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CHILD LABOR IN AMERICA:  
AN HISTORICAL ANALYSIS

by Caroline G. Trinkley

Children have been employed throughout the entire history of the United States. They have worked on the farms and in the factories. They have picked cotton, operated dangerous machinery and they have delivered newspapers and telegrams. While much of this work has all but been eliminated, the practice of employing children has continued into the twentieth century and is likely to extend well into the twenty-first century. Despite mandatory school attendance policies that have successfully removed the majority of children from the streets and the factories, pockets of legal and illegal employment remain.

American children were victims of an economic system that failed to regulate employment both for themselves and for their parents. Employers, perceived as the sole villain, simply followed human nature and exploited the system to its maximum boundaries. Favorable public opinion towards the use of children, and active advocation by employers for its continuance, were both contributing factors. Crushing poverty, rampant throughout society, and the lack of legal protection forced the young into responsibilities far beyond their physical endurance. In truth, it was an economic system spiraling out of control that held the bodies and spirits of the exploited in its grasp.

Today the business owner as patriarch is a thing of the past. In his place, the government has stepped in to offer the protection of the law. In 1938, Congress passed the Fair Labor Standards Act\(^1\) which specifically prohibits oppressive child labor practices. This Act also empowers the Secretary of Labor to

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conduct investigations and inspections of work sites and requires employers to document the age of their child laborers. In New York, children under age eleven are not permitted to deliver newspapers, and those under the age of twelve are not permitted to work in agricultural industries. The minimum age for street trades is fourteen. Furthermore, children may be employed as delivery persons or clerks in factories only under certain specified conditions. Finally, factory work for children under the age of sixteen is strictly prohibited.

As we look towards the future, the reality of child labor must still be acknowledged. On television, children are used to "enhance" story lines. A recent Buffalo News article described the use of children and small infants on television. Dennis Rinsleer, executive producer of the sitcom "Full House," believes that "[b]aby performers' work has got to be fun and it can't feel like a job." On a more sinister note, "baby wrangler" Adria Later uses toys and food to help keep the child actors' attention on their work. Often, students in the Buffalo School District are excused early from school to work for school credit. This program is

5. N.Y. Lab. § 131 (McKinney, 1986).
8. Id.
9. Id.
an attempt to reduce the drop-out rate by offering a half credit for one hundred and fifty hours of work, and a whole credit for three hundred hours of work.\textsuperscript{11} Academic requirements must be met before a student can participate in the job program, including maintenance of a grade of 70 or above in English, History, Math, and Science; a ninety percent attendance record; and exhibition of good behavior.\textsuperscript{12} Tops Friendly Markets, Woolworth, and Putt-Putt Golf and Games are all employing children through this program.\textsuperscript{13}

Some children are still being employed and utilized by dishonest employers in violation of existing labor laws. "The United States, according to the General Accounting Office, recorded a 250 percent increase in child labor law violations between 1983 and 1990. Many involved work done in garment factories, fast-food shops and on farms by immigrant workers."\textsuperscript{14} In 1989, 22,500 violations of the Federal child labor laws were reported.\textsuperscript{15} During the spring of 1990, 500 U.S. Labor Department Inspectors conducted surprise inspections in more than 3,000 businesses and uncovered 7,000 violations.\textsuperscript{16}

A November 1993 article in U.S News & World Report stated that it found recent evidence of child labor violations citing the case of a ten year old girl working in Manhattan.\textsuperscript{17} In

\textsuperscript{11} Id.
\textsuperscript{12} Id.
\textsuperscript{13} Id.
\textsuperscript{16} Id.
\textsuperscript{17} \textit{Made in the U.S.A.}, U.S. NEWS AND WORLD REPORT, Nov. 22, 1993, at 48.
neighboring Brooklyn, immigrant children as young as eight have been found working next to their mothers in sewing factories, some earning as little as $2.50 per hour.  

In the states of New York, California, Washington, and Texas, young children are being used as door to door candy salespeople while in the fields of California, Texas and Florida, migrant children are working side by side with their parents, some as long as twelve hours a day.

Children are being encouraged to work to supplement the family income, and employers are hiring children to increase their ability to compete with overseas labor. High levels of immigration have introduced a number of non-English speaking foreign workers into the employment pool who have little or no understanding of the prohibitions against child labor.

The employment of children has a price. The National Safe Workplace Institute has reported that 70,000 children are accidentally injured each year and that three hundred are killed on the job.

Children can benefit from work as it enhances their self-esteem, and "[d]evelops qualities of industry." However, these benefits must continue to be balanced against the needs of our children to obtain a decent education and enjoy free time in which to play and socialize with others. As adults, we need to understand that the attitudes of society shape the promulgation and enforcement of our laws which in turn affect the quality of life of all American citizens.


20. Id.

21. Id.

22. Id.

23. JEREMY P. FELT, HOSTAGES OF FORTUNE vii (1965).
Old timer, can't you see that scene in the years
gone by/when children worked in cotton mills the
same as you and I?/ I you're glad that times have
changed and kids can have some fun./ Now grown-
ups go and do the work that babies used to run.24

An honest acknowledgement of our role as a people
exploiting both adult and child labor may aid in preventing future
abuses. Our eyes must always be open to see how we allow child
labor to be used in order to avoid the mistakes of the past.

This paper will briefly discuss the historical development
of child labor in America and the reason for its perpetuation into
the twentieth century. In Part I, the English roots of child labor
will be discussed as well as the prevailing colonial attitudes. Part
II will survey the conditions under which children worked, the
wages they were paid, and the attempts by employers and parents
to employ children despite existing laws. Part III is an
examination of the major justifications for and criticisms of the
child labor system. Finally, Part IV will present evidence to
dispel the myth of the child as merely a passive victim.

I. ENGLAND AND THE COLONIES: THE ROOTS OF
CHILD LABOR IN AMERICA

The American attitude towards child labor originated in
England.25 Instead of blaming crime and poverty upon the lack
of education and the inability to earn a living wage, these problems
were considered a result of children's idleness.26
"Transportation," a practice whereby the English shipped their

24. Dorsey Dixon, Babies in the Mill, in CARRY IT ON 78-79 (Pete Seeger
and Bob Reiser eds., 1985).

25. ELIZABETH LEWIS OTEY, THE BEGINNINGS OF CHILD LABOR
LEGISLATION IN CERTAIN STATES 9 (1974).

26. Id.
poor to the new world to become apprentices, was the chosen solution to these societal problems. This was also an attempt to avoid financial responsibility for the care of the less fortunate members of society.\footnote{Id. at 11.} In addition, this practice provided a viable solution to the constant shortage of labor in the American colonies.\footnote{ALEC FYFE, CHILD LABOR 57 (1989).} There is evidence that "transportation" began as early as the year 1619.\footnote{Ohio Council on Women and Children in Industry, in CHILD LABOR 11 (Julia E. Johnsen ed., 1925)(1922)[hereinafter Ohio Council].} 

"[A] 1627 letter from England mentions the fact the [sic] 'there are many ships going to Virginia, and with them fourteen or fifteen hundred children, 'mostly paupers.'"\footnote{Id.} New England also received shipments of children but in fewer numbers.\footnote{OTEY, supra note 25, at 12.}

Well established social institutions, such as the church and the legal system, supported the use of children in manufacturing industries, as well as other places of employment. For example, a reverend in a 1638 church sermon congratulated the citizens of Rawley, Massachusetts on the construction of a fulling mill where their children were employed.\footnote{Ohio Council, supra note 29, at 11. A fulling mill was a textile mill where wool was shrunk, pounded, twisted, and dried to produce felt. ISABEL B. WINGATE, TEXTILE FABRICS AND THEIR SELECTION 320 (1955).}

In fact, the church was as much to blame for labor conditions as was any other institution. Reverend John Haynes Holmes, a speaker at the Sixth Annual Conference of the National Child Labor Committee, alleged that the church had never been a
leader of social reform. He believed that Church leaders were quite antagonistic to efforts at social reform, such as the abolition of slavery, the trades union movement and the child labor reform movement. The Reverend blamed this on the trend towards denominationalism and the fact that individual churches were involved in pursuing agendas of spirituality rather than actively promoting the eradication of social problems. According to Holmes, the church concerned itself with foreign missions and the afterworld rather than secular domestic issues. Holmes also placed some blame on the parishioners themselves, who sought spiritual fulfillment rather than guidance on domestic issues.

Reverend Holmes also observed that men of the working classes failed to attend church while factory owners attended church. These same owners contributed to the ministers’ wages and were involved with church committees. Holmes concluded that socially minded ministers would find it difficult to verbally attack what would later come to be viewed as exploitation when the factory owner was seated in the front pew. Holmes referred to this phenomenon as the "tyranny of the pew."

Employment of impoverished children was viewed as an act of charity. On occasion, colonial children from struggling

34. Id.
35. Id. at 26-27.
36. Id. at 27-30.
37. Id. at 31.
38. Id.
39. Id.
40. OTEY, supra note 25, at 13.
families were removed from their homes and put to work as apprentices. The responsibility to feed and clothe them now resided with their master. While these children might also be taught a trade, this was not the common practice throughout the colonies.

In the 1700’s, leading members of the Massachusetts colony promoted the employment of children in the clothing industry. They reasoned that child employment would "render [children] useful members of society" while avoiding the necessity for community support of the wives of fishermen while their husbands were at sea. They also assumed that gainful employment of children would promote moral behavior.

The courts were also involved in furthering the exploitation of child laborers. Often the court would instruct families to keep their children employed. When immigration declined, resulting in a shortage of manufactured goods, Massachusetts courts directed families, children and servants to work on wild flax and hemp needed to produce clothing. In 1656, children were ordered to spin if they were not employed elsewhere.

By the end of the colonial era, the public perceived the employment of women and children in factories as socially

41. Id. at 17-18.
42. Id.
43. Id. at 21.
44. Id.
45. Id.
46. Id.
47. See generally, OTEY, supra note 25, at 9-23.
48. Id. at 14.
49. Id. at 14-15; Ohio Council, supra note 29, at 11.
beneficial. This allowed men the liberty to accomplish the heavy, labor intensive work that agriculture demanded.\textsuperscript{50}

By the onset of the industrial revolution, society still had a favorable attitude towards child labor. In addition, it was now felt that child labor furnished extra income,\textsuperscript{51} avoided the vice of idleness and developed general "habits of industry."\textsuperscript{52} Rapid industrialization was responsible for the widespread usage of child labor and the conditions of exploitation that finally led to its regulation.\textsuperscript{53} Though the artisan system offered very little protection to the child laborer\textsuperscript{54} the degree of suffering would dramatically increase as the children moved into factories.\textsuperscript{55}

\textbf{II. WORKING CONDITIONS: THE CHILD AS A SLAVE TO WAGES}

The working conditions for children as well as for all employees were terrible. Photographs of children with drawn and dirty faces impart their own tales of endless working days and inadequate wages. Little time remained in the day to play games with friends or to run outside in the fresh air after working for the better part of the day as slaves of the factory or field.

No matter how exhausted they were from the drudgery of the previous day, factory children were obliged to keep pace with

\textsuperscript{50} Id. at 29.

\textsuperscript{51} See generally, JEREMY P. FELT, HOSTAGES OF FORTUNE (1965); J. E. SIDEL, Pick For Your Supper, in CHILDREN IN THE FIELDS (Dan C. Murray ed., 1975)(1939).

\textsuperscript{52} FELT, supra note 23, at 6.

\textsuperscript{53} STEPHEN B. WOOD, CONSTITUTIONAL POLITICS IN THE PROGRESSIVE ERA 3 (1968).

\textsuperscript{54} See generally, W. J. RORABAUGH, THE CRAFT APPRENTICE (1986).

\textsuperscript{55} Id.
machinery that never tired. It was not uncommon for children to work ten or more hours per shift.\textsuperscript{56} When a ten hour day for children was proposed, New York legislators opposed a reduction because they feared that it would eventually lead to a similar reduction in working hours for adults.\textsuperscript{57}

As a consequence of these lengthy work days, children suffered from fatigue and were known to fall asleep at their work stations.\textsuperscript{58} They were frequently beaten or whipped by supervisors to compel them to stay awake.\textsuperscript{59} Moreover, factory owners employed various methods to ensure continual production. One glass factory owner used barbed wire to keep his employees at work,\textsuperscript{60} while others locked the doors.\textsuperscript{61}

Constant movement was a requirement of factory work and children were driven to their absolute limits of physical endurance. Children, some as young as seven, were continuously in motion as assistants to adult glass blowers. Many of these boys were exposed to extreme temperatures of up to one hundred forty

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\textsuperscript{56} E. Markham, B. B. Lindsey & G. Creel, Children in Bondage 186-87 (1914)[hereinafter Markham et. al.].

\textsuperscript{57} Felt, supra note 23, at 19. The legislators fears were not without merit. Organized labor was in fact seeking to shorten the working day for males by initially shortening the working day for females and children. Otey, supra note 25, at 39.


\textsuperscript{59} Otey, supra note 25, at 66.

\textsuperscript{60} Markham et. al., supra note 56, at 63-64.

\textsuperscript{61} Id. at 130. Locked doors could pose serious dangers to employees. In 1911, one hundred six employees were killed when a fire broke out in a shirt factory where all the doors had been locked. Felt, supra note 23, at 86-87. The owners of the factory were tried for first and second degree manslaughter but were acquitted. Id. at 87.
degrees, while holding glass up to the "glory hole" for reheating. For this work, a ten year old, working ten hours a day in the glass factory, earned an average salary of $4.50 a week.

In the vegetable canning factories, children passed their days cleaning strawberries, snapping and stringing beans, husking corn, and dropping tops on cans. In the oyster cannery, they cut meat from the oyster shells. Raw, chapped hands, caused by constant exposure to salt and moisture, were universal. Heavy lifting was another hazard of cannery work. Younger children toted heavy boxes of beans. Additional responsibilities included sweeping and scrubbing which commenced before the start of the actual canning work. These additional hours would often go unreported in order to circumvent with legal limitations on the number of hours a child could work.

In 1912, inspectors discovered children as young as four working in canning factories. In an attempt to avoid existing laws, employers allowed children to work as "mothers' helpers" and, therefore, their salary was included with that of the mother. These children labored long hours with few breaks,

62. MARKHAM ET. AL., supra note 56, at 62, 70.
63. Id. at 65.
64. Id. at 187.
66. Id.
68. MARKHAM ET. AL., supra note 56, at 190-91.
69. Bache, supra note 65, at 97.
70. MARKHAM ET. AL., supra note 56, at 190.
some beginning work as early as 3:00 a.m. and remaining until 9:00 p.m.\textsuperscript{71} Furthermore, cannery work took place seven days a week.\textsuperscript{72}

Accidents were common. In one sweat shop accident, a child lost an eye from a mishap with a pair of scissors.\textsuperscript{73} Girls in the box factories often had their fingers crushed, while children in the confectionery shops suffered burns and blisters on their legs from working with hot pots.\textsuperscript{74} Other injuries included losing fingers, falling down elevator shafts, tumbling into vats of hot chemicals, and getting caught up in the moving parts of machinery.\textsuperscript{75} It is believed that young boys under the age of sixteen had twice as many accidents as men, while girls had three times as many accidents as women.\textsuperscript{76} High rates of accidents among children can be attributed to the fact that children were quicker to suffer from fatigue, were easily distracted, and were often incapable of sustaining the physical activity that their employment required.

Eventually, children began receiving compensation from their employers for their injuries. New York courts ruled that if children had been working in violation of the labor laws, employers could not utilize the defense of contributory negligence.\textsuperscript{77} In\textit{ Sitts v. Waiontha Knitting Co.},\textsuperscript{78} in which a

\textsuperscript{71} Id. at 186-87; Bache, supra note 65, at 44.

\textsuperscript{72} FELT, supra note 23, at 176.

\textsuperscript{73} MARKHAM ET. AL., supra note 56, at 90.

\textsuperscript{74} Id. at 123-28.

\textsuperscript{75} FELT, supra note 23, at 29, 79-80.

\textsuperscript{76} MARKHAM ET. AL., supra note 56, at 158-59; see also Scott Nearing, \textit{In Solution of the Child Labor Problem}, in CHILD LABOR (Julia E. Johnsen ed., 1925).

\textsuperscript{77} FELT, supra note 23, at 176-77.
fifteen year old girl was injured in the rollers of a knitting machine, the Court stated that

... we think that the decision in [Marino v. Lehmaier\textsuperscript{79}] may fairly be regarded as authority for the propositions, first, that the effect of the Labor Law is to declare that a child under the age of fourteen presumably does not possess the judgment, discretion, care and caution necessary for the engagement in such a dangerous avocation as working upon machinery in a factory, and, therefore, is not as a matter of law chargeable with contributory negligence or with having assumed the risks of employment, and, second, that in an action for injuries sustained by an infant employed in violation of the statute, such employment and such violation is in and of itself some evidence of negligence in a case where the accident could not have happened but for the employment.\textsuperscript{80}

Exposure to harmful substances on the job was common. In the tobacco industry, children were subjected to tobacco through touch and smell,\textsuperscript{81} and, at that time, a correlational relationship between tobacco workers and stillbirths was suspected.\textsuperscript{82} In the

\begin{itemize}
\item \textsuperscript{78} 87 N.Y.S. 911 (1904). Children over 14 were allowed to work in the factories but a certificate of age was required by New York law to be filed in the employer's office. \textit{Id.} at 914.
\item \textsuperscript{79} 66 N.E. 572 (1903). A 13 year old boy had his fingers cut off in a printing press. He was working in violation of the child labor laws which prohibited the employment of children under the age of fourteen in factories. \textit{Id.} at 573.
\item \textsuperscript{80} Sitts, \textit{supra} note 78, at 915.
\item \textsuperscript{81} MARKHAM, ET. AL., \textit{supra} note 56, at 146.
\item \textsuperscript{82} \textit{Id.} at 147.
\end{itemize}
coal mines, they were subjected to coal dust, a substance recognized as the cause of black lung disease.

Boys as young as eight worked in the mines. In 1915, Pennsylvania enacted a law restricting the age of children employed in mines to those over sixteen. The law was not strictly enforced, and parents were known to falsely report the boys' ages to gain entrance to the mines.

My father started to work at the age of 10 in 1906 in the coal mines and worked his way up to supervisor. He worked there for 50 years. He told me that he was so little when he started that his bucket drug on the ground. The tunnels were 4 feet high and he had to crawl through them on his hands and knees. He never had any formal schooling past age 10 but he did manage to get his schooling through the mail. My dad's parents made him go to work. The Clarks were from England. They didn't think anything of sending kids to work. His father was a coal miner too.

Children received inadequate compensation for their labors. For example, the United States Census Bureau (in 1905) reported that the average wage of a man over 16 years of age was $11.16, for a woman it was $6.17, and for children under 16 it was $3.46. Wages were often a point of contention between child laborers and factory owners; children were compelled to accept the same types of salary reductions forced upon adults.

83. Id. at 107.

84. 1915 Pa. Laws c.177.

85. MARKHAM, ET. AL., supra note 56, at 104-05.


87. MARKHAM, ET. AL., supra note 56, at 254.
Children were poorly paid if they were paid at all. A retired Ford worker remembers:

I was born in 1925 on a farm in the hills of Western Pennsylvania into a family of 18 children. Everybody worked on the farm. I remember starting working at about 7 or 8 years old but probably started before that. We were up by 6:00 a.m. and the last chores were finished around supper time. The boys did the outside chores like milking cows and feeding the animals. My dad grew corn and it all had to be handpicked and husked. When I was in my teens, I drove the horses for plowing. We had a big garden. I remember how much I hated weeding. All the water needed for the house had to be hand-carried from the well. When I was in the 8th grade, my father forced me to quit school, as he had most of my other brothers, to work on the farm. I didn’t mind much. Only three graduated from high school. Those who went to school did chores before they went to school and chores after they got home. My father didn’t believe in friends. We didn’t have much time to play anyway and we weren’t allowed off of the farm much. In the summer, we worked on the farm from morning till night and often on Sundays, too. In the summer, we use to say, "You have to make hay while the sun shines." We never were paid any money for working until World War II when my father paid the last three of us a dollar a week. Some of my other brothers went to the war. My work on the farm, I didn’t consider it child labor but you had no choice... It wasn’t all bad.88

Parents on occasion employed their children on outside jobs for which they held the contract. A 65 year old retired construction worker recalls:

My father, Melvin, carried the mail on horseback at the age of 12. My grandfather carried the contract with the government to deliver the mail. He collected all the money and paid my Dad about five cents a week. My Dad went to work on the railroad at age 15. He was a paddy. I think it was the CNI Railroad, a part of the B & O System. He worked four or five years on the railroad and then he went to work in the mines. 89

Other children were employed, with the blessings of the school system, during World War II.

J.M., a 61 year old homemaker and nurse: When I was 9 or 10, we got taken out of school to pick potatoes, beans, and cucumbers. We rode the school bus out to wherever we were picking. It was voluntary to help out the war effort. We were excused from school during the picking season. I don’t remember getting paid. As to your question about families, families worked together in all ways. The work tied them together. Children didn’t question their parents. Whatever they told us to do we did. 90

Frequently, a family wage was paid to an adult member for the labors of their children. 91 The advantage of the family wage


to the employer was that the family, in all likelihood, received less as a whole than they would have had they been paid individually. In addition, parents had an incentive to keep their children at work, thus relieving employers of the expense of hiring extra supervisory personnel. One paycheck allowed employers to conceal the presence of underage workers on the premises. The primary disadvantage was that it probably contributed to the suppression of wages of laborers paid individually.

To attract bigger (and cheaper) pools of labor, owners rented homes to the families with the most children, thus homes were often crowded.\(^9\) The rent charged was determined by the number of children in the family employed by the landlord.\(^9\)

Underage children were hidden by factory owners or by families when inspectors visited the premises. Lookouts were strategically stationed in an effort to alert workers to an imminent inspection.\(^9\) Employers' statements regarding the number of children engaged on the premises were generally received without question by overworked inspectors.\(^9\) If apprehended, employers argued that the affidavit setting forth the child's age was falsified or that the child was not actually working but was simply a visitor on the premises.\(^9\)

Age was difficult to substantiate when parents denied the existence of a birth certificate or baptismal record, and school records were notoriously inaccurate.\(^9\) In fact, the registration of

\(^9\) OTEY, supra note 25, at 69.

\(^9\) E. Markham, Child at the Loom, in CHILD LABOR 79 (Julia E. Johnson ed., 1925) (1906). See also MARKHAM, ET. AL., supra note 56, at 259, for an example of a sliding rent scale.

\(^9\) FELT, supra note 23, at 6.

\(^9\) Id.

\(^9\) Id. at 6, 22.

births did not always occur. In New York State, the testimony of parents as proof of age was unacceptable because of its questionable reliability. A birth certificate, baptismal or hospital record, or a certificate of graduation were deemed adequate evidence.

With their wages, children purchased clothes and shoes, and paid school expenses, or other expenses incurred while living closer to work. Many children assisted family members financially or purchased gifts for them.

When I was 12, I drove an old tractor on the township. My grandfather, who I lived with after my mother died and my dad remarried, carried the contract with the town. He collected all the money for my work and doled it out to me. I worked when I wasn’t going to school and on Saturdays and during the summer. I used the money I earned to go to the amusement park. It didn’t cost much then, a quarter or fifty cents.

My dad’s pay went straight to his parents and he was allowed to keep 10 cents a week. With that 10 cents he bought what meat and bread he could for himself because with 16 kids to feed, there wasn’t much to go around. I remember when I was about 7 or 8, we visited my grandparents and stayed for

98. FELT, supra note 23, at 23.


100. Id.; N.Y. Lab. Law § 71 (Consol. 1907).


lunch. Grandma tossed the leftover lima beans from my bowl back into the pot for the next meal. I sure was glad I wasn’t staying for dinner. My dad took castor oil every night from the age of 10 on. They paid him 5 cents a week to take it and then he had to save to pay for the next bottle.  

III. CRITICISMS AND JUSTIFICATIONS

Employers endeavored to justify the systemic exploitation and abuse of children by arguing that they themselves had entered the workforce at an early age and were successful. This argument, however, did not hold for the multitude of child laborers, the successful entrepreneur being the exception and not the rule. The American belief in individualism, personal initiative, and self-reliance, reinforced by the arguments of the few successful business owners, "resulted in unquestioning acceptance of poverty" as an individual weakness unrelated to the workings of the economic or social system. "That child labor, slums, crime, poverty, and vice were the results of society's failure to cope with its industrial revolution and not of individual depravity was a concept that rarely penetrated to the working level of reform."  

One of the primary justifications for using children in the workplace was that it developed skills that would be useful

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104. Felix Adler, Annual Address of the Chairman of the National Labor Committee, in CHILD EMPLOYING INDUSTRIES 3 (The American Academy of Political and Social Sciences ed., 1910).

105. Id.

106. WOOD, supra note 53, at 5.

107. FELT, supra note 23, at 5.
throughout the lifetime of the laborer. In truth, child laborers were under-educated and had little opportunity to acquire additional skills with which to enhance the quality of their adult lives.

Opportunities to learn a trade were virtually nonexistent. As a result, the use of child labor simply reinforced the cycle of poverty.

Not being promoted, migrant children are kept with those younger and smaller than themselves; they get discouraged, lose interest, and don’t want to go to school. One father said, "My kids will be dumb, just like me."

In the workplace, parental authority was replaced with the employers’ authority. As the size of factories grew, and the owners engaged in less personal contact with employees, philanthropic and parental notions of responsibility for the welfare of both the adults and the children gradually subsided. Employers assumed that child labor was vital to continued economic development because they believed that these practices increased their margin of profit. The advantage of using children


110. Id. at 59.


was that they would work inexpensively and were seldom known to organize into labor unions.\textsuperscript{114}

The pressures of interstate commerce and the lack of federal regulation discouraged the development of the state laws to protect child laborers. Employers argued that they would lose their competitive edge if they were obliged to hire adults at a higher wage.\textsuperscript{115} They were also concerned that restrictive child labor laws would hinder their ability to effectively compete on an international level.\textsuperscript{116}

Existing laws were poorly enforced and rarely followed.\textsuperscript{117} Homer Folks, Secretary of the New York Charities Aid Society from 1892 to 1947,\textsuperscript{118} believed that adequate inspection of work areas was needed to enforce existing laws as well as a system of penalties that would induce compliance by employers indifferent to public opinion.\textsuperscript{119} Public opinion was the key to enacting and enforcing more stringent child labor laws. Without public support child labor laws were nearly impossible to implement effectively.\textsuperscript{120}

While many factory owners assumed that child labor increased their profit margin, at least one enlightened employer

\begin{enumerate}
\item[114.] Markham et al., \textit{supra} note 56, at 258. Though it will be shown later in this discussion that some child labor strikes did occur and some were in fact marginally successful.
\item[116.] Fyfe, \textit{supra} note 28, at 61.
\item[117.] See generally Felt, \textit{supra} note 23, at 17-37.
\item[120.] Felt, \textit{supra} note 23, at 36.
\end{enumerate}
believed that children below the age of sixteen were of less use, more accident prone, and more likely to damage expensive machinery, than were adults. It was his contention that it was advantageous to industry to avoid the use of young children in order to save money. In addition, he argued that if more adults were employed the overall volume of American consumers would increase.\textsuperscript{121}

A worker declared that the utilization of children in their least productive years would result in a premature end to their adult productivity.\textsuperscript{122} Once they were unable to work, they would become a liability to the system.\textsuperscript{123} It was his opinion that if the government invested in the welfare of the children at an early stage, they would realize a future economic benefit.\textsuperscript{124}

Under the common law, earnings generated by the labor of children, whether at home or elsewhere, belonged to the parent and was considered a property right.\textsuperscript{125} Parents, therefore, exploited their children's labor with the blessing of society. It has been noted that families of the 1800's were adverse to outsiders meddling in family matters, a characteristic shared with modern families.\textsuperscript{126}

Education was not a high priority in the United States prior to the twentieth century. In particular, parents of child laborers


\textsuperscript{123} \textit{Id.} at 313.

\textsuperscript{124} \textit{Id.} at 132.

\textsuperscript{125} 59 AM. JUR. 2d, Pardon and Parole § 37 (1987); W.J. Rorabaugh, \textit{The Craft Apprentice}, 83 (1986).

\textsuperscript{126} \textit{Felt}, \textit{supra} note 23, at 9.
were basically not interested in educating them. Some parents believed that since they themselves coped without an education so too could their children. An education was not necessary to continued employment and many parents were unable to envision any economic benefit to attendance.

Instead of attending school on a regular basis, migrant children were often sent to work. To accommodate their work schedule, schools in California operated on a schedule of half days, during which time the children received no education. Many children detested school because they feared physical abuse. Moreover, the migrant children were ostracized by the other children.

Even in areas where attendance was mandatory, children and parents flouted the law and continued to work during school hours. In those rare cases where the employers or parents were brought up on charges before a court, they typically received a suspended sentence or a slight fine. Another problem was the lack of enforcement by school districts. School districts failed to diligently pursue absent children. In fact, absent children could


130. Clopper, supra note 127, at 141.

131. Sidel, supra note 51, at 37.

132. Todd, supra note 129, at 142; Sidel, supra note 51, at 37.


134. Id. at 241.
often be found working on the farms of the board of trustees.\textsuperscript{135} The few children that did comply with attendance laws usually worked before and after school.\textsuperscript{136}

"The common law regarded the child as a miniature adult. Blackstone's Commentaries, for example, contains no chapter on infancy."\textsuperscript{137} Unlike adults, children were not free to contract or negotiate the terms of their own employment.\textsuperscript{138} They worked in what has been described as a state of involuntary servitude.\textsuperscript{139}

Court decisions invoking the Fellow Servant Rule, assumption of risk and contributory negligence defenses generally left adult employees without any form of compensation\textsuperscript{140} and indirectly contributed to the employment of children. Children frequently worked because of the death, disease, or disability of the father.

My father broke his back while working in the mines. There wasn't much money coming in so my brothers worked the night shift for a year and went to school during the day. They didn't always stay in school though. I guess they just checked in and then came home to sleep.\textsuperscript{141}

\begin{thebibliography}{9}
\bibitem{135} Id. at 239.
\bibitem{136} Id. at 243.
\bibitem{137} FELT, supra note 23, at 2.
\bibitem{138} J.F. Lawson, Child Labor and the Constitution, in CHILD LABOR 349 (Julia E. Johnsen ed., 1925).
\bibitem{139} Id. at 348.
\bibitem{141} Interview with A.R.T., Hamburg N.Y. (Sept. 27, 1993).
\end{thebibliography}
During the "child-saving era," from 1880-1914, "the right to childhood was finally recognized and education emerged as the solution to the problems associated with the practice of child labor."\textsuperscript{142} An interest developed in child psychology and the need to play and mature naturally.\textsuperscript{143} One professor said that "for years, play was looked upon merely as a sort of inevitable waste of time among children."\textsuperscript{144} The denial of play time and the consequent lack of childhood enjoyment resulted in the inability to become "fully developed adult[s]."\textsuperscript{145}

There is nothing prejudicial or weakening to character in suitable schooling, suitable play or suitable work, the three principal substitutes alike for child labor and child idleness; these on the contrary challenge and exercise and discipline all the growing powers of the child, leading to self-development, self-control, self-discovery, self confidence and the fullness of selfhood.\textsuperscript{146}

Despite these criticisms, child labor continued to grow. At the end of the nineteenth century approximately 400,000 children, five to eighteen years of age, were employed in the State of New York alone.\textsuperscript{147} In fact, four percent of the factory workers employed from 1886 to 1900 in New York were younger than

\begin{itemize}
\item \textsuperscript{142} FYFE, supra note 28, at 58-59.
\item \textsuperscript{143} R.G. Fuller, \textit{Child Labor and Child Nature}, in \textsc{Child Labor} 36 (Julia E. Johnsen ed., 1925).
\item \textsuperscript{144} \textit{Id.} at 38-39.
\item \textsuperscript{145} \textit{Id.} at 40.
\item \textsuperscript{146} \textit{Id.} at 43.
\item \textsuperscript{147} FELT, supra note 23, at 3.
\end{itemize}
sixteen years old. In the southern states, following the conclusion of the Civil War, an increase in the number of children employed in the cotton industry was readily apparent. In 1870, 2,343 children were employed while in 1905 that number increased to 27,538.

Eventually, however, the regulation of child labor picked up momentum. The use of photography in the twentieth century may have been the single most powerful contributor to this development. The National Child Labor Committee used photography to influence the political process by visually documenting children at work. The pictures were then published and distributed. Lewis Hine, a photographer and social reformer who worked for the Committee, photographed children in the textile mills, the tobacco industry, as well as in a variety of other settings. These documentary images have been credited for the passage of child labor laws in fifteen states during the years of 1902 and 1903, as well as a New Jersey law passed in 1904, limiting the minimum age of night workers to sixteen.

Changes in public opinion brought about by child activists and unions were important as well in the eventual curtailment of child labor. In fact, when the practice was under virulent attack in the early twentieth century, it was already fading away.

148. Id. at 36.
149. Id. at 35.
150. OTEY, supra note 25, at 45.
151. FYFE, supra note 28, at 59-61.
152. Id. at 59-60.
154. FYFE, supra note 28, at 61.
155. Id.
Changes in the economic system, a recognition of the necessity for education, and the passage of compulsory education laws all contributed to its decline.\textsuperscript{156} It was believed that mandatory school attendance was a more effective tool than any other previous laws that had been passed\textsuperscript{157} and government assistance, such as free lunch programs, made the cost of schooling more palatable to parents.\textsuperscript{158}

IV. THE CHILDREN FIGHT BACK: STRIKES AND UNION ACTIVITY

It is time for the myth of the child as a passive actor in his or her employment to be retired. Children actively participated in union activity, both on their own and with adults. Barbed wire and locked doors were attempts to keep children from protesting long hours. When their demands went unmet, they resorted to violence and strikes. As members of a society on the verge of social change, they absorbed and imitated the protests of their elders.

On November 15, 1904, one hundred and fifty children, ages sixteen and under, went out on strike at Cohen's Paper Box Factory.\textsuperscript{159} During the height of the season, their employer reduced their wages by ten percent. The firm canceled some of its contracts and told the employees that they would have to take a wage cut or be fired. Under the old wage system, they earned thirty cents per one hundred boxes. Small girls could earn between $2 and $3 per week while some earned more. In

\begin{flushright}
\textsuperscript{156} Id.
\end{flushright}\textsuperscript{157} Hall, \textit{supra} note 97, at 123.

\begin{flushright}
\textsuperscript{158} FYFE, \textit{supra} note 28, at 159.
response to the wage cut, the children formed the Paper Box Union. The union refused to compromise and the children were discharged. Thus, the children struck because they said that the wages offered were starvation wages and that they could not afford to work for any less. (The rent on a five room tenement at that time was between $25 and $40 per month.)

On November 16th, 1904, they picketed the factory. One lone policeman was sent to stand guard. While this did cause the striking boys to flee, the girls remained to march up and down making faces at the policeman. Twenty-five replacements were hired. This angered the strikers who tried to prevent the replacements from working.

Children, between the ages of fourteen and sixteen, went on strike to demand higher wages at the Chelsea Jute Mills, in Manhattan, New York. Spinners claimed they worked eighteen hours a day for $7 dollars a week; a pitiful wage. The owner had previously reduced their wages and promised to raise them again when business improved.

In 1898, one hundred and twenty-five girls at the Continental Match Factory in Passiac, New Jersey, went out on strike due to wage cuts. For their work, they had previously been paid six and a half cents per gross which was now reduced to five cents. Under the old wage, they earned about sixty cents a day and packed about 400,000 matches. The presence of mothers, sisters, and girlfriends supported the strikers.


161. Three Hundred employees (sic) of the Chelsea Jute Mills Strike, N.Y. TIMES, Mar. 30, 1886, at 2; A Striker's Picket Fined, N.Y. TIMES, Apr. 14, 1886, at 8; Dealing With Boycotters, N.Y. TIMES, May 1, 1886, at 2.

162. Match Packers Quit, N.Y. TIMES, Nov. 4, 1898, at 1; Girl Strikers Troublesome, N.Y. TIMES, Nov. 5, 1898 at 1.
Messenger boys employed by the Mutual District Telegraph Company struck in 1886. The boys were angry because they were fined excessively when they were absent and because they had to work thirteen out of fourteen days in two weeks without receiving compensation for the Sunday they had off. Mutual District employed 1500 messengers and out of that number approximately 300 to 400 went out on strike. The strikers wanted every Sunday off without a pay reduction. The company responded by saying they had to maintain the every other Sunday schedule or they would be short of help. It was reported that the strikers settled with the company but the terms were unknown. "General Manager Ryder said last evening that a satisfactory arrangement had been made with the boys, and that they would not strike again."

A smaller strike occurred on February 23, 1887, in which forty messenger boys struck to increase their pay from $4.50 to $5 per week as well as seeking a remission of fines for being absent. It was company practice to fine the boys two days pay if they were absent the day after pay day. (It is generally believed the boys went to the movies instead of going to work.) Strike leaders were discharged while the other boys would be allowed to return to work.

Eighty-five boys who worked for the American District Telegraph Company went out on strike in 1892 when their wages were cut without notice. Scabs, many of whom were non-English speaking Russians, replaced them. The company claimed that the wages were cut because they recently absorbed Mutual District Telegraph, and the striking boys were originally employees of Mutual. American had different rules and required

163. Strike of Messengers, N.Y. TIMES, Nov. 21, 1886, at 14.
164. Id.
165. The Striking Messengers, N.Y. TIMES, Feb. 24, 1887, at 8.
166. Messenger Boys On Strike, N.Y.TIMES, Aug. 3, 1892, at 5; Fewer Striking Messengers, N.Y.TIMES, Aug. 4, 1892, at 8.
that its employees work seven days a week. The company wanted the striking boys to work Sundays at the same rate of pay that they had received from Mutual District Telegraph. If they were absent, they would have eighty-four cents deducted from their paycheck.

In 1893, American District was again threatened by a strike. The company changed its policy to pay the boys every two weeks instead of weekly, a move unpopular with the boys. In addition, the company did not pay them until Monday following the newly scheduled pay day because Saturday was a half holiday and the banks would have closed before the checks could have been cashed. Unfortunately, they failed to give the messengers a reason for the delayed pay. The boys discussed their grievance on the sidewalk in front of the company office but were eventually sent back outside.

In July of 1899, New York messenger boys went on strike against all the telegraph companies in an attempt to paralyze the city and force them to meet their demands. At the American District Telegraph Company, they did not want a pay increase. The strikers wanted to be told what shift they were working in advance, so they would have more flexibility to plan their lives. During the strike, the company paid the remaining messengers double pay. Eventually, the company manager conceded by allowing the boys to work half a day on Sunday instead of having every other Sunday off.

The boys at Western Union wanted Sunday hours cut from fourteen to ten. In addition, they did not want to pay fifty cents a week for uniforms. They also wanted to be paid even if they were unable to deliver a telegram because the person to whom it was addressed was unavailable (called "closed pages"). About


168. Messenger Boys May Strike, N.Y. TIMES, July 22, 1899, at 4; The Messenger Boys Strike, N.Y. TIMES, July 25, 1899, at 3; Messenger Boys' Strike, N.Y. TIMES, July 26, 1899, at 3.

169. Id.
eighty boys went out on strike at Western Union and even more attended a joint meeting of the Postal Telegraph and Western Union employees.

Postal Telegraph employees wanted fifteen cents per hour and two and a half cents per message. They also wanted the practice of "closed pages" eliminated. On July 25th, many Postal Telegraph employees went on strike. Pickets were posted to intercept boys sent to deliver messages. Those employees still working experienced some violence. The company offered double pay to boys coming back to work which induced some boys to abandon the strike. In addition, the company hired scabs to take the place of striking workers. Despite this, more boys went out on strike.

In July of 1899, messenger boys in Cincinnati, Ohio, went out on strike. Strikers attacked boys delivering messages. Stabbings and beatings were reported. Police escorts were provided to those boys remaining on the job. On July 25th, the newsboys joined the strike. They surrounded the news office and refused to let the scabs out with their papers. The police were called but were unable to disperse the newsboys. It was reported that newsboys in the New York City area were on strike against the Evening World and the Journal.

In Rochester, New York, on August 27, 1890, the Post-Express newspaper offered its carrier boys bicycles as prizes to increase the paper's circulation. This directive placed the home and business delivery carrier boys in direct competition with

170. Id.

171. Id.

172. Messenger Boys Ride in Cabs, N.Y. TIMES, July 26, 1899, at 3.

173. Id.

174. Id.

the street sales boys for the same pool of customers. The street sales boys, who were members of the Knights of Labor, decided to strike by refusing to pick up the early editions of the Post-Express. Instead, they sold early editions of the two rival papers in front of the Express' office. In the meantime, the Express had arranged to sell some of their papers through a few bootblacks (a boy who polished shoes). The striking newsboys retaliated by taking the bootblacks' papers, tearing them up, paying the bootblack for them, and warning the bootblack off.

In New York City, during the summer of 1899, newsboys from the *Evening World* and *The Journal* went out on strike. The newsboys wanted the wholesale price of the paper reduced from sixty to fifty cents per hundred papers but the company refused. It was easier for the newsboys to strike than it was for adult workers to strike because they had no families to support. In a sympathy strike, newsboys in Jersey City decided not to sell papers either. During the strike, the Harlem newsboys organized a union. A mass meeting attended by two thousand newsboys was held on July 25th while another three thousand convened on the street outside. The meeting was run completely by the newsboys themselves. During the course of the meeting, they discussed the utility of the ten cent cut to themselves versus its utility to Mr. Hearst, the papers' owner.

On July 31st, the newsboys created a new union and elected an adult as the president. The new President advised the boys that they should "become affiliated with other labor organizations." It was then decided that the city would be divided into districts and there would be representative for the newsboys from each district.

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During the strike, the newsboys roamed the streets tearing up copies of the paper. The newsboys also demonstrated in front of the news office and fought with boys who would not strike.\textsuperscript{179} Handbills were printed and passed out. They read "Help us in our struggle to get a fair play by not buying The Journal or The World. Help Us! Do not ask for The World, or The Journal. Newsboys' Union." \textsuperscript{180}

The newsboys strike reached a conclusion when the company agreed to repurchase unsold newspapers.\textsuperscript{181} The strikers accepted this offer despite the fact that they were unsuccessful in obtaining their original goal of canceling the paper price increase.\textsuperscript{182}

Alterations in the process of manufacturing often led to a strike. In 1892, thirty girls from the Singer Manufacturing Company struck because they felt that a change in the shape of the sewing machine was causing them to lose money.\textsuperscript{183} Their job was to ornament the sewing machines using transfers for which they were paid by the piece. The company manager offered to average their wages for a few months until they became more comfortable with the change, but the girls rejected the offer because they felt they could not live on the lowered wage.

Violence and arrests were common among striking children. In the Cohen Box Factory strike of 1904, fifty seven girls were arrested, fined or reprimanded for their activities.\textsuperscript{184} During the newsboys' strike of 1899, the police arrested several of

\begin{enumerate}
\item \textsuperscript{179} Newsboys Go On Strike, N.Y. TIMES, July 21, 1899, at 2.
\item \textsuperscript{180} Striking Newsboys are Firm, N.Y. TIMES, July 23, 1899, at 3.
\item \textsuperscript{181} LABOR CONFLICT IN THE UNITED STATES 356-357 (Ronald L. Filipelli ed., 1990).
\item \textsuperscript{182} Id. at 357.
\item \textsuperscript{183} Thirty Girls on Strike, N.Y. TIMES, May 23, 1892, at 3.
\item \textsuperscript{184} MARKHAM ET. AL., supra note 56, at 132.
\end{enumerate}
the ringleaders.\textsuperscript{185} In 1877, five Chicago newsboys were arrested after "becoming riotous and abusive."\textsuperscript{186} During the match packers strike of 1898, in Passaic, New York, girls used clubs to dissuade other girls from taking their place in the factory.\textsuperscript{187} This escalated into a brawl when several girls got through the picket lines and into the factory. And during a messenger boys' strike a scab was severely beaten while out delivering a message.\textsuperscript{188}

There is evidence that several groups of children engaged in labor union activity. The Harlem newsboys organized a union during the strike of 1899,\textsuperscript{189} while girls and boys at Cohen's formed the fully officered Paper Box Union.\textsuperscript{190} This brief analysis of labor organization among children tends to show that children, though fully exploited by the economic system and those who controlled it, were not completely powerless.

\textsuperscript{185} Striking Newsboys Are Firm, N.Y. TIMES, July 23, 1899, at 3.

\textsuperscript{186} Newsboys Aiding Striking Printers, N.Y. TIMES, Feb. 9, 1877, at 1.

\textsuperscript{187} Match Packers Quit, N.Y. TIMES, Nov. 4, 1898, at 1.

\textsuperscript{188} The Striking Messengers, N.Y. TIMES, Feb. 24, 1887, at 8.

\textsuperscript{189} Newsboys For a New Union, N.Y. TIMES, July 31, 1899.

\textsuperscript{190} No Big Policeman Can Scare Striking Girls, N.Y. TIMES, Nov. 17, 1904, at 7; Tiny Girls Face Hungry Christmas, N.Y. TIMES, Dec. 25, 1904, at 10. It should be noted, however, that labor organizers were reticent to involve children because they were difficult to organize. FELT, supra note 23, at 14. These difficulties resulted primarily from the children’s inabilities to understand the issues and their lack of interest in job security. Of course, there was the ever present threat of job termination from owners and management. Evidence shows that employers threatened troublesome children with replacement. Girls Have a Lively Fight, N.Y. TIMES, Aug. 8, 1895, at 11; Messenger Boys on Strike, N.Y. TIMES, Aug. 3, 1892, at 5; Girl Strikers Troublesome, N.Y. TIMES, Nov. 5, 1898, at 1.
V. CONCLUSION

Our perception regarding the utilization of children as workers has been colored by the passage of time. As a community, we tend to forget or to minimize the lessons of history and our active participation in and acceptance of child labor practices which today are considered abusive. Despite the fact that child laborers visit our homes on a daily basis, they are an invisible presence. Public apathy and inattention are gradually leading to the resurrection of a system of employment detrimental to the welfare of Americans both young and old.

It is essential that we recognize the significant role that public opinion plays in the promulgation and enforcement of laws that regulate the employment of children. Without the cooperation of the public, laws designed to protect the most vulnerable members of society will continue to be ignored. Acknowledgement of the active role of children in their own employment does not in any way relieve society of its responsibility to regulate and enforce laws meant to offer protection from exploitation and abuse.

We can shape the future by educating ourselves about the attitudes and beliefs of the past and by continually guarding against encroachments that interfere with the joys of childhood and education of our children. As a society, our ultimate goal should be to provide an environment that will allow our children the opportunity to become healthy and productive members of that society.