Supplementary Material

Chapter 7: The Republican Era—Equality/Native Americans

Piper v Big Pine School Dist. of Inyo County, 193 Cal. 664 (1924)

Alice Piper was a fifteen-year-old Native American who wished to attend public school in the Big Pine school district. The school district excluded her on the ground that the federal government was operating a school for Native Americans within the school district. Piper filed a lawsuit against the school district claiming that her exclusion violated the constitution of California and the equal protection clause of the Fourteenth Amendment.

The Supreme Court of California ordered that Piper be admitted to public school in Big Pine. Justice Seawell's unanimous opinion held that the state had a constitutional obligation to provide a public school for all state citizens. The Supreme Court of California did not, however, insist that Piper had the right to an integrated public school. On what basis did Justice Seawell reach those conclusions? Would courts in New York and Alabama reach similar conclusions?

JUSTICE SEAWELL

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The policy of the law of this state since its organization with reference to the subject of the education of its citizens finds forcible expression in the language of our earlier and present Constitution and in legislative enactments. By article 9, §1, of the state Constitution, the advantages and necessities of a universally educated people as a guaranty and means for the preservation of the rights and liberties of the people is thus declared:

> "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral and agricultural improvement."
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> Section 5. "The Legislature shall provide for a system of common schools, by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."

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. . . The education of the children of the state, into whose keeping, sooner or later, the preservation of the "rights and liberties of the people" must be committed, is not only directed by but also protected and safeguarded by a state board of education vested with supervisory power against the teaching of doctrines that might have the tendency of purpose of destroying the fundamental principles upon which our government rests. It is in a sense exclusively the function of the state which cannot be delegated to any other agency. The education of the children of the state is an obligation which the state took over to itself by the adoption of the Constitution. To accomplish the purposes therein expressed the people must keep under their exclusive control, through their representatives, the education of those whom it permits to take part in directing the affairs of state.

The privilege of receiving an education at the expense of the state is not one belonging to those upon whom it is conferred as citizens of the United States. The federal Constitution does not provide for

any general system of education to be conducted and controlled by the national government. It is distinctly a state affair. But the denial to children whose parents, as well as themselves, are citizens of the United States and of this state, admittance to the common schools solely because of color or racial differences without having made provision for their education equal in all respects to that afforded persons of any other race or color, is a violation of the provisions of the Fourteenth Amendment of the Constitution of the United States, which provides: "Nor shall any state . . . .deny to any person within its jurisdiction the equal protection of the laws."

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The establishment by the state of separate schools for Indians, as provided by the statute, does not offend against either the federal or state Constitutions. Questions of racial differences have arisen in various forms in the several states of the Union and it is now finally settled that it is not in violation of the organic law of the state or nation, under the authority of a statute so providing, to require Indian children or others in whom racial differences exist, to attend separate schools, provided such schools are equal in every substantial respect with those furnished for children of the white race. "Equality, and not identity of privileges and rights, is what is guaranteed to the citizen.". . . .

No dispute arises here as to the political or civil status of petitioner. She is the descendant of an aboriginal race whose ancient right to occupy the soil has the sanction of nature's code. Since the founding of this government its policy has been, so far as feasible, to promote the general welfare of the American Indian, even to the point of exercising paternal care, and, whenever he has shown an inclination to accept the advantages which our civil and political institutions offer, to permit him to enjoy them on equal terms with ourselves. To this end Congress, in 1887, adopted a statute known as the Dawes Act which provides as follows:

> Every Indian born within the territorial limits of the United States who has voluntarily taken up within said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

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Respondents' contention that section 5, article 9, state Constitution, which provides that "the Legislature shall provide for a system of common schools, by which a free school shall be kept up and supported in each district at least six months in every year," etc., is satisfied by the establishment of the federal school in question, is answered by the patent fact that the mandate of the Constitution has been wholly ignored and no legislation whatever has been had in compliance therewith so far as this petitioner is concerned. To argue that petitioner is eligible to attend a school which may perchance exist in the district, but over which the state has no control, is to beg the question. However efficiently or inefficiently such a school may be conducted would be no concern of the state. The public school system of this state is a product of the studied thought of the eminent educators of this and other states of the Union, perfected by years of trial and experience. It is adaptability to the genius of western development and expansion makes it peculiarly important to those who choose to remain in this state where its influence will be felt. Each grade forms a working unit in a uniform, comprehensive plan of education. Each grade is preparatory to a higher grade, and, indeed, affords an entrance into schools of technology, agriculture, normal schools, and the University of California. In other words, the common schools are doorways opening into chambers of science, art, and the learned professions, as well as into fields of industrial and commercial activities. Opportunities for securing employment are often more or less dependent upon the rating which a youth, as a pupil of our public institutions, has received in his school work. These are rights and privileges that cannot be denied.

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