Oregon at 150:

Three (mostly) True Stories of Hardship, Pioneering Women, and the Law of Oregon

Willamette Valley Inn of Court
February 19, 2009

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Muller v. Oregon, 208 US 412 (1908)

In 1903, Oregon attempted to regulate the harsh consequences of industrialization by imposing a maximum ten-hour work day for women employed in factories and laundries. But in April of 1905, in *Lochner v. New York*, 198 US 45 (1905), the Supreme Court struck down a similar New York statute that had limited the hours of bakery workers. Less than six months after the Court's decision in *Lochner*, an Oregon laundry foreman required one of his employees to work more than ten hours; the foreman was convicted of violating Oregon's maximum-hour law and fined ten dollars. He appealed his conviction, arguing that Oregon's law was unconstitutional under the reasoning of *Lochner*.

Muller is best known not for the Court's decision upholding Oregon's law, but for the brief written by then-litigator (and later Supreme Court Justice) Louis D. Brandeis. In *Lochner*, the Court had acknowledged the state's general police power to protect the health, safety, and welfare of its citizens, but had reasoned that there was not a reasonable connection between the law restricting the hours of bakery workers and those state goals. Because there was no reasonable justification for the law, the Court held that the law interfered with the right of the bakery owners -- and the bakery employees -- to freely contract, thus depriving them of a liberty interest without due process of law and violating the Fourteenth Amendment (no state may "deprive any person of life, liberty, or property, without due process of law").

In what has become known as the "Brandeis brief," Brandeis, with the help of the National Consumers' League, gathered 95 pages of social science data that demonstrated the deleterious effects of long working hours on women's health. Instead of attempting to overturn *Lochner*, Brandeis used *Lochner*'s reasoning and argued that there was a reasonable connection between Oregon's law and the state's goal of protecting women's health, safety, and welfare.

A unanimous Supreme Court was persuaded by the "Brandeis brief" and upheld Oregon's maximum-hour law. The Court noted that it did so "without questioning in any respect the decision in *Lochner v. New York*," which would not be overturned for another thirty years. Though *Muller* was not the landmark case that overturned the now-infamous *Lochner* reasoning, it has since become the paradigm for efforts to incorporate social and economic realities into judicial decision-making. *Muller* and the "Brandeis brief" led the way for decisions such as *Brown v. Board of Education*, 347 US 483 (1954), which was based less on traditional legal reasoning and more on the ultimate social impact of the Court's decision.

COPY OF THE COVER OF
THE ORIGINAL "BRANDEIS BRIEF"

WOMEN IN INDUSTRY

DECISION OF THE UNITED STATES SUPREME COURT IN CURT MULLER *VS.* STATE OF OREGON

UPHOLDING THE CONSTITUTIONALITY OF THE OREGON TEN HOUR LAW FOR WOMEN

AND

BRIEF FOR THE STATE OF OREGON

BY

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Pierce v. Society of Sisters, 268 US 510 (1925)

In 1922, Oregon voters passed the Oregon Compulsory Education Act, which required Oregon parents to send nearly all children who were eight to sixteen years of age to public school. The law was proposed by initiative and backed by the Ku Klux Klan largely in response to a growing number of Catholic immigrants in Oregon who sent their children to private schools. The Society of Sisters, a religious order of Catholic nuns that ran several private schools, and the Hill Military Academy, a secular private school, sought to enjoin enforcement of the Act, challenging its constitutionality.

In a unanimous opinion, the United States Supreme Court held that the law violated the Due Process Clause of the Fourteenth Amendment (no state may "deprive any person of life, liberty, or property, without due process of law") by "unreasonably interfer[ing] with the liberty of parents and guardians to direct the upbringing and education of children under their control." The Court indicated that the state could constitutionally require that all children attend "some" school and even could require that certain material be taught to all students. However, the state could not "standardize its children by forcing them to accept instruction from public teachers only."

Because religious animosity sparked the Oregon Compulsory Education Act and because many private schools are religiously affiliated, *Pierce* is often viewed as a decision defending religious liberties. However, despite the law's anti-Catholic underpinnings and the interest in religious education that was at stake, the Court's decision did not rest on First Amendment grounds. In fact, at the time of *Pierce*, the Free Exercise Clause did not yet apply to state governments, and one of the petitioners -- the Hill Military Academy -- was not a religious organization. Instead, the decision rested on substantive due process grounds -- the idea that a court can strike down a law because it interferes with fundamental "liberty" interests. The Court in *Pierce* held that the law unreasonably interfered with parents' liberty interests in determining how to educate their children.

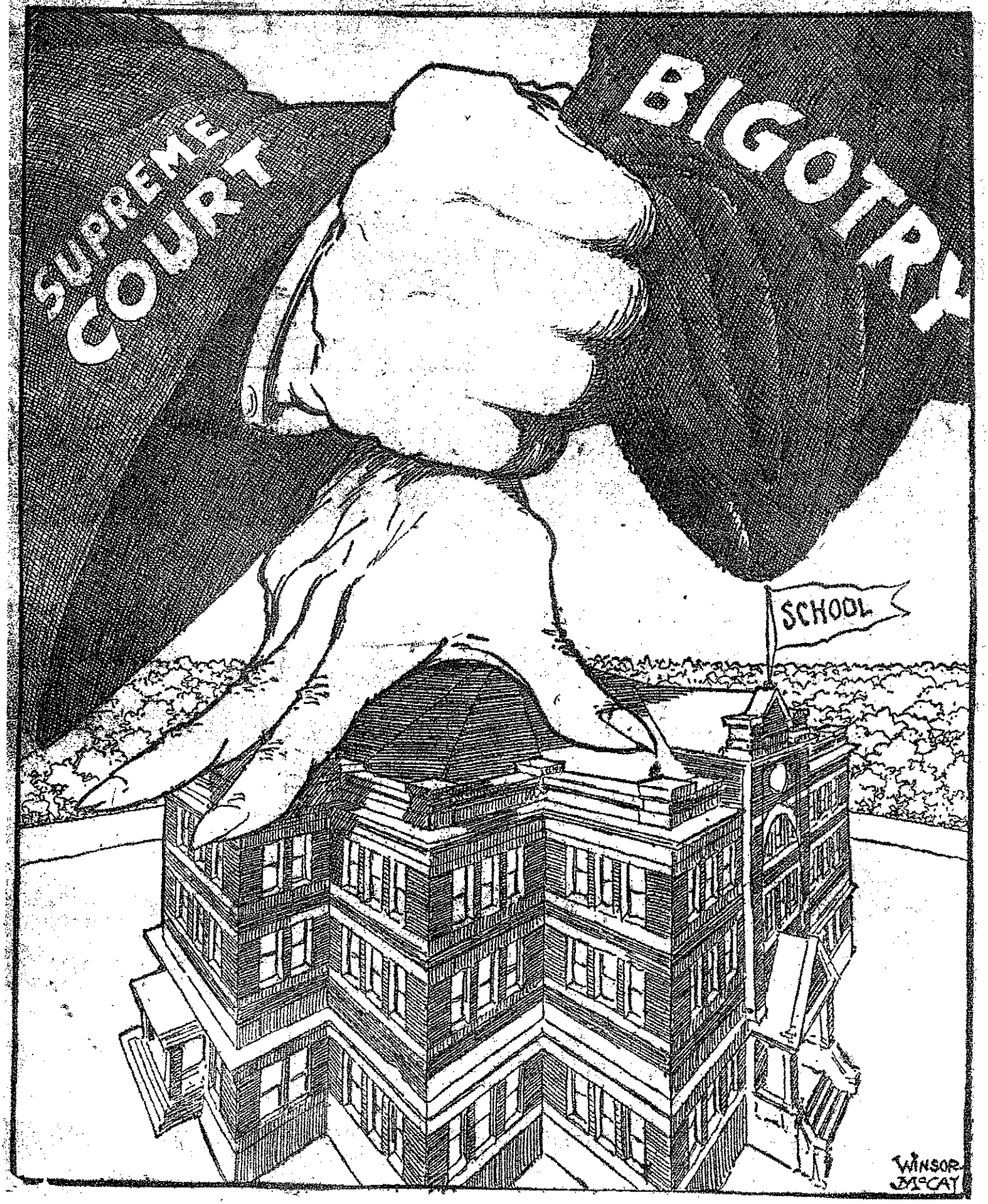
Pierce is cited frequently for the proposition that citizens hold certain fundamental rights -- such as the right to choose how to raise one's children -- that are not found in the text of the Constitution. For example, both *Griswold v. Connecticut*, 381 US 479 (1965), where the Court first articulated the now-famous "right to privacy," and *Roe v. Wade*, 410 US 113 (1973), cite *Pierce* for that proposition. But substantive due process has always been controversial because it requires judges to decide which rights are fundamental. The Supreme Court used the concept to strike down maximum hour and minimum wage laws in the early 1900s -- decisions now discredited -- but abortion, "right to die," and other cases involving rights that may be fundamental but that are not specified in the Constitution ensure that the substantive due process doctrine will continue to generate debate.

COLUMBUS OHIO DISPATCH
WEDNESDAY, JUNE 3, 1925

WE ARE MAKING PROGRESS—WE HAVE OUR CHILDREN BACK

ST. LOUIS GLOBE DEMOCRAT
JUNE 1925

HANDS OFF



LYNN (Mass.) TELEGRAM-NEWS
JUNE 2, 1925

BIGOTRY SUPPRESSED

In declaring invalid the Oregon law compelling children to attend the public schools the Supreme court of the United States has settled for all time this momentous issue and settled it along the lines of true Americanism.

The decision of the nation's highest tribunal is that Oregon, or the states in general, cannot require the attendance of children in "public" schools, to the exclusion of private or parochial schools.

The inevitable, practical result of obedience to the Oregon law would have been the destruction of parochial and other private primary and elementary schools "which are engaged in a kind of undertaking not inherently harmful but long regarded as useful and meritorious," the court points out.

More public interest has been manifested in the attack on the constitutionality of the Oregon public school law than in any controversy which reached the Supreme court in recent years.

Oregon, like most states, has a compulsory education law, which commands schooling for minors up to a certain age. The state went a bit farther and by mandate of law, said this schooling must be acquired in a public school.

In 1922 this "public" school compulsory education was adopted by the voters by a vote of 115,506 to 103,685. The issue was born then.

Suits were instituted by the Sisters of the Holy Name of Jesus and Mary, and by the Hill Military academy. The enforcement of the law was restrained in Oregon by order of the court and appeal brought the case to the U. S. Supreme bench. Joined in the opposition to the law finally, were various religious organizations, Jewish as well as Christian, and many educational institutions, colleges and universities, as well as parochial and private schools.

In addition, opposition arose generally in the public state of mind from the Pacific to the Atlantic. Oregon represented in support of its now invalidated law that it was incumbent on the state to teach children true allegiance and to impress upon the young minds that the claims of the government are superior to those of any religion and thereby the state had the right to demand that children go to the "public" schools.

The Supreme court decision, no doubt, satisfies the vast majority of thinking Americans. The Massachusetts plan of compulsory free education in public schools, when the parents choose the public schools for their children, is vigorously American in principle, and so is the broad and fair Massachusetts plan that the first and foremost consideration is education for all its rising generations, and that suitable education obtained in public and private schools, such as parochial, private kindergartens and boarding schools, etc., answers the demand of the Commonwealth, that regardless of creed or color, whether native or foreign born, the children shall have equal opportunity in America so far as schooling will qualify them.

Massachusetts and most other states, to put it in a brass tacks way, says, the children must be qualified for life's battles by proper and adequate schooling. But it does not say where that schooling shall be and this Massachusetts idea excels in the great American principle of toleration as laid down in the nation's constitution.

The Supreme court of the land has upheld the far-reaching verdict already established in the public mind of America in its finding in this Oregon issue. The decision is commended everywhere. The finding may readily and properly be interpreted to mean, away with the chances for narrowness and bigotry, whoever attempts to apply it to public policy and to the educational policy in American States.