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Meyer v. Nebraska at 100: The Legal History of German Language Education in the 20th Century

In the wake of World War I, German American communities across the United States were the target of policies that restricted use of the German language and sought to force assimilation to Anglo-American customs. Most notably, by 1923, upwards of 37 states codified provisions that restricted teaching children in a language other than English. These provisions were applied to public and private schools alike and signified the use of democratic systems to force the Americanization of one of the nation's largest ethnic groups.[2] Even further, such laws signified an infringement on speech and expression at a time prior to the majority of significant First Amendment jurisprudence.

As teachers were prosecuted under statutes that forbade them from teaching German, legal challenges were mounted. Things came to a head on June 4, 1923, when the United States Supreme Court announced its ruling in two companion cases – *Meyer v. Nebraska* and *Bartels v. Iowa* – both of which asked the Court to evaluate the constitutionality of state laws that prohibited teaching German in grade schools. In *Meyer* and *Bartels*, the Court struck down such laws and found that they violated the Due Process Clause of the Fourteenth Amendment. In doing so, the Court crafted a decision that gave rise to the substantive due process doctrine—the doctrine that justifies the Court's ability to protect fundamental rights from government interference that are not expressly enumerated in the Constitution. Moreover, the Court found that there was a fundamental "right to choose and pursue a given legitimate vocation" that was protected by the Fourteenth Amendment; the vocation there being teaching German as a "modern language."[3] The story

of the "German Language Cases" is illustrative of the cultural resistance that German American communities faced in the wake of World War I—a resistance that was, to an extent, stagnated by the Supreme Court's ruling.

This article revisits *Meyer* and *Bartels* upon the 100th anniversary of the Court's decision in both cases by illustrating the circumstances that led to the German Language Cases, describing their immediate impact, and looking more broadly at the long-term impact *Meyer* and *Bartels* had on protecting the right to German education, as well as language education more broadly. In the century since it was decided, *Meyer* has been cited in over 3,000 decisions in state and federal courts nationwide, including in 127 Supreme Court decisions. Yet, for such an important case, *Meyer* has been often diminished to a footnote in American history and a mere squib in constitutional law textbooks and its companion case, *Bartels*, which applies *Meyer* to four factually similar cases, is hardly remembered whatsoever. As a result, fascinating aspects of these cases are often overlooked. For instance, while *Meyer* significantly impacted the ability of immigrant communities to express their cultural heritage, *Meyer* was not decided on First Amendment grounds and predated much of the Supreme Court's significant First Amendment jurisprudence, which has led to the German Language Cases being overlooked as case studies on free speech and expression. Further, overlooking *Bartels* and the three other cases consolidated within it deprives students and scholars alike of the opportunity to engage with factual comparisons between the cases, as well as to engage with a dissenting opinion that was not articulated in *Meyer*, which often discounts the contemporary jurisprudential debate around the principles that *Meyer* stands for. This article aims to remedy the latter problem through discussing the facts of *Meyer, Bartels*, and their companion cases and offering a more accessible means for others to draw conclusions on the significance of this moment in American legal history.[4]

Background

German American Presence in America

The German Language Cases culminate a jurisprudential moment that culminated over two centuries of co-existence between German Americans and Anglo-Americans that spurred periodic cultural tensions. Anglo-American concerns regarding the prevalence of German language usage dates back to the colonial period, where some raised the issue of what civic role German Americans should play in an emerging American society. Famously, Pennsylvania statesman Benjamin Franklin, once pondered this question, asking, "Why should the Palatine Boors (Germans) be suffered to swarm

into our settlements and, by herding together, establish a language and matters, to the exclusion of ours? Why should Pennsylvania, founded by the English, become a colony of aliens, who will shortly be so numerous as to Germanize us instead of our Anglifying them?"[5] Indeed, as Philadelphia became an epicenter of decision-making for colonial leaders, especially in the revolutionary era, the presence of German communities was seen and felt in close proximity. Franklin's ponderings illustrate how cultural differences raised the issue of whether these communities could effectively coexist under the same system.

From the time that the first significant German American community was formed in Germantown, Pennsylvania in 1683 to the time of the American Revolution, over 70,000 Germans had emigrated to American shores and by 1790 Germans accounted for roughly one-third of Pennsylvania's population alone.[6] As German Americans quickly became the largest non-English ethnic group in the early United States, their growth came alongside early considerations of policymaking that would promote English as the nation's *lingua franca*. For instance, John Adams encouraged the Continental Congress to form "the first public Institution for refining, correcting, improving and ascertaining the English Language."[7] Adams' idea indicated his promotion of an English-favoring governance, which he thought would "have an [*sic*] happy effect upon the Union of the States, to have a public Standard for all persons in every part of the Continent to appeal to."[8] Such concerns raised in the Revolutionary Era ran parallel to those discussed in the wake of World War I, America's first international conflict with German peoples.

By the time the situations that gave rise to the German Language Cases were set in motion, German communities had a widespread presence in American life. Over four million Germans immigrated to America in the century after independence, with consistent immigration continuing through 1914. As "manifest destiny" spurred western settlement, German Americans were encouraged to move west through policies federal policies like the Homestead Act of 1862, which offered 160 acres of land to heads of households for $1.25 per acre; an open invitation for immigrants to seek their fortune by settling the American frontier.[9] As a result, German communities became more prevalent in the Upper Midwest, forming America's "German Belt," a region that remains home to many German Americans today.[10] The Midwest remains the home to a significant German American population today.

The spread of German American communities also gave rise to stereotypes that followed those communities in their movement west, reflecting that the cultural tension that existed in the Revolutionary Era still was present over a century later.[11] Albeit, German American communities came in closer and

more integrated proximity to Anglo-American communities, the attitude behind some of these stereotypes shifted to terms of endearment. Indeed, the perception of German Americans being "sluggish, phlegmatic, kind, and devoted to beer-drinking," in the early nineteenth century, shifted largely to a perception of being "efficient, hard-working, militaristic, and still devoted to beer-drinking" by the turn of the twentieth century.[12]

Stereotypes played a significant role in policymaking that affected German American communities. Indeed, positive connotations assigned to one's "German-ness" largely dissipated after 1914 with the onset of World War I. As America came at odds with Germany on the battlefront, xenophobic sentiments were communicated through propaganda posters depicting Germans and Germanic iconography in an anti-patriotic light, as well as through occasional acts of violence targeted toward German Americans by Midwestern nativists.[13] Amidst the tense social climate, German Americans sought to assimilate into Anglo-American society by disbanding social organizations, changing surnames, and limiting speaking German to private settings, keeping pride in their heritage subtle at best.[14] As German cultural organizations and publications declined in numbers during this period, churches and schools were critical to keeping the German language alive in more subtle settings. However, when America claimed a military victory over Germany where President Wilson played a key role in drafting the Treaty of Versailles, at home, states claimed a cultural victory by implementing statutory schemes that restricted where the German language could be learned.

State laws restricted teaching German in schools, with the goal of promoting an English-centered civic life. Two types of restrictions evolved: (1) restrictions that limited classroom instruction to being conducted in English and (2) restrictions of substantively learning a foreign language. The former was the most common type of restriction, schemes that required classroom instruction to be conducted in English and prohibited instruction in other languages.[15] Such laws were adopted by states across the country, not concentrated in any particular region.[16] These regulations sought assimilation by streamlining the language that students learned in. The justification was that if children heard German at home or in church, that they already had exposure to their cultural mother tongue. In that regard, states with English requirements in schools felt that students should universally be exposed to English, as a *de facto* official language. While all such statutes applied to public schools, many states extended their reach to private schools as well, both secular and parochial. This was notable considering that parochial schools attached to German-speaking parishes often involved community-based leadership that offered more focus on language and cultural immersion than public schools. Some felt that language restrictions were actually targeted at Catholic and Lutheran parishes in particular.[17]

Some of these states then added on to restrictions by passing bans or limitations on learning a foreign language. Such statutes saw more variation in the breadth of their reach. Some states, like Wisconsin and Connecticut, limited the length of foreign language instruction to one hour per day.[18] Others prohibited foreign language from being taught in primary schools, with restrictions spanning from the first grade to the sixth or eighth grade, but allowed foreign language study at the high school level.[19] Three states, Indiana, Louisiana, and Ohio, only banned German and not other languages, demonstrating that German communities were directly targeted by such laws.[20]

The effects of these statutes were felt dramatically in states across the country as the public school system saw a dramatic drop in students taking German because of wartime sentiments. For instance, in 1915, 71% of New York State high school students took German as a foreign language.[21] By 1925, this number dropped to a mere 9%.[22] While language restrictions were taken on a state-by-state level, the issue had adopted a nationalized character. The German Language Cases illustrate instances where individuals resisted these state legislative schemes and speak to a German American response to propagandized sentiments which caused many to view speaking German as unpatriotic.

Getting to the Supreme Court

Each of the German Language Cases involved an instance where an educator was prosecuted for teaching German in a state with a statutory language restriction. This section aims to illustrate the stories of each case for comparison.

Meyer involved the case of Robert T. Meyer, an instructor at Zion Lutheran School in Hampton, Nebraska, who was charged with violating Nebraska's Siman Act for instructing students on how to read German by using a German bible.[23] Enacted on April 9, 1919, Nebraska's law read that "No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language."[24] By way of penalties, the Siman Act found violators "guilty of a misdemeanor" and subjected violators to a fine between $25 and $100, or up to 30 days in prison for each offense.[25] Accounting for inflation, the fines allowed under the Siman Act ranged from over $400 to over $1,600 in 2025.[26]

Arthur Mullen, the attorney who represented Meyer before the Supreme Court, illustrated Meyer's situation in his memoir, *Western Democrat*:

> [Meyer] was teaching the story of Joseph to a dozen little children. It was not during school hours, but during recess between one and one-thirty o'clock in the afternoon. As had been the custom of the school before the passage of the Siman Law, he was using the German Language, having been instructed by the synod, who were acting under my opinion, that the law could not forbid the use of a language other than English as a time not in the regular school period.[27]

As Meyer instructed German bible verses to his students, the Hamilton County Attorney arrived. Meyer recalled that,

> I had my choice … I knew that, if I changed into the English language, he would say nothing. If I went on in German, he would come in, and arrest me. I told myself that I must not flinch. And I did not flinch. I went on in German. … It was my duty … I am not a pastor in my church. I am a teacher, but I have the same duty to uphold my religion. Teaching the children in the religion of their fathers in the language of their fathers is part of that religion.[28]

Meyer appealed his criminal conviction to the Nebraska Supreme Court, however, that court found Meyer's conviction was justified under the law and, thus, his conviction was affirmed.[29] So, Meyer then appealed his conviction to the court of last resort—the US Supreme Court. Notably, when this case was heard in 1923, it predated the Court's adopting the practice of *certiorari*, where the Court chooses the cases that it hears for an upcoming year's docket; a practice intended to manageably limit the Court's workload and prevent significant backlog that the Court had experienced by the turn of the nineteenth century.[30] So, by virtue of being appealed, Meyer's case was going to be heard by the U.S. Supreme Court by default, as were the other German Language Cases, and was scheduled for oral argument. Meyer's attorney, Arthur F. Mullen, was respected as a gifted orator, attorney, and political organizer in Nebraska.[31] At the time of Meyer's arrest, Mullen was working with the Lutheran synod to challenge Nebraska's Siman Act.[32] At oral argument, Mullen emphasized the gravity of Nebraska's law as having the potential to "change the history of the entire human race."[33] However, the gravity described in the *Meyer* argument was true of the several other German Language Cases appealed to the Court.

Bartels v. Iowa, for instance, involved the situation of August Bartels, a teacher for the parochial school affiliated with St. Johns Evangelical Lutheran Church, in Bremer County, Iowa.[34] The school was small, with 36 pupils enrolled between ages six and thirteen, who would attend classes that were generally taught in English.[35] The exception to this was found to be religious instruction, which was delivered in both English and German, at the request of parents who wished to supplement the religious instruction provided at home.[36] On appeal to the Iowa Supreme Court, that court found that desire of the parents was "to enable then to read intelligently the church catechism and the Bible in … German."[37] However, Bartels was fined $25 under Iowa's foreign language ban where he used German as the language of instruction for a secular subject (reading) and taught German to pupils below the eighth grade.

Passed in 1919, Iowa's law held that "[t]he medium of instruction in all secular subjects taught in all of the schools, public and private, within the state of Iowa, shall be the English language, and the use of any language other than English in secular subjects in said schools is hereby prohibited; provided, however, that nothing herein shall prohibit the teaching and studying of foreign languages as such as a part of the regular course above the eighth grade."[38] Like under Nebraska's Siman Act, Iowa's penalty charged violators with a misdemeanor punishable by a fine of between $25 and $100, but did not specify prison time.[39]

Bartels initially appealed his conviction to the Iowa Supreme Court, which upheld his conviction as rightfully assigned. In justifying this, the Court found that "[t]he state has an absolute right to adopt a policy of its own, respecting the health, social welfare, and education of its citizens; and so long as it does no violation to constitutional inhibitions, the citizen within [the state's] borders has no other alternative than to obey…". [40] Bartels argued that Iowa's law violated both protections enshrined in the Iowa State Constitution and the United States Constitution protecting freedom of worship. His assertion was "that to learn to read German is an "innocent act;" and that it is being down … for a *religious* purpose, namely that the children may, by reason thereof, receive religious instruction at home in the German language."[41] However, the Court rejected this logic under the notion that secular subjects were being taught—the secular subjects of reading and writing in the German language—such that there was no interference with religious freedom.[42]

The cases of *Bohning v. Ohio* and *Pohl v. Ohio* were slightly distinguishable insofar as Ohio's statute targeted instruction in German specifically, whereas Nebraska and Iowa targeted instruction in languages other than English more broadly. Ohio's Ake Law, named for sponsoring Senator H. Ross Ake, ordered that,

> all subjects and branches taught in elementary schools . . . below the eighth grade shall be taught in the English language only. The board of education, trustees, directors and such other officers as may be in control, shall cause to be taught in the elementary schools . . . Provided, that the German language shall not be taught in any of the elementary schools of this state (emphasis added).[43]

Ohio's law applied such restrictions to public, private, and parochial schools equally.[44] Similar to Nebraska and Iowa, violators were charged with a misdemeanor and subject to a fine between $25 and $100, and the law also provided that "each separate day in which such act shall be violated shall constitute a separate offense."[45] These cases involved Ohio's prosecution of Emil Pohl, a teacher, and H.H. Bohning, a trustee, both of St. John's Evangelical Lutheran School in Garfield Heights, Ohio, who each were fined $25 for violations of the Ake Law.[46]

On initial appeal, the Ohio Supreme Court found the Ake Law was constitutional and gave deference to the Ohio State Legislature in enacting the law.[47] In that regard, the Court found that the legislature was presumed to have "information with reference to the effect of the teaching of the German language to the youth" and that if the legislature found such facts warranted enacting a ban, that "it is not within the province of a court to redetermine the existence or nonexistence of such facts."[48] Presuming the facts that were before the legislature at the time of enactment were true, the Ohio Supreme Court found that the Ake Law was reasonable within the state's authority to enact legislation that was "essential to the welfare of the state."[49] Pohl and Bohning challenged Ohio's German language ban to the Supreme Court. National news coverage illustrated how, at oral argument, counsel compared how depriving a Lutheran of the right to learn religion in German would be a comparable burden to preventing a Rabbi from studying Hebrew or a Catholic priest from studying Latin.[50] In this vein, counsel for *Pohl* and *Boehning* articulated that Ohio's law violated the Fourteenth Amendment's privileges and immunities clause, as well as the element of the Due Process clause that protects against takings of life, liberty, and property without due process.[51]

Lastly, another challenge to Nebraska's Siman Act was elevated to the Supreme Court by the Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio, and Other States (hereinafter "the Missouri Synod").[52] There, the Missouri Synod, which was formed by German Lutheran immigrants in the early nineteenth century, sought an injunction against Governor Samuel Roy McKelvie to prevent state enforcement of the Siman Act. This case

differed from the others on appeal before the U.S. Supreme Court because the relief sought was different. Rather than seeking to reverse a conviction, the Missouri Synod sought to preemptively challenge the Siman Act before it was used to prosecute more teachers within the Lutheran community.

Represented by a legal team that included Arther Mullen, who represented Robert Meyer in his case, the Missouri Synod initially sought an injunction in 1919, prior to Robert Meyer's conviction.[53] The Missouri Synod described the harm as that "since the officers and members of the respective churches are largely made up of foreign speaking people, if the act is enforced their children will be unable to obtain instruction in religion and morals in accordance with the doctrines of the religious denominations to which the parents belong, in the language of their parents."[54] Further, the Missouri Synod highlighted other practical concerns, "that many of the children cannot understand English, and . . . such instruction in that language" and that "the language of parents is used to teach English."[55] Further, the Synod opined that if such children "cannot learn English if they do not receive rudimentary education in the tongue the parents use [and] that property rights in the school buildings and grounds, and in the good will of schools, will be destroyed." [56] At that time, the Nebraska Supreme Court was unpersuaded by the Missouri Synod's arguments and found that the use of language was not as interfered with as the Missouri Synod implied. For instance, it found that parents, teachers, or pastors could continue conveying religious or moral instruction in the language of their choice, so long as not interfering with studies in school.[57] It also found persuasive that the law did not prevent hiring private tutors to teach language or that language could be taught on Saturday or Sunday.[58] Overall, the injunction sought at that time was denied, paving the way for prosecutions like that of Robert Meyer the following year.

In 1921, after the Nebraska State Legislature reissued a slightly modified version of the Siman Act, the Missouri Synod again sought an injunction to prevent the Act's enforcement. There, the Nebraska Supreme Court found its treatment of Meyer's case was informative.[59] The Court specified that the Act did not specifically target "teaching of the German language only, but applies to all foreign language."[60] So, the Court there found that the harm put forward by the Missouri Synod was still not persuasive. It noted that "[t]he law does not create an absolute prohibition against the learning of a foreign language. It only postpones and regulates that teaching. There is no curb on knowledge."[61]

In contrast to the Nebraska Supreme Court's majority opinion, Chief Justice Andrew M. Morrissey authored a sole dissent. There, he disagreed with the majority's rationale, writing, "I cannot regard as a reasonable exercise of the police power a provision which arbitrarily forbids the acquisition of

useful learning—learning that is not harmful in itself, learning that the well to do parent may employ a private tutor to impart to his child, or that the cultured parent may personally impart to his child, if not done in a school."[62] Further, Morrissey found that the Siman Act violated the state and federal Constitutions. This discourse foreshadowed how the Missouri Synod case, alongside those of Meyer, Bartels, Pohl, and Bohning, would be treated at the U.S. Supreme Court.

The Decisions

Meyer and *Bartels* were decided on the same day and published consecutively, with Justice James Clark McReynolds authoring the majority opinion for a 7-2 Court with Justices Oliver Wendell Holmes and George Sutherland in dissent. The majority opinion in *Meyer* reasoned that Nebraska's law violated the Due Process Clause of the Fourteenth Amendment. In that regard, the Court found that the Fourteenth Amendment included protections for "an individual's right to contract, engage in any of the common occupations of life [and] to acquire useful knowledge."[63] In other words, the Court found that the language bans were unconstitutional because they interfered with a teacher's right to pursue teaching another language—like German—as a profession. "Mere knowledge of the German language cannot reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable. … His right to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the amendment."[64] Through this analysis, it seems apparent that the majority concluded that a German teacher's right to work as they see fit was protected by the Fourteenth Amendment.

While Justice Holmes authored a dissent (joined by Justice Sutherland) in *Bartels*, both justices dissented in *Meyer* in name only. As a result, since *Meyer* is the better remembered case, it is easy for Holmes's dissent to be overlooked. Holmes's dissent in *Bartels* speaks for both cases and offers insight into a different perspective on the issue. A contemporary collection of Holmes's dissents reflected on *Bartels* as the result of "zeal for good citizenship, given impetus by war [and] it is certainly in the province of the legislature to enact laws protective of patriotism and the war power of the country."[65] In his dissent, Holmes analyzed the question at issues through the lens of whether the means adopted deprive teachers of the liberty secured to them by the Fourteenth Amendment."[66] While disagreeing with the majority and finding that the Constitution did not prevent "the experiment being tried" of limiting teaching a foreign language to young children, Holmes agreed with the majority's rationale to strike down the Ohio statute that targeted German

specifically.[67]

The Aftermath

The Court's rulings in *Meyer* and *Bartels* signaled a shift in American mindsets away from the fears associated with World War I. Indeed, a 1923 case brief reviewing *Meyer* in the University of Pennsylvania Law Review described how "[t]he prohibition against teaching one class of studies is certainly an arbitrary restriction of [protected] liberties, unless some very pressing consideration of public welfare demands it."[68] In the years immediately following the *Meyer* decision, *Meyer* was interpreted to apply beyond teaching languages and more broadly doubting states' ability to prohibit teaching other types of curricula, such as evolution in science classes amidst the *Scopes* trial.[69] These discussions focused on the right for a teacher to contract their duties, emulative of the antiregulatory *Lochner* era of Supreme Court history. During that period, from 1905 to 1937, the U.S. Supreme Court issued decisions that largely rejected government regulation of economic enterprise, on industry-wide and individual levels alike. For instance, this discussion noted that, "[a] Legislature should not, under the United States Constitution, have the power to provide imprisonment because a teacher breaks his contract by teaching something forbidden under the curriculum, any more than if he had been lacking in punctuality, or had failed to wear a prescribed scholar's gown, or had broken some other rule of routine discipline."[70] The results in this dialogue signaled two overarching impacts the Court presented through *Meyer* and *Bartels*: one being a common law impact on individual rights jurisprudence and the other being a practical impact on the ability of German-American communities to freely engage in their language and culture.

Jurisprudential Effects of Meyer and Bartels

By way of legacy, *Meyer* is an early example of the Court's enshrining individual rights through the Fourteenth Amendment under the substantive due process doctrine. Here, the right enshrined was the right for a teacher to contract, and by virtue of this, the right to learn German in schools. *Meyer* is frequently cited alongside *Pierce v. Society of Sisters*, which in 1925 established a similar principle of protecting parents' rights to choose whether to send their children to parochial schools, as opposed to public schools.[71] In *Pierce*, the Court struck down Oregon's Compulsory Education Act, which would have eliminated parochial schools in effect, finding the law in violation of the Due Process Clause of the Fourteenth Amendment, as well as the Free

Exercise Clause of the First Amendment.[72] Again authoring the Court's opinion, Justice McReynolds held in *Pierce* that under *Meyer*, Oregon's act "unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control."[73] Through this lens, the challenges raised against the German language bans had a broader impact of assisting other communities in their pursuit of enshrining individual rights, especially those related to the schoolhouse.

Meyer also reflects an anomaly from within individual rights jurisprudence from the early twentieth century. *Meyer* and *Pierce* have both been described as "nearly impossible" to reconcile with the balance of *Lochner*-era jurisprudence, having nothing to do with business.[74] While many cases from this era that follow *Lochner*'s logic pertain to business enterprise, *Meyer* and *Bartels* apply the right to contract in a different vein. Yes, those cases ultimately protect a language teacher's right to pursue their profession. However, the logic used also protects the intended consumer of that information, the student, insofar as if there is a right for a teacher to teach German, then it follows that the students they teach have the right to consume information in the language they instruct. Indeed, *Meyer*, *Bartels*, and *Pierce* have been credited for being centered on a family-oriented issue which established and protected a parent's substantive right to rear their children and make decisions regarding their education.[75]

Further, the majority's focus on parental autonomy mirrors societal concerns surrounding socialism typical for the time. *Meyer* has been viewed alongside *Pierce* as representing the Court's rejection of socialist theory inserting its way into how children are raised, rejecting states' efforts to centralize education within the public school system.[76] Jeffrey Schulman has interpreted *Meyer* as being not only about the right to learn German, but determining a more soviet-inspired question in a post-Russian Revolution era over who had ownership over America's children: individual parents or the government.[77] Arthur Mullen referenced this concern at oral argument, asserting that state control over educational content would lead America down a slippery slope to Bolshevism.[78] At oral argument, Mullen expressed that,

> This is one of the most important questions that have been presented for a generation, because it deals with the principle 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.[79]

Indeed, the Court's answer not only would affect state policymaking in responding to the 34 jurisdictions who had outlawed German but also speak to potential federal-based policy measures. To be sure, in 1920, a bill titled the Smith-Towner Bill, proposed to create a Department of Education and would have conditioned receipt of federal funds by state education agencies on states establishing a law requiring English as the basic language of instruction in all public and private schools.[80] The bill was considered an "emergency measure in the midst of the [First World W]ar," which in reality may have reflected negative attitudes towards German American communities at that time.[81]

Lastly, while not a case decided on First Amendment grounds, *Meyer* and *Bartels* had extraordinary implications on access to information in the education context.[82] Regarding students' rights to information, *Meyer* and *Bartels* have stood for the notions that (1) all children have the right to be educated regardless of their language of origin and (2) government cannot restrict languages other than English that are presented to children in the educational setting. Being decided shortly after landmark First Amendment decisions related to World War I – including *Schenck v. United States*, *Abrams v. United States*, and *Debs v. United States*—all cases involving wartime government restrictions of speech supporting the Soviet Union–*Meyer* and *Bartels* favored peacetime protection of "harmless" information, like learning the German language.[83] McReynolds's majority opinion in *Meyer* alluded to protecting individuals' rights under the First Amendment to have access to content in other languages in stating, "Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution – a desirable end cannot be promoted by prohibited means."[84] However, as such is not analyzed deeply in the Court's decision, any potential infringement on the First Amendment, whether through the free speech or free exercise clauses, did not seem to be an issue that the Court felt was necessary to address.

The conundrum of *Meyer* and *Bartels* goes deeper when considering how Justice Holmes, who only four years earlier established the marketplace of ideas theory through his dissent in *Abrams*.[85] Holmes's marketplace of ideas theory has long been referenced over the last century of First Amendment jurisprudence to promote the open exchange of ideas and access to information. So, while Holmes's dissent in *Bartels* suggested that the state could experiment with limiting the marketplace of ideas in the schoolhouse based on the language information is exchanged in, the majority's opinion seems more consistent with the principles advanced by the marketplace of ideas theory, even though it did not engage with the First Amendment directly.[86]

More narrowly, with regard to education law, *Meyer* opened the door for decisions that protect students' access to knowledge through curricula by using an individual rights-based analysis. [87] In 1927, *Meyer*'s principles were applied through the Due Process Clause of the Fifth Amendment in *Farrington v. Tokushinge* where the U.S. Supreme Court held that the then-Territory of Hawaii violated individual rights in attempting to close Japanese supplementary schools—private schools that instructed students in Japanese.[88] *Meyer* has also been remembered along with *Lau v. Nichols*, a 1974 case that protected the right to English as a Second Language programs, as one of only two Supreme Court cases which directly enshrine a child's right to use languages other than English in schools.[89] The implications of *Meyer*'s ability to survive the *Lochner*-era has been celebrated and discussed as the judicial bedrock to allowing modern bilingual education, which oftentimes benefits immigrant-heavy populations through the form of English As A New Language (ENL) programs.[90]

The Court's decisions in *Meyer* and *Bartels* left a meaningful impact in establishing the path justices would navigate towards protecting individual liberties under the Fourteenth Amendment. *Meyer*'s application to a teacher's right to use German in the classroom has been attached an individual's right to "engage in any of the common occupations of life" protected under the Due Process Clause of the Fourteenth Amendment.[91] As the Court rejected *Lochner*-era jurisprudence through the New Deal, *Meyer* was preserved and cited to support advancing the substantive due process doctrine, notably in the U.S. Supreme Court's 1938 *Carolene Products* decision, a case remembered for asserting that the government has a duty to protect "discrete and insular minorities."[92] *Meyer* was then later used by Justice Douglass in *Griswold* as a sturdy foundation for his argument that the First, Third, Fourth, and Fifth Amendments had "penumbras" which "help give them life and substance," in other words, a rationale to extend rights of privacy, checks on law enforcement, and others as protections that are applicable at both the federal and state levels.[93] In terms of impact, the German Language Cases opened the door to a framework for the U.S. Supreme Court to protect individual rights that has been revisiting many times over the last century.

Societal Effects of Meyer and Bartels

A century after *Meyer* and *Bartels*, German was reported the third most-studied foreign language in the United States.[94] In the decades following *Meyer* and *Bartels*, a sharp growth in popularity for German resurged, undoing some of the sharp decline in study that occurred after World War I. Enrollments in German language classes rose significantly, peaking in the late-

1960s.[95] These trends occurred across education levels, becoming noticeable in high schools, colleges, and universities alike.[96] German's popularity rose as relations with Germany improved, with the number of secondary school students studying German rising from 43,000 in Fall, 1948 up to 283,000 by Fall, 2000.[97] By 1990, nearing the reunification of Germany, an estimated 1.6 million Americans spoke some level of German,[98] around which time an estimated 326,000 high school students nationwide were studying German.[99] A century later, Americans continue to identify with their German heritage as well, making German the largest ethnic group in the United States. Most recently, the 2020 census revealed that 12.3% of Americans identify as having German American heritage. Moreover, by the 2021-22 academic year, 3,649 public K-12 schools were offering Dual Language Immersion programs, where students are provided content and language instruction in both English and a partner language.[100] Without the Court's ruling in the German Language Cases, such programs would not be possible.

Conclusion

A reflection on *Meyer* published 35 years after the decision the issued found that when *Meyer* was announced, "it aroused very little stir. Nebraska was entering a new era with new problems and new interests and the reasons for the legislation gradually faded into the past.[101] Indeed, while new problems took the attention of Nebraska leaders, the statutory provision that spurred *Meyer v. Nebraska* still remained on the books.

In 1999, 76 years after *Meyer* and *Bartels* were decided, Nebraska State Senator Elaine Stuhr introduced Legislative Resolution (LR) 20CA, which proposed eliminating the English-language requirement as it applied to private, denominational, and parochial schools and was invalidated by *Meyer*. Notably, Senator Stuhr had come to know Raymond Parpart, a child who was being taught German by Robert T. Meyer when he was arrested and prosecuted under the Siman Act in 1920. In 2000, LR 20CA passed through Nebraska's unicameral legislature unanimously, but failed a statewide referendum vote nearly four-to-one, losing in all 93 counties.[102] An amended version, LR 1CA, passed the Legislature in 2002 by 45-1, but similarly failed to pass by referendum at the ballot, meaning that provision of the Nebraska State Constitution challenges in *Meyer* remains the same as it was in 1920.[103] Despite the societal developments that have ensued since *Meyer*, the fact that the Siman Act remains a dormant provision of Nebraska state law begs the question of whether the values that inspired the Siman Act have actually withered.

Overall, however, revisiting the German Language Cases offers a situation that may seem brighter than bleaker for German American studies. When statutory language restrictions were passed by state legislatures in the early twentieth century, one of the justifications was in effort to promote civic education. Revisiting the facts of these cases suggests that the opposite was true and that, rather, limiting language education ran contrary to original constitutional principles. To be sure, the survival of these cases and reliance upon them over the last century signals not only that the German Language Cases remains pertinent, but that the principle they established always was pertinent. As discussed, the German language has maintained a longstanding presence in the United States dating back to colonial times, such that encountering German is a tradition as old as our republic. The German Language Cases represent this principle by taking it one step further. Not only do these cases offer some legitimacy to that history and tradition, but they confirmed that the right to teach and learn German is within our constitutional framework. As Americans now embark on celebrating our nation's 250th anniversary, revisiting stories like those of Robert Meyer, show how German communities fit within the larger heritage of our nation's democratic institutions. Indeed, through the lens of cases like *Meyer* and *Bartels*, German language educators advance students' civic duty to "acquire useful knowledge" still today.[104] And we are all the better for it.

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Notes

[1] Courtland D. McEneny Ingraham is a Professorial Lecturer of Law at The George Washington University Law School and Adjunct Professor of History and Politics at Marymount University. This article evolved from research conducted for "History of the Supreme Court," taught by Professor Ethan Torrey at The George Washington University Law School. The author thanks the Society for German American Studies for the opportunity to present this research at their 47th Annual Symposium in Alexandria, Virginia in 2023, as well as to Professor Jana Weiss and the University of Texas at Austin Germanic Studies Department for the opportunity to share this research with students and to simulate the Court's process of deciding the German Language Cases. Special thanks also goes to Dr. Dennis Tamburello, OFM, at Siena University for fostering my research in German American studies from my time as an undergraduate, and to Frau Connor and Frau Hickey for performing their civic duty in teaching me German in the Guilderland Central School District.

[2] By 1910, an estimated 2.3 million German-born immigrants lived in the United States, who relied on over 800 German-language periodicals for news. This number of periodicals fell to 230 by 1920 as anti-German sentiments rose throughout the nation. See Library of Congress Area Studies European Division, The Germans in America (Apr. 23, 2014). As of the 2021 American Community Survey, the United States Census Bureau continues to list Ger-

man as the most common ancestry reported, encompassing roughly 42.3 million Americans. See United States Census Bureau, American Community Survey: Selected Social Characteristics in the United States, (2021).

[3] Meyer v. Nebraska, 262 U.S. 390 (1923).

[4] Contemporaneously, these cases were remembered as the "Foreign Language Cases," based on the impact of these cases on foreign language education. Nebraska organizer Arthur F. Mullen, who opposed Nebraska's ban on foreign language in school, proposed that instead these cases "should have been called the Private School Cases or the Freedom of Education Cases: for upon them rested the right to every private school in the United States to operate and the right of every American citizen to direct the education of his child, provided only that such education is consonant with public morality." See Arthur F. Mullen, Western Democrat (New York: Wilfred Funk Inc., 1940) at 208-09. However, this framing underemphasizes that the litigation that rose to the U.S. Supreme Court involved restrictions targeted towards teaching German. In that regard, the "German Language Cases" seems a more appropriate title for this article's discussion and is the term I have chosen to use.

[5] See Benjamin Franklin, Observations Concerning the Increase of Mankind, Peopling of Countries, etc., (1755) at para. 23.

[6] The Concordia Trust, "Early History: The Founding of Germantown," https://perma.cc/24VN-3FYV; Wokeck, Marianne. "The Flow and the Composition of German Immigration to Philadelphia, 1727-1775." The Pennsylvania Magazine of History and Biography 105, no. 3 (1981): 260-61 (detailing the number of passengers on German passenger ships arriving in America from 1683 to 1775); John B. Frantz, "The Pennsylvania Germans: "A Persistent Minority," Der Reggeboge, v. 35, no. 1 & 2, 2001, 3-4.

[7] "John Adams to the President of Congress, No. 6, 5 September 1780," Founders Online, National Archives, https://founders.archives.gov/documents/Adams/06-10-02-0067.

[8] Ibid.

[9] See generally Folke Dovring, European Reactions to the Homestead Act, 22 J. of Econ. History 4 (Dec. 1962), 461-472 (describing the rise in European immigration as a result of settlement incentive programs such as the Homestead Act of 1862).

[10] See Cora Lee Kluge, Kevin Kurdylo, Mark Louden, and Antje Petty, "How German is American?", Max Kade Institute, 2005; United States Census Bureau, American Community Survey: Selected Social Characteristics in the United States, (2021) (noting the placement of German Americans following the 2020 U.S. Census).

[11] Bill Piatt, Only English?: Law and Language Policy in the United States, 17 (Univ. of New Mexico Press, 1990).

[12] Dirk Voss, National Stereotypes About Germans in American Travel Writings, 1815-1914, University of Oklahoma, Dissertation, 2000, 2.

[13] See generally "Prussianizing Wisconsin," Atlantic Monthly, Vol. 11, January 1919, No.1 pp. 101–102. (Describing an incident of a Wisconsin man being threatened with lynching in October, 1918); History On The Net. "War Hysteria & the Persecution of German-Americans," (July 12, 2012), http://www.historyonthenet.com/authentichistory/1914-1920/2-homefront/4-hysteria/.

[14] For examples of German-American assimilation documented in national memory, see Mary J. Manning, Being German, Being American In World War I, They Faced Suspicion, Discrimination Here at Home, Nat'l Archives: Prologue, (Summer 2014), https://www.archives.gov/files/publications/prologue/2014/summer/germans.pdf.

[15] See I. N. Edwards, "The Legal Status of Foreign Languages in the Schools," The Elementary School Journal 24, no. 4 (1923): 270–78. (identifying the states that restricted use of languages other than English in schools).

[16] Ibid. In total, the states that enacted some form of language restriction included: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Washington, West Virginia, and Wisconsin.

[17] See generally See Arthur F. Mullen, Western Democrat (New York: Wilfred Funk Inc., 1940) at 206-26.

[18] Edwards at 272.

[19] Ibid.

[20] Ibid.

[21] White, Christopher Scott. "Table XI: Study of Modern Languages in High Schools throughout New York State," in From Acceptance to Renunciation: Das Ende von Albanys Deutschtum, Master's thesis, University at Albany, 2005.

[22] Ibid.

[23] Capozzola, Christopher (2008). Uncle Sam Wants You: World War I and the Making of the Modern American Citizen. NY: Oxford University Press, 176–85, 190–3.

[24] Act Neb. April 9, 1919, Laws 1919, c. 249; Adopted as Neb. Const. art. I, § 27 (1920); adopted 1920, Constitutional Convention, 1919-1920, No. 3 (stating "The English language is hereby declared to be the official language of this state, and all official proceedings, records and publications shall be in such language, and the common school branches shall be taught in said language in public, private, denominational and parochial schools).

[25] Ibid.

[26] See U.S. Inflation Calculator, https://www.usinflationcalulator.com (adjusting the dollar value using CPI data accumulated since 1913).

[27] Mullen, at 217-18.

[28] Mullen, at 218.

[29] Bill Piatt, Only English?: Law and Language Policy in the United States, 39 (Univ. of New Mexico Press, 1990).

[30] See e.g. Peter Charles Hoffer, Williamjames Hull Hoffer, and N.E.H. Hull, The Supreme Court: An Essential History (University of Kansas Press, 2018), 220 (discussing the Judiciary Act of 1925).

[31] See generally Mullen.

[32] Mullen at 219.

[33] Transcript of Oral Argument at 8, Meyer v. Nebraska, 262 U.S. 390 (1923).

[34] State v. Bartels, 181 N.W. 508, 509 (Feb. 12, 1921).

[35] Ibid.

[36] Ibid.

[37] Ibid.

[38] Iowa State Legislature, "Chapter 198. English Language for Secular Subjects in Schools of State,"Laws of the Thirty-Eighth General Assembly (Apr. 10, 1919).

[39] Ibid.

[40] State v. Bartels, at 1067.

[41] Ibid, at 1071.

[42] Ibid at 1072.

[43] Bartels v. Iowa, 262 U.S. at 410 quoting Section 7762 of Ohio General Code.

[44] Ibid.

[45] Ibid.

[46] New York Times, "Upholds Ban on German.; Ohio Court Finds Valid Law Prohibiting it in Lower School Grades," New York Times, (June 8, 1921), at 22.

[47] Pohl v. State and Bohning v. State, 102 Ohio St. 474 (1921).

[48] Ibid, at 476-77.

[49] Ibid, at 477.

[50] New York Times, "Ban on School German Before Supreme Court; Ohio Statute Violation of Fourteenth American, Counsel Contend—Jurisdiction in Doubt," New York Times, (Oct. 11, 1922); see also Washington Evening Star, "Ban on German Argued: Prohibition of Teaching in Ohio Before Supreme Court," Washington Evening Star, (October 11, 1922), at 15.

[51] Ibid.

[52] See Nebraska Dist. Of Evangelical Lutheran Synod of Missouri, Ohio, and Other States (Siefken et. al., Interveners) v. McKelvie, et. al., 108 Neb. 338 (April 19, 1922).

[53] See Nebraska District of Evangelical Lutheran Synod of Missouri, Ohio, and Other States et al. (St. Wenceslaus Church of Omaha, et. al., Interveners) v. McKelvie, Governor, et al., 175 N.W. 531 (Dec. 26, 1919); see also Mullen at 219-20.

[54] Ibid, at 532.

[55] Ibid.

[56] Ibid.

[57] Ibid at 534.

[58] Ibid, at 534-35.

[59] Missouri Synod, 187 N.W. at 927.

[60] Ibid, at 928.

[61] Ibid.

[62] Ibid, at 930.

[63] Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (citing Lochner v. New York, 198 U.S. 45 (1905)). In his opinion, Justice McReynolds authored the following passage, which has been cited frequently over the last century as an early definition of substantive due process: "without doubt, it denotes not merely freedom from bodily restraint but also the right to the individual right to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, 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." See ibid. See also E. Thomas Sullivan & Toni M. Masaro, The Arc of Due Process in American Constitutionalism 134 (Oxford Univ. Press, 2013) (highlighting the notable nature of Meyer in outlining a substantial list of unenumerated rights the Court found were protected under the Due Process Clause of the Fourteenth Amendment).

[64] Meyer, 262 U.S. at 400.

[65] Oliver Wendell Holmes, The Dissenting Opinions of Mr. Justice Holmes, 25 (Alfred Lief, ed., The Vanguard Press, 1929).

[66] Bartels, 262 U.S. at 412 (Holmes, dissenting).

[67] Ibid, at 412-13.

[68] Gerald F. Flood, "The Unconstitutionality of the Foreign Language Law," University of Pennsylvania Law Review 72, no. 1 (Nov. 1923) 46-48, 48.

[69] Nous Verrons, "Letter to the Editor, Evolution and Religion," New York Times (Jul. 7, 1925).

[70] Nous Verrons, "Letter to the Editor, Evolution and Religion," New York Times (Jul. 7, 1925).

[71] Pierce v. Society of Sisters, 268 U.S. 510 (1925).

[72] Ibid.

[73] Ibid.

[74] Phillips at 96, 116-117.

[75] Michael J. Phillips, The Lochner Court, Myth and Reality: Substantive Due Process from the 1890s to the 1930s, 9 (Praeger, 2001).

[76] See generally Jeffrey Schulman, Meyer, Pierce and the History of the Entire Human Race: Barbarism, Social Progress, and (the Fall and Rise of) Parental Rights, 43 Hastings Const. L.Q. 337-388 (2016).

[77] Schulman at 338-339.

[78] Douglass A. Kibbee, Language and the Law: Linguistic Inequality in America, Cambridge Univ. Press, 2016 at 101-102; see also Mullen at 224-25.

[79] Mullen at 224-25; see also Transcript of Oral Argument at 8, Meyer v. Nebraska, 262 U.S. 390 (1923).

[80] Smith-Towner Bill §10 (1920).

[81] Charles H. Judd, Desirable Amendments of the Smith-Towner Bill, Address delivered before the Society of the College Teachers of Education in Cleveland, Ohio, (Feb. 23, 1920); see also Livia Gershon, When American Schools Banned German Classes, JStor Daily (May 9, 2017).

[82] Hoffer, at 228-29.

[83] See generally Schenck v. United States, 249 U.S. 47 (1919); Abrams v. United States, 250 U.S. 616 (1919); Debs v. United States, 249 U.S. 211 (1919).

[84] Meyer, 262 U.S. at 401.

[85] Abrahms at 630 (Holmes, J., dissenting) ("that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.")

[86] Bartels, 262 U.S. at 412.

[87] Dennis Baron, The English-Only Question: An Official Language for Americans? (New Haven: Yale University Press, 1990), 11 (citing Meyer, Lau).

[88] Baron at 12 (citing Farrington v. Tokushinga, 273 U.S. 284 (1927)).

[89] Baron at 10 (citing Lau v. Nichols, 414 U.S. 563 (1974) (holding that schools must ensure non-English speaking children are not excluded from the benefits of education).

[90] See generally Bill Piatt, Only English?: Law and Language Policy in the United States, (Univ. of New Mexico Press, 1990).

[91] Meyer, 262 U.S. at 400; Phillips at 52.

[92] United States v. Carolene Prod. Co., 304 U.S. 144, 153 (1938) (citing Meyer in "There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten Amendments, which are deemed equally specific when held to be embraced within the Fourteenth. … we [need not] enquire whether similar considerations enter into the review of statutes directed as particular … national … minorities. Whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry.")

[93] Griswold v. Connecticut, 381 U.S. 479, 500 (1965); See also See also E. Thomas Sullivan & Toni M. Masaro, The Arc of Due Process in American Constitutionalism 141 (Oxford Univ. Press, 2013) (discussing Douglass's use of Meyer in authoring his majority opinion in Griswold).

[94] Dennis Looney and Natalia Lusin, Enrollments in Languages Other Than English in United States Institutions of Higher Education, Summer 2016 and Fall 2016 Preliminary Report, Modern Language Assoc., (Feb. 2018).

[95] National Center for Education Statistics. "Enrollment in Foreign Language Courses Compared with Enrollment in Grades 9 through 12 in Public Secondary Schools: Selected Years, Fall 1948 through Fall 2000." Digest of Education Statistics, 2009. https://nces.ed.gov/programs/digest/d09/tables/dt09_056.asp.

[96] Ibid.

[97] U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), State Nonfiscal Survey of Public Elementary/Secondary Education, 1982 through 2000. Am. Council on the Teaching of Foreign Languages (Fall 2000).

[98] Bill Piatt, Only English?: Law and Language Policy in the United States, 7 (Univ. of New Mexico Press, 1990).

[99] U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), State Nonfiscal Survey of Public Elementary/Secondary Education, 1982 through 2000. Am. Council on the Teaching of Foreign Languages (Fall 2000). Supra note 54.

[100] U.S. Department of Education Office of English Language Acquisition, "Dual Language Immersion Programs," January 2025, https://ncela.ed.gov/sites/default/files/2025-01/dliprogramsinfographic-20250113-508_2.pdf.

[101] Jack W. Rodgers, "The Foreign Language Issue in Nebraska, 1918-1923," Nebraska History 39 (1958) 1-22, 22.

[102] James Cunningham, Meyer v. Nebraska Created an Interesting Story, S. Neb. Reg. (Jan. 23, 2015), https://www.lincolndiocese.org/op-ed/capitol-correspondent/3156-meyer-v-nebraska-created-an-interesting-story.

[103] Id.

[104] Meyer, at 399.