Comments

TEENAGE EMPLOYMENT EMANCIPATION AND THE LAW

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I. INTRODUCTION

Teenagers have limited rights in the United States. The minimum driving age is sixteen in most states. The minimum full working age is eighteen, when teenagers are legally allowed to work in any occupation. The minimum voting age is eighteen. There are also minimum ages for signing contracts, entering into marriage and participating in other activities. Legally, the age of majority is eighteen in most states. It is as if a cloud hangs over a person under the age of eighteen, and the cloud is lifted only when that person reaches the age of majority. At this age, a minor, with little to no legal rights in his own name, is suddenly deemed an adult with full legal status.

These age restrictions are based on an overly pessimistic view of teenage personhood. In the eyes of the law, minors are deficient in their personhood. Although they are recognized as human beings, they are considered immature and incapable of making important decisions. Therefore, the law denies full legal status to teenagers until they reach a certain age at which they are presumed to become responsible persons.

This legal concept of personhood deficiency serves as a self-fulfilling prophecy. The consequence of stringent age restrictions is to delay

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5. Id.
adulthood for young persons in the United States. Teenagers are not treated as responsible people, hence they learn to live up to such expectations and remain irresponsible.

Besides functioning as a self-fulfilling prophecy, stringent age restrictions constitute a denial of teenagers' employment rights. Teenagers have an interest in gainful employment and in benefiting from the fruits of their labors. To the extent that the law frustrates teenagers' desire to become fully productive citizens, the law becomes a burden and a hindrance to human freedom.

This comment is structured as a comprehensive overview of working age restrictions. Part II explores the arguments in favor of relaxing federal working age restrictions. Part III discusses federal regulation of teenage employment. Both the structure of the federal statutory law as well as its enforcement are examined. The history of federal regulation is important in understanding the current state of the law; thus it is recounted in some detail. Part IV outlines possible reforms to improve the federal regime. Part V is a comparative study of working age restrictions, where the working age restrictions of four states are compared. Additionally, foreign working age restrictions are discussed, in order to look at their advantages and disadvantages.

II. ARGUMENTS

I propose three arguments for relaxing the age restrictions on teenage workers. First, teenagers have employment rights under the Declaration of Independence and the Ninth Amendment of the Constitution. Second, employment teaches responsibility and makes teenagers productive citizens. Third, important public policy concerns call for teenage employment emancipation.

A. Teenagers Have a Right to Gainful Employment

If teenagers have a right to gainful employment, then this right can be found in the Declaration of Independence and the Ninth Amendment. The Declaration of Independence offers a robust libertarian argument for teenagers' right to seek gainful employment: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."\(^6\)

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6. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).
The Founding Fathers did not define "pursuit of happiness" but assumed that common sense would be sufficient to define it. It might be helpful to turn to some natural law theorists and see how they defined the "pursuit of happiness." According to John Locke, happiness is "the utmost pleasure we are capable of." According to Jean Jacques Burlamaqui, "By Happiness we are to understand the internal satisfaction of the mind, arising from the possession of good: and by good whatever is suitable or agreeable to man for his preservation, perfection, conveniency, or pleasure." Therefore, the "pursuit of happiness" probably means the pursuit of good, or the pursuit of pleasure. Happiness comes in different forms for each person, but every person has the right to pursue happiness.

In my opinion, the "pursuit of happiness" has a special meaning for teenagers. Teenagerhood is a time of transition when young people start to acquire the privileges and responsibilities of adulthood. Hence, the "pursuit of happiness" presumes that teenagers have the prerogative of acting like adults and being treated like adults, if conducive to their happiness. Teenagers may find happiness in any of several vocations, including higher education, sports, community service, or work. If teenagers find happiness in challenging and demanding work, then we must respect their right to pursue it.

Furthermore, the Bill of Rights implicitly recognizes teenagers' employment rights: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Employment rights are not expressly articulated anywhere in the Constitution, but they are encompassed within the Ninth Amendment. In Richmond Newspapers, Inc. v. Virginia, the Supreme Court explained the purpose of the Ninth Amendment by examining its legislative history. When the Bill of Rights was proposed in Congress, many legislators foresaw that some rights would be left unmentioned and feared that these rights would not be recognized by the government. James Madison

10. LOCKE, supra note 8, at 351.
11. "Now it is evident, that God, by creating us, proposed our preservation, perfection, and happiness. This is what manifestly appears, as well by the faculties, with which man is invested, which all tend to the same end; as by the strong inclination, that prompts us to pursue good, and shun evil. God is therefore willing, that every one should labor for his own preservation and perfection, in order to acquire all the happiness, of which he is capable according to his nature and state." BURLAMAQUI, supra note 9, at Pt. II Ch. IV § IX.
12. U.S. CONST. amend. IX.
assuaged their fears by claiming that the proposed Ninth Amendment would serve to guard against the denial of certain rights that were not specifically mentioned in the Constitution. Consequently, being that work is so important and necessary to human life, the right to gainful employment must fall within the protection of the Ninth Amendment, even though it is not expressly articulated anywhere in the Constitution.

The right to seek gainful employment is a fundamental human right for at least three reasons. First, work is a means of meeting basic human needs. Second, work is a means of acquiring private property. Third, work allows individuals to achieve their full human potential. Because work is important and necessary for human life, the right to seek gainful employment must exist as a self-evident fact, and it is protected by the Ninth Amendment.

Teenagers are human beings, too. Therefore, it is only reasonable to start recognizing teenagers' employment rights. In much of human history, most teenagers were considered adults. It was only in the last hundred years or so that society started treating teenagers differently.

Admittedly, employment rights are not absolute; governments can place limits on the exercise of employment rights. In order to protect the public welfare, governments have the power to pass child labor laws. However, child labor laws should not come at the expense of teenagers' employment rights. The line between childhood and teenagerhood must necessarily remain imprecise. However, for the sake of teenagers who are mature enough to take on adult responsibilities, this bar should be set lower.

14. Id.; see also 1 ANNALS OF CONG. 438-40 (1789).
15. "In the sweat of thy face shalt thou eat bread . . ."  Genesis 3:19; "[I]f any would not work, neither should he eat." 2 Thessalonians 3:10. "Man works to sustain physical life—to provide food, clothing, and shelter."  SPECIAL TASK FORCE TO THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE, WORK IN AMERICA 1 (1973) [hereinafter WORK IN AMERICA].
16. "[E]very man has a property in his own person; this nobody has any right to but himself. The labour of his body and the work of his hands we may say are properly his. Whatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property."  JOHN LOCKE, OF CIVIL GOVERNMENT: SECOND TREATISE 22 (Gateway Editions 1955) (1689).
17. "[I]t is clear from recent research that work plays a crucial and perhaps unparalleled psychological role in the formation of self-esteem, identity, and a sense of order. . . . [T]hrough the inescapable awareness of one's efficacy and competence in dealing with the objects of work, a person acquires a sense of mastery over both himself and his environment."  WORK IN AMERICA, supra note 15, at 4. "Work is a good thing for man—a good thing for his humanity—because through work man . . . achieves fulfilment [sic] as a human being and indeed, in a sense, becomes 'more a human being.'"  Pope John Paul II, Laborem Exercens §9 par. 3 (1981).
18. MITCHELL & CLAPP, supra note 3, at 1.
B. Employment Makes Teenagers Productive Citizens

Working age laws are based on the presumption that teenagers are incapable of taking on important responsibilities. This functions as a self-fulfilling prophecy, to the detriment of teenagers. The denial of employment rights serves as a denial of the opportunity to take on real responsibilities and gain beneficial learning experience. Teenagers in the United States have a prolonged childhood. As a consequence, they are overly pampered and take too long to mature.

Work is an effective means of achieving personal growth and maturity. Through work, teenagers learn discipline, self-reliance, and responsibility. History teaches us that work experience can make young persons more responsible and mature; George Washington, Alexander Hamilton, and Benjamin Franklin are common examples. George Washington was a surveyor at age sixteen. This was at a time when most of Virginia was still uncharted territory. His surveying commissions took him deep into the backwoods where he faced many occupational hazards.\footnote{19. \textit{Paul Johnson, George Washington: The Founding Father} 15-16 (2005).} Alexander Hamilton was an artillery captain at age nineteen. On the battlefield, he was responsible for the lives of soldiers older than himself.\footnote{20. \textit{James Thomas Flexner, The Young Hamilton: A Biography} 88-93 (1978).} Benjamin Franklin had his own printing business by age twenty-four. Success took years of hard work and perseverance. While still a teenager, he was already making a name in the profession.\footnote{21. H.W. Brands, \textit{The First American: The Life and Times of Benjamin Franklin} 105 (2000).}

Teenagers of today's time have less work experience and show less maturity. As one parent remarked, "I see kids watching TV. They don't know what to do with themselves. Shouldn't they be occupied doing something worthwhile?"\footnote{22. Steven Greenhouse, \textit{Foes of Idle Hands, Amish Seek an Exemption From a Child Labor Law}, N.Y. Times, Oct. 18, 2003, at A9. The remark was made by an Amish parent.} Aside from watching too much TV, there are even worse problems: violence, alcoholism, and drug abuse are rampant among teenagers.\footnote{23. Oversight Hearing on the Fair Labor Standards Act: Hearing Before the Subcomm. on Workforce Protections of the Comm. on Economic and Educational Opportunities, 104th Cong. 23 (1996) (statement of B. Edward Fitzpatrick, Washington State Auto Dealers Association)}

The relationship between teenage delinquency and teenage unemployment is complex.\footnote{24. MITCHELL & CLAPP, \textit{supra} note 3, at 84-85, 94-107.} However, it is reasonable to say that better employment opportunities will be a step in the right direction.\footnote{25. \textit{Id.} at 106-107.} Employment emancipation will give teenagers an outlet for their youthful
energy and encourage them to be productive citizens.

Ideally, working age restrictions are meant to encourage teenagers to finish their high school education. The law is concerned that work should not interfere with schooling—and this is a reasonable concern. However, there is a better strategy for encouraging teenagers to finish high school, namely improving education, instead of punishing teenage employment.

Moreover, the law seems to have an unreasonable anti-employment bias. In its grand desire to regulate the lives of teenagers, the law serves to frustrate their legitimate interests. The law prohibits teenagers from working in their desired occupations, thereby keeping useful skills and training out of their reach. Therefore, the law is failing our teenagers.

C. Teenage Employment Emancipation Is Good Public Policy

Society will benefit from teenage employment emancipation. Teenagers provide much-needed labor resources at low cost. The demand for teenage employment is significant. Hence, teenage employment should be encouraged as a matter of public policy. One public policy concern resolved by teenage employment emancipation is community need, a good example of which is the sudden upsurge of construction demand after natural disasters. Hurricane Katrina of 2005 left many Gulf Coast communities in need of immediate rebuilding. The availability of teenage workers would have expedited the rebuilding of coastal cities and towns.

Another public policy concern alleviated by teenage employment emancipation is economic hardship. The incidence of poverty among teenagers is significant. According to the U.S. Census Bureau, the poverty rate among persons below the age of eighteen is 18.5%, which is higher than the poverty rate of 13.3% for the general population. The problem of teenage poverty can be alleviated through the employment emancipation of teenage workers from the poorest families.

26. Id. at 53.
27. Id. at 139-40, 142.
28. Hurricane Katrina caused widespread damage along the Gulf Coast, particularly in New Orleans. The hurricane damaged or destroyed around 140,000 homes in the city. The Way of Babylon? What Lies Ahead for an Irreplaceable City, ECONOMIST, Sept. 8, 2005, at 27 [hereinafter The Way of Babylon?].
29. U.S. Census Bureau, American Community Survey (2005), http://www.census.gov/acs/www/index.html (follow “Click here” hyperlink under Quick Start; then scroll down and follow “show more” hyperlink for Economic Characteristics) (last visited Nov. 19, 2006).
III. FEDERAL REGULATION OF TEENAGE EMPLOYMENT

Federal working age restrictions are codified in the Fair Labor Standards Act (FLSA).\(^\text{30}\) The FLSA mandates stepwise regulation of teenage labor and charges the Department of Labor with the authority to implement federal labor laws. Implementing regulations promulgated by the Labor Department are published in Title 29 of the Code of Federal Regulations.

Various exemptions to the federal working age restrictions that are currently listed in the FLSA\(^\text{31}\) were first enacted under the Shirley Temple Act.\(^\text{32}\) A similar FLSA provision §13(d)\(^\text{33}\) adds some age-wage-hour (AWH) exemptions. The basic difference between Shirley Temple Act exemptions and FLSA §13(d) exemptions is that the former are pure age exemptions. Under Shirley Temple Act exemptions, the exempted workers are still subject to minimum wage and maximum hour restrictions set by federal law.

At this point, I will introduce my own terminology to make the discussion easier to follow. “Legal working age” is the age at which individuals begin to have employment rights, even though only a limited number of occupations are available to them. “Full working age” is the age at which individuals have full employment rights and can work in any occupation they choose. Commonly, the full working age is the same as the age of majority, at which a person attains full legal rights.\(^\text{34}\)

A. The Fair Labor Standards Act (FLSA)

The legal working age is sixteen by statutory default, but the Secretary of Labor has discretionary authority to lower it to fourteen, where it currently stands.\(^\text{35}\) The full working age is eighteen.\(^\text{36}\) There are separate lists of prohibited occupations for persons below sixteen\(^\text{37}\) and below eighteen.\(^\text{38}\) From these provisions, we can see that the FLSA is based on a philosophy of gradual teenage emancipation. Very limited employment rights are granted at the legal working age. Employment rights are earned

\(^{31}\) Id. § 213(c).
\(^{34}\) Black’s Law Dictionary.
\(^{36}\) Id. § 203(l).
\(^{38}\) Id. § 570.51-570.68 (2006).
gradually through time as teenagers approach the full working age. For legal purposes, a person's biological age is treated as a valid proxy for maturity. It is irrelevant to the FLSA that a fourteen-year-old or a sixteen-year-old person might exhibit the psychological maturity to take on adult employment. The FLSA makes an irrebuttable presumption that persons below eighteen are immature.

The FLSA imposes a few more regulations on teenage employment. Persons of school age may work outside school hours, as well as for limited hours during school days. Also, the FLSA provides for some career education opportunities. Eligible persons from fourteen to sixteen may participate in school-supervised work experience and career education programs.

1. Non-Agricultural Employment

Fourteen-year-olds and fifteen-year-olds are prohibited from working in most occupations. Allowed occupations include work in "retail, food service, and gasoline service establishments." Some occupations are deemed by the Labor Department to be particularly hazardous to persons below sixteen, including:

(1) Manufacturing, mining, or processing occupations.
(2) Operating power-driven machinery.
(3) Driving.
(4) Public messenger service.
(5) Transportation of persons or property.
(6) Warehousing and storage.
(7) Communications and public utilities.
(8) Construction.

Sixteen-year-olds and seventeen-year-olds are prohibited from working in hazardous occupations, as determined by the Labor Department. Such hazardous occupations fall under sixteen categories. These are:

(1) Work in establishments that manufacture or store explosives.
(2) Truck driving.
(3) Mining.
(4) Logging and sawmilling.
(5) Operating power-driven woodworking machines.
(6) Occupations involving radioactive exposure.

39. Id. § 570.35.
40. Id. § 570.35a.
41. Id. § 570.34.
42. Id. § 570.33 (a)–(d), (f)(1)–(4).
(7) Operating power-driven cranes and fork lifts.
(8) Operating metal-working machines.
(9) Slaughtering and meat packing.
(10) Mechanized baking.
(11) Mechanized paper production.
(12) Brick and tile manufacturing.
(13) Operating circular saws, band saws, and guillotine shears.
(14) Wrecking, demolition, and shipbreaking.
(15) Roofing.
(16) Excavation.44

2. Agricultural Employment

Fourteen-year-olds and fifteen-year-olds are prohibited from working in hazardous occupations, as determined by the Labor Department.45 Such hazardous occupations fall under eleven categories. These are:

1. Operating a tractor of over 20 PTO horsepower . . . .
2. Operating . . . any of the following machines:
   (i) Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;
   (ii) Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or
   (iii) Power post-hole digger, power post driver, or nonwalking type rotary tiller.
3. Operating . . . any of the following machines:
   (i) Trencher or earthmoving equipment;
   (ii) Fork lift;
   (iii) Potato combine; or
   (iv) Power-driven circular, band, or chain saw.
4. Working on a farm in a yard, pen, or stall occupied by a:
   (i) Bull, boar, or stud horse maintained for breeding purposes; or
   (ii) Sow with suckling pigs, or cow with newborn calf (with umbilical cord present)
5. Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.
6. Working from a ladder or scaffold . . . at a height over 20 feet.
7. Driving . . . when transporting passengers, or riding on a tractor . .

8. Working inside:

44. Id. §§ 570.51-570.55, 570.57-570.68.
(i) A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;
(ii) An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;
(iii) A manure pit; or
(iv) A horizontal silo while operating a tractor for packing purposes.
(9) Handling or applying . . . [toxic] agricultural chemicals . . . .
(10) Handling or using a blasting agent . . . .
(11) Transporting, transferring, or applying anhydrous ammonia.

B. Exemptions under the Shirley Temple Act and FLSA § 13(d)

Various exemptions to the federal working age restrictions are codified in the Shirley Temple Act\(^47\) and FLSA § 13(d).\(^48\) The Shirley Temple Act is eclectic. One exemption, the child-actor exemption, is broadly written, whereas other exemptions are narrowly written. FLSA § 13(c) provides exemptions to:
(1) Agricultural employees working at farms owned or operated by their parents.
(2) Child actors.
(3) Eleven-year-old and twelve-year-old short-season hand harvest laborers, on condition of waiver by the Labor Department.
(4) Sixteen-year-old and seventeen-year-old workers loading materials into scrap paper balers and paper box compactors, under certain conditions.
(5) Seventeen-year-old automobile and truck drivers, on condition that the vehicle is less than 6,000 pounds gross weight and other various limitations.
(6) School-exempt workers from fourteen to eighteen in family sawmills.\(^49\) This exemption benefits primarily Amish teenagers\(^50\) and can be called the “Amish sawmill exemption.”

FLSA § 13(d) adds age-wage-hour exemptions for newspaper deliverers and makers of evergreen wreaths at home.\(^51\)

The Shirley Temple Act’s eclecticism is due to a process of gradual accretion. At the time of enactment, there were few occupations that were deemed safe for minors, and acting was one of them.\(^52\) Through the years, it became apparent that the federal working age restrictions were not

\(^{48}\) Id. § 213(d).
\(^{49}\) Id. at § 213(c)(1), (3)-(7).
\(^{50}\) Id. at § 213(c)(1), (3)-(7).
\(^{52}\) 82 CONG. REC. 1780 (1937); 83 CONG. REC. 7441 (1938).
flexible enough. Children and teenagers were actually more competent than Congress or the Labor Department had contemplated them to be. The subsequent history of the Shirley Temple Act is one of political challenge and concession. The federal working age restrictions would be challenged by minors, their parents, and their employers. Congress would then concede by enacting further exemptions. However, the concessions would be piecemeal as Congress would place several limitations on the exemptions.

C. The Federal Regime in Practice

The federal regime is incomprehensible. The average teenage worker is almost required to be an expert on employment law to be compliant with all the provisions. Remembering all the limitations and conditions imposed by the FLSA can be mind-boggling, because the rules are written unsystematically. For example, the federal working age restrictions on operating power-driven drills on wood are very confusing: “One has to be 18 years old to drill a hole in a piece of wood. But aiming the drill bit at a piece of drywall is legal, provided one doesn’t run it into a wood stud and isn’t on a construction site.” With such a level of incomprehensibility, teenagers go to work without fully knowing whether their work is legal at all.

Moreover, the federal regime is intrusive, inefficient, and excessively punitive. The Labor Department has the authority to raid homes and businesses to check for under-age employees. One employer described the Labor Department’s actions as an “overzealous enforcement that makes businesses and the public lose faith in government.” This is an unacceptable intrusion into our domestic and business affairs. The Labor Department has better things to do with its time and resources than intruding into private persons’ homes and businesses. As Representative Randy Tate of Washington described the issue:

I can think of other priorities that the Department of Labor could have been pursuing other than punishing businesses that provide part-time jobs and summer jobs to teenagers that are motivated, responsible and conscientious. This is a perfect example of a government regulation denying job opportunities for young

people who want to work, not creating them. In fact, many employers have stopped offering teenagers jobs because of the fear of possible fines.57

Furthermore, the federal regime may be obsolete. When the federal government started regulating child and teenage employment, the image of under-age employment was that of a ten-year-old child being exploited on the factory floor.58 Ever since, social and economic conditions have improved for workers: manufacturing hours have leveled off;59 medical care has improved considerably; and workers’ compensation systems have been developed.60 Furthermore, the Occupational Health and Safety Act (OSHA)61 was enacted to take care of workplace safety.62 Hence, workplace safety has improved.

Ultimately, the federal regime serves to preempt state laws. Some states are lenient in regulating teenage employment; for example, Wyoming sets the full working age at sixteen.63 However, lenient state rules cannot take effect since stricter federal working age restrictions exist.64 Federal employment regulation is unresponsive to the needs of teenage workers. It is difficult, if not impossible, to tailor federal employment laws to the needs and concerns of teenage workers in every industry in every state.65 Since they are applied bluntly, federal working

57. Id. at 6 (statement of Rep. Randy Tate).
58. MITCHELL & CLAPP, supra note 3, at 145.
59. Id. at 33.
60. Id.
62. MITCHELL & CLAPP, supra note 3, at 149.
63. WYO. STAT. ANN. § 27-6-110 (2005).
64. MITCHELL & CLAPP, supra note 3, at 144.
65. "But the law ought always to trust people with the care of their own interest, as in their local situations they must generally be able to judge better of it than the legislator can do." ADAM SMITH, AN INQUIRY INTO THE NATURE & CAUSES OF THE WEALTH OF NATIONS 497 (Edwin Cannan ed., Random House 1937) (1776). In a republic of such vast extent as the United States, the legislature cannot attend to the various concerns and wants of its different parts. It cannot be sufficiently numerous to be acquainted with the local condition and wants of the different districts and if it could, it is impossible it should have sufficient time to attend to and provide for all the variety of cases of this nature, that would be continually arising.
In great centralized nations the legislator is obliged to give a character of uniformity to the laws, which does not always suit the diversity of customs and of districts; as he takes no cognizance of special cases, he can only proceed upon general principles; and the population are obliged to conform to the requirements of the laws, since legislation cannot adapt itself to the exigencies and the customs of the population, which is a great cause of trouble and misery.
age restrictions may impose a heavy burden on some classes of teenagers. For example, before 1998, sixteen- and seventeen-year-old workers were limited under the FLSA to "occasional and incidental" driving. Car dealers in Washington State felt that teenagers were mature enough for the work and hired them as lot attendants, with some "occasional and incidental" driving on the job. However, the Labor Department was unsympathetic to teenage drivers and interpreted the FLSA to ban anything beyond "rare or emergency" driving. Without fair notice, the Labor Department started imposing fines on employers. Employers suddenly found themselves owing thousands of dollars in fines even though they believed, reasonably and in good faith, that they had done nothing wrong.

Teenagers in a certain class may be burdened by the restrictions, but the process of seeking an exemption is burdensome. Teenagers have to petition the Labor Department for an exemption. However, the Labor Department can be unsympathetic to the needs of teenagers. If the Labor Department refuses, teenagers may have to go all the way to Washington, D.C. to ask Congress for an exemption.

Teenage employment is an issue that is better left to the states. The states are in a better position to handle teenage employment, because they have localized knowledge and are more responsive to local needs. If teenagers have a concern with the working age laws, they can go to the state legislature and petition for an amendment. Moreover, if any state sets its working age too low, public opinion will compel it to raise it to a more reasonable level.

D. History of Federal Regulation

Judging from history, it seems that the Federal Government did not intend to regulate teenage employment. The Federal Government was concerned mainly with child labor, and in its efforts to solve the problem of child labor, it inevitably stumbled over the issue of teenage employment.


67. *Id.*

68. 29 C.F.R. 570.38.

69. "In small states, the watchfulness of society penetrates everywhere, and a desire for improvement pervades the smallest details; the ambition of the people being necessarily checked by its weakness, all the efforts and resources of the citizens are turned to the internal well-being of the community . . . ." DE TOQUEVILLE, *supra* note 65, at 165.
1. The Need for Federal Regulation

By the early twentieth Century, child labor became a widespread problem in the United States. In 1916, Congress sought to solve the problem by enacting the Child Labor Act prohibiting goods produced by child labor from interstate commerce. However, two years later the Supreme Court struck down the federal statute in *Hammer v. Dagenhart*. In *Dagenhart*, the plaintiff filed a motion in the district court to enjoin enforcement of the 1916 Child Labor Act, on behalf of his two sons aged fourteen and sixteen who were working at a cotton mill in Charlotte, North Carolina. The district court granted the motion, an appeal was pursued, and eventually the Supreme Court ruled in favor of the father. It was held that Congress had exceeded its constitutional power by attempting to regulate child labor.

To address the constitutional issue of congressional power over child labor, the Child Labor Amendment was proposed in Congress in 1924. The text of the proposed amendment read:

Section 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

Sec. 2. The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress.

The same year, Congress adopted the Child Labor Amendment. However, the number of states ratifying it did not reach the three-fourths majority needed to make it binding.

2. Enactment of the FLSA and the Shirley Temple Act

In 1938, Congress passed the FLSA to accomplish many goals, including setting minimum wages and maximum work hours, as well as the abolition of child labor. Congress specifically stated its desire to address "detrimental labor conditions" and "unfair competition," among other issues.
In 1937, President Franklin D. Roosevelt sent Congress a special message proposing federal regulation to solve the problem of child labor, as well as set minimum wages and maximum work hours. He claimed that federal regulation would leave room for "some differentiation between different industries and localities." With a more sympathetic Supreme Court, the President's proposal would not be hindered by any constitutional issues. Acting on the President's proposal, Senator Hugo L. Black and Representative William P. Connery introduced two nearly identical bills in Congress, S. 2475 and H.R. 7200, that would become the FLSA.

Ninety-three persons representing various constituencies, interest groups and organizations appeared in joint hearings before the Senate Committee on Education and Labor and the House Committee on Labor to critique the proposed legislation. Of the witnesses who testified, a majority were in favor of the proposed legislation including its child labor provisions. We include the testimony of three witnesses in favor of federal regulation. Their testimony shows some of the important arguments for federal working age restrictions.

Lucy Randolph Mason of the National Consumer’s League claimed that child labor led to unfair competition, and sweatshops notoriously shifted production to states with obsolete labor laws that did not include age restrictions.

Robert H. Jackson of the Justice Department condemned the negative effect of child labor on national labor standards in that one state could subvert the nation’s labor standards by allowing child labor within its borders.

Katharine F. Lenroot of the Labor Department Children’s Bureau argued that child labor legislation was necessary to protect young workers. She cited statistical studies showing that young workers were especially susceptible to occupational hazards. Young workers in Pennsylvania’s bituminous coal mining industry, for example, had a higher accident rate than other workers in the industry. Also, power-driven machinery was

83. E.g., id. at 7 (statement of Robert H. Jackson, U.S. Department of Justice); Id. at 385 (statement of Katharine F. Lenroot, Chief of the Children’s Bureau, U.S. Department of Labor); Id. at 404-05 (statement of Lucy Randolph Mason, General Secretary, National Consumers’ League).
84. Id. at 404-05 (1937) (statement of Lucy Randolph Mason, General Secretary, National Consumers’ League).
85. Id. at 7 (statement of Robert H. Jackson, U.S. Department of Justice).
86. Id. at 385 (statement of Katharine F. Lenroot, Chief of the Children’s Bureau, U.S.
singed out as a leading cause of accidents involving young workers. At the same time, Ms. Lenroot insisted that employment law must be consistent with education law.

Only a few witnesses came forward to voice opposition to the proposed legislation. Two of them criticized it for violating state sovereignty. John E. Edgerton of the Southern States Industrial Council conceded that improving labor conditions was a noble purpose. However, he condemned the proposed scheme to enlarge federal power. In particular, he expressed serious concerns about the dangers of concentrated power and arbitrary authority that would result from the “domination of all industry in the United States” by a centralized government board headquartered in Washington, D.C.

George B. Chandler of the Ohio State Chamber of Commerce echoed Mr. Edgerton’s sentiments. He argued that the child labor provisions were being used as an excuse to violate state sovereignty:

Never before in my experience . . . can I recall any measure which has met with such widespread condemnation and resentment on the part of all substantial interests in our State as this so-called bill to establish “fair” standards. . . . [The child labor provisions] are much publicized for political purposes but really not germane to the real issue involved. We haven’t any child-labor problem in Ohio. What we resent is the brazen and, as we believe, illegal entry of the Federal Government within our borders to tell us how to run our own affairs.

When the bills were proposed, the minimum age for factory employment was fourteen in thirty-three states and the District of Columbia, fifteen in four states, and sixteen in ten states. One state had no comparable age restriction. The argument that the bills violated state sovereignty was a minority position. For the most part, Congress favored the federal regulations of child labor.

However, Congress still had to address the issue of a child-acting exemption. An outright ban on child labor would have made Shirley Temple’s acting career illegal. Shirley Temple became popular when

88. *Id.* at 384.
89. *Id.* at 761 (statement of John E. Edgerton, President, Southern States Industrial Council).
90. *Id.* at 866 (statement of George B. Chandler, Ohio State Chamber of Commerce).
91. *Id.* at 384 (statement of Katharine F. Lenroot, Chief of the Children’s Bureau, U.S. Department of Labor).
America was in the midst of the Great Depression, and the public desperately needed entertainment to distract them from the era's harsh realities. President Franklin Delano Roosevelt was led to say: "When the spirit of the people is lower than at any time during this Depression, it is a splendid thing that for just 15 cents an American can go to a movie and look at the smiling face of a baby and forget his troubles."\textsuperscript{93} From 1935 to 1938, her films topped the U.S. box office, outdrawing the movies of Greta Garbo, Marlene Dietrich, Clark Gable, and Humphrey Bogart.\textsuperscript{94} The positive impact of Shirley Temple's acting talent on Depression-era audiences was so widely appreciated that Representative Charles Paul Kramer of California introduced the exemption on the floor of Congress.\textsuperscript{95} According to Representative Kramer:

The ability to perform in motion pictures requires an intellectual gift and quality, something which is born in the exceptional child. Not only the motion picture industry but the movie-going public would be denied much pleasure and enjoyment if children were barred from the screen. The old and young are delighted with the unassuming appeal of America's little sweetheart, Shirley Temple....\textsuperscript{96}

Congress passed the Shirley Temple Act,\textsuperscript{97} as the general public came to call the exemption.\textsuperscript{98} Child actors have been exempt from federal working age restrictions ever since.

In passing the Shirley Temple Act, Congress admitted that child acting was not "oppressive child labor,"\textsuperscript{99} and was actually relatively harmless. The Act promoted the child actor's own best interests, as well as those of society. Child actors were able to develop their talent, and being under the protection of state law, they had every opportunity to receive an adequate education.\textsuperscript{100} In return, society would be enriched by the "pleasant and wholesome entertainment" provided by child actors.\textsuperscript{101} Moreover, there were economic benefits from child acting.\textsuperscript{102} Because of its positive

\textsuperscript{93.} DAVID & DAVID, supra note 32, at 15. Another U.S. president had fond memories of the child actress. Years later, Ronald Reagan would reminisce: "Like everyone else in America, I loved Shirley Temple in those days when a depression-haunted world forgot the drab dreariness for a few hours in a neighborhood movie house, especially when a tiny golden-haired girl named Shirley Temple was on the screen." \textit{Id.} at 19.
\textsuperscript{94.} \textit{Id.}
\textsuperscript{95.} 82 CONG. REC. 1780 (1937).
\textsuperscript{96.} 83 CONG. REC. 7441 (1938).
\textsuperscript{97.} Ch. 676, § 13, 52 Stat. 1067 (1938) (codified at 29 U.S.C. § 213(c) (2000)).
\textsuperscript{98.} DAVID & DAVID, supra note 32, at 23.
\textsuperscript{100.} 82 CONG. REC. 1780 (1937); 83 CONG. REC. 7441 (1938).
\textsuperscript{101.} 82 CONG. REC. 1780 (1937).
\textsuperscript{102.} Because of child acting, the film industry would be able to make more movies and employ more workers, and the government would be able to collect more tax revenues from
contribution to the nation's cultural and economic life, it was deemed not within the problem contemplated by child labor regulation.\textsuperscript{103}

As a practical matter, Congress conceded that an outright ban on child and teenage labor would be detrimental to the country. This commonsense acknowledgement is commendable. If only Congress were more consistently open-minded, we would have more reasonable teenage employment laws.

3. The 1949 and 1961 Amendments

Through the years, it became evident that more exemptions were needed. Minor workers were showing themselves competent in a wide range of occupations, not just child acting. And so Congress passed the 1949 amendment allowing an AWH exemption for newspaper deliverers.\textsuperscript{104} The 1961 amendment allowed another AWH exemption, this time for evergreen-wreath makers working at home.\textsuperscript{105} These two amendments seem to be based on the principle first seen in the child-acting exemption. If an occupation is deemed safe and harmless enough for children and teenagers, it will be considered for an exemption.

4. The 1998 Amendment

The 1998 amendment, known as the Drive for Teen Employment Act of 1998, added a Shirley Temple Act exemption for seventeen-year-old automobile and truck drivers.\textsuperscript{106} This was in reaction to over-regulation by the Labor Department. Without notifying employers, the Labor Department imposed fines on employers who hired teenage drivers who did more than "rare or emergency" driving.\textsuperscript{107} Employers were moved to action and appealed to Congress for an exemption. Congress agreed and granted their appeal. According to Representative Randy Tate of Washington:

This Department of Labor regulation bears no resemblance to the way employers run a business or to the way workers are expected to fulfill their job responsibilities. By creating this unworkable

\begin{footnotes}
\item[103.] Id.; see generally 83 CONG. REC. 7441-7442 (1938).
\item[106.] Drive for Teen Employment Act, Pub. L. No. 105-334, § 2(a), 112 Stat. 3137.
\end{footnotes}
standard, the Department of Labor has effectively prohibited teenagers from being employed in thousands of jobs. . . . We should be promoting job opportunities for teenagers, not stifling them. This Labor Department policy has affected teenagers in Washington state who in many cases were trying to earn enough money to go to college.  

The crucial factor for successful passage of the 1998 amendment was employer outrage at over-regulation by the federal government. Employers stoutly supported the amendment, compelling Congress to concede to their demands.

5. The 2004 Amendment

The 2004 amendment added a Shirley Temple Act exemption for school-exempt teenage workers in family sawmills. The exemption is written in neutral terms, but in practice it applies primarily within the Amish and Mennonite communities. It applies to individuals from fourteen to eighteen years of age who are legally exempt from compulsory school attendance, provided they are supervised by an adult relative or an "adult member of the same religious sect." This exemption is based on the First Amendment right to free exercise of religion. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." Because of Wisconsin v. Yoder, Amish parents are allowed to pull their children from formal schooling. From age fourteen, Amish children are expected to do real work, whether on the farm or in an occupation within the Amish community. This custom, deeply rooted in Amish religion and culture, is called "learning by doing." Forbidding Amish teenagers from practicing this custom will impose a burden on their personal growth and professional development. As one Amish parent said, "If we couldn't put our boys to work and they didn't do nothing [sic] until they were 18, they'd be absolutely worthless . . . We want them to be obedient and to learn a trade. If they don't, they'll be out and getting into mischief."

111. U.S. CONST. amend. I.
113. Greenhouse, supra note 22.
114. Lynch, supra note 54.
115. Greenhouse, supra note 22.
Before the sawmill exemption was passed, enforcement of the FLSA interfered with the Amish way of life. The Labor Department was poking its nose into the homes and businesses of peace-loving Amish people. The Labor Department should be thankful that Congress passed the sawmill exemption. Congress effectively saved the Labor Department from the embarrassment of punishing decent Amish parents who only wanted to teach their children an honest living.

The sawmill exemption is important for two reasons. First, Congress acknowledged religion as a basis for relaxing federal working age restrictions. Second, Congress acknowledged that teenagers can act responsibly and competently in hazardous occupations, provided there is sufficient adult supervision.

E. Principles Behind Age Exemptions

Four broad principles seem to underpin the current federal working age exemptions. These are public necessity, occupational harmlessness, outrage at over-regulation, and religion. The child-acting exemption is unique in combining the principles of public need and occupational harmlessness. Child acting met a public necessity—the desperate need of Depression-era audiences for entertainment, and it was deemed a harmless occupation for children. The exemptions for newspaper deliverers and evergreen-wreath makers seem to be based on occupational harmlessness. The teenage driver exemption is based on employer outrage at over-regulation by the federal government. As for the Amish woodworking exemption, it is based mostly on religion.

Looking at the four principles behind the current federal working age exemptions, we can fairly predict what kinds of exemptions will be passed by Congress in the future. Future exemptions must be beneficial to society, or at least neutral, and they must be based on a reasonable good-faith argument for child and teenage emancipation. Moreover, exemptions need the strong support of either parents or employers. Teenagers themselves have little political power; hence, they need the support of parents or employers.

IV. POSSIBLE REFORMS

In this section, I propose possible reforms to improve the federal regime of teenage employment regulation. Additional exemptions may be passed, or, if Congress is serious about improving the federal regime,
comprehensive reform may be warranted.

A. Additional Exemptions

Judging from the current state of the law, it seems that future exemptions will follow a basic pattern: they must be beneficial to society, or at least neutral; they must be reasonable; and they must receive the strong support of either parents or employers. Some additional exemptions that come to mind include community need, economic hardship, home-schooling, and professional development.

1. Community Need

Employment laws should be flexible enough to allow for community need. Particular communities may have a critical need for teenage employment. After a natural disaster, such as Hurricane Katrina of 2005, the need for immediate rebuilding is keenly felt. Hurricane Katrina caused extensive damage along the Gulf Coast. New Orleans was probably the most severely-stricken city. The hurricane left around 140,000 homes damaged or destroyed.

Disaster-stricken communities, such as New Orleans after Hurricane Katrina, desperately need help in rebuilding. This desperate need can be alleviated by allowing an exemption for teenagers to work as construction workers. Such an exemption can be enacted by a statutory amendment, either charging the Labor Department with the authority to suspend working age restrictions temporarily on a case-by-case basis, or reserving to states the power to set their own labor laws in times of emergencies.

118. See supra Part II.D. (describing the principles behind age exemptions).

119. Hurricane Katrina made landfall in eastern Louisiana on August 29, 2005 at a wind speed of 145 miles per hour. The next day, two levees protecting New Orleans were breached, causing waters from Lake Pontchartrain to flood the city lying below sea level. Much of the city remained underwater for three weeks. See Joseph B. Treaster & Kate Zernike, Hurricane Slams into Gulf Coast; Dozens are Dead, N.Y. TIMES, Aug. 30, 2005, at A1 (describing New Orleans the day after Hurricane Katrina); Joseph B. Treaster & N.R. Kleinfield, New Orleans is Inundated as 2 Levees Fail; Much of Gulf Coast Is Crippled; Toll Rises, N.Y. TIMES, Aug. 31, 2005, at A1 (detailing the damage caused by the breach of two levees in New Orleans); Will There Always Be a New Orleans?, ECONOMIST, Mar. 4, 2006, at 25 (describing the state of limbo New Orleans is currently in due to the hurricane’s aftermath).

120. The Way of Babylon?, supra note 28, at 27.

121. Two months after Hurricane Katrina, Mr. Donald T. Bollinger Jr., chief executive of Bollinger Shipyards, said: “This region is going to be going through a huge boom for the next three to five years rebuilding the coast. That’s very good news for those who want work and really worrisome news for employers who have to compete with everyone else for labor.” Gary Rivlin, Wooing Workers for New Orleans: A Shattered City Finds That Labor Is Its Greatest Need, N.Y. TIMES, Nov. 11, 2005, at C1.
2. Economic Hardship

The incidence of teenage poverty remains significant, and the problem is exacerbated by the prevalence of single-parent households. According to the United States Census Bureau, the poverty rate among persons below eighteen is 18.5%. The poverty rate among single-mother families with children below 18 is even worse, at an alarming 37.6%. Single-parent households need all the income they can legally earn. Elder siblings could help supplement the family income if there were fewer restrictions on teenage labor. Since many children grow up in single-parent homes, broadening teenage employment will help them overcome poverty.

Additionally, teenage marriage is another cause of economic hardship. Most states set the minimum age for marriage at eighteen, and it is lowered to sixteen if there is parental consent. New Hampshire sets the minimum marriage age with parental consent at fourteen for males and thirteen for females. Three states have even more lenient teenage marriage laws. Persons below eighteen are allowed to marry as long as there is parental consent in California, Kansas and Massachusetts. Whether or not teenage marriage is ideal, it does occur. In 2000, there were 381,000 married persons of ages fifteen to nineteen. Employment laws should accommodate the interests of married teenagers. Married teenagers need to support their families; therefore, they should be free to work in any occupation with as few legal barriers as possible.

3. Home-schooling

About 1,096,000 children and teenagers are home-schooled in the United States. Home-schooled teenagers have more free time than teenagers in formal schools. We should encourage home-schooled

122. U.S. Census Bureau, American Community Survey (2005), http://www.census.gov/acs/www/index.html (follow “Click here” hyperlink under Quick Start; then scroll down and follow “show more” hyperlink for Economic Characteristics (last visited Nov. 19, 2006).
teenagers to be productive and useful during their free time. Homeschooled teenagers should be allowed to work in more occupations.

4. Professional Development

Workers can advance earlier in their careers if they are allowed to begin employment as teenagers. With early training, workers become more productive and contribute more to society. Moreover, American businesses benefit from the earlier professional development of workers.

The professional development exemption can be enacted by a statutory amendment. Congress can charge the Labor Department with authority to certify certain occupations for professional development exemptions.

B. Comprehensive Reform

The list of prohibited occupations may now be obsolete. Workplace safety has improved in the years since the federal government started regulating teenage employment. Furthermore, the Occupational Safety and Health Act (OSHA) already takes care of workplace safety for all workers, whether teenagers or adults. Therefore, it is feasible to lower the legal working age to sixteen and to let the OSHA handle workplace safety issues for teenage workers.

A more radical proposal would be to leave teenage employment regulation to the states. The legal working age could be set at fourteen to protect children, and then the states could decide how leniently or strictly to regulate teenage employment. This would allow the states to compete in formulating the most optimal regime for regulating teenage employment.

If one state is successful in regulating teenage employment, other states will be able to learn from its experience. The states will be able to learn from each other's experiences so that the optimal regime will eventually prevail. As Justice Brandeis opined in one of his dissents: "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."

130. MITCHELL & CLAPP, supra note 3, at 33.
132. MITCHELL & CLAPP, supra note 3, at 149-50.
133. Id.
Comparing employment laws with those of other jurisdictions can help us evaluate the advantages and disadvantages of the current regime. A comparative study of state working age restrictions shows the great diversity of legal philosophies within our own country. These different legal philosophies give rise to different models of state regulation. Some models emphasize paternalism, while others emphasize personal autonomy.

A comparative study of foreign working age restrictions reveals useful alternatives to the current regime. The experiences of other countries are not perfectly comparable with our experience, but we can gain some powerful insights nonetheless. Comparing their experiences to ours helps us see which elements of employment law are universal and which are particular to specific cultures and societies.

Because comparative law has no "established set of methodological principles,"\textsuperscript{135} I will introduce my own terminology. We shall frame this comparative study in terms of leniency, consistency, and harmony. Leniency is the degree of personal freedom persons above the legal working age are allowed. Consistency is the level of compatibility between employment law and other bodies of law, especially education law. Harmony is the level of compatibility between state or provincial law and federal or national law.

A. Teenage Employment Regulation in the States

We will first look at the regimes of New York, Tennessee, Wyoming, and Arizona. These four states were chosen to represent the broad diversity of culture and economic activity within the United States. Not surprisingly, these states offer four different models of teenage employment regulation. We learn valuable lessons from comparing these models. Despite more than sixty years of federal legislation, state governments have not entirely conceded the issue of teenage employment. Differences among the states show a respect for local mores, as well as a robust competition for enacting the optimal set of legal rules.

1. New York

New York sets the legal working age at fourteen.\textsuperscript{136} Teenagers enrolled in school are prohibited from work during compulsory school

\textsuperscript{135} Konrad Zweigert & Hein Kotz, An Introduction to Comparative Law 29 (Tony Weir trans.) (1992).
\textsuperscript{136} N.Y. Lab. Law § 130.1 (McKinney 2006).
hours.\footnote{137} When not in school, persons between the ages of fourteen and seventeen are allowed to work in a few occupations, such as (1) outdoor work for parents,\footnote{Id. §§ 131.1, 132.1.} (2) caddy services at bridge tournaments,\footnote{Id. §§ 130.2(d), 131.3(a)(6), 132.3(a)(6). This exception includes twelve and thirteen year old children.} (3) caddy services at golf courses,\footnote{Id. §§ 130.2(h), 131.3(a)(5), 132.3(a)(5). This exception includes twelve and thirteen year old children.} (4) baby-sitting,\footnote{Id. §§ 131.3(a)(1), 132.3(a)(2).} and (5) yard work, including household chores.\footnote{Id. §§ 131.3(a)(2), 132.3(a)(3).} Prohibited occupations for persons under sixteen years of age include: (1) painting or exterior cleaning, (2) factory work, (3) operation of washing, grinding, cutting, slicing, pressing or mixing machinery, or (4) work in "institutions in the department of mental hygiene."\footnote{Id. § 133.1(a)-(d).} Prohibited occupations for persons below sixteen encompass eighteen categories.\footnote{Id. § 133.2.} The list of prohibited occupations is somewhat similar to those set by the federal government. The full working age is eighteen.\footnote{Id. § 130.2(a)-(c).}

New York provides exemptions to: (1) child performers, (2) child models (3) newspaper deliverers above 10 years of age,\footnote{Id. §§ 130.2(e).} (4) hand-harvest workers above twelve years old,\footnote{Id. §§ 130.2(a)(1), 132.3(a)(2).} and (5) persons who are "found to be incapable of profiting from further instruction available."\footnote{Id. § 130.2(c).} The first two exemptions seem to be based on the importance of the entertainment industry in New York. As for the fifth exemption, it is a lenient provision. It allows teenagers who are unfortunately incapable of benefiting from education to quit school and go to work instead.

The New York working age restrictions share many of the characteristics of the federal working age restrictions. The list of prohibited occupations for teenagers is very similar. More importantly, the New York working age restrictions are extremely nuanced. The state

\begin{itemize}
\item \footnote{Id.} elevator operation,\footnote{Id. § 133.2.} occupations dealing with explosives,\footnote{Id. § 133.2.} operation of any abrasive,\footnote{Id. § 133.2.} emery polishing or buffing wheels,\footnote{Id. § 133.2.} work in penal or correctional institutions,\footnote{Id. § 133.2.} cleaning or adjusting belts on machinery,\footnote{Id. § 133.2.} packing paints or leads,\footnote{Id. § 133.2.} preparing any composition containing poisonous or dangerous acids,\footnote{Id. § 133.2.} operating steam boilers,\footnote{Id. § 133.2.} construction work,\footnote{Id. § 133.2.} occupations involving radioactive exposure,\footnote{Id. § 133.2.} logging and sawmilling,\footnote{Id. § 133.2.} mining,\footnote{Id. § 133.2.} operating various power-driven machinery,\footnote{Id. § 133.2.} operating power-driven saws,\footnote{Id. § 133.2.} slaughtering and meat-packing,\footnote{Id. § 133.2.} operating power-driven hoists,\footnote{Id. § 133.2.} brick and tile manufacturing, and\footnote{Id. § 133.2.} motor vehicle helpers.
\end{itemize}
employment laws set provisions for almost any occupation imaginable. Teenagers almost have to be experts in employment law to understand all the provisions.

New York seems to follow a philosophy of benevolent paternalism. The state believes that its active intervention is necessary to protect the interests of teenagers, therefore it places many restrictions on the exercise of employment rights.

2. Tennessee

In Tennessee, the legal working age is fourteen. Teenage employees may work in occupations that do not interfere with their "health or well-being." If enrolled in school, they are prohibited from working during compulsory school hours. The list of prohibited occupations is somewhat more stringent than those under federal law. Generally, Tennessee follows the federal list of prohibited occupations for persons below eighteen, but with additional prohibitions. Persons below eighteen are prohibited from serving alcoholic beverages, child pornography, and "occupations involved in youth peddling."

Tennessee provides some exemptions for: (1) married persons or parents, (2) high school graduates, (3) self-employed minors, (4) minors employed by parents in non-hazardous occupations, (5) agricultural workers, (6) newspaper delivery, (7) errand and delivery work, and (8) child musicians or entertainers. The full working age is eighteen.

The Tennessee regime is stringent in some ways and lenient in others. It is stringent because it prohibits more occupations than the federal regime. At the same time, it is lenient in providing exemptions for married persons, parents, high school graduates and the self-employed. These are the classes of teenagers who will benefit the most from exemptions. Tennessee seems to follow a mixed philosophy towards teenage

150. Id. §§ 50-5-104(a)(1), 50-5-105(a)(2).
151. Id. §§ 50-5-104(b)(1), 50-5-105(b)(2).
152. Id. § 50-5-106(1)-(18). Hazardous occupations for persons below eighteen include: (1) manufacturing or storing explosives, (2) driving, (3) mining, (4) logging and sawmilling, (5) operating power-driven woodworking machines, (6) occupations involving radioactive exposure, (7) operating elevators, (8) operating power-driven metal-forming machines, (9) mining other than coal mining, (10) slaughtering and meat-packing, (11) mechanized baking, (12) mechanized paper production, (13) brick and tile manufacturing, (14) operating power-driven saws, (15) wrecking and demolition, (16) roofing, (17) excavation
153. Id. § 50-5-106(10)-(18).
155. Id. § 50-5-106(21).
156. Id. § 50-5-107(2)-(9).
157. Id. § 50-5-102(7).
employment. It is stringent in situations where stringency is warranted and lenient in situations where leniency is beneficial. In my opinion, this is probably the best approach for regulating teenage employment.

3. Wyoming

Wyoming sets the legal working age at fourteen, with a broad exemption for persons below fourteen in all “farm, domestic or lawn and yard service.”158 Fourteen year olds and fifteen year olds can work in allowed occupations for limited hours.159 The full working age is sixteen.160 The Wyoming regime is lenient and concise. It is lenient enough to allow most kinds of reasonable work to teenagers; and at the same time it is concise enough to be understood by most teenagers.

Wyoming seems to follow a pro-employment philosophy. The state wants to encourage people to work as early in life as possible. The farm exemption ensures that minors will be free to start working in home and agricultural work at an early age. Furthermore, with the full working age set at sixteen, Wyoming teenagers can work in many occupations that are legally prohibited to their peers in other states.

4. Arizona

Arizona does not set a legal working age, but instead enumerates a list of occupations prohibited to persons below sixteen.161 This reluctance to set a legal working age seems based on a libertarian philosophy. It is less intrusive for government to enumerate the prohibited occupations, than to set a legal working age that may be a hardship for some.

The full working age is eighteen.162 However, employers can apply for a variation from the state working age restrictions if they can show (1) that the variation “would be in the best interests” of the teenage worker and the community and (2) that the teenage worker’s “safety, health and personal well-being” will be protected.163

The state provides exemptions for married persons164 and for persons with a high school diploma or its equivalent.165 These exemptions demonstrate the state’s libertarian bias. The state believes that being married or having a high school diploma is a manifestation of maturity, and

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159. Id. at § 27-6-110.
160. Id.
162. Id. § 23-231.
163. Id. § 23-241.
164. Id. § 23-235.A.8.
165. Id. § 23-235.A.9.
thus declines to restrict persons who demonstrate such maturity.

B. *Teenage Employment Regulation in Foreign Jurisdictions*

After a comparative study of teenage employment regulation, we see that the United States has much to learn from foreign jurisdictions. Foreign regimes have significant advantages in consistency and harmony.

1. Canada

Canada's regime is similar to the United States. Canada has a federal system of government, and teenage employment is regulated in two levels, the federal level and the provincial level. The federal government establishes the general rules, while the provinces have autonomy to set specific regulations. However, the Canadian regime seems to be more harmonious than the United States regime. In the Canadian regime, the federal government and the provinces have a relationship of cooperation, rather than friction. The Canadian federal government, which is recognized as superior to the provinces, has reserved powers over matters not assigned to the provinces. Any rivalry that exists between the federal and provincial governments is muted, making regulation of teenage employment harmonious.

In contrast, the United States regime is marked by friction between the federal government and the states. The constant tension between the federal government and the states is a source of friction, causing United States teenage employment law to exist under a disharmonious patchwork of federal and state regulation. The states have their own set of rules, but the federal government insists on superimposing its own set of rules, which leads to disharmony.

Furthermore, Canadian law is more lenient than United States law. Fourteen-year-olds and fifteen-year-olds may work in a wider range of occupations.

a. *The federal rules*

The full working age is eighteen. Persons below seventeen may work in allowed occupations, provided provincial education laws do not prohibit them to do so, and the work is not likely to harm their health or safety.

Allowed occupations are set by regulation, and include: (1) office or plant jobs, (2) "transportation, communication, maintenance or repair service," and (3) construction.

Persons below fifteen are prohibited from ship jobs. Prohibited occupations for persons below seventeen include: (1) mining, (2) explosives factory work, and (3) occupations involving atomic energy. Persons below seventeen may not work from 11 P.M. to 6 A.M.

b. The provincial rules of Ontario

Each province sets its own working age restrictions. For non-agricultural employment in Ontario, the legal working age varies according to occupation. It is fourteen in a non-factory workplace, fifteen in a non-logging factory, and sixteen in a logging operation.

2. United Kingdom

The United Kingdom (U.K.) has a unitary form of government, with some level of devolution. Acts of the U.K. Parliament are paramount within the realm. However, the Scottish Parliament has power to legislate over devolved matters. Hence, while there is an emphasis on uniformity within the realm, there is considerable room for regional differences. Additionally, according to the Human Rights Act, all legislation must be consistent with the European Convention on Human Rights.
The United Kingdom regime is more consistent and lenient than the United States regime. The full working age is set at the end of the compulsory school age. Because of consistency between employment laws and education laws, the transition from education to work is neat and orderly. Also, sixteen-year-olds and seventeen-year-olds in the United Kingdom enjoy greater freedom in choosing jobs than their peers in the United States.

The legal working age is thirteen. Persons from fourteen to the end of compulsory school age are allowed to do “light work.” Light work is defined as any work “not likely to be harmful to the safety, health or development of children” and not harmful to school attendance or to participation in work experience. The computation of compulsory school age is complicated. Compulsory school age ends at the school leaving date after the child reaches sixteen years of age, or at the school leaving date before his sixteenth birthday, if he reaches sixteen years of age before the beginning of the next school year.

The U.K. Parliament grants local authorities the power to pass by-laws authorizing persons aged thirteen to be employed in light work, or in light agricultural or horticultural work under parental supervision. Local authorities also have the power to set the legal working age for persons below compulsory school age. For the purposes of working age restrictions, “local authorities” are defined generally as local education authorities.

Aside from being more consistent and lenient, the United Kingdom regime has a more accommodating policy on work experience programs. Teenagers can gain work experience in their last two years of compulsory education. The local education authority or the governing body of the school is responsible for arranging work experience programs.

In the United Kingdom, local education authorities can set up work experience programs on their own, whereas in the United States, school boards must get the Labor Department’s approval before offering work experience programs. This difference is due to the vocation-oriented education in the United Kingdom. Young persons are encouraged to

186. Children and Young Persons Act, 1933, 23 Geo. 5, c. 12, § 18(1)(a), amended by Children (Protection at Work) Regulations, 2000, W.S.I. 2000/1333, reg. 2(1) (Eng.).
189. Education Act, 1996, c. 56, § 8 (Eng.).
190. Children and Young Persons Act, 1933, 23 Geo. 5, c. 12, § 18(2)(a).
191. Id. § 18(2)(c)(1).
192. Id. § 96(1).
193. Education Act, 1996, c. 56, § 560 (Eng.).
choose early their particular career or profession. Therefore they are given wide freedom to participate in work experience programs.

VI. CONCLUSION

The issue of teenagers' employment rights merits greater legislative attention. All too often, the good intentions of the law run counter to the legitimate interests of teenagers. The law mandates over-protection of teenagers, leading to immaturity and irresponsibility, which does not benefit teenagers. Teenagers need real responsibility to build up their backbones and to learn self-reliance.

George Washington made his own decisions during his teenage years, as did many of our forebears. While still teenagers, they were productive citizens earning enough income to support themselves and to contribute to our nation's economic life. There were few rules indicating which jobs were safe and which ones were too hazardous. In the spirit of honoring our forebears, Congress should take a second look at the law to examine whether there are more working age exemptions available for our teenagers.