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

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Cross Purposes is a thorough recounting of a landmark case in the history of American education. At issue was the state of Oregon's authority to compel *public* education, thereby illegalizing private schooling. Paula Abrams not only tells the legal story of *Pierce v. Society of Sisters* but the social and political story of how a law compelling attendance at public schools got started, why it was supported, and how it ended. In 1922, the state of Oregon passed the Compulsory Education Act, a misnomer in that Oregon *already* mandated that all children attend formal schooling. This act went a step beyond, mandating that all children aged eight to sixteen attend *public* school. While the wording of the act did not specifically say so, the obvious intent of the act was to prevent children from attending religious, and namely Catholic, schools.

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Part 1 of this book (chapters 1-8) details the cultural climate in Oregon which led to such a bill being drawn up and passed. These chapters recount the tumultuous 1922 gubernatorial campaign and how the “school bill” became an integral issue in it, which Democrat William Pierce eventually won partly by endorsing the bill. Fueled by post-World-War-1 suspicion of Catholic immigrants and Bolshevik radicals, Protestant groups like the Ku Klux Klan (and politicians seeking the votes of a Protestant majority) argued that the “school bill” was necessary to ensure that all of Oregon’s youth were properly “Americanized.”

Detractors argued that the bill, motivated by hasty nativism, set a dangerous precedent in achieving a state monopoly on education. Quoting newspaper articles, advertisements, and pamphlets distributed at the time, the author adeptly gives readers a feel for the strength of the anti-Catholic (as well as anti-immigrant, and anti-“Red”) sentiment that led to the bill’s passage.

Part II (chapters 9-19) pick up with the Catholic Church’s attempt to fight the newly passed Compulsory Education Act. The plaintiff would be the Society of Sisters of the Holy Name of Jesus and Mary, a corporation owning six parochial schools in Oregon. (They were joined by Hill Military Academy, a secular private school.) The argument would be that while the government has the right to regulate education, compelling attendance at *public* schools violated parochial schools and parents 14th amendment “due process” rights, unreasonably taking away the former’s means of earning a living and the latter’s personal liberty.

From trial preparation, to the plaintiffs’ victory at the 9th Circuit to their ultimate victory at the Supreme Court, Abrams details not only the legal arguments, but the lives of the attorneys and the judicial climate of the day. Not only was this the era of *Lochner v. New York* (1905) – an era where the Supreme Court was already predisposed toward 14th amendment arguments used to strike down government regulation – but fresh off the heels of *Meyer v. Nebraska* (1923), another 14th amendment case affirming private

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schools' right to instruct students in foreign languages. In 1925, the Court ruled unanimously in the Society of Sisters' favor, affirming that children "the mere creature[s] of the state" (*Pierce v. Society of Sisters*, 1925) and that the government could not force students to receive *public* education.

Part III consists of a brief epilogue and afterward exploring the implications of *Pierce v. Society of Sisters*. If one major criticism can be leveled against this book, it is that this section might have been longer, as the significance of *Pierce* is interesting and robust. As the author points out at the book's beginning:

Pierce, despite its significance, is frequently misunderstood. In numerous opinions, the Court has treated *Pierce* like a constitutional chameleon, disputing whether the decision is primarily about privacy or the free exercise of religion or free speech rights. Outside the legal community, the common perception of *Pierce* is that it is a case rejecting anti-Catholic bigotry. That the perceptions of *Pierce* vary is not surprising; the decision speaks to all those values. (p. 4)

Indeed, the author notes in Part III that the *Pierce* decision has been cited in a variety of subsequent cases as supporting very different legal principles. Most obviously, *Pierce* has been cited in cases involving states' power over educational issues. Two years after the *Pierce* decision, the Supreme Court invoked *Pierce v. Society of Sisters* to strike down a law imposing very strict regulations on Hawaiian private schools that taught languages other than English in *Farrington v. Tokushige* (1927). Better known is *Wisconsin v. Yoder* (1972), where *Pierce* was invoked in exempting Amish children from compulsory school attendance.

The author explains that *Pierce v. Society of Sisters* is also largely responsible for the privacy cases that would emerge later, such as *Griswold v. Connecticut* (1965), where *Pierce* was cited in support of a "right to privacy" beyond which the government may not interfere. The case receives similar mention in *Roe v. Wade* (1973). *Pierce* has also shown up in

First Amendment cases like *Tinker v. Des Moines* (1969) for its claim that government may not interfere with certain rights of the student. As Abrams suggests, the amazing thing about *Pierce* is that it means so many different things to so many different people in large part because it *does* touch on so many different issues.

As something of a sub-theme of this book, Abrams does make clear several times that those tempted to view *Pierce v. Society of Sisters* as a case about free exercise of religion are mistaken. Not only did the Plaintiff's lawyers avoid making a First Amendment argument against the Compulsory Education Act but the unanimous Supreme Court opinion did not address the issue of religious liberty. The case was decided wholly on 14th amendment "due process" grounds involving parents' educational, and private schools' economic, liberties. Abrams does recognize that *Pierce* may appear closely related to First Amendment issues "by describing educational choice as a fundamental parental prerogative" and thus "forg[ing] a connection to freedom of thought, a core First Amendment principle" (p. 216). Still, she is careful to note that *Pierce* itself is often wrongly mistaken as a First Amendment case.

Throughout the book, the author also gives readers a sense of how momentous *Pierce* was. Before the case was heard at the Supreme Court, Abrams points out that similar legislation was already proposed in at least 14 other states. "The NCWC [National Catholic Welfare Council] worried that a ruling upholding the Oregon law would embolden Protestants to push for greater presence of a 'Protestant form' of religion in the public schools" (p. 156). Abrams also explains that there were several attempts, fueled largely by the Ku Klux Klan, to propose a Constitutional Amendment making public schooling mandatory for all students in the United States. Put directly, this case and its aftermath would decide what the subsequent educational landscape looked like not just for Oregon, but for the nation.

If there is an overall theme to *Cross Purposes*, however, I think it is in recognizing the multi-faceted nature of *Pierce v.*

Society of Sisters. Pierce invoked questions of the limits of state authority over education, the distinction between the public and private spheres, freedom of thought of parent and student, and the dividing line between regulation and compulsion. The author does a very good job at explaining the social, political, and legal factors that led to the Compulsory Education Act and the Society of Sisters' challenge to it. Anyone interested in the history of state involvement in formal schooling will not want to miss this in-depth look at a very significant Supreme Court case.

References

- Farrington v. Tokushige, 273 U.S. 284 (1927)
Griswold v. Connecticut, 381 U.S. 479 (1965)
Lochner v. New York, 198 U.S. 45 (1905)
Meyer v. Nebraska, 262 U.S. 390 (1923)
Pierce v. Society of Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510 (1925)
Roe v. Wade, 410 U.S. 113 (1973)
Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)
Wisconsin v. Yoder, 406 U.S. 205 (1972)

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