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Child Labor and the Constitution

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of the United States. This is closely followed by a treatise written by William M. Meigs, of the Philadelphia Bar, entitled, *The Growth of the Constitution in the Federal Convention of 1787*. This treatise covers 188 pages and traces the origin and development of each separate clause of the constitution from its first suggestion in the convention to the form finally approved. A short chapter on Constitutional Construction and Interpretation follows the treatise by Meigs and the rest of the three volumes contain annotations of the various provisions of the constitution. The balance of the first volume and the entire second volume appear to be a reprint of the material contained in the Annotated Statutes. The annotations are in the form to which the legal profession has become accustomed. Volume three supplements these notes and brings them down to January, 1924. This volume also contains an index of 180 pages arranged in double column which greatly enhances the value of all the volumes.

The work, as the reader can gather from the statement just made, is not intended to be a scientific treatise setting forth in measured phraseology the influence which the Constitution has had on the courts and the influence which the courts have exercised on the Constitution. It mainly consists of annotations thrown together without much regard to their historical sequence and with no attempt at showing the influence which any decision abstracted may have had on the very constitutional provision which it construes. But, though the historian who refers to these volumes will probably be disappointed, they will serve a very useful purpose. By bringing together the annotations to the constitution in two volumes and bringing these annotations up to date in the third, they will serve to lighten greatly the labors of attorneys and judges in finding precedents.

The type is clear; the volumes are printed on a good grade of paper and bound in black, flexible binding. Teachers of constitutional law and attorneys with a large federal practice will find these volumes to be valuable, if not indispensable, helps in solving the various problems with which they are confronted.

CARL ZOLLMANN.

Child Labor and the Constitution. By RAYMOND G. FULLER with an Introduction by JOHN H. FINLEY. New York: Thomas Y. Crowell Company. 1923. pp. xvi, 323.

This work is a scientific presentation of the problem of child labor. It is distinguished by a constructive social program for dealing with a national problem. Mr. Fuller tells us at the outset of his work that while the amount of child labor has been much diminished in the last decade, the task of abolition is today more difficult than ever before and embraces a larger number of children. He states that a new and broader program of child-labor reform is necessary to accomplish the task of abolition. Mr. Fuller is eminently qualified in the field of social science, particularly in the field of child-labor reform; his conclusions are based strictly upon the results of practical investigations and experience.

The author points out that the child-labor problem is not a distinct and separate problem, but that it is a part of the great problem of child welfare, which, in turn, is a part of the greater problem of human welfare. On this viewpoint depends the new and broader program of child-labor reform. He defines child labor as any work of children "that deprives them of a fair start in life, in terms of health, play, education. . . ." By this he does not mean that childhood is to be unoccupied; on the contrary it is to be well occupied, and child-labor reform must recognize these two aspects of the problem and not only remove from the lives

of children that which is harmful and undesirable, but also bring to them that which is desirable and proper in child life.

With the importance of the period of childhood, its psychological significance and its relation to the political and social welfare of the nation, we are sufficiently impressed by the author.

In the first half of the work the author deals with the various forms of child labor. It is in the rural communities where child labor has flourished almost entirely unhampered by state law. The seasonal demands of farm labor, general irregular school attendance, and the lack of adequate educational and socializing facilities and influences are a few of the special problems of rural child labor. The various forms of urban and industrial child labor with which Mr. Fuller deals include street work, labor on the stage, work in canneries and cotton mills and work in coal mines.

The relation between school attendance and child labor and the function of the school in preparing children for working life are emphasized. The chief reasons for premature school-leaving are enumerated in the work as follows: (1) poverty; (2) failure of the school to hold the child's interest; (3) retardation, caused by (a) irregular attendance, (b) ill health, (c) mental deficiency. A program of child-labor reform should meet the economic cause through proper administration of poor relief, mothers'-pension laws, and the establishment of scholarships. The second cause of premature school-leaving demonstrates the need of adapting our schools to meet individual needs. Retardation as a cause of premature withdrawal from school must be met with compulsory school attendance laws, the strict enforcement of such laws, health supervision, regrading and educational guidance on the basis of intelligence tests and the study of individual cases.

Education reform recognizing the psychological factor of individual difference and variation in general ability and special capacity is a distinct part of the broad program of child-labor reform. The desirability of individual supervision over the general chronological age limit usually established by law, is recognized. Statutes providing for the issuance of employment papers to children who have attained the required minimum of age take cognizance of individual cases and standards other than mere chronological age if supplemented by certain educational and physiological requirements.

Sub-normal children present a special problem. The Connecticut plan of vocational probation supervised by the juvenile court and probation officers is a novel plan for dealing with the sub-normal children. The most recent advance in local care of dependent and defective children is through county organization.

A broad program of child-labor reform must attempt the prevention of poverty—a chief cause of child labor. General welfare measures for the prevention of poverty are enumerated by the author as follows: (1) minimum wage laws; (2) unemployment insurance; and (3) workmen's compensation laws.

Federal child-labor regulation is desirable. The enforcement of state laws has been lax; a federal child-labor law would set a national minimum standard.

Congress passed child-labor legislation in 1916 and again in 1919. Both attempts at federal regulation were declared unconstitutional. The first enactment (Keating-Owen bill) making it a misdemeanor for the producer to put into interstate commerce the products of child labor as defined by the act, was an attempt to restrict child labor under the power of Congress to regulate interstate commerce. The Lottery case (188 U. S. 321) and the White Slave case (*Hoke v. United States*, 227 U. S. 308) had affirmed the power of Congress to regulate interstate commerce in the interest of the public health, morals, safety and welfare;

but in holding invalid the Child-Labor Act of 1916, the United States Supreme Court said that the products of child labor were in themselves harmless, that the objectionable labor was performed before the goods were placed in interstate commerce and that the interstate transportation of these products was not necessary to achieve the harmful results. Therefore the Act of 1916 could not be sustained as a regulation of interstate commerce. *Hammer v. Dagenhart* (247 U. S. 251.)

The Act of 1919 levying a tax of ten per cent upon the net profits from the sale of products of child labor as defined by the act, was an attempt to regulate child labor by virtue of the taxing power of Congress. In the Bank Note case (*Veazie Bank v. Fenno*, 8 Wall. 533) and the Oleomargerine case (*McCray v. United States*, 195 U. S. 27) the purpose of the tax was clearly regulatory, but the Supreme Court held that Congress having the power to tax, the purpose for which the tax was levied was a question for the electorate, not the court. In passing on the Act of 1919, however, the Supreme Court held that this was not a tax the primary motive of which was revenue, but that it was a penalty and was passed solely for the purpose of its prohibitory and regulatory effect. The regulatory effect was not an incidental motive, but the primary motive and therefore the act was invalid. *Bailey v. Drexel Furniture Company*, 259 U. S. 20.

This nation should most assuredly have the power to protect its future citizens in industry. Mr. Fuller believes that the burden of the child-labor reform must be borne by the states, and in his opinion the mere possession by the federal government of the *power* to act in the matter of child-labor regulation, would be productive of more adequate state protection for the nation's children. An amendment to the Constitution will give Congress this power. Mr. Fuller warns that a child-labor amendment to the United States Constitution should not embody legislation, but it should merely vest in Congress an additional power which Congress may use as it may see fit.

Mr. Fuller tells us in this work what the problem of federal action has been and what it now is. Our political philosophy, state rights, centralization of power and the tedious amending process are factors which operate to make federal action a problem. Coming at a time when the child-labor amendment to the United States Constitution is a vital issue before the American people, the book is timely and invaluable.

ELMER W. ROLLER.