



## A Free Society Requires Educational Freedom

Jason Bedrick

February 9, 2016

Over at the Washington Post's essential Volokh Conspiracy blog, David Kopel retells the fascinating and important story of how, in 1922, the US Supreme Court came to recognize the right to teach one's children in a language other than English — an extension of the general right to raise and educate one's children according to one's conscience.

In 1919, Nebraska outlawed teaching students younger than 9th grade in any language other than English. Like the Blaine Amendments, such laws were primarily directed at Catholic and Lutheran schools, which often taught religious studies in the native tongues of children's immigrant families. When Robert T. Meyer, a schoolteacher at a Lutheran school, was arrested for teaching in German, he appealed his conviction all the way to the US Supreme Court.

Meyer's lawyer, Arthur Mullen, argued that the Nebraska law violated the 14th Amendment's guarantee of liberty, which he explained included "the right to study, and the right to use the human intellect as a man sees fit... [M]ental liberty is more important than the right to be physically free." In response to pushback from Justice James Clark McReynolds during oral arguments, Mullen argued that the freedom of parents to educate their children in their religious tradition and values is central to freedom generally:

Mr. Justice McReynolds sometimes pushed me hard. "What about the power of the state," he demanded, "to require that children to attend public schools. You will admit that, will you not?"

"I do not admit that," I said.

"You do not admit it?" he asked in evident surprise.

"I do not admit it," I repeated. "I deny that a state can, by a majority of the legislature, require me to send my child to the public schools. I deny that any such legislative power exists in a constitutional government. The question here is at the very base of this case. It is a blow to education. It is a striking down of the principle that a parent has control over the education of his child. This is one of the most important questions that have been presented for a generation, because it deals with the principles of the soviet. Here is an act requiring the child to be taught religion after dark or on Sundays. In Russia they abolished religious teaching altogether. There

are 147 different languages in Russia, and you cannot teach a child religion in any one of them over there. That is the question which is involved in the right to run private institutions.

Mullen succeeded in persuading Justice McReynolds, who authored the 7-2 decision in *Meyer v. Nebraska*, enshrining the right to “establish a home and bring up children” as one of at least eight rights that the 14th Amendment’s guarantee of liberty includes, along with the rights “to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, [...] to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.”

Reflecting on the case later in life, Mullen wrote of the importance of freedom of education, which he believed was necessary to preserve the rights guaranteed by the First Amendment: “if the state can put shackles on the minds of youth,” then it can “throttle desire for freedom of the press and of speech and of religion.”

The government exercises less control today over what’s taught in private school classrooms (at least directly), but how much educational freedom do we really have when “free” government schools crowd out most alternatives? As my colleague Neal McCluskey explained recently, this is why educational choice is, ultimately, about freedom:

This is first and foremost a normative conviction. Freedom must have primacy because society is ultimately composed of *individuals*, and leaving individuals the right and ability to control their own lives is fundamentally more just than having the state – be it through a single dictator, or majority of voters – control our thoughts, words, or actions.

Of course, children are subject to someone’s control no matter what. But a corollary to free individuals, especially when no one is omniscient and there is no unanimous agreement on what is the “right” way to live, or think, or believe, must be free association – free, authentic communities. We must allow people and communities marked by hugely diverse religious, philosophical, or moral views, and rich ethnic and cultural identities and backgrounds, to teach their children those things. Short of stopping incitement of violence or clear parental abuse, the state should have no authority to declare that “your culture is acceptable,” or “yours must go.” Indeed, crush the freedom of communities and you inevitably cripple individual liberty, taking away one’s choices of how and with whom to live.

As I’ve written before, a free society should have an education system that respects and reflects that freedom.

*Jason Bedrick is a policy analyst with the Cato Institute’s Center for Educational Freedom.*