

Forging New Freedoms: Nativism, Education, and the Constitution, 1917-1927, by William G. Ross. Lincoln: University of Nebraska Press, 1994; 277 pp., illustrations, notes, index; \$40.00, cloth.

It is quite possible to devote substantial time to constitutional law and constitutional history without developing any real intimacy with *Meyer v. Nebraska* (262 U.S. 390 [1923]) or *Pierce v. Society of Sisters* (268 U.S. 510 [1925]). Since it seems unthinkable that today a state would ban the teaching of

foreign languages in nonpublic schools or require all grammar school students to attend public schools, the facts of those controversies do not seem particularly relevant. Moreover, the doctrinal significance of *Meyer* and *Society of Sisters* has always been somewhat clouded. Although William G. Ross would have us see the opinions as "Janus-faced" because they use "concepts borrowed from the old doctrine of economic due process to create a new theory of personal freedoms" (p. 197), the "old" economic substantive due process was soon to suffer ignominious repudiation, and the "new" substantive due process would lie dormant until its controversial invocation in such cases as *Griswold v. Connecticut* (381 U.S. 479 [1965]) and *Roe v. Wade* (410 U.S. 113 [1973]).

Forging New Freedoms elegantly places *Meyer*, *Society of Sisters*, and a number of related cases in a much broader historical context. Although all the cases on which the book focuses concern education, the origins of the controversy are not so much to be found in concerns about schooling as in a fierce hostility to all things German that built from the outbreak of World War I and reached a fever pitch after the United States entered the war in 1917. Use of the German language, whether in churches, in parochial schools, or in less formal settings, was seen as preserving the cohesiveness of ethnic German communities that were feared as potentially disloyal to the United States. Even after the Armistice in 1918, efforts to suppress the German language continued. The Nebraska statute, enacted in 1919, that was challenged in *Meyer* prohibited all instruction in a foreign language in any public, private, or parochial school for students below the ninth grade. Teacher Robert T. Meyer of the South School at Zion Lutheran Church near Hampton, Nebraska, was convicted when he continued to have his fifth-grade students read Bible stories in German even after the county attorney entered his classroom to observe.

Wartime anti-all-things-German sentiments easily blended into a campaign against parochial schools, since there were many Lutheran schools, most of them serving German congregations. However, the more numerous parochial schools operated by the Roman Catholic Church were also targets of the ardent supporters of "Americanization," even though classes were overwhelmingly conducted in English. The Catholic and other parochial schools were criticized as being of poor educational quality, and especially for failing to instill appropriate moral and patriotic principles. For example, it was argued that "any saving on expenditures for public schools [that resulted when students attended parochial schools] was more than counterbalanced by increased public spending for

the 'children's homes, reformatory schools, charity hospitals, insane asylums, courts of justice and prisons' that were needed to accommodate parochial school alumni and their progeny" (p. 70). The Oregon initiative measure invalidated in *Society of Sisters* required that children between the ages of eight and sixteen attend public school through the eighth grade. (There were exceptions for children who were physically or mentally disabled, who lived a long distance from public schools, or who obtained permission to receive instruction from a parent or tutor [p. 151].)

Ross engagingly describes the social and political circumstances under which the Nebraska and Oregon statutes were adopted, and he presents a full account of the litigation that achieved the invalidation of the legislation by the Supreme Court. A third major case, *Farrington v. Tokushige* (273 U.S. 284 [1927]), which struck down Hawaii's hostile regulation of schools providing instruction in Japanese, closes out the 1917-27 period promised in the title of *Forging New Freedoms*. The author also provides an enlightening treatment of the constitutional reasoning contained in the Supreme Court's decisions in the cases.

Perhaps the most intriguing aspect of the book is its depiction of the diverse tactics and arguments used to defend against and mostly defeat the many attacks launched by nativists against the parochial schools. Lutherans and Catholics sought and obtained support from other religious groups (such as Jews, who did not operate many full-time schools, but who were mindful of the broader risks posed by nativist campaigns), from newspapers and other opinion-shapers, and from the full range of other allies to be found in the political arena. For each repressive statute that was adopted, there were a great number of others that were defeated, side-tracked, or watered down by amendment. The churches operating parochial schools often achieved this result by accepting greater regulation than had previously been imposed on them. Voters and legislators in most states "were willing to allow parochial schools to teach distinctive cultural and religious beliefs if the schools would conform to the pedagogical standards and political orthodoxy of the public schools" (p. 205).

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