

The History of Child Labor in the United States: Hammer v. Dagenhart

by

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Introduction

What is the role of the Supreme Court in American History? How do past Supreme Court rulings affect our lives today? Whether or not you could answer these questions in part or in whole, it is our job as educators to inform students of the judicial process and how it has evolved over time since the signing of the Constitution in 1787.

From the first days of the United States, the Supreme Court has been fundamental in interpreting our Constitution and shaping our government as we know it today. The unit that I have devised is to look at the role of the Supreme Court as it relates to child labor. My main focus is to examine the onset and progression of child labor leading up to the Supreme Court case of Hammer v. Dagenhart, 247 U.S. 251. I strongly feel students will gain an insight into the responsibilities and precedence the Supreme Court sets for the entire United States.

This unit will be aimed for the seventh grade special education population that I teach in an inclusive environment. The students that I work with are on a spectrum ranging from Learning Disabled to Autistic. Due to a wide range of disabilities and various learning styles, I feel a multi-sensory approach would be most beneficial to meet the goals and objectives as reflected in each student's Individualized Education Plan.

Some of the material in this unit will be read orally within a large group setting and other material will be researched by students in small pods. Along with the regular education teachers, I will develop many engaging and thought provoking activities that capture and sustain the interest of my special education students as well as the rest of the class.

The lessons that I will cultivate will integrate assorted methodologies of learning such as auditory, visual and kinesthetic. The lessons will be clear and concise for a greater understanding of the historical facts.

Within my proposed unit, I will be able to teach my students' content, intellectual skills such as making inferences, the ability to develop and form conclusions based on evidence within a text and provide them with the civic skills for making informative decisions in order to be an active participant in our democratic society.

As a special education teacher, I am challenged with many barriers educationally, socially and emotionally. Since I am working in an inclusive setting, I see a large number of special education and regular education students having difficulty reading and comprehending material due to a lack of phonemic awareness, phonics and minimal to no vocabulary recall. Therefore, students often give up. As teachers we know that reading is crucial to daily living and without it one would be lost. In trying to teach this unit students must see the information presented to them as a valuable tool.

This above-referenced unit will integrate the two disciplines of Social Studies and Language Arts. The allotted time given for this unit will be approximately two weeks. The intent of this unit is designed to meet the New Haven Board of Education Curriculum Standards and No Child Left Behind Law enacted in 2004.

Based on the seventh grade Social Studies curriculum students are required to research historical data and explain the causes and effects of an event. The Language Arts curriculum focuses on reading a variety of texts and being able to express individual ideas by demonstrating a critical stance. Using an interdisciplinary approach will assist in the overall learning of a subject matter as well as making a transference of curriculum standards.



Industrial Revolution

Usually when an individual thinks about children some words that might come to mind are innocent, sweet, delicate little beings. These colorful words for children have not always been deemed in this fashion.

“There is work that profits children, and there is work that brings profit only to employers. The object of employing children is not to train them, but to get high profits from their work.”(1)
Lewis Hine, 1908

This quote sets the tone of how child labor was recognized by the American government during the late 1800's and early 1900's. There is an overall consensus that attributes the Industrial Revolution for the rise of exploitation of child labor.

The idea of the Industrial Revolution came from England. Not only did Americans fancy the revolution occurring back in England but they wanted to replicate the same things here but only better. This revolution phenomenon was dreamy to many Americans. The Industrial Revolution was depicted by fresh technology like the cotton gin and a rising economy. This period in history transformed the way people existed and worked.

Not all individuals agreed with the Industrial Revolution. For example, Thomas

Jefferson, when he was Secretary of State in Washington's Administration, strongly opposed the idea. He believed that once people started working in industries rather than agricultural pursuits, the United States would marvel in the money and forget about schooling. Contrary to Jefferson's beliefs, Alexander Hamilton, Secretary of treasury promoted the idea of industrial revolution. He alleged that the benefits of a growing economy strongly outweighed the negatives

economy strongly outweighed the negatives.

Due to the rise of cities, many families moved from their rural dwellings. Over two million children worked during this era. Child labor was seen in all facets of work. Children worked in factories, fields, mines and in the city streets. Children were an asset to the employees because they were cheap labor. Children worked to help support their families. As soon as they were old enough to help they did some were young as five years old. At this time in history children were uneducated unless they came from a wealthy family.

Not only were children subjected to work at such a young age but they had to work under deplorable conditions. Children toiled for pennies after a seventy hour work week. Those children who worked in the factories suffered from many health conditions such as bronchitis and tuberculosis due to poor ventilation. Children who worked in the coal mines would face clammy and gloomy conditions. Many of them had to transport the coal on their back which led to back problems, paralysis and on a whole a large number of them expired.



Reformers

Child labor was becoming increasingly more significant due to the economy. In the early 1900's a social movement was established to protest child labor. This assembly was called the reformers. They had a platform that needed to be addressed by the national government. Up until this point the Supreme Court took a laissez faire approach.

Facing opposition by employers many felt that social reformers were unable to see how child labor was the driving force of the United States economy. Employers who favored child labor suggested that it added to the moral fiber of the child by instilling a value system of work ethic. (2)

The president of Merchants Woolen Company, Charles Harding stated: "There is a certain class of labor in mills where there is not as much muscular exercise required as a child would put forth in play, and a child can do it about as well as a grown person...There is such thing as too much education for working people sometimes. I have seen cases where young people are spoiled for labor by...too much refinement." (3)

The social reformers focused on welfare of the child and the abolishment of child labor. The first organized group was formed in 1904 it was known as The National Child Labor Committee (NCLC). This committee consisted of politicians, social workers and citizens who contested child labor. Two of the most renowned reformers were Jane Addams and Lewis Hine.

Jane Addams played a prominent part in the formation of the National Progressive Movement. In 1912, when Theodore Roosevelt ran for President of the United States, Addams empathically declared her support for his progressive ideas. As a pioneer of the progressive movement, Jane Addams campaigned for new laws to support the rights of children. As the founder of Hull House in Chicago, Illinois she was able to provide a platform where children and others could come to seek assistance from the dreadful environment which surrounding them each day. Jane believed that they way to change the social atmosphere in the United States was to lobby the government for laws that would promote better education for children.

In 1907 the NCLC was granted a charter from Congress. A year later the committee hired Lewis Hine. He was a teacher who was hired to research the ills of the child labor industry. For several years following, Hine traveled and photographed pictures of the exploitation of children in the work force. Later these pictures were published and seen by many. The impact the pictures had on America was unspeakable. The pictures unfolded a story that demonstrated violations against children in the most revolting way. It was truly astounding.

Two years later the Bureau of Labor Statistics found that contradictory to past reports, more children were employed in the Southern states than up North. Many of these children were receiving an insignificant amount of education. If children attended

school then they would lose their jobs, children at that time children did not want to face the punishment they would receive from their families.

As a result of this and the backlash of Hine's pictures, states started to pass laws restricting the age at which children could work. Nonetheless, The Supreme Court was not taking a stand on this issue.

It was not until 1916, that we see the involvement of the Supreme Court. During this year Congress passed the first child labor bill, Keating-Owen Act. This act banned the sale of any article produced by child labor (factory, cannery, and mine) and it regulated the number of hours a child could work. The Keating-Owen Act was passed in 1916 under the Woodrow Wilson's administration. Many progressives and republicans

embraced his efforts. Two years later the Supreme Court declared the Keating-Owen Act unconstitutional. The Supreme Court stated that on legal grounds Congress was using its power to go beyond its right to regulate interstate trade.

After the abolishment of the first child labor bill, the Keating-Owen Act there was a significant amount of tension that existed between the Congress and the Supreme Court.

Did the power rest in the Congress or did the Supreme Court act as a superior being?



Hammer v. Dagenhart 247 U.S. 251

Argued April 15, 1918 and decided on June 3, 1918 was the next case in the forefront of child labor laws. This case was filed initially in North Carolina in the United States District Court. It was brought to the court by a father, Roland Dagenhart filing on behalf of his two sons Reuben and John who were employed on a cotton mill in Charlotte, North Carolina. Both of them were under sixteen years of age. Dagenhart's law suit claimed that Congress had violated his sons' freedom to work.

In response to Dagenhart's claim, the United States District Court filed a response that stated the Dagenhart's bill directly violated child labor laws that dealt with commerce from state to state as addressed two years prior by the Keating-Owen Act.

The first decision upheld by the District Court stated that the bill was unconstitutional. The District Court stated that Congress had violated numerous laws according to the Constitution. The violations were as follows the Commerce Clause, the Fifth Amendment and the Tenth Amendment to the Constitution.

According to the District Court, Congress claims violated the Commere Act which is found in Article 1, Section 8 clause 3 which states "the congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." (4)

Secondly, they saw a breach of the Tenth Amendment which asserts "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." (5)

The court's last reservation claimed that Congress had violated the Fifth Amendment according to due

process. Which clearly states, “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” (6)

Many reformers and others were disheartened by the decision. As a result, John Davis and attorney, W.C. Hammer appealed the former decision therefore seeking assistance from the United States Supreme Court. Congress felt that they had a strong backing and compelling evidence based on the Constitution to support their claim. One of their key claims was that Congress has the power to regulate goods created by child labor because there was no one rule that blanketed all the states.

The Supreme Court was faced with answering the underlying question, does Congress have the right to police goods that are sold between states that were constructed by children under sixteen years old?

During this legal proceeding there were nine justices in total, four of whom were Democrats and the five remaining were Republicans. The names of these Justices were Edward D. White, Joseph McKenna, Oliver W. Holmes Jr., Mahlon Pitney, James C. McReynolds, Louis Brandeis, John Clarke, Willis Van Devanter and William R. Day.

The final decision of the Supreme Court was given by William R. Day. The Court saw this act as unconstitutional. The decision recognized by the court stated Congress had stepped outside of their boundaries and that Congress misconstrued the interpretation of the Commerce Clause which was upheld in the Keating-Owen Act. The Supreme Court argued that in spite of children working in factories and canners to produce goods that are exchanged between the states does not technically fit the confines of commerce. In view of that fact the Congress has the power to regulate trade but in this case, commerce is not the question when talking about the actual trade process because it does not involve the physical harm of children.

Open to various interpretations the Commerce Clause can be argued that commerce is defined not by the manufacturing, the making of products locally but by the shipment, the actual transportation of the manufactured goods which are shipped interstate. As stated in the previous case of *Gibbons v. Ogden* the power to regulate commerce is the power “to prescribe the rule by which commerce is governed” 7

To support their decision, Justice Day refers back to prior court cases such as *Lackawanna & Western R.R. Co. v. Yurkonis*, *Kidd v. Pearson* and *New York v. Miln*. All three of these cases were focused around the Commerce Clause. In *Lackawanna & Western R.R. Co.* the court established that coal mining is not defined under the terms of commerce. In the later two cases the same commerce clause cannot be redefined to include the regulation of goods made by child labor as identified by individual states.

Regardless of Justice Day and the majority of the ruling there was a dissenting opinion. This difference of opinion came from Justice Holmes, Justice McKenna, Justice Brandeis and Justice Clarke all of whom concurred. Holmes argued that Congress acted on the basis that it has the right under the Constitution to disallow certain goods to be traded also known as prohibition. Hence, prohibition includes the use of child labor as represented by the Keating-Owen Act. Also, he disputed that according to the Constitution the Congress falls under the umbrella of being protected by the federal government to monitor commerce as identified in Article 1, Section 8 of the Constitution.



The Aftermath

Soon after the court's decision on June 3, 1918 many people felt puzzled. They wondered why the court did not find *Hammer v. Dagenhart* a moral dilemma. They believed it was the court's job to uphold the integrity and ethical standards upon which the United States was founded.

Later that year in December of 1918 another bill was presented on behalf of child labor. This bill was another endeavor to regulate child labor by enforcing a tax of 10% to industries employing children under the age of sixteen. Soon after, this bill was also struck down by the Supreme Court stating that it was unconstitutional.

Around the 1920's the country had won World War I and America felt hopeful about the economy but too many individuals were wrong. The country's debt rose to enormous heights. In 1929, the American stock market crashed causing the great depression. During the depression millions of people lost their jobs but children still worked.

In 1932, President D. Roosevelt initiated the New Deal. The New Deal was Roosevelt's idea of getting America back on track economically. In 1933, The National Recovery Act was passed. This act assisted with child labor laws because it outlawed all child labor. Just like the others this act was overturned by the Supreme Court.

Almost twenty years after *Hammer v. Dagenhart*, hard work, pain, suffering and even death the question still remained did the child labor movement progress? It was through assistance from political supporters and labor unions that made the vision reality.

In 1933, Congress made another attempt to assist efforts for child labor during the depression. This Act was known as the National Industrial Recovery Act. This act set age limits and working conditions. During this time one could see a significant decline in the number of children working. Just like prior attempts in 1935 the Supreme Court ruled the National Industrial Recovery Act unconstitutional.

In 1938, the Fair Labor Standards Act also known as Federal Wage and Hour Law was finally recognized by the United States federal government. This Act made it mandatory for employers to give children minimum wage of twenty-five cents an hour and a maximum amount of work hours. Additionally, it set age limits and limited certain jobs that children could obtain. Once this Act was upheld children soon began to stop working and received their education.

It was not until 1941, *U.S. v. Darby*, upheld the Fair Labor Standards Act and reversed the case of *Hammer v. Dagenhart*.

As a result of the many laws that were deemed as unconstitutional, children today can look back at history and be thankful for the road that was paved on their behalf. As it remains the Fair Labor Standards Act still exist and is recognized by highest ranking judicial body which for so long refused to establish them- the United States Supreme Court.

Although the United States has made momentous advancements to the child labor laws over the last fifty years, child labor still exist. The fight still persists. As stated by the International Labor Organization the number of working children are increasing daily. Sad but true children are still being exploited in sweatshops making pennies a day to city streets. So it is our job to remember the past and push for laws for the future.

Wal-Mart to cut ties with Bangladesh factories using child labour

Last Updated: Wednesday, November 30, 2005 | 9:01 PM ET

[CBC News](#)

Wal-Mart, the world's largest retailer, is promoting a corporate code of conduct that it calls one of the strictest in the industry. But an investigation by Radio-Canada, the French-language service of the CBC, casts doubt on the company's capacity to enforce that code in dealing with Third World countries.

Much of the clothing purchased by Wal-Mart is made in poor countries like Bangladesh. It was with the intention of preventing abuse in the workplace, especially the use of child labour, that Wal-Mart introduced its code of conduct. It specifically says the company will not deal with any supplier that employs children under age 14.

For fewer than \$50 per month, workers in Bangladesh knit, sew and pack clothes for sale around the world, and some garments end up at Wal-Mart stores in Canada.

Radio-Canada journalists posed as buyers in the Canadian garment industry so they could videotape inside factories in Bangladesh with hidden cameras.

In one factory, typical of many in the country, children were busy with lower-skill tasks. In badly lit, dirty and overheated workshops, young boys were everywhere.

A label reading Simply Basic, one of Wal-Mart's in-house brand names along with the number CA 28885, the corporate ID of Wal-Mart Canada, was seen in the factory.

The same factory also produces Wal-Mart's corporate T-shirt for Canada.

The factory manager told Radio-Canada that the children are working on domestic production.

"They do not work on export garments, like Wal-Mart's," said Liakot Patwary. "I can give you [a] guarantee."

But after filling many orders, Patwary said he had never met inspectors from the company and Wal-Mart had not visited the factory.

When shown the images from the report, Wal-Mart explained that the factories were subcontractors with no direct business link with Wal-Mart. Still, the company's representative in Montreal acknowledged the problem.

"These factories are clearly violating our code of conduct," said Wal-Mart spokesman Yanik Deschenes. "That's why we've ceased immediately to do business with these two factories."

Wal-Mart said it tries to inspect all of the factories that work on its orders. But with literally thousands of subcontractors around the world, Wal-Mart may not be able to enforce its own corporate code of conduct and get rid of labour practices it says are unacceptable.



Pictures were taken by hidden cameras in Bangladesh factories as part of Radio-Canada's investigation.



- This story is now closed to commenting.

THE BANGLADESH CONTEXT

The situation of women and children

83 per cent of the population - or 115 million people - live on less than \$2 a day. This is despite an increase in national income per capita. The poverty gap is widening.

63 million people live below the food-energy intake poverty line.

It is estimated 5 million people live in slums. Access to basic essential services in such communities is scarce. Many children must work, are denied an education and are vulnerable to violence, abuse, and exploitation.

An estimated 5 million children aged 5 to 14 years are working, many under dangerous conditions. Poverty is the main cause of child labour.

There are virtually no structured early learning opportunities to prepare young children for school.

Net primary school enrolment rates are 82 per cent for boys and 86 per cent for girls.

However, the dropout rate is high. Fewer than half the children who complete primary school reach expected competencies because of poor teaching methods, overcrowded classrooms and a lack of home support.

The adult literacy rate is estimated at 50 per cent for men, 31 per cent for women.

Dowry and dowry-related violence are widespread and pose serious threats to women. Women are the most likely victims of acid attacks.

Bangladesh has one of the highest rates of child-marriage in the world. Nearly two-thirds of adolescent girls are married (10-19 years).

14 per cent of maternal deaths are caused by violence.

Bangladesh's maternal mortality rate remains high - underpinned by the fact most deliveries take place at home, away from emergency obstetric care and without a skilled attendant.

Anaemia is a severe public health problem for pre-school children and pregnant women. Health facilities suffer from shortages of supplies and qualified staff.

Bangladesh could be facing an HIV epidemic if there is no change to current behaviours. Major prevention efforts are needed to keep the HIV prevalence rate low.



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August 22, 2007

U.S. Group Accuses Chinese Toy Factories of Labor Abuses

By [DAVID BARBOZA](#)

SHANGHAI, Aug. 21 — A workers' rights group in the United States released a report on Tuesday detailing what it called brutal conditions and illegal practices in Chinese toy factories, many of which supply some of the world's biggest brand-name toy makers, including [Walt Disney](#) and [Hasbro](#).

China Labor Watch, which is based in New York, said that it had investigated eight Chinese factories over the last year and discovered widespread labor violations, including the hiring of under-age workers, mandatory overtime, unsafe working conditions and managers who engaged in verbal abuse and sexual harassment.

In one instance, the group said, a toy factory in the impoverished Guangxi Province hired 1,000 junior high school students. Chinese law forbids employers to hire children under the age of 16.

"Shortsighted policies drive corporations like Hasbro to turn a blind eye to safety — and to ignore the labor conditions in their supplier factories," the group said in its report.

The report is being issued at a time of growing concern about the quality and safety of Chinese exports, and after a series of large toy recalls involving Chinese-made goods.

The Chinese government, however, has insisted that most Chinese exports are safe and of good quality, and multinational corporations say they have stepped up the monitoring and auditing of Chinese factories.

But some workers' rights groups say tainted and defective products are a result of a factory system that allows big corporations to outsource to contractors here who routinely violate Chinese labor laws and cheat workers to reduce costs and increase profits.

China Labor Watch assigned part of the blame to multinational corporations that focus on keeping costs low.

Hasbro said in a statement that it would conduct a thorough investigation into the issues raised in the report and would "act swiftly and decisively in making any necessary changes."

"Hasbro has an excellent record in the arena of product safety and, in light of the recent news from China, we have increased the intensity of our ongoing safety review efforts when it comes to any of our products manufactured both here and overseas," the statement said.

Disney said in a statement that it and its affiliates take allegations of unfair labor practices seriously, investigate them thoroughly and take remedial action. "We have a firm commitment to the safety and well-being of workers, and fair and just labor standards," a spokeswoman, Alannah Goss, said in an e-mail statement, according to [Reuters](#).

The report by China Labor Watch is only the latest in a series of reports issued by nongovernmental organizations over the last few years detailing worker abuse in Chinese factories.

Last June, a group of trade unions and nongovernmental organizations accused several Chinese companies that make merchandise for the 2008 Beijing Olympic Games of using under-age workers and forcing many to work overtime in unsafe conditions.

The Beijing Olympic organizing committee later revoked the license of at least one company that made Olympic merchandise, saying the company had hired some under-age workers and did not have employee contracts.

Many other companies, including Apple and [McDonald's](#), have also been the subject of reports by Chinese journalists and workers' rights groups here that accuse the companies of violating Chinese labor laws. The companies have denied violating the law and said that if they are alerted to violations, they will act.

In response to China Labor Watch's report, the International Council of Toy Industries issued a statement Tuesday saying that it is working with factory management in countries like China to ensure workers are treated fairly. "Our objective is to alleviate working conditions like those described in the report in order to make sure that workers don't bear the brunt of poor factory management practices and keep their jobs," Alan Hassenfeld, a spokesman for the organization, said in the statement.

Many companies, particularly toy companies, have independent auditors who make unannounced visits to factories with contracts from the companies. But critics say auditors are sometimes fooled by factory managers, who are coached in how to deal with them.

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