

Fighting for the Soul of a Nation:
***Pierce v. Society of Sisters*, Education, and American Democracy**

Alexa Rose

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After several years of legal battle, the Supreme Court gave its final ruling on *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary* in 1925 that the Oregon School Bill of 1922 was unconstitutional. The decision was celebrated as a win among those who had opposed the attempt to constitutionally amend compulsory education laws in Oregon. Those who had supported the bill lamented what they believed was a misjudgement on behalf of America's judicial system. Voter pamphlets and court documents reveal a discourse around participation and protection under democratic principles – one whose arguments shift to accommodate local issues and contexts. *Pierce* is a debate as much about democracy as it is about the State's involvement in education and personal liberties. The belief that democratic values were instilled within schools meant that any threat to education was deemed as a threat to these values and to democracy as an institution. The *Pierce* decision cements this idea of education and democracy as permanently interweaved in the social consciousness of Americans in the early twentieth-century.

This paper expands on several key pieces of scholarship, blending legal history approaches with social history analyses of educational reform and Klan activity. Crucial to the story of *Pierce v. Society of Sisters*, the Ku Klux Klan has received considerable attention from early twentieth-century scholars. Most of these studies use the Oregon School Bill as a case study for Klan activity in the 1920s, such as Adam Laats' argument on the importance of educational reform to the Klan.¹ Drawing on this scholarship, Linda Gordon provides a more recent and comprehensive sociopolitical analysis of the 1920s Klan, positing the Oregon case provides an example of the Klan's adaptation to local issues and the driving mechanisms behind

¹ See Adam Laats, "Red Schoolhouse, Burning Cross: The Ku Klux Klan of the 1920s and Educational Reform," *History of Education Quarterly* 51, No. 3 (2012). <https://www.jstor.org/stable/23251451>.

its momentum.² This paper is interested in applying her idea of the Klan's "influence on political consciousness" through its redefinition of Americanness "redefinition of Americaness" to analyze the impact of the debates encapsulated during *Pierce* on the social consciousness.³ In the preceding studies, discussion on *Pierce* is often limited to a paragraph or two. Tyack blends a social history lens with a focus on the debates around the case, arguing that in this process "came a searching reappraisal of the ideology of the common school in a pluralistic society." However, Tyack primarily focuses his analysis of this conceptualization from the viewpoints of those supporting the bill. The *Pierce* case receives more attention from legal studies, analyzing the context surrounding the court proceedings and its use as legal precedent in numerous subsequent cases. The legal scholarship had established the important legal ramifications of the *Pierce* decision. This paper is also interested in exploring the conceptualizations of democracy Paula Abrams lays out in her legal history of *Pierce*. Weaving together Tyack's argument of reappraisal and Abrams discussion of democratic themes in the trials, this paper examines the case of *Pierce v. Society of Sisters* using a social history approach.

Educational Reform and American Democracy

The belief that education had an influence on democratic principles emerged from Progressive Era reformers. These reformers, and the social movements they championed, were heavily concerned the social and class inequalities driven by corruption proliferating American society. Ending inequality was only one factor in motivating reformers to focus on schools. Fears over the spread of Bolshevism and hysteria generated during the first Red Scare convinced reformers to prioritize schools within their efforts. Many of the "vigilant crusaders against

² Linda Gordon, *The Second Coming of the KKK: The Ku Klux Klan of the 1920s and the American Political Tradition* (New York: Liveright Publishing Corporation, 2017), p. 139.

³ Gordon, *The Second Coming*, p. 7.

radicalism [had] argued that patriotism through public education was necessary to national security.”⁴ A prevailing “progressive vision of a comprehensive public education system included both extensive state regulation and a greater role for the federal government in educational policy”.⁵ In theory, this would provide adequate enforcement of such legislation and do so on a nationwide scale. The progressive approach to education was thus two-fold: in having all children be educated under a public education system which the state regulated, these reformers hoped to ensure protection against potentially harmful ideas and assimilate the nation into one large melting pot.⁶

The Klan’s focus on the common school entwined progressive educational reform beliefs with Klan ideology, leading to exclusionary policies masquerading as a message of equality. National Ku Klux Klan leader Hiram Evans “insisted that education reform could fix all the problems that plagued rank-and-file Klan members, such as the perceived threat from immigration, the increasing power of the Catholic Church, the perceived loss of power by Whites, eroding Victorian cultural mores, and Protestant nationalism.”⁷ Evans’ approach helped further establish education as a key focus among Klan organizations. However, like many Klan initiatives, the overall priority of educational reform would fluctuate based on localized conditions. The Klan was determined to achieve its goals, even if it would mean eventually defending their efforts before the judicial system.

The Oregon School Bill was the legislative manifestation of these goals. It had been officially proposed by the Oregon Scottish Masons,⁸ and while there is some debate among

⁴ Paula Abrams, *Cross Purposes: Pierce v. Society of Sisters and the Struggle Over Compulsory Education* (Ann Arbor: University of Michigan Press, 2009), p. 72.

⁵ Abrams, *Cross Purposes*, p. 96.

⁶ David B. Tyack, “The Perils of Pluralism: The Background of the Pierce Case,” *The American Historical Review* 74, no. 1 (1968): 93. <https://www.jstor.org/stable/1857630.93>

⁷ Laats, “Red Schoolhouse,” p. 332.

⁸ Tyack, “The Perils of Pluralism,” p. 77-78.

scholars on the extent to which the Klan was involved in the initial proposal of this bill, the organization was undoubtedly involved in galvanizing support. The Bill would feature in the General Election voter's pamphlet for Oregonians, to be voted on in November 1922.⁹ Set to go into effect in September 1926 if passed, the proposed amendment would extend the current law's age range from "children between the ages of nine and fifteen years" to "children between the ages of eight and sixteen years" for those required to attend public school.¹⁰ It also removed an entire section on "children being taught in private school", which specifically mentioned parochial schools, as an exception to the public school requirement leaving a noticeably reduced section on private instruction.¹¹ In significantly reducing and eliminating portions of these sections, the intended effect was to force the closure of parochial schools and thereby move these children into the public school system.

The Stakes of the Oregon School Bill

Through promotional materials and public events, school bill advocates pushed the narrative of the security of the American democratic nation being tied to the fate of the public school. As one advertisement declared, "what the nation is, what its laws are to be, its future usefulness in the world, all depend on the school in which the children are taught."¹² Their arguments struck an emotional chord with their audiences, pointing to the permanence of progressive views on the value of education within the social consciousness. Speeches especially

⁹ Secretary of State, "1922 (Measures) 1922 Voters' Pamphlets, General Election|Proposed constitutional amendments and measures (with arguments) to be submitted to the voters of Oregon at the general election," State Publication, Salem, Oregon, 1922. State Library of Oregon Digital Collections. <https://digitalcollections.library.oregon.gov/nodes/view/24438>.

¹⁰ "Compulsory Education Law and Compulsory Education Bill – Comparison of Text" Oregon Voter, Sep. 9, 1922, p. 6 (366), in *Pamphlets on Oregon Compulsory Education Bill*, 1922. Accessed through Special Collections and University Archives Oregon Collection, University of Oregon Libraries.

¹¹ *Ibid.*

¹² 14. "The School – Earth's Noblest Monument", advertisement in *Pamphlets on Oregon Compulsory Education Bill*

proved one way of successfully transmitting this message. In a public address “before the Portland Ministerial Association”, William F. Woodland defended the bill on the grounds of a shared fight to ensure a nation of all peoples. The founders, according to Woodward, had established the government’s foundations “with a very clear understanding that its enduring success” rested on on this “suffrage”, as he referred to it. This goal can “only be secured in the fullest degree by a thorough system of education” found within the public school, “which draws unto itself every child without regard to birth, creed, race or affiliation.”¹³ Private schools were simply unable to match this efficiency and children must be taught in public schools to reap these benefits. This sentiment would later be echoed in a Klan-run newspaper who assured readers they “still believe[d] that the first duty of a democracy is self-preservation of itself through the enforced education of the multitude of individuals of which it is composed.”¹⁴ Sympathizing with the Klan’s claims, supporters had made the school bill a moral issue at which the very survival of the nation was at stake.

The response to news of the proposed bill being included on the 1922 November General Election was immediate and vocal. Those in opposition comprised a resistance spanning denominational lines and even across faiths. This diverse composition is seen in the formation of organizations like the Lutheran Schools Committee, “a temporary cooperative arrangement between the principals of a number of private schools, Episcopalians, Lutherans and Adventists [...] made to assist in waging war on the School Monopoly Bill.”¹⁵ They were joined in their

¹³ “Debate on School Bill – Masterly Presentations on Both Sides Before Ministerial Association,” Oregon Voter, Oct. 7, 1922, p.14-15, in *Pamphlets*

¹⁴ “Comments of the Press”, p.147-48, in *The Oregon School Fight : A True History Compiled from the Arguments of Proponents and Opponents of Bill and Arguments on the Constitutionality of the Measure as Argued before the Honorable Federal Judges, W.B. Gilbert, C.E. Wolverson and R.S. Bean in Portland, Oregon, January 15th, 1924 and the Complete Text of the Decision Handed down by Judges William B. Gilbert, Charles E. Wolverson and Robert S. Bean of the United States District Court for Oregon, March 31, 1924, Whereby the Oregon Compulsory School Law Is Declared Unconstitutional*. Portland, Or: A.B. Cain, 1920.

¹⁵ Correspondence, August 1922, in Lutheran Schools Committee records. B 138. 0.1 Linear Feet. Special Collections and University Archives, University of Oregon Libraries.

efforts by Hill Military Academy, a private instructional institution concerned about the bill amendment's impact beyond parochial schools. These organizations were not fundamentally opposed to compulsory schooling. In response to Woodward's comments, William D. Wheelwright asserted that those sharing his position "believe in the public schools, in establishing high standards of education therein and in the inculcation of American principles and ideas."¹⁶ Wheelwright was certainly a vocal figure of the opposition, described in a letter from the Lutheran Schools Committee as a "well known, influential and public spirited citizen of Portland."¹⁷ The position of many involved in protesting the bill on the issue of compulsory education were further summed up in Wheelwright's open letter to P.S. Malcom of the A. & A. S. R. Schools Committee:

"It is because we are Americans that we oppose this Bill. It is an invasion of private rights, an invasion of the home and of parental authority, repellent to every principle of Democracy and consonant only with the tyrannies of Medievalism."¹⁸

For the most part, these organizations shared Wheelwright's proclamation that "a majority has no higher privilege, no more sacred duty, than to protect a minority in its inalienable rights."¹⁹ The minorities under attack were Catholics, religious freedom more broadly, and other private institutions exercising their personal rights. This is where these organizations differentiation from pro-bill supporters, in their belief of which types of schools transmitted democratic values and the constitutional stability protecting these rights from state intervention.

These groups had three main objections to the bill. Firstly, it operated under false pretenses of providing a compulsory education law when the Oregon already had one and its claims of having nothing to do with religion was insincere, for it was "a matter of common

¹⁶ "Debate on School Bill " Oregon Voter, Oct. 7, 1922, p.19, in *Pamphlets*

¹⁷ "An Open Letter to P. S. Malcom Esq.," Correspondence, n.d., in Lutheran Schools Committee records. B 138. 0.1 Linear Feet. Special Collections and University Archives, University of Oregon Libraries.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

knowledge that [the bill] is aimed primarily at the parochial schools of the Roman Catholic Church.”²⁰ This earned the bill the nickname “School Monopoly Bill” and “the so-called Compulsory Education Bill” in their pamphlets and other assorted paraphernalia.²¹ Secondly, it intentionally sowed seeds of dissent by raising “up a figment of its own imagination, and [inciting] the people of the State to war against a phantom, thus engendering the bitterness that always comes out of heated controversy.”²² Finally, and most prominently, the bill violated constitutional protections pertaining to personal liberties and property rights. They decried the measure as “an invasion of private rights, an invasion of the home and of parental authority, repellent to every principle of Democracy and consonant only with the tyrannies of Medievalism.”²³ These three components fueled the primary messaging of advertisements and speeches against the bill. Despite their relentless criticism of the measure in advertisements and approach in appealing to “common sense”, the Oregon School Bill passed in November 1922, with 115,506 votes in favor and 103,685 votes in opposition.²⁴ They were determined to continue their fight, but challenging the bill came with several obstacles. The measure had passed with “the approval of an actual majority of voters in a general election,” wrote one newspaper, who reasoned that this presumably meant “there must be a considerable body of public opinion which believes in this doctrine.”²⁵ Such major approval would not be so easily swayed. Further complicating the issue was the Klan’s entanglement with local politics, sure to be an impediment

²⁰ “Debate on School Bill ” Oregon Voter, Oct. 7, 1922, p.19, in *Pamphlets*

²¹ See “The Truth about the So-Called Compulsory Education Bill” in Lutheran Schools Committee records. B 138. 0.1 Linear Feet. Special Collections and University Archives, University of Oregon Libraries. <https://scua.uoregon.edu/repositories/2/resources/1231>; and Non-Secretarian and Protestant Schools Committee (Portland, Or.), *School Monopoly Bill, Called on the Ballot, “Compulsory Education Bill.”* Portland, Or: James, Kerns & Abbott, 1921.

²² “Debate on School Bill ” Oregon Voter, Oct. 7, 1922, p.20, in *Pamphlets*

²³ “An Open Letter to P. S. Malcom Esq.,” Correspondence, n.d., in Lutheran Schools Committee records. B 138. 0.1 Linear Feet. Special Collections and University Archives, University of Oregon Libraries. <https://scua.uoregon.edu/repositories/2/resources/1231>.

²⁴ Inside Cover, in *The Oregon School Fight*

²⁵ 6. “The Future of the Private School,” Oregon Voter, Sep. 9, 1922, p. 6 (366), in *Pamphlets*

to overturning the bill at a local level.²⁶ Thus, after great deliberation, the school bill's opponents decided to challenge the bill through one of America's other great democratic institutions: the federal courts.

In Defense of Democracy

As the protesters had argued prior to the 1922 General Election, the Society of Sisters of the Holy Names of Jesus and Mary submitted their complaints and intent to challenge the unconstitutionality of the school bill. They approached the District trials with “a two-prong attack that challenged the constitutional legitimacy of the law and asserted the plaintiff's right to bring suit.”²⁷ They claimed that the “School Bill impaired the obligation of contract between the corporation and the state, in violation of the contracts clause of the federal constitution.”²⁸ If they could convince the Court of their arguments, it would be a major win for the organizations opposing the bill. .

To defend the school bill as necessary, the Klan had needed to provide a tangible threat for supporters to rally against. The targeting of Catholics was neither a deviation from the Klan's usual targets nor unrealistic to many Oregonians. The success of the school bill can be contributed in large part to the pre-existing prejudices. Oregon's population at this time was predominately “Protestant and white, and 87 percent native-born.”²⁹ Other communities constituted a miniscule percentage in comparison, with Catholics leading at 8 percent.³⁰ This demographic was intentionally curated through discriminatory land-use policies and continued attacks on minority

²⁶ Abrams, *Cross Purposes*, p. 89

²⁷ Abrams, *Cross Purposes*, p. 137.

²⁸ Abrams, *Cross Purposes*, p. 139

²⁹ Gordon, *The Second Coming*, p. 140.

³⁰ Gordon, *The Second Coming*, p. 140

communities.³¹ The fact that Oregon had relatively no “immigrant problem”³² meant that there was simultaneously a portion of their goal already achieved but also that there was a lack of something which the Klan could use to convince more moderate citizens of their cause. Luckily, at least for the Klan and its supporters, Oregon had a decent amount of parochial schools, existing anti-Catholic sentiment, and a strong affiliation for its pioneer past which had supposedly “brought true Americanism with them.”³³ The Klan manipulated these sentiments through inflammatory publications like *The Old Cedar School* and impassioned speeches, spreading a rhetoric that parochial schools were conspiring to plot the downfall of the public school and therefore the “destruction of free institutions.”³⁴ In doing so, it demonstrated both the idea of the school and democracy as linked in Klan ideology and an ability to aggravate local issues in advancement of their goals.

The arguments of both the Plaintiffs and the Defendants formally articulated the School Bill’s discourse around education and democracy before a federal court. The State’s defense of the school bill relied on a similar argument of the school bill as necessary for the continued health and integrity of American democracy. The Defendants backed “the School Bill primarily by asking the court to defer to the will of the Oregon voters, who had decided that compelled public education promoted assimilation and good citizenship.”³⁵ After several days of trials and legal proceedings, the District Court made its stance known in a decision handed down by the three-man court on March 31, 1924. It determined that the “state acting in its legislative capacity, has, in the means adopted, exceeded the limitations of its power [...] and has and will deprive

³¹ See Gordon, *The Second Coming*, p. 139-42.

³² M. Paul Holsinger, “The Oregon School Bill Controversy, 1922-1925,” *Pacific Historical Review* 37, no. 3 (1968): 330. <https://www.jstor.org/stable/3636867>.

³³ Holsinger, “The Oregon School Bill Controversy,” p. 328.

³⁴ Estes, George, “The Old Cedar School” *Pamphlets*, p. 9.

³⁵ Abrams, *Cross Purposes*, p. 142.

[the constituents] of their property without due process of law.”³⁶ It further argued that “the melting pot idea applied to the common schools of the state, as an incentive for the adoption of the act, is an extravagance in simile.”³⁷ The State had pinned its hopes on convincing the judges that the reasoning of assimilation and egalitarianism was justified – a gamble that ultimately failed. Regardless, the State was not finished with its fight and filed an appeal to debate the bill at the top judicial court in the nation: the Supreme Court.

In appealing the case to the Supreme Court, the State hoped to get the District’s decision reversed, which would surely happen as “time will show them[, those opposed to the bill and the Supreme Court,] that this law is to the advantage of any good American citizen and only to the disadvantage of autocracy, political and ecclesiastical.”³⁸ This conviction in the Supreme Court to see reason also extended to advocates against the bill, as illustrated by the *Portland Telegram*’s statement that “this is a country in which there is always a legal remedy,” which is “the great redeeming factor in the American system.”³⁹ Further exclamations of success from many other newspapers speaks to a shifting social attitude in the debate, finding more favor with those against the bill, while also serving as a reminder that the school bill was contentious from the moment of its proposal on the ballot.

The challenge in arguing a join case was balancing both complaints without fully compromising one or the other. It helped that both the Sisters and Hill Academy were seeking federal agreement that their personal rights had been violated. The Plaintiffs for the Sisters “stayed with the strategy that had proved successful at the district court”⁴⁰ by arguing that the law’s arbitrary nature was the result of “the State [lacking] sufficient justification for the measure

³⁶ “Text of the School Act Decision,” p.143, in *The Oregon School Fight*

³⁷ *Ibid.*

³⁸ *The Western American*, “Comments of the Press”, p. 148, in *The Oregon School Fight*

³⁹ *Portland Telegram* “Comments of the Press”, p. 145, in *The Oregon School Fight*

⁴⁰ Abrams, *Cross Purposes*, p. 169.

and that the School Bill unreasonably interfered with parental rights and economic liberties protected by the Fourteenth Amendment.”⁴¹ With the Sisters arguing on the grounds of a violation of constitutional rights, the State needed to undoubtedly prove that it had not overextended its power in further regulating Oregon education. The Appellants decided to omit “any serious consideration of standing and prematurity,” choosing instead to argue that “that the School Bill did not violate any protected rights of the schools or the parents and that the Court should defer to state authority over educational policy.”⁴² The State’s argument had not proven effective in the District Courts and would face the same fate here. Furthermore, “the progressive imprint on federal and state education policy made education reforms” a particular nuisance to the more conservative Taft Court, ultimately not helping the State’s persuasiveness of their argument.⁴³

On June 1, 1925, the Supreme Court upheld the District’s ruling of the bill as unconstitutional. In the handed down decision, the Court validated the Sisters’ position on state overreach in education, stating:

“The fundamental theory of liberty upon which all governments of this Union rest excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachings only.”⁴⁴

This meant that the state did not have the ability to regulate education to the extent it would have been provided by the bill, giving some – albeit, still vague – explanations on the limits of the state’s power. The Court further stated “that the assimilation of the foreigner is not a justification for any such prohibitory statute”, citing Meyer as precedent, and that the “whole contention [of such claims] is fallacious” as “Oregon has no substantial unnaturalized immigrant problem.”⁴⁵

⁴¹ *Ibid.*, p. 168.

⁴² Abrams, *Cross Purposes*, p. 170.

⁴³ *Ibid.*, p. 166.

⁴⁴ James Clark McReynolds and Supreme Court of the United States, “U.S. Reports: Pierce v. Society of Sisters, 268 U.S. 510 (1925),” Periodical, 1924. <https://www.loc.gov/item/usrep268510/>, p.510.

⁴⁵ *Ibid.*, p. 516.

Ultimately, this decision had important ramifications for how supporters and protesters of the compulsory education legislature approached similar educational reform legislature.

A Legacy Established

The Supreme Court's decision effectively halted the momentum of compulsory education, but it did not fully settle the animosities stirred up by the school bill debate. Noticeably, "the Sisters [had] not dispute[d] the state's legitimate authority over many aspects of education, including mandatory school attendance, curriculum, and teacher credentials."⁴⁶ The Court had also contended that there "was no justification for the destruction of private schools [as] patriotism could be ensured by regulating curricula and by proper licensing of schools and teachers."⁴⁷ This distinction had important implications for the continuance of this debate around education, as the Klan promoted "less wholesale bills in many other state legislatures, focusing on curricular requirements and control of teaching staff" in an attempt to still implement some form of control over education after *Pierce*.⁴⁸ The embers of the school fight were still burning, eventually reigniting numerous times over the course of decades to come.

Ultimately, the trial proceedings of *Pierce v. Sisters* encapsulated the conflation of protecting democracy and the role of the school in American society. The positions taken by the Sisters and the State were two sides of the same coin. They shared a fundamental conceptualization: education was inexplicably tied to democratic principles and understandings of Americanness. As pro-bill supporters had argued in the 1922 campaigns, the State represented the view that compulsory education managed under the state would achieve the democratic goal of a united, equal nation. In contrast, the Sisters represented the belief that compulsory education

⁴⁶ Abrams, *Cross Purposes*, p. 173.

⁴⁷ *Ibid.*

⁴⁸ Gordon, *The Second Coming*, p. 156.

could protect and facilitate American democratic ideals, so long as citizens had the ability to choose whether the mode of instruction was private or public. Both sides had known their cases “lay in persuading the Court where the state’s authority over education should end” and therefore had “made the relationship between education and democracy a central theme in their beliefs.”⁴⁹ These beliefs were not only rooted in a social and political sense, but now also in the legal consciousness.

The Klan’s impact on definitions of Americanism, as Gordon had outlined, and the meshing of democratic values with the educational institution would shape future discourse on this issue. Where the “social monopoly bill [had] legitimized the values of a group through state action,”⁵⁰ *Pierce* delegitimized the ability of the state to enforce those values through providing the state with more power in dictating educational policy. In its decision, the Court had reaffirmed the school as a foundational piece of American democracy and instruction. One side would claim an insidious ideology infiltrating education, posing a threat to the institution in which the seeds of democracy were planted and grown. Another would argue that attempts to confront this “threat” were exaggerated and ultimately more at fault in jeopardizing foundational democratic principles. The arguments imbedded in this case demonstrate the importance of *Pierce v. Society of Sisters* as a pivotal moment in American social, political, and legal consciousness. The attitudes and emotions driving the case are part of a much larger discourse around democracy and control of the soul of a nation – a story whose arguments and legacy live on today.

⁴⁹ Abrams, *Cross Purposes*, p. 172.

⁵⁰ Tyack, *Perils of Pluralism*, p. 91.

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