

Formalism Over Function: Compulsion, Courts, and the Rise of Educational Formalism in America, 1870–1930

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Background/Context: *Though the impact of the legal system in shaping public education over the last sixty years is unquestioned, scholars have largely overlooked the impact of the legal system on the early development and trajectory of public schools in America. Scholars have given particularly little attention to the period in the late nineteenth and early twentieth century, when states began passing laws requiring that children attend school for some portion of the year. These laws brought an end to the era of voluntary schooling in America while posing a difficult set of legal and educational questions for judges who had to interpret and apply them. The evolving logic of these decisions subsequently shaped the role, purpose, and form of education in America.*

Purpose/Objective/Research Question/Focus of Study: *This article offers a legal history of compulsory education in the late nineteenth and early twentieth century. In doing so, it seeks to understand the role that courts played in shaping the character and development of the modern school system by examining court cases that stemmed from the passage of compulsory schooling laws. By examining decisions from both before and after the passage of these laws, it is possible to trace shifts in judicial thinking about the role and purpose of these laws and to recognize the role that these rulings played in developing a specific vision—and particular grammar—of schooling.*

Research Design: *This article is a historical analysis that focuses exclusively on cases brought in state courts relating to the rights of parents to control the education of their child before and after the passage of compulsory schooling laws. Though the rulings examined were issued by individual state courts and state supreme courts, attention is paid to the sharing of ideas between courts from different states and the collective vision of the purpose of compulsory school laws that resulted.*

Conclusions/Recommendations: *The shift from voluntary to compulsory schooling that*

occurred at the turn of the century was attended by an equally dramatic shift in the educational vision articulated by judges. The courts began the period with a view of the aims of education as being synonymous with learning, only to end the period with a view of education as being synonymous with attendance at school—a change that represents a shift from educational substance to educational formalism. Thus, this article argues, the history of compulsory education is also the history of the rise of educational formalism, and the courts played an important, and as yet unrecognized, role in legitimating and facilitating a vision of schooling that privileged certainty and order over substance and complexity.

The impact of the legal system in shaping public education over the last sixty years is unquestioned. A simple listing of the case names—*Brown, Rodriguez, Bakke, Tinker, Serrano, Bollinger*—is enough to elicit thoughts about the complex relationship between courts, society, and schools. Whether revered for their ability to transcend local prejudices and politics, or reviled for their lack of institutional capacity or inability to craft flexible solutions to complex problems, courts, and their role in shaping the public education system of the late twentieth century, have received considerable scholarly attention. Despite the glut of attention directed at understanding this relationship in recent times, the impact of the legal system on the early development and trajectory of public schools in America has been largely ignored by scholars.¹ Traditional accounts of the creation and expansion of the modern school system have focused primarily on the efforts of a cadre of professional educators who, obsessed with developing the science of education and convinced that they had conceived the best possible system of education, worked tirelessly to create the modern bureaucratic school system. The importance of these “managers of virtue” (Tyack and Hansot 1982) to the story of modern schooling in America and the development of the “one best system” (Tyack 1974) is undeniable, but this focus on professional educators’ own contributions to schooling has left the impact of actors in other spheres largely unaccounted for. This article seeks to show the role that courts and the law played in bringing about and reinforcing a specific, and rather narrow, vision of education as an activity that takes place only in schools.

Specifically, this article will offer a legal history of compulsory education in the late nineteenth and early twentieth century. The shift from voluntary to compulsory schooling that occurred at the turn of the century was attended by an equally dramatic shift in the educational vision articulated by the courts. The courts began the period with a view of the aims of education as being synonymous with learning, only to end the period with a view of education as being synonymous with attendance at

school—a change that represents a shift from educational substance to educational formalism. Thus, this article argues, the history of compulsory education is also the history of the rise of educational formalism, and the courts played an important, and as yet unrecognized, role in legitimating and facilitating this vision of schooling.

The move from seeing education as a substantive, content-based endeavor to one marked by formalisms such as attendance at a place called “school” can be traced through three distinct periods of judicial thought. The first period, which began with the rise of the common school movement and continued until the last decades of the nineteenth century, covered the era of voluntary schooling in America. During this period, courts understood the role of the school as largely educational and, for the most part, largely within the realm of the parent to control. The idea of compulsion was anathema to parents, educators, and legal scholars alike. Courts rejected efforts to compel through legislation and, as one set of legal commentators put it after a particularly favorable opinion, “all classes of men, and women too . . . [are free to] keep their own children at home, and educate them in their own way” (*Supreme Court of Illinois* 1871).

The objections to compulsion, however, would not last. Within the final two decades of the nineteenth century, the majority of states passed compulsory schooling laws, and the rest of the states followed in short order. Despite the fundamental shift in the philosophy of American education, in this second period of judicial thought on education, the courts continued to develop a body of legal precedent based on the view that the aim of education was learning a body of knowledge and acquiring a set of skills. The compulsory schooling laws, the courts observed, were intended to ensure that parents fulfilled their duty to educate their children. Contrary to what some scholars have suggested, this period did not constitute a sharp break from the previous era of judicial thought. Though courts began to struggle with how to give meaning to these new statutes while maintaining traditional notions of the role of the parent in education, parents in the early decades of compulsory schooling were still routinely granted discretion in determining the course of study for their child and given latitude in selecting the means by which this education was acquired. As one state supreme court put it, “[the] purpose is ‘to secure to the child the opportunity to acquire an education’ . . . the result to be obtained, and not the means or manner of attaining it” (*State v. Peterman* 1904, 552).

But this understanding, too, would give way to a different conception of education. The ever-growing complexity of compulsory attendance statutes in the 1910s and 1920s helped usher in the third era of judicial

thought. Though seldom remarked on by scholars, the shift from voluntary to compulsory education dramatically altered the calculations that courts were required to make in adjudicating cases about the education content and the manner in which education should be provided. The act of compelling education required courts to articulate, with increasing frequency and specificity, exactly what was being compelled by these laws: Attendance at school? The acquisition of certain knowledge? The acquiring of certain skills? Abetted by legislators who felt a need to enumerate, usually by way of statute, the elements of schooling that had necessitated making it compulsory, the courts came to conflate *education* with *schooling*—where schooling was more often associated with a place than a body of knowledge. With this shift, the courts came to recast significantly their earlier understanding of education in terms that were more formalized and literal. By the end of the period, judges could not conceive of education occurring any place but *in school*. In this way, the courts played an important and seldom recognized role in validating and legitimizing the idea that education was synonymous with attendance at school.

Several scholars have also remarked on the legal shift from voluntary to compulsory attendance. Focusing on the increasing specificity of compulsory statutes and on the ways in which the state used compulsory attendance to introduce non-education-related interventions, these scholars have described the shift as moving from “compulsory attendance to compulsory education” (Steffes 2007; also Provasnik 2006). This is an important and apt characterization of the compulsory school laws themselves and, in turn, the nature of American state-building and governance in the period, but it obscures the fact that the courts moved in the opposite direction. While the legislative approach to compulsory school laws was shifting from “attendance to education,” judicial thinking on the purpose of compulsory school laws was undergoing an equally dramatic shift in emphasis from education to attendance. As this article will show, courts abandoned their early view that compulsory education laws were intended to produce some educational outcome and instead opted more formalistic, bright line tests of whether parents had complied with compulsory education laws. Rather than concern themselves with the difficult task of assessing whether learning had actually occurred, judges based their rulings on more readily observable facts, such as attendance at an officially sanctioned school for a specific period of time. In contrast to the increased complexity of education legislation, this era saw a narrowing of educational options that could be used to comply with compulsory attendance law. The impact of this shift in thinking was to reinforce the notion of a “one best system” and its particular “grammar of schooling” (Tyack 1974; Tyack and Cuban 1997).

VOLUNTARY ATTENDANCE AND OPTIONAL EDUCATION

In the early years of the nineteenth century, Americans were among the most literate people in the world. Despite the lack of a national ministry of education and having an entirely voluntary system of schools that, at least in its early days, was neither free nor entirely public, Americans made a considerable investment in developing a system of public education and held a deep faith in its power. This faith in education and the subsequent demand for schooling can be seen in the numerous provisions made by Congress throughout the nineteenth century for the funding and development of schools in newly settled territories. As far back as the Northwest Ordinance of 1787, Congress provided for the federal underwriting of the creation of schools—funding that came to be seen as an entitlement rather than an incentive to settle new lands (Tyack et al. 1987, 32–36). The widespread faith in education as a means of securing a republican form of government, safeguarding democracy, and instilling civic values was matched by an equally wide range of views on the form education should take. Before the common school of Horace Mann and Henry Barnard became the predominant form of education in the mid-nineteenth century, there were at least three other robust models of education operating successfully and competing with the common school for clients (Katz 1971).

Though the specific reasons for the ascendancy of the common school have been the subject of considerable debate among scholars, it seems clear that an increase in the number of immigrants entering the country and the rise of industrialized capitalism coupled with the anxieties of an increasingly insecure middle class to make the work of the common schools appear more important than ever (Kaestle 1983; Cremin 1951). Despite these social and class-based concerns over the changing character of the country, education in America, with the exception of Massachusetts and New York, remained completely voluntary until after the Civil War, at which point states began passing laws with such frequency that nearly every state had a compulsory education law by the turn of the century. Many historians of education have left this shift from voluntary education to compulsory education unexamined, or they have assumed that the laws were a natural sign of progress—the inevitable outgrowth of a burgeoning education bureaucracy. Early educational historians like Ellwood Cubberley were more interested in telling the story of the triumphant advance of schooling and of the heroic work done by educators in producing good American citizens than to question the logic or value of compulsory schooling (Cubberley 1909, 55–60). To Cubberley, the story was one of natural evolution and unquestioned

progress. “Each year,” Cubberley wrote with approval, “the child is coming to belong more and more to the state, and less and less to the parent.” The destination of the steady march of progress toward compulsory attendance was close at hand, allowing Cubberley to predict in 1909 that the unenlightened parent’s “plea in defense that ‘the child is my child’ will not be accepted any longer” (39, 63).

Such a view obscures the support that voluntary education had in the late nineteenth century among parents, judges, and educators alike (Provasnik 1999). It was by no means inevitable that compulsory schooling laws would become a defining characteristic of the American school system, and assuming so prevents us from seeing the dramatic shifts that occurred in the wake of compulsion. In this period, education was understood by courts as a voluntary act on the part of the parents, and courts did not believe parents were ceding any of their parental authority by sending a child to school, nor did courts have to concern themselves with the suitability of alternative means of education parents sought for their children—such was the nature of voluntary education. Thus, in this era of voluntary schooling, courts did not see, as some scholars have suggested, the school as “*parens patriae*, a substitute parent, to whom real parents delegated the task of education and responsibility for discipline and training,” but rather saw the parent as maintaining discretion over the content of the child’s education (Rubin 1986, 134–35).

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In the era of voluntary schooling, among the first important education-related issues posed to courts² was the proper relationship between the school and the family: Given that a parent could decide whether to send his child to school at all, what was the relative standing in the school building of the parent and the state—manifested in the teacher or school trustees—with respect to the parent’s wishes for the child’s educational attainment? In what would become one of the most cited cases on the issue at the time, the Supreme Court of Wisconsin ruled on whether a father, over the objection of the teacher and contrary to the school’s curriculum, could prevent his son from studying geography. The school district and the circuit court believed he could not, reasoning that “the views of the parent . . . must yield to those of the teacher, and that the parent, by the very act of sending his child to school, impliedly undertakes to submit all questions in regard to study to the judgment of the teacher” (*Morrow v. Wood* 1874, 63). The Wisconsin Supreme Court, however, disagreed.

Citing a “fatal error” in the logic of the lower court, the Wisconsin Supreme Court said,

It seems to us it is idle to say the parent, by sending his child to school, impliedly clothes the teacher with that power, in a case where the parent expressly reserves the right to himself, and refuses to submit to the judgment of the teacher the question as to what studies his boy should pursue. . . . Certain studies are required to be taught in the public schools by statute. . . . But the parent has the right to make a reasonable selection from the prescribed studies for his child to pursue. (*Morrow v. Wood* 1874, 65)

In other words, the teacher was not supplanting the will of the parents while the child was at school, but instead had to abide by it. Deciding in favor of the defendant was an important step in the evolution of the court’s thought about the role of the school and the parent’s duty to educate his child. The court conceived of the school as having been created to enable children to acquire certain skills and to learn certain information. The court in *Morrow* added that the specific set of skills and information to be learned was solely within the discretion of the parent to decide. This right of the parent to select from the curriculum, the court explained, extended even to courses that the state legislature required every school to offer. In so reasoning, the court construed legislation that enumerated the subjects that must be taught at every school as constituting a declaration of the minimum number of subjects that schools had to make *available* to students for study, not as a required course of study for all students.

Wisconsin’s high court was not the only high court to weigh in on the issue of the rights of the parent with respect to the offered curriculum. In the case of *Rulison v. Post* (1875), the Supreme Court of Illinois independently reasoned that parents had the right to select from the courses offered at the school to construct an appropriate course of study for the child.³ Two years later, the same court had occasion to revisit its ruling in *Rulison* and used the opportunity not only to affirm the general formulation of its earlier ruling but to expand its scope as well. This time, in the case of *Trustees v. People ex rel Van Allen* (1887), the court rejected the authority of the district to prevent a student from attending high school on the basis of an entrance examination on a subject (grammar) his father had refused that he study. In *Rulison*, the Illinois Supreme Court found that a parent had the right to make a “reasonable” selection among the offered courses. Now the court argued that “no particular branch of study is compulsory upon those who attend school,” to which

it added its view that “in most primary schools it would be both absurd and impracticable to require every pupil to pursue the same study” (*Trustees v. People*, 308). Fully recognizing the power that this decision placed in the hands of the parent, regarding the outcome of this decision, the court noted, “whether fortunate or unfortunate [for the student], it is for the parent, not the trustees, to direct the branches of education he shall pursue, so far as they are taught” (309).

These early decisions, though issued by state courts and grounded in state law, were cited by courts around the country when faced with similar legal questions. Thus, the influence of these state decisions was decidedly national in scope. For instance, when the Supreme Court of Nebraska was asked to determine the reasonableness of the decision to expel a child for her refusal to study grammar, it echoed the logic of—and specifically cited the decisions of—the courts in Wisconsin and Illinois, declaring, “no pupil attending the school can be compelled to study any prescribed branch against the protest of the parent . . . and any rule or regulation that requires the pupil to continue such studies is arbitrary and unreasonable” (*State ex rel Sheibley v. School District* 1891, 395, emphasis added). The enumerated subjects in school legislation were, in the court’s view, intended to bind educators and school officials to ensure that the *opportunity* to learn a certain set of subjects was brought within reach of all students, not to ensure that all students became educated in the same way. In affirming the right of the parent to have discretion over the studies of his child, the court specifically rejected the idea that the teacher or school trustees were in any way qualified to fulfill this role.

Taken together, these cases reveal the thinking of the courts with respect to education on a number of key issues. In this era of voluntary schooling, courts developed and elaborated a coherent view of the school as an institution intended for the education and enrichment of all children in the state. To the extent that legislation enumerated a specific course of study to be offered in all the schools of the state, courts interpreted these courses as binding on the minimum of what schools could offer, not as a condition of course selection on attendance for the student. Far from considering the school and its officials as *parens patriae*, the courts had no difficulty dividing the task of education into pieces and delegating responsibility to educational professionals and parents accordingly. The expertise of educational professionals was deferred to by both courts and legislatures with respect to the task of selecting the courses, materials, and methods of instruction, while the parent maintained the right to select for his child among those courses. Courts did not express any doubt that the parent retained the responsibility of directing the education of his child even as the child attended school.

This was not a responsibility that could be delegated to school authorities, rather, it was a duty to be reserved and exercised only by the parent. In the view of the courts, neither the subject in question nor the level at which it was studied—common school or high school—affected the ability of the parent to exercise these rights.

COMPULSION AND THE STRUGGLE TO DEFINE EDUCATION

In the era of voluntary schooling, the courts had come to a happy agreement about the place of the school in the development of the child and had upheld the traditional view of the right of the parent to determine the manner and means by which his child is raised. Not only was the decision to send one's child to school purely optional, but once the student was within the school building, the courses offered by the school were also optional, with the selection of classes left to the judgment of the parent. This arrangement, however, was about to change dramatically as the movement to pass compulsory schooling laws swept through state legislatures across the nation. Between 1870 and 1890, twenty-five states enacted compulsory attendance laws, and by 1918, every state in the union had such a law.

There is considerable debate among scholars about the reasons for this sudden and uniform legislative shift from voluntary to compulsory education, but whatever reason one accepts for their enactment, compulsory attendance laws threatened to upset the traditional view of the parent as determiner of the length and content of his child's education—a view that, as we have seen, had been sustained on so many occasions by courts in the past.⁴ The enactment of these laws, however, was not the final step in the changing of the philosophy of American education from voluntary to compulsory. The laws still had to survive strong political and legal challenges to their existence. Shifts in the majority party from Republican to Democrat often brought the repeal of these laws (Tyack et al. 1987), and there was concern that hostile judges might declare them unconstitutional or issue adverse decisions that would render the laws meaningless or unenforceable (Provasnik 2006). These threats to compulsory education, however, rarely materialized and were always fleeting. The era of strictly voluntary education was over.

Though the courts of this period were inclined to give considerable deference and leeway to state legislatures in their enactment of new laws, as was shown in the preceding section, there was a considerable amount of

judicial precedent that the courts could have drawn on in determining that the state had overstepped its bounds through abrogating the traditional rights of parents to control the upbringing of their children by requiring that the children attend school. Indeed, one scholar has characterized the four decisions that upheld compulsory schooling cases against challenges that the laws were unconstitutional as acts of “judicial activism” (Provasnik 2006).

In a sign of how unsettled the law was on the point of legalized compulsion, the four courts between them managed to generate three distinct legal justifications—*parents patriae*, constitutional duty to defuse knowledge, and the police power—for their rulings.⁵ Despite their lack of accord on the constitutional basis for the power of compulsion, the courts were unanimous in upholding compulsory attendance laws and thus were a key player in closing the door on the era of voluntary schooling in America. Provasnik has argued that these decisions should be recognized not only for their role in bringing compulsory attendance to American education, but also because “these decisions justified compulsory attendance in a way that abrogated the traditional rights of parents to control the educational content of their children’s schools and gave states a *carte blanche* to regulate all educational content” (Provasnik 2006, 313). Legislators took full advantage of this *carte blanche*, in Provasnik’s telling, until the United States Supreme Court finally placed a check on the state’s power to regulate education with its rulings in *Meyer v. Nebraska* (1923) and *Pierce v. Society of Sisters* (1925). Though Provasnik is right to suggest that these compulsory education rulings were a pivotal moment in the history of American schooling, these decisions did not mark the end of parental involvement in education during this period. Though an increasing amount of authority was placed in the hands of legislators and school officials to determine the terms of education, the rulings did not create a sharp break with the past in part because judges did not believe that the constitutionality of compulsory laws “abrogated the traditional rights of parents to control the educational content” of their children’s education. Rather, judges set about interpreting the meaning and spirit of these laws in ways that defined their purpose as substantive and outcome driven and, thus, could be complied with in any number of ways that maintained considerable levels of parental discretion and control.

Though they maintained continuity with existing legal precedent concerning parental involvement in education, the rulings did significantly change the questions that the courts were asked to adjudicate. Whereas before, the court had to determine the limits of parental discretion within the walls of the school, once school attendance was compelled, the questions that quickly followed were: What exactly is being compelled?

The acquisition of a certain set of facts? Attendance at a place called school? For the first time, the courts were troubled with the question of what constituted a “school.” The answers to all these questions mattered in a way that they never had before, because previously parents had been able to do as they pleased with respect to their child’s upbringing. Now, parents had to make sure that their efforts to control the education of their child did not run afoul of the local school board or that they had the blessing of the courts to maintain the discretion that prior to compulsory education laws had been considered rightfully theirs.

In answering these new questions, judges articulated a view that compulsory attendance and parental choice were not mutually exclusive ideas. Even more important still, the courts found a way to hold the traditional line that education could take a number of forms, contain differing content, and leave considerable room for discretion on the part of the parent. The rationales articulated by the courts in the early period belie the idea that the passage or enforcement of compulsory education laws immediately led to the creation of the modern bureaucratic public school. The history is more complicated than that as judges in this period consistently rejected the idea that the passage of these laws necessarily meant a uniform curriculum or that education could only take place in a location called school.

One important case that illustrates the courts’ ability to maintain parental discretion over the content and form of a child’s schooling even after compulsory attendance laws were enacted and enforced is the Massachusetts case *Commonwealth v. Roberts* (1893). The question before the court was whether Mr. Roberts was guilty of violating the state’s compulsory attendance law for having his child attend a school that was neither the local public school nor an approved private school (its application for approval having been expressly rejected). In delivering the verdict of the court, Justice Allen ruled that the purpose of the compulsory law was to ensure education, not a particular form or style of schooling. “The great object of these provisions,” Justice Allen wrote, “has been that all children shall be educated, not that they shall be educated in any particular way” (*Commonwealth v. Roberts* 1893, 374).

Thus, the *Roberts* decision articulated a rule that left the number of places where a child could receive his or her education nearly limitless. Contrary to the lower court’s ruling, Justice Allen reasoned that the approval of the local school board was not intended to limit the places in which an education could be received. Rather, it was only intended to offer a simple and straightforward means of compliance with the compulsory attendance law. If the child attended a public school or an approved private school, that was enough, on its face, for a parent to be

considered in compliance with the law. On the other hand, Justice Allen continued, “If the school committee has not approved of a particular school, or expressly refused to approve of it, then the person having control of the child . . . must take the responsibility of being able to prove that he has been sufficiently and properly instructed there” (*Commonwealth v. Roberts* 1893, 374–75).

In other words, parents who opted out of the public, or publicly approved, system simply bore an extra burden that those who attended an approved school did not: Parents who opted out had to prove that their child had actually become educated. For everyone else, it was merely assumed that attendance at a public school would inevitably lead to the education that was intended by the law.

It might be supposed that the justices in Massachusetts, coming from a state that was the first to implement compulsory education laws and that was generally a pioneer in public schooling, might have had views on education that were out of step with those held in other parts of the nation. But this was not the case. In 1904, Clarence Peterman was similarly prosecuted for failing to abide by Indiana’s compulsory schooling law because he had removed his daughter from the public school and had her instructed at the home of a tutor whom he privately employed. Charges were brought against Peterman because the local officials did not believe that hiring a private tutor could fulfill the requirement in Section 6033a of the state’s compulsory attendance law that a child attend a “public, private, or parochial school.” To this point, the prosecution made a special effort at trial to highlight all the ways the *physical* environment in which the tutor, Mrs. Hugelheim, instructed the child did not resemble a school at all: Mrs. Hugelheim “had no school equipments, other than a study table and a desk owned by [Mr. Peterman], and a blackboard upon said desk, and that she had said child sit most of the time at her desk in the sitting room, but sometimes . . . in the kitchen” (*State v. Peterman* 1904, 551). The prosecution’s harping on blackboards, tables, and desks reveals the extent to which people had begun to accept the *physical environment*—a rather superficial formalism—as a proxy for the content of education.

It was self-evident, the prosecution’s logic ran, that Mr. Peterman’s arrangement was deficient because the environment in which the education was to take place was deficient. Indeed, the prosecution wanted the judge to instruct the jury that a private school within the meaning of the state statute meant “a reputable private school, organized and conducted . . . by a person or persons, who possesses the necessary qualifications . . . and who have proper equipment for conducting such a school” (*State v. Peterman* 1904, 551). Justice Henley, writing on behalf of a unanimous

court, did not mince words in expressing the court's view that this was not a suitable definition for a school. "We think the instruction was properly refused," he wrote, "because it is radically wrong." The definition of a school in the court's view was, quite simply, "a place where instruction is imparted to the young." To explicate the point further, Justice Henley added, "If a parent employs and brings into his residence a teacher for the purpose of instructing his child or children . . . the meaning and spirit of the law have been fully complied with" (552).

In the court's view, then, school was not a place connoted by any physical elements, but rather by the activities that take place there. Any place where learning occurs could rightfully be declared a "school" within the spirit of the law. Echoing its Massachusetts colleagues in *Commonwealth v. Roberts* (1893), who, it was recalled, had determined that the law required that children be educated, not educated in a specific way, the Indiana court reiterated that it was results, not form, that mattered when determining compliance with the law: "The result to be obtained, and not the means of obtaining it, was the goal which the lawmakers were attempting to reach. The law was made for the parent, who does not educate his child, and not for the parent who employs a teacher and pays him out of his private purse" (*State v. Peterman* 1904, 552).

Thus, in both the *Roberts* and *Peterman* decisions, we find courts ruling in favor of a parent's ability to direct the education of their child even after compulsory schooling laws had been enacted and enforced by the state. It should also be noted that in both instances, the courts rejected narrow readings of the state's compulsory attendance laws, offering instead a functional interpretation of the laws that placed learning at the heart of the law and eschewed a constrained vision of learning as an activity that could only occur at a certain location or under certain conditions. This is particularly true of the *Peterman* decision, because the Indiana law very specifically listed three types of schools—public, private, and parochial—that would allow for compliance with the compulsory law and did not have an "or by other suitable means" clause like many other states did—a clause usually interpreted by courts as an indication that private tutoring was an acceptable alternative. The court in *Peterman* interpreted "private school" to mean, effectively, any education that was privately funded. This is an especially important conclusion because it has been presumed that in sustaining compulsory schooling laws, either the legislature or the courts were thereby intending to promote a single vision of schooling, which is to say public schooling. The decisions of the Indiana and Massachusetts Supreme Courts in *Peterman* and *Roberts* resist such an interpretation.

Not only did courts in this period espouse a liberal notion of what

could constitute a school, but they also continued to rely on and expand the legal precedent of the precompulsory law days, which gave parents the ability to make choices about curriculum within the public school itself. In fact, in 1909, the Supreme Court of Oklahoma expressly rejected the argument that “the compulsory education clause . . . absolutely destroys the old common-law doctrine that the parent had the entire control over the education of his child, and . . . places the course of study that is to be used in all the public schools in this state in the hands of a textbook commission” (*School Board District Number 18 v. Thompson* 1909, 579). Instead, the court embraced the precedent of the precompulsory education era—citing the decisions in *Morrow* and *ex rel Van Allen* among others—and declared, “Our Constitution provides for compulsory education; but it leaves the parents free to a great extent to select the course of study” (581).

An even more direct comparison between pre- and postcompulsory attendance law judicial thinking is offered by *State ex rel Kelley v. Ferguson* (1914), which was heard by the Nebraska Supreme Court in 1914. Twenty-three years earlier, the Nebraska court had ruled that a pupil could not be compelled to study *any* portion of the curriculum over the objections of the parent (*State ex rel Sheibley v. School District* 1891). The court was asked to reassess that ruling in light of the passage of a compulsory law in 1887. Recognizing that much of the existing precedent sided with the parent’s ability to select from the curriculum, the district attacked that precedent on the grounds that the school system had changed drastically in the forty years since the Wisconsin Supreme Court had decided *Morrow v. Wood* (1874). Not only was attendance now compulsory, the state argued, but the schools in the earlier period were often ungraded one-room school houses overflowing with students and staffed by undertrained teachers, making it difficult to disrupt the course of study because it had never been systematic or uniform in the first place. Now, they noted, schools were properly graded and the curriculum strictly systematic. Though there was considerable merit to the argument that schools had changed drastically in the intervening time since the *Morrow* decision—schools were now routinely graded, educators were seen largely as professionals, and education was considered something of a science (Tyack 1974)—the court, again, was not persuaded.

Citing its own decision in *Sheibley v. School District* (1891) and the decision of the Oklahoma Supreme Court in *School Board v. Thompson* (1909), in addition to other prior precedent, the Nebraska high court ruled that

the right of the parent to make a reasonable selection from the prescribed course of studies . . . is not limited to any particular

school of that class or to any particular grade in any of such public schools. If the right exists at all, *it exists at all times and in every grade.* (*State ex rel Kelley v. Ferguson* 1914, 1043)

In reexamining and adhering to its previous decision, the court considered itself “squarely inline” with the mainstream of judicial opinions and in quite good company. The opinion noted specifically that of the five cases that could be found on point—according to both the litigants’ briefs and the court’s own research—four courts had delivered the same verdict as in the present case.⁶

The foregoing is intended to illustrate that contrary to the suggestion of some scholars, there was not a sharp break between the era of voluntary schooling and that of compulsory schooling in terms of parental rights to control children’s education and curriculum. The highest courts in the land continued to draw on precedent that had been established prior to compulsory schooling laws, and other courts used the opportunities presented by new cases to reaffirm their prior rulings. The courts consistently adopted a functional belief that it was the *outcome* of creating an educated person that the legislatures had intended when they passed their compulsory attendance laws. To this end, they rejected narrow definitions put forth by local school boards of what constituted a school in favor of allowing numerous schools to flourish and maximum opportunities for parents to fulfill their long-established duty of educating their children. Courts, in these first decades of compulsory education, understood compulsory laws as a means of obtaining the desired end of an educated citizenry, not as a means of creating a uniform system of schooling.

FROM COMPULSORY EDUCATION TO COMPULSORY SCHOOLING

Although there can be no question that courts did not initially consider the concepts of parental choice with respect to curriculum and compulsory schooling to be mutually exclusive, there were signs that courts were increasingly having difficulty reconciling the two notions. It was, after all, hard to imagine that one could compel that a child be educated but that the required education contained no specific content, or content to be left completely to the discretion of the parent. Increasingly, the courts and state legislatures felt the need to fill in the substance of the education that was intended. But as legislatures made the requirements both more substantive and detailed, courts were put in the even more difficult position of policing the standards of an education system that was vastly expanding in size and complexity. The earlier outcome-driven standards

of education—the belief that it was the outcome, and not the method of instruction, that mattered—became increasingly difficult to sustain. In the face of such difficulty, the courts in this period came to abandon their prior outcome-based and substance-driven views of education in favor of ones based on the formal trappings of schooling. Whereas before, courts had definitively eschewed the view of school based on specific physical characteristics, now they embraced it. In this respect, we must recognize the role that the courts played in legitimating what Tyack has called the “grammar of schooling.”

A sign that the judicial outlook was changing can be seen in the just-discussed Nebraska Supreme Court decision in *State ex rel Kelley*. Though the Nebraska high court was unanimous in its finding that the father was entitled to exclude his daughter from the district’s mandatory domestic science class, Justice Letton was able to concur in the holding only. In his concurring opinion, Letton expressed concern over the majority’s failure to specify limits to a parent’s discretion when it came to the selection of the curriculum for his child. The majority opinion’s rule taken to its logical extreme—the parent’s rejection of the entire curriculum—would, in Letton’s view, render the compulsory schooling law essentially meaningless. Letton insisted that there must be some check or limit placed on parental choice so as to ensure that the compulsory law maintained some meaning. “In my opinion,” he wrote, “the right of parental control should apply only to such studies as are not plainly essential” (*State ex rel Kelley v. Ferguson* 1914, 1044). While lamenting that the legislature had made education compulsory but failed to specify its content, he concurred that parents must be allowed a “reasonable latitude of choice” in selecting the branches of study for their children.

The legislature of Nebraska may not have specifically detailed the subjects it intended children to study, but on this point, it was increasingly the outlier. In the first two decades of the twentieth century, state legislatures dramatically increased the number of courses prescribed and required by statute in the public schools. A study conducted in 1923 noted that while there were 564 total state constitutional and legislative prescriptions regarding curriculum in 1903, that number grew to 720 by 1913, and ballooned to 926 by 1923. All told, this amounted to a sixty-five percent increase in the number of curricular prescriptions in only a twenty-year period (Flanders 1925, 174). Another study conducted several years later counted at least eighty-seven state-level prescriptions concerning the subjects that were required to be taught in secondary schools around the country (Patty 1927, 34). State constitutions and statutes also combined to list at least forty objectives that the secondary schools were maintained to achieve (Patty 1927, 7). These objectives ranged from the

standard (the public secondary schools shall teach the duties of an American citizen) to the regional (“the public secondary schools shall aid in agricultural improvement”) to the moral (“the public school shall develop good humor”) (Patty 1927, 12).⁷

The sheer number of legislative enactments and demands on public schools, though impressive, does not tell the entire story. It was not just that state legislatures were passing a greater volume of legislation in an effort to shape the character of the schools; the character of the legislation itself had changed significantly. In the words of an author of a 1925 study on curricular legislative enactments, “The recent enactments are, on the whole, more definitive and restrictive.” The author added, “Recent legislation reveals an increase in assurance on the part of law makers,” about which he could only conclude, “Apparently they are more conscious of their authority and more determined to insure the realization of their will” (Flanders 1925, 63). Lawmakers were more aware of their authority, but also many interest groups and Progressive Era reformers were aware of lawmakers’ power and saw the public schools as an amazing opportunity for social intervention.

Compulsory attendance laws created a convenient bottleneck in an otherwise burgeoning and unwieldy society and made schools appear as the perfect site for a host of social interventions at a time when reformers were looking to combat a host of social ills ranging from illiteracy to alcohol to poor hygiene. Schools thus became important battlegrounds for society’s fight against a host of infectious diseases as states mandated compulsory vaccination for all school-age children.⁸ Moral interventions were also common. The movement for temperance, culminating in the passage of the 18th Amendment to the U.S. Constitution in 1919, succeeded in making education in “stimulants and narcotics” a required subject of instruction in forty-three states in 1923. Jesse Flanders (1925), the author of an exhaustive study on curriculum legislation, observed, “From the various enactments one might infer that ‘stimulants and narcotics’ is regarded as our most important branch of learning; not only is it more widely prescribed but it has received more extensive and more specific legislation than any other.” He concluded, “It is our nearest approach to a national subject of instruction; it might be called our one minimum essential” (68).

EDUCATIONAL FORMALISM

This flurry of legislation represents an important shift in the character and nature of education legislation. Indeed, as Tracy Steffes (2007) has argued, these laws—rooted in the legislatures’ authority under the police

power and concerned with centralization at the state level—were a hallmark of the “new education” reform effort that placed schools at the center of a growing governmental apparatus of child protection and welfare. Steffes has characterized the growing specificity of compulsory school laws as part of these efforts as constituting a shift from “compulsory attendance to compulsory education”—a change from requiring the presence of a child at school, to offering the specifics of what shall be done at school.

This is a keen observation and an important insight into the changing nature of American state-building and governance in the late nineteenth and early twentieth centuries. But it is important that in characterizing a shift in the law from compulsory attendance to compulsory education, we distinguish between the actions of legislatures and the viewpoints of judges expressed in their legal decisions. While legislatures were increasingly specific about the education to be received at school, the response from the judiciary was to adopt a less substantive view of compulsory schooling laws; judges’ tests for compliance increasingly relied on formalistic conceptions of what education was and the circumstances under which it could occur. Though the specific content may not have been as minutely specified, courts had consistently interpreted the intent behind compulsory attendance laws in substantive ways that stressed the outcome of an educated citizen over the specifics of how that education was achieved. As the number of legislative enactments exploded, the courts abandoned their outcome-driven tests of education for a simpler conception that education could only occur at school. The result was a direct repudiation of the previous forty years of judicial thought and legal precedent that had held that the legislative intent behind compulsory attendance laws, and the state’s interest derived from its police power, was as a means of securing an educated citizenry, not, to paraphrase the court in *Commonwealth v. Roberts* (1893), a citizenry educated in a particular way or by particular means.

Evidence that courts were beginning to abandon the broad view of compulsory education laws as a prescription not for a specific type of education but to assist in securing a specific outcome—the education of youth—can be seen in the case of *Commonwealth v. Levey* (1912). The case arose when Daniel Levey Jr., age fifteen and a half, received a graduation certificate for his successful completion of the eighth grade and decided to join his father’s company in order to gain an “inkling in business.” A prosecution was subsequently brought against the boy’s father on the grounds that he had failed to comply with the provisions of the compulsory schooling law that required all children under the age of sixteen to attend school continually throughout the year. The Leveys argued that by

successfully completing the eighth grade, Daniel Levey Jr. had clearly received an education in the common branches and thus clearly complied with the *spirit* of the compulsory attendance laws. After all, they said, Daniel was clearly an educated citizen in every contemporary sense of the word, and the law had made provisions for far less educated people—those who could merely “read and write English intelligently”—to leave school to obtain employment. In response, the court declared that the Leveys’ view of compulsory attendance laws as having something to do with *education* was misguided. The court explained,

Some children are more apt than others and would be further advanced in their studies at ten or twelve years of age than others at sixteen, and it may be safely said that many pupils would not acquire a common school education by the time they had reached the age of sixteen years. Hence, *to hold that the intention of the act is to compel education would be to make the matter of attending public schools uncertain and indefinite*, and might well result in compelling some pupils to attend school from the time they became of school age until they reached their majority; while some prodigies might complete the course prescribed when but twelve or fourteen years of age. A construction of the act that would be open to such possibilities . . . would surround the whole matter of compulsory attendance with doubt and uncertainty. (*Commonwealth v. Levey* 1912, 6, emphasis added)

In the court’s view, then, it was the legislature’s intent in passing the compulsory attendance laws to create *certainty* around matters of education rather than to secure any educational outcomes or achievement. Of course, it is pure fantasy to suggest that any educational endeavor could be surrounded by the certainty expressed in the court’s ruling. It is reasonable to suggest that the justices, recognizing their lack of institutional capacity to adjudicate on matters of education, opted for a simple test that they could readily enforce—age. But the court could just as easily have maintained the view that compulsory laws *were* about education and deferred to the expertise of the superintendent or school principal in determining when a child was “properly” educated—which is, after all, what a diploma had been created to signify. In fact, deferring to the expertise of professional educators was what the law required in the case of those students who were between fourteen and sixteen years of age and wanted to seek full-time employment. But rather than interpreting the law as encouraging educational attainment, as determined by professional educators, and considering the age guidelines as an upper limit,

the court formulated a view that suggested all educational aims were secondary to the desire for certainty on the years of *attendance* at school.

This “warehousing” view of school—that students go to school not to receive an education but to ensure that they do not go elsewhere—had come under strong criticism from members of the professional education community. Professor Charles Ellwood of the University of Missouri argued in the journal *Education* that the compulsory attendance laws had become a decided failure because they had come to be viewed as encouraging a length of schooling rather than the learning of a body of knowledge. Ellwood (1914) wrote,

Instead of securing that proper training for citizenship which must be the foundation of successful free institutions, [compulsory education laws] let every year vast numbers through their net. The reason for this is that they are designed upon a wrong principle; namely, the principle of keeping the child in the school a *definite* length of time, and then turning him loose whether he has even the rudiments of education or not. (572)

Ellwood certainly had a point. An examination of the progression of titles of compulsory schooling laws in some states dramatically illustrates this shift in thinking. The first compulsory attendance law in Ohio, passed in 1877, was entitled “An Act to Secure to Children the Benefit of an Elementary Education,” while the second iteration of the law, enacted in 1889, was entitled “An Act to Compel Children under Fourteen Years of Age to Attend School for a Certain Length of Time Each Year” (Huang 1922, Appendix A).

It is fair to say that at least some of what the courts were responding to was this change in the tone of legislation, from a concern with the education of children to a concern with mere attendance. This is probably especially true in states whose high courts had heard relatively few education cases in the early days of compulsory schooling. But even in states in which courts had a considerable amount of their own precedent to lean on or draw from, courts still moved away from conceptions of compulsory laws as intending to secure education for children and toward a formalistic notion of education grounded in attendance for a specific time at a specific place called “school.” One such state was Indiana. The Supreme Court of Indiana, it should be recalled, was one of the first to rule on the constitutionality of compulsory schooling laws in *State v. Bailey* and had followed that ruling with a decision in *State v. Peterman* in which the court rejected as “radically wrong” the view that a school was a specific place with a specific kind of instruction. Instead, the court ruled

in favor of a broad view of the definition of a “school” and the idea that the compulsory schooling laws were intended to secure education for the child, not for a specific *type* of education. Now, a little more than a decade later, the court was asked to revisit portions of this earlier ruling in *State v. O'Dell* (1918), a case that, like *Levey*, involved a student who had received an eighth-grade diploma, having left school before the specified age to receive instruction at home.

Whereas in earlier decisions, the state’s supreme court had taken the position that the test for the law was *results* based, the court now articulated a different view of the same law. In *Peterman*, the court ruled, “The result to be obtained, and not the means of obtaining it, was the goal which the lawmakers were attempting to reach. The law was made for the parent, who does not educate his child” (*State v. Peterman* 1904, 537). Now, Chief Justice Spencer argued, “The tests which determine whether the child shall attend school are primarily those of age and mental and physical fitness” (*State v. O'Dell* 1918, 530). Even though previous versions of the compulsory schooling laws had contained specific age ranges for schooling, only now was the court arguing that this alone was the determinative factor. The new test for school attendance, like that established by the Pennsylvania court in *Levey*, was no longer based on educational criteria but on simple objective measures like the age of the child and the distance from the child’s residence to the schoolhouse.

Even more surprising, the court dismissed out of hand the idea that *Peterman* provided support for Mr. O’Dell’s argument that his daughter continued to meet the requirements of the compulsory schooling law by receiving instruction in music and by continuing to study at home.⁹ The court offered little in the way of explanation for this holding other than to reiterate that the legislature had determined it was in the best interests of both citizens and the state for those children within the age ranges enumerated in the law to “pursue study of the general branches of learning.” While one might assume that receiving a diploma from the local common school was sufficient to prove that a child had done just that, the court interpreted the age limit as controlling, not the extent of the child’s completion of the “general branches” that one was required to study. Though the court rejected the schooling received by Mr. O’Dell’s daughter as insufficient, the court did not define “general branches,” elucidate what the phrase might mean, or attempt to determine what the legislature had intended with its use. The only thing the court offered by way of explanation was a comment that “ample provision is made for a course of study which shall cover that period [of attendance required by law], and sufficient opportunity remains thereafter for development of individual ambition” (*State v. O'Dell* 1918, 531). While not eliminating the

possibility of a private school meeting the criteria, the clear implication of this statement is that the court was equating attendance at a public school for a specific length of time with compliance with the law. This, of course, represents a strong break with the court's previous view of an outcome-based test of compliance and a broad view of where education could occur.

The idea that compulsory education laws were now synonymous with school and not with a level of educational achievement continued to gain currency with the high court in various states. The Supreme Court of New Hampshire in *State v. Hoyt* (1929) ruled definitively that showing that sufficient equivalent instruction had been given to the student was not a valid defense against charges brought for failure to comply with the compulsory schooling law. The court ruled that the state, in compelling education, had a right not only to determine the content of the education but also to establish a system of education whereby it can be assured that the required education is being delivered. Among the chief objections the courts found in the appellees' compliance with the law was that their use of a private tutor placed an unreasonable burden on the state, which would be required to determine whether a proper education had been received by the children. While the simple solution to this potential problem would have been to allow for the examination of the children by the local principal or superintendent and to defer to his expertise on the matter, no question was even raised in this case about whether the parents had actually failed to educate their children. Instead, the court focused on the need for the state to develop an efficient education *system*, arguing,

If the parent undertakes to make use of units of education so small . . . that supervision thereof would impose unreasonable burden upon the state, he offends against the reasonable provisions for schools which can be supervised without unreasonable expense. The state may require, not only that educational facilities be supplied, but also that they be so supplied that the facts in relation thereto can be ascertained, and proper direction thereof maintained, without unreasonable cost to the state. (*State v. Hoyt* 1929, 171)

Though the court took other considerations into account in its final ruling, it is clear that both the court and the legislature were interested not just in "knowledge and learning, generally diffused in the community," as the state's constitution declared,¹⁰ but also in the creation of a singular school system.

Several years later, a New Jersey court would be faced with a similar set of facts and would reach a remarkably similar conclusion. Unlike the New Hampshire compulsory legislation, New Jersey's compulsory education laws contained specific provisions detailing the subject matters to be taught in school as well as a specific provision allowing students "to receive equivalent instruction elsewhere than at school." Though in this era, judges usually deferred to the legislature when interpreting statutes and tended not to construe provisions of a statute in a way that would render them meaningless, the ruling in *Stephens v. Bongart* (1937) essentially nullified the provision of the law that allowed for compliance with the compulsory schooling law in a place other than school. At issue was whether the Stephenses, who had elected to homeschool their children rather than send them to the local public school, had fulfilled their duty to provide equivalent instruction to their children as required by law. After a lengthy comparison of the facilities and opportunities provided by the public school and those provided by the Stephenses, Judge Siegler ruled,

I incline to the opinion that education is no longer concerned merely with the acquisition of facts: the instilling of worthy habits, attitudes, appreciations, and skills is far more important than mere imparting subject matter . . . in a cosmopolitan area such as we live in, with all the complexities of life, and our reliance upon others to carry out the functions of education, it is almost impossible for a child to be adequately taught in his home. (*Stephens v. Bongart* 1937, 92)

In other words, as far as Judge Siegler was concerned, education and schooling were essentially synonymous—one could not be educated unless one attended a public school.

CONCLUSION

Though explanations for the development of the modern, bureaucratic school system usually center on the Herculean efforts of single-minded professional educators—those "administrative progressives," to use Tyack's phrase—who believed that they had found the best way to organize and manage a modern school system, in this article, I have tried to show that the courts also played an important role in validating and legitimizing the notion that education was synonymous with being at school. We have traced the changes in judicial thought as states moved from a voluntary system, in which parents had complete discretion over both the

if and what of the child's education; to a compelled system, in which education was understood as the sole objective, with little regard for where it took place; to the idea that the compulsory education laws were intended to secure attendance for a fixed period of time, not educational outcomes. During this time, the court traded an outcome-based view of education in favor of one premised largely on a faith that just "being there," at a publicly run school, was sufficient to secure all the various outcomes society hoped to accomplish through education. Given the law's predilection for definitive answers, straightforward tests, and deference to professional expertise and the numerous uncertainties and considerable subjectivity involved in education, perhaps it is not surprising that the courts would abandon a substantive view of education in favor of one more easily and objectively ascertained and enforced. Nonetheless, it is important to recognize the role that the courts played in solidifying our notions of modern schooling. Moreover, it is important to recognize that the need to answer questions like "What is a school?" and "What constitutes an education?" stemmed directly from compulsory education laws. Rather than pass over these laws or view them as the inevitable outgrowth of an expanding school system, scholars need to understand the repercussions of compulsion on modern schooling—something this article has sought to do.

Among the final thoughts offered by the judge in the *Bongart* case was a succinct statement that not only reflected the then current judicial philosophy with respect to schooling but also embodied just how much the courts' thinking on education had changed in forty years' time. "I cannot accept," Judge Siegler wrote, "the theory asserted by Mr. Bongart that, 'I am not interested in method but in results.' That theory is archaic, mechanical, and destructive of the finer instincts of the child" (*Stephens v. Bongart* 1937, 92). Whether consciously inverting so much of the early precedent on education law or not, Judge Siegler's view was a far cry from the court in *Roberts*, which declared, "The great object of these statutes has been that all children shall be educated, not that they shall be educated in any particular way" (*Commonwealth v. Roberts* 1893, 374), or the unanimous court in *Peterman*, which found, unequivocally, that "the result to be obtained, and not the means of obtaining it, was the goal which the lawmakers were attempting to reach" (*State v. Peterman* 1904, 551). Judge Siegler's ruling was, however, with its interest in form over substance, a fitting epigraph for the days of schooling yet to come.

Notes

1. The one notable exception to this rule remains Tyack et al. (1987).

2. It should be noted that the amount of education-related litigation in the decades following the Civil War is relatively small. One study of litigation rates involving education cases estimated that there were only 799 state or federal appellate cases heard between 1877 and 1886 and only 1,020 cases heard between 1887 and 1896. This translates to a litigation rate of 1.54 cases per million population between 1877 and 1886 and a slightly higher 1.61 cases per million population in the following decade. Consistent with what John Hogan has termed the “classical view” of the role of courts in education, adjudication of educational disputes was considered almost exclusively the province of state courts, in large part because the federal constitution made no mention of education, and no fundamental right touching education had been attributed to the United States Constitution. States therefore assumed power to establish and regulate education under the powers reserved to the states under the Tenth Amendment. Though not numerous, these cases still offer valuable insights into the ways in which ordinary people, as well as those in the judiciary, conceived of the role the voluntary school system was to play in American society. See Tyack and Aaron (1985) and Hogan (1974).

3. *Rulison v. Post* (1875); I say “independently” reasoned because the court in *Rulison* cites no precedent or other authority to support its reasoning or conclusions. Given that *Morrow* was decided within a year of the *Rulison* decision, it is quite possible that the court had not yet learned of the Wisconsin court’s decision. Adding further credence to the independence of the court’s decision in *Rulison* was that two years later, in *Trustees of Schools v. Martin Van Allen* (1877), the court cites both *Rulison* and *Morrow*, calling the *Morrow* decision “able and instructive.”

4. The most convincing accounts of the rise of compulsory school law have been offered by Provasnik (1999) and McAfee (1998), who argue they were largely a product of a political strategy advanced by the Republican party after the Civil War. For alternative political explanations of compulsory schooling laws, see Burgess (1976) and Tyack (1976). For those who have argued that the laws reflected the ratification of a widely followed practice see Eisenberg (1988) and Landes and Solomon (1972). For the argument that teachers were an important part of the passage of compulsory schooling laws see Richardson (1980).

5. For a detailed discussion of the rulings in these cases, see Provasnik (2006).

6. The one outlier was an 1886 case heard by the Supreme Court of Indiana. That case took place prior to the enactment of the state’s compulsory schooling law and addressed whether the father could withhold his son from the music class. The court in its decision made a great deal of the failure of the father to offer a specific reason for his wish that his son not be instructed in music and concluded that a wish tendered without reason was by definition, in the court’s view, arbitrary and thus “must yield and be subordinated to the governing authorities of the school city of La Porte.” See *State ex rel Andrews v. Webber and others* (1886).

7. The number of states that prescribed each of the forty objectives noted by the author ranged widely. Twenty-six states stated that one of the objectives of the secondary school was the duties of citizenship; seven states wanted agricultural improvements from secondary schools; and one state (Massachusetts) desired good humor to be inculcated in the schools.

8. On the issue of school vaccinations, see Steffes (2007, Chapter 5) and Duffy (1978).

9. The court said only, “The decision in *State v. Peterman* . . . would serve to defeat a contention that the pursuit of any special study under conditions such as are presented by the record in this case would constitute attendance at a private school within the meaning of the law” (*State v O’Dell* 1918, 530).

10. This line in the state constitution is significant because it formed much of the basis

for the court's prior decision in *State v. Jackson* (1902), in which the general constitutionality of compulsory schooling laws was held.

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