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Volume III Number 9

CHILD LABOR

JULIA E. JOHNSEN
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CHILD LABOR

Compiled by
JULIA E. JOHNSEN

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INTRODUCTION

Since June, 1924, the proposed Twentieth, or Child Labor Amendment to the United States Constitution has been before the several states for ratification, and has caused an immense amount of discussion throughout the country. To the present time, four states of the forty-eight have given it their approval through their legislatures: Arkansas, California, Arizona, and Wisconsin. Thirty-four have rejected it, while the remaining ten either adjourned without action or have still to hold their legislative sessions.

The remaining course of the amendment will be followed with intense interest. Not only does it remain an open issue in the ten states which have not placed themselves definitely on record, but it is assumed the amendment may remain indefinitely before the states, or at least a "reasonable time," and that legislatures which have voted adversely may still reverse their decision and ratify if they so desire. The states that have once ratified are presumed no longer to have the power to change their vote. Since three-fourths of the states must approve an amendment before its adoption, the ratification of the present amendment is not looked for within a few years, but any reversal records a gain in its favor.

Should the present amendment ultimately fail, the issue of child labor will still remain as a problem before the American people. Child labor is a problem larger by far than a single proposed means of dealing with it. The tendency of the age is to legislate for every welfare of the child. It is inconceivable that his immaturity shall be allowed to be exploited. With the forced withdrawal of two former Federal laws, it is to be presumed that the question of child labor will be the concern of

a beneficient country until standards are such as are everywhere approved by an enlightened opinion. In connection with the question of ratification or non-ratification various proposals have been made, in Congress and elsewhere, to change the manner of amending the Constitution. Among these are proposals for the withdrawal of amendments or the declaring of definite defeat on thirteen adverse votes, limiting the time in which the states may ratify, and the holding of state referendums.

The present REFERENCE SHELF is intended as a supplement to the Handbook on Child Labor published in 1924. It particularly covers the period since the submission of the amendment to the states. It is suitable to be used independently also, if desired, as a guide to this recent literature and discussion. In conformity with the general policy of the Reference Shelf Series, it includes a large, selected, and up-to-date bibliography (classified as general, affirmative and negative), a brief and representative reprints, impartially selected, in the same order.

JULIA E. JOHNSEN

January 11, 1926

BRIEF

RESOLVED: *That the proposed twentieth amendment to the Constitution of the United States enabling Congress to regulate child labor should be ratified by the several states.*

AFFIRMATIVE

I. The amendment is needed because of the seriousness of the child labor problem.
   A. It is of considerable extent.
      1. The census of 1920 reported 1,060,858 children between the ages of ten and fifteen at work, or 8.5 per cent of the total children of that age in the country.
         a. The enumeration did not take account of children under ten, of the total children in agriculture (the census being taken in January), nor children doing seasonal, industrial home work, or vacation work.
      2. Since then child labor has increased.
         a. The withdrawal of the last Federal child labor law has paved the way for larger employment of children.
         b. The number of work permits and industrial statistics in different parts of the country show increase.
   B. Child labor is detrimental.
      1. It interferes with the physical, mental, and moral development of children.
         a. He is subject to overstrain, fatique, retarded growth, accident and injury,

industrial poisons, night work and conditions of moral danger.

b. Most of the illiteracy of the country is due to early work.

c. Children are deprived of the moral and spiritual balance that comes with natural childhood, play, and the opportunity for happiness.

2. It is an economic and social waste to the country.

a. His competition lowers wages and increases unemployment.

b. It impairs future productivity.

c. It does not benefit employers in the long run.

d. It lowers the quality of citizenship.

(1) This constitutes a political and social danger.

e. It leads to the increase of charitable and penal problems.

II. Federal jurisdiction over child labor is desirable.

A. The problem is national.

1. It oversteps state boundaries.

a. The products of industry are shipped to other localities.

b. There is interstate movement of industry itself.

(1) It may cause the loss of both established and new industries and in many cases can be evaded by shipping children and goods into adjoining states and shipping the finished product back.

c. There is interstate movement of people.

(1) Persons whose health and education have been impaired through child labor migrate to other states and thereby pass an unfair burden upon them.

B. State regulation is inadequate.
   1. In certain states standards are much too low.
      a. In only a few are they equal in every respect to the former Federal laws.
      b. Twelve states with about 30 per cent of the children between ten and fifteen have 623,646 child laborers, or nearly 60 per cent of the total of 1,060,858.
   2. There is lack of uniformity.
      a. States with fairly good laws are negligent in certain respects.
   3. Enforcement is not adequate.
      a. Laws are weakened by numerous exemptions, work permits, etc.
   4. Control by a single Federal legislature is better than control by forty-eight separate legislatures.

C. It would not invade state rights.
   1. The power would be voluntarily given by the states.
   2. It is absurd to suppose that under changing social conditions Federal powers should stop short with those heretofore delegated to the national government.

D. Federal regulation is not possible at present without the amendment.
   1. The two former laws were invalidated on grounds of unconstitutionality.

III. The proposed amendment is desirable in every respect.

A. It is wisely drawn.
   1. It is drafted in its present form to open the way for legislation along several lines, including the prohibition of employment of children at very young ages, and of older children in hazardous occupations, the regulation of conditions and hours of employment and the harmonious coordination of Federal and state laws.
   2. The power is conferred in general terms.
      a. This is the case with practically all other constitutional sections, as the power to impose taxes, to regulate foreign and interstate commerce, to declare war.
      b. It leaves to the judgment of Congress, subject to the control of public sentiment and social changes, the exact extent of exercise of the power.
   3. The age limit is eighteen.
      a. This is necessary to regulate conditions of employment up to eighteen, and to prohibit employment in extra-hazardous occupations.
      b. It is inconceivable Congress would make a blanket prohibition of employment up to eighteen, unless public opinion should sanction it.
      c. The state legislatures have power to prohibit employment up to twenty-one years.
   4. The power to "prohibit" as well as to "limit" and "regulate" was necessary.
      a. That there might be no doubt of Congress' power to absolutely prohibit labor at certain ages and in certain occupations.

b. It is the only practicable way to obtain a reasonable amount of prohibition.

5. Coordination between state and Federal governments is provided for.
   a. State standards would be in effect except where the state refused to establish and enforce adequate standards.
   b. Cooperation prevailed in the former Federal child labor acts.

B. Most of the objections to the amendment are unfounded, exaggerated, and misrepresent the real issues.
   1. It would not increase bureaucracy, enter the home and the farm, interfere with home work and chores and the guardianship of the parent.
   2. It would have nothing whatever to do with education.
   3. Congress would not use its power to an unreasonable extent.
      a. The former Federal laws indicate the general character of legislation that may be expected.
   4. Repudiation of the amendment in Massachusetts was due to widespread paid propaganda and misrepresentation.
   5. Cooperation would obviate expensive and annoying duplication of enforcement machinery.

NEGATIVE

I. There is no real need for a Federal law.
   A. The number of child laborers is relatively small.

1. According to the 1920 census only 8.5 per cent of children of ten to fifteen were employed.
   a. Most of these were in agriculture.
2. There has been no considerable increase in child labor since the Federal census.

B. The absolute prohibition of child labor is uncalled for.
1. Many young people are quite capable of earning their living.
2. Many are called upon by necessity to do so.
   a. For their own needs or to help those at home.
3. Gainful employment is sometimes the best alternative open.
   a. The child may be incapable of proper advance in school.
   b. It is better than idleness or the street.

C. Under proper conditions work is unobjectionable.
1. Work on the farm, in the home, during vacation, etc.
2. Early work has been a factor in the lives of many successful men.
3. Parents are the best judges of necessity and the desirability of their children entering gainful occupations.

II. Regulation of child labor should be left to the states.

A. Federal regulation would constitute an encroachment on the rights of the states.
1. The Federal government is a government of limited powers.
   a. It was not designed to be and ought not to be sovereign except as to those subjects which were specifically delegated to it for the common good.

B. Federal regulation would be undesirable.
   1. It would promote centralization, the growth of bureaucracy, etc.
   2. It would be impracticable.
      a. Would be costly and unwieldy.
         (1) Require heavy administrative machinery.
   3. It would weaken local responsibility for children.
   4. Our experience with prohibition does not warrant the assumption that it would be particularly successful.

C. The states are already dealing with it.
   1. Most of them have laws that generally protect the child.
   2. A number have laws equal to the former Federal laws.
   3. Some have gone beyond the Federal standards in many respects.
   4. They are improving their laws with reasonable speed.
      a. A number of improvements have been made since the withdrawal of the last Federal law.

III. The proposed amendment would be eminently undesirable.

A. We should not further tamper with the Constitution.
   1. There are too many amendments already.

B. It gives too broad powers.
   1. It gives power to Congress to prohibit and regulate the labor of all persons under eighteen.
   2. Its implied powers are even greater, and constitute all powers necessary to execute the main power.

a. It would open the way to a progressively extended program of education, wages, hours, etc.

3. Congress would exercise its power to the extreme limit.

4. It gives power to invade the home.

a. It would subject parents to inquisition, domination and tyranny of agents from Washington.

C. It is socialistic, bolshevistic, and communistic.

D. It is not supported by public opinion.

1. This is shown by its rejection by thirty-four state legislatures.

2. A referendum in Massachusetts overwhelmingly defeated it in that state.

E. The problem is one not to be solved by legislation alone.

1. When social conditions are improved child labor will tend to disappear of itself.

a. There should be cooperation in surveying conditions, developing machinery for exceptional abuses, etc.

b. There should be coordination of all the factors that go to make the welfare of the child, his work, education, recreation, domestic life, economic life, etc.

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REPRINTS

CHILDREN IN POLITICS[1]

The first Federal law was enacted September 1, 1916. It prohibited the shipment in interstate commerce of commodities produced in mines and quarries which employed children under sixteen years of age and the products of factories and shops which utilized the labor of children under fourteen or which employed children between fourteen and sixteen more than eight hours a day or at night. This law was declared unconstitutional after being in effect nine months and three days.

Congress made a second attempt on February 24, 1919. This time it imposed a tax of 10 per cent on the profits of all mines, quarries, and manufacturing establishments which employed children in violation of the standards laid down in the earlier act. The Supreme Court ruled that the power to tax did not warrant such an impost and that Congress was without authority to enact a child labor law. Then the agitation arose for a constitutional amendment which would empower Congress to deal with child labor.

The judiciary committees of both branches of Congress conducted lengthy hearings on the subject, and many forms of constitutional amendment were considered. Finally, on June 2, 1924, a proposed twentieth amendment passed the Senate, having previously been approved by the House. The important provisions are these:

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

[1] From article by William L. Chenery. *Century*. 109: 600-1. March, 1925

Section 2. The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress.

In making its report to the Senate, the judiciary committee, a body of able constitutional lawyers, said:

It cannot be questioned that it is a paramount duty of government to guard and protect the welfare of its children to the end that they may have the utmost opportunity possible to attain the maximum development of their moral, intellectual and physical beings . . . and it may be observed that while under our dual system of government the power and duty to make adequate provision by law for the accomplishment of these desirable ends are now vested in the several states, nevertheless it is important to the national government as it is to the government of every state that its citizenry be afforded every opportunity for legitimate development and that such development should neither be stunted nor destroyed by a neglect to pass adequate laws for the protection of childhood.

Herein lies the justification for the government of the United States in asking of the states that upon it be conferred power concurrent with their own to legislate upon this matter so vital to both. If the states shall have passed appropriate laws, it is safe to say that any legislation of Congress will march side by side with such laws. If such a state has been unmindful of its duty, then such Congressional legislation will work no injury, but rather a positive benefit to the state itself as well as to the national government.

STATUS OF THE CHILD LABOR AMENDMENT[1]

Rejection of the proposed child labor amendment by one or both houses of the legislature in twelve states, following its defeat in the advistory referendum in Massachusetts, November 4, 1924, closes the door to full ratification of the amendment as a part of the Constitution, for the present, at least, and raises a number of interesting questions as to its status.

Can a proposed constitutional amendment, having been rejected by one state legislature, be ratified by a succeeding legislature?

[1] From *Editorial Research Reports*. p. 43-50. January 29, 1925.

Does a constitutional amendment, notwithstanding its rejection by more than one-fourth of the states, remain open to future acceptance for an indefinite period?

Can the Congress withdraw a pending amendment, or, without such action, submit a new amendment in slightly different terms to the states for ratification?

These questions, while they are answered affirmatively by most constitutional authorities, have never been directly passed upon by the Supreme Court. They are likely, therefore, to become questions of controversy, in connection with the future moves of supporters and opponents of the child labor amendment, and in the effort to secure submission by Congress of the Wadsworth-Garrett proposal to change the method of amending the Constitution to the states for ratification.

Four proposed amendments to the Constitution approved in Congress by two-thirds majorities, and submitted to the states, have failed in the past to secure the number of ratifications necessary to their adoption, although two of these fell short just one of the number required to make them a part of the Constitution.[1] The question whether these amendments might still be ratified, although the last of them was submitted prior to the Civil War, is frequently raised.

The rule laid down by Congress in the case of the fourteenth amendment would seem to be that a state may reconsider and change a rejection of a constitutional amendment, but may not reconsider and change a ratification. The author of the article, "Constitutional Law" in *Corpus Juris* (12 C.J., page 681) states the rule as follows:

> Ratification of a proposed amendment, when once acceded to by a state legislature, would seem to exhaust its authority to act and preclude a reconsideration; but on the other hand, a vote of rejection on the part of a state is no bar to a subsequent reconsideration and adoption of the amendment.

[1] Two amendments were submitted in 1789 shortly after the adoption of the Constitution, as a part of the series constituting the Bill of Rights, a third was submitted to the states by the Eleventh Congress in 1810, the fourth was the Corwin amendment submitted March 12, 1861.

Jameson, in his work on constitutional law, states a similar rule, and much reliance is placed upon these authorities by the supporters of the child labor amendment. There are others who insist that an affirmative act by a state legislature has the same right of reconsideration as a negative act, prior to the time when the affirmative act actually makes law. The question has never been decided by the Supreme Court. It may come up for decision in connection with the pending amendment.

Article V of the Constitution, without the proviso, which is now obsolete, reads as follows:

> The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislatures of three-fourths of the several states or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress.

The language of this article would seem to place no time limit upon the completion of ratification. It was in recognition of this fact that the Congress in proposing the eighteenth (prohibition) amendment to the states included a provision that the amendment should be inoperative unless ratified within a period of seven years. The amendment was ratified in a little over a year.

In the case of Dillion vs. Gloss (265 U.S. 368) the argument was made that the amendment was invalid because Congress in proposing it had fixed a time limit for ratification. The Supreme Court in its decision, May 16, 1921, held that it was a fair inference from the article of the Constitution heretofore quoted that the ratification must be completed within some reasonable time after an amendment is submitted. The court failed to state what period might be considered reasonable, confining itself to asserting that Congress may, within reasonable limits, fix a definite period for ratification.

Justice Van Devanter, who delivered the court's opinion, referred to the four unsuccessful amendments and to the effort in the Ohio legislature to revive one of them after many years. Whether an amendment proposed without fixing any time for ratification, and which after favorable action in less than the required number of states had lain dormant for many years could be resurrected and its ratification completed, Justice Van Devanter said, had been mooted on several occasions, but was still an open question.

An effort to have Congress withdraw the child labor amendment from further consideration by state legislatures is believed to be one of the methods that will be attempted at a later date by opponents of the amendment. There is no precedent for such action and the question, therefore, has not come up for decision by the Supreme Court.

In February, 1864, three years after the submission of the Corwin amendment, Senator Anthony of Rhode Island introduced a resolution to repeal the resolution by which the amendment was submitted to the states. This raised the question of whether Congress has further power of control after the submission of an amendment. The resolution was not acted upon, and this interesting question has never been decided.

Related to it is the question of whether the Congress has power to amend a proposed amendment after it has been submitted to the states. This question is raised by Senator Borah's proposal that a new amendment be submitted to the states, identical with the pending amendment, but reducing the age stated in the amendment to sixteen or fourteen years. Efforts to so amend the amendment when it was pending in Congress were defeated. There is no precedent for amending a proposed amendment after it has been submitted, although the power of Congress to submit new amendments dealing with this subject for ratification by the states is not questioned by constitutional authorities.

The proposed Wadsworth-Garrett amendment, now pending in the House and Senate, if adopted as a part of the Constitution, would settle many of the questions that have arisen in connection with the child labor amendment. The amendment would make four changes in Article V of the Constitution, relating to the method of amendment:

1. It would require that at least one branch of the ratifying legislature be elected subsequent to the submission of the amendment to be acted upon.

2. It would permit a state to require that the act of ratification by its legislature be subject to confirmation by popular vote.

3. It would give a state which had ratified an amendment the right to reconsider its vote of ratification at any time before three-fourths have ratified or more than one-fourth have rejected it.

4. It would make the rejection of an amendment by a state legislature final, and make it necessary that any amendment rejected by more than one-fourth of the states be again submitted by Congress before further action can be taken by the legislatures upon it.

MINIMUM STANDARDS [1]

The National Child Labor Committee holds these minimum standards should be enacted and adequately enforced.

I. No child under fourteen years of age to be employed, permitted, or suffered to work at any gainful occupation except in domestic service or agriculture.

II. No child under sixteen years of age to be employed, permitted, or suffered to work:
   1. At any work known and declared to be dangerous, injurious or hazardous for chil-

[1] From pamphlet *Child Labor Complication in* 1925. p. 14. National Child Labor Committee. New York. 1925.

dren under sixteen years of age. Places and occupations known to be dangerous or hazardous for children under sixteen years of age should be enumerated in the law, but authority should be delegated to some state board or commission to extend the list.

2. After 7 P.M. or before 6 A.M.
3. For more than eight hours a day or six days or forty-eight hours a week.
4. Or unless the employer procures and has on file a work permit issued by a proper school official upon the following conditions, except that no work permit is to be required for employment in domestic service or agriculture.
   (a) A promise of employment by the prospective employer showing the exact nature of the work.
   (b) Legal evidence, documentary wherever possible, that the child is of legal age for that specific employment.
   (c) Evidence that the child has completed the eighth grade of the public school course or its equivalent. If all other requirements are complied with, this requirement should be waived during the time when the public school of the district in which the child resides is not in session, a special vacation work permit being issued.
   (d) A statement by an authorized physician showing that upon examination he finds the child of development and in such state of

health as makes him physically fit for his particular employment.

III. No child under eighteen years of age to be employed, permitted or suffered to work at any occupation or in any place known and declared to be dangerous, injurious or hazardous for children under eighteen years of age. Places and occupations known to be dangerous or hazardous for children under eighteen years of age should be enumerated in law, but authority should be delegated to some state board or commission to extend the list.

UNIFORM LAW[1]

Our different states have had different standards, or no standards at all, for child labor.

The Congress should have authority to provide a uniform law applicable to the whole nation which will protect childhood.

Our country cannot afford to let anyone live off the earnings of its youth of tender years. Their places are not in the factory, but in the school, that the men and women of tomorrow may reach a higher state of existence, and the nation a higher standard of citizenship.

RATIFICATION OF THE NATIONAL CHILD LABOR AMENDMENT[2]

This child labor amendment, with its possibilities for the promotion of human welfare and the relief of human misery, is, beyond all comparison, the most important measure that the legislature of California will be called

[1] From speech of acceptance of President Coolidge. National Education Association. *Journal.* 14: 127. April, 1925.

[2] Remarks of Senator Herbert C. Jones in support of Assembly Joint Resolution No. ., in the Senate of California, January 8, 1925. From the *Journal of the Senate.*

upon to determine at this session. Nay, more, it is, in my judgment, the most important, in its enduring results, that the legislature has been called upon to vote on in my fourteen years' service as a member of this senate.

The contest over this amendment is a struggle essentially between the social service organizations of the nation on the one hand, and the National Manufacturers' Association and kindred groups on the other hand. The report of the Judiciary Committee of the House of Representatives on the proposed child labor amendment sets forth the groups on the opposing sides. Among the advocates of the amendment, women's organizations are by far the greater part of its supporters. This struggle is a coming to grips of the organized womanhood of the nation with the manufacturing and industrial interests that desire cheap labor. No worthier cause could be espoused by the mothers and the women of the nation.

Before discussing the amendment, it is well to have clearly in mind the issue involved. That issue is simple; Shall Congress have concurrent jurisdiction with the states in regulating child labor, so as to bring up backward states to the standard that the public opinion of the nation demands? Shall the national government, as well as the states, have the right to prevent the exploitation of child labor, in order to protect children if the laws of some states prove inadequate, or if individual states are prevented by powerful industrial interests from acting? This amendment is merely a conferring of authority upon Congress so that it may secure uniformity throughout the nation.

It will be my purpose in discussing the resolution now before us to show two things:

1. That the need exists for regulating child labor, and

2. That Federal action is necessary.

In considering the need for stopping child labor I shall base the case against child labor, not upon the

grounds of sentiment, but upon the grounds of sound economics.

Time does not permit, on this occasion, of the discussion of the causes of child labor. They are numerous, varied and interwoven. Of all these causes, however, the strongest, the one that constitutes the most formidable opposition to better laws, is the greed of employers—the desire for cheap labor.

Taking up the extent of child labor, we find from the Federal Census of 1920 that there are enumerated as child laborers, between the ages of ten and fifteen, 1,060,858. These figures, however, are universally recognized as being far below the actual number at the present time. This is partly due to the fact that the second child labor act was then in effect, partly to the fact that the figures of the 1920 census related to the date of January 1, 1920, when industry was quiet, whereas the census of 1910 was taken in April, when industry, particularly agricultural, was active; and partly to the fact that the figures of 1920 were compiled at a time of industrial depression. Furthermore these figures do not include children under the age of ten, and, of course, fail to include many child workers whose parents evaded the census takers.

Even the figures of the 1920 census, however, show that one child in every twelve in the United States, between the ages of ten and fifteen, is engaged in gainful occupation, this being defined by the Census Bureau, not to include children who work for their parents at home merely on *general housework* or *chores,* or at odd times on other work, but only children whose labor contributes materially to the family income.

The growth of child labor since the second child labor act was declared invalid has been serious. The increase for the last six months of 1922, as compared with the last six months of 1921, as shown by government statistics for twenty-one cities, was 43 per cent.

During the first quarter of the year 1923, in the great cities, such as New York, St. Louis, Baltimore, Detroit, Hartford, and many others, the increase was 24 per cent.

As to age—the 1920 census disclosed that three-eighths of the children enumerated were under the age of fourteen years. For example in the beet fields of Colorado 43 per cent of the children were under eleven years of age; in the beet fields of Michigan 38 per cent were under eleven years of age. In some cases they began to work before six years of age. In the oyster canning industry nearly 25 per cent were under eleven years of age. Sweating has always exploited the smaller children. In Rhode Island over 45 per cent were under eleven years of age, and seven-eighths under fourteen years of age. In Connecticut the same percentages are disclosed and in New York the percentages are even higher.

As to literacy and education—illiteracy exists to a startling extent among child labor. Illiteracy among the little folk in the oyster and shrimp canneries of the gulf coast is as high as 25 per cent, while for children of the United States as a whole it is only 4 per cent. Communities with the largest proportion of child workers have the smallest percentage of school attendance, and the highest rate of illiteracy. The following government statistics in different states show the average grade that child workers leave school:

Place	Grade on Leaving School
Woonsocket	3.6
Pawtucket	4.1
Columbus, Ga.	4.0
Georgia and Alabama Counties	3.1
Columbia, S.C.	2.9
Plymouth, Pa.	4.0

Let us now take up the effects of child labor. These effects can be classified under four heads: psychological, social, moral, economic.

In childhood the foundation of health is laid. During the years of infancy the body of the child is plastic. About the thirteenth year, physiologists tell us, is the period when the muscles are hardening. In these years of growth excessive strain may produce permanent injury. Particularly with the body undergoing transformation at the age of puberty do injuries often leave permanent effects. Long periods in certain positions, the dust in mines, the lint in textile mills, the poisonous fumes in tobacco factories, affect children much more severely than adults. Moist floors, laundry work, variations in temperature, fumes in varnish, paint, enamel and dye factories, find children their most susceptible victims. Night work is most injurious of all, being contrary to the order of nature. The employment of youthful children under the strain of these modern industrial conditions injures their physique.

Child labor stands condemned because of its physiological effects.

Society today needs men and women of physical vigor to become useful citizens, but child labor unfits for social and political life. The child worker is debarred from adequate education. If once started in industry, he seldom returns to school. Few are able to overcome the handicaps of premature labor. Few become factors in directing our civilization. Being unfitted for social and political life, they endanger the citizenship of the country. In the words of Beveridge:

> Child workers see their inferiority in body, mind and soul, caused, not naturally, but by their slavery. They are robbed of intellect, health, character, and God's light, and they resent it. They turn into engines of wrath against society and breed the anarchistic spirit.

The failure to develop its potential citizens is a social waste.

Child labor stands condemned because of its social effects.

Figures compiled from government sources show that the number of delinquents among working boys runs from two times to ten times the percentage among other boys. The percentage of delinquency among young working girls is greater still. The atmosphere surrounding many trades is demoralizing. Messenger boys, newsboys, errand boys, are required to visit haunts of vice. They become calloused morally and diseased physically.

The Federal government has gathered in a comprehensive manner the data in the following table which shows the proportion of delinquents among working as contrasted with non-working children:

	Proportion of boys delinquent		Proportion of girls delinquent	
Place	Working	Non-working	Working	Non-working
Boston	15.71	1.46	1.36	0.08
Baltimore	2.87	0.66	0.51	0.02
Newark	3.74	0.89	0.28	0.04
Pittsburgh	6.56	1.54	2.47	0.14
Philadelphia	1.66	0.55	0.34	0.04
Minneapolis	6.67	3.15	1.41	0.31

Long hours and overwork result in excesses and the breakdown of restraint. Night work is particularly objectionable. The development of the character of boys and girls requires more schools, more parks, more playgrounds, better homes—not more child labor.

Child labor stands condemned because of its moral effects.

In its economic effects, the counts against child labor may be listed as follows:

It shortens the period of trade life; it prevents the developing of efficiency; it produces unstable labor; it reduces the wages of adults; it produces poverty; it causes race deterioration.

The period of trade life is shortened due to physical depletion from premature labor, and the inability to endure the strain of work at early age. The nation's

available labor power is diminished by drawing prematurely on its economic assets. By early exhaustion trade life is shortened. The economic loss is due to:

1. Death of the worker in middle life.
2. Loss of earning power in latter life through injury or physical breakdown.

The mortality of children is high in some industries. The accident rate is high among children. In the tending of machinery, requiring the utmost care of adults, the carelessness and inability of children to concentrate, produces a high rate of accidents. In the cotton mills of the south this rate is 48 per cent higher for children of fourteen and fifteen than for those of sixteen and over. With machinery having shafts and belts it is 133 per cent higher, and with machinery having gears 350 per cent higher.

This mortality among children is an economic loss that cannot be replaced. Even though death does not result from accident or in middle life, stunted physiques, deformity, incapacity for hard work, mean loss of productive power. Governmental action is necessary to extend the industrial career.

Child labor prevents the developing of efficiency. Child workers enter industry without a trade education. They join the ranks of the unskilled and remain the victims of low wages throughout their industrial career. They do not receive proper training, but become adapted to routine or specialized work, which is not for their best interest in securing positions.

Child labor is unstable labor. Children being untrained frequently enter positions that do not lead to promotion, short-lived jobs, "blind alley" occupations. With no special training and no opportunity for increasing wages, they go from one job to another. Habits of irregularity are formed. These younger years spent in industry are wasted years. Two years of such irregular work result in instability.

Child labor reduces the wages of adults. In this day of machinery, in many positions, boys displace men, and girls displace women. Frequently there is no difference in the work of the adult and the child, yet the child is given lower wages. The standard rate of wage is thereby reduced and the adults have to accept low wages. This reduces other parents below the poverty line, and the little children of these other parents are driven to the mills and factories to help eke out the family existence. Statistics and investigations show that in communities where child labor exists extensively, the income of the entire family is not materially larger than in localities where the support rests on the economic head of the family.

Child labor produces poverty. The handicap of the child worker, his lack of training in any trade, his lack of education, make him incapable of rising in the scale of living. He is not developed and is unable to use foresight. Through early breakdown of physique and lack of ability to better himself, he increases in numbers the dependent class, with its consequent burden upon society.

Child labor causes race deterioration. The injured physique, the sapped energy, the devitalized constitution, the dwarfed and stunted body, and the undeveloped mind that child labor produces affect the health and standard of the race. The physical decline of the English people is traceable in part directly to child labor. The producing and conserving of the best type of physique is inexorably necessary in the complicated civilization of today. A nation which works its boys and girls exhibits the same wisdom as the farmer who grinds his seed corn.

Child labor stands condemned because of its economic effects.

It is a crime against childhood because it prevents the growth of manhood and womanhood. It is a menace to the nation's economic and industrial development because it shortens the trade life of the nation's workers

and draws prematurely on its economic assets. It is a crime against the nation because it prevents the growth of a host of children into strong, patriotic and intelligent citizens.

To legislators of California, I deem it unnecessary to proceed further with the case against child labor. We already have on our statute books a law ahead of the provisions contained in the two national child labor acts. The protection of the children of the state is an established policy of California; a policy which we universally approve, and in which we glory.

Let us now turn to the objections that we hear to the proposed Federal amendment. These objections are two:

1. That it invades the rights of parents.
2. That it invades the rights of states.

As to the first objection: This is an argument now repeated with a hundred variations, throughout all the states where this amendment will be up for ratification. Its validity admits of a simple test. Does any parent in the United States now enjoy the right, beyond the possibility of legislative invasion, in disposing of his child's labor as he sees fit? "No." The states can now do everything that it is proposed to empower the Federal government to do. In every one of the states of this union, the right of the state is superior to the right of the parent. This amendment does not deprive the parent of any liberty he now enjoys. It does not involve any new principle of goverment. It simply confers upon Congress an authority which the states have had ever since the adoption of our Federal Constitution.

Organizations that have never before done anything in behalf of children are now taken with a sudden attack of interest in the welfare of the nation's children. They talk about the "sacred institution" of the home. I have here in my hand a clipping quoting a speech of a business man from Texas who denounces this amend-

ment as a "step in the direction of the socialistic plan to make the children the chattels of the state instead of the jewels of the home." I also hold in my hand newspaper clippings from Texas showing what they are doing down there.

Merkel, November 2.—Clayton, five-year-old son of D. D. Coats of Merkel, has picked 2,002 pounds of cotton since August 29. His best day's work was eighty-one pounds.

Rotan, November 2.—Lincoln Ernest, five, son of Mr. and Mrs. E. W. Cleveland, picked seventy-two pounds of cotton before sundown on October 27. He has averaged over fifty pounds a day all fall.

Jewels of the home! When I read those accounts of infants only five years old toiling all through the season, there comes before me the picture of my own little five-year-old girl at home, and I say to myself: Childhood is endowed with certain inalienable rights that tower over and above all material things; among these rights are freedom from earning their daily bread by the sweat of their brow; the right to play and to dream; the right to sleep when night steals over the day; the right to be educated and to pursue and enjoy the happiness of childhood and the company of other children.

If wages are adjusted to the fact of child labor, the parent is no longer free as to putting his children into the factory or keeping them out. The "home" from which children are hurried away every morning to the factory and to which they return every night broken with weariness no longer exists. Child labor is destructive of liberty—of the liberty of the child, of the child's parents who are thrust into a position where they must choose between starvation and the enslavement of their children.

As to the second objection: that this amendment invades the rights of states It does not take from them their authority to legislate concerning child labor, for its very terms recognize and continue the authority the states now have. It is true, however, that the amendment does confer authority, not to the exclusion of the

states, but concurrently with the present authority of the states, upon the Federal government to regulate child labor.

There come times when national action becomes necessary. No less than the senator from Modesto, my preference would have been to have had the abuses of child labor obliterated by the states. But when states refuse to act, a state's right becames a state's wrong. When, after one hundred and thirty-five years, a state refuses to act, is it not time that the Federal government be allowed to act in order that the public opinion of the nation may not be outraged? The gentleman from Modesto, in the year 1919, was not willing to leave to the action of the individual states the regulation of the liquor traffic; he would not be willing to have left the abolition of slavery to the action of individual states. He was not willing, the journals of the extra session of 1919 disclose, to leave the matter of woman suffrage to the action of the individual states. In fact, two years ago, I find from the records of this Senate, he joined in the unanimous action of this body in memorializing Congress to submit an amendment under which nation-wide and uniform action could be taken for the abolition of the evils of child labor.

Federal action is necessary to bring into line those states where the grip of powerful industrial interests throttles every effort at reform. In some states there are industries using child labor that dominate the political action of the state. They crush out the lives of countless little children in the name of states' rights. With the possibility of Federal action, these exploiting interests, no matter how powerful or dominating in a particular state, would not be able longer to block relief.

Year after year humanity has battled inhumanity to stop this curse. When states have sought to end it, inhumanity has said: "If this state merely ends it here, other states will flood you with their child-labor prod-

ucts; the only way to end it is by national law." Now, when humanity seeks a national law, inhumanity appears and cries: "This violates states' rights." The time has come to kill this cruel duplicity.

National action is necessary to secure uniformity, and uniformity is necessary to protect the states that have adequate child labor laws. With national legislation, no habitual employer of child labor can escape the law by migrating to another state. If he migrates to a foreign country, we can protect ourselves by the tariff barrier. But if there is only state action fixing a high age limit for child labor, the exploiter of children has only to move across the nearest state boundary. He is free to ship the product of child slavery back into the state, to compete with the products of free labor. The state loses business and taxable property, without being able to bring about any betterment in the adjoining states. In our own state, with our new cotton industry, is it right that we should be penalized in protecting the young children of the state? Should we be put into competition with other states whose standard of child labor legislation is far below ours? Even if half of the states prohibited child labor, about as many children in the United States could still be found in factories, though concentrated in the states of slack laws. Uniformity through Federal action prevents this evasion, and protects the progressive states.

Another reason for Federal action is to save or protect certain states from the burden of dependents, broken down by premature strain, coming from other states. In our own state of California, we have a large proportion of immigrants from other states afflicted with tuberculosis, coming here to regain health, having impaired their health through the dust, the moisture, the lint and the fumes of childhood employment. Child labor notoriously involves an immediate profit to the employer at the cost of the efficiency and health of the adult worker. We are

migratory people. Under existing conditions the profit is too often enjoyed by one state while the cost is borne by another. The prevention, by Federal action, of ill-health would cut off at the source an amount of dependency that now has to be carried by some states which is caused in other states.

The present propaganda against the child labor amendment seems to know no restraint. The attempt to amend the Constitution in the constitutional way is denounced as revolutionary. The supporters of the amendment are branded as bolshevists; and the amendment itself alleged to eminate from communist Russia. Has not the time come when denunciation as a substitute for argument should cease? When four presidents of the United States—Coolidge, Harding, Wilson and Roosevelt—have advocated this amendment; when four members of the Supreme Court of the United States and the House of Representatives have approved this amendment, it is the utmost limit of propagandist effrontery for parties interested in preserving the privilege of exploiting child labor to continue to talk about Russian reds!

The opposition seeks to arouse apprehension, misgivings and terror as to what Congress might do. This argument is based upon the supposition that Congress cannot be entrusted with this power because it will misuse its authority. This attack is fundamental. It goes to the essence of our representative system of government. Theoretically it is possible for a legislative body to defy the people, to ruin industry, to wreck the country. It is possible for this legislature to throw the state of California into anarchy. We can withhold the appropriations for the courts, for the prisons, for the militia. Representative government, however, must stand upon the theory that the representatives of the people carry out the will of the people. Human experience has found nothing better as a form of government than a

democratic republic. The evils that come from disparaging our system of government may become serious. When has Congress shown any inclination to disregard the public will? It has the right to levy taxes, but it does not, through that power, confiscate property or destroy industry. It has the right to declare war, but only exercises this authority when the public opinion of the nation demands. If Congress can be entrusted with the authority to tax, to borrow money, to declare war, it certainly can be entrusted with the authority to protect little children from their exploiters. There has been nothing in the history of our republic to justify the fear that Congress will attempt to say that the boy cannot drive the cow to pasture, or mow the lawn, or bring in the kindling, or the girl wash the dishes or tend the baby. Certainly there has been nothing in the two national child labor acts, passed at a time when it was supposed that Congress had unquestioned authority, to justify any misgivings or apprehension.

On the one side are real issues—on the other side are imaginary issues. The evils of child labor are actual. The fear of congressional abuses, imaginary.

It is unthinkable that a great nation should not have the authority to protect its children. Child labor prevents physical, mental, moral and economic development. Its horrors, in the words of President Roosevelt's message to Congress, are "a blot on our civilization."

More earnestly than I have ever pleaded before, do I now ask you that you make the vote in favor of this amendment unanimous. If your vote today is cast for the emancipation of the children of the nation, you will never have any troubled conscience; you will always look back on this vote as one of the matters of pride in your legislative career. Let us flash the word over the nation that California regards little children as something more than the appendage of machinery. Earnestly do the mothers, the women of California, hope—fer-

vently do they pray, that this curse may speedily pass away.

The pure white of that star in our flag that represents California in the sisterhood of states is undefiled by this crime against the little children. May the day soon come when every star shall be undefiled by this blot, when every star shall gleam with the spotless whiteness of purity and freedom from the enslavement of God's little children—when the flag shall float over a land where the lives of little children are not permitted to be crushed out by the wheels of industry nor sacrificed on the altar of greed, a land that is great enough and rich enough not to have to exist off of the labor of little children, a land where every child is given an opportunity to grow up in physical vigor, and to become a useful, happy and patriotic citizen.

IS THE CHILD LABOR AMENDMENT PROPERLY DRAWN?[1]

The referendum campaign in Massachusetts with reference to the child labor amendment has brought out some arguments which have greatly astonished me. Without dealing with the amendment on its merits, I should like to analyze some of these arguments as they are advanced by some of my friends who are opposing the amendment and at the same time showing their desire to advance the abolition of child labor.

It is clear to me that the employment of children can be effectively regulated and controlled in the United States only by national action. If one has reached this conclusion, I can understand his objections to the amendment. But until this year I had supposed that the national character of the problem would be better appreciated in Massachusetts than anywhere in America, for

[1] By Manley O. Hudson, Bemis Professor of International Law, Harvard Law School. *American Child*. 6: 1. 7. November, 1924.

ever since I first came to Massachusetts I have heard people talk of their desire for better legislation "if only the south could have it, too." I do not fear in the slightest the increase in the power of the Federal government which this amendment will involve. It may be partly because my ancestors were supporters of the Confederacy in the war of 1861 that I conceive this country to be a welded nation and not simply a union of independent states. In my view, it is essential, therefore, that the Federal government should have adequate powers, and I am hospitable to an attempt to deal with the employment of children in the most effective way possible—by common and simultaneous action of the people of the whole country recorded through their representatives in Congress.

Opponents Foment Hostility to Congress—But some of my friends argue that the amendment would be very dangerous in that it would give to Congress an unlimited general power. To substantiate this argument the current hostility to Congress is being mobilized, as well as the current hostility to the national prohibition policy. In a recently published statement a distinquished citizen of Massachusetts has argued that the amendment would violate the fundamental principles of the Constitution, and in the same statement he attacked the Constitution itself for giving Congress general powers over interstate commerce. I do not object to one's trying to have and eat his cake at the same time—I object only if he attempts to disguise that process in his dealing with the public.

The truth is that most of the powers of Congress are given in just such general terms as those of the child labor amendment. If anyone doubts this, I would ask him to read Section 8 of Article I of the Constitution. It was the framers who gave Congress many general powers, including the power "to borrow money on the credit of the United States;" to "regulate commerce with

foreign nations and among the several states;" to "coin money;" and to "declare war." If Congress cannot be entrusted with general legislative powers, the framers made a great mistake and the Constitution should be changed radically. In that event, I would not know how we could meet any of our national problems.

Are the Enumerated Powers Unalterable—The federal nature of our government has been amply recognized in the drafting of the amendment. It is because our Federal government is one of enumerated powers that the problem now confronts us. The powers of Congress are conferred only by the Constitution. Many people have supposed—Congress itself supposed until a recent Supreme Court decision—that the enumerated powers of Congress included some power to regulate child labor. It seems to me absurd for one to say that this enumeration cannot be increased without "destroying the Federal union." Are we to suppose that the enumeration of legislative powers as between the states and the Federal government is fixed for all time as it was determined in 1789, so that the people must not change it? Will the slightest readjustment to meet the country's needs destroy the essential character of our government? I cannot believe that the nation hangs on such a slender thread.

I should have deprecated any introduction into the amendment of rigid limitations on the manner in which Congress should exercise the power to be granted. The Constitution is not the place for statutory legislation, the terms of which ought to be subject to frequent change. It is often argued as one of the chief objections to the eighteenth amendment that it did not stop with giving Congress the power to legislate concerning intoxicating liquors. The child labor amendment is admirably drafted in this respect. It would merely confer the power on Congress, and the terms of legislation in exercise of the power will remain subject to change in accordance with the changing will of the country.

States Already Possess This Power—It seems to me patently ridiculous to argue, also as do some distinguished citizens of Massachusetts in an advertisement appearing in the Boston press on October 17, 1924, that the defeat of this amendment is "essential to the preservation of the fundamental right of every man to care for the well-being of his children." If that right could be violated by Congress after the passage of the amendment, it can equally be violated by the Massachusetts legislature today. All of our state legislatures now have the power "to limit, regulate, and prohibit the labor of persons under eighteen years of age." Without examining each of our state constitutions, I think it is not too much to say that any one of the forty-eight state legislatures can now do for its own state the very thing that Congress could do under this amendment. The state legislatures today "limit, regulate, control, and prohibit" the labor of persons under twenty-one years of age.

The adoption of the amendment would merely substitute the action of one legislature, Congress, for the action of forty-eight legislatures. To the extent that Congress does not act, the state legislatures would still retain their power. Are the men we send to Congress less equipped to deal with our problems in a reasonable way than the men we are sending to the state legislatures? I had supposed their calibre was somewhat better.

Equally fantastic is the statement made by the same group of citizens that the amendment would enable Congress "to interfere in the discipline of each household" and to "take from parents the right and the duty to educate and guide their children." This presupposes a complete collapse of all limitations on legislation by Congress. In their unwillingness to entrust to Congress a general legislative power possessed by all state legislatures some of the opponents of this amendment show an utter lack of confidence in our system of government and an utter lack of faith in the intelligence and common sense of all American voters.

Amendment Only Practical Way—The amendment seems to me quite properly drawn. The age might have been put at sixteen instead of eighteen, but since we are not dealing with legislation but with legislative power, I think it was necessary to put the age at eighteen in order to enable Congress to enact uniform measures for the whole country dealing with the employment of persons under eighteen at night and in dangerous trades. I think we can foresee what Congress is likely to do by looking at the child labor legislation which was attempted a few years ago and which, without this amendment, was declared unconstitutional. The results of that legislation while it was in force, were most satisfactory. They indicate to me that the adoption of the amendment now proposed is the only practical way for us in America to deal with a problem which since Lord Shaftesbury's time has been similarly dealt with in England.

CHILD LABOR AMENDMENT [1]

Will the Bill of Rights be abrogated if the child labor amendment is ratified? This seems to me the most absurd bogey that ever was conjured up. Let me give you an example of the way lawyers can argue on such points. Probably there is no better authority on law in the country than Mr. Hughes. When the income tax amendment was under consideration he urged strongly that the result of it would be to allow the national government to tax state and municipal securities out of existence. Certainly the language of the amendment was very strong—income "from whatever source derived." Nevertheless the Supreme Court of the United States has held that the amendment did not have any such destructive effect. Now take the present case. The

[1] By Dean Roscoe Pound, Harvard Law School, in reply to a letter from the National Child Labor Committee, October 28, 1924. Latter part in letter to George Stewart Brown, October 27, 1924. 4p. National Child Labor Committee. New York.

argument is that a power of prohibition and regulation is conferred, and that there are no limits upon that prohibition or regulation. But the amendment is meant to fit into the Constitution as a whole, and the Bill of Rights provides that the Federal government shall not deprive any person of life, liberty or property without due process of law. Therefore, any unreasonable means of regulation, and anything arbitrary or unreasonable in the carrying out of the prohibition would be subject to the limitation that applies to all congressional exercise of powers given by the Constitution. The Supreme Court of the United States has never manifested any inclination to give free reign to social legislation. On the contrary, it has always scrutinized it very jealously, I see no reason to suppose that it would allow legislation under this amendment to run wild. If it is said that we may presently get a radical court, my answer would be that when we get such a court, it won't need constitutional amendments to enable it to sanction congressional dealing with the subject of child labor. It will simply overrule the first child labor decision and let the matter go at that.

You ask whether the Supreme Court will allow educational control to be implied from the amendment. Here again, I can only say that the Supreme Court has shown no inclination to allow wide latitude for social legislation. Why it should be supposed that this amendment will bring about an entire change of front in the attitude of the court I cannot perceive. The amendment says nothing whatever about education. What it says is that Congress may regulate and prohibit child labor. Under the tenth amendment "the powers not delegated to the United States by the Constitution or prohibited by it to the states are reserved to the states respectively or to the people." This seems to me to settle the matter. There being nothing whatever in the Constitution about education, it is committed to the states respectively

where it stands now. If certain children are not permitted to be employed in labor, and therefore it is deemed they ought to be educated, the matter of educating them rests with the state exactly as the matter of protecting them from being run over by automobiles in the streets does.

You ask will the amendment give Congress a power more extensive than that now possessed by the states? I suppose the states have power to deal with the matter of child labor up to the age of twenty-one. Very likely regulations of labor above twenty-one would be said not to be due process of law. If that is the case the power given by this amendment is less than the power actually possessed by every state in the union at present. It should be borne in mind that the Supreme Court of the United States has expressly decided that the states may enact child labor legislation. What this amendment does is to give to Congress a power to deal uniformly with the whole country in a matter with respect to which each state now has greater powers than those which this amendment proposes to confer upon Congress.

Let me say one thing more. I have read attentively the voluminous literature which has come out upon this subject recently in which some very good lawyers (obviously retained for the purpose) have expended the resources of ingenious advocacy in conjuring up bogies in this connection. It should be remembered that excellent lawyers have always done this with respect to every important measure in our history. We certainly have never had a greater lawyer in this country than James Kent. But he thundered against the Louisiana purchase as unconstitutional, revolutionary and subversive of American institutions. Nothing that I have read about the child labor amendment paints a gloomier picture for the future than that which this eminent lawyer painted in his opposition to acquisition by the United States of a territory which would make it an American empire.

With the court (United States Supreme Court) as it is, and as it is likely to be, there is not the slightest danger of the terrible things which advocates retained by the Manufacturers' Association are picturing in order to reach the fears or the prejudices of voters.

What seems to me a much more real and substantial fear is that if this amendment is defeated the manufacturers and mill owners will then go to the legislatures in our several states and say, "Behold, the people are opposed to child labor legislation. Now let us repeal existing laws on that subject." Further, state administrative officers will feel that public sentiment is against child labor laws, and the present lax administration in many states will become worse. The evil of child labor is so serious, and the results of it in so many communities already are so manifest, that I am much more alarmed about the possibilities to our citizenship involved in a continuous growth of child labor than I am by the possibility that Congress will run away with the powers conferred upon it, and that if Congress should do such a thing the Supreme Court of the United States would acquiesce therein. By and large in the past that great tribunal has been governed by common sense in its handling of the Constitution, and why should we suppose that all common sense will depart from it in connection with this particular amendment. Moreover, as between trusting the Manufacturers' Association and trusting Congress I much prefer to trust the latter. Obnoxious acts of Congress can be repealed. But wrecking the lives of coming generations can never be repealed.

WHY THEY INVOKE STATES RIGHTS[1]

Little by little the attack upon the child labor amendment is shifting its base from the untenable position that empowering the Federal government to regulate child

[1] From *New Republic*. 41: 108-9. December 24, 1924.

labor is an attack upon the integrity of the home, an invasion of the right of the parent to dispose of the time and labor of his children to suit his fancy. The parent has no such right under any civilized government. Everywhere the state asserts the right to regulate or prohibit child labor. With us, the governmental body which at present exercises this power is the state instead of the nation. The child labor amendment proposes to give the nation a share in this power. The issue, therefore, is not the family or the individual *versus* government, but state *versus* nation. This the more intelligent advocates and opponents of the amendment recognize clearly.

The seriousness of the issue does not lie in the terms and objects of the amendment itself. It is silly to talk of any army of Federal bureaucrats roaming over the land devouring the taxpayer's substance and setting his children against his authority. The Children's Bureau, or whatever other organ of enforcement may be created, will have a perennial fight on its hands to secure appropriations sufficient for the enforcement of such laws as Congress may enact. The Appropriations Committee is not going to find funds for inspectors enough to look into every kitchen, every field and garden. Under the two child labor laws enacted by Congress and later declared unconstitutional there was close cooperation between the Federal and state authorities. This would be true under the amendment. The state, retaining exclusive control of the field of education, is too strongly entrenched to be thrust aside in the common enterprise of establishing the conditions under which children live. Where the state law is adequate Washington will be chary in supplying enforcement agents. Where the state law is defective a corps of Federal inspectors will be required. No state that resented their presence would be forced to put up with them. It could bring its laws up to the minimum standard.

Even if the result of the amendment were to transfer the interest in child labor legislation to the national government instead of that of the state, it would not be true, as it is frequently asserted, that the states would be shorn of a legislative field in which they are actively working. Since 1912, as the *New York World* points out in one of its weightiest leaders, there has been great activity in child labor legislation. *The World* does not point out that the activity was greatest while the abortive Federal child labor laws were in force, and has nearly disappeared since the second one was declared unconstitutional. This may be explained in part by the greater difficulty of persuading legislatures to act, now that a state with high standards is again exposed to the competition of states with low standards. But the chief part of the explanation must lie in the decline of democratic idealism that has marked the last years. With due allowance for the probability of a recovery of the democratic spirit, we may still assert that the child labor issue itself does not stand as a major one, either in legislation or administration. It is attacked as a symbol of something bigger and more fundamental in our national life.

The real issue is the old one of states rights, the most momentous domestic issue in our history. It has figured in innumerable political campaigns; it cost us a civil war. It is no wonder that to many Americans this issue should take on almost a religious character. When so much emotion has been compacted into a single formula men cannot be expected to exhibit calm reason. They cannot be expected to distinguish between what is fundamental to the American system of government, the restriction of the Federal government to the field expressly assigned to it by the Constitution and the reservation to the states of all residual powers not expressly denied to them, and what is unessential and requiring adaptation of the times, the definition of the field in which the Federal government may work. States rights are invaded

when the Federal government oversteps the limits set by the Constitution. If such practices were permitted the states would be in great danger of being reduced to the position of mere administrative areas, like the French departments. When the people of the United States, by due constitutional process, confer upon the Federal government powers it has not hitherto possessed, there is no invasion of states rights, even though the states may incidentally be shorn of some of their powers. Under our system there are neither state nor national rights superior to the will of the sovereign people.

The founders of the Constitution conferred upon the Federal government such powers as at the time were ample to protect the common interests of the people. Control of foreign relations, of foreign and interstate commerce, of the coinage, the power to make war or peace, and apparently adequate power of taxation—were these not sufficient for the management of the common affairs of thirteen sparsely settled states strung along the Atlantic seaboard, with each community leading almost a self-sufficing existence? The founders of the Constitution were practical men and would no doubt have conferred broader powers on the Federal economy if the conditions of the national government had required it. They did not imagine that they were fixing for all time the spheres of the Federal and state governments. Indeed, Washington, seeking in his Farewell Address to define the essence of American institutions, does not bring forward the Constitution itself, but the power of the people to change it.

An immense revolution in economic life has taken place since the adoption of the Constitution. An unforeseeable mobility of population, commerce and industry has characterized the century since the industrial revolution got well under way. Organized capital has risen to the rank of an economic political power of the first magnitude; organized labor has gained a status that to

the founders of the Constitution would no doubt have seemed most dangerous. A few optimists may hold that these new forces need no regulation; that whatever emerges from the womb of time is necessarily well born, destined to enrich the life of mankind. History and common sense preach no such dogma. The state cannot be indifferent to the forces working within it. A government which acts as a trustee for the common interest must hold itself in readiness to control and check if necessary forces that may operate subversively to the good of the people. And in a country of divided sovereignty, like the United States, common sense would seem to ordain that power to cope with new forces should be conferred upon state or nation primarily with a view to efficiency.

Twenty years ago this appeared to be recognized by intelligent men of all parties. Only the Bourbon rejected violently the program of extending the powers of the Federal government to cover the fields in which state action was ineffective, and the establishment of the principle of harmonious state and Federal cooperation. But in these two decades a change appears to have come over the public mind. The Bourbons have come out into the open with the anti-constitutional doctrine that the Constitution must be left intact as it stands.

One reason for this change in public sentiment lies on the surface. We have a Federal prohibition law, and its administration is a scandal and a disgrace. We had state prohibition laws before. What of their enforcement? It was everywhere a scandal and a disgrace. Both state and nation have tried their hands at enforcing unenforceable laws. They have failed ignominiously. But the state failure has been swallowed up in the more recent Federal failure. Just now the burden of disrespect has been shifted from the states to the Federal government. This has no bearing, to be sure, on the question of the distribution of power between state and

Federal governments. It bears on the limitations of government in general, not of any particular branch. But the discrimination is too nice for popular currency

Another reason, and a far more significant one, is the immense progress in self-consciousness that has been made by the leaders of big business. With the consolidation of their economic position they grow more and more concerned over the weakness of their political position. They are afraid of the American people, and of the governments which may at any time fall subject to the control of the American people. The chief virtue of our constitutional system, as they see it, is its inefficiency. The Federal government, which alone holds jurisdiction co-terminous with the American business field, is without adequate powers of regulation. The states have sufficient regulatory power, but because they are arbitrary fragments of the national economic unit, they are unable to use it effectively. In the no man's land between state ineffectiveness and Federal incompetence, business may build up an economic state of its own, unhampered by regulation, insured against attack by the constitutional safeguards of property.

Big business has no considerable stake in child labor as a productive force. The two hundred thousand children under sixteen employed in industry can produce no tremendous sum of profits. What leads big business to oppose the amendment is the principle involved: namely, the principle that when the American people desire to regulate industry, they shall have the constitutional power to do so.

We think big business is mistaken in its tactics. Suppose it forces a crystallization of our constitutional development. What then? Is it to be supposed that the American people, this huge and unruly colossus, will lie on its back forever, held motionless by Lilliputian legalistic strings? In the long run, there is no safety

for any interest in America, except by the favoring will of the people, won by adequate show of merit.

CHILD LABOR AMENDMENT'S DEFEAT[1]

How did it come about that an opposition which was out-argued and out-voted only a year ago in Washington has achieved such a speedy and overwhelming triumph at the bar of national public opinion? There seems to be only one sufficient answer to this question. For the present the tide is running irresistibly against any proposed progressive legislation which the business interests now in control of American politics have any sufficient interest in defeating, and the kind of propaganda which they used to defeat this particular proposal is glaringly illustrative of their methods and standards. They did not discuss the proposal. They grossly misrepresented its meaning and consequences and condemned as inconceivably baleful the grotesque effigy which they erected in the market place. They denounced the amendment as a malign attack on the American home and particularly upon those homes which are situated in farm houses. It deprived, so they alleged, the American father and mother of their natural responsibility for the welfare of their children. It was to be interpreted as a part of the net which is being spun to catch hundreds of innocent victims by the wicked spider in Moscow. It was equivalent to the nationalization of American children and their subsequent bondage to the arbitrary and ruthless government of a group of bureaucrats in Washington.

The friends of the amendment were totally unprepared to combat the flood of distorted propaganda which was let loose upon them. They had been accustomed to argue their case before reasonable and attentive human beings. They suddenly found themselves compelled to

[1] From *New Republic*. 42: 330-1. May 20, 1925.

discuss a matter of public policy with a monstrous jazz band. There was nothing to be done about it. If people do not know the difference between propagandist jazz and serious economic argument or between melodrama and statesmanship, there is no way of enlightening them by discourse. They will simply have to live and learn, and they will have to pay dearly for their lesson. If American public opinion is capable of being deceived so easily and by such vulgar, cheap and raucous propaganda, it is suffering at present from a morbidness which will render it subject in the future to still more dangerous infections. When the next period of serious economic privation and discontent arrives, the conservative propagandists who have been doing their best to make the behavior of American public opinion as much as possible like the behavior of a mob, will be repaid with interest in their own coin. In this instance they have been particularly successful in deceiving rural communities as to the effect of the amendment. It was pathetic to watch farmers who cannot stop their young men and women from drifting away from home in order to work in city factories fool themselves into thinking that by opposing the amendment they were keeping control of their young people. In this and other ways American industrialism is rapidly breeding an agricultural proletariat, with little to live upon but grievances, which may eventually become a greater threat to social order than is the industrial proletariat of an European country.

The opposition to the child labor amendment did not, of course, consist exclusively of these conservative business propagandists. There was a minority of opponents to it who sincerely and intelligently doubted the wisdom of allowing the Federal government to assume new functions which under the Constitution the state governments now exercise. The *New Republic* has the utmost respect for these scruples, and attaches as much importance as they do to the preservation of a proper balance between the powers of the national and the powers of the local

governments. We realize that in the case of legislation to prevent child labor, the argument in favor of Federal intervention, while in our opinion sufficient, is not conclusive. The business of providing for the education and welfare of the children in any community is, at least on its administrative side, chiefly a problem to be handled by local agencies; and we trust that the defeat of the Federal amendment will stimulate those people who wish to promote child welfare by legislation but who would rather leave the child unprotected than entrust his protection to the Federal government, to work more zealously on behalf of improved state codes for the welfare of children.

But when they undertake this work, they will find that the defeat of the Federal amendment will render the task of raising the standards of state legislation more rather than less difficult. The defeat of Federal intervention is not a victory for the public-spirited friends of state government who believe that increases of the activity of the Federal government must involve a diminution of state political power and responsibility. These people contributed only a small share to the flood of opposition which has been accumulated and let loose against the amendment. The victory has been won by certain business interests which have reason to dislike all efforts to protect children against exploitation in industry. They achieved the victory by using arguments which for the most part count as decisively against state as against Federal action—arguments which tend to infect public opinion with a dislike and a fear of all progressive and humane legislation. While it is inconceivable that the cause of adequate legislative provision for child welfare will not eventually triumph, yet after the experience of the past year and the increasing accessibility of American public opinion to silly melodramatic propaganda, it is only too evident that the prospect for effective and general state legislation for the protection of children looks dubious and remote.

CHILD LABOR PROBLEM OF THE FARMER[1]

Industry is reaching out for farm children. Cotton mills, knitting mills, shoe factories, and garment factories are moving into the smaller cities and the country towns. Labor is "cheaper" in the country, because the potential "labor supply" is unorganized, and inexperienced in self-protection.

That is one phase of the "decentralization of industry" Henry Ford talks about—and Mr. Ford is himself building factories in the country in order, he says, to utilize farm labor in the winter-time. The garment industries of New York are moving "upstate." The textile industries of New England are moving south.

How does this affect the farmer? It may bring markets nearer. But *it is his children the factories are after.* Does he realize what that means?

Child labor becomes the farmer's problem not with reference to the work of his own children on his own farm, but with reference to their work *in the factory.* Shall farm children work in factories without proper regulation? Or shall they be surrounded by the protection of limited hours and safeguarded against industrial hazards? Shall the experience of industrial states and the resulting industrial laws be extended to the agricultural areas? Or shall the farm children be left at the mercy of newly arrived manufacturing interests seeking to use them as "cheap" labor in competition with the protected labor of other states or communities?

That this is one large aspect of the child labor problem in America today is clear from facts stated in a recent monthly summary of *The Agricultural Situation* issued by the Bureau of Agricultural Economics of the United States Department of Agriculture. Children under ten years of age in farm communities, says C. J.

[1] By Honorable Arthur Capper, United States Senator from Kansas. *National Education Association Journal.* 14: 51. February, 1925.

Galpin, in charge of the Division of Farm Population and Rural Life, out-number by two million the children of any group of cities in the United States, having a combined population equal to the total farm population. Mr. Galpin puts it this way:

> The farm population in round numbers approximates 50,000,000 persons. The urban population is close to 57,0000,000 persons. Select now a representative number of cities whose combined population comes up to 30,000,000 and it will be found that there are 2,000,000 fewer children under ten years of age in these cities than in the whole farm population.
>
> What are some of the results which flow from this great disparity between farm life and city life? In the first place, every one will see that with 2,000,000 fewer producers than city industries in cities of an equal population, farming is carrying the burden of rearing and educating 2,000,000 more children—non-producers—than city industry. The full weight of this fact becomes apparent only when it is realized that the greater part of this human product is turned over at the producing age to the cities and to city industry, ready made, finished, educated. The farm people are feeding, clothing, carrying through the perils of infancy and childhood practically the equivalent of a small nation; then when this nation arrives at an age when it can be productive, turns it over as a free gift to urban industry.

FACTS ABOUT CHILD LABOR AMENDMENT[1]

Who Are Supporting the Amendment

The amendment was *drafted* by a group of the country's ablest constitutional lawyers, in conference with experts on child welfare and labor problems. Among the lawyers were: *Senator George Wharton Pepper* of Pennsylvania, *Senator Thomas J. Walsh* of Montana, *Senator Samuel M. Shortridge* of California, who introduced the amendment in the Senate, and *Representative Israel M. Foster* of Ohio, who introduced it in the House. Among those who consulted with the lawyers, as a committee on behalf of twenty-two national organizations of men and women of unselfish, public-spirited purpose, were:

[1] From article Real Facts About Child Labor Amendment. *Ohio Christian News.* 3: 1, 3. January 9, 1925.

Samuel Gompers, recently deceased president of the American Federation of Labor; *Father John A. Ryan,* Professor of Moral Theology and Industrial Ethics at the Catholic University of America, and *Dr. Worth M. Tippy,* secretary of the Social Service Commission of the Federal Council of Churches.

Submission of the amendment was recommended by *President Harding* in a message to Congress and also by *President Coolidge* in his first message. It was endorsed by *John W. Davis* and *Robert M. LaFollette,* presidential candidates in 1924. *President Wilson* urged Congress to pass the former child labor statutes.

The *legislatures of six states*—California, Massachusetts, Nevada, North Dakota, Washington and Wisconsin—petitioned Congress to submit such an amendment.

The amendment passed the United States *Senate* by a vote of sixty-one to twenty-three and the *House* two hundred and ninety-seven to sixty-nine—far more than the necessary two-thirds majorities. Among its supporters in the Senate were *Henry Cabot Lodge* and *Joseph T. Robinson,* floor leaders, respectively, of the Republicans and Democrats. *Congressman Nicholas Longworth* of Cincinnati, majority leader of the *House,* has been publicly praised by the National Child Labor Committee for his leadership in the fight in the lower House. Both Ohio senators and nineteen Ohio members of the House voted for the amendment.

State and national platforms of both parties last fall endorsed the amendment in the following planks:

We commend Congress for . . . . its prompt adoption of the recommendation of President Coolidge for a Constitutional amendment authorizing Congress to legislate on the subject of Child Labor, and we urge the prompt consideration of that amendment by the legislatures of the various States."—*Republican National Platform.*

We favor the prompt ratification of the Child Labor Amendment to the Federal Constitution."—*Republican State Platform.*

We pledge the party to co-operate with the State Governments for the welfare, education and protection of child life.

. Without the votes of Democratic members of the Congress the Child Labor Amendment would not have been submitted for ratification."—*Democratic National Platform.*

No one now contends seriously that Child labor in factories ought not to be abolished, and the Democratic party approves the Federal Constitutional amendment submitted by the Congress to the Legislatures of the various States and its prompt ratification by the general assembly of Ohio.—*Democratic State Platform.*

Eminent lawyers of the country have publicly approved the amendment from the legal standpoint; among these are the following deans of university law schools: Roscoe Pound, Harvard; Walter W. Cook, Yale; M. R. Kirkwood, Leland Stanford; George P. Costigan, Jr., California; William Draper Lewis, Pennsylvania; Henry M. Bates, Michigan.

National organizations supporting the amendment, which are composed of men and women with no selfish interest in the matter, contributing their time and money to a humanitarian cause, include the following: American Association of University Women, American Federation of Labor, American Federation of Teachers, American Home Economics Association, American Nurses' Association, Federal Council of the Churches of Christ in America, General Federation of Women's Clubs, Girl's Friendly Society in America, Medical Women's National Association, National Child Labor Committee, National Consumers' League, National Council of Catholic Women, National Council of Jewish Women, National Council of Women, National Congress of Parents and Teachers, National Education Association, National Federation of Business and Professional Women's Clubs, National League of Women Voters, National Woman's Christian Temperance Union, National Women's Trade Union League, Service Star Legion, Young Women's Christian Association.

Who Oppose the Amendment

A limited and not very active number who base their opposition on their honest belief that Federal control of

child labor violates *states' rights.* This opposition is far weaker than it would have been some years ago, for the whole trend of the past fifty years or more, in both constitutional amendments and legislation, has been away from the "states' rights" doctrine. This is emphasized by the fact that Senator Robinson of Arkansas, a southern Democrat, was one of the amendment's leading supporters in Congress. Dean Roscoe Pound of the Harvard Law School has said in this connection:

> Today so far as industry and business are concerned state lines are but lines on the map. A situation in which one standard as to child labor applies on one side of such a line, and another upon the other side, or in which an easy-going administration upon one side of such a line, as it were, competes with a strict administration upon the other, can result in nothing but evil.

Manufacturers' organizations, especially those whose members have an interest in industrial establishments employing children. The National Manufactures' Association, whose president is a southern textile mill owner, has been the center of this opposition, supported by the *Southern Textile Bulletin,* an organ of the textile industry of the south, whose editor, David Clark, has been instrumental in the circulation of propaganda against the amendment. The textile mills employ more children than any other manufacturing industry in the United States—54,649 between the ages of ten and fifteen, inclusive, according to the 1920 census. Other manufacturers' organizations listed as opponents of the amendment are: American Association of Flint Lime Glass Manufacturers, American Mining Congress, Laundry Owners National Association, National Association of Worsted and Woolen Spinners, National Committee for Rejection of the Twentieth Amendment.

In Ohio little or no public opposition to the amendment has been voiced by manufacturers, perhaps because Ohio manufacturing establishments are now governed by high child labor standards under state laws, and their owners are not largely interested in plants employing children in other states.

Farm organizations, actuated by fear that Congress

may enact legislation under the amendment interfering with the work of children on the farm and at household tasks. Study of the development of the fight against the amendment leaves little room to doubt that this farm opposition has been deliberately cultivated by the manufacturers' organizations, resulting in the strange picture of the agricultural interests of the entire country lining up to aid a small manufacturing group in perpetuating low child labor standards in a few backward states. Fear of Congress was stirred up among the farmers by the manufacturers' representatives; the *Southern Textile Bulletin* has referred editorially to this propaganda work among the farmers as its "first job" in the campaign against the amendment, and added:

> Our other work and by far the most difficult task was to convince the people of New England that they were not suffering by reason of the employment of little children in Southern mills.

In other words, manufacturers who are opposed to the kind of law Congress probably will pass—regulating child labor in mines, mills and factories—have aroused the farmers to fear an agricultural child labor law, which Congress is not even remotely considering and whose passage would be an impossibility, in view of the public sentiment against it. All this effort of the industrial interests met with a ready response among the farmers, because the agricultural interests, having failed more than once in the past to get from Congress the consideration received by the better organized business interests (such as the manufacturers), have grown suspicious of Congress. This suspicion has apparently caused them, in their fear of Congress, to lend their support to a movement in which they really have no interest at stake and which is contrary to their humanitarian sentiment.

Should the Amendment Be Submitted to Referenum?

No constitutional authority exists for a referendum on ratification of a Federal constitutional amendment.

The United States Constitution provides that the legislature shall act for the state in ratification of a Federal amendment. This was fully established by a decision of the United States Supreme Court, setting aside results of a referendum in Ohio on the Prohibition Amendment.

An "advisory referendum" such as has been suggested would serve no useful purpose and would merely permit members of the General Assembly to *dodge the responsibility* which their election conferred upon them. The law places responsibility for ratifying or rejecting a Federal amendment upon the legislators. They were elected on party platforms which plainly endorsed the amendment. The people who elected them have a right to expect them to carry out the platform promise, or if they will not do that, to come out openly and without evasion in opposition to the platforms. They have no right to dodge the issue.

Needless expense to the state would be caused by an illegal, unnecessary referendum, doing no good for any one except the legislator who wishes to avoid responsibility for performance of his duty.

EMPLOYMENT OF YOUNG PERSONS [1]

It is argued against the necessity of Federal regulation of child labor that the last decade showed a large and satisfactory decrease in the number of young persons employed, and that there is no reason why the present decade may not show a reasonable decrease as well; that the constantly improving standards of living, the diminishing of the pressure of necessity, of parental ignorance, and of racial attitude, and the industrial trend favoring labor saving devices and more efficient labor forces, all will tend to reduce the number of young persons employed, without the aid of Federal legislation. It is also held that the states are making steady progress

[1] By National Industrial Conference Board. *Employment of Young Persons in the United States.* Summary. p. 96-9. The Board. New York. 1925.

in solving the problems connected with young people's employment and may be expected to continue to do so. It is not believed that the previous Federal legislation had any material influence in decreasing the employment of children, nor that the absence of Federal regulation since 1922 has tended to increase such employment.

The discussion of the desirability of the proposed twentieth amendment involves various questions of political theory and governmental policy which are quite apart from the question of the need of Federal regulation of child labor or the relative effectiveness of Federal and state legislation. The more important of these questions are: Whether Federal power to regulate child labor by such amendment constitutes an encroachment on the rights of the state, and, if so, whether this is a dangerous tendency; whether it would lead to an over-extension of the functions of central government, with attendant concentration of authority and increase of expense; whether, also, it would not open the way to further social legislation by the Federal government and involve the latter in a progressively extended program of regulation of education, wages, hours, and conditions of work, recreation, etc.; and, finally, whether such an amendment does not abrogate existing constitutional guarantees of property rights and personal liberty of the individual. These are matters of individual opinion and interpretation upon which agreement is difficult, and in which objective determination is nearly impossible.

Reviewing the whole problem of the work of young persons as it presents itself in the United States today, it should be emphasized that premature employment or employment under conditions detrimental to welfare is not a problem to be solved by legislation alone, whether state or Federal. It is essentially a problem of coordinating the work aspect of education and child development with the formal school aspect, the recreational aspect and the domestic aspect. This is partly a problem of supplying more and better educational

facilities, particularly in rural districts, as well as different types and varieties of training than are usual in the schools today; partly a problem of better adjustment between the schools and our economic life, and, in addition, it is a problem of stabilizing and improving adult earnings and family living standards.

It seems clear that there is considerable need for improvement in these respects in various states and localities; but neither the factors influencing the employment of children, nor its extent, character and effects, appear today to be so general and serious as to invite chief reliance upon legislative measures.

So far as legislation is concerned, it is a question whether it is desirable, in a situation of this kind, to make fundamental alterations in the Constitution and extensions in the power of the Federal government in the hope of securing the desirable adjustments quickly, or to rely upon the operation of economic forces and the development of public opinion to raise standards where they are defective, and to make provision where it is inadequate, in accord with local conditions and necessities.

The oustanding requirement today, in view of the fact that the question of child labor regulation is still open and under public consideration, is the securing of more comprehensive, detailed and up-to-date information concerning the factors, extent, character and effects of the employment of young persons under existing conditions and regulations. Only thus can a sound basis for legislative policy, state or national, be provided. The existing data are either too old, too general or too fragmentary to justify conclusions of wide current application. Preparations may well be made to include in the next census of population specific inquiry into the character of children's occupations, the amount of time spent in them, the factors influencing their pursuit, and the extent to which they interfere with school attendance. In the meantime the several states might advantageously

provide fuller records of the circumstances, character and conditions of employment of children working under certificate, and of their health and educational progress. There is need, too, for more extended surveys and intensive studies of the health of working children, of the causes of school retardation and juvenile delinquency. In these ways a firmer basis may be provided for measuring the magnitude of the chlid labor problem and for judging the most effective means of remedy. Finally, it may be suggested that there are wide and as yet untried possibilities of voluntary cooperation among employers and between employers and the government in the direction of surveying conditions, raising standards, developing machinery for the private remedy of exceptional abuses, and especially in improving the relationship between education and industry which is so important a part of the problem of juvenile employment.

NEW AMERICAN REVOLUTION[1]

That child labor ought not to exist in a civilized community should need no discussion. Where the loving care of parents and the intelligent policy of employers do not combine to protect childhood from exploitation, it is necessary, if the race itself is not to be degraded, to call upon the power of government. Here again the real question for consideration and decision is not as to the continuance or discontinuance of child labor, but as to the most effective method of bringing about that discontinuance. Fortunately the legislation on this subject by the great majority of the states is humane, progressive and intelligent. Public opinion supports this legislation and is steadily extending it. A few states have been recalcitrant, and partly because of the indifference of parents and the greed of employers, there has been no legal impediment within their boundaries to the

[1] From address by Nicholas Murray Butler, president, Columbia University, before the Institute of Arts and Sciences, Columbia University, October 13, 1924. 20p. New York.

employment of child labor at a miserable wage. Before the new American revolution the public opinion of these recalcitrant states would have been attacked by education and their legislatures by argument. They would have been held up to public view as backward, inhumane and careless of childhood, and the whole power of the nation's public opinion would have been brought to bear, and successfully brought to bear, to improve their legislation on this subject. Under the new American revolution, however, the procedure is different. It is now proposed so to enlarge the power of the Federal government as to force these recalcitrant states to accept at once and without demur the better and more humane standards of the great majority of states. The language by which the Congress is to be clothed with this new power is sweeping in the extreme. The new grant of power is not limited to childhood and to child labor, but it includes the activities of all persons under eighteen years of age. It goes without saying that the vast majority of human beings are, and ought to be, helpfully and hopefully engaged in some form of gainful occupation for at least a part of the time before that age is reached. Indeed, it is difficult to see how the youth of the land can be properly educated without opportunity to engage in some systematic occupation after the age of sixteen. Proponents of this measure insist that the sweeping power which is to be conferred upon the Congress will never be used, that nothing more will be done than has already been proposed, and that the recalcitrant states will be brought quickly into line by the power of the Federal government. Experience proves, however, that legislative bodies do not withhold their hand when the people grant them power; rather do they exercise it to the extreme limit. Again, as in the case of the fifteenth and eighteenth amendments, one certain effect of the new proposal, if ratified, will be to weaken the sense of local obligation to protect childhood, and to shift responsibility for that protection to the new and costly bureau-

cracy to be established by the Federal government at Washington. Under these conditions the recalcitrant states are not unlikely to become still more recalcitrant, and that childhood which we should so greatly like to protect may be sentenced to new suffering and to new deprivation by the very act of those who are striving to guard and to cherish it.

It is not easy to secure public attention for these considerations. Generous sentiment and eager love of childhood prompt us all to take, unreflectingly, whatever steps are proposed by high-minded persons to put a stop to child labor. Time and again, however, in matters such as this, the end does not justify the means and the means prove ineffective to accomplish the end. Child labor will be ended, as it ought to be ended, when local sentiment and local control bring it to an end. So rapid has been our progress in this regard in recent years that we have not very far to go. It is greatly to be feared that childhood may suffer rather than benefit by the governmental proposals now so earnestly urged on its behalf and so strongly supported.

Speaking in the Senate on June 2, 1924, Senator Reed of Missouri pointed out that the proposed amendment takes from the several states the right to control the hours and conditions of labor of every citizen in the United States under eighteen years of age, that it deprives all parents in the United States of the right to control and regulate the conduct of their children in matters of industry and labor, that it concentrates all these powers in the Congress of the United States, and that it takes from their parents and natural guardians the care, custody and control of forty million beings, and vests that control in four hundred and thirty-five congressmen and ninety-six senators.

This measure which, despite its sweeping and revolutionary character, has received the formal endorsement of the several political parties, will in all likelihood be ratified in the not distant future and so become part of

the fundamental law of the land. If so, it will make possible a more far-reaching series of changes in our family, social, economic and political life than have heretofore been dreamed of by the most ardent revolutionary. The Congress may perhaps withhold its hand for a time, but that it will continue to do so is contrary to all governmental precedent and to all human experience. There are other, more certain and more effective ways of protecting childhood, but it is the revolutionary way which now occupies the center of the stage.

EXAMINATION OF PROPOSED TWENTIETH AMENDMENT[1]

An amendment to the national Constitution is presumed to be urged only by "overwhelming necessity." The pending proposal, through its designation as the "child labor" amendment, makes a peculiarly sympathetic and disarming appeal. History indicates representative institutions were often imperilled by popular rulers before whom the people's vigilance relaxed. So, too, power is likely to be recklessly bestowed in response to a plausible appeal to the heart which dims the reason. Those who analyze and reflect will find lurking beneath a touching sentiment a determined endeavor to obtain a grant of power from the people, revolutionary in its effect upon their private life and government, and entirely unnecessary to accomplish an object which all desire.

Analysis of the proposed amendment demonstrates that it is not a "child labor" amendment, but an exclusive grant of power to the Congress, which directly and by implication confers control over the labor and education of all persons under eighteen to an extent not now possessed by any state of the union.

[1] From pamphlet by James A. Emery, general counsel, National Association of Manufacturers of the United States of America. 25p. 50 Church St. New York. August, 1924.

It proposes a revolutionary transformation of the traditional relation and respective function of local and Federal government and the primary control of parents over the training and occupation of their children.

It is unnecessary, since the nature and extent of the work done by children is grossly exaggerated. It is plainly evident that the protection of child life from exploitation is being more effectively and rapidly met by the states than perhaps any other like social question.

The legislation flowing from this amendment will inevitably be bureaucratic, increasingly expensive, and superparental in its control of minor life.

It will impair the sense of local responsibility for the remedy of community conditions, and substitute for that natural respect for local law the distrust and constant irritation aroused by the imposition and administration of remote, inaccessible and irresponsible bureaucratic authority.

The proposal is socialistic in its origin, philosophy and associations.

It will overwhelm the central government with administrative detail. Finally the very nature of the debate upon the amendment indicates that it will continually excite sectional dissensions and open the way to congressional regulation of production especially novel in its application to agriculture.

Prior to the vote in the House submitting the proposal, various amendments were offered to it, each and all of which were defeated. These required its ratification within seven years, submission of the proposal to conventions called by the legislatures in the respective states, exclusion of the labor of persons under eighteen within the house or in the business or upon the farm of the parent, or in houses or on farms where such children reside. Before the final vote in the Senate, amendments were proposed and rejected which would have excluded from the terms of the proposal "outdoor" employment, or agriculture and horticulture, reduce the

age limit to sixteen, strike out "the power to prohibit," require ratification within five years, or confine the congressional power to occupations of "special hazard."

The suggestion to submit the proposed amendment either to qualified voters in the respective states, or to conventions therein, arose from a growing realization that amendments take vast power from the people without opportunity for their approval or disapproval. Governor Ritchie of Maryland, in a recent address, emphasized this consideration. He said:

> Thirty-six states can impose their will in constitutional questions on the other twelve—and not the people of those states, but just a majority of the legislature in each of those states, and you have a majority of the legislatures in each of thirty-six states if you can get the vote of 2,316 members. Think what that means! Twenty-three hundred men or women out of 110,000,000 people can write into the Constitution of the land any amendment they choose to ratify, with no appeal to the people from their action.

The first section of the proposed amendment would grant to Congress the power to "limit, regulate and prohibit the labor of persons under eighteen years of age." It will thus be observed that the word "children" is not employed, and the age limit of eighteen includes plainly not merely all who may be described as children, but all who are commonly regarded as youths. This age limit, it may be observed, is two years in excess of that fixed in either the child labor statutes which were invalidated. Neither is this grant of power confined to regulation, but it includes the right to *prohibit* the labor of any person under eighteen. It is commonly said by the proponents of the proposal that it is intended merely to give Congress the power which the states presently possess over the same subject. *It is not open to dipute that no state possesses the power to prohibit the labor of all persons under seventeen, much less eighteen years of age.*

Can it even be doubted that if any state prohibited any person under seventeen, much less eighteen, from

engaging in farm work, that such prohibition would not be judicially sustained? It may likewise be asked, would the people of any state grant such power of prohibition to their own legislature? Yet they are asked to grant to the Congress a greater power than any state possesses or would be likely to be granted.

"What is the highest standard now? Is it more than eighteen years?" asked Congressman Montague of the chief of the Children's Bureau.

"They are prohibited up to eighteen years in no country, nor in the United States," she replied.

The power to prohibit carries much more than the right to prevent the acceptance of employment. It includes of necessity the authority to fix the conditions under which any person under eighteen may be permitted to engage in any occupation. It necessarily includes the power to say to such persons what hours they may work and at what employment, the wages which must be paid, the education or training preliminary to work.

Moreover, the power to prohibit employment may include the authority to appropriate wholly or partly for the support of those who are not permitted to support themselves. Nor does the power of prohibition merely run against unrelated employers. It includes the power to forbid any person under eighteen from working for the parent, or guardian, either in the home or around their premises, or farms or for them in any occupation.

Thus, it must be observed, not only *direct* but *implied* power is conveyed. Every grant of political authority carries the power to make it effective. From the right to declare war is implied the right to draft our citizens, and take such exclusive control of factories, farms and railroads as is necessary to insure the successful conduct of war. The power to regulate commerce is held to imply the power to exclude things from it, to fix rates, control the distribution of facilities and the legal liability of the passengers, managers and employees of interstate carriers.

So the proposed amendment would authorize Congress to enact legislation, create such bureaus, commissions or boards, appoint such officials and employees and levy such taxes as in its judgment are necessary to make its authority effective.

The whole subject of training and education as a condition precedent to the employment of persons under eighteen passes to the Congress and it will determine the obligations of parents and guardians with respect to the labor and education of all such persons. That subject is conceded to be primarily within the control of the parents, nor is there excuse for its invasion, save to meet abuse. "The law which the God of nature has planted in the breasts of fathers and mothers is a sufficient guarantee in the great majority of cases for the careful nurture, training, education and development of children."

Commenting upon this phase of the proposed amendment, the Right Reverend Warren A. Candler, Bishop of the Methodist Episcopal Church, says:

> But this "child labor" amendment tends to discredit and dethrone parents and subvert family government, substituting for parenthood a paternalistic government at Washington and empowering the federal Congress to stand in *loco parentis* to all the children of the country under eighteen years of age. This is nothing less than a monstrous proposal. It proceeds on the absurd assumption that Congress will be more tenderly concerned for children than their own parents, and that from the distant capital congressional tenderness and wisdom will do better for them than their affectionate fathers and mothers, watching over them in their homes. This assumption appraises congressional government far above its worth and puts home government far below its value.

It has been said that the proposed amendment does not contemplate the early enactment of legislation aimed at the control of farm labor. This gratuitous assumption respecting future regulation is met not only by the fact that Congress is to be granted exclusive control over the labor of all persons under eighteen years on the farm, even to the point of prohibition against any

direction or request of the parent, but every effort to exclude horticulture or agriculture, or any form of outdoor work, from the terms of the amendment was opposed and defeated by its proponents. Moreover, the National Child Labor Committee, the chief proponent of the amendment, distributed to every congressman prior to the vote on the proposal, booklets which carry the plain implication that labor upon the farm now needs legislative attention.

The pamphlet points out that, under the census of 1920, 647,309 boys and girls between ten and fifteen years of age inclusive are engaged in agricultural pursuits. Again, the booklet states "agriculture" is the only important field of work entirely uncontrolled "by legislation." Again, "the south, because of its agricultural character, still leads in child labor." Legislators are told "agriculture employs three-fifths of the million child laborers," and "investigation shows that there are many of these at work in sugar-beet fields, cranberry bogs, cotton plantations and other agricultural pursuits throughout the country." It is further urged upon the attention of Congress that "the 1920 census was taken in January, a season when little or no agricultural work is being done," hence "many children who ordinarily follow agricultural occupations are reported by their parents as having no employment."

Many more paragraphs of this booklet and of the argument of proponents before committees and in their publications is devoted to emphasizing the necessity of Federal regulation of child labor on the farm. One may properly ask, if it is not intended to employ the power to secure Federal supervision of farm labor, why is it demanded in terms denied to any state? Why have the proponents of such legislation resisted every effort to limit the power sought, as were the Federal Child Labor Acts of 1916 and 1919, to those under sixteen engaged in mines and quarries, or under fourteen in manufacture?

The figures of the Federal census for 1920, considered elsewhere, show that 88 per cent of those under sixteen who are partially or occasionally, as well as constantly, employed at any farm task, reside in the home, and any work they perform is on the farm of their parents. Is it to be conclusively presumed that Federal legislation and a Federal bureau is essential to protect such children against their parents? On the day Calvin Coolidge became President of the United States his fourteen year-old son received $3.50 for his labor in a neighbor's tobacco field.

Having considered the nature of the power which it is proposed to confer upon the Congress, let us contrast this grant with the division of authority between the local and the central government, hitherto regarded as elementary in the American theory of government.

With a tradition of growth from the shire to the town, the county, municipality, and the state, our people reached the unique conception of a central government, to which the states and the people made specific grants of authority. The idea growing particularly from their unhappy experience with the weakness of the Continental Congress. Alexander Hamilton, a leader in the establishing of a necessary central authority, thus pictured the Federal function in the *Federalist*:

> The common defense of the members; the preservation of the public peace, as well against internal convulsions as external attacks; the regulation of commerce with other nations and between the states; the superintendence of our intercourse, political and commercial, with foreign countries.

Another great figure, James Madison, described the powers to be held by the states:

> The powers reserved to the several states will extend to all the objects which in the ordinary course of affairs concern the lives, liberties, and properties of the people and the internal order, improvement, and prosperity of the state.
>
> * * *
>
> By the superintending care of these (the states) all the more domestic and personal interests of the people will be

regulated and provided for. With the affairs of these the people will be more familiar and minutely conversant.

Mr. Jefferson, who emphasized the importance of perpetuating the states in their integrity, declared "the true barriers of our liberties in this country are our state governments."

Many causes, social and economic, with which we are familiar have operated to greatly develop the Federal authority, but from Washington to Coolidge this natural growth has been accompanied at all times by insistence upon the necessity of preserving the community's control over its local affairs. The vitality of citizenship and respect for new rules of conduct essentially depend upon the acceptance and preservation of local responsibility for the meeting of local conditions and the creation of a body of opinion which expresses itself, when regulation is necessary, in a rule springing from perceived conditions and common agreement of the need for the regulation adopted.

Long ago Mr. Jefferson pointed out that "to take from the states all the powers of self-government and transfer them to a general consolidated government, without regard to the special delegations and reservations solemnly agreed to in the Federal compact, is not for the peace, happiness, or prosperity of these states."

Our great commentators and philosophers among historians, judical and political students, have again and again emphasized the latent dangers of withdrawing local affairs from local government to repose them in remote bureaucrats. Our eminent historian, John Fiske, declared:

> If the day should ever arrive when the people from the different parts of our country should allow their local affairs to be administered by prefects sent from Washington and when the self-government of the states shall have been so far lost as that of the Departments of France, or even so far as that of the counties of England, on that day the progressive political career of the American people will have come to an end and the hopes that have been built upon it for the future happiness

and prosperity of mankind will be wrecked forever.—*The Critical Period of American History.*

This tendency has already gone so far that we must necessarily view with caution the most extraordinary and unparalleled demand for a grant of congressional authority over the most intimate of relations within the family. From conception to death the citizen is now moving under a body of rules emanating from Washington.

The original concept, confining national control to defence, foreign relations, commerce, currency, coinage, the postal system, has now shifted to such ordinary police affairs as health, gambling, prize fights, physical training, censorship of the press, moving pictures and literature, the control of game birds, hunting and fishing reservations, labor contracts, maternity aid, and vocational training.

We are familiar with the growing demand that the Congress shall regulate marriage and divorce, despite the strong tradition of communities as widely separate in their views as South Carolina which recognizes no grounds for severing the marriage bond, to Nevada which offers more than a score.

Hamilton's fear that powerful states would encroach upon the nascent Federal domain, is succeeded by a real fear that the dominant central government will overwhelm the little that remains of the states. Certainly you will search in vain among the great advocates of the original central authority, like Hamilton and Marshall, for any support for such encroachment, as is sought today, on the principle of local self-government in local matters.

It is not alone that we face a steady departure from the clear cut and explicit plan of government, which entrusted matters of a strictly national character to Washington and reserved all else to the states or the people, but we are overwhelming the central government with duties of administration, unduly increasing its cost and making *humanly impossible* its task. As the food,

drinks and morals of the citizen's daily life become more constantly subject to this enlarging bureaucracy, the citizen, in the language of Pierson in *Our Changing Constitution*:

> . . . if he will only stop and think, must realize that no one central authority can supervise the daily lives of a hundred million people, scattered over half a continent, without becoming top-heavy. . . . Shall the conduct of citizens of Mississippi be prescribed by vote of Congressmen from New York, or supervised at the expense of New York taxpayers? Will an educational system suitable for Massachusetts necessarily fit the young of Georgia? Such suggestions carry their own answer.

When we consider these things, the voice of Jefferson from the past sounds a modern note when he warns us:

> . . . were we directed from Washington when to sow and when to reap, we should soon want bread. It is by this partition of cares, descending in graduation from general to particular, that the mass of human affairs may be best managed for the good and prosperity of all.

To preserve "that balance" to which, in the language of Chief Justice Salmon P. Chase, the Constitution always looks—"an indestructible union composed of indestructible states"—it is essential that the Federal principle be protected against misuse, and especially that we shall not embrace a swollen bureaucratic system which inevitably weakens the central authority and, in the language of one of our greatest students of government, is the "fore-runner of disintegration and even of separation."

Federal coercion cannot become a satisfactory substitute for the persuasion of "neighborhood opinion." The warning words of President Coolidge to the American Bar Association are most pertinent:

> In a republic, the law reflects rather than creates a standard of conduct. To dragoon the body when the need is to replenish the soul will end in revolt. (August 10, 1922.)

Everything back of this proposal speaks of "compelling backward communities," "coercing recalcitrant

states." It is immediate reform by force rather than the patient but permanent method of persuasion. It urges "dragooning" the community "body" rather than "replenishing" the community "soul."

The Federal authority to be applied through this amendment must accommodate itself to the varying local circumstances of highly diversified local life, or its administration will be unworkable. When Congress enacted a model child labor law for the District of Columbia, it found it necessary to exempt the "children employed in the service of the Senate" to meet a local condition. But to do this essential thing for the nation under the proposed amendment would substitute the judgment of a bureau for the special experience and knowledge of a responsible state. Yet if such power be granted, it will be impracticable either to recall or modify it.

According to the census of 1920, there were in the United States in that year 12,502,582 children from ten to fifteen years of age, inclusive. Of this number 1,060,858 were said to be gainfully employed, 647,309 in agricultural pursuits, and in non-agricultural occupations, 413,549. Of those engaged in agriculture, 88 per cent, or 569,824, did work on the farms of their parents where they resided. It is apparent, then, that but 77,485 could be said to be engaged in any form of agricultural occupation outside of the home farm, and these alone would be the subject of legislation under the so-called child labor amendment, unless a regulation or prohibition of work by children on the farm of their parents is intended.

There remain 413,549 between ten and sixteen engaged in non-agricultural employments. When the census of 1920 was taken, the Child Labor Tax Act of 1919 was in effect, and 364,444 of such children were fourteen and fifteen years of age, and must be presumed to have been legitimately employed. There would then remain

but 49,105 from ten to thirteen years of age, or below the standard of the act of 1919.

Referring to this, the distinguished senator from New York, Mr. Wadsworth, discussing this amendment in the Senate, May 29, 1924, made the following statement, which was never contradicted, questioned or criticized:

> Undoubtedly, some of those 49,000 are employed in such a fashion as to cause concern. Incidentally, more than one-fourth of those were newsboys. For example, there were but 622 cotton-mill operatives in this group; 404 being employed in the states of North Carolina, South Carolina, Georgia, and Alabama, and 218 in all the other states. So it will be seen that it whittles down to almost nothing. There are only 404 in the four southern cotton-mill states, and there is only a bare presumption that any of the 404 were illegally employed—that is, were below the age limit. A great deal of the outcry and uproar has been directed at those same four states on account of the alleged conditions existing in cotton mills, and we find the conditions do not exist.

But it must be borne in mind that the figures of the census of 1920 did not include merely persons under sixteen who are continuously employed. It included all kinds of intermittent work done by school children outside of school hours, and all forms of legal employment under the Federal Child Labor Tax Act, which was in force at that time.

The Director of the Census in a letter to the chairman of the Judiciary Committee of the House, under date March 18, 1924, said:

> It is generally recognized, of course, that the great majority of the children reported by the Bureau of the Census as engaged in agricultural pursuits was not, as a matter of fact, working with any high degree of regularity or continuity. Of the 647,309 children ten to fifteen years of age reported as engaged in "agriculture, forestry, and animal husbandry" in 1920, 569,824, or 88 per cent were farm laborers on the home farm, and it is very probable that a majority of the remaining 77,485 worked either for, with, or under the direction of their own parents. The work of these children doubtless varied from a few weeks or months work each year to regular employment throughout the year.

In the two groups of children ten to fifteen years old in some form of agricultural occupation other than

work on the home farm, 77,485, and those from ten to thirteen in non-agricultural pursuits, numbering 49,105—one-quarter of whom are newsboys—a total is presented of 126,590. Can it be contended that the employment of 126,590 children out of 12,502,582 demand the grant of power to Congress which is sought? There is no evidence that the employment is other than intermittent, is dangerous to health or morals, or to the extent that such is the fact, it will not be corrected by the states with the rapidity which has characterized their progress in dealing with this subject.

The amendment would open many new pathways of appropriation. It would authorize an exercise of the taxing power commensurate with whatever executory legislation is from time to time adopted. The state power would recede and state legislation become inoperative as the Federal authority was exercised and enforced. The administration of Federal statutes would necessarily proceed through its own bureaus, officials and employees. The proponents of the amendment wisely refrain from even roughly surmising the cost of developing the new policy.

But we may safely conjecture the future from the past. Nothing is more certain than the expansion of Federal payrolls in response to new grants of power and new demands for its exercise. The accelerating growth of central government followed the Civil War. During the fifty years from 1871 to 1921, Federal civil employees grew from one for each seven hundred and thirty-three of the population to one for every one hundred and ninety-two.

The cost of the Federal government, exclusive of the amount paid out for the Army, Navy pensions, and interest on the public debt, in 1871, was $62,777,666, averaging only $1.58 per capita. The cost of the Federal government in 1921, excluding every item which might even remotely be claimed to be a war expense—not only, as before the Military Establishment, pensions, interest on public debt, but also the disbursements for Federal railroad control, vocational education, and the emergency ship-

ping fund—reached the discouraging total of $825,968,057, or $7.04 per capita—almost five times the per capita cost fifty years before. The population of the country had increased about two and a half times. The number of civil-service employees had increased over ten times, from 53,900 to 560,863. The total cost of the peace activities of the government had increased more than 14 times.—*Bentley Warren. Atlantic Monthly. March, 1924.*

The Federal civil service of 435,000 in 1913 climbed to 918,000 in 1918, fell to 548,500 in 1922, and is now estimated at 590,000.

Three independent Federal bureaus and commissions, which cost annually $820,000 in 1900, have grown to thirty-three, requiring for their present support substantially $550,000,000 per year The Children's Bureau, the probable instrumentality of the power sought, with an initial appropriation of $25,640 in 1912, directed the expenditure of $1,551,040 in 1923 for activities which it has stimulated. On the horizon hovers a Federal Department of Education seeking an initial appropriation of $100,000,000!

Today the President and both parties declare tax reduction the paramount issue. Are we likely to decrease the cost of government by enlarging its burdens, affording opportunity to multiply its civil servants, and duplicate state administration, while enormously expanding the irritating area of bureaucratic supervision to embrace a vast percentage of our population?

The American of the present, reflecting upon the probable operation of this proposed amendment, may find much that is suggestive in the complaint of our Fathers against the King in the Declaration of Independence.

He has erected a multitude of New Offices and sent hither swarms of Officers to harass our people and eat out their substance.

Summary

This proposed amendment of the Constitution would confer upon the Congress the exclusive right to regulate not merely the working life of children, but of every person in the United States under eighteen years of age.

It would include the power to prohibit all such persons from earning a livelihood at any and all forms of employment, or even to engage in any task or occupation in aid or support, or at the request or direction, of their parents or guardians at any time or place, and not less at home or within their premises than on their farm or in any factory. The proposed grant of authority includes, by necessary implication, the right to attach any preliminary condition to any under eighteen engaging in labor. It confers, therefore, the right to determine what hours, if any, they may work, at what occupations, at what pay, and with what preliminary education or training, the right to direct and supervise such education or training, to provide by taxation for the support of those under eighteen who may be prohibited from labor or of the parents or guardians dependent upon the aid of such prohibited labor.

The amendment would, therefore, convey power in terms and to an extent not now possessed with respect to the same subject matter by any state of the union. Nor is it probable that the people of any state would confer such power upon it. It would give a right of intervention between parent and child and Federal control over farm life without precedent in the history of local government.

The proposed amendment would remove from the states a subject and relationship which by every concept and tradition of American government are peculiarly their right and obligation. Any subsequent legislation could be administered and enforced by the central government only through an elaborate and expensive bureaucratic system, inevitably tending to be top-heavy, irresponsible, unresponsive, remote from the subject of regulation, irritating in the circumstances of supervision, and by its operation lessening respect for and obedience to the central authority.

The theory of control and the social tendencies comprehended within the amendment are strangers to our

soil and more in harmony with the philosophy and manifest desires of alien states.

Finally, the amendment is utterly unnecessary. The states have neither neglected adequate protection of child life nor failed in the development of sympathetic, reenforcing public opinion. On the contrary, the testimony of their severest critics is overwhelmingly in their favor, and the circumstances and progress of state legislation exhibit an effective and constantly growing body of appropriate local regulation without parallel during the past decade in any other field of social reform.

FEDERAL ADMINISTRATION UNDESIRABLE[1]

The question is whether it is necessary or desirable to turn to Congress and to the Federal administration for the remedy. *The World*, after careful consideration, has come to the conclusion that it is not necessary and may be highly undesirable.

The reasons which have led to this conclusion are as follows:

1. The progress of the states in the protection of children has been marked since 1912, when the Committee on Standards of Living and Labor of the National Conference of Social Work drew up its model child labor law. In 1912 only twenty-one states prohibited labor in factories and stores of children under fourteen. Today forty-five states prohibit it. In 1912 only twenty-one states prohibited the labor of children under sixteen in dangerous trades. Nearly all states now prohibit it, and many are above this standard. States limiting the industrial work of children to eight hours a day have doubled in number. There are now thirty-one such states. All but five states now have some prohibition of night work. The educational requirement has been raised in many states. And nearly all have some educational minimum. Ten years ago less than half the

[1] From editorial, *New York World*. 65: 10. December 8, 1924.

states had a physical test to determine whether children might work. All but nine have it today. Ten years ago only six states required a physician to pass on a child's fitness to work. Today twenty-two states require it. This progress is not confined to the north. There has been progress in most states of the south, most striking progress in West Virginia and Alabama.

This advance has coincided with the establishment of woman suffrage and with the effective campaign of education waged by social workers. It is proof beyond a doubt that the movement for the protection of children has real vitality in the states and that it is not dependent upon Federal legislation.

2. The protection of children against the evils of child labor is not merely a matter of passing laws to forbid it. A law forbidding a child of a certain age to work has to be enforced. On what does enforcement depend? It depends fundamentally on the parents of the child, the employers of the community, the trade unions and churches and public officials of the locality. In our judgment, based on experience with the Volstead act and other legislation of that character, the government at Washington cannot successfully reach into the localities and enforce a legal standard of personal living which the bulk of the people of that locality do not support. There are a thousand methods of evasion and corruption where public sentiment is not behind a law. As fast as public sentiment is educated the states will raise their own standards and enforce their own laws. The Federal government cannot, except on paper, raise them any faster.

3. The protection of children is not merely a matter of prohibitory laws and of enforcement of those laws, but of a vast number of other things which are the substitute for child labor. A government which forbids a child to work must at the same time send it to school. A government which deprives a family of the child's earnings must

in many cases provide the mother with a pension or the child with a scholarship. The future of child protection requires a great mass of undertakings in regard to education, vocational training and guidance, protection of mothers and the regulation of adult labor. Obviously, these are not proper undertakings for the government at Washington, for they involve a mass of detail and a knowledge of local conditions which are quite beyond the competence of Congress or of a Federal department. Yet the protection of children is bound up with them, and one of the fundamental objections to the broad powers of the proposed twentieth amendment is that it will divert attention from effective progress in the states and center it upon the enactment of paper standards at Washington.

Therefore, since enforcement of laws depends on local support, since the protection of children involves an educational policy and social legislation of a most complicated sort, *The World* is convinced that the short cut of a uniform Federal standard will be an apparent short cut, and not a real one.

These reasons are a concrete application of the principle of home rule. That principle is not held by *The World* because it is supposed to be a Democratic dogma —a dogma, by the way, more honored in the breach than in the observance—but as a conviction based on observation of the trend of things in this country. *The World* proposes to judge each new proposal on its merits, but in its opinion the burden of the proof is on those who wish to centralize power at Washington. Our last great experience with centralization was the eighteenth amendment and the Volstead act. It has been a dangerous and corrupting experience, and *The World* will oppose any further advance like it which involves the regulation from Washington of personal lives and local affairs, except on the proof of overwhelming necessity. In that position *The World* believes itself to be

standing for the preservation of a liberal democracy and against the growth of imperialism.

In opposing ratification of the twentieth amendment, *The World* recognizes the educative effect upon public opinion of the Federal child labor laws and of the campaign for the amendment itself. They have helped enormously without a doubt to induce the states to improve their own laws. That campaign of education should go on, regardless of the fate of the twentieth amendment. Backward states should be made to feel the criticism of a national opinion. Progressive states should be advertised to the nation. Such a campaign of education can, in our opinion, be promoted best by the following program:

Let Congress pass for the District of Columbia a children's code which can be held up as a model to the states. Such a code will without any of the dangers of centralization establish a national standard.

Let the state legislatures in refusing to ratify the twentieth amendment memorialize the President to call a meeting of the governors of the forty-eight states to discuss the problem of child protection and to adopt a minimum standard code to be recommended by them to the states.

PROPOSED CHILD LABOR AMENDMENT [1]

A law to prevent the exploitation of child labor may result if the amendment should be approved by the legislatures of three-fourths of the states. But the amendment confers upon the Congress a power far beyond the mere regulation of child labor. It puts into the hands of the Congress the power to regulate, limit or prohibit the labor of persons up to the age of eighteen. This is a blank

[1] By Henry S. Pritchett, president, Carnegie Foundation for Advancement of Teaching; former president, Massachusetts Institute of Technology; former superintendent, United States Coast and Geodetic Survey. 8p. National Committee for Rejection of Twentieth Amendment. Washington, D.C. September 1, 1924.

check which future Congresses may fill out as they please. Under it the complete control of the labor of all persons under eighteen in every state and community, may be taken out of the hands of the state, of the community and of the parents and vested in a government bureau at Washington. No such sweeping invasion of personal and local civil rights has ever before been proposed in this country. If accepted by the necessary number of state legislatures, this change in our constitutional rights will have been effected without any opportunity for the people to express their will in the matter, except that a popular referendum is to be taken at the November election in Massachusetts.

Under the influence of public opinion, the regulation of child labor by the states has steadily advanced. In only a few states are the laws below the standard indicated as wise and just by the experience of the world. These states are mainly in the south, where factories are relatively new. It was most natural that in the south a considerable portion of the population should be attracted by the new opportunities for earning money offered in the cotton mills and other manufacturing industries set up in the last quarter century. Exactly the same thing happened in New England when cotton and woolen mills were first established there. But public opinion has moved rapidly. Most states have passed sound legislation excluding children from unwise and injurious labor.

The matter is rapidly being solved by the wholesome process of the education of public opinion in the various communities. There is no crying need for the central government to take the question out of the hands of the states and settle it by regulation from Washington.

The arguments put forward for taking this question out of the hands of the states are weak. It is urged, for example, that certain New England cotton mills are at a disadvantage in competition with the cotton mills

in those southern states that have not as yet brought this child labor legislation to the same standard as that in Massachusetts. When all has been made of this argument that can be made, little cause is found for this sweeping legislation. The present discrepancies between state laws are being removed. The enforcement of the law depends on the public opinion of the region in which the mills are operated. There still remains, as the census shows, a considerable employment of children in indoor industries, even where the laws are explicit in its regulation. In this matter it is wiser to follow the old and sure process of education of public opinion in the separate states and communities than for the Federal government to undertake to coerce them. It has always required a certain experience to convince any people that the money received for the premature employment of children was ill got. It was so in Old England and in New England. In our southern states public opinion favorable to reform in this respect has grown with unusual rapidity. It will solve the problem in reasonable time.

The real force back of this movement, however, is not economic. It is rather that spirit so prevalent in the world today which assumes that all social ills can be cured by legislation. Into this movement have been drawn the sympathetic but uncritical friends of reform, the doctrinaires, the socially restless, and many politicians who are always ready to give tongue and trail off in pursuit of any fox that is unpopular. In the long debates in Congress over this measure no sound reasons were given for this sweeping amendment. A modicum of economic competition, sentiment well meaning but unwise, and faulty politics are the forces back of this proposed change in our national Constitution.

The objections to the proposed amendment are of the gravest character, for this legislation goes beyond any

other measure yet enacted in breaking down the principles upon which our government rests.

The most weighty of these objections lies in the violation of the civil rights of the people of the various states and communities. This amendment puts into the hands of the Congress the power to take over, through a government department or bureau, the complete regulation of the employment of all persons up to eighteen. It may limit, regulate or entirely prohibit the employment of persons up to the age stated. Through this power to prohibit and regulate it may in great measure determine the conditions of education of such persons.

Advocates of the measure urge that Congress will not use this power except in a wise and temperate fashion. There can be no possible assurance of such action. On the contrary the same restless movement that has brought this bill forward will continue to urge extreme action under it. Nor is this all, for rules and regulations made by a bureau pursuant to an act of Congress have been construed as equivalent in effect to the law itself. An aggressive bureaucrat at the head of a Federal child labor bureau may exercise a dominance over the relations of children to parents or to teachers from which there is no appeal. Many persons find their highest usefulness and happiness, as well as their best development, in entering gainful occupation before the age of eighteen. To confide to a Federal bureau in Washington the power to decide this question for all such persons in the United States is bureaucracy gone mad.

The notion that a centralized bureaucratic administration can better solve the social and educational problems of our American communities than the communities themselves is a singular phenomenon in a people hitherto devoted to the ideal of civil liberty. There is little ground in the experience of other nations to lead Americans to take this road. Where has bureaucratic control ever wrought out in the long run the results to be reached by

free communities under their own laws? Has the history of Prussia or of France, where the theory has been carried to its logical conclusions, furnished any ground to believe that a bureau at Washington can regulate child labor, in our widely varying commonwealths, more wisely than their own public opinion, as expressed through their state governments, will do?

One thing the experience of France and Prussia does show, and that demonstration furnishes a second reason for having child labor regulated by the respective state governments in touch with actual conditions. Local initiative and local sense of responsibility die under regulation by outside governmental administration of local duties. Our government is founded on the principle of local self-government. Only on this basis of self-government can a community sense of responsibility be kept alive.

Finally, if history is to be trusted, this bill points straight to socialism—a socialism of dependence under which more and more people live on or by government.

Under the powers of this amendment, successive Congresses will vie with each other in extending its application by specific statutes. Interference with the gainful employment of persons under eighteen will become more and more pronounced. In due time parents will make a claim for the enforced loss of the services of their elder children. By the same process by which this agitation has been obtained, they will get it.

Civil liberty for the individual is the most precious fruit of our civilization. It is directly related to the preservation of local self-government. The so-called child labor amendment is not a child labor measure. It is a sweeping enactment, well meant but unwise, whose ultimate effect will be to subvert free government and to promote socialism. This legislation entails too great a risk to our liberties. Sound regulation of child labor can be had by a wiser and safer way.

SHALL THE AMERICAN CHILD BE FEDERALIZED?[1]

The Washington (D.C.) *Star* publishes a synopsis of a textbook issued by the advocates of the child labor amendment to the Constitution of the United States "definitely contradicting statements" of its opponents, it is claimed, and in defending the amendment the textbook says:

1. The proposed amendment is an *enabling act,* not a statute.

No one claims it to be a statute. It is worse. Statutes can be repealed. Not so easily a constitutional law. It is a grant of power. But who ever heard of a constitutional power being an enabling act? Every intelligent person knows the Constitution, and the laws made in pursuance thereof, is the supreme law of the land. It supersedes and overrides all state laws. Even by the second section of this amendment it is provided that the state laws shall remain unimpaired, which would be true, whether stated or not, except when necessary to give effect to this amendment and statutes made pursuant to it by Congress. To say it is an enabling act is manifestly a misleading statement made for effect.

2. This textbook claims it grants power to Congress to make laws against the exploitation of childhood.

It does not. Congress under it *can regulate the child* in his labor *but not the employer* in his employment, except negatively in prohibiting the child by directing how, when and where he may work, and neither "child" nor "employment" is mentioned in the proposed amendment.

3. To fix a minimum standard for the employment of children is another claim.

Not at all, except to say to the child that he may not under a certain age engage in work, but, if he does so

[1] By Iredell Meares, attorney-at-law, Washington, D.C. *Dearborn Independent.* 25: 2. November 22, 1924.

engage, no act under this grant could attach a penalty to the employer who might employ such child under the prescribed age. It is the *child's labor*, not the person employing it, which it may limit, regulate and prohibit. In fact, the proponents of the bill, when considered in committee, objected and had discarded from the proposed amendment the words—*child* or *employment*.

4. To prevent employers sending work across state lines for children to do, or to employ children who migrate from one state to another and "to enable Congress to protect high standard industries with good child labor laws to protect their children against low standard industries and backwood states"; but this it could do only by prohibition of the labor of minors under eighteen, not by imposing fines upon low-standard industries so as to compel them to raise their standards. There is no grant of power to regulate industries or to prevent the shipment of goods from state to state for any purpose. It might prohibit any person under the age of eighteen from labor on goods so shipped, after such goods had reached the state of the person's labor. No grant of power is given to regulate such shipments, if for such purpose ever made, or to impose penalties upon shipper or transportation company.

5. It is not, says this textbook of errors, a regulatory measure and does not itself prohibit or regulate anything.

No, but it grants the power to Congress, and, if granted, Congress may enact laws to execute the power. Every advocate in committee of this proposed amendment urged it so as to enable Congress to legislate and knowing such legislation would supersede all state laws, now existing or hereafter made, if in conflict with any act of Congress upon the subject. Of course, if adopted, Congress might not pass any law on the subject and the power conferred might remain dormant, but Congress will probably do so, if given the power, and that is the purpose of the amendment.

It is said we can have confidence in Congress and rely on its exercising the power wisely; but let us recall and act upon the counsel of Thomas Jefferson who said "confidence is everywhere the parent of despotism—free government is founded in jealousy; not in confidence—it is jealousy and not confidence which prescribes limited constitutions."

Will the mothers of this land vote to confer upon Congress the power to limit, regulate and prohibit the labor of their children under eighteen years of age? Consider the question in terms of *your own children,* Mothers of America, not in terms of *other people's children,* and then act and vote as mother love, mother conscience, dictates! If this power is granted, Congress will exercise it, and then we shall have regulations prepared and prescribed by high-salaried philanthropists, at Washington, directing all persons under eighteen *when* to labor, *how* to labor and *where* to labor, even *not to labor,* whether that labor be for gain, pleasure or in unrequited service to parents!

6. It is not contemplated, this textbook says, to regulate the labor of domestics, like girls who may go out to work in homes or who work at home with their mothers, without compensation but in cooperation with the family.

If not, why did not the proposed amendment limit the power of Congress to regulate the exploitation by employers and conditions of labor in factory, mill, mine, or other places where children are employed, and except those engaged in domestic service? *The amendment includes all occupations of every kind, whether for or without compensation, beneficial or deleterious either to health or morals.*

7. It exempts no occupation this textbook admits—it could not do otherwise—it would explain, because the place to make exemptions is in the law which Congress will enact.

When, however, the Senate rejects a motion, as it did, to exempt "those engaged in outdoor employment" and another to limit the power to those "who are engaged in occupations other than agriculture or horticulture," may it not be said that it is contemplated Congress will enact, if the power is given, a law to limit, regulate or prohibit the labor of all persons under eighteen who are engaged or want to engage in such pursuits?

8. "It takes away no power the states do not now have" is the inexcusable misstatement of this textbook.

If not, and it is not its purpose, what is the reason for the amendment? The moment Congress enacts a statute "to limit, regulate or prohibit the labor of all persons under eighteen years of age" all state laws in conflict must give way and the Federal statute becomes the supreme law of the land. At present the states have exclusive power to legislate, within reasonable limits, as to the welfare of their children, each within its own borders. Congress has no such power.

The amendment proposes that the states surrender this power and confer it upon Congress, and, if adopted, the states could pass no law in conflict with any act Congress might enact in pursuance of the power granted. *The power thus proposed to be given is one no state legislature could exercise over "all persons under eighteen" without having had it expressly granted to it by the people in the constitution of the state.* There is no state in the union whose people have conferred such unrestricted power upon its legislature by constitutional grant.

It was proposed in the Senate to strike out the words, "That Congress shall have the power to limit, regulate and prohibit the labor of all persons under eighteen years of age" and, instead, to provide that "The Congress shall have the power reasonably to limit and regulate the labor of persons under eighteen years of age and to

prohibit such in pursuits involving special hazards to health, life and limb," but the proposal was voted down.

Senator Fletcher has well said that "refusal on the part of those responsible for the introduction of the proposed amendment to consent to the adoption of these amendments *clearly indicates their influence, intentions, and what may be reasonably expected in the way of legislation* should Congress be granted the power to "limit, regulate and prohibit the labor of all persons under eighteen years of age."

Senator King, of Utah, speaking in the Senate on the question, said:

> If the Senator from Delaware will pardon me, every Bolshevik, every extreme Communist and Socialist in the United States is back of the measure. The Bolsheviks of Russia were familiar with the scheme that was about to be launched to amend our Constitution.
>
> In conversation with one of the leading Bolsheviks in the city of Moscow, one of the educators, when I was there last September and October, I was remonstrating with him about the scheme of the Bolsheviks to have the state take charge of the children: "Why," he said, "you are coming to that" .... "A number of Socialists in the United States," and he mentioned a number of names but I shall not mention them here, "are back of the movement to amend your Constitution of the United States, and it will be amended, and you will transfer to the Federal Government the power which the Bolshevik is asserting now over the young people of the state."

We are further told in their textbook that this proposed amendment "does not prohibit the labor of children up to eighteen nor does it contemplate a Federal law containing a general prohibition up to eighteen years."

This assertion is mere camouflage and a gullible public is relied on to accept it, as if the amendment does not in itself manifest its intention. If not contemplated, why did the proponents of the measure so make it read?

So it is the child, not the employer of the child, after which the proponents of this measure are reaching, and expecting, if Congress is granted the power, that by

gradual legislation, here a little and there a little, effected by influencing the passage of bills, or amendments adopted in committees upon recommendation of bureaus and passed without understanding by members of House or Senate, that ultimately the Federal government will control the persons under eighteen by limiting, regulating and prohibiting their labor.

It is my judgment, backed as this amendment has been chiefly by persons identified with sovietism and socialism, that it is the foundation which has been laid for subjecting the youth of this country to control by the Federal government under the pretense of protecting child labor and providing for its welfare.

As the persons identified with this movement have been able to lead Congress to the submission of this proposed amendment, so they hope by appeal to sentiment to enlist the support of a sufficient number of states to adopt it and, if so, to influence Congress from session to session to secure the passage of legislation which will gradually enable them to accomplish their ultimate designs. As no time limitation has been placed in the act within which the states shall act, if they fail to get it adopted at this time, agitation will continue so as to induce the states, now rejecting it, to reverse their action and ultimately to secure favorable action of a sufficient number to adopt the amendment.

It is worthy of note that the president of the American Child Hygiene Association, at the hearings on the physical education bill, January 12, 1921, declared that "the child is not private property to be controlled and treated at the will of the parent but public, belonging to the public, and must be brought up for the good of society," and Mrs. Florence Kelley, a recognized leader in so-called social welfare legislation, and the chief promoter of this amendment before the Senate committee, said, "It is unsafe to leave children to the tender mercies of the pressure of ignorant parents."

It is only necessary to review the hearings in committee and to know the records of its proponents to realize the above-quoted words reflect the views of the majority of them. It is claimed eighteen women's organizations are back of this proposed amendment. Would it not be more accurate to say eighteen self-constituted leaders?

Having a constitutional proviso "to limit, regulate and prohibit the labor of all persons under eighteen years of age," we will have a law by Congress; having the law, we will have a bureau; having a bureau, we will have welfare workers; having welfare workers, we will have rules and regulations; and the milk in the cocoanut is the creation of a lot of jobs at Washington for a self-created profession of non-productive laborers in the vineyard who call themselves social welfare workers.

Hiking around the country, bedecked with Federal badges, will be so-called experts on child labor, which will be construed to relate to all things pertaining to children if this twentieth amendment is incorporated in the Constitution of the United States. The power is there and, once given, it will be exercised, sooner or later.

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