The United States Supreme Court and Lutheran Parochial Schools

Framing the Identity of Lutheran Schools in North America

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In the past seven years, there have been two high profile cases that have come before the United States Supreme Court involving the Missouri Synod.[1] Far less well known is the first Missouri Synod case that before the United States Supreme Court – *Meyer v. Nebraska* (1923).[2] This case, involving the teaching of German in parochial schools, had important implications for the Missouri Synod in regard to the language question, the synod's German identity, and a new understanding of the role of the Lutheran parochial school as deliberately distinct from public schools. Additionally, *Meyer v. Nebraska* was a very important case for the history of the Supreme Court, as it established a precedent of a new use of the Fourteenth Amendment that is still used today.

In the wake of the anti-German and anti-Soviet sentiments throughout the United States during and in the aftermath of World War I, several states passed a variety of "nativist" laws directed against immigrant communities, especially those who spoke languages other than English, particularly German. Many states took aim at schools, outlawing the use of foreign languages and, in some cases, prohibiting parochial schools altogether. The reason behind this was the view that patriotism was taught at a young age and speaking a language other than English—especially German—was un-American. This caused a major problem for many Missouri Synod schools that had at least part of their instruction in German. Twenty-three states either had or were considering some sort of restriction upon parochial schools, generally with particular interest in the language question.[3]

In 1919, Theodore Graebner wrote that there were three challenges facing the Lutheran Parochial schools: "1.) *The inspection of schools by the State*; 2.) *The use of languages other than English;* 3.) *The continued existence of parochial schools.*"[4] These challenges were variously applied in different places,

Sixth and Seventh Grade of First Bethlehem Lutheran School, Chicago. 1914.

all with the eventual intent of limiting or even closing religious parochial schools. To the first, Graebner argued that, in the right circumstances, Lutheran schools could accept inspections. To the third, Graebner recognized this as a major threat and something that simply could not be allowed: "We hold that all such measures are a violation both of natural and constitutional rights."[5] To the second challenge, though, that of the language question, Graebner presented a far more nu-

[1] *Trinity Lutheran Church of Columbia, Inc. v. Comer* (2017) and *Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Opportunity Commission* (2012).

[2] The importance of the case was briefly discussed in the recent article, Heather Smith, "A Gift for Our Children: The Past, Present and Future of Lutheran Schools in America," *Lutheran Witness* 137 (May 2018): 12–14.

[3] For a full description of the variety of states which either had or were considering such restrictions see Dwight D. Stelling, *A Historical Study of the Problems Faced By the Day-Schools of the Lutheran Church-Missouri Synod During the Years 1914–1935.* Ph.D. Dissertation, St. Louis University, 1996, 50–97.

[4] Theodore Graebner, "Un-American Legislation," *Lutheran Witness* 38 (1919): 35.

[5] Graebner, "Un-American Legislation," 36.