Supplementary Material

Chapter 7: The Republican Era—Individual Rights/Personal Freedom and Public Morality

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Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510 (1925)

The Society of Sisters of the Holy Names of Jesus and Mary operated several private religious schools in Oregon. In 1922, that state passed a law requiring all children between the ages of eight and sixteen to attend public schools. The Society of Sisters and other private schools sought an injunction forbidding the governor of Oregon, Walter Pierce, from enforcing the statute. They claiming the law violated both their right as teachers and the right of parents to send their children to a private school. A local federal court agreed the law was unconstitutional and Oregon appealed to the Supreme Court of the United States.

Unlike Meyer v. Nebraska *(1923), which held that persons had a constitutional right to teach German, the decision in* Pierce *was unanimous. Are the facts sufficiently different, or do you believe Holmes and Sutherland, the dissenters in* Meyer*, were following precedent? To what extent do you think the Court might have been influenced by evidence that the Ku Klux Klan, as anti-Catholic in the 1920s as anti–persons of color, played a major role in the passage of Oregon's Compulsory Education Act? Suppose Virginia in 1963 passed a similar law for the purpose of preventing parents from sending their children to private segregated schools. Would that law be constitutional?*[1]

JUSTICE McREYNOLDS delivered the opinion of the Court.

. . .

No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.

The inevitable practical result of enforcing the act under consideration would be destruction of appellees' primary schools, and perhaps all other private primary schools for normal children within the state of Oregon. Appellees are engaged in a kind of undertaking not inherently harmful, but long regarded as useful and meritorious. Certainly there is nothing in the present records to indicate that they have failed to discharge their obligations to patrons, students, or the state. And there are no peculiar circumstances or present emergencies which demand extraordinary measures relative to primary education.

Under the doctrine of *Meyer v. Nebraska* (1923) we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. . . . [R]ights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers

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[1] For an argument that such a law would be constitutional and that the court should overrule or modify *Pierce*, see James S. Liebman, "Voice, not Choice," *Yale Law Journal* 101 (1991):259.

only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

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