

# **CHILD-LABOR BILL**

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## **HEARINGS**

**BEFORE**

## **THE COMMITTEE ON LABOR**

**HOUSE OF REPRESENTATIVES**

**SIXTY-THIRD CONGRESS**

**SECOND SESSION**

**ON**

## **H. R. 12292**

**A BILL TO PREVENT INTERSTATE COMMERCE IN THE  
PRODUCTS OF CHILD LABOR, AND FOR  
OTHER PURPOSES**

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**FEBRUARY 27 AND MARCH 9, 1914**



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**COMMITTEE ON LABOR.**

**HOUSE OF REPRESENTATIVES, SIXTY-THIRD CONGRESS**

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**JAMES P. MAHER, New York.**

**J. M. C. SMITH, Michigan.**

**JOHN J. CASEY, Pennsylvania.**

**WILLIS C. HAWLEY, Oregon.**

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## CHILD-LABOR BILL.

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COMMITTEE ON LABOR,  
HOUSE OF REPRESENTATIVES,  
*Washington, February 27, 1914.*

### STATEMENT OF HON. A. MITCHELL PALMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA.

Mr. PALMER. Mr. Chairman and gentlemen of the committee, I want to call the attention of the committee to a bill introduced by myself, H. R. 13892, a bill to prevent interstate commerce in the products of child labor, and for other purposes.

In the short time I shall have it will be impossible for me to discuss this matter at great length.

The CHAIRMAN. I was going to suggest that inasmuch as the subject of this bill involves in a most vital way the manufacturing and labor and commercial interests of the country, that we would hear from you this morning a comprehensive statement of the object of its principal factors in order that the country might know what they have to consider, and we would not consider that we have gotten all the help from you we need from a brief statement from you this morning.

Mr. PALMER. It was my idea that all I should do to-day was to make a statement as to what this bill is, what it proposes to do, and, in a most general way, state the reasons for it, in the hope that the committee would give us a little further time to present some further facts and arguments on the part of the friends of this measure and to give a free, full, and ample opportunity to those who may be opposed to it, if any, to be heard before the committee. So, before I conclude, I shall ask the committee to fix some date when we can have a full hearing from both sides on the bill.

The proposition contained in this bill is a Federal child-labor law. It differs radically from former attempts at Federal child-labor legislation, and, in my judgment and in the judgment of many men of very much wider experience and very much deeper learning in the law than myself, this bill as framed will meet all the objections which have heretofore been raised against this sort of legislation. In a word, the proposition is to provide that it shall be unlawful for any person to ship or deliver for shipment in interstate commerce the products of any mill, mine, quarry, or manufacturing establishment where the labor of children below a certain standard is employed.

The standard fixed by the act is: In mines and quarries, 16 years; in mills, factories, workshops, or other manufacturing establishments, 14 years, with a further provision against the night work of

children and a further provision for an 8-hour day for children between 14 and 16 years of age. In other words, this bill, if it becomes a law, will keep out of interstate commerce the products of any mine or quarry where children under 16 years of age are employed; the products of any mill, cannery, workshop, or manufacturing establishment in which children under 14 years of age are employed, or where children between 14 and 16 years of age are compelled to work more than 8 hours a day, or in the nighttime between 7 o'clock at night and 7 o'clock in the morning.

Now, this measure differs from the Beveridge bill, or, properly, the Beveridge amendment, which was pressed in 1907, and upon which Senator Beveridge made his great argument in support of child-labor legislation. It differs from the Kenyon bill, which is the Beveridge proposition, in that those bills put the burden upon the carrier and make it unlawful for any common carrier to receive or ship goods manufactured under conditions of the sort fixed by the law.

The Copley bill, introduced in the last Congress and in this Congress, and which, I think, is before the Interstate Commerce Committee—although it may be before this committee; I am not sure—is quite a different measure, and it again puts the burden largely upon the carrier. It provides against what it calls "antisocial labor," and puts it up to the Secretary of Labor to determine whether the factory laws in various States are sufficient, and whether conditions in the various States are right, and gives him such enormous power and puts upon him such a tremendous burden that it seems to me it would be impracticable and impossible.

The simple method, as it strikes us, is to make it a misdemeanor for the producer, for the man who is responsible for the labor itself being employed, to put into interstate commerce the article which is produced under these conditions.

Now, I take it, Mr. Chairman, that what this committee will want to satisfy itself about before it reports favorably upon a bill of this character would be three things: First, whether child labor exists in this country in a nation-wide way; whether it is in the mills, factories, mines, quarries, and workshops of the land from one end of the country to the other; and, second, whether it is such an evil of a nation-wide character affecting the interests of the Nation and the future of our people as demands uniform, universal legislation to correct it, preferably Federal legislation; and, third, whether, assuming that these things be true—that child labor exists in the country and that it is a great evil that ought to be corrected, and as a national evil ought, if possible, be corrected by Federal legislation—whether it may be reached under the power of Congress under the Constitution to regulate commerce between the States.

Now, 10 years ago, the first question—perhaps the second question—might have been debatable. Five years ago, perhaps, there would have been found men on both sides of the proposition, but to-day it seems to me there can be no argument upon it. The country has awakened to the fact that millions of our little children, despite some advance in the States upon this question in the way of regulatory legislation, are being employed in the mines and quarries and mills and factories of the land, and that the result has

been and is bound to be in the future so appalling upon the health and morals of the children and of the men and women as they develop that it will constitute a great crying evil which calls for correction and remedy.

Now, in every State the question has been agitated; in every State attempts have been made at corrective legislation—vigorous, earnest attempts. They have met with opposition as vigorous and as earnest, and the principal opposition to this kind of legislation in the States presents the strongest argument which can possibly come before the Congress for legislation here upon this question. The campaign in every State in reference to this child-labor legislation makes it plain that it is interstate commerce which is at the very root of this great evil. It is absolutely a national question, because to-day, with our greater facilities for transportation for commerce between the States, production and manufacturing have become not a State proposition but an interstate proposition. No producer anywhere to-day of any size, especially of the kind where children are employed, is engaged in the production of articles the consumption of which is confined entirely within the lines of the States within which the production takes place.

The commodities of our manufacturing establishments go everywhere, and, consequently, when we go to a State and ask that State to make a law which will crush out this evil of the employment of little children in the mills and factories, we are immediately met by the answer on the part of the manufacturer and producing interests, "It is not fair to us and to our own people in this State to do this thing, because it puts us in competition, after you have done it, with the States which are not progressive and are not interested in humane legislation of this kind and which refuse to pass this kind of legislation. Those States are, therefore, able to produce our article at lower cost." And it is a good argument, and it has constituted a block in a great many States against this kind of legislation. The legislator says:

If our State is going to be compelled to suffer by reason of putting good laws upon our statute books, if our business interests and industrial development and all that sort of thing are going to be at the mercy of other States, we will not put this kind of law upon our statute books.

A situation is presented which, it seems to me, aside from the constitutional and legal question, calls for some kind of uniform, universal, Nation-wide regulation of this evil.

Now, before we get through, Mr. Chairman, we shall ask opportunity to present to the committee evidence to show what I have here stated, that child labor exists to an enormous degree in the country and that it is a great evil.

Mr. MAHER. Some of the States of the Union have laws preventing the employment of children?

Mr. PALMER. Yes.

Mr. MAHER. Not all the States?

Mr. PALMER. There are different standards.

Mr. MAHER. If this act were to become law, could not the employer or merchant take refuge in the Sherman antitrust law, that this act was depriving him of his rights to interstate commerce?

Mr. PALMER. That raises the entire constitutional question.

Mr. MAHER. I heard it argued before the United States Supreme Court, and they quoted the Anti-Child Labor League—there is a branch of it in San Francisco—which informed a merchant in San Francisco who was handling the goods of an employer in Connecticut that they would not purchase the goods made by children and that he was selling at retail. It was held that that was a violation of the Sherman antitrust law—interfering with interstate commerce.

Mr. PALMER. Restraint of trade by individuals might get into that kind of a position, but it would be a novel proposition, to my mind a charge that an act of Congress was in violation of the Sherman antitrust law.

Mr. MAHER. They claimed they were protected by the Sherman antitrust law.

Mr. PALMER. If this becomes a law, and it shall be determined by the courts that this proposition is within the power of Congress, of course the question which you raise, Mr. Maher, could not come in.

Mr. SMITH. Will you let me interrupt you a moment. Do you know what laws they have in foreign countries prohibiting child labor—whether they have any or not—and do you think there ought to be laws passed prohibiting the importation of goods made by child labor in other countries?

Mr. PALMER. Yes; I would say so; and I would personally have no objection to the inclusion in this bill of a provision against the shipment in our foreign commerce of these products in exactly the same way as interstate commerce.

Mr. HAWLEY. But that would only apply to the carriers and not to the manufacturers.

Mr. PALMER. That is all it does anyway. It is only the transportation of the goods we are reaching, because we forbid their shipment in interstate commerce. We could in the same way forbid and actually prohibit the importation of such goods as are made in foreign countries under conditions which were the same as are provided in this bill, because under the Constitution we have the same power exactly to regulate foreign commerce as interstate commerce.

The CHAIRMAN. Would it be very difficult to determine the facts in foreign countries in such a way as to be able to apply them punitively to the carriers?

Mr. PALMER. Yes.

Mr. SMITH. Where they have no such law in a foreign country you could prohibit them, and designate the country by the fact that they have no law against child labor.

Mr. PALMER. It was left out of this bill because we felt one step at a time would do. This is a long step and great step, and we do not want to confuse the two propositions of importation and transportation between the States.

Mr. NOLAN. During the discussion by the committee of the Booher bill, in which the same principle is involved so far as Federal law is concerned, a discussion took place on a measure I had before the Interstate and Foreign Commerce Committee prohibiting the shipment of convict-made goods in interstate commerce, which is a little different from your bill, but the question came up as to the constitutionality of the measure, and that seemed to stick in the minds of some of the members of this committee. I would suggest, Mr. Palmer, that inasmuch as you and those who have collaborated with

you in the preparation of this bill must have given this question of constitutionality some thought, that if you have a brief it might be well to present it to the committee.

Mr. PALMER. I wish to say that I would not like to undertake to discuss the constitutionality of the question in five minutes, and I have had in mind exactly what you say. Before we get through with this question I would like not only to file a brief which can be printed in the hearings, but an opportunity to present an oral argument. I have dealt with committees long enough to know that an oral argument is preferable to a brief, but I would like to present both.

The CHAIRMAN. Could you indicate a Supreme Court case that has been adjudicated that would come close to throwing some light upon this subject so that the members of the committee and the country may be directed to the sources of constitutional authority relied upon?

Mr. PALMER. We take the position that under the decisions of the Supreme Court, Congress having power to regulate commerce between the States, has the same power to regulate interstate commerce as a State has to regulate intrastate commerce or commerce within its own borders, and that the Congress may go so far under its power of regulation as to prohibit from interstate commerce commodities which are produced under conditions which, within the State, would call for the exercise of the police power of the State. The cases have gone very far.

In the lottery case, for instance, which sustained an act of Congress which prohibited from interstate commerce lottery tickets, in themselves entirely inoffensive and innocent, the Supreme Court held that Congress, upon the ground that these tickets represented and stood for a business which affected the morals of the community and was against the interest of the Nation, might look to the use of the article which was asked to be transported in interstate commerce, and if that use was against the morals of the Nation it might absolutely prohibit its transportation in interstate commerce. The food and drugs act is an illustration of the same principle, and the insecticide act and in many others it was held the power to regulate commerce goes so far as to prohibit commerce in a certain commodity where the use of that commodity or the transportation of that commodity shows such a condition that makes it improper and unsafe, in the judgment of the lawmaking power, that it should be transported. For instance, there is a law upon the statute books making it unlawful to transfer loose hay upon ships in interstate commerce and also explosives in order to protect the safety of the carrier and of passengers and property carried by the carrier. It is an absolute prohibition, however, of commerce between States.

Mr. NOLAN. Let me ask you right there: Is there a law prohibiting the interstate shipment of the Johnson-Jeffries fight pictures?

Mr. PALMER. I do not think there was such a law passed.

Mr. NOLAN. There is a prohibition, I know—not particularly those pictures, but moving pictures of fights.

Mr. PALMER. I do not know about that. Now, you will see, Mr. Chairman, taking the lottery cases and the loose-hay proposition and the explosives and the pure-food acts and the insecticide act, they

have been sustained upon the principle that the Congress, in its power to regulate interstate commerce, may absolutely prohibit where the use of the commodity is, in the judgment of the lawmaking power, against the interests of the Nation.

Now, this proposition is that Congress may, under that power to regulate, also prohibit from interstate commerce a commodity which has been produced under conditions the general character of which are against the interests of the Nation and calculated to weaken the moral strength of the Nation. In other words, we say that if Congress may look forward to the use to which a commodity, which goes into interstate commerce, may be put, and say that because that use is bad therefore we may regulate its commerce by absolute prohibition, Congress may also look backward to the origin of the commodity and say that because it originated under conditions which were undesirable and offensive that therefore it shall be prohibited from interstate commerce, the article itself in each case being equally innocent in character.

The product of a child-labor factory is of itself no more deleterious than a lottery ticket, a mere piece of pasteboard. It is not the article itself which is bad or wrong, but the use or the manufacture of the article is such as makes it proper for the lawmaking power, in the right of its exercise of that power, to prohibit it from transportation.

Now, I want to call your attention to a few cases. In *Hoke v. United States*, which was decided in 1913, and which is a white-slave case, Justice McKenna says:

There is a domain which the States can not reach and over which Congress alone has power; and if such power be exerted to control what the States can not it is an argument for, not against, its legality. Its exertion does not encroach upon the jurisdiction of the States. We have examples; others may be adduced. The pure food and drugs act is a conspicuous instance. In all of the instances a clash of National legislation with the power of the States was urged and in all rejected.

I want to call your attention to a couple of other cases. In *McDermott v. Wisconsin* (223 U. S., 115), Justice Day said:

Congress may itself determine the means for barring articles from interstate commerce; and so long as they do no violence to the other provisions of the Constitution, Congress is itself the judge of the means to be employed in exercising the powers conferred on it in this respect.

This last case was in relation to the transportation of illicit and harmful articles.

Now, in the lottery case the court said this:

We should hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, can not be met and crushed by the only power competent to that end.

Mr. SMITH. That seems to be a leading case.

Mr. PALMER. That is the lottery case.

The CHAIRMAN. I think, Mr. Palmer, you have laid the general foundation of your case very clearly.

Mr. PALMER. That is all I care to do now. I wish to file with you a brief and argument, so that it can be printed in the record, and I want an opportunity for myself and some other friends of this measure to present a legal argument, because I believe that is the thing that will give most concern to this committee.

Mr. NOLAN. Not only to the committee, but to Congress.

Mr. PALMER. Yes.

Mr. HAWLEY. The extent of the employment of children and their ages will be very important also.

Mr. PALMER. Yes; the facts. The national child-labor committee, which is represented here by Dr. McKelway, is anxious to lay the foundation for this kind of legislation by the presentation of some data which they have collected. When can he take that up? If you will permit the suggestion, I think if you gave public notice that is all that is necessary. If you have the newspapers print the statement that the national child-labor committee and the child-labor associations of the various States will be heard on such and such a day and all other persons interested, you will find that all who are really interested will turn up.

(Thereupon the committee adjourned.)



COMMITTEE ON LABOR,  
HOUSE OF REPRESENTATIVES.  
*Monday, March 9, 1914.*

The committee was called to order at 11 a. m., Hon. David J. Lewis (chairman) presiding.

**STATEMENT OF HON. A. MITCHELL PALMER, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF PENNSYLVANIA.**

Mr. PALMER. Mr. Chairman and gentlemen of the committee, this is the day fixed for the hearing on bill H. R. 12292, to prevent interstate commerce in the products of child labor, and for other purposes.

At the former hearing I made a statement, which has been printed in the hearings of the committee, covering in a general way the purposes of the bill, and very briefly discussed the constitutional phase of the question, which was the matter. I think, that interested the committee most. I stated at that time I would only make a general statement, and later would present to the committee certain witnesses who would be able to present to it facts which would sustain the proposition that child labor does exist in this country as a national evil, nation wide in its extent—facts which, in our judgment, would support the proposition that this committee ought to take cognizance of that evil and make an effort to remedy it by Federal legislation. I stated also that we would be able to present an argument upon the constitutional phase of the question. I wish to say that these witnesses are here and certain volunteers, who are interested in this matter, and they are very much more able to discuss the legal phases of it than I am, and I shall ask your committee to hear them.

First, I would like to present Mr. Owen R. Lovejoy.

**STATEMENT OF MR. OWEN R. LOVEJOY, SECRETARY OF THE  
NATIONAL CHILD LABOR COMMITTEE.**

Mr. LOVEJOY. Mr. Chairman and gentlemen of the committee, I am here representing the national child labor committee, a volunteer organization which has been in existence nearly 10 years and has for its purpose the studying of child-labor conditions in various parts of the country, the drafting of bills, conferring with different State committees and organizations, campaigning to get these bills through in the different States, cooperation with the departments of factory inspection, labor commission, educational authorities, and others in the effort to get the laws enforced when they are enacted.

The national child labor committee is interested in this bill because, after 10 years' experience in helping to get better laws in the various Commonwealths, we have found that it is difficult, if not impossible, to get uniformity of action in the different States. In many instances we find that the interests opposed to the legislation sought are opposed, not because they would be opposed on their own ground, but because they feel if they passed laws that would be more stringent within their Commonwealth they would be handicapped in competition with the same interests in other States. To some extent we believe that opposition on this ground is not warranted. We take the position that child labor is the most extravagant form of labor to be employed ordinarily, and that the industries that are managed with reduced child labor, or that eliminate it, are working on more economical lines than the industries that employ child labor extensively and for long hours. But opposition to enacting laws in the States is just as vigorous from that point of view as though it were not sometimes founded on a fallacy.

Now, Mr. Chairman, the points I want to suggest to the committee are the following: First, assuming that Congress is able to pass such legislation as this, assuming it to be constitutional, I want to present to the committee the suggestion that the bill we are arguing for is not an unreasonable, drastic piece of legislation. That is the objection that has already been raised against the measure by those who do not wish this kind of legislation enacted. It has been said that we are asking the Federal Government to establish a standard that is entirely unique and does not exist to any extent, and therefore that it is unreasonable to ask Congress to take action which would not be upheld, or has not been upheld by the standards of any fair number of the people of a Commonwealth.

I wish to meet that argument with data that I have to present to the committee, but which I shall present now only in summary and which I will leave with the committee.

The first standard is the prohibition of child labor under 14 years of age in the ordinary manufacturing occupations. There are at present 40 States that have enacted legislation of this kind, either relating to a large number of industries or to certain specific industries. In addition, the law exists in the District of Columbia and Porto Rico. The bill next seeks to forbid the employment of children under 16 years of age in mines and quarries. There are 15 States that already prohibit such work by children of this age. I will not read the laws of these States, but they are contained in this brief. In addition to these 15 States there are 6 States that have such small mining and quarrying interests that there are less than a thousand people altogether engaged in the industry in any one of these 6 States. Therefore there are 21 States that either have the standard or have such slight industrial interests in the matter as to prevent any so-called practical objection to this legislation.

The third is the prohibition of child labor under 16 years of age for more than eight hours a day. The attitude of the American Commonwealths and of the Federal Government on the subject of the eight-hour a day is interesting in its present form and in its history. There are now 18 States that prohibit the employment of children under 16 years of age for more than eight hours a day.

This of itself presents a strong argument for making it a national standard, that 18 States have taken this position. But it is not as strong as the correlated facts that out of the 26 States that prohibit the employment of adults on State contracts for more than eight hours a day 13 of these States do not appear in the list of the 18 States to which I referred. That is to say, whereas 26 States forbid the employment of adults for more than eight hours a day on State contracts, only 13 of those are in the list of 18 States that forbid such employment of children under 16 years of age. In addition, there are 13 States that forbid the employment of convicts in our penitentiaries or other penal institutions for more than eight hours a day. Two of them limit the hours of work to six a day. Besides this, the Federal Government, after having for some years forbidden the employment of labor for more than eight hours a day on Government contracts, at the last Congress went even further and provided that no private contractor doing Government work should be permitted to employ labor for more than eight hours a day on private contracts or Government work.

We take the position that if eight hours a day are considered by 26 States long enough for every able-bodied adult man to work on State contracts, if eight hours a day are long enough for people nearly all adults, probably all adults to work on Federal contract work, either for the Government itself or for private contractors, if eight hours a day constitute a long enough day for convicts in our penitentiaries (and I suppose their limitation has not been established because of a desire to do kindness to those being punished, but on the same principle that if a man was sentenced to be electrocuted to-morrow morning at 9 o'clock, and at 8 o'clock the night before he attempted to commit suicide, we would send for all the doctors for miles around in order to save him and have the satisfaction of killing him officially. On that analogy I suppose the 13 States have established the eight hours a day in order to preserve the present efficiency of the laborers in the State institutions, and to preserve their efficiency for the future when they go into further punishments). If these hours are long enough for Government and State employees and convicts, we submit to you gentlemen that eight hours a day constitute a long enough day for children between 14 and 16 years of age who have just come out of school, who are in the very midst of that radical change that comes to every child at that time of life, going through the adolescent period, when they need protection and care, not only for their education and morals, but for their physical health.

The fourth standard refers to night work, and there are at present 33 States and the District of Columbia and Porto Rico that forbid the employment of any children under 16 years of age at night—a majority of the States.

A question at this point might reasonably be asked: If so many States have taken this stand—if within the past 10 years so many States have made such advances toward the standard sought in this bill—why, then, this relief from the Federal Government in accomplishing what seems to be a foregone conclusion in the future by State legislatures? The fact is, in a number of these States I have mentioned the law refers only to specific industries, and I am men-

tioning them here simply to establish a principle as a standard and not as affording the protection that is sought.

The sentiment in many of these States where the laws are more sweeping is that while they would not fear protecting the children against these conditions, yet as a matter of fact the laws are ignored. In some of the States the departments of factory inspection are entirely lacking. The State will pass a law, but make no provision for the machinery to enforce the law. In other States the inspection departments are either so limited by small appropriations or such a small force or so tied down by other conflicting influences that their efficiency is greatly impaired.

The second matter to which I desire to call your attention just for the moment is one that will be presented ably by Mr. Brinton, of Pennsylvania, formerly United States district attorney, and Dean Lewis, who will present the lawyer's point of view regarding the constitutionality of this measure. I would like, however, to read to the committee the specific objections we have heard thus far on the ground of constitutionality. Assuming now that the standards we seek here are reasonable, that we ought to ask for their establishment, the next question is whether Congress can do it—whether it would be constitutional? I suppose there is no man who would undertake in this country to ask the question whether it would be constitutional or not. As one of your Congressmen said to me some time ago, when we first presented the matter here in Washington, nobody can tell at all until it goes before the "court of last conjecture." If Congress should hesitate to pass laws on the ground that they might be declared unconstitutional, we should never have built up the body of constitutional law that now exists.

Assuming the standards reasonable, here are the objections that have been raised, and we have endeavored to prepare a memorandum giving direct quotations from decisions of the Supreme Court of the United States in answer to each one of those objections. I will not take the time to read those answers, but simply state the objections. The first objection is that it violates the rights of the States. The second objection that it infringes the right of free contract. In answer to that objection, may I ask your indulgence just to read a few sentences.

The CHAIRMAN. It is very obvious that in dealing with children there are no contracts that are binding. The State itself must provide the contract.

Mr. LOVEJOY. Yes; the only instance in which contracts with minors have been considered valid in recent years is between the guardian of a minor child and an employer in the form of an apprenticeship, and that is becoming so out of good form that in the recent Children's Code enacted in Ohio it has been left out on the ground that it establishes a kind of slavery. But justice McKenna, in the case of *Hoke v. United States* (227 U. S., 308), even denied that people have rights in the ordinary sense of the use of that word. He said, "It is misleading to say that men and women have rights. Their rights can not fortify or sanction their wrongs; and if they employ interstate transportation as a facility of their wrongs, it may be forbidden to them to the extent of the act of July 25, 1910."

The third objection is: Congress has no power to regulate the hours of labor. There is an historical answer to that showing the Supreme Court decision.

Fourth. It violates the fifth amendment of the Constitution, which provides that "No person shall be deprived of life, liberty, or property without due process of law." It does not take life, but seeks to conserve it. It does not deprive of liberty. The only liberty of which it could be charged that the citizen is deprived is the right to make labor contracts with a child, and we should like very much to have the opponents of this bill set up the claim that they own property rights in the labor of children. That would be the strongest possible argument to be advanced for seeking this kind of legislation.

Fifth. Congress has power to regulate interstate commerce, but this seeks to prohibit such commerce. It does not seek to prohibit interstate commerce at all. It seeks only to regulate the commerce that shall enjoy the facilities of interstate traffic. A man may presumably manufacture as many goods with adult labor as with child labor. Therefore the stream of his output is not interfered with unless as he may direct.

Sixth. It affects intrastate commerce as well as interstate commerce.

Seventh. Granting that Congress has power to forbid interstate commerce in goods that would injure the consumer (as in the food and drugs act), there is nothing directly injurious in goods made by children.

Eighth. This bill would establish a precedent by which the power of Congress over interstate commerce would be unlimited.

I think it is obvious, in reply to this, that the precedent, as established, already exists; that Congress has proven, by the enactment of every law, that its power over interstate commerce is unlimited; that its discretion only applies to the kind of legislation and the extent to which it applies that power.

The last objection is this: The power of Congress to regulate or prohibit interstate commerce depends on the kind of injury such commerce might do.

It is admitted that if the goods injure the consumer, either physically or morally, or if they injure the producer, Congress may regulate; but here the producer is not injured or the consumer is not injured. Goods made by children may be just as free from taint as goods made by adults. We answer that it may injure the producer—that has already been referred to—that it also does injure the consumer, not probably materially, but certainly it injures the consumer morally. You may desire, as a citizen of the State of Maryland, to refrain from using the products of the labor of little children. You may wish to know when you go into a market whether your goods are free from that taint. If you succeed in getting the State of Maryland to devise a law to limit that kind of labor, it would give you some kind of relief, but not the relief you seek. But, as a consumer in the market, it does not protect you. There is nothing in the goods to show whether those goods are made of child or adult labor. Your State is powerless to protect you. You believe the employment of young children is detrimental to their health, to their educational advancement, and directly, therefore, to our standards

of American citizenship. You wish to uphold our citizenship in the interest of the general public. You are unable to do it because in buying the necessaries of life you become an unwilling and innocent party to the breaking down of our Government standards of citizenship.

How, then, can you be relieved from this complicity in a system that strikes at the very foundations of the Republic unless by invoking the only power that will bring relief, the only power that can control the kind of stream that flows through interstate commerce?

The bill as it has been introduced by Mr. Palmer is a very brief, plain bill. We think there is no possibility of misunderstanding the bill. There are many details that might have been introduced, and the committee may discover in an investigation of the measure that it is necessary to enter a little more in detail in the matters of administration. But these questions, I suppose, will be taken up by those who are versed in the law and the details of the administration of the acts of Congress. The bill seeks to place in the hands of three Cabinet officers the administration of the law, and under their direction, as a permanent board, gives the Secretary of Labor power to enforce the law, with the assistance of his deputies. It does not, however, seek to take out of the hands of State officials any function they have already performed. A State factory inspector, truant officer, or any other citizen may bring evidence before a United States district attorney for prosecution.

One criticism at this point has been made that no State factory inspector would be interested, because he owes no duty to the Federal Government; his duty ends in his own State. This in theory is a good objection. In fact it is not. We are not demanding that any State factory inspector shall bring evidence before any United States district attorney. The bill does not try to impose any new duties on State officials, but it gives the State official new privileges.

In the long experience that Mrs. Kelley and others have had in seeking the enforcement of the labor laws in different States evidence can be brought from many sources to show that improper factory inspection and insufficient enforcement of the law have often arisen from department demoralization and hostile local courts.

For two or three years the cannery industry came under my observation in the up-State districts of New York. In many counties the whole interest, not only the manufacturers in the small towns, but the farmers who furnished the raw material for the canneries, favored the exploitation of young children in canneries. A great many cases were brought into court, but, as far as I know, during the year or two of most vigorous activity on the part of the New York State Department of Labor to bring these cases to prosecution every case was turned out of court either by the judge, who would throw out the evidence, or by a hostile jury obtained in the county, which would fail to bring in a verdict, because the sentiment of the county was favorable to the breaking down of the law. In a situation like this you would think that if a State factory inspector could go before a Federal grand jury and obtain a true bill it would be possible to secure a prosecution and uphold the standards of the law, where now he finds the law borne down by a hostile sentiment, although the sentiment of the State at large may be in favor of the law.

In the matter of penalties the bill seeks to be reasonable. The minimum fine is based at a hundred dollars, the purpose being to make the fine small enough so that the jury would not fail to convict for fear it would impose a severe punishment upon one who innocently offended. So the minimum fine is made small. It is provided in the last section of the bill that every shipment or offer of shipment shall constitute a separate offense. Therefore if it is found the offender is incorrigible, if he persistently violates the law, as many prosecutions may be brought under the law as is necessary to give him whatever amount of punishment he needs to cure him of the offense.

The CHAIRMAN. There are two propositions in this bill: First, has any child under 14 years of age worked in any mill or quarry or mine? Second, has any employer offered or in fact shipped some of the product of that mill into some other State or Territory? Those two facts, if established, would afford proof of the offense under the bill.

Mr. LOVEJOY. That is our understanding, Mr. Chairman. The bill uses the words "at any time," which I believe would cover that. The question has been raised whether if goods are found in interstate commerce, and the Federal authorities attempt to trace the goods back to the original sources, they may find that children are employed when they make the search, but would that prove the children were employed at the time the goods left the factory? They may be in transit several weeks, and if that objection is good we believe the defect could be remedied by providing that the employment of children under these conditions, forbidden at the time the goods are offered for shipment or at the time they are found in process of shipment, shall be presumptive evidence that the children were so employed at the time they were made, throwing the burden of proof on the employer to show they were not made under the conditions forbidden by law. I believe the phrase "at any time" covers it.

Mr. Chairman, that is all I wish to present at this time, and I thank the committee for hearing me. I would like to say I have a brief here that I would like to present as part of my remarks.

The CHAIRMAN. Does it contain information upon which you have been basing your remarks?

Mr. LOVEJOY. Yes, sir.

Mr. CHAIRMAN. Very well.

(The brief referred to is as follows:)

[The Federal Government and child labor. A brief for the Palmer-Owen child-labor bill by Owen R. Lovejoy, general secretary national child labor committee. House Bill No. 12292; Senate bill No. 4571.]

#### MEMORANDUM ON THE PALMER-OWEN CHILD-LABOR BILL.

This memorandum is addressed to those who are opposed to child labor. The exploitation of the labor of little children and the excessive burdens upon older children who might wisely be employed under reasonable limitations have been so generally condemned in a majority of our States, as well as in older industrial civilizations, that we here assume the need for legal restrictions. Those who do not accept this fundamental proposition are referred to the publications of the national child labor committee in promoting its general educational campaigns, and to the improved laws in 40 States enacted within the 10 years we have been at work.

We here face two questions, first, whether any kind of Federal law should be applied to this abuse; and, second, whether the Palmer-Owen bill is adapted to meet the needs.

The text of the bill is as follows:

A BILL To prevent interstate commerce in the products of child labor, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, On and after January 1, 1915, no person, partnership, association, or corporation, or any agent or employee thereof manufacturing, producing, or dealing in the products of any mine or quarry in which children under 16 years of age are employed or permitted to work at any time; or of any mill, cannery, workshop, factory, or manufacturing establishment in which children under 14 years of age are employed or permitted to work at any time, or in which children between 14 and 16 years of age are employed or permitted to work more than eight hours in any day or more than six days in any week or after the hour of 7 p. m., or before the hour of 7 a. m. of any day, shall ship or offer or deliver for shipment such products in interstate commerce.*

Sec. 2. That the Secretary of Commerce, the Secretary of Labor, and the Attorney General shall constitute a board to make and from time to time to amend rules and regulations for carrying out the provisions of this act.

Sec. 3. That for the purpose of securing proper enforcement of this act the Secretary of Labor or any person duly authorized by him shall have authority to enter and inspect at any time mines, quarries, mills, canneries, workshops, factories, and manufacturing establishments in which goods are produced for interstate commerce.

Sec. 4. That it shall be the duty of each district attorney to whom the Secretary of Labor shall report any violation of this act or to whom any State factory inspector, commissioner of labor, State medical inspector, or school attendance officer, or any other person shall present satisfactory evidence of any such violation to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay for the enforcement of the penalties as in such cases herein provided.

Sec. 5. That any person, partnership, association, or corporation or any agent or employee thereof manufacturing, producing, or dealing in the products of any mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment who shall violate any of the provisions of section 1 of this act, or any of the rules and regulations made in accordance with the authority contained in section 2 of this act, or who shall refuse or obstruct the entry or inspection authorized by section 3 of this act shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000 nor less than \$100 or by imprisonment for not more than one year or less than one month, or by both fine and imprisonment, in the discretion of the court.

Sec. 6. In prosecutions under this act each shipment or delivery for shipment shall constitute a separate offense.

The national child labor committee urges the enactment of this law because we believe it presents the most effective and direct method of putting an end to this national abuse. After ten years' experience in seeking improved legislation in the various States and attempts to harmonize State laws through general adoption of the uniform child-labor law, we have reached the conclusion that Congress should forbid interstate commerce in the products of child labor because:

(a) It is difficult if not impossible to secure uniform and effective laws in the different States. This difficulty arises from the fact that every proposition to enact an effective State law is opposed by the industries that would be affected on the ground that such a law would handicap them in competition with other States. We believe this objection is frequently unwarranted, because we maintain that child labor is the most extravagant and wasteful kind of labor. Nevertheless the opposition is quite as effective with legislative committees as though it were never founded on a fallacy.

(b) The preponderant moral sentiment of the community is hostile to child labor, but the State which does enact an effective law is helpless to protect itself or its citizens from purchasing goods produced by exploiters of young children in another State and shipped into local markets.

(c) The States are therefore powerless, except by joint and simultaneous action, effectively to prohibit child labor. Therefore, we believe if child labor is to be abolished we must invoke the power of the Federal Government in so far as Congress may act under its constitutional limitations.

Congress might act in one of two or three ways to control this situation.

1. By the power to regulate interstate commerce. This is the method proposed in the foregoing bill.

2. By the taxing power. Congress might tax all establishments employing child labor regardless of whether the goods were shipped in interstate commerce. The tax, to be effective, should be (a) heavy enough to make child labor very expensive, as in the case of the oleomargarine tax, in which case the Federal Government would place itself in the position of tolerating child labor on condition that the profits of it went into the Federal Treasury; or (b) heavy enough to tax child labor out of existence, as in the case of the white phosphorus tax. In this case the tax becomes a subterfuge rather than a direct method. The purpose is not to license, but to destroy. This, we submit, introduces a wholly new method of handling labor problems, and would provide a precedent which might seriously affect all existing labor legislation. The Government could destroy any kind of industrial activity of which it did not approve by imposing a prohibitive tax. This plan is so far-reaching in its possibilities of controlling industries within the several States that we should hesitate to invoke it until all other resources have been exhausted.

3. By the power to regulate the mails. The Government might forbid the use of the mails to advertise goods made by child labor in the same way that fraudulent or immoral matter is forbidden, or it might forbid the transportation of goods by parcel post. This method would, in our judgment, be equally indirect and would involve equally difficult questions. Furthermore, even if valid it would touch only a part of the problem, as it would have no application to freight or express business or to local advertising.

In advocating this legislation we are not unmindful of the criticisms that may be brought against any attempt to deal with this subject on a national scale and specifically against the bill we here advocate.

#### OBJECTIONS CONSIDERED.

These objections fall roughly under four divisions, which we undertake to consider for the information of people who would be glad to endorse so direct a method of dealing with the problem but are deterred by objections advanced against the proposition with such vigor and plausibility as to appear irrefutable.

We shall consider questions on the following points:

- I. On the standard of restrictions proposed.
- II. On constitutionality.
- III. On administration.
- IV. On details of inspection, penalties, etc.

#### I. A STANDARD LAW.

When the Palmer-Owen child-labor bill was introduced in Congress on January 26, it was immediately hailed by the conservative press throughout the country as a "drastic measure." Assuming for the moment therefore that such action by Congress would be considered constitutional we are compelled to face the charge that the proposed bill is drastic, that it seeks to establish standards which the American people can not tolerate.

#### IN FACTORIES.

First. Child labor under 14 years of age is to be forbidden in manufacturing establishments, canneries, and workshops which seek the facilities of interstate commerce for the distribution of their goods. To what extent is this standard already established? Forty States, the District of Columbia, and Porto Rico have laws on their statute books forbidding the employment of children under 14 years of age in manufacturing establishments. A few of these States make weakening exemptions in their laws, it is true, and several are without the proper machinery for enforcing the law. On the other hand, some States are above the standard specified, as for example, Ohio, California, and Montana.

In detail the prohibition of child labor under 14 years of age is shown in the following schedule of States.

## CHILD-LABOR BILL.

## SCHEDULE I.

States which prohibit child labor under 14 years in mills and factories: Forty States, the District of Columbia, and Porto Rico:

Arizona.	Montana (16 years).
Arkansas (except orphanage or poverty).	Nebraska.
California (15 years except child of 12, if completed school or poor).	Nevada (school hours only).
Colorado.	New Hampshire.
Connecticut.	New Jersey.
Delaware.	New York.
District of Columbia (except for poverty, or in United States Senate).	North Dakota.
Florida.	Ohio (boys 15, girls 16).
Illinois.	Oklahoma.
Indiana.	Oregon (12 years in vacation of more than 2 weeks).
Iowa.	Pennsylvania.
Kansas.	Porto Rico (except poverty and completion of eighth grade).
Kentucky.	Rhode Island.
Louisiana.	South Dakota.
Maine.	Tennessee.
Maryland.	Texas (15, about machinery).
Massachusetts.	Vermont (if more than 10 persons employed).
Michigan.	Virginia (except poverty).
Minnesota.	Washington (except poverty).
Mississippi (girls only).	West Virginia.
Missouri.	Wisconsin.

## IN MINES AND QUARRIES.

Second. The bill provides that no child under 16 years shall be employed in mines or quarries. Investigators for this committee have shown within the past few years the extensive employment of children of 12, 13, and 14 years in and about the mines and quarries of our various States. Evidence from physicians, emergency hospitals, the United States Bureau of Mines, and other sources is conclusive that mining is an extra-hazardous industry and that no child should be exposed to its dangers. We believe the employers in this branch of industry will be glad to have child labor entirely eliminated. At least the operators of mines and quarries have offered no objection so far as we are aware. The objection has come rather from those who feel that our mining communities will suffer if young children are not allowed in the ranks of wage earners. However, the restriction proposed has obtained so wide an application among the States as to be fairly regarded as the American standard. Fifteen States forbid employment of children under 16 years of age in mines and quarries. In Texas the age limit is 17, in Wisconsin 18, and in Pennsylvania children under 18 years may not be employed in quarries. In addition to these States, there are six States which have so small a number of people engaged in mining or quarrying that the need of such legislation has never been brought to public attention. Thus there are 21 States that have already established this standard or whose "practical" interests could offer no reasonable opposition.

## SCHEDULE II.

Child labor forbidden under 16 years in mines and quarries in 15 States:

Arizona.	Oklahoma.
Colorado.	Pennsylvania (inside mines, 18 years quarries).
Illinois (mines only).	Tennessee.
Maryland.	Texas (17 years).
Montana.	Vermont.
Nevada.	Washington (inside mines).
New York.	Wisconsin (18 years).
Ohio.	

The following six additional States employ less than 1,000 wage earners in mines and quarries, and therefore could have no economic interest in opposing this legislation:

Delaware (640).  
Louisiana (61).  
Nebraska (178).

North Dakota (298).  
Rhode Island (667).  
Mississippi (none).

#### THE EIGHT-HOUR DAY.

Third. The third standard proposed in this bill is the establishment of an eight-hour day for children under 16 years of age. This is considered the most radical provision of the measure and is the one which will arouse the greatest opposition. Not only manufacturers of cotton in Georgia, but textile manufacturers of Pennsylvania, Maryland, and all the New England States except Massachusetts will be equally hostile and will stoutly maintain that such a law would ruin the American textile industry.

The canners will also oppose the bill because, as in all seasonal occupations, they desire to rush their plants to the maximum while the season is on. However, if it has been determined that the youth engaged in our industrial occupations ought not to be exposed for a longer period the financial interests of particular industries must obviously submit to considerations of general welfare. This is not a new standard among us. The eight-hour day for children under 16 years of age has in the past few years become so popular a means of protecting youth in industry that 18 States and the District of Columbia now provide this limit for employment in mills, factories, and other industries. In some instances this law is weakened by exemptions, as in Indiana and Washington, but on the other hand, Porto Rico has been enterprising enough to limit the hours to six per day for such children.

The American people have taken a curious way of expressing their belief in the principle of the eight-hour day, for a further analysis of the labor laws of our States shows that some 21 States and the United States Government itself have established the eight-hour day for adults on State work. A fair number of these States have also established the eight-hour day for employment of convicts in reformatories and penitentiaries. The Federal Government by recent law has taken a further step and declared that no private contractor shall employ men for more than eight hours a day on Government contracts. Of these 21 States 8 do not appear in the list of those who provide the same protection for children under 16 years of age, while Connecticut and others provide that eight hours "is a lawful day's work," and Montana establishes the eight-hour day for engineers in mines. A total of thirty-odd States, the District of Columbia, Porto Rico, and the Federal Government recognize the principle of the eight-hour day. It can hardly be considered a radical step therefore to apply the same principle in the few remaining States.

#### SCHEDULE III.

States which limit labor of children under 16 to eight hours a day in mills and factories: Eighteen States, District of Columbia, and Porto Rico:

Arizona.	Missouri.
California.	Nebraska.
Colorado.	Nevada.
District of Columbia.	New York.
Illinois.	North Dakota.
Indiana (9 hours, with parents' consent).	Ohio.
Kansas.	Oklahoma.
Massachusetts.	Porto Rico (8 hours).
Minnesota.	Washington (for girls).
Mississippi.	Wisconsin.

The following 27 States have an eight-hour day for adults on State work:

Arizona.	Idaho (except agricultural and domestic).
California.	Kansas.
Colorado.	Kentucky.
Delaware (for Wilmington).	

Maryland (for Baltimore).	Ohio.
Massachusetts (local option for cities or towns).	Oklahoma.
Minnesota (except agricultural).	Oregon.
Montana.	Pennsylvania.
Nebraska (cities of first class).	Texas.
Nevada.	Utah.
New Jersey.	Washington.
New Mexico.	West Virginia.
New York.	Wisconsin.
	Wyoming.

Also:

United States.	Hawaii.
District of Columbia.	Porto Rico.

Among these States, the following do not appear on the first list:

Delaware.	Pennsylvania.
Idaho.	Oregon.
Kentucky.	Texas.
Maryland.	Utah.
Montana.	West Virginia.
New Jersey.	Wyoming.
New Mexico.	

This makes a total in both groups of 31 States, the District of Columbia, Porto Rico, Hawaii, and the United States. The following States limit the labor of convicts to eight hours or less per day:

Colorado.	Nevada (6 hours).
Delaware.	New York.
Florida.	Pennsylvania.
Idaho.	Utah.
Minnesota.	Wisconsin.
New Mexico (6 hours).	

Thirteen States have limited the hours of work to eight a day for all persons in mines.

#### NIGHT WORK.

The prohibition of night work by children under 16 has become so well established in the various Commonwealths that we should anticipate no opposition to its extension throughout the country had not experience proven the contrary. When the National Child Labor Committee began 10 years ago to advocate prohibition of night work for boys under 16 in the glass industry we were met in every glass-manufacturing State by the vigorous opposition of both manufacturers and workmen who claimed that it would be impossible to continue glass manufacture with this restriction. Men in New Jersey urged that they could not compete with Pennsylvania, West Virginia, Indiana, and the other glass-manufacturing States if this law were enacted. West Virginia made the same objection as did Indiana, Ohio, Wisconsin, Pennsylvania, and Maryland. During these 10 years this inhuman practice of exposing little boys to the excessive heat of the glasshouse at night has been abolished in New York, New Jersey, Ohio, Indiana, Illinois, Wisconsin, Missouri, and Kansas, leaving only Pennsylvania, Maryland, and West Virginia in the black list of States exploiting children at night in this industry.

But this advance in other States has apparently made no impression upon the manufacturers in these States. Last winter, when a bill was introduced in Pennsylvania—similar to the bill 10 years ago—to prohibit night work by young boys in factories, precisely the same opposition was advanced, with this exception, that whereas 10 years ago the Pennsylvania glass manufacturers said, "If you pass this law we can not compete with New Jersey, Ohio, Indiana, Illinois, Maryland, Wisconsin, Missouri, and West Virginia," they are now compelled to say, "We can not compete with Maryland and West Virginia."

For many years the glass industry has been heavily subsidized by the American consumer, who has paid a protective tariff in some instances as high as 60 or 80 per cent. While it has thus been fed by the bounty of American citizens, it has continued to exploit the health and educational future of American youth. If the glass industry requires even the tariff protection afforded by the

Underwood law and at the same time the sacrifice of American boys, we may as well frankly face the question whether, in the interest of humanity, we should not restore a higher tariff protection than it has ever enjoyed—high enough to protect not only the industry but the children who labor in it. Or, if this is too expensive, should we not face the alternative, which any self-respecting business man would face, of nailing up the shop and going into some occupation less brutal in its demands upon childhood?

The prohibition of night work for children under 16 has become pretty well established among our States. It is forbidden in mills and factories in 33 States, the District of Columbia, and Porto Rico. While there will be opposition from several centers in which glass, textiles, or other articles are produced at night, we are confident that the defense of such employment of young children has become so obsolete that this kind of opposition will make little impression on the fair-minded public. The schedule of States in which night work is forbidden under 16 is as follows:

## SCHEDULE IV.

Night work forbidden under 16 in mills and factories in the following 33 States, the District of Columbia, and Porto Rico:

Alabama.	Mississippi.
Arizona.	Missouri.
California.	Nebraska.
Colorado.	New Hampshire.
Connecticut.	New Jersey.
Delaware.	New York.
District of Columbia.	North Carolina.
Florida.	North Dakota.
Idaho.	Ohio.
Illinois.	Oklahoma.
Indiana.	Oregon.
Iowa.	Porto Rico.
Kansas.	Rhode Island.
Kentucky.	South Carolina.
Louisiana.	Tennessee.
Massachusetts.	Vermont.
Michigan.	Wisconsin.
Minnesota.	

## WHY THE LAW WILL BE OPPOSED.

The point of view of those opposed to this standard is most frankly expressed in a recent article in the Charlotte (N. C.) Observer. In its issue of January 31, 1914, the Observer says: "Not a cotton mill in the South could ship its goods out of the State in which they are made if this bill were a law."

The same concrete opposition is shown by the organ of the glass manufacturers in Pennsylvania and by champions of other special interests elsewhere. We are pleased to have the issue so clearly drawn.

If this statement is not true, the mills that are manufacturing cotton under humane conditions in Southern States should publicly repudiate this gratuitous defense of a condition of child employment which has become intolerable to the national conscience. If, however, the plea is true, it is time all Americans should know it. It is deplorable that the cotton-mill interests, which have for 10 years professed to be leaders in child-labor reform, but which have, through this entire period, opposed every specific attempt to improve the laws, should have their position clearly set forth. If the statement is true, we are no longer left in doubt as to the motive which has killed every creditable child-labor bill in the past 10 years in any prominent southern cotton-manufacturing State, and has as consistently opposed every such measure in northern cotton-manufacturing States. The opposition has been based on the belief that cotton can not be manufactured in Georgia, the Carolinas, or Alabama under such conditions as would be established by this law. In other words, we are warned that we can not use cotton manufactured in these numerous establishments built by American capital, protected by American laws, operated by American management and American workmen, unless children under 14 years of age are employed and unless children under 16 years are worked more than eight hours a day. To make the objection concrete, we are asked to believe that a

cotton mill in Georgia equipped with the best modern machinery, surrounded by cotton fields, located in a territory where rents are not high and the cost of living is not great, surrounded by a labor force that can be employed at low wages, and with tidewater facilities for bringing its product to the great markets of the world, can not manufacture cotton under conditions that now exist in New York and Ohio and Massachusetts where labor is costly, rents are high, and cotton fields are remote. It will require some stretch of the imagination to accept this astounding position.

## II. CONSTITUTIONALITY OF A FEDERAL CHILD-LABOR LAW.

Assuming, now, that such standards as we have discussed are desirable for the whole country, we next face the question whether such action is within the power of Congress under the constitutional limitations of our Federal Government. The specific objections thus far brought to our attention on constitutional grounds are here considered in order:

### OBJECTION 1. "IT VIOLATES THE RIGHTS OF THE STATES."

We answer that it does not undertake to dictate under what conditions children shall be employed in any State, but does undertake to protect sister States, i. e., the national domain, against the folly of any of its parts, just as Congress has not undertaken to forbid prostitution or commercialized vice in any State, but does forbid the spread of the abuse from one State to another. On this power of the Federal Government the court is clear; see *Hoke et al. v. United States* (227 U. S., 308), argued January 7 and 8, 1913, decided February 24, 1913. Justice McKenna delivered the opinion of the court, and said in part:

"There is a domain which the States can not reach and over which Congress alone has power; and if such power be exerted to control what the States can not, it is an argument for—not against—its legality. Its exertion does not encroach upon the jurisdiction of the States. We have examples; others may be adduced. The pure food and drugs act is a conspicuous instance. In all of the instances a clash of national legislation with the power of the States was urged and in all rejected."

*Cohens v. Virginia* (6 Wheat., 204). Chief Justice Marshall:

"That the United States form for many and for most important purposes a single Nation has not yet been denied. In war, we are one people. In making peace we are one people. In all commercial regulations we are one and the same people. In many other respects the American people are one, and the Government, which is alone capable of controlling and managing their interests in all these respects, is the Government of the Union. It is their Government, and in that character they have no other. America has chosen to be in many respects and to many purposes a Nation, and for all these purposes her Government is complete, to all these objects it is competent. The people have declared that in the exercise of all powers given for these objects it is supreme. It can, then, in affecting these objects legitimately control all individuals or governments within the American territory. The constitution and laws of a State, so far as they are repugnant to the Constitution and laws of the United States, are absolutely void. These States are constituent parts of the United States. They are members of one great empire—for some purposes sovereign, for some purposes subordinate."

We need not here cite the cases in which the power of Congress to regulate interstate commerce is maintained. These cases are very numerous. See *Gibbons v. Ogden* (19 Wheat. 1, U. S.). Chief Justice Marshall.

"They denied that the particular law in question was made in pursuance of the Constitution, not because the power could not act directly on vessels, but because a perpetual embargo was the annihilation and not the regulation of commerce. In terms they admitted the applicability of the words used in the Constitution to vessels, and that in a case which produced a degree and an extent of excitement calculated to draw forth every principle on which legitimate resistance could be sustained. No example could more strongly illustrate the universal understanding of the American people on this subject."

In case of *Brown v. Houston* (114 U. S., 622), Justice Bradley, the Supreme Court, used this language:

"The power to regulate commerce among the several States is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations."

Wherever cases have arisen involving this principle the Supreme Court has been emphatic. This is true even down to the case of *Hoke v. United States* (227 U. S., 308) in which Justice McKenna said:

"Congress is given power 'to regulate commerce with foreign nations and among the several States.' The power is direct; there is no word of limitation in it, and its broad and universal scope has been so often declared as to make repetition unnecessary. And besides, it has had so much illustration by cases that it would seem as if there could be no instance of its exercise that does not find an admitted example in some one of them. Experience, however, is the other way, and in almost every instance of the exercise of the power differences are asserted from previous exercises of it and made a ground of attack. The present case is an example."

**OBJECTION 2. "IT INFRINGES THE RIGHT OF FREE CONTRACT."**

The power of a State over making of contracts is defined in the case of *Sturges Manufacturing Co. v. Beauchamp* (231 U. S., 320). Justice Hughes said:

"It was competent for the State to prohibit such employment altogether," etc. This case involved damages against an employer of a child injured while working on a certificate giving a false statement of age.

Also in *Muller v. Oregon* (208 U. S., 412), Justice Brewer:

"We take judicial cognizance of all matters of general knowledge. \* \* \* Legislation designed for her (woman's) protection may be sustained, even when like legislation is not necessary for man and could not be sustained. \* \* \* The limitations which this statute (10-hour work day) places upon her contractual powers, upon her right to agree with her employer as to the time she shall labor, are not imposed solely for her benefit, but also largely for the benefit of all."

The power of Congress over making contracts is defended in *Adams Express Co. v. Croninger* (226 U. S., 491), Justice Lurton:

"The constitutional power of Congress to regulate commerce among the States and with foreign nations comprehends power to regulate contracts between shipper and carrier of shipments in such commerce in regard to liability for loss or damage to articles carried."

The court even refuses to justify a social wrong by the exercise of personal "rights." See *Hoke v. United States* (227 U. S., 308), Justice McKenna:

"It is misleading to say that men and women have rights. Their rights can not fortify or sanction their wrongs; and if they employ interstate transportation as a facility of their wrongs, it may be forbidden them to the extent of the act of July 25, 1910."

**OBJECTION 3. "CONGRESS HAS NO POWER TO REGULATE THE HOURS OF LABOR."**

Such power is not claimed. It is not assumed in this bill. But Congress has power to say whether goods shall be shipped in interstate commerce which have been produced under conditions injurious to public welfare.

See *Baltimore & Ohio Railroad v. Interstate Commerce Commission* (221 U. S., 612), Justice Hughes:

"The act of March 4, 1907 \* \* \* regulating the hours of labor of railway employees engaged in interstate commerce and requiring carriers to make reports in regard thereto, is not unconstitutional as beyond the power of Congress, because it applies to railroads and employees engaged in intrastate business. \* \* \* The length of time employed has a direct relation to efficiency of employees, and the imposition of reasonable restrictions in regard thereto is not an unconstitutional interference with the liberty of contract. The power of Congress to make regulations in regard to agencies for interstate commerce is not defeated by the fact that the agencies regulated are also connected with intrastate commerce."

Employers' Liability cases (207 U. S., 463), Justice White delivered the opinion of the court:

"We fail to perceive any just reason for holding that Congress is without power to regulate the relation of master and servant, to the extent that regulations adopted by Congress on that subject are solely confined to interstate commerce and therefore are within the grant to regulate that commerce or within the authority given to use all means appropriate to the exercise of the powers conferred."

This principle is clearly set forth by placing side by side the following two utterances of the Supreme Court, the first showing the extent of the power of a State over industry, the second declaring a similar power over interstate commerce by Congress.

*Sturges Manufacturing Co. v. Beauchamp* (231 U. S., 320). Justice Hughes says:

"As it was competent for the State to prohibit such employment altogether, it could select the means appropriate to make its prohibition effective, and could compel employers at their peril to ascertain whether those they employed were in fact under the age specified. The imposition of absolute requirements of this act is a familiar exercise of the protective power of the Government."

*Northern Securities case* (193 U. S., 197). Justice Harlan:

"Subject only to such restrictions (those imposed by the Constitution upon the exercise of the power granted by that instrument), the power of Congress over interstate and international commerce is as complete as the power of any State over its domestic commerce."

OBJECTION 1. "IT VIOLATES THE FIFTH AMENDMENT OF THE CONSTITUTION, WHICH PROVIDES THAT 'NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW.'"

1. It does not take life, but seeks to conserve it.

2. It does not deprive of liberty. The only liberty of which it could be charged that the citizen is deprived in the right to make labor contracts with a child. In the case of *Sturges Manufacturing Co. v. Beauchamp*, above cited (231 U. S., 320), Justice Hughes says: "It was competent for the State to prohibit such employment altogether." The liberty to contract for the labor of a child does not exist except in case of contract for apprenticeship between the guardian of a child and a journeyman. Even such contracts are in disrepute and in the children's code recently adopted in Ohio have been eliminated on the ground that to permit them was to permit a species of slavery.

3. It does not deprive of property—unless it can be proved that an employer enjoys a property right in the labor of children. The proof of the existence of such a property right would present the strongest possible argument for a law which would at once abolish such property. It would call for emancipation of the children of the country.

In brief, this bill does none of these three things. It does not even attempt to determine under what conditions goods shall be prepared, but only when they can become objects of interstate commerce.

See *McDermott v. Wisconsin* (228 U. S., 115). Justice Day:

"That body [Congress] has the right not only to . . . laws which shall regulate legitimate commerce among the States and with foreign nations, but has full power to keep the channels of such commerce free from the transportation of illicit or harmful articles, to make such as are injurious to the public health outlaws of such commerce, and to bar them from the facilities and privileges thereof. Congress may itself determine the means appropriate to this purpose, and, so long as they do no violence to other provisions of the Constitution, it is itself the judge of the means to be employed in exercising the powers conferred upon it in this respect."

Even were it to actually take property, it would be going no further than States have gone in the matter of labor legislation under the fourteenth amendment, which contains precisely the same limitation with reference to a State that the fifth amendment contains with reference to the Federal Government, viz: That no person shall be "deprived of life, liberty, or property without due process of law." Yet the Supreme Court in *Sturges Manufacturing Co. v. Beauchamp*, cited above, ruled that damages could be collected from an employer of a child whose age had been misrepresented to him.

OBJECTION 3. "CONGRESS HAS POWER TO REGULATE INTERSTATE COMMERCE. BUT THIS SEEKS TO PROHIBIT SUCH COMMERCE."

It is true that this bill seeks to prohibit goods made under certain conditions, and that the power to regulate interstate commerce includes the power to prohibit is clear from the following decisions. Defending act of July 2, 1890, to destroy lotteries, in *Champion v. Ames* (188 U. S., 321). Justice Harlan says:

"Are we prepared to say that a provision which is in effect a prohibition of the carriage of such articles from State to State is not a fit or appropriate mode for the regulation of that particular kind of commerce? If lottery traffic, carried on through interstate commerce, is a matter of which Congress may take cognizance and over which its power may be exerted, can it be possible that it must tolerate the traffic and simply regulate the manner in which it may be carried on? Or may not Congress, for the protection of the people of all the States and under the power to regulate interstate commerce, devise such means, within the scope of the Constitution and not prohibited by it, as will drive that traffic out of commerce among the States?"

"The act of July 2, 1890, known as the Sherman antitrust act, and which is based upon the power of Congress to regulate commerce among the States, is an illustration of the proposition that regulation may take the form of prohibition."

Champion v. Ames (188 U. S., 321), Justice Harlan:

"We should hesitate long before adjudging that an evil of such appalling character carried on through interstate commerce can not be met and crushed by the only power competent to that end."

OBJECTION C. "IT AFFECTS INTRASTATE COMMERCE AS WELL AS INTERSTATE COMMERCE."

Any State may continue to exploit its children in producing goods for home consumption. But under this law the citizens of a State can protect themselves against purchasing goods made under conditions they would not tolerate.

The position of the Federal court in the case of *Stockton v. Baltimore & New York Railroad Co.* is clear (32 Fed., 9):

"We think that the power of Congress is supreme over the whole subject (interstate commerce), unimpeded and unembarrassed by State laws; that in this matter the country is one, and the work to be accomplished is national, and that State interests, State jealousies, and State prejudices do not require to be consulted. In matters of foreign and interstate commerce there are no States."

Also in the case of *Baltimore & Ohio Railroad v. Interstate Commerce Commission* (221 U. S., 612), Justice Hughes:

"The act of March 4, 1907, \* \* \* regulating the hours of labor of railway employees engaged in interstate commerce and requiring carriers to make reports in regard thereto is not unconstitutional as beyond the power of Congress, because it applies to railroads and employees engaged in intrastate business. \* \* \* The length of time employed has a direct relation to efficiency of employees, and the imposition of reasonable restrictions in regard thereto is not an unconstitutional interference with the liberty of contract. The power of Congress to make regulations in regard to agencies for interstate commerce is not defeated by the fact that the agencies regulated are also connected with intrastate commerce."

Through regulating interstate commerce Congress has power even to regulate the conditions of manufacture. This is set forth by Justice McKenna in *Hoke v. United States* (227 U. S., 308):

"Let an article be debased by adulteration, let it be misrepresented by false branding, and Congress may exercise its prohibitive power. It may be that Congress could not prohibit that manufacture of the article in a State. It may be that Congress could not prohibit in all of its conditions its sale within a State. But Congress may prohibit its transportation between the States, and by that means defeat the motive and evils of its manufacture. How far-reaching are the power and the means which may be used to secure its complete exercise we have expressed in *Hipolite Egg Co. v. United States* (220 U. S., 45; 55 L. ed., 361; 31 Sup. Ct. Rep., 364)."

In re *Rahver* (140 U. S., 545). (In the case at bar, petitioner was arrested by Kansas State authorities for selling imported liquor on August 9, 1890, contrary to laws of Kansas. The act of Congress had gone into effect August 8, 1890, providing that imported liquors should be subject to the operation and effect of the State laws to the same extent and in the same manner as though the liquors had been produced in the State; and the Kansas law forbade the sale.) Chief Justice Fuller.

"No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which

divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so."

If we correctly interpret the court this means that Congress has power, not only to enforce the laws of a State in relation to goods shipped into it, but can even divest the goods of the character of "subjects of interstate commerce," by preventing their shipment across a State line.

Applying the principle directly to our case the court may consistently say "no reason is perceived why, if Congress chooses to provide that goods manufactured by the labor of children for interstate commerce shall be governed by a rule which divests them of that character, i. e., prevents them from becoming subjects of interstate commerce, it is not competent to do so."

The effect on intrastate commerce would be far less sweeping in our case than in the *Rahrer* case. For the enforcement of the Kansas law would directly affect the volume of liquor manufactured by reducing the available market. In our case the volume is not affected, but only the conditions of production imposed in the interest of public health and welfare. Presumably, the manufacturer can produce as much goods with adult labor as with child labor, hence the production of goods is in nowise restricted—only regulated.

**OBJECTION 7. "GRANTING THAT CONGRESS HAS POWER TO FORBID INTERSTATE COMMERCE IN GOODS THAT WOULD INJURE THE CONSUMER (AS IN THE FOOD AND DRUGS ACT) THERE IS NOTHING DIRECTLY INJURIOUS IN GOODS MADE BY CHILDREN."**

But the consumer may claim the right in the interest of social justice to know what kind of goods he is purchasing. He may be unwilling to become a party to a system of production which endangers or debases the standards of citizenship by affecting the health or education of children. He may wish to protect himself against encouraging so destructive a policy, but is powerless to do so. Nothing on the goods can enlighten him as to their source. The laws of his State can not protect him, even in a State with laws corresponding to the standards sought in this bill, as in Massachusetts or Ohio, and he may justly claim that in procuring the necessaries of life he is forced to become the enemy of his country. At present he has no escape. He is therefore injured as a consumer by having his principles outraged.

See *United States v. Brigantine William* (district court of United States for Massachusetts, 1808). Judge Davis:

"It was perceived that under the power of regulating commerce Congress would be authorized to abridge it in favor of the great principles of humanity and justice."

See *United States v. Marigold* (9 How., 560 U. S.). Justice Daniel:

"Such exclusion can not be limited to particular classes or descriptions of commercial subjects; it may embrace manufactures, bullions, coins, or any other thing. The power once conceded it may operate on any and every subject of commerce to which the legislative discretion may apply it."

**OBJECTION 8. "THIS BILL WOULD ESTABLISH A PRECEDENT BY WHICH THE POWER OF CONGRESS OVER INTERSTATE COMMERCE WOULD BE UNLIMITED."**

We answer that the precedent already exists. When the American Colonies revolted against the English Government, expressing their protest in the Declaration of Independence, and making it good in the Revolutionary War, the power to regulate commerce among the Colonies and with foreign powers left England and crossed to this side of the Atlantic. It existed in the Colonies; whether in their separate State Governments or in the Confederacy we need not here discuss. If the Union existed before the States, as Lincoln said, the power resided in the Union from the first. That power is expressed in the Constitution of the United States and has never been successfully denied by any State Government. If, on the other hand, it existed in the several Colonies, our position is equally strong.

As a matter of history, the call for the Annapolis Convention and later for the Philadelphia Convention where the Constitution was adopted grew out of a controversy between Virginia and Maryland over commerce in the Potomac River and Chesapeake Bay. Suppose we grant that Virginia then had absolute power to regulate commerce across her boundary, even to prohibit imports. Manifestly she no longer has that power. Where is it? Was sovereign power over commerce lost when the States adopted the Constitution? If not, then it

exists in the Federal Government, as it was not among the powers reserved to the States. No matter which horn of the dilemma the objector chooses, our case is equally clear. The logic in brief is this:

1. Power over our commercial relations formerly existed in the English Crown.

2. The Crown lost it when the American Colonies revolted.

3. It continued in (a) the Union, which clearly expressed it in the Constitution and has never surrendered it, or (b) in the "sovereign States," which passed it to the Union in forming the Federal Government.

The power of the Government over interstate commerce is the same as over foreign commerce.

See *Inman Steamship Co. v. Tinker* (94 U. S., 238), Justice Swayne:

"The prerogative, the responsibility, and the duty of providing for the security of the citizens and the people of the United States in relation to foreign corporate bodies, or foreign individuals with whom they may have relations of foreign commerce, belong to the Government of the United States and not to the governments of the several States; and confidence in that regard may be reposed in the National Legislature without any anxiety or apprehension arising from the fact that the subject matter is not within the province or jurisdiction of the State legislatures."

*Crutcher v. Kentucky* (141 U. S., 47), Justice Bradley:

"And the same thing is exactly true with regard to interstate commerce as it is with regard to foreign commerce. No difference is perceivable between the two."

"It has been frequently held down by this court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce."

*Brown v. Houston* (114 U. S., 622), Justice Bradley:

"The power to regulate commerce among the several States is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations."

*License cases* (5 How., 599), Justice Catron:

"And here is the limit between the sovereign power of the State and the Federal law; that is to say, that which does not belong to commerce is within the jurisdiction of the police power of the State, and that which does belong to commerce is within the jurisdiction of the United States."

*Hoke v. United States* (227 U. S., 308), Justice McKenna:

"Congress is given power to regulate commerce with foreign nations and among the several States. The power is direct; there is no word of limitation in it, and its broad and universal scope has been so often declared as to make repetition unnecessary."

*Hippolite Egg Co. v. United States* (220 U. S., 45), Justice McKenna:

"The statute (pure food and drugs act) rests, of course, upon the power of Congress to regulate interstate commerce, and, defining that power, we have said that no trade can be carried on between the States to which it does not extend, and have further said that it is complete in itself, subject to no limitations except those found in the Constitution."

*Brown v. State of Maryland* (12 Wheat., p. 419, U. S.), Chief Justice Marshall:

"All power may be abused, and if the fear of its abuse is to constitute an argument against its existence it might be urged against the existence of that which is universally acknowledged and which is indispensable to the general safety."

OBJECTION 9. "THE POWER OF CONGRESS TO REGULATE OR PROHIBIT INTERSTATE COMMERCE DEPENDS ON THE KIND OF INJURY SUCH COMMERCE MIGHT DO."

This objection admits that Congress may regulate or prohibit interstate commerce in goods that do injury:

(1) To the morals of the consumer:

As in the act of February 21, 1905, which prohibits the transportation in interstate commerce of obscene books, although the Constitution expressly guarantees "freedom of speech."

(2) To his safety:

The transportation of goods may involve danger to life, as in the act of March 3, 1905, which prohibits the transportation of loose hay on passenger steamships. The act of March 31, 1900, prohibits the transportation of explosive materials in any vessel or vehicle in interstate commerce.

(3) Or to the producer:

The producer is protected by the act of July 1, 1902, which prohibits the transportation or sale by another State of dairy or food products which have been falsely labeled or branded.

But it is contended that the products of child labor are not injurious to the consumer and offer no danger in the process of interstate transportation; that their only possible injury lies in the effect upon the children who produce them.

Assuming for the moment that this is true, apparently the types of injury above cited do not exhaust the power of Congress to intervene.

The act of February 3, 1903, prohibits the transportation in interstate commerce of cattle without a certificate from the Inspector of the Department of Agriculture. It can not be shown that all cattle shipped in interstate commerce without this certificate are diseased or worthless. Many may be entirely sound, but they are effectually barred.

It has never been contended that oleomargarine is injurious to the consumer, yet its transportation in interstate commerce or its sale in another State than the producing State is prohibited unless it is plainly marked. This provision is clearly for the purpose of protecting the producers of dairy butter.

If the facts of child labor in any part of the country are such as are obnoxious to the moral sense of the country; if children are so employed as to injure their future value as citizens of the Nation; if the State in which these abuses exist refuses or delays to abate them, then it is clearly in the province of "the people," represented in Congress, to act. The decision in the White Slave Case, under the Mann Act, is definite on this point.

*Hoke v. United States* (227 U. S., 308), Justice McKenna:

"Our dual form of government has its perplexities, State and Nation having different spheres of jurisdiction, as we have said; but it must be kept in mind that we are one people, and the powers reserved to the States and those conferred on the Nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral. This is the effect of the decisions, and surely, if the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from the systematic enticement to and the enslavement in prostitution and debauchery of women, and, more insistently, of girls."

We do not claim that the consumer is injured materially or physically by the purchase or use of goods produced by child labor. But we do claim that the consumer is injured morally; that he is powerless to protect himself by means of humane laws enacted in his own State so long as interstate commerce offers facilities for shipping into his State goods made under conditions obnoxious to his moral sense. And how can he be protected in this except by the only power competent to regulate interstate commerce?

Says Justice McKenna in *Hoke v. United States* (227 U. S., 308):

"It must be kept in mind that we are one people; and the powers reserved to the States and those conferred on the Nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral."

### III. ADMINISTRATION.

1. *Administration board.*—The responsibility for administering this law is placed upon a board composed of three Cabinet officers—the Secretary of Commerce, the Secretary of Labor, and the Attorney General. This board shall draft all rules and regulations necessary to guide Government officials in enforcing the law, and shall from time to time amend the rules as experience or changing conditions may require. We are confident that this is a far better plan for administration than to attempt on a priori grounds to construct a detailed plan of enforcement.

These representatives of the General Government are at the source of information; they represent a sufficiently wide range of public interest to insure a fair interpretation and administration of the law which no one department, for example the Department of Labor, could guarantee. The Secretary of Labor will presumably represent the interests of labor on the board, while the Secretary of Commerce will see that rules are not adopted that would be unnecessarily harsh or irritating to commercial interests. The Attorney General as a third member of the board completes the group and assures the technical wisdom of the Department of Justice in developing an effective system of administration.

2. *Enforcement.*—In the practical enforcement of the law the Secretary of Labor is given authority to investigate all industrial plants in which violations of the law may occur. He and his deputies are given the same power to investigate these industrial establishments as is now exercised by departments of labor in the various States. At the same time State factory inspectors, school-attendance officers, health officers, and private citizens are equally competent to report violations. Cases in prosecutions are to be brought before the United States district attorneys, and they are required under the law to institute immediate proceedings.

3. *Duty of citizens.*—The bill differs radically from others in respect to the duties of citizens in complying with it. One pending bill provides that every six months every producer using the facilities of interstate commerce shall file an affidavit that he does not employ children contrary to law and has not done so during the preceding six months. This is an effective way to bring the desired evidence before the officials. On the other hand, it would cause unnecessary annoyance to a large number of people. Among 100,000 employers, perhaps 90,000 have never employed child labor and do not intend to do so. In our judgment it is unfair to require of these 90,000 the form of affidavit every six months in order to help Government officials detect the violators who may be found among the other 10,000.

4. *Seeks to punish real offenders.*—We have been asked why the interstate carrier is not made a party as in other bills. The answer is that it is the producer and not the carrier who is guilty of the offense the law seeks to punish. Why, then, beat around the bush instead of placing the responsibility where it belongs, viz, on the employer of the child? And why compel every interstate carrier to act as a Government agent to bring offenders to justice? This is a public function and we question the wisdom of laying upon private enterprise the disagreeable task of acting as a Federal detective service. We believe that rules can be laid down by this board which will make it practically impossible for an exploiter of the labor of young children to pollute the stream of interstate commerce with his goods.

Undoubtedly, as shown, there would be danger to an innocent wholesaler or merchant handling the goods of an employer of child labor. This, of course, should be avoided and we have relied on the administrative board to fix rules of evidence which will insure the punishment of the real offender. If the "dealer" were omitted from the bill he could be used at any time by the producer as a cover. The law must, therefore, include all parties who handle the goods from the producer to the acceptance of shipment.

HOW, THEN, INCLUDE THE MERCHANT AND WHOLESALER AND STILL NOT SUBJECT THEM TO PUNISHMENT FOR AN ACT INNOCENTLY PERFORMED?

It has been objected that the administrative board can not determine rules of evidence, but that this is law and must be embodied in the bill itself. The purpose of the framers of the bill has been to divest it of every unnecessary detail, so as to fix public attention on the standard proposed. If the objection here made is valid, however, it can readily be met by adding to section 5 the following, adopted from the pure food and drugs act:

"*Provided*, That no person shall be subject to conviction under the provision of this section who shall establish a guarantee issued by the person by whom such goods are sold, manufactured, shipped, or delivered for shipment, and residing in the United States, to the effect that in the production, sale, or shipping of said articles no children had been employed or permitted to work contrary to the conditions hereinabove set forth. Said guarantee to afford the protection above provided shall contain the name and address of the person giving the same, and in such event such person shall be amenable to any penalty which otherwise might have attached under the provision of this act to the person seeking the protection of said guarantee."

It has also been objected that, to prove violation, goods must be traced from the point where they are discovered in interstate commerce back to the original source. That then the burden of proof is in the Government to show that children were employed in violation of the law at the time the goods were made, which might have been many weeks prior to the shipment. The answer is that the Government is entirely competent to so word the act as to throw the burden of proof on the other party. In this instance a simple solution, if Congress finds the objection valid, will be by adding, in section 5, the following:

"The employment of a child in violation of any of the provisions of section 1 of this act on the date of shipment or offer for shipment of any goods in interstate commerce shall be presumptive evidence that children were so employed at the time the goods were produced."

**IV. Inspection, penalties, etc.**—This bill gives authority to the Secretary of Labor or his deputies to visit and inspect all mining or manufacturing establishments in which goods are produced for transportation in interstate commerce, for the purpose of learning whether this law is being violated. We have been asked why it is not made mandatory upon the Secretary of Labor to make these inspections. The answer is that it would place too heavy a burden on this department of Government to require its inspection of practically all industrial establishments. In the nature of the case, it must be left discretionary. We do not, however, rest our resources for law enforcement here. Any State factory inspector, school-attendance officer, or any other person is competent to produce evidence of violation before the United States district attorney, and if at any time the representative of the Federal Government should grow lax, the machinery of the several States may come into action as in the case of violation of their own laws.

The advantage of being able to bring violators before a Federal court will be appreciated by those who have tried to administer State laws in communities where local sentiment was hostile. The nullification of the New York labor law by local courts in fruit and vegetable canning communities is notorious. The New York department of labor tried repeatedly to punish the most flagrant lawbreakers where the evidence was clear. In every instance the case was thrown out of court by the local judge, or the jury refused to render a verdict. Such hostile local prejudice can effectually paralyze the most conscientious inspection department.

That there is no danger of duplication of work by State and Federal agents is the judgment of those most competent to foresee. Before drafting this bill we inquired of factory inspection departments in a number of States as to their judgment of the machinery necessary to make such a law effective, and whether the establishment of such a service by the Federal Government would duplicate the work of State departments or would tend to standardize and increase their efficiency.

With few exceptions it was the judgment of these officers who are in direct contact with the problem that the cooperation of Federal officials to the extent of enforcing the law against interstate commerce in the products of child labor would stimulate and standardize the work of State departments of factory inspection.

The responsible officer in one State writes:

"A large inspection force would not be necessary if the thing is handled systematically and intelligently.

"One intelligent Federal inspector would handle New England by seeing to it that the States enforce their own laws.

"Federal inspection would not duplicate the work of the State inspection, and if effective would tend to stimulate and standardize State inspection."

Others reply as follows:

"A large inspection force would not be necessary, for a few Federal prosecutions would prove effective. An office in each State with one or two field men would be sufficient.

"The Federal and State inspectors would consult each other, but there would be no duplication of work."

"Federal legislation followed by uniform State laws is the only solution of the problem of regulating child and women labor."

"Federal inspection would not be carried on along the same lines as State inspection, and hence would not duplicate but strengthen and stimulate State inspection."

The maximum and minimum penalties for violation are small, in view of the serious social injury done by the lawbreaker, but experience in the enforcement of State child-labor laws has taught that where heavy penalties are provided convictions are almost impossible to secure. One of the favorite methods in local courts where the conviction is secured is to remit the fine or suspend sentence. This was done recently in a court in the vicinity of New York, where the violator was convicted of the employment of a large number of young girls. The minimum penalty for the offense was \$20, and in pronouncing sentence the

judge apologized to the offender for having to impose so heavy a fine and suspended sentence. When the court can thus come between the people of the State and its lawmaking body, popular government is destroyed. We believe that by fixing light penalties juries will be more apt to convict in cases of proven guilt, and the judge is more likely to exact the penalty required by law.

There is also to be considered the disciplinary value of punishment of one who violates through oversight or carelessness. The employment of child labor has become so interwoven in our industrial life that it does not appear to the popular mind as housebreaking or other forms of robbery. To those who offend inadvertently the small penalty provided in the law will be as valuable a deterrent as a heavier penalty.

The last section of the bill is designed to meet the needs of chronic or incorrigible offenders, for while the penalty for any given offense is small, the bill provides that "in prosecutions under this act each shipment or delivery for shipment shall constitute a separate offense."

The position of the committee in the matter of penalties is well summarized by Charles P. Neill, formerly United States Commissioner of Labor, "It was not our design to confiscate the property of a man who through some accident or oversight permits a child to be employed in violation of the law. We have, therefore, made the penalty light enough to work no hardship on first offenders, but by providing that every delivery for shipment shall constitute a separate offense, we make it possible for the Federal Government to give the incorrigible offender all the punishment he wants."

We have thus set forth in this preliminary brief our reasons for introducing and urging the passage of this bill. We shall from time to time discuss with the utmost frankness any further objections that may arise. Meantime we commit this bill to the careful and favorable consideration of the thousands of men and women throughout the country who deplore the existing abuses of child labor and are ready to have it abolished.

In brief there are but two grounds on which the measure can be seriously opposed. The first is by those who do not want little children emancipated from industrial slavery. Against these the issue is clearly drawn by all those who see that a sin against the child is a sin against the Republic and who realize that child labor is one of the most prolific causes of poverty, ignorance, industrial inefficiency, and adult unemployment.

The second is by those who would be glad to have the Federal Government furnish the relief here sought but who believe it powerless to do so because of constitutional limitations. These objections we have also endeavored to answer. We are aware that our arguments will make little impression on those who look upon the United States Government as a political expression of the Newtonian theory—a mechanical device held in position by a system of nicely fitting checks and balances. But for our part we prefer to accept the position so strikingly expressed by President Wilson in "The New Freedom." "To interpret the Constitution of the United States according to the Darwinian principle \* \* \* that a nation is a living thing and not a machine."

#### STATEMENT OF MRS. FLORENCE KELLEY, GENERAL SECRETARY OF THE NATIONAL CONSUMERS' LEAGUE.

Mrs. KELLEY. Mr. Chairman and gentlemen of the committee, Mr. Lovejoy has covered, I think, the theoretical points and a large part of the practical points in favor of the passage of this bill. There is one aspect, however, which I do not think he presented, that is the confusing experience of the people in some States under the present limitations of the activities of the Federal Government. For instance, I spend my summers in a village in Maine where there are two principal industries, fishing and the preserving of fish and shell foods. All summer long there floats around on the Atlantic Ocean, about 4½ miles outside of the seashore line, a wretched little boat occupied by two men who are without a country. They are native citizens of the State of Maine, but were found guilty of gathering in Blue Hill Bay 1,560 scallops illegally. There is a fine

by the Federal Government of \$1 a scallop for every scallop taken illegally. These men will never be able to pay that fine. So they can not land, and all summer long they live in this little boat and in the winter go up into Canada, because the Federal Government enforces very efficiently the protection of scallops in our part of Maine.

In the village is a factory which preserves scallops and fish. Under the laws of the State of Maine children can not work in that factory until they are 14 years of age, and they have very rigid limitations on their hours and a stiff educational requirement, but the nearest justice of the peace is 28 miles away.

The State of Maine is very eager to promote the canning industry. The number of child-labor inspectors is very insufficient, and the consequence is that when fish are brought in to the cannery the children are sent there by their fathers, who are a very shiftless set. They are a great deal like the man in Janet Lee's little story of Uncle William. He was asked what the people do in Maine in the long winter. He replied, "Along about the beginning of November you make a big fire in the fireplace and from then until Washington's Birthday you sit and think, and then along after Washington's Birthday you mostly just sit there." These fathers are about like that. Whenever there is any work they send their children into the factory, and the children work at any age and unlimited hours. You can understand how confusing it is to their moral sense. The Federal Government is very much interested in the protection of the scallops. Everyone is interested in scallops in that part of Maine because it is hard to get food there, and the Government is particular that the scallops should be taken care of. But it seems disproportionate that these two men should be kept out on the sea in that boat forever, and then have the children of the State of Maine encouraged by their parents to break the law whenever opportunity offers and have Uncle Sam keep his hands off out of respect for the local State authorities who do nothing at all.

The discrepancy is not always so picturesque, but in principle the same kind of thing occurs in a thousand forms all over the country. We seem to take care of everything except the most essential thing—the children, whose moral sense is being molded now. When we are dead they will be the Republic. Negatively, of course, Uncle Sam is assuming a great responsibility in his continued neglect of them, in his continued application to the minor interests of the country and continued neglect of the greater interests of the Republic.

That is the way the matter presents itself increasingly to numbers of people who from year to year become interested in the problem of the immigrant children or our own poor white children, such as these children in Maine who are losing their childhood and the privileges of education, who are going the way the English children have gone for the last 100 years.

Our industries are increasing. One State after another changes from an agricultural State to a manufacturing State. We find this process going on in the most conspicuous manner in New Jersey, where formerly there was chiefly fruit growing and agriculture, but now every steerage that comes into the port of New York brings with it children who work in the manufacturing industries there. The compulsory-education law is very laxly enforced in New Jersey. We do not ask the Government to interfere with that, but we do

believe this proposed Federal law would come to the rescue, right there in that one State, of an increasing number of children every year that passes, and there has been dire need of it.

It is over 30 years since I enlisted in the effort to get better legislation for the protection of the children. I believe there are more children under 16 years old working to-day in dangerous occupations than there were when I began, because our manufacturing industries have increased stupendously and our State legislation has halted. There has been no unity in our progress. The 48 States suggest the legs of a centipede, some going forward and some paralyzed, the total progress lamentably slow. This Republic is one, and we can not go on forever with a favored class of children in the northwestern States, where there is a requirement that the children shall not work until they are 15 years of age, and they are kept in school throughout the eighth grade, while in the southern cotton-manufacturing States there is no compulsory education, and either entire lack of legislation by the State or a collection of nugatory laws. South Carolina at one time restricted the work of children to 10 hours a day, but afterwards decided that life was too easy for them and prolonged the hours to 66 hours a week, and permitted 11 hours a day for young children. We can not, as one Nation, go on having favored children in the northwest and oppressed, helot children in the southeast. We can not go on having such a relation as that now in Pennsylvania, where children 14 years old may work all night in the glassworks, and in West Virginia there is no enforcement whatever of the child-labor law. They work at any age.

In Ohio, the State adjacent to those two, boys can not work until they are 15 years old—in manufacture—and can not work at night until they are 16, and the law is enforced. It is hard upon the children to have such discrepancies.

One argument advanced in favor of of the proposed Federal law—the Palmer bill—seems to me not very important. I refer to the plea that it is unjust to employers to have the law rigid in Ohio and lax in West Virginia. Some employers claim that it is of advantage to the employers in West Virginia. I do not think it is of advantage to any industry to exploit children. The advantage to-day is with the Ohio manufacturers, where they have a law which makes them carry on their industries on a better and more efficient plane.

In regard to child labor in the various States and the varying enforcement of the laws, referred to by Mr. Lovejoy, I was at one time chief inspector of factories and workshops in the State of Illinois. I found great numbers of children working at night—working illegally. The superintendent of a glass-bottle company told me himself that this occurred once when he was rushed with work: A widow had come to him bringing two little boys, one still in kilts and one in knee breeches. She told him that their father had just been killed on the railroad, and that they were penniless; and she wanted the older little boy to go to work in the glassworks, where he would get 40 cents a day. The superintendent was pressed for boys, and said, "I won't take the bigger fellow alone, but if you will take the baby back home and put him into knee pants, and then bring them both back in trousers, I will take them both." She did so, and those two little fellows, aged 9 and 7 years, began their work on the night shift.

That was illegal. I prosecuted that concern for its illegal employment of children. I brought the officers before a local magistrate, and the case was thrown out. Our magistrates in New York City have done that same thing within a month. They have refused outright in the court of special sessions to consider a case they did not wish to hear. I then brought suits against the Illinois Glass Co. in four adjacent counties, and all the magistrates refused to entertain a case. It was not until after my term of office came to an end that my successor began bringing cases in the northernmost counties of Illinois. This glass company was down in Alton, in the south of the State; and it was not until my successor adopted the method of bringing the officers of that company and all his witnesses entirely across the State to the northern counties that he could get a hearing at all. I believe that, in the interests of the children, one of the greatest benefits that would accrue from the passage of this bill would be the transfer of cases like that from local courts, terrorized by local large manufacturers, to Federal courts, where such terrorism does not prevail.

#### STATEMENT OF MR. W. H. SWIFT.

Mr. SWIFT. Mr. Chairman and gentlemen of the committee, I am merely here to give my experiences, after two years' observation, in that section of our country which, I am sorry to say, is one of the most flagrant violators of any law that is made with reference to the employment of young children. I have no desire to cast any reflections on my State—I may say I am from North Carolina—and I have spent two years going from factory to factory for the purpose of seeing whether or not a large number of young children were employed.

The CHAIRMAN. What is your relation to this subject?

Mr. SWIFT. I am the secretary of the North Carolina child-labor committee, the secretary of the South Carolina child-labor committee, and have been for two years paid for my services by the National Child Labor Committee.

Now, if we should find that this law is constitutional and that it is all right, then you will take into consideration whether or not it is wise in this country to have a law forbidding the employment of children under 14 years of age in the manufacture of goods to be shipped in interstate commerce, and in mines under 16. I have spent two years talking about this matter face to face with men who are in the habit of using children for the manufacture of their goods. So far as I now remember, I have never heard a single man, either in North or South Carolina, claim that it would not be a good thing for the child and for the community to forbid the employment of children. The best reason why it would be good to have such a law I heard expressed by a mountaineer. I was taking to a little body of mountaineers about this matter, and after I got through a long, skinny fellow got up and said, "I have some folks who are working their young ones in the mill, but I am with you, and I will tell you why: We are cattle raisers up in this country, and I notice when a fellow gets a good heifer up here to raise fine stock he does not put her to work." That was his reason for being in favor of a restricted law.

But, passing that over, the question will come how, in this country, are we going to be able to restrict the use of children in manufacturing establishments and in mines? There are just two possible ways. It can be successfully done by the Federal Government. In some States it can not be successfully done for a great many years by the State governments. Some of the States, of course, will enact and have enacted laws which forbid the use of children under 14 years of age or for more than eight hours a day. In other States, where the same goods are manufactured and come in competition with the goods manufactured in the other States, they do not have this law. There are other States which have an 11-hour law and 12 years as the limit, which is not observed. Take my State of North Carolina, or South Carolina, the age limit is 12 for the employment of children. The hours of labor are 11 hours a day for five days in the week, with a short Saturday. I, myself, have seen children under 14 years of age—I do not think they could have been over 13 and, perhaps, not over 12—working 12 hours all night long, and I was informed they did not even stop for a midnight lunch. In other words, North and South Carolina are engaged largely in the spinning of yarns; that manufacture has become a tremendous industry in our section—95 per cent of all yarns spun in either of these two States, or all cloth woven in those States is spun or woven by the work of children under 14 years of age; in a large number of cases under 13 years, and in many cases, from personal observation, under 12 years.

South Carolina has enforced pretty well the age limit of 12 and the 11-hour day. To show you how this thing works: In 1905 we passed a law in North Carolina that no child under 12 years shall be employed; that after 1907 no child under 13 should be employed, except in an apprenticeship capacity. Now, I think any reasonable man would understand that it was meant that after 1907 there should be fewer children than in 1905, but the fact is that as soon as we passed that law every child engaged in the manufacturing of cotton in North Carolina took an "apprenticeship." So we should not have put that exception into the law. Why did that occur? It occurred for this reason, and this is the ruling reason: A certain number of our people wanted to use children in the manufacture of goods. A certain other number of our people, either through ignorance or what they consider to be poverty, feel driven to employ their children. We have had in my State a great many agents come into the State, into the rural communities, and tell our farm people who were not very successful what a good thing it would be to live near the manufacturing establishments and put their children to work. The result is that thousands of our people have moved to these manufacturing establishments and have been in a measure successful, but a part of their success is based upon the fact that that part of their family between 12 and 14 have been working 11 hours a day in order to bring in the money which they make.

The CHAIRMAN. Mr. Swift, can you tell us who seem to be the worst offenders as parents in that respect—the colored or the white parents?

Mr. SWIFT. We have no colored factory workers in my State at all; no negroes, so far as I know, except one silk mill. No colored

people work in the manufacturing establishments. They are white people.

Mr. MAHER. Are they native white or immigrants?

Mr. SWIFT. Ninety-nine and nine-tenths per cent—

Mr. MAHER (interposing). Are native white?

Mr. SWIFT. Yes, sir; we scarcely have any foreigners down there at all.

The CHAIRMAN. Is it a fact in the South that the colored children do not work in those mills and the white children do?

Mr. SWIFT. Yes, sir.

Mr. PALMER. Why is it?

Mr. SWIFT. Well, sir; we do not want colored people in our mills. I think it has been tried, but it was not successful.

Mr. MAHER. They prefer to kill white children instead of colored children?

Mr. SWIFT. Well, that is going a little far; but they use the white children.

The CHAIRMAN. That means that the little colored children play around the streets and fields and the white children are at work.

Mr. SWIFT. Yes; it means more than that. I do not want to reflect on the State, but I have seen a great many strong, robust negro children, 12 to 14 years of age, on their way to school, while the white children were working from 6 in the morning until 8 in the evening.

Mr. MAHER. White children?

Mr. SWIFT. Yes, sir; but I must not talk too far, because I have to go back home.

The CHAIRMAN. It is your duty to tell this committee all you can.

Mr. SWIFT. I am doing it as I have seen it. You ask me why that is. I give it to you as my opinion that children in this section of our country—in my section—will not get ample protection within the next 5 and, I think, 10 years, unless the Federal Government gives it to them. Having for two years gone hard up against this proposition I am thoroughly convinced that if you leave it as it is and go there in five years you will find plenty of children under 14 years of age at work. We have had this law protecting children up to 12 since 1905. I have seen many violations of it. So far as I now know, there has not been in my State but one prosecution for the employment of a young child. The reason of it is because the manufacturers are influential. They control the thought, and I think they will do it for some time.

There is another point on this. The reason we do not do it is this: North Carolina and South Carolina are adjacent. If in North Carolina we undertook to change the age limit and the hours we are met with the proposition that South Carolina has not done it, and the people will move across the line, and then when we go to South Carolina and suggest that we change the age limit they say North Carolina will take all our wealth. A law of this kind will solve the problem, so that North and South Carolina would be working on a fair basis and fair with every other section of the country. I can not see any way by which it can be done successfully except by the Federal Government, and it will be done wisely that way. Take this as a case: You indict a man in my State. He would be indicted in the county in which the offense was committed and a jury gotten

from that county. If he was tried in the Federal court the jury would come from several counties, and if he violated the law he would be found guilty.

The CHAIRMAN. Have you traveled pretty extensively through the different States?

Mr. SWIFT. I do not know anything of any State except North and South Carolina, except Virginia. You take Virginia. It has a higher age limit than we have—two years higher than North Carolina. I remember passing from a small village in North Carolina over the line into Virginia. It looked like going into a new country. These North Carolina villages look as though school was just letting out when the children come from the mills.

Mr. NOLAN. Is there any scarcity of white children in North and South Carolina for the mills?

Mr. SWIFT. I understand there is considerable demand for children there.

Mr. NOLAN. They might experiment with the colored children.

Mr. SWIFT. I doubt it, because I do not think our white people would work with the colored people in the mills.

Mr. NOLAN. I thought possibly the reason for that was that the white children were more proficient.

Mr. SWIFT. I think there is something in that.

Mr. NOLAN. If there was a scarcity they would not hesitate in making some provisions to exploit the colored children, even to the extent of segregation. I do not suppose it is any consideration for the feelings of any of the children that prompts the employer not to employ the colored children?

Mr. SWIFT. No; I do not think that; and it is not willingness to hurt any of the children. They simply started in the business when they worked up to 13 hours a day, and they have to go slow in getting out.

Mr. NOLAN. That probably accounts for some little scarcity.

Mr. SWIFT. And then another thing: Farming has been looking up down my way and a great many people are staying on the farm and we have done a little work among these people.

Mr. KEATING. What is the sentiment in the communities in which these children are employed?

Mr. SWIFT. It is generally favorable to employment. That, in my opinion, is the worst feature of it. I know the loss of a child is a great thing. I think it is a loss to the business. In my opinion, the worst feature is to have certain communities in your State think it is all right to work children. That undermines more than anything else the standard of the whole community life.

Mr. MAHER. Are the parents who approve of the employment of their children illiterate?

Mr. SWIFT. Yes, sir; as a rule; some of them are poor.

The CHAIRMAN. They grow to be dependent on the child's labor in a degree?

Mr. SWIFT. Yes, sir. In most cases, I think, they move to the mill for the purpose of making the children contribute largely to the support of the family.

The CHAIRMAN. It does not always mean the parent is lazy?

Mr. SWIFT. Not always, but, unfortunately, it frequently does. But there is another side of it. I hold in my hand a part of a report

from the department of labor of my State. The per cent of children in 50 mills in my State runs from 16 to 80.

Mr. PALMER. Children of what age?

Mr. SWIFT. I can not tell you; nobody knows whether it is 16 or 18 or 21. I hope it is 21, but you see our department of labor is a joke. We have pretty good mine inspection. We have only four mines, and I think two of them are shut down; but when it came to regulate the employment of children in factories we bound the hands of our own officers, and they will keep bound unless the Government steps in. And, speaking of my own State, I think a large body of our people feel that it is time, since we can not do what is right for ourselves, and since these boys and girls are as good people as this country affords, for this Congress and this Government to give to our boys and girls the same chance as the majority of the children of this country have.

(The committee then took a recess until 1.30 p. m. same day.)

AFTER RECESS.

The CHAIRMAN. You may proceed, Mr. Palmer.

Mr. PALMER. Mr. Chairman and gentlemen of the committee, I desire next to introduce Mrs. John B. Webb, a representative of the New Jersey State Federation of Women's Clubs.

**STATEMENT OF MRS. JOHN B. WEBB, REPRESENTING THE NEW JERSEY STATE FEDERATION OF WOMEN'S CLUBS.**

Mrs. WEBB. This is a most unexpected honor, Mr. Chairman, and I regret to say that I am not prepared to offer anything to the committee at this time. I only come to you to plead, in the name of all the women of the State of New Jersey, for the children of the Nation. We have a problem, as you know, with child labor in many places in the State of New Jersey, and we feel we can not meet these problems without the aid of a bill of this kind; that otherwise we can not protect the children. We are trying to frame some child-labor bills there which will cover the interests of the children and protect them, but we find it is going to be almost impossible to get such a bill through unless we have back of us this Federal bill.

I am not prepared at all to make any statements about the conditions in New Jersey. I think, perhaps, those are quite familiar to you all, but I do appeal to you, in the name of the women of New Jersey, to help us pass this bill to protect the children.

**STATEMENT OF MISS JULIA C. LATHROP, OF THE CHILDREN'S BUREAU, DEPARTMENT OF LABOR, WASHINGTON, D. C.**

Mr. PALMER. Mr. Chairman and gentlemen, I take pleasure in now presenting to you Miss Julia C. Lathrop, who is, as we all know, at the head of the Children's Bureau of the Department of Labor.

Miss LATHROP. Directly the bureau was organized, its correspondence revealed afresh a country-wide desire to get rid of child labor, a conviction that there must be abolished any condition which defrauds the child of his right to education and a fair start in life.

In addition to the correspondence, which showed this very wide popular feeling, last year it was my duty to go much about the country stating as well as I could the purpose and scope of the bureau and I found everywhere groups of people very deeply interested in the question of preventing child labor, persuaded that it is the duty of the public, not merely negatively to abolish the premature labor of children, but to provide those opportunities for the just development of every child which the ideal of a sound democracy requires. These were people not always skilled in legislative wisdom, but who were only waiting for the passage of such a measure as this to take hold of the task of substituting for the labor of children the training which is their due, of putting child training in the place of child labor. The passage of such a measure as this would undoubtedly signalize a distinct and immediate advance in the provisions for the hygiene and education of children.

The CHAIRMAN. You are perhaps prepared to give an opinion upon a question like this: Do the medical authorities find it to be a fact that the stress of continuous labor, industrial labor, affects the growth of the child, the ordinary physical development of the child?

MISS LATHROP. I think that all European and American authorities alike agree upon that. Of course the labor of children is very largely surrounded by such other disadvantageous conditions outside of the factory as go to make the factory injury, from impure air or overspeeding, even more disadvantageous to the child than if the child came from a happy and luxurious home, to which he or she returned, where health and comfort were preserved in every respect outside of the hours of labor.

The CHAIRMAN. What age or period of the child's life has been indicated by the physicians as the appropriate age at which labor could safely begin?

MISS LATHROP. I am not aware that there is any uniform decision by the medical profession on this matter, but I notice that every year those who study most carefully the growth and development of American children push that age further and further ahead, whether they are educators or whether they are physicians, or whether they are interested in any form of civic improvement where the interests of the child are concerned.

The CHAIRMAN. I do not know whether that indicates a general sympathy for childhood or whether it indicates a medical opinion as to the fact.

MISS LATHROP. I think it very emphatically indicates a medical opinion. Such material as was gathered by Josephine Goldmark in her book on Fatigue and Efficiency is testimony in that particular. There are many medical opinions and brief studies scattered through the whole literature of child labor, but thus far, with the exception of the volume on Fatigue and Efficiency, I know of no general compilation.

Mr. PALMER. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes; certainly.

Mr. PALMER. Miss Lathrop, everybody recognizes there are certain kinds of labor which are healthful for young growing persons. There is no attempt being made anywhere, through Europe or any-

where else, to build up a sentiment against labor of all kinds for children, is there?

Miss LATHROP. I suppose there is everywhere an effort being made to build up a sentiment against labor for children during the years in which the consensus of educational and medical opinion alike indicates they should be going to school, getting the training of the hand and mind alike, which will enable them to make the most of their resources later in life.

Mr. PALMER. It is recognized that labor in the summer time, in school vacation, any outdoor healthful pursuit, is not necessarily detrimental to a child's welfare?

Miss LATHROP. Under proper regulation as to hours and supervision I think that would be recognized.

Mr. PALMER. The whole evil arises out of the exploitation of children in mills, factories, mines, quarries, and all that sort of thing, where every day's labor decreases the moral and physical efficiency of the child.

Miss LATHROP. I do not know that it would be a popular thing to say, but it is my opinion children may be exploited on the farm as well. But that certainly is not within this bill.

Mr. PALMER. How far has your bureau gone in the investigation of this child-labor proposition, so far as gathering statistics may be concerned?

Miss LATHROP. I should like to explain to this committee the attitude of the Children's Bureau. The bureau was confronted by the field marked out for it by this committee, namely, to investigate and report upon all matters pertaining to the welfare of children and child life among all classes of our people, and at the same time by the fact that its staff consisted of 15 people and its appropriation \$25,640. At the same time the \$300,000 investigation by the Bureau of Labor into the labor of women and children was still not entirely published, and it seemed grossly absurd to put the two field investigators provided by the law for the Children's Bureau on this subject; so that we did not begin our field inquiries by further investigation of child labor. We have, however, one member of our staff whom we designate within the bureau as expert upon industrial matters, and who is now carrying on inquiries as to the method by which labor certificates are granted and as to the frequent changes in the work of children between 14 and 16, as to how far such changes are educationally valuable or demoralizing to the child.

The CHAIRMAN. Is there not a publication of the Department of Labor on child labor forthcoming and ready for print?

Miss LATHROP. Of course they have published certain material on child labor. The full report on woman and child wage earners in the United States contains much material on child labor, and in the reports on the glass industry and textile mills there are special sections on the relation of labor to health. Thus on pages 385-386 in the report on the textile mills (Vol. 7) the greater liability of children to accident is shown, and pages 47-59 of the report on the glass industry (Vol. III) describes the great physical strain of the work for boys, and pages 433-447 the relation to health of the work

of girls in this industry. Volume XIV, on the causes of death among women and child cotton-mill operatives, is suggestive in this connection. I have been told that it is intended to make a popular condensation of all the reports. I do not know how this is progressing.

Mr. HAWLEY. May I ask a question, Mr. Chairman?

The CHAIRMAN. Certainly.

Mr. HAWLEY. There is in the world a growing sentiment in favor of vocational education. You have been interested in that?

Miss LATHROP. Very greatly.

Mr. HAWLEY. There is nothing in this bill that would interfere, you think, with the carrying out of that plan of vocational education?

Miss LATHROP. If I did not think the bill would greatly serve that end I should be absolutely against it. There is appended hereto a statement prepared by Dr. Arthur Reed Perry, of the Bureau of Labor Statistics, under direction of Dr. Royal Meeker, the commissioner of the bureau. I think this statement is unique, and feel that I can greatly clarify my statement by adding it.

There is now being prepared by Arthur Reed Perry, M. D., through the United States Bureau of Labor Statistics, an extension of his 1905 to 1907 study of factors that shorten lives of woman and child operatives in cotton manufacturing cities (published as Vol. XIV of the nineteenth volume report upon woman and child wage earners, S. Doc. No. 645, 61st Cong., 2d sess.), that will be based upon accompanying circumstances or phenomena of the lives of all persons aged 10 to 64 years dying in Fall River, Mass., during the semi-decade 1903 to 1912—the initial study (Fall River) in a survey series of anti-longevity causes in manufacturing cities of foremost rank in the several industries.

Possibly the most conclusive argument against allowing children under 16 to work is the showing, both in Vol. XIV, p. 72, and in this coming supplementary study of Dr. Perry's, that girl cotton operatives (most of whom even in New England, prior to 1912, began millwork before their fifteenth birthday) after working in the mill only a few years have become very much more liable to die than holds true of the aggregate other girls of their city of the same age.

Table 84, page 400, of this Volume XIV, shows that a sixth (16 per cent) of the female operators dying from tuberculosis within the cities included in that study began millwork before they were 13 years of age.

Tenacity of life is at its zenith around the age of puberty. Conditions must be superlatively bad, therefore, in order to kill outright children either near the age of 14 or those on the threshold of youth in the post-puberty age period, 15 to 19.

Vitality conservation quite as much as stature increase is the function of adolescence.

This is the period, therefore, during which should be jealously safeguarded for the child his inherent right, perquisite, pleasure, and duty to accumulate and save from nature's gifts of vitality, lavishly bestowed upon him daily, a store that later drawn upon will predicate a favorable issue over misfortune and accident, stress and disease.

Nevertheless advantage has been taken of their tenacity of life to impose upon children working days so long, tasks so unsuitable, or workshops so unhygienic that, barely to exist as he is, the child is obliged each day to draw upon and use what nature intended for present growth and for later emergency use to insure longevity.

For even in these childhood, post-puberty, and youthful years of designed vitality-penty apparently for some operative girls the exigencies of daily living already had used up their reserve strength, because in three cotton manufacturing cities during a period of three years the number of deaths from tuber-

culosis to each 1,000 girls of each designated occupation class of specified age Volume XIV shows (Table VI, p. 193) to have been as follows:

Age groups.	Mortality from tuberculosis among females of Fall River, Mass., Manchester, N. H., and Pawtucket, R. I., in 1905-1907.		
	Cotton operatives.	All other (nonoperatives).	Total both classes.
Death rates:			
10 to 14.....	2.21	0.54	0.59
15 to 19.....	2.19	1.10	1.54
20 to 24.....	3.04	1.21	1.93
Percent of excess in death hazard of operatives over nonoperatives:			
10 to 14.....	309		
15 to 19.....	100		
20 to 24.....	115		

Operatives thus, of the most youthful age group were four times; those of the post-puberty group were twice; and those of the young adult group—20 to 24—were about two and a half times as liable to die from tuberculosis as were, respectively, the girls of like age that did not work in cotton mills. It must be remembered that one-half of all female operatives are aged 15 to 24 and that, therefore, this group is a fair sample of the cotton industry.

It is scarcely less than obvious that the groups 15 to 19 and 20 to 24 together comprise about the very earliest age period in which "premature age at beginning wage earning," or occupation, childbearing, or, in fact, any other life incident or accompanying circumstance, however debilitating, could have so depleted a worker's native store of resistance and vitality as to have resulted in death.

And yet Volume XIV has shown, furthermore (Table 52, p. 325), that thus early in life, exercise even of the natural function of childbearing, by Fall River operatives of 1905 to 1907 was attended with an enormously greater hazard to life than it was for nonoperatives similarly aged. (Operative rate from parturition .56 per 1,000 of whole population aged 15 to 24; nonoperative rate from the same cause .06 per 1,000 of whole population aged 15 to 24.)

Moreover, the same table shows that the whole liability of female operatives aged 15 to 24 to die from any and all causes (5.50 per 1,000) was more than one and three-quarters times as great as obtained in the case of nonoperative girls of the same age (2.96 per 1,000).

Obviously it may be objected that there is an appreciable degree of inequity in comparing the death rate of a class—the operatives—all of whom work, with the death rate of nonoperative girls of the same age, since some of the latter are not wageworkers.

The excess hazard of the operatives, however, is so enormous as more than to offset any unfairness in the comparison.

To guard against even the possibility of misapprehension perhaps it should be pointed out also that there is a considerable degree of probable unfairness in comparing, as respects their hazard from parturition, the whole class of operatives with that of nonoperatives, irrespective of conjugal condition.

Because, though at the age of 15 to 24 the female population of Fall River, married and single together, is almost equally divided between operatives and nonoperatives, it is extremely likely that operatives constitute a considerable majority of the whole married population of this young-age group. Still the comparison, though admittedly inexact, can not mislead, because (all) operatives, as has been noted above, were 10 times as liable to die from childbirth as were (all) nonoperatives of the same age, and there is no probability that married operatives were anything like 10 times as numerous, even in age group 15 to 24, as were the married nonoperatives.

It is now becoming in some degree appreciated how much misery and inefficiency result from long-unrecognized defective vision, and how large is the number of deaths in middle and later life that basically are attributable to unidentified lesions caused in childhood by the so-called mild contagious diseases—as measles and whooping cough—as well as to the severer ones—scarlet fever, diphtheria, pneumonia, tonsillitis, and influenza.

Hence accompanying the crusade for a high age limit for beginning wage earning, and of no less value practically in conserving health through preventive measures, should be a demand for an "employment physician" with power, after a thorough physical examination of applicants, to refuse an employment permit to anyone until crippling defects of vision, nutrition, or disease shall have been corrected, and to withhold from any applicant a permit to work in such industries as shall be deemed grossly injurious to the applicant's longevity. The applicant, for example, with incipient tuberculosis should be withheld from employment in indoor dusty occupations, and he with a leaky heart valve should be kept out of the heavier and physically more strenuous trades. Moreover, whenever change of employment is sought it should be the physician's duty also to reexamine each such applicant and to grant or refuse a certificate for reemployment, whether in the same or in a new industry, wholly with reference to the applicant's physical condition at that time. Incidentally, through such reexaminations ultimately there may be learned much respecting the effect of occupations upon the health.

(Respectfully submitted March 18, 1914, by Arthur Reed Perry, M. D.)

**STATEMENT OF MR. JASPER YEATES BRINTON, OF THE PHILADELPHIA BAR, PRESIDENT OF THE PENNSYLVANIA CHILD LABOR ASSOCIATION.**

Mr. PALMER. Mr. Chairman, I desire to next present to the committee Mr. Jasper Yeates Brinton, a member of the bar of Philadelphia and the State of Pennsylvania, and president of the Pennsylvania Child Labor Association.

Mr. BRINTON. Gentlemen of the committee, from Pennsylvania we come to this hearing with high hopes. Session after session at our legislatures we have been met by the cry from the manufacturers, "State legislation is unfair. You ask us to compete with other States of different standards. This interstate competition will ruin our business. If we must advance, let us advance together." It is to meet this argument, which however unfounded in fact it may be in any particular instance, is yet the most effective argument that confronts the child-labor cause in America to-day, that this bill has been introduced, and you can believe that we, in whose ears it is still ringing, come with a peculiar conviction and enthusiasm in support of this effort to lend Federal aid to what has become a truly national evil.

For let me remind you that it is from the Federal Constitution that every manufacturer is guaranteed the right to ship his goods freely into whatever State he pleases. By its wise prohibition no other State may lift a ban against him at its borders, whatever unequal advantage he may have enjoyed or from whatever inhuman working conditions his product may have sprung. The Nation may do this (and has done it in the convict-labor clause of its tariff laws) under the powers surrendered to the States by Congress. But not so the States themselves, who have parted with this power. There was a day when this was otherwise. But it was an evil day. It has been called the critical period of American history. The States could then prohibit as they choose, and it was largely due to the evils which attended the lodging of this particular power in so many sovereignties that the new Constitution was adopted, in which for the good of all it was surrendered to the National Government.

The condition which confronts us to-day is therefore in actual fact largely a problem of interstate competition through interstate commerce; a condition emphasized in every child-labor campaign in

every State; a condition certain to grow more hopeless as conditions of competition become constantly more intense. Interstate commerce is at the root of the evil as it exists to-day. The interstate-commerce power alone is adequate to effectively relieve it.

May such power be constitutionally invoked, as in the bill which is now before the committee? Or rather (assuming that the passage of the bill is to the interests of the people, and if it is not so it will not be passed), can such a case be made against its constitutionality, that it is the duty of Congress to anticipate a certain adverse decision by the Supreme Court and therefore to defeat the measure?

Nor is it common experience that a problem carefully and accurately stated is often a problem half solved. To avoid covering unnecessary ground, let me therefore spare a few minutes at the outset of our discussion, in endeavoring to reduce to its narrowest limits, the precise question we have to meet. For surely, so far as the Supreme Court has rendered decisions covering any features of the situation presented by this bill, we need waste no time in going behind those decisions, but may use them as a starting point of our discussion to-day. How far, then, have these decisions gone? What conclusions can be incontrovertibly drawn from them? What difference, if any, is presented in the actual facts between the decided cases and the act before us? And what, then, are the considerations to which we must look for light as to the application of the principle found in these decisions to the legislation now proposed?

To put the matter as briefly as possible, I begin by asking you to have in mind two comparatively recent laws, one of which has been conclusively sustained by the Supreme Court in a decision familiar to you all; the constitutionality of the other of which has been affirmed by many of the lower courts and assumed in discussions of that act before the Supreme Court and tacitly accepted by Congress and the Nation.

I refer to the lottery act and to the food and drugs act, from the principles of which I ask you to note these two incontrovertible conclusions—conclusions sustained by numerous prior decisions, with the recital of which I will not burden you—equally applicable to the case before us.

The first is, that lottery tickets and misbranded goods are articles of commerce, and the second is, that regulation of interstate commerce in these articles may take the form of prohibition.

Now, you will, of course, note at once that there is a considerable distinction between these two acts and those earlier acts, familiar to you all, which have prohibited the carriage of articles likely to endanger commerce itself, as, for instance, nitroglycerine, or loose hay, or other combustible materials. In these acts the prohibition was designed primarily to protect the people from dangers incident to the physical carriage itself. In the two later acts, however, with reference to lotteries and adulterated and misbranded food products (as also in the case of those various other acts relating to falsely-branded dairy products and condemned carcasses of animals, and quarantined articles and obscene literature), it is obvious that the courts have passed beyond the consideration of a danger to commerce inherent in the articles, and have looked to a possible injury to the public resulting from the future use of the articles by the consumer.

after commerce has been terminated. The use of lottery tickets is calculated, in the judgment of Congress, to debauch the public morals. The circulation into commerce of misbranded and adulterated goods is calculated to deceive and injure the people who use such goods.

The single question, then, which presents itself is this: Can a controlling distinction be drawn between a power in Congress to prohibit the interstate transportation of articles adapted to deceive or defraud the consumer, or injure his health, or morals, and articles whose manufacture has injured the health and morals of the children employed therein? In other words, may Congress look forward to the effect of such articles upon the consumer for whose benefit they are produced, but not backward to the effect of their manufacture upon the worker and the industry by which they are made?

In answering this question, it is important to remember at the outset that we are concerned solely with the problem as to whether the proposed legislation is or is not a regulation of interstate commerce, within the meaning of the Constitution. If it is a regulation (and does not violate some specially protected right under the Constitution) it is constitutional. If not, it is not constitutional, and the question as to whether it incidentally affects the conditions of manufacture in a given State—conditions over which Congress itself has no primary right of control—is altogether beside the point. I say it is important to remember this, for at the bottom here is to be found the real source of all the objections that have been made in the past to legislation similar to that now before you.

It is an argument, indeed, which has, as I see it, for once deceived the legal judgment of so great a lawyer as our last President—and when I say this I speak with a sincerity of respect born, not from political agreement, but from a personal study of every judicial decision which this great judge wrote. Sometimes, indeed, I wonder if any other soul alive, except himself, can say as much as this. But here, as in other matters, we have disagreed.

In a few sentences, in his recent little volume on popular government, he attacks the proposed bill, and sums up his argument in this sentence:

“In other words, it seeks indirectly, and by duress, to compel the States to pass a certain kind of legislation, that is completely within their discretion to enact or not.”

Mr. HAWLEY. What is he referring to?

Mr. BRINTON. This sort of legislation. That quotation is from his little book entitled “Popular Government.” It is published by the Yale University Press.

Let me call attention to this fact: “To compel the States to pass a certain kind of legislation.” I want to impress that upon the committee, because it is an argument that has been brought up and will be brought up again. But this bill does not compel the States—does not invite the States—to pass any kind of legislation. Absolutely it is an incorrect statement. The bill concerns itself only with the legislation by Congress, and only with that phase of commerce that is under the sole jurisdiction of Congress, and in so far as it is true that it indirectly affects conditions in the States, this fact is equally true of the food and drugs act and a dozen other acts of similar nature. I ask you to consider that objection.

The CHAIRMAN. Of course, as a lawyer you want to meet the difficulties.

Mr. BRINTON. That is what I am here for.

The CHAIRMAN. In that connection I want to suggest hypothetically this state of affairs: In dealing with the question of pure food you have presented a problem like this: The State in which the goods were manufactured had no power to legislate with reference to their interstate commerce.

Mr. BRINTON. Precisely.

The CHAIRMAN. The State to which they were consigned and in which the consumer lived, whose health might be affected by their use, had no power to deal with the interstate commerce in such matter. There was only one legal power, therefore, that could effectuate the object of restricting the interstate commerce in pure food, and that was the power of Congress. Does that legal fact present itself here? A State that now has no 14-year or 16-year provisions might enact a provision, and they would be legally affected. A State where the article is manufactured might do so. That presents the legal difficulty, although I recognize the competition fact is a dominant circumstance. I would like to hear you with reference to that situation.

Mr. BRINTON. That is what we want to meet here. But the State certainly has the right, in the first place, I think, Mr. Chairman, to prevent the sale within its borders of foods or drugs which are going to injure the health of its people, irrespective of whether they are or are not articles of interstate commerce. That was decided in the oleomargarine cases. While until the Wilson act was passed surrendering certain of the rights of Congress, the State could not prevent the sale of whisky imported from another State, the rule is different in the case of poisonous food products. Their right here arises from the same power as their right to pass child-labor laws. The analogy is just the same. They have a right to protect themselves against child labor, if they want to do so, so far as it is confined to their own State, and they have a perfect right to pass their own food and drugs act, have they not?

The CHAIRMAN. I might have some doubt about that. The State of Pennsylvania would have the power, for example, to say that diseased meats should be subject to certain disposition, after they reached the State. That is your position?

Mr. BRINTON. Yes; after they reach the State, because, under the police power which applies to all goods coming into the State, it could regulate anything affecting the health or morals of the people.

The CHAIRMAN. And that answers the suggestion that only Congress could have dealt with the pure-food situation?

Mr. BRINTON. But the point I want to make is this, that the passage of the pure food and drugs act certainly has the effect of establishing a national standard for the States. The State might not want to have that national standard. The State might say, "We do not want any of these standards in our State. We are self-governing." But that is only the indirect result, is it not? The passage of the food and drugs act may, therefore, raise the standard of all the States, because nobody can make up drugs to pass out of the State that do not comply with the national standard; and, of course, we are only considering it in the broad view, and assuming

that most manufactured articles are made with a view to the possibility of their entering interstate commerce. I say the indirect result of the food and drugs act is to lift the standard for the States, and the indirect effect of this is going to be to lift the standards of the States, and that there is no difference whatever between them on that score.

And yet no one has seriously objected to the food and drugs act upon this account.

The argument, then, looks to an incidental effect, that ignores the inherent nature of the law as a prohibitory commerce act, and its limitations to a sphere strictly within the control of Congress.

This proposition has been clearly stated by one of the most distinguished authorities on constitutional and administrative law in the United States, Prof. Frank J. Goodnow, of Columbia University, now constitutional adviser of the Chinese Government and president-elect of Johns Hopkins University, in a small but very notable volume entitled "Social Reform and the Constitution," in which he unequivocally declares in favor of the proposed legislation. Let me give you his words. After referring to the provision of the Constitution that the laws of Congress made in pursuance of the Constitution shall be the supreme law of the land, Prof. Goodnow makes this statement:

Men's minds are peculiarly twisted when they argue, under a constitution containing such a provision, that a regulation purporting to be a regulation of interstate commerce is not such because it will necessarily have the incidental effect of regulating conditions of manufacture. The only reason why it will have this incidental effect is because in the economic conditions of the present day manufacturing has ceased to be a State, and has become an interstate matter. A State with no factory legislation can, in the present conditions of interstate transportation, underbid a State which seriously attempts to improve the conditions of manufacturing. The denial by the Federal Government of the right of the States to protect their laboring population against competition based on cheaper and lower conditions of labor, really makes it incumbent on the Federal Government to exercise its constitutional powers to the fullest extent in the interest of the laboring classes, which the States can no longer protect.

**THE CHAIRMAN.** As an original proposition, without reference to the effect upon the employment of the child, would Congress have the power to say, with pure reference to commerce itself, that conditions which render participation in that commerce by the manufacturers of the different States unequal and discriminatory should be eliminated, and might not that condition be the employment of child labor in one State, prohibited in another?

**MR. BRINTON.** I think the argument must go to that extent. I shall come to that in just a moment. I want to meet that very question as to how far it is going to lead us. But for a moment I would like to return to the question I was discussing.

Is there a substantial distinction in principle between an act of Congress which regulates interstate commerce in an article with respect to certain qualities likely to affect the consumer, and an act which regulates commerce in articles with respect to the effect which the manufacture of such articles has had upon industry and the labor employed therein; in other words, is the protection of industry—the conservation and protection of its labor—a proper subject in whose interest may be enlisted the inter-state commerce power of the Constitution?

For a denial of any such valid distinction let me quote from a recent unpublished article by Prof. W. W. Willoughby, of Johns Hopkins University, lately president of the American Academy of Political and Social Science, and, like Prof. Goodnow, one of the leading authorities in the country upon constitutional and administrative law. In an earlier treatise upon constitutional law Prof. Willoughby expressed a doubt as to the constitutionality of the legislation now proposed. In the article to which I refer, however, he presents in no uncertain terms his later opinion in support of this legislation:

The distinction between conditions of production and purposes, or modes of use, of commodities, though a real one will probably not be held controlling. In neither case has Congress a direct regulative power—over neither the conditions of production nor the mode or use of consumption. If, therefore, in either case, the prohibition can be construed to be, in fact, a regulation of interstate or of foreign commerce, neither the ultimate effect nor the legislative intent embodied in the law may be inquired into by the courts. In result, then, it is to be admitted that the lottery case is authority for the doctrine that interstate carriers may be prohibited from carrying, or shippers or manufacturers from sending, from State to State and to foreign countries, commodities produced under conditions so objectionable as to be subject to control as to their manufacture by the States under an exercise of their police powers or of a character designed or appropriate for a use which might similarly be forbidden by law.

Is this conclusion correct? Does the protection of industry, then—the protection of the manufacturer and the protection of the worker who produces these articles of commerce—fall within the rightful function of the interstate commerce power of the Constitution?

With this precise question before us, in the light of what I have said, let me invite your consideration for a few minutes to certain propositions which, to my mind, have a very important bearing upon the interpretation of this clause.

The power of which we are speaking is to be found in some 21 words of the Federal Constitution, as follows:

The Congress shall have power \* \* \* to regulate commerce with foreign nations and among the several States and with the Indian tribes.

As you will see, three powers are here included in a single sentence, of which the power which we are now considering appears as second among the number.

Obviously there is nothing in the wording of this clause to suggest a distinction between power to regulate commerce with foreign nations and the power to regulate commerce among the several States, and, as a matter of fact, it has been repeatedly declared that, so far as the phrase which I have above referred to is concerned, this power is identical.

Says the great Marshall in *Gibbons v. Ogden*, that landmark on the interstate commerce clause: “ \* \* \* the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions in the exercise of the power as are found in the Constitution of the United States.” (9 Wheaton, 194.)

Says Mr. Justice Johnson, in the same case (9 Wheaton, 228):

The power to regulate foreign commerce is given in the same words and in the same breath, as it were, with that over the commerce of the States, and with the Indian tribes, but the language which grants the power as to one

description of commerce, grants it to all; and, in fact, if ever the exercise of a right or acquiescence in a construction could be inferred from contemporaneous and continued assent, it is that of the exclusive effect of this grant.

Says Mr. Justice Taney in the License Cases (5 Howard, 504, p. 578):

The power to regulate commerce among the several States is granted to Congress in the same clause, and by the same words, as the power to regulate commerce with foreign nations; and coextensive with it.

Says Mr. Justice Matthews, in *Bowman v. Chicago & North Western Railway Co.* (125 U. S., 465, p. 482):

A power conferred upon Congress to regulate commerce among the States is indeed contained in the same clause of the Constitution which confers upon it power to regulate commerce with foreign nations. The grant is conceived in the same terms and the two powers are undoubtedly of the same class and character, and equally extensive.

Says Mr. Justice Bradley in *Brown v. Houston* (114 U. S., 622, 630):

The power to regulate commerce among the several States is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations.

Says the same Justice in *Crutcher v. Kentucky* (141 U. S., 47, p. 58):

It has frequently been laid down by this court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce.

And after pointing out that the power of Congress includes the duty of providing for the security of the people of the United States—in relation to foreign corporate bodies, and foreign individuals with whom they may have relations of foreign commerce, Justice Bradley continues:

And the same thing is exactly true with regard to interstate commerce as it is with regard to foreign commerce. No difference is perceptible between the two.

So, too, in an earlier case, in the circuit court, before his appointment to the bench of the Supreme Court, *Stockton v. Baltimore & New York Railway Co.* (82 Fed., 9, p. 17), he says:

We think that the power of Congress is supreme over the whole subject, unimpeded and unembarrassed by State lines or State laws; that in this matter the country is one, and the work to be accomplished is national; and that State interests, State jealousies, and State prejudices do not require to be consulted. In matters of foreign and interstate commerce there are no States.

Says Mr. Justice Field, in *Pittsburgh & Southern Coal Co. v. Bates* (156 U. S., 577, p. 587):

The power to regulate commerce among the several States is granted to Congress in terms as absolute as is the power to regulate commerce with foreign nations.

Says Judge Davis, in *United States v. Forty-three Gallons of Whisky* (3 Otto, 188):

Congress now has the exclusive, the absolute power to regulate commerce with the Indian tribes, a power as broad and as free from restrictions as that to regulate commerce with foreign countries.

Mr. HAWLEY. Do these decisions, which you have quoted, have reference to the nature of the commerce going into interstate commerce?

Mr. BRINTON. They are discussions of the clause itself--of the meaning of the clause of the Constitution itself.

Mr. HAWLEY. What were the facts upon which the decisions were based? What was the nature of the cause pending in the court? Did it have reference to the condition or nature of the commerce, or did it have reference to its protection or its production?

Mr. BRINTON. There was a great variety of cases.

Mr. HAWLEY. I would like to hear if you have any decisions on the questions that have been rendered by the Supreme Court involving questions where the production of the article, the conditions of its production, were involved as related to its shipment in interstate commerce.

Mr. BRINTON. I am perfectly frank to say I do not think any case has been decided where the conditions of production of an article in the United States have been considered. To that extent there is a difference. I am frank to admit it. There is a difference, in fact, between this case and other cases that have gone before it.

To return to the question of the identity of the powers, the conclusions which I have stated as to the identity of the power to regulate foreign commerce, with the power to regulate commerce between the States is, of course, subject to be affected, in special instances, by other limitations and conditions outside of the question of the commerce clause. Such, for instance, would be the application of various provisions of the Constitution guaranteeing certain rights to the citizens of the States, and also the other provisions relative to the treaty-making power of Congress itself. For instance, also, Congress might exclude articles from one country but not from another; but might not exclude from interstate commerce articles from one State but not from another.

So far, however, as a particular object is sought to be secured solely through the exercise of the commerce power without reference to the various considerations here referred to, it is clear that the interpretation which has been followed under one phase of the subject is the construction which will be followed upon the other. As stated by Prof. Willoughby:

It is believed, therefore, that so far as the grant contained in the commerce clause is concerned, no valid distinction between interstate and foreign commerce can be drawn.

Considering it in this light, we need not be surprised to find that there is nothing startling, nothing revolutionary, in the invoking of the commerce power of Congress to protect the industries of the Nation. Indeed, the protection of industry through the regulation of commerce was one of the most familiar illustrations of sovereign power in the minds of the framers of the Government.

The justification of the embargo acts under the commerce clause is perhaps the most conspicuous illustration of this principle.

The CHAIRMAN. Did these embargo acts ever come before the courts?

Mr. BRINTON. Yes, sir; they did.

We have the authority of Marshall himself upon this point. Says he, in *Gibbons v. Ogden* (19 Wheat., 191, 192), in discussing the power of Congress under the commerce clause:

The universally acknowledged power of the Government to impose embargoes must also be considered as showing that all America is united in that con-

struction which comprehends navigation in the word commerce. Gentlemen have said, in argument, that this is a branch of the war-making power, and that an embargo is an instrument of war, not a regulation of trade. That it may be, and often is, used as an instrument of war, can not be denied, but not all embargoes are not of this description. They are sometimes resorted to without a view to war, and with a single view to commerce. When Congress imposed that embargo which, for a time, engaged the attention of every man in the United States, the avowed object of the law was the protection of commerce and the avoiding of war.

To the same effect is the language of Mr. Justice Daniel, speaking for the Supreme Court in *United States v. Mangold* (9 How., 960, 566) :

Since the passage of the embargo and nonintercourse laws, and the repeated judicial sanctions those statutes have received, it can scarcely, in this day, be open to doubt that every subject falling within legitimate sphere of the commerce regulation may be partially or wholly excluded, when either measure shall be demanded by the safety or by the importance of the interests of the Nation.

So, too, Judge Davis, of the United States district for Massachusetts, in 1880, in the case of *United States v. William* (28 Fed. Cases, 614), in which he sustained the constitutionality of the recent embargo act :

Further, the power to regulate commerce is not to be confined to the adoption of measures exclusively beneficial to commerce itself, or tending to its advancement, but in our national system, as in all modern sovereignties, it is also to be considered as an instrument for other purposes of general policy and interest.

So, too, the greatest of all commentators on the Constitution, Justice Joseph Story (vol. 2, p. 1060, ed. of 1833) :

Foreign and domestic intercourse has been universally understood to be within the national power. How, otherwise, could our theory of prohibition and nonintercourse be defended? From what other source has been derived the power of laying embargoes in a time of peace and without any reference to war or its operations? Yet this power has been universally admitted to be constitutional, even in times of the highest political excitement.

In *Gibbons v. Ogden*, in demonstrating that the power to regulate commerce included the regulation of vessels employed in transporting passengers, Judge Marshall emphasized his conclusions by pointing out that it was clearly recognized by the framers of the Constitution that the power to regulate included the power to prohibit, for the reason that they inserted an express exception to such power in the article forbidding Congress to prohibit the importation of slaves until 1808.

This section—  
says Judge Marshall—

has always been considered as an exception from the power to regulate commerce, and so far as an exception from a power proves its existence, this section proves that the power to regulate commerce applies equally to the regulation of vessels employed in transporting men who pass from place to place, voluntarily, and to those who pass involuntarily.

To these authorities as to the right to prohibit by direct embargo may be added, as the gentlemen are well aware, innumerable authorities and declarations by the founders of the Government, justifying the right of Congress to prohibit by prohibitory taxation, as justified under the commerce clause rather than under the taxing power.

Indeed, this distinction between the right to lay duties, prohibitory or otherwise, for the regulation of commerce, and the right of taxation per se, was at all times clear and distinct in the minds of the colonists themselves. Says Mr. Justice Marshall, in the case we have referred to (9 Wheat., 202) :

The right to regulate commerce even by the imposition of duties was not controverted, but the right to impose the duty for the purpose of revenue produced a war as important, perhaps, in its consequences as any the world has ever witnessed.

Or again, in his *Life of Washington* (vol. 2, p. 81, 1st ed.), speaking of the stamp act :

The colonies had long been in the habit of submitting to duties laid upon their trade and had not generally distinguished between those which were imposed for the mere purpose of regulating commerce, and this, which being also designed to raise a revenue, was in truth to every purpose a real tax.

Said the sage Franklin in his examination at the bar of the House of Commons in 1786 (Bigelow's life, Philadelphia, 1874, p. 479).

I never heard any objection to the right of laying duties to regulate commerce, but a right to lay internal taxes was never supposed to be in Parliament, as we are not represented there.

In a letter to Secretary Jay, dated 1785, John Adams earnestly recommends that the States give to Congress full power to govern all external commerce :

Whether prohibitory or high duties will be most politic is a grave question. (Vol. 8, Works of Adams, Little, Brown, 1853, pp. 2-3.)

If the power is identical, if the power to regulate foreign commerce has been used and has been sustained in the case of embargoes, in the case of prohibitive legislation, it can certainly be sustained in the case of convict labor; and what is the inference we are to draw from that? Simply this: That the same moving considerations which have directed the action of Congress in regard to foreign commerce apply equally to the commerce between the States. The power which was originally in these 13 sovereignties has been passed bodily into Congress. It has been exercised, as these decisions show, for these specific purposes, and there it rests to-day.

The CHAIRMAN. Would your case, do you think, differ in principle from a prohibitory limitation upon convict-made goods abroad? There Congress, expressing the national will, declares that its manufactories in the United States shall not be subjected to the competition of manufactories abroad employing convict labor because of its being cheaper and the competition resulting being unfair.

Mr. BRINTON. So far as the commerce clause is concerned, there is not a scintilla of a difference.

The CHAIRMAN. That argument could be made in Congress, as well as between manufacturing competitors in the United States, that those living under a restriction of 14 and 16 years should not be subject to competition with those who had no restrictions at all. Would this case be identical with the other, in your view?

Mr. BRINTON. That seems to me to be identical. If there is any reason against it, I would like to know it. We want to fortify your committee not only for this meeting but for any future occasions when you may be called upon to defend this act. So far as the clause itself is concerned, there is absolutely no distinction until you come

in conflict with some reserved right, under the fifth amendment, for instance, the effect of which I shall consider in a moment.

For at this point the very natural question arises as to what is the limit of application of the principle whose existence I am trying to support by this analogy. May the power to prohibit foreign commerce be exercised in an arbitrary manner by Congress without restraint of any kind? If so, must we not concede equal liberty in the matter of commerce between the States?

To this very proper inquiry, my answer is that it has never yet been decided that Congress may arbitrarily and capriciously prohibit, under the commerce clause, either foreign or domestic commerce, and that for the purposes of our present inquiry it is not necessary to decide the point. As the Supreme Court wisely says in the Lottery case:

The present case does not require the court to declare the full extent of the power that Congress may exercise in the regulation of commerce among the States.

It is a maxim of constitutional law never to cross your bridges till you come to them.

However, no case presenting such an arbitrary exclusion, not referable to a desire to protect the industries, or to some consideration analogous to the police powers of the State, has been presented to the Supreme Court. In *Butterfield v. Stranahan* (192 U. S., 470) the Supreme Court, in sustaining the right of Congress to prohibit the importation of inferior teas, reminds us that Congress has, from the beginning, exercised a plenary power in the exclusion of merchandise brought from foreign countries, both by embargoes and prohibitory tariffs, and has also "in other tariff legislation asserted a police power over foreign commerce by provisions which in and of themselves amounted to the assertion of the right to exclude merchandise at discretion," illustrating this statement by the laws regulating the degree of strength of drugs and chemicals entitled to admission to the United States.

So, too, in the case of *United States v. 43 Gallons of Whisky* (93 U. S., 194), in sustaining the right to prohibit the introductions of whisky into territory occupied by the Indians, the court said:

This being true, it results that a certain statute which restrains the introduction of particular goods into the United States from considerations of public policy, does not violate the due-process clause of the Constitution.

These cases, however, illustrate the furthest extent of the doctrine as passed upon by the Supreme Court, and it is to be noticed that in neither of these cases was an arbitrary exclusion asserted, but one which was based upon solid considerations of public policy, analogous to the police power of the States.

It may well be therefore that in both cases some special limitation will be applied, as is suggested by Prof. Willoughby in the following paragraph:

The question as to the extent to which Congress is limited by the due process of law requirement when exercising the power granted it by the commerce clause, is one not wholly free from difficulty, but this much at least is clear, that Congress may not, under the guise of an exercise of its commerce power, any more than it may under the guise of any of its other powers, work a direct deprivation of a particular property right or a direct impairment of a specific contract right. From this it follows that, granting that an individual has a vested right to engage in interstate or foreign commerce, he

can not be arbitrarily excluded therefrom, either as a shipper or carrier or importer, except in so far as such exclusion may fairly be held to be incidental to the regulation of such commerce.

This thought was thus expressed by Mr. Beck, in his successful argument for the Government in the lottery case, as follows:

The power to prohibit exists for any purpose referable to the legitimate objects of government, such as the preservation of health, the protection of morals, and the safety of life.

It is not essential, however, for the Government to contend for an absolute power of prohibition, and it may well be that where a prohibition is not referable to some of the police powers of a sovereign State, or to the great aims for which all government is founded, and where therefore such prohibition is an undue trespass upon the liberties of the citizens, that the judicial department of the Government would have the power to declare such a law void. The bill of rights contained in the amendments to the Constitution may well prohibit many arbitrary and unwarranted prohibitions of trade between the States.

Mr. Beck's words find strong support in this later paragraph of Prof. Willoughby:

In result, then, it is to be admitted that the lottery case is authority for the doctrine that interstate carriers may be prohibited from carrying or shippers or manufacturers from sending from State to State and to foreign countries commodities produced under conditions so objectionable as to be subject to control, as to their manufacture, by the States under an exercise of their police powers or of a character designed or appropriate for a use which might similarly be forbidden by law. Furthermore, the case is probably authority for the power of Congress to provide laws directed against manufacturers and shippers generally, rather than against the commodities produced or sold by them, and excluding them from interstate and foreign commerce so long as they fail to conform to conditions which, if imposed by State law, would be upheld as proper police measures.

If, then, you ask the hypothetical question, as they did of Mr. Beveridge, "Can Congress prohibit interstate transportation of articles made by any other than labor unions?" the answer is, "Is that a deprivation of property without due process of law? If it is, it can not be justified under this clause." I think the answer would probably be in this case that it would be a deprivation of property without due process of law, because the courts would hold it to have no reasonable reference to the protection of the industry, whereas here you protect children and wipe out child slavery, and that certainly has a direct relation to the protection of the industries of the country so far as they are concerned in interstate commerce.

Mr. BROWN. Did Senator Spooner take part in that Beveridge discussion?

Mr. BRINTON. Yes; he did. He asked some hypothetical questions of Mr. Beveridge that were rather troublesome.

Mr. ARTHUR HOLDER (legislative representative of the American Federation of Labor): If I may be permitted to make the suggestion, Senator Spooner was the gentleman who placed all those hypothetical questions in the discussion with Senator Beveridge as to whether, if such a law was to be even considered, the Senate would then be required to consider a convict labor law, an 8-hour law, a union-labor law, etc. Senator Spooner was the principal opponent at that time of the proposition offered by Senator Beveridge.

Mr. BRINTON. At page 2157, of volume 4, No. 43, of the Congressional Record of the Fifty-ninth Congress, second session, February 4, 1907, occurred the following:

Mr. SPOONER. Yes; that is right. Now, if Congress should come to the conclusion, on the Senator's argument, that it affects the morals of the people; the labor of the people; that there should be an eight-hour labor day; or that all labor should be combined into a labor union, and should therefore prohibit transportation from State to State of any commodity which is not the product of eight-hour labor, or of union labor, does the Senator think—

Mr. BEVERIDGE. Or that we could prohibit it altogether.

Mr. SPOONER. Or prohibit it altogether.

Mr. BEVERIDGE. What is the Senator's question?

Mr. SPOONER. Can the court review the wisdom and discretion of Congress?

Mr. BEVERIDGE. I will answer that question upon the very best authority, etc.

He answered it by quoting Senator Spooner himself and in the affirmative. In every case he took the affirmative and went to the fullest extent, that Congress had unlimited arbitrary power, and that it was a matter of policy and not of power.

The interpretation suggested by Prof. Willoughby would at least fully meet the caution of the Supreme Court in the Lottery case, as laid down in the following language:

It is said, however, that the principle that in order to suppress lotteries carried on through interstate commerce, Congress may arbitrarily exclude from commerce among the States any article, commodity, or thing, of whatever kind or nature, or however useful or valuable, which it may choose, no matter with what motive, to declare shall not be carried from one State to another. It will be time enough to consider the constitutionality of such legislation when we must do so. The present case does not require the court to declare the full extent of the power that Congress may exercise in the regulation of commerce among the States. We may, however, repeat, in this connection, what the court has heretofore said, that the power of Congress to regulate commerce among the States, although plenary, can not be deemed arbitrary, since it is subject to such limitations or restrictions as are prescribed by the Constitution. This power, therefore, may not be exercised so as to infringe rights secured or protected by that instrument. It would not be difficult to imagine legislation that would be justly liable to such an objection as that stated and be hostile to the objects for the accomplishment of which Congress was invested with the general power to regulate commerce among the several States.

But, as often said, the possible abuse of a power is not an argument against its existence. There is probably no governmental power that may not be exerted to the injury of the public. If what is done by Congress is manifestly in excess of the powers granted to it, then upon the courts will rest the duty of adjudging that its action is neither legal nor binding upon the people. But if what Congress does is within the limits of its power and is simply unwise or injurious, the remedy is that suggested by Chief Justice Marshall, in *Gibbons v. Ogden*, when he said:

"The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections are in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied to secure them from its abuse. They are the restraints on which the people must often rely solely in all representative Governments.

On the other hand, it is to be noted that there is an alternative to this conclusion, adopted by high authority, to wit, that the power of Congress over both foreign and interstate commerce is absolute and arbitrary; and that objections to any specific exercise of this power concern only its policy and not its power.

This is the view which was adopted and defended with rare courage and ability by Senator Beveridge in 1907, in a speech which none who heard it are likely to forget, and to which I have referred just a few moments ago in my argument.

It is a view which is also expressed by the late Mr. Edward B. Whitney, of New York, in an able discussion of the lottery case,

published in the Michigan Law Review in 1903 (vol. 1, No. 8, May, 1903). After presenting the facts of the decision, Mr. Whitney discusses its future application in this language:

What is the true theory of this decision? Is the congressional power derived from the fact that the tickets are evil in themselves or deleterious in their effects? Is it to be followed only when the courts shall concur with Congress in considering any articles which may in future be prohibited to be similar evils, or has Congress a general power to prohibit any article whatever which, in its own unreviewable legislative discretion, it may consider deleterious? Has Congress the power to exclude any and, therefore, every article from interstate commerce and thus put an end to interstate commerce altogether? I think that the latter is the true analysis and the true scope of the decision, although the conservative language of the court leaves the question to some extent open for further argument. The court found no implied power in Congress upon which the legislation could be based. Congress has no general police power. It has no power to supervise the morals of our citizens, to prevent crime, or to restrain extravagance. This lack of general police power and lack of general power to suppress lotteries is pointed out by the dissenting justices; nor is it claimed by the majority of the court. The decision is squarely based upon one of the express powers of the Constitution—the power to regulate commerce. The dissenting justices maintain that this express power could not be invoked, because the power to regulate does not include the power to prohibit. The majority of the court, while not definitely committing themselves to the proposition that every prohibition is included within the power to regulate, maintains “the proposition that regulation may take the form of prohibition,” and that whenever the general public opinion of the Nation may have come to regard an article of commerce, however once approved and favored, as “grown into disrepute” and offensive, so that commerce is considered both by the court and by Congress as polluted by the presence of that article, the removal of that pollution by exclusion of the article is within legislative authority. The next step forward the court declines to forecast. Statesmen, however, must attempt to forecast it, because they are confronted with the question whether Congress may deal with the problem of monopoly by exclusion of monopoly-made articles from transportation between the States.

It seems to me that Congress will ultimately be held to have the power to exclude any article from interstate commerce, because the power to regulate (which has now been decided to include the power to prohibit) is one of the enumerated powers of the Government. There is a radical distinction between the enumerated and the nonenumerated or implied powers. Presumptively a power expressly granted by the Constitution is unlimited, unless limitations are implied from another section of the instrument.

As I have stated, it is wholly unnecessary to decide now which of these alternatives may be the correct one, for the reason that the present law falls well within each of them.

In passing, it is interesting to note the view of a very distinguished authority on constitutional law, Gov. Baldwin, of Connecticut, himself formerly, as you know, chief justice of his State and professor of constitutional law at Yale. While he does not support the policy of this legislation, it seems clear that he considers it well within the power of Congress to enact. In a recent presidential address before the American Academy of Political and Social Science, he asks:

Would it not again be an admissible regulation to provide that no goods should be the subject of interstate commerce until they had been inspected by Federal officers, or unless, as manufactured goods, they had been manufactured at an establishment conducted in a way approved by Federal authority? Long steps in these directions have indeed been already taken by the acts of Congress as to pure food and the inspection of packing houses. The Constitution of the United States is, in my opinion, flexible enough to bear a construction supporting legislation by Congress in such directions far in advance of anything hitherto attempted.

In conclusion, I submit that if it is true, as stated by the Supreme Court, that "the power of Congress over interstate commerce is as absolute as it is over foreign commerce," and that a prohibition on the importation of convict-made goods is a valid exercise, not of the taxing power but of the power to regulate commerce; if it is true that Congress has in its tariff acts prohibitory or otherwise avowedly had in mind the protection of the manufacturer and the artisan; if it is true that the power to regulate commerce, as stated by Justice Marshall, "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution"; and if it is true, as the Supreme Court says in the white-slave case, that "if the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs," it can also be taken from "the enslavement in prostitution and debauchery of women, and, more insistently, of girls," why may it not equally be denied to a commerce which arises in and thrives upon conditions of child employment which Congress conceives to be a menace to the general welfare of the Nation?

Such legislation is not an attempt to impose a Federal standard upon the internal affairs of any State. It is merely a declaration that the channels of interstate commerce shall not be polluted by being used to support a condition of child slavery shocking to the moral sense of the representatives of all the people.

#### STATEMENT OF DR. WILLIAM D. LEWIS, DEAN OF THE LAW SCHOOL OF THE UNIVERSITY OF PENNSYLVANIA.

MR. PALMER. I now have great pleasure, Mr. Chairman and gentlemen of the committee, in presenting Dr. William D. Lewis, dean of the law school of the University of Pennsylvania.

DR. LEWIS. Mr. Chairman and gentlemen, the bill put in by Mr. Palmer and the bill put in by Representative Copley last July are national child-labor bills. They rest on the proposition that Congress has the power to exclude from interstate commerce any articles that are made in an establishment where conditions inimical to the life or the morals of the employees are permitted to exist.

In view of the decisions of the Supreme Court of the United States, I do not think there can be any reasonable doubt as to the power of Congress to pass this legislation. There have been two views of the power of Congress over interstate commerce. One is the view of Marshall, which he expressed in *Gibbons v. Ogden*, which was that power over interstate commerce in Congress was just as great as the power of the States over intrastate commerce. Of course the power of Congress must be exercised in view of the expressed limitations contained in the Constitution. He expressed that thought in the following sentence from *Gibbons v. Ogden*, which I do not think anyone here or elsewhere can improve upon:

The power over commerce, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.

And he adds:

These limitations are expressed in plain terms. If, as has always been understood, the sovereignty of commerce, though limited to specific objects, is plenary as those objects, power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of power as are found in the Constitution of the United States.

This theory of Marshall can be illustrated by a simple example.

This bill, for instance, excludes from interstate commerce certain products. The question of its constitutionality under Marshall's view does not depend upon whether that exclusion is a regulation of commerce, because a power given to a sovereign to regulate must include as one of those regulations the power to exclude. The question, therefore, is not, is it a regulation of commerce, but is it a regulation which violates any of the express limitations in the Constitution? Under Marshall's view there are only two existing provisions of the Constitution of the United States that may by any possibility be argued as restrictions on the power of Congress over interstate commerce.

One provision is the fifth amendment: That no person shall be deprived of life, liberty, or property without due process of law. The other is the ninth amendment: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

It may be argued that an act of Congress which excluded from interstate commerce an article, where that act was not based on any express or apparent reason, would be arbitrary, and would violate either one or both of these amendments. It is not necessary here for you to decide whether such an act would or would not violate either of these amendments. But it is important for you to realize that under the Marshall view, the celebrated tenth amendment to the Constitution is not a restriction on the power of Congress over interstate commerce.

The tenth amendment to the Constitution reads:

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.

The power over commerce is delegated. Therefore, this tenth amendment does not apply. That is the Marshall view of the power over interstate commerce.

The other view is this, that the power over interstate commerce is not only limited by express limitations in the Constitution, but limited by the principle that it must be so exercised as not to indirectly regulate what Congress can not regulate directly; and the argument in favor of that view is the argument intimated in the opinion of ex-President Taft, which has been quoted to you, that to allow Congress to regulate indirectly what it can not regulate directly would in effect render nugatory this tenth amendment, which says that the powers not expressly conferred on Congress are reserved to the States.

The CHAIRMAN. In reference to the implied sections of other features of the Constitution, here is a manufacturer having a plant, a part of which is operated, let us say, ostensibly through the employment of child labor and part of which is not. Under this bill all

rights of interstate commerce are taken away from the products of that plant. The limitation is not to such products as child labor may have produced, but all products of the manufacturer. When we were considering the illustration of convict-made goods abroad being excluded or embargoed, only the convict-made goods, the goods themselves that offended in their origin of production, were affected. Under this bill all products of the factory, whether offensively produced specifically or not, would be affected. Would that be a fair statement of the facts?

Dr. LEWIS. I understand the bill is so drawn. The only objection to drawing the bill in that way, under the Marshall view of the power of Congress, would be that in excluding products where no child labor was exploited in their production, the bill violated either the fifth or the ninth amendment. On the other hand, it could be argued as against that proposition that it was necessary to exclude all products of that manufacturing establishment in order to practically make efficient the administration of the bill, because it would be almost impossible to tell if part of the products were produced by nonexploited child labor and part were produced by exploited child labor; whether this particular product which had been shipped by the dealer was or was not produced by exploited child labor. The constitutional justification would be the impossibility of administering a bill differently drawn. I should therefore say that the bill as drawn is constitutional; but I would also suggest that if an administration can be devised which can separate the two classes of goods, you should confine your prohibition to those that are produced by exploited child labor.

If I have answered that question I should like, in continuing my general argument, to emphasize this fact: As between those two views which I have stated of the power of Congress over interstate commerce, it is hardly necessary for this committee or for the Congress to spend time to ascertain which is the best, because the decisions of the Supreme Court of the United States have made it entirely clear that that tribunal has adhered always, and especially lately—and if I may I would emphasize the words “especially lately”—to the Marshall view.

Congress passed an act to exclude from interstate commerce lottery tickets. The constitutionality of that act came before the Supreme Court of the United States in the lottery case. Each view that I have tried to make clear was ably presented to the court. The majority of the court, taking Marshall's view of the power, decided that the act was constitutional. The minority of the court taking the opposite view, thought that the act was unconstitutional. That decision was made in 1903. Every member of the court who was with the minority has passed away. In 1911 and in 1912 the constitutionality of the pure food and drugs act and the constitutionality of the white-slave or Mann Act came before the court; the first in the case of the Egg Co. against the United States, and the second, the Mann Act, in the case of Hoke against United States. In both of those cases—though it is only in the second, the Hoke case, that the constitutional question is argued—the court was presented with these two diverse views which have persisted practically ever since Marshall's day. In each case the constitutionality of the act before the court was sustained, not this time by a divided but by a unani-

mous court. In other words, every existing member of the Supreme Court of the United States has, in adhering to the opinion of the court in the case of *Hoke v. United States*, which supported the Mann Act, and especially in adhering without dissent to the language of Judge McKenna in that case follows the Marshall view. At least as far as the Supreme Court of the United States is concerned this question is a closed question, and therefore those of you who feel that that is controlling, would regard any further argument as a work of supererogation.

There is, however, Mr. Chairman, one argument upon which I would like to lay some emphasis. The State has the right to exclude the importation of misbranded articles of commerce. That has been decided in the case of *Plumley v. Massachusetts*, in which the law of Massachusetts which prohibited the importation into the State of oleomargarin colored as butter, has been upheld in the Supreme Court of the United States. By analogy to that case, I think you all can see that the States would have the right to exclude poisonous drugs or adulterated foods. I think by analogy, also, we can say that the State would have the right to protect itself from the importation of lottery tickets. But lottery tickets, impure food, and poisonous drugs are what we may denominate as the outlaws of commerce. The Supreme Court of the United States has expressly stated that when an article is a common article of trade and commerce among men, and where it contains no contamination of other articles of commerce, as, for instance, liquor or oleomargarin, then the States can not prohibit the introduction of that article into the States. That was decided in the famous cases of *Lisa v. Hardin*, the liquor case, and *Shellenberger v. Pennsylvania*, the oleomargin case.

If the State can not keep liquor from being imported, or if the State can not keep oleomargarin from being imported, it can not protect its manufacturers from the unfair competition of the manufacturers of other States, who, exploiting child labor in order to cheapen their products, import the product into the State which has these laws or where the manufacturers of the State refuse to stoop to such processes. It is unfair competition—and this is an economic fact, it seems to me, which lies at the basis of this whole constitutional argument—for a man in one State to exploit child labor for the purpose of cheapening the product. I agree entirely with other witnesses here, that the manufacturer in the long run is in error.

In the long run the ruining of the lives of children makes the product of the State more expensive, not less expensive; but the immediate effect of exploited child labor may be, and often is, to cheapen the product. And therefore I say that is unfair competition for the manufacturer in one State to exploit child labor for the purpose of cheapening his product and then send that product into another State for the purpose of underselling the manufacturers of that latter State. Furthermore, it would be an indictment against the wisdom of the framers of the Constitution of the United States to say that they drew a Constitution which deliberately takes from the States the right to protect their manufacturers from that unfair competition, and then failed to give that power of protection to the only other government that could protect—the Government of the

United States. What better exercise of the power of Congress over interstate commerce than its exercise to prevent unfair competition?

I am aware, of course, that the argument has been made that there is a distinction between the food and drugs act, which prohibits the introduction into interstate commerce of poisonous drugs, and this act, which prohibits the introduction into interstate commerce of goods which are not in themselves poisonous. I would like to commend those who make this argument to the latest utterance of the Supreme Court of the United States in this very case of *Hoe v. United States*, which supported the Mann Act. The court said, speaking of the power of Congress:

The power is direct. There is no word of limitation in it, and its broad and universal scope has been so often declared us to make repetition unnecessary, and, besides, it has so much illustration by cases that it would seem as if there could be no instance of its exercise that does not find an immediate example in some one of them.

We can expect that if you should pass this act the difference between a food and drugs act and the national child-labor bill would be emphasized. You will be told that one keeps out poisonous articles, and that this act keeps out an article which is not in itself poisonous. It is true that the acts are different. Their objects are different. One, the food and drugs act, is desired to protect the people of the States from poisonous and adulterated food. This act is to protect the manufacturers and producers who wish not to exploit child labor from being subjected to unfair competition of those who do, and when you have expressed the argument in that way you have shown that you have fulfilled in this act the only requisite which the Supreme Court of the United States will oblige you to fulfill, which is that the act you pass shall at least have an express or apparent purpose, which is perhaps not wise but in a broad view a reasonable purpose, and we can conclude that the power to protect from unfair competition in interstate trade is within the power of Congress or nothing is within that power.

That is all I wish to say upon the constitutional point.

The CHAIRMAN. In drafting this commerce clause they gave Congress the power to regulate interstate commerce without in that connection mentioning the States or purposes of such regulations. How would you define the object and purpose? Would you do it with reference to the general-welfare clause? If not, what definition would you refer to of the objects and purposes proper in the exercise of the clause?

Dr. LEWIS. In the exercise of the power, Congress has no limitation to its purposes. It can pass the law for any purpose. But when the act actually comes before the Supreme Court, the Supreme Court will probably take the position that that purpose must not be a purely arbitrary one, or the fifth amendment, or the ninth amendment, to which I have referred, may prevent it. You are entirely right in saying that the only definition contained in the Constitution, or, rather, in the preamble—it is not in the Constitution, but in the preamble—is the one definition of the purpose which must be before Congress. The purpose is the welfare of the people of the United States.

Mr. PALMER. May I ask a question now, Mr. Chairman?

The CHAIRMAN. Yes, Mr. Palmer.

Mr. PALMER. Dr. Lewis, will you go so far as Prof. Willoughby, in his recent address, in which he practically lays down as the law, in view of the recent decision of the Supreme Court, that the Congress, under its power to regulate interstate commerce, may go so far as to exclude from interstate commerce all commodities which are produced under conditions so intolerable and offensive to the moral sense of the community, or so violently against the interests of the people, as to properly call for the exercise of the police power of the State in the regulation of their production?

Dr. LEWIS. I should, sir; for the reason that all such production is, from an economic point of view, essentially unfair when the producer or the person who buys the product again sells that product in interstate commerce.

Mr. PALMER. Of course, if that is a correct statement of the law, it closes the case, so far as this bill is concerned.

Dr. LEWIS. Yes, sir; that closes the case.

Mr. PALMER. And does it not also cover the question which was raised by the Chairman earlier in your argument, as to whether this bill should provide against the shipments in interstate commerce of the products of the factory where child labor exists or the products in which child labor is employed to produce, because it is the intolerable under which production occurs which may be aimed at by the exercise of the police power in the State, is it not?

Dr. LEWIS. I think I can answer that in this way, that there is an undoubted power under the decisions of the Supreme Court to keep out of interstate shipments all products of manufacture where child labor or other labor is exploited, even though some of the products kept out may not be due to that exploited child labor, provided you can show to the court that there is a good reason for keeping out all the products, or the act will fail from an administrative point of view.

The CHAIRMAN. Do you think of an actual case of that sort? I am not as familiar with the pure-food act in its operations as our friend from Philadelphia; but is it not a fact that in that case non-offensive meats and foods are excluded, as well as offensive meats and foods, unless certain positive acts of qualification are taken by the original shipper?

Dr. LEWIS. With the correction of Dr. Brinton, who is much more familiar with the details of that act, that is my understanding of it.

Mr. BRINTON. I think that is true, as you have stated it.

The CHAIRMAN. What does the shipper have to do in taking meat, for example, from one State to another, Mr. Brinton?

Mr. BRINTON. That comes under a very similar act—the meat-inspection act. The food and drugs act has not been held to refer to meat products. Under the meat-inspection act there are, as you say, certain definite requirements in regard to the stamping of the meat demanded, which is not true in the same way under the food and drugs act; and still it is true, too, because they have to mark the percentage of alcohol in some cases, certain dangerous products have to be marked by name on the package, such as cocaine, etc. There are certain definite, positive acts that have to be performed in both cases.

The CHAIRMAN. Still, in this case, Dr. Lewis, the State itself provides the means by which the manufacturer of articles protected un-

der either clause of the Constitution can be distinguished from articles which would not be protected in violation of this bill.

Dr. LEWIS. I am sorry, sir; but I did not quite understand your question.

The CHAIRMAN. Let us suppose half of the products of a factory not engaging child labor offensively were protected by this other constitutional provision, the fifth amendment; that the other half of the products, made by exploited child labor, was not protected by the fifth amendment, but came under the invalidation of this bill. Ought there to be some means by which the manufacturer could distinguish, giving him the right to ship the valid as distinguished from the invalid? All these questions are going to arise in the history of this subject, here in the committee probably, and later in the House and in the Senate. I think it well that we should have the benefit of your trained views upon the different difficulties which may be presented.

Dr. LEWIS. Instead in making my answer to that question, I think, with your permission, I would like to make one statement in regard to what I believe to be the administrative problem which confronts you in this bill, should you decide to recommend it, and in doing that I think I will be able to make more clear my answer to the particular question which you have raised.

Mr. PALMER. Before you go to that, Dr. Lewis, is it necessary, in order to defend the language of this bill, to rely upon the administrative difficulty alone, as you have suggested? In other words, does not the exploitation of child labor in a mill, for instance, to the extent of 50 per cent of its products create an atmosphere, if you please, which deadens the moral sense of the community and lowers the moral tone of the community, sufficiently injures the physical and moral fiber of the rising generation, to call for the exercise of the police power of the State in its regulation; and if that be so, could not the police power attend to such regulation of the entire production, whether child labor was used in it or not? And if so, again—and the Willoughby proposition is correct—would not this be carried along by regulation, by prohibition from interstate commerce? Do you get my thought?

Dr. LEWIS. I believe I do get the thought contained in the question, and I think the question puts the point of view which would sustain this bill, even though one child was employed in a very large establishment and the entire production was thereby excluded.

Mr. PALMER. Of course, that is supposing a very strong case.

Dr. LEWIS. At the same time, I do have and would like to emphasize the feeling that the actual wording of the bill might at least avoid the criticism which has been suggested if it is confined to the products in which child labor has been exploited. On the other hand, I am alive to the fact that that may make the administration of the bill exceedingly difficult; and my opinion as to the constitutionality of the bill as drawn—believing that as drawn it is constitutional—is based on the fact that I do doubt whether any bill which merely prohibits the products of an establishment where the child labor has been exploited in a particular product and not the rest of the products of the establishment can be administered in a practical manner.

The CHAIRMAN. Let me give you a fanciful case along that line.

Dr. LEWIS. May I complete my thought in this connection, Mr. Chairman?

The CHAIRMAN. Certainly, Dr. Lewis.

Dr. LEWIS. You must remember, Mr. Chairman, that under the fifth amendment, having the indefinite words "due process of law," the members of your Supreme Court are in the position of asking themselves as reasonable men, "Is this act extraordinarily arbitrary?" If it so strikes them, they will apply the fifth amendment. Therefore, in drawing this or any other legislation, you have got to be careful, if you can by any possibility avoid it, not to have any provision which may be used in argument before the Supreme Court as an instance of arbitrary action.

The CHAIRMAN. I was thinking of that in this connection. Suppose this bill is passed. In some States you find a factory which engages in interstate commerce, and in the manufacture of their products they employ child labor offensively under the bill. You get an indictment on which two facts are stated. First, that they did employ child labor offensively; second, that they shipped the product in interstate commerce. That is an indictment good under the bill. The defendant enters court and admits he employed child labor, but denies that the product of that child labor went into interstate commerce, but, as a matter of fact, it was sold in intrastate commerce. The question then would be whether the product not offensively originating, that went into interstate commerce under those circumstances, could be prohibited; whether the plea I have outlined would not put the defendant under the fifth amendment; and if there be grave danger as to that, whether there is not some other supplementary provision possible to protect this bill from that possible weakness.

Dr. LEWIS. I think, Mr. Chairman, I probably have sufficiently stated that my opinion as to the advisability of making such a provision in the bill for the purpose of avoiding any constitutional objection depends very largely upon a fact which is beyond my experience, to wit, whether such a provision would be practicable; and I think that if you would ask Mr. Lovejoy or others here, who have had long experience in the enforcement of State child-labor laws, they might be able to throw some light on that question. Personally, if I were in your position, I would follow very largely their opinion as to the practicability of making such a distinction.

The CHAIRMAN. Why could we not require them to put a certificate on this product when they ship it that it had not been produced by child labor?

Dr. LEWIS. May I now, instead of answering that question, go on with what I regard an administrative problem?

The CHAIRMAN. Yes; proceed.

Dr. LEWIS. The bill introduced by Mr. Palmer provides certain standards for child labor. If these standards are violated in any establishment, then the person who ships in interstate commerce those articles, be he the manufacturer or the dealer, is liable, and liable to the possibility of a jail sentence. In the bill as drawn it is not clear in my mind whether, in order to convict a manufacturer or dealer under those provisions, you would have to show that he knew of the violation. I assume that the courts would hold, it being a penal statute, that you would have to prove knowledge; but I am not

absolutely certain about it. Supposing the courts held that you have to prove knowledge, it is obvious that that would render the bill impossible of efficient enforcement. The manufacturer usually knows whether he is violating the child-labor law, but the dealer in goods has no such knowledge, and it is the dealer that either can be made the shipper in every case or practically is the shipper in a large number of cases.

If, on the other hand, you say that this bill does not mean—and you can make it, of course, express that it shall not mean—that knowledge of the violation must be proved, then the bill as it stands imposes liability on the dealer with no way of protecting himself, even though he use ordinary care or even extraordinary care, from prosecution. That result would make your bill exceedingly oppressive to commerce.

In that dilemma—which we have confronting us, whether we are going to put knowledge or lack of knowledge as a requisite for a successful prosecution—you have the crux of the administrative problem in the national child-labor bill. It is not a mere problem of detail. You have got to solve it before you can conscientiously put through a national child-labor bill. The problem has to be solved. Personally I have seen two solutions of the difficulty, either of which is entirely practical.

One of the solutions is that which is contained in the bill drawn by the gentleman who spoke immediately before me, Mr. Brinton, which, as he indicates, follows in its administrative features the national food and drugs act, by placing the liability on anyone who ships in interstate commerce goods produced contrary to the standards, which expressly provides that knowledge shall not be necessary to be proved, and yet enables the shipper to protect himself by securing a guaranty from the producer. That is, so far as I can see, a line of solution of that difficulty which would render the bill entirely practical. The other solution—

Mr. PALMER (interposing). Dr. Lewis, may I interrupt to ask a question?

Dr. LEWIS. Yes.

Mr. PALMER. Could not that guaranty system be provided for by regulations made by this board?

Dr. LEWIS. Yes; certainly. These regulations would involve a question which the chairman last asked me, the question of permitting the manufacturer to brand his goods as not produced under child labor.

The CHAIRMAN. Make it a necessary qualification for shipment?

Mr. PALMER. That would not be necessary under the guaranty.

Dr. LEWIS. That would be perfectly possible, whether desirable or not. Mr. Brinton's bill does not do that, and I should doubt whether it would be desirable.

The CHAIRMAN. I have, perhaps, suggested this question before, but I think I can suggest it now. Would an indictment under this bill, and the constitutional principles you have elucidated here, be a valid indictment if it did not allege that the article shipped in interstate commerce was produced by child labor?

Dr. LEWIS. It would be valid under the bill if you did not so allege. Whether the act would be constitutional or not, we come back to the

old question of whether such a provision is a purely arbitrary provision or whether it has a substantial reason.

Again, Mr. Chairman, I point to the fact that I personally would be swayed very largely by the experience of those who have had the enforcement of child-labor laws, to ascertain whether it was necessary or not to include all the products of the mill.

Mr. PALMER. The question is whether we shall exclude the child-labor product or the product of a child-labor mill.

Dr. LEWIS. That is the question. The question is whether it is an arbitrary thing to exclude the product of the child-labor mill. Personally, my inclination—and I have not the slightest hesitation to give it to you—is that the bill is constitutional as it stands; but I would before passing a professional opinion on that have to know something more in regard to the impracticability of making the distinction.

Mr. PALMER. You also think, Dr. Lewis, that the suggestion from Mr. Brinton in his bill could be covered by rules and regulations provided for under this bill, do you not?

Dr. LEWIS. No. I should be afraid of that, Mr. Palmer.

Mr. PALMER. I thought I so understood you.

Dr. LEWIS. Indeed, the administrative problem which I have suggested to my mind is so important that I believe you should examine all well thought out possible solutions of it. Mr. Brinton's is one of them. I have had the pleasure of reading it, and, as I stated, so far as I can see, it is practical. It does involve quite extensive amendment of the bill as introduced; but if you have, as I hope you have, a reasonable prospect of passing this bill, nobody wants to pass it and then find it ineffective. This administration feature is a very important feature.

Mr. PALMER. I agree entirely with you about the Brinton proposition, but I was not born yesterday in this legislative work. I have discovered that we can make better progress by taking short steps at the beginning, and that too complicated and involved measures are apt to scare people away from a support thereof, and we may have to do some of these things Mr. Brinton has suggested at a later time.

Dr. LEWIS. I sympathize entirely with the thought that it is desirable to get the bill into as short space as possible. I stated that I had known of two possible solutions of the administration difficulty. The other solution is that embodied in the bill, which was introduced by Representative Copley last July, and which has been indorsed by the members of the Progressive Party who are Members of Congress, and therefore in that sense it is a party measure. In that bill the administration difficulty presented is solved in this way:

The liability for the shipment is not only placed upon the manufacturer who ships or the dealer who ships, but also upon the common carrier. Everybody but the manufacturer, however, can protect himself by insisting, before shipping the goods, that the manufacturer shall have registered his goods under the act. Any manufacturer or producer of an article has a right to register the goods under the act by merely filing an affidavit with the Secretary of Labor to the effect that he employs no child labor contrary to the act. Upon the filing of that affidavit he receives from the Secretary of Labor a certificate to the effect that his goods are registered; and that

certificate or a copy of it can be placed on each item of his goods. Under that system, the whole administration of the bill, so far as prosecutions under it are concerned, would be prosecutions against manufacturers and other producers for making false affidavits.

The CHAIRMAN. Is there any such provision in the bill now?

Dr. LEWIS. That is in the Copley bill, which is not before this committee; but that bill is H. R. 6146, which has gone to the other committee. I mention it here merely as showing another method of solving what Mr. Brinton has tried to solve—this by no means inconsiderable administration difficulty. If the Copley bill has any advantages over the bill suggested by Mr. Brinton, from an administration point of view, it lies in this fact, that its administration is greatly simplified by giving to the Secretary of Labor the duty to investigate whether the laws of a particular State, in their enactment and enforcement, substantially prevents child labor contrary to the standards expressed in the bill. If the States do prevent child labor contrary to the standards expressed in the bill, then any goods produced in that State are not subject to the provisions of the bill. This provision is made workable by confining the prohibitions contained in the bill to the initial shipment. Only the initial shipment in interstate commerce is prohibited. As a large number of States already have provisions comparable with this bill as introduced, of course, in those States, under the Copley bill, there would be no machinery of administration at all.

Now, to some that may seem to be an advantage, and then it might not be. I merely mention it to show that there have been two solutions offered for the very serious administrative difficulties connected with the national child-labor bill, and both of those should be considered by you, if you desire to report the bill introduced by Mr. Palmer affirmatively.

There is one other provision of the Copley bill that I should like to refer to, Mr. Chairman, with your permission.

The CHAIRMAN. Certainly, sir; that is what we want; we desire to learn all that we can on this subject.

Dr. LEWIS. It is this: The bill introduced by Mr. Palmer excludes children between the ages of 14 and 16 years from two kinds of dangerous employment, one is the employment in mines, and the other in quarries. The bill introduced by Mr. Copley prevents a child under 16 years of age from being employed not only in those two dangerous employments, but also in coke ovens and in establishments where poisonous acids or gases or dyes are manufactured or packed for shipment. In other words, it covers what has been discovered by the national child-labor organization to be dangerous occupations; and then it also contains what I believe, from an administrative point of view, is a clause of infinite value. It is this: "Or in any establishment wherein the work done or materials or equipment handled are dangerous to life and limb or injurious to the health or morals of such child."

Now, that means that you not only exclude child labor from two or three dangerous occupations, but you lay down in the bill the general principle that labor apt to be dangerous or injurious to the health or morals of children between the ages of 14 and 16 years is excluded, and you leave to the administrative officer—in this bill the Secretary of Labor, or any other administrative officer you may

choose—the right to designate from time to time, after investigation, what are dangerous employments.

I believe that in all this class of legislation we are wrong when we try to have the legislation itself specific in designating certain definite employments. The thing that can be done practically by a legislature is to express the general principle that no child under the age of 14 years shall be employed; that children between the ages of 14 and 16 years can not be employed in occupations which are particularly dangerous to such children, and then to leave to administrative officers the determination of whether a particular employment is or is not a dangerous one. Only in that way, I believe, will you be able to effectually exclude children from dangerous employments.

The CHAIRMAN. I quite agree with you in that.

Dr. LEWIS. And as to the constitutionality of the proposed law: I have heard objections raised to this administrative provision on constitutional grounds. On that all I desire to say is this: In your interstate commerce act you have given the commission the right to determine whether or not a rate is fair, and if you can do that you can give to the commission or to the proper administrative officer the right to determine whether a particular employment is actually dangerous to a child, and if it is dangerous to exclude the child therefrom.

The CHAIRMAN. I think that in England and on the Continent in general their legislatures have passed declarations of principle, leaving to administrative officers or other tribunals the regulations definitive of the application of that principle from time to time. It is certainly so in Italy, and also in France.

Dr. LEWIS. I think the principle is a good one, Mr. Chairman. It can be carried too far, but I think it is not carried too far in the bill which has been introduced by Mr. Copley.

Mr. WALSH. Doctor, aside from the constitutionality or practicability of the law in the event it is passed, in drawing a line of distinction between the child labor product and the product of the mill in which child labor is employed, do you think it is fair and equitable to exclude the product of the child-labor mill from shipment in interstate commerce?

Dr. LEWIS. I do; I think that where a man violates his obligation not to use his wealth for the purpose of exploiting others he renders himself a producer whose products should be excluded from interstate commerce.

Mr. WALSH. And you think the result would be that wherever he had children in his employ he would soon get them out?

Dr. LEWIS. I think so; that is my personal opinion.

Mr. WALSH. That would, no doubt, be the result.

The CHAIRMAN. We thank you very much, Doctor, for the information you have given us.

Mr. LOVEJOY. I would like to say one word, Mr. Chairman, as the representative of the National Child Labor Committee, in answer to a question raised by Dean Lewis. We discussed the matter very carefully when considering, in the committee, which bill we would indorse. These matters have now been brought up, and I would like to say that it seemed to the committee, from the standpoint of its experience in trying to get a child-labor law, that the brief and

comprehensive Palmer bill covered the ground. We felt that the details of rules and other administrative features might be devised and worked out better in the process of experience and in view of changed conditions that might arise from time to time, than could be foreseen at the time the bill was passed; but if it should be determined in the course of your deliberations on the bill that the working out of these rules was beyond the province of this administrative board, then we should be entirely agreeable, and I am sure I speak for the trustees of this committee, in accepting Mr. Brinton's suggestion that these details be embodied in the bill.

As to the question of the chairman relative to excluding from interstate commerce products of child labor and products of the mill in which child labor is employed, I would like to ask the committee whether there is not a fair analogy on the administrative side in the administration of the law requiring that cattle shipped from State to State in interstate commerce shall be certified? A man may have 100 cattle that he wants to ship to a neighboring State; 10 of them may be diseased and 90 of them may be in perfectly good condition. If he insists on shipping them across the State line without a certificate, not only the 10 diseased cattle, but the other 90, as I understand it, might be confiscated.

Mr. McKELWAY. I can call your attention to a situation where it is more stringent than that. In parts of the South when cattle become diseased they can not ship any out of that section at all, whether they are in perfect condition or not. There are great sections of the South that prohibit the shipping of any cattle if they find the cattle diseased, and though a man might have 1,000 cattle, all perfectly sound, if he lives in one of those districts he can not ship his cattle out.

Mr. LOVEJOY. Yes; and I submit that will be visiting upon the individual owner or employer a very much greater hardship than could be conceived under any plan contemplated in this bill, because there a man might have nearly his entire product taken from him, or put in jeopardy, when there was only a small offense, and what is the reason of the Government doing that? As I understand it, it is simply an administrative protection simply because the Government can not undertake to see that every one of these cattle is thoroughly examined before the shipment is made. And so in this, it seems to me, it would be almost impossible to attempt to discriminate in the goods shipped from a given factory—what goods have the labor of children in them and what have not. And we must recognize the fact that if the children are employed in one part of the factory, though they had no part in the manufacture of an article, and as is undoubtedly the case in many instances the labor of the child, in whatever capacity he is there, makes the completed product cheaper, and the manufacturer can not only ship cheaper, but the entire cost of production is lowered.

Mr. KEATING. Mr. Lovejoy, in the matter of discriminating between the goods made with child labor and the goods made with adult labor, some one has referred to the analogy existing in the meat-inspection act. When you go through the packing house you find meat inspectors there. They are present when the steer is killed; they follow the various processes until the dressed meat is finally placed aboard a car and shipped from the factory, and

just before it is placed in the cooler they brand each piece of the carcass with an official brand which certifies that the meat comes up to the regulation. Now, if it is deemed feasible to do this in that industry, would it not be a comparatively simple administrative problem to have in these great cotton mills, for instance, some arrangement whereby the goods manufactured by adult labor could be so branded that it would be distinguished from the goods manufactured with child labor? That would involve the employment of inspectors, it is true; but we employ inspectors when we want to safeguard our meat supply, and I can not see why we should not do so to safeguard the children of the country.

**Mr. LOVEJOY.** It would seem, Mr. Chairman, that the analogy is very close, but there is this difference: That the meat is certified because in any one piece of the meat there might be serious danger to some consumer, and it is necessary, in order to make the inspection complete, that every piece shall be separately certified to be in good condition; whereas, in this proposition we are discussing, the principal aim is not to protect the consumer against any particular piece of goods that he may get, but to discourage the employer regarding his exploitation of the children.

**Mr. KEATING.** Let us take a South Carolina cotton mill: Suppose you had a corps of inspectors in that mill who met the cotton when it came into the mill and followed it through the whole process just like the inspectors do in the packing houses, from the moment the cotton came in over here until it went out over there as a finished product. Now, those inspectors would know whether child labor had been used in any part of the process, and when that finished product came out over here they would refuse to brand the goods on which child labor had been employed, and they would O. K. the cotton cloth which had been made by adult labor. Wouldn't that clean up your cotton mills at once? If it would not, then I would not want that process; but I do want one that will clean up the situation. But it seems to me that possibly that sort of arrangement would answer some of the objections made to the effect that in excluding the product of child labor and the product of mills in which child labor was employed you would also be excluding the product of adult labor, and therefore raise a constitutional question which might jeopardize your law.

**Mr. LOVEJOY.** I think that would be very effective; but I can see one objection that would be raised, and that is that it would require such a vast army of inspectors to cover all the industries in the country in which children might be employed that you could not get the bill through. It would mean an appropriation very much larger than has ever been granted to any administrative department of the Government.

**Miss KELLY.** Mr. Chairman, there are so many practical difficulties in the way that would prove to be insuperable that I don't think that proposition could be considered; there would be a thousand little, hair-splitting questions come up in administering such a law and make it impossible. There would be no way to accurately determine just when child labor entered in to the manufacture of a product and when it did not. I can give you a picturesque illustration. At the stock yards in Chicago one of the most murderous occupations in which children are employed would not be shown at all as entering into the production of a piece of dressed meat, for all these little boys

do is to stand at the doors and open them while little electric trains go into the cooling house carrying sides of beef. You would never be able to prove in any court that holding that door open to let the train pass through was a process which entered into the production of any particular piece of meat. I was in Chicago and was present when this was going on, in the month of August when three men had died of sunstroke because of the heat, and these wretched little boys came out in that heat and held the door open in the broiling sun, and when the train had passed through they went back into the cooling room, which were filled with icicles, because that temperature was suitable for the meat. They had to have three times as many boys on their list as were needed in this employment, because two out of the three were always ill. And it is the same way in the glass works, the most killing thing done by the little boys is sitting right beside the molder, holding and cleaning the molds after the bottles are taken out. Now, you could never show in any way, as to any particular bottle, that the little boy had participated in its production; he had never touched one of them, but had just been sitting there rubbing grease in a mold. It would be so with the little girls who work in garment factories and carry the cloth that has been cut up to the stitching room, up four or five flights of stairs; you wouldn't be able to show how that had entered in any way in the manufacture of any particular garment; she had simply carried a box of cloth out of a room, in a hall, up some stairs, and still, while the garment was being made there, she has never touched it.

I can see that there would be thousands and thousands of hair-splitting things like that come up which would make such a law very difficult to carry out.

I would also like to say that I consider it quite as fantastic to exempt the State of New York, for we have some of the most difficult child-labor problems there; we should bitterly resent having New York exempted from the working of this law.

The CHAIRMAN. Your objections, Miss Kelly, to the exemption of New York are based on the theory that quite frequently these local industries control the action of the local officials and even the local courts, so that you can not get an enforcement of the law?

Miss KELLY. Yes, sir.

Mr. KEATING. On the strength of Miss Kelly's presentation of her objections, I wish to withdraw my "fantastic proposal." It was not offered in any hostile spirit, Miss Kelly.

Miss KELLY. I understand, sir.

#### STATEMENT OF MR. A. J. MCKELWAY, SECRETARY FOR SOUTHERN STATES, NATIONAL CHILD LABOR COMMITTEE.

Mr. MCKELWAY. I am not a lawyer, Mr. Chairman; I have written a good many laws, and I suppose I might be called a "cornfield" lawyer; but I have a historical argument here on this question, as to the constitutionality of the law. It may not appeal to the legal mind, but it seems to me to be logical.

It was because of difficulties between Maryland and Virginia over commercial relations that a commission met at Mount Vernon, the home of Washington, during the Confederation and before the Con-

stitution was made, to discuss these difficulties. Out of that grew the Annapolis convention, and out of that grew the Constitutional Convention.

The CHAIRMAN. What were those difficulties?

Mr. MCKELWAY. A dispute between Maryland and Virginia as to inland navigation.

The CHAIRMAN. About the right to the use of the streams?

Mr. MCKELWAY. Yes, sir.

If I have read the history of Virginia correctly she had the power in those days to prohibit the importation of any kind of goods from Maryland, convict-made goods, or child-made goods.

The CHAIRMAN. And she simply shifted that right to the Congress of the United States.

Mr. MCKELWAY. Yes, sir; Virginia hasn't the power now, but I think it was simply transferred in its entirety to the United States Government, under the interstate-commerce clause of the Constitution. [Reading:]

It has now been nearly 10 years since I began to represent, as one of its secretaries, the work of the National Child Labor Committee, which was organized 10 years ago this spring. I have been with the committee since it began active work. The field assigned me was the territory of the Southern States, and I have been in every one of these States from Maryland to Arizona in the interest of child-labor legislation, and before all the legislatures of these States except two. I am also fairly familiar with the general work of the National Child Labor Committee in other sections of the country, having kept in as close touch with the latter field as was possible for a worker in a particular section. I suppose I may say for myself also that I have been reasonably successful in this work. Every one of these Southern States has either passed an original child-labor law or has amended a law in some parts in the right direction during this decade. But none of these Southern States east of the Mississippi has as yet reached the standard which the American Bar Association, for example, has set as a proper standard for the regulation of child labor. Four or five of them are considerably below such a standard of legislation, one of them allowing 10-year-old children to be employed in factories 11 hours a day, and in none of them are the laws adequately enforced, partly through lack of appropriation, through the inefficiency of State labor bureaus, and because in some States there is no factory inspection, and there has never been prosecution for a violation of the law. So, while we are working for a better standard of legislation in some of these States, we are met with the stern fact that conditions have but little improved since the National Child Labor Committee was formed, and what is true in the South is true in somewhat lesser degree in the States of the North, East, and West, where by far the greater number of toiling children are to be found because of their greater industrial expansion.

Now, the obstacle we have met everywhere in America in the attempt to raise the standard of protection of working children to the proper standard and to enforce the law has been the argument that a State adopting such a standard and rigorously enforcing its laws is placed at a disadvantage through the competition of similar industrial establishments in other States, especially bordering States. The good State is, as it were, penalized for passing a good law,

because of the failure of the low-standard State to enact similar legislation. I do not hold that this argument will be true in the long run. I hold that child labor in itself is an economic error, and not only for the welfare of its citizenship should a State abolish child labor, not only for the diminishing of poverty and resulting degeneracy, illiteracy, and crime, but for the sake of the industrial establishments themselves. The cheap labor of little children is not an economic advantage. But the American manufacturer rarely looks beyond the profits of this year, or the next year at the farthest. I can give many examples of this argument of the manufacturers of any State against raising the standard for that particular State until some other State reaches the same standard.

For example, we have a 10-hour day in Virginia for children under 16 and for women. Through acts of Congress we have an 8-hour day in the District of Columbia for children under 16 and for women. But Virginia competes, especially in the cotton mill industry, with North Carolina, and it happens that the largest cotton mills in the State are located in Danville, near the border. An almost equally large cotton-mill community is at Spray, N. C., near the Virginia border, and not far from Danville. Now, the Virginia manufacturers complained when we succeeded in raising the age limit for children employed in factories to 14 years, and the cotton-mill families of Danville employers simply packed up and went across the border and were employed in Spray or in Greensboro, where they were able to work the younger members of their families. The enforcement of the Virginia child-labor law raises the same objection, because North Carolina has not provided any means of enforcement, except through sporadic efforts of school superintendents, and that law only became effective the 1st of January.

For the same reason the Virginia manufacturers resist the reduction of the hours for children to 8 a day, which has become the standard in our great industrial States, on the ground that they are put at a disadvantage in competition with the North Carolina manufacturers so close to them, who can employ such children and even younger children 11 hours a day. Trainloads of cotton-mill employees have been shipped from Tennessee, with a fairly good child-labor law, into North Carolina and Georgia, on the border, on account of the inducements offered by cotton-mill employers and where they can work their younger children also.

The cotton manufacturers in Mississippi have been recently attempting to secure the repeal of the Mississippi law providing an 8-hour day for children under 16, on the ground that they could not meet the competition of the Alabama employers with an 11-hour day for children.

The Tennessee manufacturers and the Texas manufacturers have told me that they favored a Federal law regulating child labor in order to equalize competition, and it seems so manifestly a matter for National instead of State regulation, because of the fact of commercial competition between the States--the very business Congress has a right to regulate when goods are shipped across State lines.

The same arguments have been made by the glass manufacturers of Pennsylvania, who still hold onto boys between 14 and 16 for all night work in the glass factories; by the manufacturers of West Virginia, by the New England States engaged in the cotton indus-

try, one after another, unless all the States in that group could unite in a measure of reform.

I suppose there has rarely been a case when an effective child-labor law has been presented to the legislature of a State in which the employers of child labor did not cite the laws of bordering States as the reason why a bill before their own legislature should not pass, and I think I am within bounds in stating that the whole general movement for the reform of child-labor conditions, to result in the abolition of child labor, as we hope, has been held back a score of years by this argument of the competition between States. And I think I may say that if anyone knows what he is talking about with regard to the difficulty of securing adequate protection for the children through State legislation, I am the one who is competent to testify.

As to the effectiveness of a Federal law, once it has been put upon the statute books, and, perhaps, runs the gauntlet of the courts—of this I have no sort of doubt. Of all laws a child-labor law is one of the most difficult laws to enforce through the verdict of a jury of the vicinage. It would be difficult, for example, to get the jury in a cotton-mill county, upon which there would, in all probability, be some loafing father who wished to employ his own children, to convict either a parent or an employer of a violation of the child-labor law.

I can tell you of an interesting example of this down at Danville, Va. As I have said, they have a better law in Virginia than they have in North Carolina, and Virginia has a State factory inspector who has been very diligent in the performance of his duties. He found 85 violations of the child-labor law in the plants in Danville of the American Tobacco Co. and in cotton mills in Danville. He took a minister with him who had worked in some of the mills in North Carolina, and he found a great many who had gone over there to the Danville mills from North Carolina. He found evidence of the violation of the law in 85 cases, and got affidavits from school-teachers as to the ages of the children, and took these cases before the grand jury in Danville. But the foreman of the grand jury was a brother-in-law of the largest stockholder in the Danville Cotton Mills; the manager of the American Tobacco Co. was a member of the grand jury; the superintendent of the cotton mills was another member; two others were large stockholders in two other mills, and four of their bookkeepers were also members of the grand jury. So there were 9 out of the 12. They threw out all except three of the cases, and the inspector took these three cases before the mayor of the town, who is the judge in such cases down there. It was rather amusing to find that the evidence the parents of the children had filed with the factory in one case showed that the three children were 14 years of age, yet there had been no twins or triplets in that family. I have the record which shows that it was stated by the parents that these children were born, the first on March 3, the second on October 9, and the third on April 16, all within 13 months. The mayor heard these cases and pronounced the men guilty, but said he knew they would be good the next time, and dismissed the cases.

Federal juries and grand juries, however, are drawn from all districts, sometimes comprising a whole State, and it is a matter of

common knowledge that the Federal laws are very much better observed where they can be enforced at all than the State laws have been even where there is the most effective method of inspection and enforcement. Take the liquor laws for example. It has been a matter of common knowledge in States where prohibition laws have been enacted that in the communities in those States not in sympathy with the purpose of the law it has been impossible to convict men who have openly violated the law, but the same men have been careful to take out a United States license for the purpose of violating a State law. I suppose the Webb law relating to the transportation of liquor will measurably end this abuse. I have no doubt that there are many sections of large States in which the distilling of whisky would be carried on to-day without molestation by the juries of the neighborhood, though in violation of the State laws, if Uncle Sam had not adopted a law making illicit distilling of liquor a crime. It is true there are violations of this law, but, considering the opportunities and the profits of this business, the number of persons in the Atlanta Penitentiary convicted of this crime are comparatively few because of the determined efforts of the Federal Government to convict violators, and the crime has become rare, even in the most inaccessible mountain regions. When the time comes that a man who sees a child working under age in a factory can write a postal to the Department of Justice and complain of the violation of the law, with the result that the inspector can be sent to determine the fact, and the employer can be arraigned before a Federal court for violating the law, there will be small need of Federal inspectors, and the danger of employing children illegally will become so great as to overbalance their profits from the cheaper labor.

Mr. Lovejoy has already filed a table showing what States have the 14-year-old limit and which prohibit child labor at night. That statement has been brought right up to date. But I would like to file a few extracts from the Federal reports on the condition of child and woman wage earners in this country which show the violations of the law up to the year 1908—how universally the State laws have been violated.

The CHAIRMAN. It would be a very profitable piece of information to add.

Mr. McKELWAY. These reports sum up the results of some three score agents who were employed to investigate conditions and secure facts regarding the employment of women and children. They reported these violations of law in the cotton-mill industry alone:

[From the Report on Condition of Woman and Child Wage Earners in the United States, Volume 1, Cotton Textile Industry. Prepared under the direction of the Commissioner of Labor. Senate Document No. 645.]

Page 147: As is indicated by this table, 46 establishments were investigated in New England, 15 of which, or 34.8 per cent, employed children under the legal age. These establishments employed 1,711 children under 16 years of age, and of these 120, or 7 per cent, were under the legal age, 14 years. These 120 employees, of whom 58 were boys and 62 were girls, constituted thirty-six one-hundredths of 1 per cent of all employees in these establishments.

Page 150: As indicated by the foregoing table, every establishment visited in Maine employed one or more children under 14 years, the legal age. In one establishment (No. 1) which employed only 34 children under 16, there were 15 children, or 44.1 per cent, under 14 years. This was 6.73 per cent of all

employees in the establishment. Two of these children were only 10 years old and 6 were only 1. In another mill (No. 5) 14 out of 66 children, or 21.2 per cent, were under 14. In the 7 mills visited in the State there were 407 children employed. Of these, 64, or 12.0 per cent, were under 14 years of age. The names of 55 of these were found on the pay rolls, and the names of 9 were not on the pay rolls. Two of these children were 10 years old, 10 were 11, 11 were 12, and 41 were 13 years old.

In New Hampshire children under 14 were found employed in 3 of the 7 mills visited. One of these, employing 5 such children, was investigated when school was not in session, and, as the children were not under 12, such employment was legal. The other 2 mills employed 5 children under the legal age. Three of these children were 13 and two were 11 years old.

It is reported that children under the legal age are undoubtedly employed in some of the mills of New Hampshire during vacation, and that children slightly under 14 begin work during vacation and continue work illegally after school begins until they reach the age of 14, when they obtain the certificate required by law. As this investigation was not made in the fall of the year, the truth of the latter assertion could not be determined.

In the 22 mills visited in Massachusetts, employing a total of 665 children, only one child was found to be under 14 years, the legal age. This child had on file an age and schooling certificate giving her age as 14, so that the violation of the law can not be charged against the employer. The birth records of the city, however, showed the child to be 13, and her certificate was therefore issued by the school committee without proper proof of age.

In a few other localities some of the foreign-born children appeared to be under 14 years of age, but whether or not they really were was not substantiated by positive proof. These children were provided with the requisite age and schooling certificates, which indicates that the evidence of age which they produced had been considered sufficient by the official who was authorized to issue such certificates.

In Rhode Island 5 of the 10 establishments visited employed children under 14 years, the legal age. Of a total of 338 children under 16 employed by these 5 establishments, 50, or 14.8 per cent, were under 14 years of age. This was 1.27 per cent of all employees in these 5 establishments. Of these 50 children, 33 were employed in 1 establishment, where they constituted 28.0 per cent of the children and 2.03 per cent of all employees. In 2 other establishments over 1 per cent of all employees were under the legal age. In one of these establishments 4 out of 24 children, and in the other 7 out of 76, were under the legal age. The names of 36 children under the legal age were carried on the pay rolls, but the names of 14, employed in 4 different establishments, were omitted therefrom. Two of the children were 11 years old, 7 were 12, and 41 were reported as 13 years of age.

Page 186: The most extensive violation of the age-limit law was found in South Carolina. In addition to 42 children under 12 years of age who were orphans, children of widows, etc., and who were therefore legally employed, 405 other children under 12 years were found working in the establishments investigated in that State. As shown by the table on page 171, such children constituted 12.3 per cent of the total children employed in the 36 establishments investigated and 2.8 per cent of the total number of employees. Children under the age of 12 years were employed in 34 of the 36 establishments investigated in the State, and 33, or 91.7 per cent, of these 36 establishments less than 1 per cent of the employees were children under the legal age and not legally excepted from the provisions of the law. In 20 establishments between 1 and 5 per cent were thus illegally employed. In 3 establishments between 5 and 10 per cent and in 3 others over 10 per cent of all employees were children under 12 years of age who were not legally excepted from the provisions of the law.

In North Carolina the law was only slightly less flagrantly violated. Of the 59 establishments canvassed 44, or 74.6 per cent, were found to employ children under the legal age. In 13 of these establishments less than 1 per cent of the employees were children under 12 years of age, in 19 establishments from 1 to 5 per cent, and in 11 establishments between 5 and 10 per cent. In 1 establishment in North Carolina (No. 41) 12.05 per cent of all employees—a higher percentage than in any other cotton mill investigated in the South, outside of Mississippi, which had no child-labor law—were under 12 years of age. In the 44 establishments illegally employing children a total of 1,751 children were em-

ployed, 202 of whom, or 11.5 per cent, were under the legal age. These constituted 8.6 per cent of all the children in the mills investigated in North Carolina, 2.61 per cent of all employees in the establishments illegally employing children, and 1.77 per cent of all the employees at work in all establishments investigated in the State.

In Georgia 20 of the 31 establishments investigated, or 64.5 per cent, employed children under the legal age. Two other establishments employed children under 12, but all were employed under legal exceptions. A total of 107 children under 12 years of age were found at work and of these 41 were under legal exceptions; the remaining 66 were illegally employed. These 66 constituted 5.8 per cent of the children and 1.05 per cent of all employees in the 20 mills illegally employing children. Of all the children employed in the mills investigated in the State these 66 children constituted 3.6 per cent, and of all employees in these mills 0.58 per cent. This is a much lower percentage of illegally employed children than in any other southern State except Virginia. In 1 establishment more than 5 per cent of the employees were under the legal age and in 9 establishments less than 1 per cent were under 12 years and not legally excepted from the provisions of the law.

Page 187: In Alabama 8 of the 13 establishments investigated employed children under the legal age. This is a smaller proportion of establishments than were found thus violating the law in Georgia, but a much higher proportion of children were illegally employed, although this proportion was lower than in either North Carolina or South Carolina. A total of 71 children were found to be under the age of 12 years. This was 7.5 per cent of all children and 1.59 per cent of all employees in the establishments illegally employing children under 12 years of age; it was 6.1 per cent of all children under 16 years of age and 1.27 per cent of all employees in the 13 establishments investigated. Of the 71 children under the legal age 48 were at work in one mill. This was the only establishment in which more than 5 per cent of all employees were under the legal age, as against 1 in Georgia, 6 in South Carolina, and 12 in North Carolina.

In Virginia 2 of the 4 establishments investigated employed children under the legal age. In one of these only one child was found to be under 12, and in the other only one-half of 1 per cent of all employees were positively proved to be under 12 years of age.

In North Carolina, in 6 of the 59 establishments investigated, more than 25 per cent of the children were under 12 years of age, and in 3 of these approximately 35 per cent of all child workers were thus illegally employed.

In Georgia only 1 establishment was investigated in which more than 25 per cent of the children were under the legal age, and in Alabama none. In 22 establishments in North Carolina, 4 in Georgia, and 1 in Alabama more than 10 per cent of the children were found to be under the legal age. In Virginia in 1 establishment investigated 4.1 per cent of the children were found to be under the legal age and in another 0.4 per cent.

On page 188: It will be interesting to compare conditions in Mississippi, where there was no child-labor law at the time of this investigation, with the conditions disclosed in the tables which have just been discussed.

In Mississippi every establishment investigated employed children under 12 years of age. This was not true of any other State. In one establishment, as indicated by the table, such children constituted 15.87 per cent of all employees, a higher percentage than in any other establishment investigated. Of the total employees in the establishments visited children under 12 constituted 5 per cent, a much higher proportion than in any other State.

In the 5 States having child-labor laws, 753 out of 9,126 children, or 8.3 per cent, were found to be under the legal age. If those under 12 but legally excepted are added, the total is 836, or 9.2 per cent. In each of the 9 establishments investigated in Mississippi more than 10 per cent of all children were under 12 years of age, and in all but 1 more than 15 per cent. In the 9 establishments 113 of the 539 children, or 21 per cent, were under 12 years of age. This, again, is a much higher proportion than in any other State.

On page 189: As shown by this table 494, or more than half, of the 949 children under 12 years of age were 11 years old. Of the remainder 283 were 10 years old, 107 were 9, 48 were 8, 16 were 7, and one, who worked as a helper, was only 6 years old. A total of 172 children were under 10 years of age, and of these 46 were employed in North Carolina, 83 in South Carolina, and 28 in Mississippi, with only 7 in Georgia, 8 in Alabama, and none in Virginia. Of

the 16 children 7 years old, 4 were employed in Mississippi, which, as has been stated, had no child-labor law at the time of the investigation; the other 12 were illegally employed, and 6 of these, as well as 1 child 6 years old, were at work in South Carolina. The names of only 4 children 7 years old were found on company pay rolls. Of these 2 were employed in Mississippi, 1 in North Carolina, and 1 in Alabama.

Of the 753 children illegally at work in the establishments investigated the names of 592 appeared upon the pay rolls of the establishments employing them and the names of 161 were omitted therefrom. The wages of these 161 children were included with those of some other member of the family, and they were what are commonly known in southern cotton mills as "helpers."

On page 190: At another mill in North Carolina was a spinner tending 6 sides, but for some time her sister, aged 11 years, had been helping her, and together they had tended 8 sides, and the older sister had received payment for tending 8 sides. At an establishment in Georgia a woman reported that her little daughter, 10 years old, worked every day helping her two sisters. The child quit for a while, but the overseer said to the mother, "Bring her in; the two girls can not tend those machines without her." The mother asked that the child be given work by herself, but the overseer replied that the law would not permit it.

At a certain mill in North Carolina a boy 9 years old worked in the daytime. His wages were carried on the day pay roll under the name of a sister, who worked at night. When the sister was not at work the boy's wages were credited to the father, who is a machinist working in a different part of the mill.

The above examples are typical and merely illustrate a common method of evading the law. This custom of indirectly employing children under the legal age has been so well recognized that, according to a labor agent in North Carolina, families on farms or in the mountains have commonly been assured that under the helper system all of their children may work in the mill and earn wages.

The CHAIRMAN. Mr. Holder, did you want to be heard this afternoon?

Mr. HOLDER. Yes, sir.

#### STATEMENT OF MR. ARTHUR E. HOLDER, LEGISLATIVE COMMITTEE, AMERICAN FEDERATION OF LABOR.

Mr. HOLDER. Mr. Chairman and gentlemen of the committee. I am not going to detain you but for a few moments. I would like to say, however, that after reading Mr. Palmer's bill, as carefully as I am able, I have come to the conclusion that it is the product of an industrial statesman, or of industrial statesmen and stateswomen. In all its details it is one of the most finished pieces of work I have seen around this Capitol. It has been drawn with particular care not to make it verbose or have it overburdened with unnecessary material. Its administrative functions, I believe, can be worked out to such a nicety that there will be little or no difficulties of any kind to contend with. And the fact that it places the matter under Federal jurisdiction will not be the only feature of interest that will enforce the bill if it should ever be enacted into law. The moral effect it would have would stimulate State legislatures to bring their laws up to the uniform standard of the Federal law is an excellent feature; it would also encourage their jealous regard for their own rights—standing firmly on the old State rights doctrine—to see that there was not any Federal interference with the enforcement of the State laws after their State laws had been brought up to the Federal standard.

I believe a word of commendation should be given to this committee at this time, particularly from myself, representing the organ-

izations that I do, for the world knows that we have been struggling for a great many years in behalf of the children. We have taken advanced steps in various States before we have reached this happy day, this particularly happy day, Mr. Chairman, in this very room, when almost—well, when everybody is unanimous in supporting a law for the social welfare—the greatest investment there is in the country—of the child; when there is not a voice heard in opposition to any feature of the bill. It is only a few short years ago when to stand in this room and support a law in behalf of the child, the workingman, or the working woman was to be ridiculed; and it is only seven short years—if I may be pardoned for making these observations, but I think it is necessary because it displays the wonderful growth and development of our human feelings—only seven short years since Albert Beveridge during the debate on his bill made his celebrated three-day speech in the Senate, and he knew something about it; he was ridiculed from the highest to the lowest because he proposed to bring in the Federal Government to interfere with State rights in regard to the status and rights of children.

I could reiterate and corroborate some of the statements made by Dr. McKelway with regard to the difficulty of legal enforcement of laws of this kind. I happen to have occupied the rather unique position of being the first factory inspector in the State of Iowa; and my good friend, Miss Kelly, will remember when we had no State factory laws in the State of Iowa. But even before there was a line of law written. I took it upon myself to see what the conditions were, and, as a result of my investigations, made a report to the governor, as deputy commissioner of the bureau of labor statistics. Upon the strength of that report the first factory-inspection law of the State of Iowa was written.

I well remember, in the southern part of the State, when I would go into a mill or factory and commence to talk to the owner about the proposition, he would say, "Oh, we came over here from Missouri to get away from all these pesky labor laws"; and in the upper part of the State they would say, "All these pesky laws are interfering with our business." Interfering with the business of exploiting children and women and trying to make the State of Iowa a pauper-labor State. We said no.

There is one point that has not been touched on or referred to by any of the previous speakers, and that is that I anticipate we are going to have some difficulty in connection with section 5. I will read the section (reading):

SEC. 5. That any person, partnership, association, or corporation, or any agent or employee thereof, manufacturing, producing, or dealing in the products of any mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment who shall violate any of the provisions of section 1 of this act, or any of the rules and regulations made in accordance with the authority contained in section 2 of this act, or who shall refuse or obstruct the entry or inspection authorized by section 3 of this act, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000 nor less than \$100, or by imprisonment for not more than one year or less than one month, or by both fine and imprisonment, in the discretion of the court.

I believe it is the first time to my knowledge that such a proposition has been made in a bill before the Federal Congress. It is only a few weeks ago that—you will remember—some Federal agents were

forcibly ejected from the Louisville & Nashville Railroad offices because they insisted on getting detailed and accurate information for the benefit of the Interstate Commerce Commission. I am just wondering what is going to happen with some of our peculiar employers when they know there is a Federal inspector wants to go through their plants to see if there are any children under age employed there. It is going to be an interesting experiment. I just point out to you that you may have to defend that particular proposition, and it is wise to be prepared.

Then, on line 11 of the first page, after the word "time," I think these words should be added. It is at the present time not very definite, and I think it should have these words added. Line 10 starts, "children under 14 years of age are employed or permitted to work at any time," etc. I would propose that you add "during the day or night" after the word "time." It would then substantiate and clarify the words that follow so there would be no doubt whatever concerning what the expression "at any time" means.

Mr. NOLAN. The bill practically prohibits their employment after 7 o'clock in the evening, doesn't it?

Mr. HOLDER. Yes, sir; but I believe you might run into some difficulty with some of the courts over those words "at any time." I am not a lawyer, but it occurred to me there was an opportunity left open at that point to have the effectiveness of the bill vitiated.

I was going to add one more word, Mr. Chairman. It may be that you have to verify this before the House, with regard to the need of this measure, with facts and figures. I don't know what data has already been presented and introduced by the previous speakers, but I presume that they have been extremely careful in the preparation of the statistical information they submitted to you. But if you have not got everything complete and need any tabulated official information I would particularly refer you to the investigation made by the United States Bureau of Labor Statistics on the strength of the law of 1906-7, on women and children labor investigations, hours of labor, etc. The results of that investigation are contained in 19 volumes. Some of you who are here to-day remember the difficulty we had to get that investigation, especially to have the investigation made by the Bureau of Labor Statistics, and after we got the authority for the investigation, the difficulty we had in getting the necessary appropriation. But you will find in those reports complete and accurate information up to the time that investigation closed.

Mr. PALMER. Hasn't there been prepared a summarization of that work so that it is more readily accessible than in that large work of 19 volumes?

Mr. HOLDER. I think so; yes, sir; and it would not be necessary to go through the whole 19 volumes.

Mr. PALMER. It is not in print, however.

Mr. HOLDER. No, sir; I don't believe the summary is yet in print; I understood that it was being prepared.

Mr. PALMER. Isn't it one of the things the Bureau of Labor Statistics wants this large appropriation for?

Mr. HOLDER. I know they are very much behind with their work and are suffering for the lack of sufficient appropriations.

Mr. PALMER. I would suggest, Mr. Chairman, if you will permit me, that I ask Mr. Meeker to transmit to you all the information he has on the subject.

The CHAIRMAN. We don't want to duplicate any of this matter, but I don't know whether he has sent that or not.

Mr. LOVEJOY. I regret to say, Mr. Chairman, the summarization you are speaking of has not been made. The Children's Bureau offered to undertake the preparation of it, but they were not authorized to do so. I think, however, that it is a matter that ought to be very vigorously urged. Our committee has been urging it, but we have not yet accomplished anything.

The CHAIRMAN. Have you any further witnesses to introduce, Mr. Palmer?

Mr. PALMER. I think not, Mr. Chairman.

The CHAIRMAN. We have not yet heard from any who may be adversely interested in this bill; but, the committee will wait for a reasonable time for any such persons to appear here for that purpose. I will keep you advised, Mr. Palmer, from day to day, of the situation.

(Thereupon, at 4.20 p. m., the committee adjourned.)