational, psychological, medical, and social problems and needs of children who are attendance problems, and endeavors to affect adjustments that are both educationally and socially sound."[279] Likewise the Kentucky State Department of Education emphasized the attendance service as child welfare work aimed at the best interests of the child and the job of attendance officers was to be that of "an ambassador to establish the best possible relations of cooperation and helpfulness between the school and the home."[280] This emphasis on attendance as welfare work was reflected in the growth of "pupil personnel services" and embedding of attendance within them in state departments of education. "Pupil personnel services" came to embody not only attendance work but all other services that aimed to adjust the school program to meet the needs of children, including vocational guidance, measurement and testing programs, psychological services, and other forms of child welfare work.[281] This broadening conception of attendance as part of a broader rubric of social work services and

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[278] State statutory requirements, state education department programs and policies, special forms of state aid. These usually followed the pattern of permissive legislation, to encouragement through state aid, to mandating programs.
[279] "Home and School Visitor—A Manual" Pennsylvania State Department of Education *Bulletin* No. 72 (1939) quoted in Segel and Proffitt, "Pupil Personnel Services," 17.
[280] "School Census and Attendance Administration" Educational Bulletin Vol. 2, No. 7 (Sept. 1934), p. 6 quoted in Segel and Proffitt, "Pupil Personnel Services," 21-2.
[281] Segel and Proffitt, "Pupil Personnel Services"; Walter S. Crewson, "Pupil Personnel Services," in *Education in the States: Nationwide Development Since 1900*, edited by Edgar Fuller and Jim B. Pearson (Washington D.C.: National Education Association of the United States, 1969): 345-380.

adjusting the pupil to the school reflected the growing emphasis of schools on individual child welfare and maximization of schooling for all as defining a "democratic education." It also reflected to some extent the ways in which compulsory education created higher expectations and greater responsibilities for the state over time; if the state was going to require more and better attendance from all pupils capable of appreciating the benefits of education, it must provide services to support this demand.

Yet for all the moves of state governments, attendance service continued to be conditioned by local enforcement. While states could and did sometimes exert more punitive measures to gain compliance, state departments sought the active and willing cooperation of localities. As scholars of administration noted, state departments of education began to focus more on guidance and advising services, especially after 1930, and move away from enforcing minimums in a host of areas, attendance included.[282] While this meant that enforcement could continue to languish in some hostile communities, state oversight usually meant that communities could not completely refuse to acknowledge the laws and state assistance helped many rural communities develop their own attendance system. In Utah, Noall recognized that local school authorities still exercised discretion by not pursuing enforcement against particularly troublesome youths. Local school officials decided whether and how much to adapt the high school program and deploy the state program of coordinators. However, most were willing to accept state assistance and comply with the law because they recognized the usefulness of the state program, believed in the benefits of education, and shared professional norms and values that increasingly prized reaching all students. Local attendance officers were "flexible" in their administration and particularly for older students, showed willingness to accommodate family and economic needs, a flexibility that Noall prized for its use in raising public sentiment and support.[283] Noall, like many other educators of his day, believed that public sentiment would continue to build as the schools showed their worth and willingness

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[282] William M. Alexander, *State Leadership in Improving Instruction, Teachers College, Columbia University Contributions to Education, No. 820* (New York: Bureau of Publications Teachers College, Columbia University, 1940); Roald F. Campbell, Gerald E. Sroufe, and Donald H. Layton, eds., *Strengthening State Departments of Education* (Danville, IL: Interstate Printers and Publishers Inc., 1967); Betty K. Whitelaw, "State Centralization: A Trend in the Administration of Public Elementary and Secondary Education 1930-1940" (MA thesis, University of Chicago, 1940).

[283] Noall, "Administration of Compulsory School Attendance," 113, 152-154.

to accommodate the needs and demands of all. In this way, state assistance rather than compulsion could help to build up crucial public support.

However, as was painfully clear in the South and in pockets of rural communities throughout the nation, this emphasis on local enforcement could allow local communities to neglect their responsibilities generally or selectively. These responsibilities not only included enforcement of attendance law—to utilize compulsion—but also the other side of the coin—improvement of the schools and attention to the causes of absence in order to allow more students to enjoy educational opportunities. Communities that neglected attendance enforcement entirely for all pupils often evinced less commitment to public schooling itself. Throughout the post-war period many Southern states made dramatic moves to build up their state departments of education, devote greater revenue to school programs, and build up attendance at schools. State school officials often gave at least lip service to professional ideas and values of expanded educational opportunity.[284] However, local communities sometimes chose to selectively not enforce the law, ignoring the non-attendance of pupils deemed problematic. As Noall noted in his analysis of attendance administration, local authorities deliberately did not enforce the law against "obnoxious pupils" and it was widely known that local school boards systematically ignored non-attendance of Mexicans in the Southwest and African-Americans in the South.[285] Perhaps even more crucially, they failed to offer the services that would have enabled more Mexican and African-American children the opportunity to go to school. A 1922 study of black school attendance in Delaware, for example, found that over one-third of black children lived more than 2 miles from school, which in the absence of transportation, rendered them both exempt under the law and largely unable to attend voluntarily.[286] The state department of education which initiated the study pledged a commitment to

[284] As explored in chapter 2, however this definition of "educational opportunity" was one of limited vision. For example, state leaders often supported improvements in African-American education including new school buildings, state supervisors for black schools, changes in funding which increased public support for black schools, etc. However, the improvements they sought were usually aimed at basic elementary education and at manual and vocational training—they expanded access but they kept black students in particular tracks that limited the opportunity for real mobility or advancement.
[285] Noall, "Administration of Attendance," 135, 6.
[286] Richard Watson Cooper and Hermann Cooper, *Negro School Attendance in Delaware* (Newark, DE: University of Delaware Press, 1923).

increasing the rate of black school attendance and within a decade had financed, largely through the personal efforts and contributions of Pierre S. DuPont, the construction of 86 new school buildings for African-American students. Yet, new school buildings were not all that was needed and when state initiative waned, the supervision of the schools left to indifferent district and county school boards with little commitment to raising levels of attendance.[287]

The inclusion or exclusion of African-Americans from compulsory attendance administration offers an interesting window into the double-edged nature of compulsory attendance—the very real coercion and the opportunity embedded in compulsion. In the North, available statistics showed that black school attendance was remarkably similar to the attendance of both native and foreign born whites even before WWI. The 1910 census showed for example, that the percentage of black school attendance was similar and sometimes even higher than the other groups.[288] School boards in cities committed themselves to enforcing attendance for African-Americans and there is evidence of prosecutions and penalties imposed alongside those given to whites.[289] Throughout much of the North, the same ideas about the purposes and social benefits of education that propelled its expansion required that African-Americans be included to some extent in its grasp. While the educational opportunities offered were not as munificent as given to whites, they were not insignificant, particularly as contrasted with the widespread hostility to black education in the South. Many southerners recognized that along with

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[287] Paul H. Johnston, "Delaware," in *Education in the States: Historical Development and Outlook*, 205-232.

[288] 1910 Census cited in Deffenbaugh, "Compulsory Attendance Laws in the United States," (1914): 25. In some Western states, black school attendance even exceeded that of native and foreign born whites. In most northern states, black school attendance was within 2% of that of white school attendance.

[289] In the 1890s, the *New York Times* reported that the New York City school board, for example, had decided to enforce the new compulsory attendance laws against African-Americans as well as whites and a few articles appeared about convictions of black parents. It is hard to tell from court records and other articles whether compulsion was pursued as vigorously against black parents and it is likely that outside of cities it was not. "The Educational Bill a Law: Parents Must Send Their Children to Some School" NYT 5/15/1894: 8; "Color Line in Jamaica Schools: Negroes Will Be Arrested for Violating Education Law" NYT 4/5/1896: 9; "Another Jamaica Negro Fined" NYT 4/10/1896: 1; "Jamaica's School War: Compulsory Education law Being Enforced Against Negroes" NYT 4/15/1896: 3. In most articles and cases about compulsory attendance, race was not identified for defendants. A human interest piece in 1922 described a Municipal Court judge's Christmas gift of shoes to one African-American mother charged with violating the compulsory attendance law; the article focused on the judge's gift, and the prosecution of black parents elicited no comment, suggesting it was a normal feature of attendance service. "Wore Mother's Shoes, Judge Buys Boy a Pair: Adjourns Truancy Charge to Take Elderly Negress and Son Shopping" NYT 12/22/1922: 23.

coercion came expanded opportunity and they sought to exclude African-Americans from it; if education was simply about domination or creating docile workers, as many educational scholars have claimed, southern African-Americans would have be coerced into the schools rather than barred from them. Implicit to some extent within schooling was an acceptance as part of the polity.

State Police Power, Compulsory Attendance, and the Emerging National System

The passage of compulsory attendance laws and the ways in which the laws were broadened and deepened during the Progressive Era and post-war period, belie an awesome growth of state authority. Through compulsory attendance laws and a host of other school regulations, the state came to decide not only that no parent may decide *not* to educate his child, but to increasingly define what that education had to look like. While early compulsory attendance statutes purported to only claim the neglected child, the laws developed over time to assert significant controls over the education of all children. In case after case, courts sustained and legitimated the growth of state police powers and its steady erosion of traditional common law understandings of parental rights. While in most cases, courts deferred to state legislatures acting on behalf of the public welfare, they also sought to define some limits to the state's reach into the household. In the 1920s, the United States Supreme Court established a sphere of parental liberty upon new grounds while also legitimating sweeping state regulations over education.

Challenges to the enlargement of state authority and its assumption of parental rights were heard from the very earliest days of compulsory attendance legislation. In the 1870s and 1880s many leading educators and a large segment of the public opposed general statutes requiring attendance at school as un-American and an invasion of traditional parental rights. The notions of "parental rights" were drawn from both a sense of natural rights and from the reciprocal rights and duties of common law: the parent (i.e. the father) owed his child protection, support, and education and in return received the child's services. In the nineteenth century, courts and state legislatures began to make some modifications to traditional common law doctrine of parental dominion, by recognizing to a limited extent the child's welfare as a factor in some decisions, most notably in awarding custody to mothers during children's tender years.

For the most part, however, courts and legislatures deferred to parental and paternal authority. Only in cases where this paternal authority was absent or suspect did the state intervene and assert its role as *parens patriae*—in cases of orphans, abused and neglected children, or dependent (i.e. public charges). In the late nineteenth century, this intervention increased through the regulation of juvenile delinquents and creation of quasi-crimes, but was still aimed primarily at families deemed deviant. As Christopher Tiedeman noted in his seminal 1886 treatise on police power, "the natural affection of parents for their offspring" means that most parents will serve both their child's and society's best interests in raising them. This bond should not be interfered with save "in the exceptional cases, when the parents are of such vile character, that the very atmosphere of the home reeks with vice and crime…."[290] Deference to parental authority remained the dominant understanding of the nineteenth century.

When supporters of compulsory attendance laws defended them in the 1880s and 1890s they invoked this understanding, arguing that the laws sought only to target deviant families who neglected the education of their children entirely. The Illinois state superintendent defended compulsory attendance in 1890, by arguing that the state intervenes on behalf of the physically abused or neglected child, so why let parents "cripple him for life by lack of knowledge and proper schooling" which causes greater harm and injury because "it injures the child in his noblest attributes, disables him where he ought to be strongest and best."[291] In a roundtable discussion at the 1890 National Educational Association meeting, James Pierce explained that "The principle of the basis of a compulsory attendance law is, that it is the interest of the state, that no child shall be neglected by its parents that it may not embrace the opportunity which the state offers of an education; that if private instruction is neglected, instruction in the public schools

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[290] Christopher G. Tiedeman, *A Treatise on the Limitations of Police Power in the United States.* (St. Louis: The F.H. Thomas Law Book Co., 1886), 561. See also Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill, NC: University of North Carolina Press, 1985); Peter W. Bardaglio, *Reconstructing the Household: Families, Sex, and the Law in the Nineteenth-Century South* (Chapel Hill, NC: University of North Carolina Press, 1995); Florence Kelley, "On Some Changes in the Legal Status of the Child Since Blackstone" *The International Review* (Aug. 1883): 83-98; Abbott, *The Child and the State*, 1938);

[291] Richard Edwards, "Compulsory Education," in *Eighteenth Biennial Report of the Superintendent of Public Instruction of the State of Illinois* (1889-1890): lxxxv.

must not be."[292] Likewise, in that same discussion J.B. Thayer argued that the goal was simply to ensure that the child was educated and not that he was educated in any particular manner or location: "Time, place, and circumstances are incidental and immaterial, so long as the child receives the education that qualifies him for the duties of citizenship."[293] Each of these supporters of compulsion justified it in terms of extending the already accepted responsibility of the state to protect neglected children but denied that the laws would interfere with the parental rights of those who already educated their children. The laws themselves seemed to reflect this purpose, allowing generous exemption for other forms and definitions of education; nearly all required attendance at public schools unless equivalent instruction was already offered in private or parochial school, by a private tutor, in home instruction, or the child had already attained the common branches of learning.[294]

This limited understanding of compulsory attendance laws as a simple extension of the state's power to protect children from parental neglect dominated the reasoning of courts in the earliest challenges to compulsory attendance laws. In 1891, Patrick Quigley, a Catholic priest and private school principal was prosecuted for failing to cooperate with state officials in the enforcement of the compulsory attendance law for refusing to fill out forms given by the state to monitor enrollment. Quigley challenged the constitutionality of the compulsory attendance statute as a violation of parental rights and authority to direct the education of one's children. In its decision, the court considered the nature of state police power and of parental rights. It traced common law understandings of the rights of parents to the care, custody, and service of their children which had long been recognized by the courts but noted that courts had also defined exceptions; father's could relinquish the right to the child through contract, neglect, abandonment, or total inability to support the child and while parents' legal rights should be respected, the welfare of the minor was of paramount concern. Furthermore, the *Quigley* decision noted that the legal

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[292] James O. Pierce in "Compulsory Laws and Their Enforcement: Discussion" *National Educational Association Addresses and Proceedings* (1890): 193.
[293] J.B. Thayer in "Compulsory Laws and Their Enforcement: Discussion" *National Educational Association Addresses and Proceedings* (1890): 198-9.
[294] Harris, "Compulsory Attendance Laws in the United States," in *Report of the Commissioner of Education* (1888-1889): 470-531.

right of the state to assume guardianship of neglected homeless children and orphans was well established. According to the court, the same police power authority that allowed the state to assume guardianship of these children or intervene in cases of parental failure, clearly established state authority to require the education of children without proper care from parents. "It is only when the parent, if I may so say, forfeits his right to the child, or at least when he shall so far forget his duty to the child as to entirely neglect to educate him, or refuse to educate him… that the state steps in, and by virtue of these statutes compels his attendance at school…."[295]

A similar understanding that compulsory attendance was aimed at preventing neglect or ensuring education, but not forcing any particular form of education, also clearly underlay the storm of opposition that accompanied new compulsory attendance laws in Wisconsin and Illinois in 1889 in which clauses were inserted requiring private schools to instruct youths in the common branches in English. In both states, German Lutherans and Catholics rose up in protest, wrought major political upheaval, and succeeded in repealing the laws. However, in both states the Democrats that came to power in state legislatures passed nearly identical laws, the offensive clause simply withdrawn, immediately after repeal. As some explained, the issue was not opposition to compulsory attendance laws or even English teaching but rather fear that they were an "entering wedge" to dictate control over private schools and invade "the rights of private judgment, parental control, and the family circle."[296] Compulsory attendance laws which merely compelled parents to educate their children, without determining how or where, were not objectionable. When a court was called to interpret a similar law in Massachusetts in 1893, it found that the state law requiring children be sent to a public school or approved private school did not prohibit a parent from satisfying the terms of the law by sending his daughter to a private school the school

[295] *Quigley v. State*, 1891 WL 289 (Ohio Cir.) (1891).
[296] William F. Vilas, "The 'Bennett Law' in Wisconsin" *Forum* (Oct. 1891): 202, 206. In both states, Republican legislatures passed the laws and the rising opposition of German Lutherans and Catholics caused major electoral upheaval in the fall 1890 election. Largely on this issue, Democrats won the Milwaukee mayoral position, legislative majorities in both states, and two new governorships. "The Schools in Politics: A Question that is Agitating the Great West" NYT 5/26/1890: 1; J.D. Roth, "Lutherans and the Schools: A Statement of What Does and Does Not Oppose in School Laws" Letter to editor NYT 6/1/1890: 11; N.C. Dougherty, "Recent Legislation Upon Compulsory Education in Illinois and Wisconsin" *National Educational Association Addresses and Proceedings* (1891): 393-403.

committee had explicitly rejected. The court reasoned that "the great object of these provisions of the statue has been that all the children shall be educated, not that they be educated in any particular way."[297] This interpretation of laws as simply requiring some education be provided and rejection of oversight over private instruction would be recast as states took more active roles in regulating local schools and state police power radically expanded in the twentieth century.

In 1901, the Indiana Supreme Court rejected a constitutional challenge to the state's compulsory attendance based on parental rights to govern and control one's children that was similar to that offered in the Quigley case. The court's decision in *State v. Bailey* would be widely cited as settling the issue of constitutionality by other states and its reasoning about the nature of state police power and parental authority would guide later cases.[298] In the case, Sheridan Bailey was convicted for failing to send his child Vory to school according to the compulsory education law. He challenged the law as invading the "natural right of a man to govern and control his own children" and violating two provisions of the Indiana state constitution—its provision which required each act to only embrace one subject and its provision requiring an amendment to clearly name the first act it amended. On the first issue, the court argued that "the natural rights of a parent to the custody and control of his infant child are subordinate to the power of the state, and may be restricted and regulated by municipal laws." One of a parent's natural duties was to educate his child, and "this duty he owes not only to the child only, but to the commonwealth" and if he neglects this duty he "may be coerced by law to execute such civil obligation," for "The welfare of the child and the best interests of society require that the state shall exert its sovereign authority to secure to the child the opportunity to acquire an education." Significantly, the court ruled that parents' responsibility toward their children was a matter not simply of private authority but of public concern, a "civil obligation" in the best interests of society which warranted state coercion if neglected.

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[297] *Commonwealth v. Roberts,* 59 Mass. 372, 34 N.E. 402 (1893).

[298] In the same decade, there were two other appellate cases which raised the issue of constitutionality, but the courts generally rejected the claim without much discussion or with a slight elaboration of the same basic principles cited in the *State v. Bailey* decision. *State v. Jackson,* 53 A. 1021 (New Hampshire, 1902); *Commonwealth v. Edsall,* 1903 WL 2585 (Pa.Quar.Sess.) (1903).

This view of parental rights subordinate to the state was justified by the court's view of the nature of state police power. State legislatures were given broad authority to regulate on behalf of the health and welfare of society, subject only to limits imposed by the constitution. Education, it reasoned, was a legitimate function of the state and therefore in the absence of any violation of an express provision of the constitution, the legislature and not the court, was the appropriate body to determine how far that regulation should extend. Consequently, in the *Bailey* decision, the court spent more time examining the other two issues presented—the claims that state constitutional requirements about law-making procedures had been violated. After close examination of precedent, the court found that the legislature had not erred in naming the law and therefore the compulsory attendance law was legitimate. The Supreme Court of New Hampshire similarly found that the state compulsory attendance law "is a decided invasion of parental domain" but it was an invasion that the state legislature under its police power was allowed to make; the court, finding it "repugnant to no provision of the constitution" and being for the general welfare, must uphold it and the citizen "must yield submission and obedience."[299] After the U.S. Supreme Court decision in *Lochner,* courts were also authorized to assert some protection for individual rights against the onslaught of police power, by using the Fourteenth Amendment to assess the validity of state regulations based on whether they were "reasonable" and not "arbitrary" or "class legislation." Even with this requirement, however, state courts deferred to most legislative actions and school regulations, finding them reasonable for the promotion of the general health, safety, and welfare of society.[300]

While courts firmly established compulsory attendance laws as legitimate exercise of police power in the first decade of the twentieth century, parents continued to try to assert realms of parental autonomy and limits to the state's power over their children. During the Progressive Era, this conflict

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[299] *State v. Jackson*, 53 A. 1021 (New Hampshire 1902).

[300] Newton Edwards, *The Courts and the Public Schools: The Legal Basis of School Organization and Administration, Social Science Studies* (Chicago, IL: University of Chicago Press, 1933); Lee O. Garber, *Education as a Function of the State* (Minneapolis, MN: Educational Test Bureau Inc., 1934); H. H. Schroeder, *Legal Opinion on the Public School as a State Institution* (Bloomington, IN: Public School Publishing Company, 1928); Joachim Frederick Weltzin, *The Legal Authority of the American Public School as developed by A Study of Liabilities to Damages* (Grand Forks, ND: Mid-West Book Concern, 1931); Ernst Freund, *The Police Power: Public Policy and Constitutional Rights* (Chicago: Callaghan & Company, 1904).

erupted most visibly and contentiously around the issue of compulsory vaccination. Many people opposed vaccinations on religious or health grounds—smallpox vaccinations caused injury and even death to a not insignificant number of those inoculated. In cases of current or imminent epidemic, however, states could empower boards of health to require people be vaccinated, a power that was legitimated by the U.S. Supreme Court in the 1905 *Jacobson v. Massachusetts* case as a reasonable regulation on behalf of public safety.[301] In many states, school boards and boards of health also began to require proof of vaccination as a prerequisite for attendance at the school. In the earliest cases on schooling and vaccination, parents challenged the authority of school boards to expel their children and require vaccination for attendance. In those cases, the courts' decisions usually hinged on whether the state legislature had authorized school boards to take the action or whether schools had acted on their own initiative, upholding the former as legitimate police power regulation and refusing the latter as schools overstepping their authority.[302] In all the cases before 1914, the court found that the willingness of parents to send their children to school exempted them from prosecution under the compulsory attendance law when school officials refused their children admittance.[303] According to a Pennsylvania court, the state law refusing admission of unvaccinated children to public schools did not mean that the defendant had to vaccinate his son for it "was a matter of choice by the defendant; there was nothing obligatory. The only consequence of non-compliance was that his child should be deprived of the privilege of the schools." The parent's sole duty under the compulsory attendance law, the Pennsylvania court and other courts reasoned, was to send his child to school and the teacher's refusal to accept the child "added

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[301] *Jacobson v. Massachusetts,* 197 U.S. 11, 25 S.Ct. 358 (1905).

[302] *Sprague v. Baldwin,* 1896 WL 3756 (Pa.Com.PI) (1896); *Mathews v. Board of Education of School District No. 1 of the City and Township of Kalamazoo,* 127 Mich. 530, 86 N.W. 1036 (1901); *State ex rel. Freeman v. Zimmerman,* 86 Minn. 353, 90 N.W. 783 (1902).

[303] *Commonwealth v. Smith,* 1900 WL 4587 (Pa.Quar.Sess.) (1900); *Compulsory School-Attendance v. Vaccination,* 1906 WL 3035 (Pa.Atty.Gen) (1906); *State ex. rel. McFadden v. Shorrock,* 55 Wash. 208, 104 P. 214 (1909); *State of Ohio v. L. M. Turney,* 1909 WL 1144 (Ohio Cir.) (1909); *State ex rel. O'Bannon v. Cole,* 119 S.W. 424 (Missouri, 1909); *Shappee v. Curtis,* 127 N.Y.S. 33 (1911). In the *Shappee* case, a mother actually sued a truant officer for malicious prosecution because he tried to prosecute her for violating the compulsory attendance statute when he knew that she had repeatedly sent her child to school only to have him refused for failing to have a vaccination certificate. The lower court convicted the truant officer but the appellate court reversed, finding that the truant officer was acting in good faith. Both courts relied on the well established precedent that a parent was not liable for penalties under the attendance law because of unwillingness to vaccinate his or her child.

nothing to the duties prescribed by the statute."[304] In other words, if a parent was willing to send the child to school but not willing to vaccinate him, he did not run afoul of either state law. The parent maintained the right to refuse to vaccinate his child.

In 1914, the New York Court of Appeals rejected all of the previous case law, and declared that from that point on parents who refused to vaccinate their children *would* be subject to penalty under the state's compulsory attendance law. In *People v. Ekerold,* Hagbart Ekerold's son was excluded from the New York City public school he had been attending for refusal to comply with law requiring vaccination. In strong language, the court held that "I do not believe that a parent may escape his duties under the Education Law by pleading simple unwillingness to have his child attend the public schools subject to the condition of vaccination." According to the court, when the "public school system has been developed with great pains and solicitude and its maintenance and support have been recognized as so important for the welfare of the state," parents should not be allowed "to manufacture easy excuses for not sending their children to school." If parents are allowed to evade the law so easily, "the purposes of the state in providing and insisting on education will be frustrated and impaired." The court rejected the argument that the vaccination law should not be indirectly forced on unwilling persons through the enforcement of the attendance law, offering an alternate construction: since the legislature adopted the compulsory attendance statute the year after it had passed the statute requiring vaccination of those in attendance at public school, it must be assumed that the legislature had meant to enforce both for "it is hardly to be assumed that when the legislature passed the later statute there had slipped from its theoretical mind remembrance of the other law…"[305] *Ekerold* signaled a major shift in courts' treatment of vaccination and attendance statutes, other state courts citing *Ekerold* and sustaining convictions of parents who refused to vaccinate their children and did not provide other suitable means of education under the attendance statute.[306]

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[304] *Commonwealth v. Smith,* 1900 WL 4587 (Pa.Quar.Sess.) (1900)
[305] *People v. Ekerold,* 211 N.Y. 386, 105 N.E. 670 (1914).
[306] *People v. McIlwain,* 151 N.Y.S. 366 (1915); *Commonwealth v. Gillen,* 1916 WL 5152 (Pa.Quar.Sess.) (1916); *Commonwealth v. Aiken,* 1916 WL 4644 (Pa.Super.) (1916); *Commonwealth v. Wilkins,* 1920 WL 2164

While the state's authority to compel vaccination of adults in the absence of any immediate threat was questionable, states effectively secured the vaccination of all children, even against strong parental objections based on religious convictions or health concerns, through the nexus of vaccination rules and compulsory attendance. This is significant for two reasons. First, it demonstrates the ways in which compulsory attendance, in requiring that parents send their children to school, could indirectly achieve ends the state might not achieve directly, including imposing new responsibilities and conditions. Laws requiring schools to exclude unvaccinated pupils did not make vaccination compulsory on their face, but when paired with laws requiring that students attend schools it made vaccination virtually inescapable. Within a generation or two, the nation's population would effectively by inoculated from smallpox. As will be discussed shortly, compulsory attendance laws served a similar function with regard to private schools; while the state lacked the authority to *directly* proscribe curriculum or standards for private schools, the requirements of the statutes that instruction offered outside of public schools be equivalent, offered a means by which the state could indirectly regulate them. The ways in which compulsory attendance laws made vaccination effectively compulsory for children is also significant in the difference it posited between children and adults. The state's growing role as protector of all children, and not merely those lacking parental authority, gave it greater authority to make rules on their behalf. Children's welfare, tied in powerfully effective rhetorical ways to the nation's welfare, necessitated and legitimated much more sweeping regulations for their protection than would have been tolerated by adults. Children did not have personal rights to assert of their own, and parental rights could easily fall aside when directly in conflict with the state's overriding interest in the welfare of children.

Courts, in upholding a vast expansion of police powers and articulating the legislature's plenary authority over public schools, helped to create a powerful state authority which could be used to reject challenges by local schools and by parents. As explored in chapter 1, the state asserted its right to regulate all aspects of the public school curriculum, laying out requirements and minimums for things like

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(Pa.Quar.Sess.) (1920); *In Re Martha G. Hargy and Harry E. Hargy Jr.*, 1920 WL 571 (Ohio Com Pl.) (1920); *Barber v. School Board of Rochester.*, 135 A. 159 (NH, 1926); *State v. Drew* 192 A. 629 (NH, 1937); *Marsh v. Earle*, 24 F. Supp. 385 (Pa. 1938).

teachers' qualifications, teachers' salaries, school term length, school building codes, textbooks adoption, courses of study, local taxation rates, transportation, and medical inspection and services. The combination of state authority and professional expertise in school administration combined to give parents and communities much less input in decisions about what was learned in public schools than they used to enjoy.[307]

Compulsory attendance statutes were used to direct this state authority over public schools into other realms of education and thereby limit traditional parental rights to direct the education of children. In the first place, some states disallowed "home instruction" as an alternative to public or private schooling while others exercised increasingly tight control over it. In accordance with the older view of compulsory attendance as merely requiring *some* education and not a particular kind, nearly all of the early statutes explicitly recognized home instruction or private tutoring as a legitimate alternative to public schooling and those that didn't usually accepted it in practice; in 1904 an Indiana court found, for example, that a statute requiring attendance at a public, private, or parochial school also applied to private instruction by a tutor in the home for "a school, in the ordinary acceptation of its meaning, is a place where instruction is imparted to the young" and not simply a location. The court held that "the result to be obtained, and not the means or manner of attaining it, was the goal which the lawmakers were attempting to reach." Like other early courts, the judge found that the law "was made for the parent, who

[307] William A. Cook, *Federal and State School Administration* (New York: Thomas Y. Crowell Company, 1927). Ellwood P. Cubberley, *State School Administration: A Textbook of Principles* (Cambridge, MA: Riverside Press, 1927); Arthur Wesley Ferguson, "Professional Staff of State Departments of Education," in *USBE Bulletin* (1925). Charles H. Judd, *Problems of Education in the United States*, *Recent Social Trends in the United States* (New York: McGraw-Hill Book Company Inc., 1933); L. A. Kalbach and A. O. Neal, "Organization of State Departments of Education," USBE *Bulletin* No. 46 (1920); A.C. Monahan, "Organization of State Departments of Education," USBE *Bulletin* No. 5 (1915); E. R. Sonnenberg, "Trends in the Organization of State Departments of Education in the United States" (M.S. thesis, Kansas State Teachers College of Emporia, 1936); Wayne W. Soper, "Development of State Support of Education in New York State," *University of the State of New York Bulletin* 1019 (1933); George Dayton Strayer Jr., *Centralizing Tendencies in the Administration of Public Education: A Study of Legislation for Schools in North Carolina, Maryland, and New York Since 1900* (New York: Bureau of Publications, Teachers College, 1934); August William Weber, "State Control of Instruction: A Study of Centralization in Public Education" (Ph.d. diss, University of Wisconsin, 1911); William Clarence Webster, "Recent Centralizing Tendencies in State Educational Administration" (Phd diss., Columbia University, 1897); Betty K. Whitelaw, "State Centralization: A Trend in the Administration of Public Elementary and Secondary Education 1930-1940" (MA thesis, University of Chicago, 1940); Morton Keller, *Regulating a New Society: Public Policy and Social Change in America, 1900-1933* (Cambridge, MA: Harvard University Press, 1994).

does not educate his child, and not for the parent who employs a teacher and pays him out of his private purse….[308] Yet state statutes began to define new higher standards for home instruction which courts upheld as valid. States required that this instruction be by "competent persons" or "properly qualified" instructors and usually defined this as persons with teaching credentials equivalent to those of public school teachers.[309] In the 1920s and 1930s, some states required additional mechanisms of oversight such as requiring that home instruction be judged for competency by county superintendent while others simply required that only instruction in a private school was an acceptable substitute for public schooling, a requirement sustained by courts.[310] In 1937, a New Jersey judge examined whether home instruction, by a father that was a college graduate and had high school teaching experience, was "equivalent" under the law and despite evidence that the father diligently endeavored to give his child good instruction, the judge rejected it. The factors the judge weighed in equivalence, and deemed home instruction lacking in, were telling: the father's lack of pedagogical training rather than teaching experience; the lack of professional supervision in instruction; the lack of grading or evaluation; the lack of "trained method"; the lack of group social setting. The judge didn't stop by finding that home instruction in this particular instance was not equivalent, but went on to doubt whether any home instruction could ever be equivalent to the public school system. According to the judge, "in a cosmopolitan area such as we live in, with all

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[308] *State v. Peterman*, 70 N.E. 550 (Ind., 1904).

[309] In one of the first cases of this kind, the judge did find that the phrase "legally qualified" in the statute did not mean that private teachers had to hold the same credentials as public school teachers: *Commonwealth v. McCullogh*, 1903 WL 2606 (Pa.Quar.Sess) (1903). In subsequent cases, courts were more strict. In *Commonwealth v. Gillen,* 1916 WL 5152 (Pa.Quar.Sess.) (1916) a mother with public school education not sufficiently qualified under law. Home instruction by parents with teacher training and public school teaching experience was deemed acceptable if they could furnish evidence that their child's education was being adequately provided in *Wright v. State,* 209 P. 179 (Ok, 1922).

[310] In *State v. Williams*, 228 N.W. 470 (S. Dak, 1929), the South Dakota Supreme Court upheld the law which required all children 8-17 to attend public or private school or receive instruction by a competent person in the common school branches, for the same period in English and gave the county superintendent the power to judge the competency of the instruction and to require examinations and progress reports. A Washington court held in 1912 that the state statute requiring attendance at a public or private school did outlaw home instruction, even when the father was an experienced teacher, for home instruction was not a "school." A school is "a regular, organized and existing institution, making a business of instructing children of school age in the required studies and for the full term required by the laws of the state, *State v. Counort,* 69 Wash. 361, 124 P. 910 (1912). Likewise, New Hampshire law which required attendance at a public or private school was interpreted as excluding private tutoring in the home because the state has the right to regulate and duty to supervise non-public schooling and the home is too small a unit for adequate supervision, *State v. Hoyt; State v. Daniels*, *State v. Covey*, 146 A. 170 (1929).

the complexities of life, and our reliance upon others to carry out the functions of education, it is almost impossible for a child to be adequately taught in his home. I cannot conceive how a child can receive in the home instruction and experience in group activity and in social outlook in any manner or form comparable to that provided in the public school."[311]

The judges opinion in the *Stephens v. Bongart* case demonstrates two crucial and related changes which had occurred in education since the passage of compulsory attendance laws: first, the meaning of "education" and its content had radically changed, from the "3 R's" and the moral values of parents to a much broader and more amorphous set of socially defined skills and values; second, "education" came increasingly to be located only in the institution of the "school" under state oversight, alternates increasingly disallowed. In the case, the judge found that home instruction could never equal public school education because the schools performed essential functions that the home could not. According to the judge, "education is no longer concerned merely with the acquisition of facts," but rather it was about "the instilling of worthy habits, attitudes, appreciations, and skills" for the development of "character and good citizenship" and these important lessons could only be taught in a social group environment under the expert tutelage of professionals. The public school system provides lessons in socialization, for it "stresses the adjustment of the child to group life and group activity and a course of living that he would be required to follow and meet as he goes out into the world." The rights of parents to educate children according to their own values are completely subsumed to the greater social interest of producing well-adjusted social citizens. Furthermore, the court asserted that the organized school under professional supervision was so far superior to other methods, that "education" required by the state had to occur in a "school."

In similar ways, states exercised increasing authority over private schools through the requirement that they offer "equivalent instruction" to that offered in the public school. While states often lacked the authority to stipulate content or regulate practices of private schools directly, they used the compulsory attendance laws to indirectly regulate by requiring them to approximate the public

[311] *Stephens v. Bongart,* 5 N.J. Misc. 80, 189 A. 131 (1937).

schools.[312] Despite the outrage of Illinois and Wisconsin Germans in the early 1890s, laws stipulating that the common branches be taught in English in both public and private schools were adopted in many states throughout the Progressive Era and most laws began to define with more precision the elements that comprised these "common branches." In addition, states began to set down requirements for instruction to qualify as "equivalent" not only in home instruction but in private schools: standards often involved not only language of instruction, but also required equal term length, "qualified" teachers, and a minimum curriculum of major public school subjects. Public school officials and state officers reasoned that in order to execute the attendance law, they needed ways to guarantee that students were receiving the minimum education required by law. To that end, many states and cities also began to require that private school officials submit records, report enrollment and attendance information, and cooperate with state officials. States varied considerably in how much oversight and regulation they required of public schools, some going so far as to inspect and accredit private schools while others virtually left them alone. The courts sustained these increasing claims of oversight based on the state's power to regulate public schools and its authority to compel attendance at schools.

In the 1920s, the U.S. Supreme Court helped to both legitimate vast state police power regulation over schools and set some clearer boundaries for this regulation as they related to the rights of parents. In *Meyer v. Nebraska* and *Pierce v. Society of the Sisters of the Holy names of Jesus and Mary*, the Supreme Court legitimated the state's extensive powers of regulation over public schools and recognized their right to supervise and set standards for private schools. At issue in both cases, was how far this authority should extend. In *Meyer,* a Nebraska German language teacher challenged the constitutionality of a 1919 state law which forbade the teaching of foreign languages to children below eighth grade. The legislature defended the law as a valid police power regulation which deemed "to foster a homogenous people with American ideals" and promote civic development of youths. While the court deemed this a laudable and

[312] Harry R. Trusler, "The Status and Regulation of Private Schools," *American School Board Journal* 59 (Dec. 1919): 41-2; 60 (Jan. 1920): 32-34, 103. Trusler notes that states have power of regulation of incorporated schools through their charters but unincorporated private schools stand on the same legal ground as other private businesses and the state does not have the power to prohibit them, interfere with instruction, impair attendance there, etc.

understandable goal, it argued that the means adopted went too far and exceeded the bounds of legitimate state power. It noted, "That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally and morally, is clear, but the individual has certain fundamental rights which must be respected." While the state can legitimately compel attendance, make reasonable regulations for all schools, require English instruction, and prescribe curriculum for public schools, this regulation goes too far because "no emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhabitation with the consequent infringement of rights long freely enjoyed." The statute is therefore "arbitrary" and "without reasonable relation to any end within the competency of the state."[313]

In *Pierce v. Society of the Sisters of the Holy Names…*, the Supreme Court extended its arguments in *Meyer* to consider the realm of "fundamental rights" which the Fourteenth Amendment protected. At issue in the case was a controversial 1922 Oregon law which effectively prohibited private elementary schools by requiring that all children 8-16 attend the *public* schools.[314] In its decision, the Supreme Court affirmed that states had broad police power authority to regulate schools, both public and private: "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 taught which is manifestly inimical to the public welfare." However, the Court argued that police powers must not unreasonably interfere with the rights of individuals and in this situation, with no particular emergency or evidence that private schools were inherently harmful, the destruction of private schools under the act was an unreasonable abridgement of the property rights of private schools. However, the Court went further, to argue that it was also an unreasonable abridgement of the rights of parents, for it "unreasonably interferes with the

[313] *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625 (1923).
[314] For background of case see David B. Tyack, "The Perils of Pluralism: The Background of the Pierce Case," *American Historical Review* 74, (Oct. 1968): 74-98; *The Oregon School Fight: A True History* (Portland, OR: A.B. Cain, 1924).

liberty of parents and guardians to direct the upbringing and education of children under their control." The state did not have the power to "standardize its children by forcing them to accept instruction from public teachers only" for the "child is not the mere creature of the state" and "those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."[315]

In *Pierce* and *Meyer*, the Supreme Court both legitimated the broad exercise of police power over schools and laid out significant new limitations for this power, in the form of constitutional rights of liberty held by parents and protected by the Fourteenth Amendment. The cases conceded many areas in which state authority was unquestioned—compulsory attendance laws, requirements for English instruction, curriculum control, laws regulating teachers qualification and requiring loyalty oaths—and it asserted that the state had the right to regulate these not only in public schools but in private schools as well in the interests of safeguarding the educational interests of all children. In maintaining that parents maintained some liberty of choice in the manner of their children's education, the court asserted new federal constitutional protections for parents rights to replace the eroded privileges of common law. As one contemporary legal scholar astutely predicted, this interpretation of parental liberty under the Fourteenth Amendment would invite new kinds of constitutional claims, particularly cases of religious liberty. Beginning in the 1930s and 1940s, parents would attempt to challenge state authority and school practices claiming new kinds of constitutional protections based on "equal protection" and "rights of conscience" through the 14th amendment.[316]

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[315] *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary; Same v. Hill Military Academy*, 268 U.S. 510, 5 S.Ct. 571 (1925); "State Control of Private Schools and Parochial Schools" *School and Society* 17 (1923): 426-429; Clifford E. McDonald, "Compulsory Public School Attendance" *Marquette Law Review* 7 (1922): 96-104; "The Oregon Compulsory School Law" *Constitutional Review* 8 (1924): 241-245.

[316] Carl Zollmann, "Parental Rights and the Fourteenth Amendment," *Marquette Law Review* 8 (1923-4): 53-60. Most of the earlier constitutional challenges were based on violations of the *state* constitution but there was a decided shift in compulsory attendance cases in the 1930s and 1940s to reach first for *federal* constitutional claims. Two later challenges to compulsory vaccination cited 14th amendment rights of conscience and equal protection: *State v. Drew*, 192 A. 629 (N. Hamp, 1937); *Marsh v. Earle*, 24 F. Supp. 385 (PA 1938). In addition, there was a clear increase in cases involving compulsory attendance that used religious conscience or parental liberty under the 14th amendment as a defense. In *People ex rel. Fish v. Sandstrom*, 279 N.Y. 523, 18 N.E. 2d 840 (NY 1939) Jehovah's Witnesses were prosecuted for violating the compulsory attendance law because their 13 year old daughter was repeatedly expelled from school for refusing to salute the flag on religious grounds. There were many

This new constitutional foundation for parental liberty, however, would prove in practice to be a much more limited basis than had been recognized in the nineteenth century. Parents' once given "dominion" over their children under common law, were not guaranteed only some choice in the location of their children's education. This choice however was further limited by the awesome state authority exercised over public schools and its ever extending reach over alternatives, including private schools and home instruction which gave parents much less voice in the education their children actually received. In the 1930s and 1940s, religious minorities objecting to particular school practices or subjects, such as flag-salute, would be prosecuted and penalized under the compulsory attendance law when they refused to participate in those activities, despite making constitutional claims.

Thus by 1920s, it was clear that compulsory attendance laws not only disciplined the deviant parent and protected the neglected child, but were an avenue by which state authority over all children was claimed and broadened. In compulsory attendance laws and in a host of other Progressive Era child reforms, the common law understanding of parental authority was chipped away and the state's claim as guardian of all children enlarged. This change produced pockets of resistance, like in compulsory vaccination, and in a myriad of other evasions and defiances of the law by parents, by courts that proved unwilling to impose penalties on parents even in clear violation of law, and by local communities that only nominally enforced the law. It provoked periodic political controversies as well—like the eruption of protest over regulation of private schools or the debates over compulsory part-time schooling. However, in case after case, state and federal courts consistently defended compulsory attendance laws as legitimate police power regulations and likewise validated a host of other school regulations deemed reasonable for the welfare of society.

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cases involving Jehovah's witnesses and flag-salute specifically: *In re Latrecchia,* 26 A.2d 881 (NY 1942); *State v. Davis,* 10 N.W. 2d 288 (S. Dak 1943); *Commonwealth v. Crowley,* 35 A.2d 744 (Penn, 1944); *Commonwealth v. Conte,* 35 A.2d 742 (Penn, 1944). In addition, other groups such as Muslims and un-named Christian sects asserted religious beliefs (usually unsuccessfully) to challenge compulsory attendance laws or school regulations: *Spurgeon S. Rice, C. Wesley Lewis and A.C. Bishop v. Commonwealth of Virginia,* 188 Va. 224, 49 S.E.2d 342, (1948); *Commonwealth ex rel. v. Bey,* 57 York 200 (Penn, 1944).

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In the passage and extension of compulsory attendance laws one sees some of the dynamics that defined the emerging national education system. The ideas of child welfare, equal educational opportunity, and state protection of children exerted strong power, animating child labor and educational reformers and guiding enforcement efforts. National fears and hopes punctuated the discussions and one of the most powerful rationales for extending compulsion centered on the contribution that education made to the progress and well-being of the nation. One also sees the role of actors operating at local, state, and national levels—child labor reformers, for example, lobbied city boards of education, state legislatures, and the federal Congress simultaneously and all these activities shaped the direction that labor and education laws took. Likewise statutory changes in attendance were wrought often from a combination of pressures emanating from local administration efforts and state and nation-wide lobbying. Furthermore, one sees the role of professionalization—professional educators were central in the enforcement of laws and as compulsory attendance took off, were also important in guiding statutory modifications and administrative changes. These professionals dominated the growing state departments of education and shaped their activities along the norms and models of administration.

In addition, compulsory attendance reforms offers a similar pattern of national policymaking as in school consolidation. Agitation for reform often began in states recognized as leading educational states (and not coincidentally often leading industrial states) and within the most “advanced” communities within those states. These advanced communities, usually mid to large size cities, were the first to take advantage of the authority granted under law and in their experimentation they devised practices that would influence and guide others. Cities and states looked to one another and often looked abroad for their ideas. In both child labor reform and schooling, reformers borrowed key ideas from Europe but adapted them to American education, including the very idea of compulsory attendance itself. In most states, once voluntary compliance was high, a combination of penalties and incentives was used to compel the resistant minority to follow suit and in this way attendance enforcement spread from large cities to smaller cities and villages and finally into rural areas. While laws and practices were often

pioneered in the industrial northeast, Western and mid-Western states were usually the ones that carried the ideas farthest. With lack of entrenched interests and traditions and general commitments to education, they were more able to adopt and implement the "best practices" as defined in the East.

However, compulsory attendance laws are important not just for the window they offer into the dynamics of state and national policymaking in schools, but for the profound effect they had in reinforcing and intensifying trends in education itself. While state constitutions and legislatures had given states the responsibility to provide free schools for voluntary attendance in the nineteenth century, the act of *compelling* children to go to school elevated this responsibility and carried with it many new ones. As this compulsion was broadened and deepened, beginning in the Progressive era and intensifying through state oversight in the postwar period, it had major implications for the development of the emerging national education system. On the most simple level, compulsory school attendance laws necessitated a massive expansion of school facilities in order to accommodate all of the children required to attend by law. The lack of school accommodations frustrated enforcement in large cities and in many other communities throughout the nation during much of the Progressive Era but growing commitments to provide and compel educational opportunity required that this obstacle be overcome. Child welfare advocates, including child labor reformers, social workers, education reformers, and organized clubwomen, lobbied states and local school boards to furnish more and better school facilities. Furthermore, the extension of the compulsory ages, fueled a massive extension of public high schools in the twentieth century as well as alternate forms of secondary education including continuation schools, evening schools, and trade schools. States provided generous aid to facilitate the building and support of public high schools and alternatives and then increasingly required that children take advantage of these secondary schooling opportunities.[317]

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[317] On the expansion of high school facilities, Moses Stambler, "The Effect of Compulsory Education and Child Labor Laws on High School Attendance in New York City, 1898-1917" *History of Education Quarterly* 8 (Summer 1968): 189-214; Robert H. Wiebe, "The Social Functions of Public Education," *American Quarterly* 21, (Summer 1969): 147-164; Edward A. Krug, *The Shaping of the American High School*, 2 vols., vol. 1 (New York: Harper & Row, 1964); Edward A. Krug, *The Shaping of the American High School 1920-1941*, 2 vols., vol. 2 (Madison, WI: University of Wisconsin Press, 1972).

The broadening and deepening of compulsion carried with it not only the responsibility to ensure that there were enough school buildings for students, but also the responsibility to make sure those schools were safe and worthwhile and could truly accommodate all youths. The United States Bureau of Education reflected on this responsibility in a 1935 report on compulsory attendance in the states: "It is obvious that the State should not compel a child to attend school in a building that is unsafe or unsanitary, or a school taught by an unqualified teacher, or a school that does not make provision for caring for the child who varies seriously from the normal type but who is not an institutional case…."[318] State-mandated compulsion carried with it state responsibilities for ensuring a minimum standard of basic schooling, including minimum building and sanitation codes, teacher qualifications, minimum curriculum standards, and proper facilities for atypical children. As the Bureau of Education noted, compulsory education "placed a responsibility upon the State and upon every school district within the State to provide the very best of school facilities."[319] It provided a powerful rationale to extend the state role in monitoring and directing local schooling.

This extension of compulsory schooling, particularly into secondary schooling, propelled into the schools some students that otherwise would not have been there and it therefore intensified the need for schools to "adjust" to the needs and interests of pupils. While pedagogical philosophy of "progressive education" and "child-centered" curriculum was making inroads in educational thought, the very practical demands of dealing with "laggard," "unadjusted," and other kinds of pupils that the school was no longer simply allowed to expel required that schools find institutional solutions. Larger school systems developed special schools and classes to segregate special populations and adapted the curriculum to their perceived needs and abilities by emphasizing manual and vocational training, leisure activities and life skills, and basic education. In addition, all secondary schools re-examined their basic curriculum and expanded it to include new subjects for the non-college bound pupil and offered greater choice to students in the selection of their curriculum. Chief among these changes was the expansion of studies aimed at

[318] Deffenbaugh and Keesecker, "Compulsory School Attendance Laws and Their Administration," (1935): 64.
[319] Ibid., 64.

preparing youths for work and social life, including vocational classes, expansion of "social studies," and cultural classes like art and music. In the 1920s and 1930s, many schools turned to elaborate programs of testing and vocational guidance to assess, sort, and guide pupils in their preparation for adulthood.

States also assumed the responsibility to care for special children and to provide assistance to localities in removing the obstacles to good attendance. As discussed above, states provided subsidies for high school building and support, vocational programs, transportation, special schools for handicapped students, and poor relief among other things. These state responsibilities could serve as an entry point for regulations that extended far beyond the classroom walls. Enforcement of child labor and compulsory education, for example required the development of new techniques of state surveillance, namely special census "enumerations" of school-age populations with gave the state increasingly detailed knowledge about the youths, and the development of mass birth registration and certification as a mode of authenticating age and identity. Furthermore, school attendance laws offered a way for the state to apply medical inspection and health policies to children, including compulsory vaccination in the absence of any immediate threat, that would have likely been deemed illegitimate for adults.

The impact of compulsory attendance laws can not be measured simply in terms of people prosecuted under the law or the number of unwilling pupils it coerced into the school. One of the most significant and far-reaching impacts of compulsory attendance was the effect it had on normalizing and regularizing full-time, full-term attendance for the majority of children into high school. The law exerted a much greater effect than simply direct force over a resistant minority. It exerted subtle persuasion over all, reshaping the choices available to youths and redefining the "normal" experience of childhood. By the end of the period, over half of American youths attended high school, up from less than 10% at the turn of the century. Secondary education was redefined from an elite institution for college-preparation to a "normal" part of common schooling for all American youths and as the twentieth century progressed those that failed to finish high school, even though not legally required to, increasingly became a problem to explain, and pejoratively known as "drop-outs." Most parents did not send their children to school for

longer because they feared the hand of law. They sent their children to school because it, not work, was the "normal" place for children.

Over time, compulsory attendance and child labor laws worked in tandem to recalibrate the relationship between work and school in the lives of the young with seismic implications. Extended periods of schooling have lengthened the economic dependence of children and increased their burden as economic liabilities, prolonging dependence and childhood itself. Furthermore, as children were held out of the labor market for longer and longer, it fueled demands that schools assume some of the burden of preparing children for work. This demand was twofold: that children learn the moral value and habits of work and that they learn actual skills to prepare them for future jobs. Both demands led to massive changes in the school, particularly the high school, as it "vocationalized." As Kliebard and others have noted, this vocational emphasis—the idea that school prepares for work-- has come to dominate public understanding of the value and purpose of schooling in the post-WWII era and has overshadowed other schooling goals.[320] This extended period of schooling has also intensified what sociologists call the "over-credentialing" phenomenon in the United States and other western nations: ever-increasing levels of education are required for entry into many trades and professions. As high school graduation became the norm, many occupations required college education. As college education is now becoming widely diffused, post-graduate work is required. Educational attainment, has become a great "sorter," even when the actual skills or knowledge gained bear no resemblance to the actual occupational requirements.

In addition to the fundamental shift compulsory attendance has effected on the boundaries of work and school, it has wrought a fundamental change in the legal relationship of children, parents, and the state. The expansion of state regulation on behalf of child welfare has led to new limits on parental rights and choices in the twentieth century. Despite the assurances of compulsory education proponents and the early rulings of courts which define the laws as only compelling the education of the neglected child, during the first four decades of the twentieth century, states moved to define the minimum

[320] Herbert M. Kliebard, *Schooled to Work: Vocationalism and the American Curriculum, 1876-1946* (New York: Teachers College Press, 1999); Harvey Kantor and David B. Tyack, *Work, Youth, and Schooling: Historical Perspectives on Vocationalism in American Education* (Stanford, CA: Stanford University Press, 1982).

standards and content of education for all children and exercise greater authority over how and not just whether children were educated. As has been explored, compulsory attendance laws have been used by states as an avenue for regulating and limiting private schools and home instruction, by applying the requirements they must meet if they wish to meet the standards for "equivalent education" under the laws. The increasing disallowance of home instruction, the plenary authority to define curriculum in public schools, the indirect regulation of alternatives to the public school, and the increasing prominence of expertise in designing education programs, all combined to give parents much less control over the education of their children.

As state police power exploded in the twentieth century, common law parental rights were torn by the blast. In case after case, courts defended compulsory attendance and other school rules and regulations as legitimate exercises of state police power in the pursuit of the common welfare and rejected traditional claims of parental dominion. The right and responsibility of the state to provide for its own well-being and preservation through compulsory education and reasonable school requirements simply outweighed any claim of "parental liberty." While there was some resistance to this limitation of parental autonomy, many local courts and communities deciding in individual cases to respect parental control rather than inflict penalties under the law, the overall trend was clear in the early twentieth century. In the 1920s, the United States Supreme Court placed some limits on this police power and placed parental rights on a new, firm, and yet more limited basis: the Fourteenth Amendment. In *Meyer v. Nebraska* and *Pierce v. Society of Sisters* the court ruled that states could not force "standardization" upon students and although states have the unquestioned right to regulate and supervise private schools, they did not have the power to outlaw them altogether and completely take away parents' right to exercise some choice in the education of their children. Parents, once given "dominion" over their children under common law, were now guaranteed only some choice in the location of their children's education and whether it be secular or have religious components. Education, once a parental and private responsibility, now was an overriding public interest and one with which parent's had limited ability to define.