Secular Conversions:
Politics, Institutions, and Religious Education in the United States and Australia, 1800-2000

By

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Abstract

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Although sociologists have increasingly abandoned the assumption that secularization is an inevitable byproduct of modernity, they have yet to develop a compelling account for why similar modern countries nevertheless accord religion substantially different roles in public life. This dissertation engages this problem by examining how the United States and Australia came to develop contrasting policies toward religious education in the late twentieth century. Prior to World War II, both countries adopted similar stances on the proper relationship of the state to religion in education: devotional practices were permitted in public schools, while financial support for religious schools was prohibited. Since the late 1940s, however, the two countries have moved in opposite directions. Australia has retained a place for religion in its public schools, while inaugurating generous government support for religious schools. The United States, meanwhile, has retained restrictions on public aid for religious schools while prohibiting devotional practices in its public schools. These changes have occurred, moreover, despite many apparent similarities: both nations are modern, religiously pluralist democracies with common-law legal systems and constitutions with explicit disestablishment clauses.

Drawing upon original archival research, as well as a wide array of other primary and secondary sources, this dissertation accounts for these divergent "secular settlements" by detailing how each country's administrative, judicial, and electoral institutions advanced or constrained three common secularizing processes: state-building, professionalization, and religious conflict. In brief, it argues that American political institutions constituted a "permeable state" which facilitated the progress of these processes, while Australian institutions constituted an "insulated state" which inhibited them.

The first part of the dissertation describes the genesis of the parallel secular settlements of the nineteenth century, focusing on how the state-building process generated public educational systems with similar policies toward religion, but divergent administrative structures. This prologue sets the stage for the second part, which examines how those administrative institutions affected the fate of religious education in state schools in the late nineteenth and early twentieth centuries. America's decentralized system of educational administration advanced two long-term secularizing processes, professionalization and religious conflict, between 1880 and 1945, while

Australia's centralized administrative system constrained them. The permeable American state facilitated challenges to pan-Protestant religious exercises in the public schools by religious minorities and educational professionals, leading to a slow attenuation of religion's position in public education over the early twentieth century. By contrast, the insulated Australian state made these kinds of challenges much more difficult, reducing the leverage religious minorities could bring to bear on policies they opposed, and actively suppressing professionalization among Australian teachers—both of which helped to sustain traditional religious instruction into the third quarter of the twentieth century.

The third part of the dissertation demonstrates how courts and parties provided contrasting opportunities and obstacles for concerted campaigns by religious minorities who sought to renegotiate each country's policy toward religion after 1945. Taxpayer standing and a realist hermeneutic made the American courts accessible and open to sustained litigation in ways that Australia's restrictive standing rules and legalist hermeneutic did not allow. By contrast, Australia's system of preference-voting and flexible party structure facilitated Catholics' political campaign to obtain state support for their school system—a campaign that foundered in the United States thanks to unfavorable coalition dynamics within a rigid two-party system.

This dissertation makes a number of contributions to contemporary debates about secularization. First, it develops a new, "political-institutional" approach to the study of secularization. Drawing on insights from institutional theory and historical sociology, this approach asserts that secular settlements emerge, not simply from broad modernizing trends or the self-interested calculations of political leaders, but instead from the interaction of general secularizing processes (such as state-building, religious conflict, and professionalization) and each country's specific political institutions. This approach offers increased explanatory power relative to four existing formulations. Second, it reveals that the state, as an institutional structure, has both mediating and constitutive effects on secularization. Both by conditioning the political and professional activities of would-be secularizing actors, and by actively calling into being the very actors who subsequently seek more secular outcomes, the state is a key factor in explaining variation in secularization. Finally, it demonstrates that the actors advancing more secular outcomes are animated by a wider variety of motivations than has typically been acknowledged. Although most existing studies focus on anticlerical or self-interested motives, this study reveals that practical administrative considerations and religious commitments have also been important forces driving the development of new secular settlements.

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List of Acronyms

Organizations

ACER	Australian Council for Educational Research
ACLU	American Civil Liberties Union
ADL	Anti-Defamation League of B'Nai B'rith
AEF	Association for Educational Freedom
AFL	American Federation of Labor
AHMS	American Home Missionary Society
AII	American Institute for Instruction
AISV	Association of Independent Schools in Victoria
AJC	American Jewish Congress
AJCommittee	American Jewish Committee
ALP	Australian Labor Party
APC	Australian Parents Council
CCAR	Central Conference of American Rabbis
CCES	Council for Christian Education in Schools
CIO	Congress of Industrial Organizations
CSB	Common Schools Board
DLP	Democratic Labor Party
DOGS	Council for the Defence of Government Schools
FCSC	Federal Catholic Schools Committee
HMC	Protestant Headmasters Conference of Independent Schools in Australia
INB	Irish National Board
NBPE	National Board of Popular Education
NCC	National Civic Council
NCC	National Council of Churches
NCWC	National Catholic Welfare Conference
NEA	National Education Association
NSWCCL	New South Wales Council for Civil Liberties
NSWJBD	New South Wales Jewish Board of Deputies
NSWTF	New South Wales Teachers' Federation
P&C	Parents' and Citizens' Association
POAU	Protestants and Other Americans United for the Separation of Church and State
PSS	Public School Society
SEDC	Secular Education Defence Committee
SES	Secular Education Society
VPF	Victorian Protestant Federation

Archives

NBLA	Noel Butlin Labour Archive
NLA	National Library of Australia
SRNSW	State Records New South Wales
UCA	Uniting Church Archive

Other

ESEA	Elementary and Secondary Education Act
GRME	General Religious and Moral Education
GRT/GRE	general religious teaching/education
KJV	King James Version
NDEA	National Defense Education Act
SRI/SRE	special religious instruction/education

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Introduction

On June 17, 1963, the United States Supreme Court handed down a ruling in *School District of Abington Township v. Schempp* banning the devotional reading of the Bible and saying of the Lord's Prayer in American public schools. "While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to *anyone,*" the Court declared, "it has never meant that a majority could use the machinery of the State to practice its beliefs." Finding that the practices unequivocally constituted "religious exercises," it declared that they were "required by the States in violation of the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion." [1] The decision, coming on the heels of a decision the previous year prohibiting nondenominational prayers in the public schools,[2] firmly closed the door on nearly two hundred years of religious exercises in American schools. It also fed a strong and growing backlash against the Court's decisions. Congressmen and religious leaders denounced the decision, political leaders and school officials in states where Bible reading was mandated by law expressed their determination to continue the practices irrespective of the decision, and scores of federal legislators introduced Constitutional amendments to overturn the court's decision.[3] Nevertheless, these proposals ultimately failed, and within twenty years Bible reading and prayer had virtually vanished from schools in the North, and even in the South their frequency had declined substantially.[4]

Five months later, half a world away, Australian Prime Minister Robert Menzies shocked political observers by announcing, in a campaign speech on November 12, 1963, that he intended to begin to provide capital funding for science teaching, which would be made "available to all secondary schools, government or independent, without discrimination."[5] The proposal represented a marked departure from Australia's longstanding policy, dating to the late nineteenth century, against providing funding to religious schools. Menzies implemented his proposal upon his reelection, over the opposition of Labor opponents who accused him of trying to buy Catholic votes. The legislation was "conceived in chicanery, born in duplicity, and nurtured on deceit," declared the opposition leader; while another Member of Parliament declared that "the political bribery" the bill represented had "never been surpassed in Australia's history."[6] Nevertheless, the legislation passed easily, and was quickly followed by a spate of additional subsidies that cemented "state aid" to religious schools as a permanent feature of the Australian educational landscape.[7]

Separated by space but not by time, these two scenes are important moments that heralded the arrival of new *secular settlements*—that is, relatively stable sets of policies governing the role of religion in particular social domains—in each country. Prior to the mid-

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[1] *School District of Abington Township v. Schempp,* 374 US 203 (1963), pp. 225-26.

[2] *Engel v. Vitale,* 370 US 421 (1962).

[3] Joan DelFattore. 2004. *The Fourth R: Conflicts over Religion in America's Public Schools.* New Haven: Yale University Press, pp. 98-126.

[4] Richard B. Dierenfield. 1986. "Religious Influence in American Public Schools." *The Clearing House* 59(9): 390-92, p. 391.

[5] R.G. Menzies. 1963. *Federal Election, 1963: Policy Speech of the Prime Minister*. Sydney: Government Printer, p. 22.

[6] Australia. House of Representatives. 1964. *Commonwealth Parliamentary Debates.* Canberra: Government Printer*,* 14 May, pp. 1980, 1930.

[7] Ian R. Wilkinson, Brian J. Caldwell, R.J.W. Selleck, Jessica Harris, and Pam Dettman. 2006. *A History of State Aid to Non-Government Schools in Australia.* Canberra: Department of Education, Science, and Training.

twentieth century, both Australia and the United States featured quite similar secular settlements, permitting religion in the public schools while prohibiting public aid to religious schools. Yet in the wake of World War II, the two nations diverged, ultimately creating new settlements that redefined the appropriate relationship between religion and the state in education. The direction and timing of these settlements is peculiar, to say the least. In the United States, public education became starkly secular—among the *most* secular educational systems in the world—in sharp contrast to Americans' high rates of personal belief and the strongly religious timbre of American political culture.[8] In Australia, meanwhile, the new settlement drew the state and religious schools into a closer embrace just as individual religiosity began a precipitous decline.[9] And these new settlements have had important practical effects: in the United States, opposition to the strict secularism imposed by the courts fed the rise of the Religious Right in the late twentieth century;[10] while in Australia, the return of state aid has led to explosive growth among denominational schools and a corresponding decline in the position of public education.[11]

This dissertation explains how and why these secular settlements emerged in the late twentieth century. To do so, I engage in a historical excavation both of the immediate changes that led to the new secular settlement in the postwar era, and in the dynamics inherent in the nineteenth-century settlement that preceded it. Ultimately, as with most complex historical phenomena, the emergence of the new settlements cannot be reduced to the proximate events that surrounded their immediate fashioning. They drew on, and were in turn shaped by, developments that took place under the aegis of the nineteenth-century settlement, many of which were, in turn, set in motion by the very dynamics that attended its creation. The politics of the late nineteenth century produced similar secular settlements, but vastly different administrative structures, and those structures in turn created dynamics that set the stage for the renegotiation of the late twentieth century. Understanding how long-term and proximate conditions worked together to generate novel secular settlements in the third quarter of the twentieth century is a key objective of this study.

In examining both the proximate and distal conditions behind the twentieth-century settlements, this study also reveals a great deal about how and why secularization occurs more generally. I make the case for a "political-institutional" approach to secularization that argues that secular settlements arise from the interaction of common secularizing processes and specific political institutions. Throughout this dissertation, I focus on three primary political processes that contributed to the secular settlements in both countries: state-building, professionalization, and religious conflict. Each process contributed in its own way to a decline in religious authority in the educational sector, but the ultimate outcomes that resulted were by no means preordained. Instead, these three processes engaged different sets of actors, and interacted with one another and with each country's distinct political institutions, ultimately yielding quite different secular settlements.

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[8] Pippa Norris and Ronald Inglehart. 2004. *Sacred and Secular: Religion and Politics Worldwide.* Cambridge: Cambridge University Press, pp. 83-95.

[9] Gary Bouma. 2006. *Australian Soul: Religion and Spirituality in the Twenty-First Century.* Cambridge: Cambridge University Press, p. 53.

[10] James Davison Hunter. 1991. *Culture Wars: The Struggle to Define America.* New York: Basic Books, pp. 21-25, 203-04; William Martin. 1996. *With God on Our Side: The Rise of the Religious Right in America.* New York: Broadway Books, pp. 232-34.

[11] Louise Watson and Chris Ryan. 2009. "Choice, Vouchers and the Consequences for Public High Schools: Lessons from Australia." Unpublished manuscript, Faculty of Education, University of Canberra, p. 3.

In the United States, political institutions created a "permeable state" that was open to actors who sought to challenge the religion-friendly settlement of the nineteenth century. America's decentralized system of educational administration facilitated challenges to pan-Protestant religious exercises in the public schools by religious minorities and educational professionals, which led to a slow attenuation of religion's position in public education over the early twentieth century. Further, America's highly democratic approach to public law enabled a coalition of religious minorities and civil libertarians to wage a campaign through the courts to define the First Amendment in uncompromising terms. By contrast, Australian political institutions created an "insulated state" that made these kinds of challenges much more difficult. Australia's centralized educational systems and relatively inaccessible approach to public law offered religious minorities and professionals none of the advantages that the American system provided. However, Australia's system of preference-voting and flexible party structure did facilitate Catholics' political campaign to obtain state support for their school system in the postwar era—a campaign that foundered in the United States thanks to unfavorable coalition dynamics within a rigid two-party system.

Focusing on the interaction of processes and institutions, I argue, offers several advantages for the study of secularization. Most basically, it allows us to explain the twisting and varied careers of religion in education in the two countries with greater historical accuracy. More significantly, however, it also holds the promise for a broader comparative theory of secularization. By identifying the processes behind the emergence of secular settlements in Australia and the United States, this study develops a set of analytical tools that can be extrapolated to other contexts where secularization has occurred. While this focus on processes does not promise to yield a new "grand theory" of secularization, it does permit us to develop some bounded generalizations about the conditions of possibility for the emergence of new secular settlements, at a minimum in polities in the Anglo-American ambit, and potentially more broadly in the developed world. Given increasing scholarly doubts about the possibility of constructing grand theories that work uniformly across space and time, these more modest ambitions actually represent an important step forward in theorizing about religious change.

Similarly, this study reclaims political institutions as an important focus for research into comparative secularization. Despite increased interest in the political dimension of secularization in recent years, the role of political *institutions* (as opposed to political *actors*) has been largely neglected by scholars. This study places them at the center of the analysis, and in so doing demonstrates that institutions are central to any understanding of secular settlements. Political institutions not only structure the conflicts between religious, professional, and state actors over the role of religion in public life, they also actively work to create actors motivated to alter settlements in more or less secular directions. This dual role played by institutions—mediating and constitutive—makes them indispensible to understanding the emergence of new secular settlements. They act as essential links between macro-level social change and the strategies of individual actors and social groups in ways that cannot be accounted for in existing theories that focus on one or the other alone.

Finally, by "bringing the state back in" to the study of secularization, this study also provides some interesting insights into the role of religion in American public life, and into American political culture more generally. Specifically, it sheds new light on how the permeable character of the American state—and in particular, its decentralized administrative bodies and broadly accessible legal system—has facilitated, and continues to facilitate, ongoing conflict over religion in public life. Ironically, the root of America's secular education system lies in the

strength and vitality of its highly religious people. It is not news that Americans' devotion to their religious beliefs frequently drives conflict with others who hold other, equally powerfully held, beliefs. What I hope will be clearer from this study, however, is the extent to which America's political institutions actively encourage these conflicts. The decentralized, readily accessible American state is, in fact, an engine for religious conflict, allowing religious differences to spill into law and politics at every turn. The contrast with the more centralized and insulated Australian state, where religious differences roil beneath the surface but far less often disturb the gaze of public officials, is striking. This suggests that religious controversies should be thought of as a structural feature of American politics, one that is actively encouraged by the configuration of America's political institutions. The specific issues over which battles are fought may change (and have changed), but *conflict* over religion is (and will remain) endemic to American education.

Chapter One
Politics, Institutions, and Secularization

INTRODUCTION

The United States poses significant, if not fatal, problems for orthodox theories of secularization. While secularization theorists for years proclaimed the inevitable downfall of religion at the hands of modernization, religious pluralism, and scientific progress,[1] the United States—a modern, religiously pluralistic, and scientifically advanced country if ever there was one—flummoxed their every prediction. In nearly every respect, relative to other modern, Western countries, it is saturated with religion: churches overflowing with congregants, sky-high rates of belief in God, and a public political culture that begins with prayer breakfasts between clergy and politicians, and ends with speeches ritualistically declaiming "God bless America!" "That the reigning theory [of secularization] does not seem to work has become an open secret," confessed Stephen Warner en route to proclaiming a "new paradigm" for the study of religion that gave American developments pride of place.[2]

Yet in one important respect, the United States *does* in fact approximate the predictions of sociology's conventional secularization theorists. America's educational system is extremely—one might say *resolutely*—secular. In fact, it is secular even in comparison to those other modern, Western countries that otherwise cast America's religiousness in such high relief. Unlike nearly every other industrial Western nation, religious exercises and religious instruction are excluded from American public schools.[3] More striking still, the United States is virtually alone in refusing to provide public support for religious schools; even hypersecular France provides funding for its system of Catholic schools.[4] How did this paradoxical situation come to pass?

American anomalies are often explained by resorting to one American "exceptionalism" or another, yet in this case no obvious candidate suffices. America's high levels of immigration and religious pluralism have certainly contributed to considerable contestation over the relationship between religion and education. Yet other countries, such as Canada and Australia, have also experienced high levels of immigration and are strongly religiously pluralistic, yet permit greater interconnections between religion and education.[5] America's current situation

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[1] Most classical sociological theorists embraced some version of this approach. See Peter Berger. 1969. *The Sacred Canopy: Elements of a Sociological Theory of Religion.* New York: Anchor Books; Emile Durkheim. 1995 [1912]. *The Elementary Forms of Religious Life,* trans. Karen E. Fields. New York: The Free Press; Max Weber. 1946. "Science as a Vocation." Pp. 129-156 in *From Max Weber: Essays in Sociology,* edited by H.H. Gerth and C. Wright Mills. Oxford: Oxford University Press.

[2] R. Stephen Warner. 1993. "Work in Progress toward a New Paradigm for the Sociological Study of Religion in the United States." *American Journal of Sociology* 98: 1044-93, p. 1048.

[3] With the exceptions of France, New Zealand, and the Netherlands, every other Western country has some provision for religion in public education, whether it be active programs of religious education led by schoolteachers, provisions for "collective worship" at assemblies, or periods timetabled for instruction by visiting clergy. The only other OECD nations not to accord religion a position of some sort in education are Mexico, Japan, and South Korea. See Jonathan Fox. 2008. *A World Survey of Religion and the State.* Cambridge: Cambridge University Press, p. 112 (Table 5.4). *Nota bene* that Fox lists Australia as not having any provisions for either mandatory or "standard but optional" religious education, yet this is clearly a misreading (see below, Chapter Two).

[4] Fox, *World Survey,* p. 112 (Table 5.4). Again, among the slightly broader category of OECD countries only Japan, South Korea, Mexico, and Turkey provide no funding for religious schools.

[5] On Australian and Canadian religious pluralism, see Gary Bouma. 2006. *Australian Soul: Religion and Spirituality in the Twenty-First Century.* Cambridge: Cambridge University Press, pp. 75-76. Moreover, it is far

cannot be explained as a reflection of longstanding desire to keep religion and education separate, either. American education has *not* always been so secular; for most of American history, religious instruction and devotional exercises had a prominent place in American public schools, and it is only recently that religion and education have experienced such a total divorce.[6] Perhaps America's secular educational system reflects its strong constitutional language disestablishing religion? Not so: although the First Amendment has remained constant since 1791, its interpretation has varied wildly over that time, and the contemporary understanding of disestablishment as "separation of church and state" in a holistic sense disallowing all ties is barely 60 years old.[7] And, as has been pointed out elsewhere, "separation" is often observed much less strictly—if at all—in other domains of social life, such as social welfare.[8] Nor, finally, is America's secular educational system entirely attributable to the "activist judges" on the Supreme Court, as popular accounts would have it. The courts certainly played their part, but the courts were not the only actors with a say in events. Courts cannot call their caseloads into existence, for one thing,[9] and Congressional and presidential *inaction* must also be considered as part of the story. Moreover, secularizing trends were already well underway by the late 1940s when the Court began to rule against religion in education.[10] Indeed, the closer one looks, the more puzzling it becomes. What accounts for America's strict secularism in the educational domain?

In this dissertation, I argue that the secularization of American education can only be understood in terms of certain peculiarities of its administrative, electoral, and judicial *institutions*; and in terms of the *political coalitions and concerted campaigns* through which its religiously and epistemologically diverse constituencies realized a particular understanding of secularism. America's "strict secularism" in education is, I argue, an *achieved* outcome, as opposed to an inevitable byproduct of macrosocial trends or the language of the constitution. Moreover, it is an outcome that was perhaps uniquely achievable in the United States thanks to particular institutional features not found elsewhere. In particular, its decentralized system of education; its democratic and expansive vision of public law; and its rigid two-party system created an institutional infrastructure favorable to those actors who sought more secular outcomes. In the end, I argue that America's uniquely secular educational system owes as much to its permeable institutional structure as it does to its religious pluralism or constitution.

Secular Antipodes? Australia and the United States in Comparative Perspective

I develop this argument through a comparison with a highly similar country, Australia. By employing a most-similar-case design, I am able to identify small yet important differences

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from clear that immigration and religious diversity would automatically lead to looser ties. In Denmark, for instance, one response to increased immigration from Islamic countries has been to *increase* the emphasis on religious education. See Niels Reeh. 2009. "Towards a New Approach to Secularization: Religion, Education and the State in Denmark, 1721-1900." *Social Compass* 56(2): 179-188, p. 186.

[6] Donald E. Boles. 1963. *The Bible, Religion, and the Pubic Schools.* Ames: Iowa State University Press; Warren A. Nord. 1995. *Religion and American Education: Rethinking a National Dilemma.* Chapel Hill: University of North Carolina Press.

[7] Phillip Hamburger. 2002. *Separation of Church and State.* Cambridge: Harvard University Press; John Witte, Jr. 2005 [2000]. *Religion and the American Constitutional Experiment.* 2nd ed. Boulder, Co.: Westview Press.

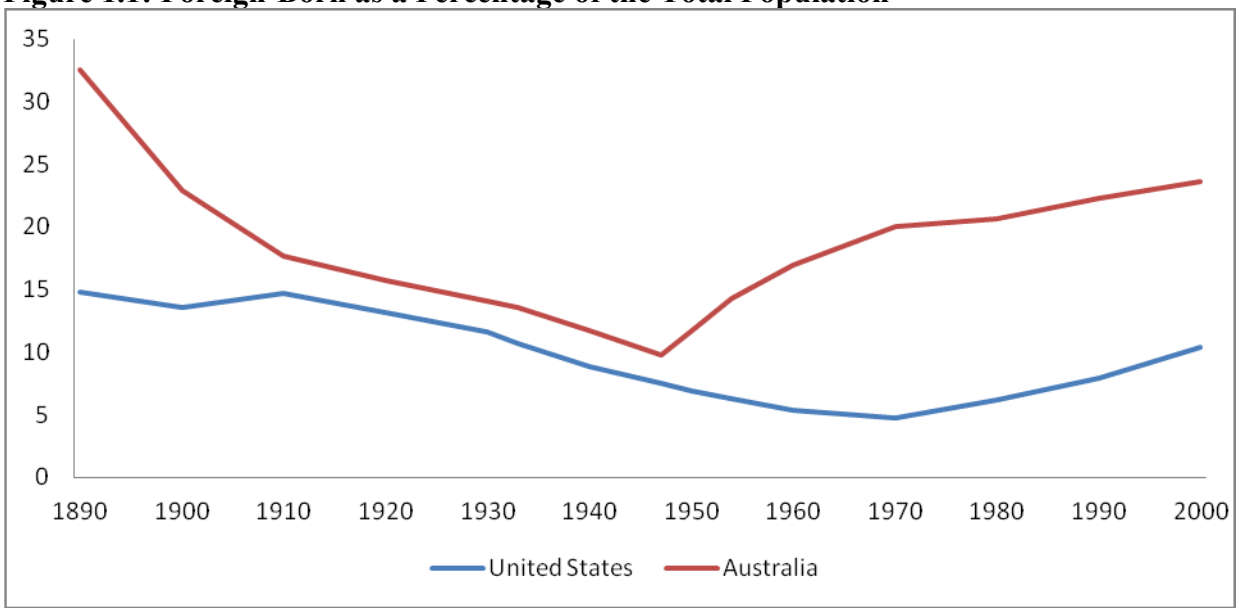
[8] See, e.g., Stephen V. Monsma and J. Christopher Soper. 1997. *The Challenge of Pluralism: Church and State in Five Democracies.* Lanham, MD: Rowman and Littlefield, p. 36.

[9] Charles R. Epp. 1996. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective.* Chicago: University of Chicago Press, pp. 18, 37-38.

[10] See below, Chapter Three.

that had an important impact on the development of policies vis-à-vis religion in each country. For the purposes of this study, Australia provides an excellent comparative case. The two countries share similar origins as former British colonies, and hence share many similar traits, such as a common language, a common law legal system empowered with judicial review, and democratic systems of government organized on a federal model.[11] Moreover, Australia is uncannily similar to the United States in terms of the supposed "exceptionalisms" outlined above. As Figure 1.1 shows, Australia's levels of immigration matched or exceeded those of the United States throughout the twentieth century; today, Australia has one of the highest immigration rates in the industrial West.[12] Moreover, Australia has a high degree of religious pluralism, as shown in Figure 1.2. While not as riotously diverse as the United States, Australia nevertheless is home to a wide array of denominations, both Christian and non-Christian. And, unlike most European countries, neither country has a religion with a majority market share.

Figure 1.1: Foreign-Born as a Percentage of the Total Population

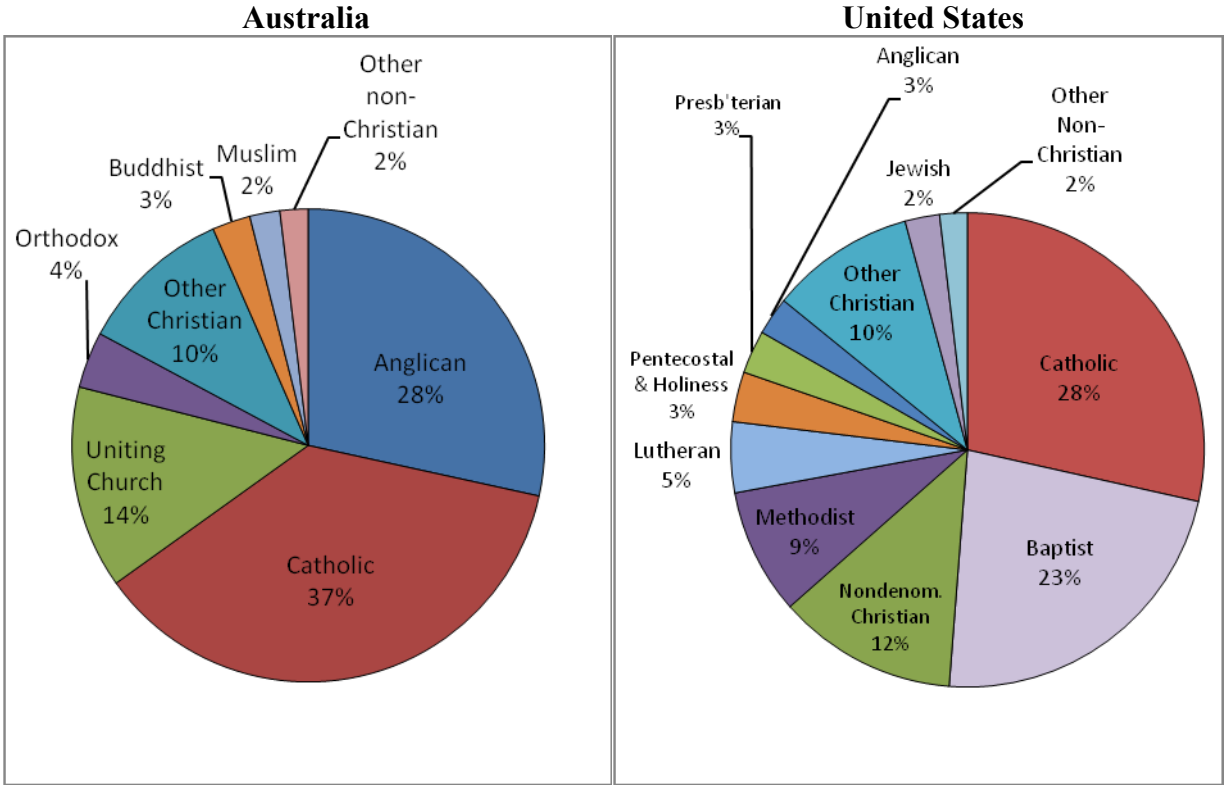


Sources: Australian Bureau of Statistics. 2006. Australian Historical Population Statistics, 2006. *Canberra: GPO; Campbell J. Gibson and Emily Lennon. 1999. "Historical Census Statistics on the Foreign-Born Population of the United States, 1850-1990." Population Division Working Paper No. 29. Washington, DC: GPO; Tiffen and Gittins,* How Australia Compares*, p. 10, Table 1.13.*

[11] Gerald Baier. 2006. *Courts and Federalism: Judicial Doctrine in the United States, Canada, and Australia.* Vancouver: UBC Press; Louis Hartz. 1964. *The Founding of New Societies: Studies in the History of the United States, Latin America, South Africa, Canada, and Australia.* New York: Harcourt, Brace, and World.

[12] Rodney Tiffen and Ross Gittins. 2004. *How Australia Compares*. Cambridge: Cambridge University Press, p. 10.

Figure 1.2: Religious Diversity in Australia and the United States



Sources: Australian Bureau of Statistics 2001; General Social Survey 2004. Figures reflect percentages of respondents reporting a religion; those reporting "No religion" or "Decline to State" excluded (25.3% Australia, 15.0% United States).

Also like the United States, Australia has a constitution with a disestablishment clause. In fact, section 116 of the Australian Constitution was modeled explicitly after the United States' First Amendment, in what one Australian scholar has called a "fairly blatant piece of transcription."[13] Accordingly, the two countries share nearly identical constitutional language regarding the relationship between church and state.[14] Moreover, Australia also has a longstanding tradition of ties between religion and education. In fact, between 1880 and 1950, Australia and the United States shared nearly identical policies toward religion and education. Each nation permitted religious instruction in its public schools, although the different states of each federation embraced this possibility to a different extent;[15] and each nation broadly prohibited any kind of direct support for religious schools.[16]

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[13] Clifford L. Pannam. 1963. "Travelling Section 116 with a U.S. Road Map." *Melbourne University Law Review* 4:41-90, p. 41.

[14] Compare the United States Constitution, Amendment I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof"), and the Australian Constitution, Section 116 ("The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth). The "no religious test" portion of Section 116 is derived from Article V of the American Constitution.

[15] On Australia, see generally Victoria. 1974. *Religious Education in State Schools.* Report of the Committee on Religious Education. Melbourne: Government Printer; and J.S. Gregory. 1973. *Church and State: Changing*

Despite these similarities, however, Australia today looks quite different from the United States. Whereas the United States, largely through a series of court rulings, moved to exclude religious exercises from the public schools[17] while maintaining its barriers against direct funding for religious schools, Australia moved in the opposite direction. While maintaining a place for religion in the public school curriculum, Australia, largely through a series of federal initiatives, began to provide wholesale funding for religious schools beginning in the 1960s. Today, every Australian state with the exception of South Australia has "right of entry" provisions whereby clergy or lay representatives come to schools to teach regularly timetabled "special religious instruction" classes; collective worship and prayers are permitted; and at least one state (Queensland) continues to permit, at the discretion of the principal, formal Bible reading as part of the regular course of instruction.[18] Similarly, federal and state governments provide massive direct support to religious schools in the form of recurrent grants distributed on the basis of enrollments, supplemented by periodic federal grants for capital improvements.[19] Non-government schools in Australia now rely on government subsidies for more than half of their annual income;[20] for Catholic schools in some states, up to 80% of their operating costs are now underwritten by public financing.[21]

This situation obviously contrasts greatly with the American situation, where prayer, Bible reading, religious instruction, and even moments of silence are forbidden; and only indirect funding (such as tax credits for parents, transportation subsidies, and loans of supplies and services to religious schools that flow [in theory] to the schoolchildren, not to the schools themselves) is permitted.[22] The type of direct support either for religious education or for religious schools that Australia embraces would be inconceivable in the United States. Viewed in comparative perspective against Australia, then, our puzzle deepens still further. Why did the United States come to embrace a supremely secular approach to religion and education *even as*

Government Policies towards Religion in Australia, with Particular Reference to Victoria since Separation. North Melbourne, Vic.: Cassell Australia. On the United States, see generally Boles, *Bible, Religion, and the Public Schools*.

[16] On Australia, see generally A.G. Austin. 1961. *Australian Education, 1788-1900: Church, State, and Public Education in Colonial Australia.* Melbourne: Sir Isaac Pitman & Sons. On the United States, see generally Lloyd P. Jorgenson. 1987. *The State and the Non-Public School, 1825-1925.* Columbia: University of Missouri Press.

[17] It should be noted that these prohibitions apply to the schools and not to the students; there are no prohibitions on voluntary student-initiated religious activities that do not disrupt the functioning of the school day. However, any formal prayers, Bible lessons, or other religious activities under school auspices are strictly prohibited. Steven P. Brown and Cynthia J. Bowling. 2003. "Public Schools and Religious Expression: The Diversity of School Districts' Policies Regarding Religious Expression." *Journal of Church and State* 45: 259-281, p. 265.

[18] See generally Nicolee Dixon. 2006. *Religious Instruction under the Education (General Provisions) Bill 2006 (Qld).* Research Brief No. 2006/22. Brisbane: Queensland Parliamentary Library; Queensland. Department of Education and Training. 2011. "Bible Lessons." Accessed 14 December 2011. Available online: http://education.qld.gov.au/strategic/eppr/schools/scmpr021/biblelessons.html.

[19] Chris Ryan and Louise Watson. 2004. "The Drift to Private Schools in Australia: Understanding Its Features." Discussion Paper No. 479, Australian National University Centre for Economic Policy Research.

[20] Ministerial Council on Education, Employment, Training, and Youth Affairs. 2007. *National Report on Schooling in Australia 2007.* Carlton, Vic.: Ministerial Council on Education, Employment, and Youth Affairs, p. 27. Accessed 14 December 2011. Available online: http://cms.curriculum.edu.au/anr2007/pdfs/2007Stats.pdf.

[21] John Luttrell. 2008. "Come to Our Aid: Funding Catholic Schools in NSW since 1800." Unpublished manuscript, Catholic Education Office Sydney, p. 1.

[22] See generally Witte, *Religion and the American Constitutional Experiment.* Even contentious voucher programs are justified as indirect supports: see *Zelman v. Simmons-Harris,* 536 US 639 (2002).

an extremely similar country with which it once shared nearly identical policies moved in the *opposite* direction, toward greater church-state collaboration?

AMERICAN EDUCATION AND SECULARIZATION THEORY

These two puzzles, while interesting in their own right, are also useful for helping us to think about secularization and religious change more generally. Secularization theory is currently undergoing a period of great intellectual ferment, as scholars attempt to come to terms with the collapse of the classical paradigm. As discussed above, the longstanding assumption that modernization would inevitably lead to the decline of religion has largely proven untenable in light of the persistence of high levels of belief and practice in the United States, the spread of global religions such as Pentecostalism, and the rise of "public religions" engaged in political and social activism in countries around the world. Classical secularization theory has accordingly come in for criticism on multiple fronts. More radical critics have denied that secularization has occurred at all, and urged that the entire theory be discarded.[23] Others have attempted to refine secularization theory, to clarify in what respects it may continue to hold. The most common approach has been to distinguish among different types of secularization. Dobbelaere, for instance, distinguishes among (1) micro-level secularization, which refers to declines in individual beliefs and practice; (2) meso-level secularization, which refers to religious organizations' internal changes to make themselves conform with the secular world; and (3) macro-level secularization, which refers to the structural and functional differentiation of different social spheres in ways that render them autonomous of religious authority.[24] These forms of secularization are thought to be potentially independent, such that meso- and macro-level secularization may occur even if micro-level secularization does not.

Based on such distinctions, the central focus has begun to shift away from questions couched at the micro-level and toward ones couched at the macro-level. Secularization has been variously reinterpreted as "declining religious authority"[25] or "institutional differentiation,"[26] and scholars have taken a renewed interest in understanding how secularization, understood as a macro-level process of institutional differentiation, takes place. However, secularization theorists have largely abandoned the search for a transhistorical, teleological account of the position of religion in society. Instead, recognizing that secularization appears to be both widely variable and even reversible,[27] secularization theorists have instead begun to ask what accounts for the variety of "secular settlements" that are visible in the contemporary world.[28]

In this context, the American and Australian cases should be understood as but two possible "secular settlements" among many. Indeed, studying them as historical outcomes can teach us a great deal about secularization and religious change more generally. In addition to helping to shed light on why America adopted its particularly rigid version of secularism in

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[23] Rodney Stark. 1999. "Secularization, R.I.P." *Sociology of Religion* 60: 249-273.

[24] Karel Dobbelaere. 1981. "Secularization: A Multi-Dimensional Concept." *Current Sociology* 29: 1-216.

[25] Mark Chaves. 1994. "Secularization as Declining Religious Authority." *Social Forces* 72: 749-774; see also David Yamane. 1997. "Secularization on Trial: In Defense of a Neosecularization Paradigm." *Journal for the Scientific Study of Religion* 36: 109-122.

[26] Jose Casanova. 1994. *Public Religions in the Modern World.* Chicago: University of Chicago Press; Philip S. Gorski. 2000. "Historicizing the Secularization Debate: Church, States, and Society in Late Medieval and Early Modern Europe, ca. 1300 to 1700." *American Sociological Review* 65:138-67; Olivier Tschannen. 1991. "The Secularization Paradigm: A Systematization." *Journal for the Scientific Study of Religion* 30(4): 395-415.

[27] See, e.g., Gorski, "Historicizing the Secularization Debate: Church, States, and Society."

[28] Philip S. Gorski and Ateş Altinordu. 2008. "After Secularization?" *Annual Review of Sociology* 34:55-85, p. 76.

education, a comparative study such as the present one permits us to ask more general questions about why different states adopt different policies toward religion; what processes and mechanisms lie at the heart of secularization and desecularization; and what effects different "secular settlements" have on religion, politics, and public life. Accordingly, the goal of this dissertation is twofold: First, to explain the divergent paths and secular settlements of Australia and the United States; and second, to identify common processes and mechanisms in the two countries' histories that have the potential to contribute to our understanding of secularization in other settings.

Accounting for Variations in Secular Settlements: Existing Approaches

Four major approaches currently exist to explaining why states adopt particular secular settlements: the modernization approach, the rational-choice approach, the *ancien régimes* approach, and the secular movements approach. Each has certain strengths, but none ultimately allows us to satisfactorily make sense of the American-Australian comparison.

The Modernization Approach

The modernization approach is the contemporary successor to classical secularization theory. This approach attributes religious change to broad structural changes, such as the growth of the state, economic development, or cultural changes such as the rise of science. As societies become more modern, the argument goes, they become more secular. This approach takes several different forms. Steve Bruce, for instance, argues that such modernizing forces as industrialization, urbanization, democratization, and the rise of science serve to undermine religion, and promote secularization. Variations in the degree of secularization are thus the product of variations in the advance of those secularizing processes.[29] By contrast, Norris and Inglehart argue that secularization rises in tandem with "existential security," meaning that the more broadly prosperous a nation becomes, the more secular it will become: "due to rising levels of human security, *the publics of virtually all advanced industrial societies have been moving toward more secular orientations.*"[30] Finally, Phillip Hammond adopts an essentially modernization-centered explanation to explain the American trend toward strict separation of church and state. This trend, he argues, is driven by "structural features of modern-day America—especially religious pluralism and government's inevitable involvement in our lives," and is more or less inevitable irrespective of any political interventions pro or con.[31]

The modernization approach would therefore explain divergence in secular settlements by reference to variations in how "modern" each country is. However, this does not enable us to explain the divergent policies of Australia and the United States, since both countries are modern, highly developed nations. Indeed, the Australian trajectory is particularly problematic. The postwar era was a period of massive economic growth and industrialization in Australia, accompanied by rapid religious and ethnic diversification and the dramatic growth of a full-fledged welfare state.[32] Yet even as these quintessentially modernizing trends were operating at full force, its policies in education were drawing church and state into a closer embrace.

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[29] Steve Bruce. 2002. *God Is Dead: Secularization in the West.* Oxford: Blackwell Books.

[30] Pippa Norris and Ronald Inglehart. 2004. *Sacred and Secular: Religion and Politics Worldwide.* Cambridge: Cambridge University Press, pp. 24-25. Emphasis in original.

[31] Phillip E. Hammond. 1997. *With Liberty for All: Freedom of Religion in the United States.* Louisville, KY: Westminster John Knox Press, pp. 14, 27.

[32] See, e.g., Geoffrey Bolton. 2006 [1990]. *The Oxford History of Australia.* Vol. 5, *The Middle Way, 1942-1995.* 2nd ed. South Melbourne, Vic.: Oxford University Press, chs. 4, 6.

Modernization approaches alone cannot account for the variations between the United States and Australia, and cannot account for why Australian policy desecularized even as it modernized in the postwar era.

The Rational Choice Approach

The rational choice, or "religious economies," approach is the most commonly discussed alternative approach to classical secularization theories, largely because it was instrumental in helping to shatter the old paradigm in the early 1990s. The rational choice approach was initially designed to explain micro-level secularization, which it explained by reference to "regulation of the religious marketplace." The theory holds that societies that "regulate" their religious marketplace through such institutions as a state church, or restrictions on minority religions, tend to create "lazy monopolies" that fail to supply people with the "religious goods" that they desire. Accordingly, religious belief and practice decline.[33]

More recently, Anthony Gill has attempted to explain why states adopt policies that restrict the religious marketplace. Gill attributes changes in state policy vis-à-vis religion to the calculating machinations of politicians attempting to preserve their ability to remain in office, maximize their economic resources, and ensure social stability. State policies are means to these ends, and change as necessary to grow and maintain political power. Thus, Gill concludes, "when restrictions on religious liberty have a high opportunity cost as measured in terms of political survival, government revenue, and/or economic growth, deregulation of the religious market results."[34] Given these preferences, Gill argues that democratic and religiously pluralistic political environments tend toward less cooperation between church and state because they make such cooperation less appealing to politicians.

The rational choice approach would therefore explain divergence in secular settlements by reference to the self-interested calculations of political actors. This approach has definite applications; as we will see, calculating politicians played a large role in Australian politics during the 1960s. Yet the rational choice approach has difficulty accounting for several important features of the American case. The rational choice model assumes a uniform set of preferences among political actors, and takes them as universal givens, rather than inquiring into them. It therefore has difficulty explaining actors with other motivations, such as judges, whose positions are consciously insulated from the demands of maintaining power or extracting revenues; or actors motivated at least in part by interests such as group allegiance, legitimacy, or a pragmatic desire to solve problems—something not necessarily reducible to maximizing preferences.[35] In the United States, these sorts of actors are central to any story. As will be discussed in Chapter Five, the Supreme Court was instrumental in shaping a separationist First Amendment jurisprudence despite having lifetime tenures; and President John F. Kennedy's

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[33] The most elaborate version of this thesis is Rodney Stark and Roger Finke. 2000. *Acts of Faith: Explaining the Human Side of Religion.* Berkeley: University of California Press, especially chs. 8-9. See also Rodney Stark and Laurence R. Iannaccone. 1994. "A Supply-Side Reinterpretation of the 'Secularization' of Europe." *Journal for the Scientific Study of Religion* 33: 230-252.

[34] Anthony Gill. 2008. *The Political Origins of Religious Liberty.* Cambridge: Cambridge University Press, p. 52. See also earlier intimations and iterations of this approach in Roger Finke. 1990. "Religious Deregulation: Origins and Consequences." *Journal of Church and State* 32:609-26.

[35] On the mediating impact of legitimacy, see Melissa Wilde. 2007. *Vatican II: A Sociological Analysis of Religious Change.* Princeton: Princeton University Press. On the distinction between preference maximization and problem solving, see Neil Gross. 2009. "A Pragmatist Theory of Social Mechanisms." *American Sociological Review* 74: 358-79, p. 367.

decision to oppose federal aid to religious schools was motivated at least in part out of desires to preserve the political viability of future Catholic presidents, as discussed in Chapter Six.

Moreover, while it may be true that dominant religions "prefer a regulatory regime that discriminates against religious minorities" while minority religions "favor regulations that make it easier for their clergy and members to openly practice their faith and proselytize," these preferences often operate at cross-purposes to one another in practice, especially in pluralistic environments.[36] Hence American history's strange and shifting religious coalitions, that saw Jews and mainline Protestants alike arguing for strict separation throughout the mid-twentieth century. Ecumenical and nativist motives, too, crucial to any story, get buried in this approach's assumption of fixed preferences. Thus, while the rational choice approach points us toward important dynamics in the evolution of secular settlements, its rigid focus on political calculation based on fixed preferences does not provide sufficient explanatory power to account for the policies that eventually developed, especially in the United States.

The Ancien Régimes *Approach*

A third approach draws connections between resulting secular settlements and the historical presence or absence of an "*ancien régime*"—that is, a political establishment with tight, often formal, ties with religious leaders in a particular church. The touchstone for this approach is the work of David Martin. Martin argues that secularization took distinctive forms in different groups of countries in the West.[37] These groupings were determined by whether a country was primarily Catholic or Protestant; whether it was religiously homogeneous or pluralistic; and—crucially—whether it had a state church or not. Accordingly, Catholic monopoly countries such as France and Italy secularized differently than Protestant pluralist countries such as Britain or the United States. In countries with a strong established church, political reforms often required a simultaneous overthrow of church and state, leading to anticlericalism and increased likelihood of strong secularism. Philip Gorski, drawing on Martin's work and the work of Hugh McLeod,[38] has suggested that this constitutes a "sociopolitical conflict model" of secularization, where secularization is the result of conflicts between religious and secularist movements. These conflicts take on a particular character depending on how closely connected church and state are at any given time; separationist (and anticlerical) movements emerge in contexts where church and state are closely identified, while combinationist movements may emerge in contexts where church and state are separate.[39] Thus, secularization can be seen as the outcome of specific conflicts "between religious and secularist movements for control of particular institutions and sectors, such as schools and education, or marriage and moral counseling."[40]

More recently, Ahmet Kuru has put forward a related argument to explain exactly the question at issue in this dissertation—namely, why modern, secular states pursue different

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[36] Gill, *Political Origins,* p. 8.

[37] David Martin. 1978. *A General Theory of Secularization.* New York: Harper and Row; see also David Martin. 2005. *On Secularization: Towards a Revised General Theory.* Burlington, VT: Ashgate Press.

[38] Hugh McLeod, ed. 1995. *European Religion in the Age of the Great Cities, 1830-1930.* New York: Routledge; Hugh McLeod. 2000. *Secularisation in Western Europe, 1848-1914.* New York: St. Martin's Press.

[39] Philip S. Gorski. 2005. "The Return of the Repressed: Religion and the Political Unconscious of Historical Sociology." Pp. 161-89 in *Remaking Modernity: Politics, History, and Sociology*, edited by Julia Adams, Elisabeth S. Clemens, and Ann Shola Orloff. Durham: Duke University Press, pp. 177-178.

[40] Philip S. Gorski. 2003. "Historicizing the Secularization Debate: An Agenda for Research." Pp. 110-122 in *Handbook of the Sociology of Religion*, edited by Michele Dillon. Cambridge: Cambridge University Press, p. 118.

policies toward religion.[41] Kuru uses a comparison of American, French, and Turkish educational systems to argue that ideology is the key factor explaining different state policies toward religion. He develops a distinction between ideologies of "passive secularism," seen in the United States and generally permissive of student religious expression and the invocation of God in the Pledge of Allegiance; and "assertive secularism," seen in France and Turkey and associated with bans on headscarves and no such pledges. These ideologies are, in turn, the result of whether each nation needed to overthrow an *ancien régime* in order to establish itself. In both France and Turkey, the need to overthrow the established order and its religious supporters led to an ideology of assertive secularism and more aggressively secular policies, whereas the United States' lack of such a *régime* meant that a more conciliatory ideology of passive secularism came to predominate.[42]

The *ancien régimes* approach therefore explains divergence in terms of the political dynamics unleashed by the degree of religious pluralism and the presence or absence of an *ancien régime* closely tied to political power. Yet these factors too cannot allow us to distinguish between the United States in Australia. Both nations are predominantly Protestant, highly pluralistic, and neither nation featured an established church or *ancien régime* that required its citizens to choose between religion and reform. And both countries are, as Kuru observes, ones in which a passive secularist ideology holds sway.[43] This approach also has difficulty explaining policy variation within the same country over time. Kuru explains America's historical variations in part as the result of battles between "separationist" and "accommodationist" interpretations of passive secularism, but these categories (derived from American jurisprudence) do not travel well to Australia, where such legal camps have not developed (indeed, section 116 jurisprudence *in general* has failed to develop, as discussed in Chapter Six). Moreover, the separationist-accommodationist dichotomy itself conceals, in both countries, important aspects of the historical trajectory, such as how those positions were themselves shaped and taken up differently by different religious and nonreligious groups in response to religious competition, especially in the nineteenth century. In short, the focus on *ancien régimes* and ideological variation cannot explain the Australian-American divergence, and potentially obscures, rather than reveals, how religious and ideological cleavages intersected and overlapped in changing configurations over time.

The Secular Movements Approach

A final approach is the "secular movements" approach pioneered by Christian Smith.[44] This approach argues that secularization is the result of a deliberate effort by rising intellectual elites to enhance their social position at the hands of established religious elites. Through a series

[41] Ahmet T. Kuru. 2009. *Secularism and State Policies toward Religion: The United States, France, and Turkey.* Cambridge: Cambridge University Press.

[42] Kuru's depiction of American education is obviously somewhat at odds with that expressed here: his vision is of an American education system less resolutely secular than its European neighbors, whereas mine is of a system in some respects more secular than European systems. In part, this has to do with which policies are emphasized; he emphasizes student dress codes and pledges of allegiance, whereas I emphasize devotional practices and funding for religious schools. Both sets of distinctions are legitimate, and reflect both the complexity of America's "secular" policies, and the difficulty of developing holistic yet meaningful criteria for cross-national comparisons of secularization.

[43] Kuru, *Secularism and State Policies,* p. 27.

[44] Christian Smith, ed. 2003. *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life.* Berkeley: University of California Press.

of analyses of Victorian and Progressive-Era America, the contributors to Smith's volume *The Secular Revolution* forcefully argue that public life was strategically secularized by actors whose interests lay in delegitimizing the Protestant Establishment and asserting the primacy of academic and non-religious knowledge in public culture. In the most direct application of this approach to the question at hand, David Sikkink argues that a decades-long effort of lawyers to professionalize and rationalize their craft helps explain the transformation of American church-state jurisprudence, as the old, Christian-inspired "jurisprudence of the heart" was rejected in favor of case law and "sociological jurisprudence."[45]

The secular movements approach would therefore explain divergent secular settlements by reference to differential access to resources and political opportunities encountered by campaigns by intellectual elites to enhance their social status.[46] Yet this can only provide a partial explanation for the Australian-American divergence. In particular, such an account leaves out the electoral and legal campaigns by *religious* actors attempting to secure their symbolic position in the polity. Secularization is not simply a feature of cultural institutions. But because it focuses so heavily on cultural, rather than electoral, conflicts, the secular movements approach has tended to overlook those contexts, such as local school boards and courtrooms, where religious actors engaged in explicit political campaigns against majoritarian practices.[47]

More fundamentally, the conceptual tools of the secular movements approach pose some problems for comparative analysis. Comparative studies of social movements are somewhat rare, in part because operationalizing the conceptual terminology for comparative analysis is quite difficult.[48] Some of its terminology lacks specificity—both "resources" and "political opportunity" are notoriously malleable terms.[49] Nor is it clear why a "political opportunity" should arise in one context but not in another—or even what that would mean. Thus, while the secular movements approach does a good job of explaining the success or failure of particular secularizing campaigns in a single case, it is much less useful for explaining comparative variation in secular settlements. In short, the secular movements approach can take us partway to an explanation of the Australia-America divergence, but its terms do not easily lend themselves to comparative analysis, and its narrow focus on cultural elites obscures the role of other actors—often religious actors—who played decisive roles in secularization.

Beyond Existing Approaches: Reclaiming the Role of Institutions

I propose that a better explanation can be developed by attending to political action *within the context of political institutions*. Institutions have been largely overlooked by

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[45] David Sikkink. 2003. "From Christian Civilization to Individual Civil Liberties: Framing Religion in the Legal Field, 1880-1949." Pp. 310-54 in *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life,* edited by Christian Smith. Berkeley: University of California Press.

[46] Christian Smith. 2003. "Introduction: Rethinking the Secularization of American Public Life." Pp. 1-96 in *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life.* Berkeley: University of California Press, p. 61.

[47] An important (and telling) exception to this is George M. Thomas, Lisa R. Peck, and Channin G. De Haan. 2003. "Reforming Education, Transforming Religion, 1876-1931." Pp. 355-394 in *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life,* edited by Christian Smith. Berkeley: University of California Press.

[48] Edwin Amenta. 2003. "What We Know about the Development of Social Policy." Pp. 91-130 in *Comparative Historical Analysis in the Social Sciences,* edited by James Mahoney and Dietrich Rueschemeyer. New York: Cambridge University Press, pp. 119-20.

[49] Jeff Goodwin and James M. Jasper. 1999. "Caught in a Winding, Snarling Vine: The Structural Bias of Political Process Theory." *Sociological Forum* 14: 27-54, p. 31.

secularization theorists. To the extent that they have examined them at all, they have tended to treat institutions primarily as mechanisms of, or targets for, mobilization, rather than as important political constraints and resources in and of themselves. Educational systems, for example, are sometimes treated as systems through which secular ideas are disseminated to the population at large;[50] and sometimes as a set of institutions that religious and nonreligious actors compete over for influence.[51] Neither approach treats the actual administrative and bureaucratic structure of the state as a serious independent factor that constrains and shapes the activities of contesting parties. Yet it is precisely these *institutional* factors that help to determine whether and to what extent political contests over religion's position in social domains are resolved in a more secular direction.

Thus, there is a real opportunity to expand our understanding of how institutions contribute to the development of diverse secular settlements. I do this by bringing to bear insights and concepts from the longstanding literature on historical institutionalism.[52] Over the past several decades, scholars working under the banner of historical institutionalism have demonstrated that variation in national political institutions has affected the development of a wide variety of social policies, including tax codes,[53] welfare states,[54] and health care systems,[55] among others. It stands to reason that political institutions may have affected the development of policies toward religion as well. Yet despite its long pedigree and substantial contributions to political sociology, historical institutionalism has had little influence on secularization debates, or on the sociology of religion more generally. By bringing in insights from this literature, I argue that we will be able to see that institutions—by constraining, enabling, and even constituting actors—can have an important independent effect on secularization.

Thus, what is needed is a political-institutional approach to secularization. In setting forth such an approach below, I argue that the development of secular settlements should be understood as a fundamentally political process advanced by interested actors. However, those actors' interests and strategies must be understood as having been indelibly shaped by the institutional contexts in which they must operate. Variation in secular settlements can be explained, therefore (at least in part), by variations in the institutional contexts in which secularizing campaigns play out.

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[50] Peter Berger, Grace Davie, and Effie Fokas. 2008. *Religious America, Secular Europe? A Theme and Variations.* Burlington, VT: Ashgate Press, pp. 19-20.

[51] See, e.g., Kraig Beyerlein. 2003. "Educational Elites and the Movement to Secularize Public Education: The Case of the National Education Association." Pp. 160- 196 in *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life,* edited by Christian Smith. Berkeley: University of California Press; and Christian Smith. 2003. "Secularizing American Higher Education: The Case of Early American Sociology." Pp. 97-159 in *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life,* edited by Christian Smith. Berkeley: University of California Press.

[52] For reviews, see Peter A. Hall and Rosemary C.R. Taylor. 1996. "Political Science and the Three New Institutionalisms." *Political Studies* 44: 936-957; and Kathleen Thelen. 1999. "Historical Institutionalism in Comparative Politics." *Annual Review of Political Science* 2: 369-404.

[53] Sven Steinmo. 1993. *Taxation and Democracy.* New Haven: Yale University Press.

[54] Margaret Weir and Theda Skocpol. 1985. "State Structures and the Possibilities for 'Keynesian' Responses to the Great Depression in Sweden, Britain, and the United States." Pp. 107-67 in *Bringing the State Back In,* edited by Peter Evans, Dietrich Rueschemeyer, and Theda Skocpol. New York: Cambridge University Press.

[55] Ellen M. Immergut. 1992. "The Rules of the Game: The Logic of Health Policy-Making in France, Switzerland, and Sweden." Pp. 57-89 in *Structuring Politics: Historical Institutionalism in Comparative Analysis,* edited by Sven Steinmo, Kathleen Thelen, and Frank Longstreth. New York: Cambridge University Press.

A POLITICAL-INSTITUTIONAL APPROACH TO SECULARIZATION

The approach advanced here takes the central contention of the agent-centered approaches to secularization—namely, that secularization is fundamentally a political project—as its starting point, but it situates this insight firmly in specific institutional contexts by focusing on the interaction of political actors and political institutions. This political-institutional approach to secularization argues that secularization occurs through the working out of a set of common *political processes,* but that specific outcomes will vary depending on the *institutional contexts* in which they play out. Analytically, this entails breaking down "secularization" into a number of component processes, and identifying how those processes articulate with and are transformed by the specific institutional features of each country. In short, we cannot understand how secularization occurs, or the secular settlements that result, without paying close attention to the structure of the state, and how it shapes political conflict, strategy, and coalition-building among secularizing (and desecularizing) actors.

Common Secularizing Processes

Although Australia and the United States currently feature very different secular settlements, their histories are not idiosyncratic. Instead, a close examination of the histories of the two countries reveals a number of commonalities in the political dynamics at work in each country. These similarities become intelligible when they are understood as common secularizing processes. Although "secularization" is often treated as a unitary phenomenon—even when delimited to its institutional dimension—this singular terminology actually encompasses at least three separate political processes: state-building, professionalization, and religious conflict. Each process embodies a particular form of political conflict that tends, in the absence of intervening forces, toward more secular outcomes. However, this does not mean that secularization is inevitable; indeed, each process is potentially reversible. Each process works at different speeds, engages different actors, and articulates with institutions in different ways, both within a single country and across different countries.

State-Building

The state-building process contains within it the potential for *conflict between emerging states and political elites, and religious actors, for control over domains of social life*. The logic behind the state-building process is that, as the state expands into an ever-increasing array of domains of social life, jurisdictional conflicts may emerge as state-provided services compete with or displace religious providers.[56] The quintessential example of this process is the creation of state education systems. Today, education is nearly universally provided by the state, yet it was largely in the hands of the churches until the nineteenth century. As state education systems were created, religious authority over education decreased accordingly, as churches' control over policies regarding religion was transferred to state agents, elected boards, and politicians. While sectarian controversy may be central to state-building initiatives, state-building is nevertheless distinct from religious conflict (discussed below) insofar as its main dynamic relates to struggles over who will *control* social domains (i.e., church or state), rather than which groups will be *symbolically embraced by* state-controlled institutions.

[56] These jurisdictional conflicts may contribute to the broader process of "differentiation" to the extent that states contribute to the development of new logics and authority structures in the course of developing new administrative infrastructure.

The development of common schools in the nineteenth and twentieth centuries in both the United States and Australia offers a paradigmatic example of the state-building process at work. In both countries, a near-total jurisdictional shift away from the churches and toward the state took place in education, as detailed in Chapter Two. This process took a different form in each country, in that American common schools were constructed in cooperation with religious leaders in a relatively open educational environment, whereas Australian state schools were established by displacing an established system of denominational schools, often over the protests of clergy. In both cases, the churches eventually largely (though not completely) yielded control of education to the state, but the systems that emerged differed considerably in their organization and tone. America's system was decentralized and, until the late nineteenth century, featured a heavily and identifiably Protestant curriculum. The Australian system, by contrast, was highly centralized, and—while usually retaining Protestant religious education—somewhat less saturated with Protestant content.

Professionalization

The process of professionalization contains within it the potential for *conflict between religious and professional actors for control over authoritative forms of knowledge in particular social domains*. One of the key characteristics of a profession is the development of specialized, abstract, and authoritative forms of knowledge.[57] In many instances, the development of new sources of knowledge, novel methods, and professional institutions can only be accomplished by marginalizing religiously-grounded forms of knowledge previously used to understand social phenomena. It is this process that was so ably documented by Smith and his colleagues in *The Secular Revolution,* and which lies at the center of the secular movements approach. Smith and colleagues document how the development of professional knowledge and norms in education, law, journalism, and social welfare during late nineteenth and early twentieth century America displaced the Protestant establishment from its cultural and intellectual perch.[58] Novel forms of professional knowledge, professional standards, and increased professional autonomy can disembed religious practices and other cultural elements from those social domains.

Professionalization as a secularizing process can be seen vividly in education in both countries. Education developed into a self-conscious profession in both Australia and the United States beginning in the late nineteenth century. This process involved the development of educational theories (often based on developmental psychology) that reoriented the practice of teaching from "instruction" (or the transmission of knowledge) to "education" (or the encouragement of learning). It also entailed the expansion of education, both formally (e.g., the development of high schools) and thematically (e.g., the development of social studies, sex education, etc.) according to educators' interests and professional logic. Professionalization thus altered the purpose, form, and content of education in ways that undercut traditional religious content and practices. In the United States, education professionalized earlier and had a more immediate impact on school districts in large part thanks to a highly developed professional infrastructure—professional organizations, university departments of education, and educational journals—that encouraged the development and dissemination of educational theories, as discussed in Chapter Three. This infrastructure in turn developed in response to the American decentralized administrative system. In Australia, by contrast, a tightly controlled system of

[57] Andrew Abbott. 1988. *The System of Professions: An Essay on the Division of Expert Labor.* Chicago: University of Chicago Press, p. 8.

[58] Smith, *The Secular Revolution.*

centralized administration discouraged the development of an independent educational infrastructure until the mid-twentieth century, stunting the professional development of education and allowing the traditional "instructional" model (with its associated religious content) to go largely unchallenged until the 1960s.

Religious Conflict

The process of religious conflict refers to the ongoing and constantly-changing conflicts between different religious groups and/or non-religious groups. These conflicts may be over doctrine or policy, but more commonly, in pluralistic and disestablished polities, they are fundamentally *symbolic conflicts over inclusion and representation in civil institutions and the public sphere*. These types of conflicts over representation are one of the major ways that religious pluralism challenges religious exercises and symbols in public institutions. Sectarian conflicts can be resolved in any number of ways. One group may triumph over the others, as in the anticlerical triumph over the Catholic *ancien régime* in France,[59] or the suppression of Protestant missionary activity in Latin America in the early twentieth century.[60] Or, parallel institutions organized around religious lines may develop, as in the famous Dutch "pillarization" system.[61] Or, the offensive and potentially offensive material may be excluded from public institutions, as in the contemporary United States. The dynamics of religious conflict change constantly as new political and theological conditions create new and destabilize old coalitions. More than any other process, these coalitional changes can contribute to reverses in secularization. When previously conflicting groups reach détente over points of disagreement, or when new, common goals are identified among former adversaries, new, ecumenical arrangements can develop that can have a *desecularizing* effect.

Religious conflict was (and remains) a central feature of the politics of religion and education in both countries. During the nineteenth and early twentieth centuries, religious minorities in each country (especially Catholics) were at the forefront of campaigns challenging the policies with respect to religion that had been enshrined into law by the Protestant establishment. They used a variety of methods, from local school board campaigns to legal challenges, to attempt to remove Protestant religious exercises from the public schools. Protestants in turn passed laws and waged court challenges to prevent any supports for Catholic schools to be enacted. In the twentieth century United States, religious minorities—especially Jews and Jehovah's Witnesses—were leaders in the litigation campaign to get the Supreme Court to ban those practices that symbolically excluded them from America's public schools. In Australia, a parallel charge was led by a much smaller and less sympathetic humanist group against religions in general. But when sectarian divisions faded, desecularization could also result. In Australia, ecumenical trends in the 1960s created a context where Catholics and Protestants could combine in favor of a policy that provided funding for all religious schools, as *desecularization* became a means of symbolically including Catholics in the polity.

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[59] Kuru, *Secularization and State Policies*, ch. 5.

[60] Anthony Gill. 1998. *Rendering unto Caesar: The Catholic Church and the State in Latin America.* Chicago: University of Chicago Press, p. 94.

[61] On pillarization, see Arend Lijphart. 1968. *The Politics of Accommodation.* Berkeley: University of California Press; and Harry Post. 1989. *Pillarization: An Analysis of Dutch and Belgian Society.* Aldershot, Netherlands: Avebury.

These three processes should not be understood as inevitable or unidirectional, but instead as general impulses and common conflicts that take particular historical shapes and character depending on the actors involved, their strategies, and the institutional structures in which they work themselves out. Nor should this list be read as necessarily exhaustive; other processes may play an important role. However, these three processes were central to the development of secular settlements in the United States and Australia.

Institutions as Contexts for Secularizing Processes

If secularizing processes tend to be common across different countries, the ultimate secular settlements that emerge will reflect variation in the political institutions in which those processes work themselves out. By political institutions, I mean those "formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy."[62] Institutions in and of themselves are not secularizing agents; as Kathleen Thelen and Sven Steinmo have noted, "institutions constrain and refract politics but they are never the sole 'cause' of outcomes."[63] However, in conjunction with ongoing secularizing processes, institutions contribute to the secular settlements that eventually emerge. While the precise institutions that impact the trajectory of secularization in a given country will vary, we can nevertheless make some general (though not necessarily exhaustive) statements about *how* institutions affect secularizing political processes. Briefly stated, institutions intervene to affect the course of secularization by shaping the dynamics of power, and by shaping the terms of political debate.

Institutions and the Dispersion of Power

Most fundamentally, institutions help to determine the balance of power among competing factions by *dispersing power unevenly* among them. Political institutions tend to grant greater access, leverage, and decision-making power to some groups rather than others.[64] This is sometimes by design (as in the United States Senate, which gives disproportionate power to less populous states), but this dynamic plays out even in those situations where power dynamics were not explicitly part of the organization of those institutions. For example, institutions can determine the ease with which certain parties have access to decision-makers, and thus influence on the development of laws and policies.[65] In Australia, centralized bureaucracies made it very difficult for religious minorities to gain the ear of decision-makers, a dynamic that tended to protect the Protestant religious exercises in the public schools. In the United States, by contrast, the broad dispersion of control over curriculum through thousands of local school boards made it much easier for minorities to influence policy in ways that weakened majoritarian religious exercises. A favorable institutional configuration can provide a decided advantage for one side in pitched battles over religious exercises or funding for religious schools.

At the same time, however, institutional power is not monolithic. Institutions are frequently fragmented and the fragments can work at cross-purposes; "the various pieces do not

[62] Hall and Taylor, "Political Science and the Three New Institutionalisms," p. 938.

[63] Kathleen Thelen and Sven Steinmo. 1992. "Historical Institutionalism in Comparative Politics." Pp. 1-32 in *Structuring Politics: Historical Institutionalism in Comparative Analysis*, edited by Sven Steinmo, Kathleen Thelen, and Frank Longstreth. New York: Cambridge University Press, p. 3.

[64] E.g., Theda Skocpol. 1992. *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States.* Cambridge: Belknap Press, p. 54.

[65] Weir and Skocpol, "State Structures."

necessarily fit together into a coherent, self-reinforcing, let alone functional, whole."[66] That is, institutions should be seen not simply as constraints, but also as potential resources for actors.[67] Institutions thus function in a second manner, as *alternative power bases* from which challenges to the status quo may be mounted. Although fragmentation is often seen as an impediment to policy change at the national level because it makes concerted action more difficult,[68] fragmented or decentralized political systems can also at times enable policy change at subnational levels. The multiple "venues"[69] in which political action can take place in a decentralized state can provide access routes that are unavailable in more centralized polities. In American cities with large Catholic populations, for example, Catholics were able to co-opt or capture local school boards.

However, there are other ways in which institutions can be put to use by strategic actors. Because institutions are not unchanging,[70] sometimes actors can take advantage of normative changes that have occurred within longstanding institutions, as happened when religious minorities and civil libertarians in the United States took advantage of a changed hermeneutic approach on the Supreme Court to advocate for a constitutional solution to the problem of religious instruction. At still other times, actors may work to develop or enlarge the power of the institutions they control, as did American superintendents at the end of the nineteenth century. Finally, actors may create new institutional power bases outside of the framework of the state and use them to challenge the status quo, as took place with the development of university departments of education, research institutes, and teachers' organizations in both Australia and the United States.

Institutions also *influence the development of coalitions and cooperative activity.* At times, they can prevent groups with objectively similar interests from joining forces,[71] but at other times, they can force groups with diametrically opposed interests together, compromising political strategies. For example, the rigid two-party system in the United States created, on issues of religion, a politics of strange bedfellows in the Democratic Party. Brought together by support for New Deal economic policy, the Democratic coalition of urban Catholics and largely Protestant Southerners fell apart over religious issues, as the Southern contingent blocked moves to aid Catholic schools even against the wishes of its own leadership. Without any third-party recourse, Catholics' objectives were repeatedly crushed. By contrast, the more flexible preference-voting system in Australia permits third parties to form and have some influence. As the Catholic-Labor coalition fell apart over communism during the Cold War, conservative Catholics were able to form their own third party and use their voting preferences as leverage to obtain funding for their school system.

Finally, institutions act to *suppress or enable the emergence of potential political actors.* While actors form around particular issues and interests, particular institutional configurations can create the interests around which influential groups come to mobilize. Thus, the presence of

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[66] Thelen, "Historical Institutionalism in Comparative Politics," p. 382.

[67] Kathleen Thelen. 2003. "How Institutions Evolve: Insights from Comparative Historical Analysis." Pp. 208-40 in *Comparative Historical Analysis in the Social Sciences,* edited by James Mahoney and Dietrich Rueschemeyer. New York: Cambridge University Press, p. 213.

[68] E.g., Edwin Amenta. 1998. *Bold Relief: Institutional Politics and the Origins of Modern American Social Policy.* Princeton: Princeton University Press.

[69] E.E. Schattschneider. 1960. *The Semi-Sovereign People.* New York: Holt, Reinhart, and Winston.

[70] Thelen, "How Institutions Evolve."

[71] Margaret Weir. 1992. *Politics and Jobs: The Boundaries of Employment Policy in the United States.* Princeton: Princeton University Press.

a Bill of Rights in the American Constitution encouraged the development of civil libertarians in the 1920s. By contrast, civil libertarians were a small and largely irrelevant force in Australia, where no Bill of Rights existed to spur mobilization. Civil libertarians played an important role in transforming the Supreme Court's self-perception in the early twentieth century to that of a champion of individual rights, and in litigating the cause of strict separation in the postwar era. Yet in a sense their very existence is largely attributable to institutional factors.

Institutions and the Terms of Debate

While institutions act powerfully to distribute power unevenly, their ability to shape the terms of the debate also has profound ramifications for political developments. One way that institutions do this is by *shaping actors' interests and identities.* Contra rational choice presuppositions, interests and preferences are not self-evident. Instead, as John Zysman has noted, "the definition of interests and objectives is created in institutional contexts and is not separable from them."[72] For example, the tight central controls of the Australian educational system encouraged teachers there to mobilize on an industrial, rather than a professional model. Consequently, their political activities centered nearly exclusively on salaries and improved working conditions, rather than on professional issues such as changes to the curriculum. This set of interests contributed to teachers' conservatism and lack of interest in challenging the religious exercises in the public schools for most of the twentieth century.

More broadly, institutions can also help to *shape worldviews and objectives*. Institutions reinforce public sentiments, norms, and identities over time, making certain issues salient and creating principled beliefs about what constitutes appropriate or noble behavior.[73] In the United States, repeated constitutional claims about the "separation of church and state" by Protestants in the nineteenth century created a normative ideal that structured political thought. This ideal later inspired Jews and other religious minorities in the twentieth century, who appropriated it but redefined it in according to their own, much stricter, standards.

Finally, and relatedly, institutions can *make certain policy solutions thinkable, and others unthinkable.*[74] Institutions contribute to subjective understandings of social problems in ways that shape actors' strategic responses to them.[75] To the extent that institutions help to shape both actors' interests and the broader public culture that defines appropriate and noble actions, certain policy outcomes will be rendered thinkable or unthinkable, and certain issues or concerns will be more or less likely to become deal-breakers. Thus, in the United States, between 1947 and 1961, there was considerable uncertainty about whether the Supreme Court would strike down federal policies providing federal aid to religious schools on Establishment Clause grounds. Yet constitutional issues dominated the debate, as reluctance to pass an unconstitutional law was evident even before the Supreme Court officially ruled against such supports.

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[72] John Zysman. 1994. "How Institutions Create Historically Rooted Trajectories of Growth." *Industrial and Corporate Change* 3(1): 243-83, p. 244.

[73] John L. Campbell. 2004. *Institutional Change and Globalization.* Princeton: Princeton University Press, p. 112.

[74] Elisabeth S. Clemens and James M. Cook. 1999. "Politics and Institutionalism: Explaining Durability and Change." *Annual Review of Sociology* 25: 441-66, p. 457.

[75] Brian Steensland. 2008. *The Failed Welfare Revolution: America's Struggle over Guaranteed Income Policy.* Princeton: Princeton University Press, pp. 11-13.

In the cases at hand, while all three political processes were at work, American political institutions provided a much more favorable environment for development in a more secular direction. America's political institutions created a *permeable state*, while Australian political institutions created an *insulated state.* Accordingly, religious minorities and professionalizing educators had an easier time penetrating American institutions and dislodging traditional religious exercises in the United States. Meanwhile, Catholics had an easier time using the structure of the Australian federal government to leverage ecumenical developments into a system of whole-scale funding for religious schools. Thus, while institutions were not determinative, their influence decisively shaped the trajectory of each secularizing process, and thus the ultimate secular settlement that emerged.

The Scope of These Claims

The argument presented here, while possessing some degree of generalizability, is not intended to function as a universal or general covering law. Instead, it takes its cue from recent developments in historical sociology and advances more modest claims. Inspired by advances in the study of temporality on the one hand,[76] and the influence of critical realism on the other,[77] historical sociologists have increasingly abandoned the search for "covering laws" presumed to be valid across time and space and applicable in all contexts. These are now thought to be effectively impossible to derive, since the social world constitutes an "open system" embedded in time, space, and constantly shifting cultural meanings.[78] The great variability of the world, on the one hand; and the constitutive effect of historical events on the other, means that in reality we should expect to see "contingent, conjunctural causality" rather than the action of universal social laws.[79]

Consequently, many historical sociologists now seek instead to identify particular processes and mechanisms that inhere across some, but not necessarily all, cases. As Elisabeth Clemens has written, the sociologist's charge has become to "appreciate all this complexity and yet find patterns by looking across cases, down branching paths, or within complex sequences to discern how 'complex events are codetermined by constellations of causal mechanisms.'"[80] This is done with the awareness of the possibility that broad social phenomena may have multiple variants, in which some processes and mechanisms may have stronger or weaker effects.[81] And it is done without the expectation that the same process will lead everywhere to the same outcome. Indeed, the same process, under different circumstances or in conjunction with other processes, can yield different outcomes; while the same outcome, under different circumstances or in conjunction with other processes, may be attributable to different causal processes.[82] The point

[76] E.g., William H. Sewell. 2005. *Logics of History: Social Theory and Social Transformation*. Chicago: University of Chicago Press.

[77] The critical realist tradition derives most prominently from the work of Roy Bhaskar. See Roy Bhaskar. 1978. *A Realist Theory of Science.* Brighton: Harvester Press; Roy Bhaskar. 1979. *The Possibility of Naturalism.* New York: Humanities Press. For an introductory review, see George Steinmetz. 1998. "Critical Realism and Historical Sociology: A Review Article." *Comparative Studies in Society and History* 40: 170-86.

[78] Andrew Collier. 1994. *Critical Realism: An Introduction to Roy Bhaskar's Philosophy.* New York: Verso.

[79] Steinmetz, "Critical Realism," p. 181.

[80] Elisabeth S. Clemens. 2007. "Toward a Historicized Sociology: Theorizing Events, Processes, and Emergence." *Annual Review of Sociology* 33: 527-49, p. 528.

[81] S.N. Eisenstadt. 2000. "Multiple Modernities." *Daedalus* 129: 1-30; Charles Taylor. 2004. *Modern Social Imaginaries.* Durham, NC: Duke University Press; Peter Wagner. 2004. "Modernity—One or Many?" Pp. 30-42 in *The Blackwell Companion to Sociology,* edited by Judith R. Blau. Oxford: Blackwell.

[82] Christian Smith. 2008. "Future Directions in the Sociology of Religion." *Social Forces* 86: 1561-1589, p. 1579.

of comparative analysis, therefore, is to isolate patterns in terms of contexts, processes, and mechanisms that transcend specific cases and may inform analyses elsewhere without assuming that they will apply universally; to "understand the interpenetration of general processes and local settings as played out in world historical time."[83] The goal of social scientific inquiry, then, is not universal explanation, but instead *epistemic gain*; progress occurs "through the construction of better and better explanatory models rather than the falsification of bolder and bolder theories."[84]

In this regard, this study follows the approach taken by several scholars who have examined secularization at the level of individual beliefs. David Martin has made the case for "rival patterns of secularization,"[85] while Jose Casanova has likewise urged that we use the concept of "multiple modernities" to improve our ability to understand variations in secularization and religious deprivatization in a global context.[86] Gorski's "sociopolitical conflict model" of secularization explains the "variations in secularity" that one finds in Europe and the United States in reference to religious pluralism and church-state relations,[87] while Peter Berger, Grace Davie, and Effie Fokas account for that same divergence through a multi-layered analysis of the boundedness of churches in territories, Enlightenment traditions, institutional carriers, and ethnic diversity.[88] And Christian Smith, in a recent programmatic essay, has called both for the embrace of a "multiple modernities" approach to religion, and for the explicit adoption of a critical realist approach that would allow seven seemingly contradictory hypotheses regarding religious change to "be correct in different contexts and under different conditions."[89]

This study follows the lead of these scholars in the sociology of religion and applies their approach and method to the study of secularization as a structural process. The processes and mechanisms that I identify here were decisive in the cases at hand, and that they also have potentially broad applicability to the study of the emergence of secular settlements in other countries. However, I also expect that these processes may be more or less determinative in other cases, depending on other similarities and the extent to which other processes and mechanisms might have taken on a more dominant role. Cases in the Anglo-American ambit, such as Canada and New Zealand, are likely to have the most similarities, whereas those countries with established churches, Catholic majorities, or low levels of religious pluralism, such as France or Sweden, may feature other processes that figured more prominently (such as the overthrow of *ancien regimes*, as Kuru suggests).[90]

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[83] Julia Adams, Elisabeth S. Clemens, and Ann Shola Orloff. 2005. "Introduction: Social Theory, Modernity, and the Three Waves of Historical Sociology." Pp. 1-72 in *Remaking Modernity: Politics, History, and Sociology,* edited by Julia Adams, Elisabeth S. Clemens, and Ann Shola Orloff. Durham, NC: Duke University Press, p. 66.

[84] Philip S. Gorski. 2004. "The Poverty of Deductivism: A Constructive Realist Approach to Sociological Explanation." *Sociological Methodology* 34(1): 1-33, p. 22.

[85] Martin, *On Secularization*, p. 47.

[86] Jose Casanova. 2006. "Rethinking Secularization: A Global Comparative Perspective." *Hedgehog Review* 8: 7-22.

[87] Gorski, "The Return of the Repressed," pp. 176-178.

[88] Berger et al., *Religious America.*

[89] Smith, "Future Directions," p. 1580.

[90] As several scholars have observed, secularization appears to have markedly different "Catholic" and "Protestant" variants, to say nothing of potential Muslim, Buddhist, or Hindu ones. See Casanova, "Rethinking Secularization," pp. 11-14; Martin, *General Theory of Secularization, passim*. For thoughtful attempts to extend these typologies beyond the Christian West, see Casanova, "Rethinking Secularization;" Martin, *On Secularization;* Hans Joas and Klaus Wiegandt, eds. 2009. *Secularization and the World Religions.* Liverpool: Liverpool University Press; and Alfred Stepan. 2011. "The Multiple Secularisms of Modern Democratic and Non-Democratic Regimes."

PLAN OF THE DISSERTATION

The first part of the dissertation describes the similar secular settlements that developed in each country in the mid-nineteenth century. CHAPTER TWO argues that variations in the state-building process led to similar secular settlements, but different administrative structures, in each country in the nineteenth century. In the United States, common schools developed organically in the mid-nineteenth century at the local level, often with the assistance of evangelical clergy. Accordingly, control remained decentralized, and religion was welcomed in the classroom. The development of common schools was accompanied by a sharpening of the distinction between public and private education. This distinction was pushed forward by a strong nativist campaign to deny funding for Catholic schools, which were seen as a threat to American freedom. In Australia, by contrast, national schools were created between 1850 and 1880 through the conscious displacement of an existing and inadequate system of denominational schools. The creation of public education required the elimination of subsidies to religious schools, and compromises with religious leaders over the religious content of the public schools. In Victoria, denominational opposition was so strong that "denominationalism" was cast as the enemy of education, and all religion was barred from the public schools. Elsewhere, however, compromise with Protestant leaders and more than a whiff of anti-Catholic sentiment ensured the persistence of Protestant religious instruction in public schools even as Protestant denominational schools shut down as funding dried up. In both countries, therefore, by the late nineteenth century, a durable settlement had been created that permitted religion in the public schools, and outlawed "state aid" to religious schools. Yet the administrative structure of education that resulted was centralized in Australia, and decentralized in the United States.

Part Two: State Structures and Secularization

The second part of the dissertation turns specifically to the question of how institutions affected the trajectory—and politics—of secularization in each country before World War II. CHAPTER THREE looks at the decentralized system of local control that developed in the United States, and argues that America's *permeable state structure* advanced both sectarian and professional secularizing processes before 1945. America's decentralized network of local school boards provided multiple sites where religious exercises could be challenged by political campaigns; while local control also allowed administrators, concerned with minimizing disruption and conflict, to adopt policies which excluded religious exercises in religiously diverse school districts. Progressive education, often indifferent or hostile to traditional religious education, also came early to the United States thanks to decentralized control. School superintendents (a position with no analogue in Australia) were able to use their autonomous districts to experiment with progressive reforms. And a network of independent university Schools of Education developed into centers for the promotion and dissemination of progressive education after 1890. Squeezed from below by sectarian pressures, and above by the spread of progressive education, religious exercises declined in American public schools between 1870 and 1950.

CHAPTER FOUR, by contrast, looks at the highly centralized Australian system of educational administration, and argues that Australia's *insulated state structure* inhibited professional and sectarian secularizing processes before 1960. Tight central control over staffing and curriculum essentially eliminated local influence over policy and made countermajoritarian

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Pp. 114-44 in *Rethinking Secularism,* edited by Craig Calhoun, Mark Juergensmeyer, and Jonathan VanAntwerpen. New York: Oxford University Press.

challenges by religious minorities nearly impossible. Meanwhile, centralized control over teacher training, public service regulations prohibiting criticism of government policy, and a strong inspectorate discouraged professionalization among teachers. Accordingly, religious education in public schools persisted, and even grew more widespread, until the 1960s. The partial secularization of Australian schools that occurred after 1960 was facilitated by attempts to decentralize curricular decision-making and give teachers more professional freedom. Although religious education was retained, it took a modified form that emphasized intra-denominational instruction and subjected religious exercises to an "appropriateness" standard determined by the diversity of the local community.

Part Three: Political Mobilization and Secularization

The third part of the dissertation turns to developments since World War II, and focuses on the specific campaigns that dominated each country's renegotiation of its policies regarding religion and education, and how those campaigns took advantage of openings provided by different political institutions to craft a new settlement. CHAPTER FIVE looks at the court-based renegotiation that took place in the United States, and argues that American courts were both structurally and hermeneutically more available to religious minorities and civil libertarians than Australian courts. Structurally, strong state-level constitutional provisions and an open tradition of public law that permitted taxpayers suits provided litigants with the standing to challenge majoritarian practices through the courts from the late nineteenth century onward. Hermeneutically, the gradual acceptance of legal realism and sociological jurisprudence among law professors and judges in the early twentieth century inclined the courts to see themselves as champions of individual rights tasked with weighing competing principles in the service of public policy. These changes in the Court's self-understanding and interpretive strategy increased its receptiveness to a legal campaign in favor of civil liberties and strict separation, which culminated in its 1962-1963 decisions banning devotional exercises in public schools. In Australia, by contrast, attempted lawsuits against state aid and devotional exercises were bogged down or compromised by a tradition of public law that granted standing in matters of public interest only to elected attorneys-general, the absence of state-level constitutional religious freedom provisions, and a textualist hermeneutic that predisposed the courts against deciding lawsuits based on principles.

CHAPTER SIX looks at the party-based renegotiation that took place in Australia, and makes the argument that Australia's system of preference-voting and less rigid party system created opportunities for Australian Catholics to successfully press their claims for state aid through the legislature that were not available to American Catholics. In Australia, the politics of the Cold War fractured the Labor Party alliance between Catholics and socialists, leading to the creation of a third party dominated by conservative Catholics. Australia's electoral institutions provided incentives for politicians to pursue Catholic votes through promises of support for Catholic schools. In the United States, by contrast, the rigid two-party system and the anticommunist fervor of the Cold War locked Catholics into an alliance with conservative Southerners, who were opposed to public aid, in the Democratic Party. The stalemate between Southern Democrats and Catholics held up legislation that would have granted public aid to Catholic schools between 1945 and 1962.

In the CONCLUSION, I draw together the threads from these chapters and unpack their implications both for sociological theory, and for our understanding of the dynamics of religion in American public life. I identify the benefits that accrue from close attention to the intersection

of political processes and institutions, and argue that paying closer attention to institutional factors will be essential to further comparative studies of religious change. I then examine what this comparison can tell us about religion and education more generally in the United States. I argue that an institutional lens reveals how the structure of the American state actively generates religious conflict in education, and, in so doing, has helped create America's paradoxically secular educational system. Finally, I consider what the future may hold for America's "strict separationist" settlement. Americans sympathetic to strict secularism are apt to view "separation of church and state" as a given, and assume that today's settlement reflects the way things always were, while conservatives who favor a greater role for religion in public institutions are apt to blame "activist judges" for driving God out of the schoolhouse. My analysis suggests that we should understand America's strictly secular education differently, as something both fragile and contingent, and as a settlement that reflects not simply elite action but also a populist campaign by a broad coalition of religious and nonreligious minorities. The conditions that brought the twentieth-century settlement into being have changed in recent years, however, and there are some signs that a new settlement, similar in some respects to the contemporary Australian settlement, may be emerging. As public and academic discourse alike increasingly tout an Australian-style solution to America's church-state conflicts, I consider the extent to which such a solution would fit within the American context, and what kinds of trade-offs such a system might require.

PART ONE
THE NINETEENTH CENTURY SETTLEMENT:
STATE-BUILDING AND SECULARIZATION, 1800-1880

Chapter Two

Forging the Nineteenth-Century Settlement: State-Building and Secularization in Comparative Perspective

INTRODUCTION

In the nineteenth century, both Australia and the United States transformed their educational systems. In the United States, the diverse array of private, denominational, and town schools that prevailed in the early national era were slowly gathered together into a coherent system of "common schools." In Australia, the mostly denominational system that grew out of the convict garrisons was edged out by a new system of government schools in the years after responsible government was granted to the colonies in the 1850s. By 1880, the state had grown to be the dominant player in the educational sector, providing free education to all children irrespective of class or religious background. Despite these divergent transformations, however, the two nations had also settled on remarkably similar secular settlements by 1880. These nineteenth-century settlements featured strong legal barriers against funding for denominational schools, but a remarkable openness to religious instruction in the public schools—especially instruction in a "nondenominational" Christianity heavily colored by Protestant assumptions.

This chapter explores how two nations that started from different points arrived at such similar nineteenth-century settlements. In so doing, it reveals how the state-building process contributed to the secularization of education, resulting in the nearly complete transfer of control over education from the churches and private schools to the state. In the United States, a bottom-up state-building process organically synthesized many different types of church and private schools under the auspices of local school districts, creating a thoroughly decentralized system with diffuse control. In Australia, by contrast, a top-down state-building process actively marginalized and displaced the existing system dominated by denominational schools through a series of centralizing reforms, creating a system of state-level educational ministries that controlled all aspects of education. It also reveals how these state-building processes intersected with religious conflict to shape the nineteenth-century settlement. In the United States, grassroots state-building was actively abetted by evangelical clergy, leading to a harmonious meshing of state education and Protestant moral ideals. In Australia, the active displacement of the denominational system created unstable dynamics both between the state and the churches, and among the various denominations, leading to substantial variation in the religious content of the state schools.

The primary purpose of this chapter is to set the stage for the analysis to come in the rest of the dissertation, by illustrating how the two countries developed such similar nineteenth-century settlements. I begin by examining the rise of the American common school. After providing an overview of how the educational sector was transformed between 1800 and 1880, I discuss how American schools were built from the bottom up, with the active assistance of evangelical clergy. I then discuss how religious conflict shaped the emerging settlement, focusing on how intra-Protestant battles bequeathed a "nonsectarian" template for the common schools, and how that "nonsectarian" vision affected, and was affected by, the growing Catholic population that stood beyond its original vision. The second half of the chapter shows how Australian government schools came into being. I likewise begin with an overview of changes in the educational sector between 1848 and 1880. I then show how Australian schools were built from the top down, through repeated episodes of centralization that systematically marginalized both the denominational schools and local control. Finally, I look at how religious conflict

affected the settlement, showing both how religious conflict contributed to demands to centralize education, as well as how variations in the Church of England's attitudes ultimately led to significant variations in the degree to which various states incorporated religious education into the state school curriculum.

STATE-BUILDING, RELIGION, AND EDUCATION IN AMERICA, 1800-1880

Education in the United States began the nineteenth century in a somewhat more developed state than did Australian education, thanks to the longer duration of settlement in North America. Yet although schooling was relatively more common, it was incredibly diverse and largely unorganized. Over the course of the nineteenth century, this diverse educational sector was synthesized and homogenized through the action of a grassroots campaign for "common schools." This bottom-up movement helped spread the common school throughout the rapidly expanding frontier, while helping it retain a locally derived, decentralized, district-based pattern of control. By the 1880s, this decentralized system, whose vibrant religious curriculum reflected the beliefs and assumptions of the Protestants who played a key role in the system's formation, attained a dominant position in the United States.

The Rise of the American Common School: An Overview

American Education in 1800

At the turn of the nineteenth century, American education took diverse forms, varying greatly from region to region and between the settled regions of the coast and the rural frontier. In New England, education was provided through an established system of town schools. These schools had their origins in the theocratic Puritan colonial governments of the seventeenth century, and though technically civic institutions, they were, for all intents and purposes, "Congregational parochial schools."[1] Local Congregationalist ministers led students through the catechism, served as schoolmasters, acted as "visitors" who regularly inspected the schools to ensure they had a suitable moral tone, and even occasionally examined children on the content of the Sunday sermons.[2]

Outside of New England, the provision of education was much more varied, although the churches did control substantial portions of it. Denominational schooling was the rule in the middle colonies, where established churches never prevailed, and denominational education had emerged early on as the solution to religious diversity.[3] Southern states also retained some schools maintained by the Church of England, left over from its days as the established church in those colonies; as well as a substantial number of denominational academies sponsored by Presbyterian and other Dissenting sects.[4] Religious schooling was also common in the growing cities of the eastern seaboard, where it typically took the form of charity schooling. The earliest urban charity schools were denominational, accepting only children of the sponsoring congregation. However, around 1800, charity schooling on an interdenominational basis began to

[1] Richard J. Gabel. 1937. *Public Funds for Church and Private Schools.* Washington, DC: Catholic University of America, pp. 28, 51.

[2] Gabel, *Public Funds,* pp. 55-56, 61; Mary Paul Mason. 1953. *Church-State Relationships in Education in Connecticut, 1633-1953.* Washington, DC: Catholic University of America Press, pp. 106-9.

[3] R. Freeman Butts and Lawrence A. Cremin .1953. *A History of Education in American Culture.* New York: Holt, Rinehart, and Winston, pp. 98, 111; Gabel, *Public Funds,* pp. 127-38.

[4] Sadie Bell. 1969 [1930]. *The Church, the State, and Education in Virginia.* New York: Arno Press & the New York Times, pp. 144-46, 214, 219, 242.

take off as religious citizens, many of them Quakers, sought to educate the poor who had been excluded from traditional denominational charity schools.[5]

In more rural areas, however, education had begun to develop largely free from formal control of the churches. In the rural North, as Carl Kaestle has observed, "the characteristic school was the district school, organized and controlled by a small locality and financed by some combination of property taxes, fuel contributions, tuition payments, and state aid."[6] Early district schools were held in barns, living rooms, or churches—wherever suitable shelter could be found[7]—and were often organized along "nonsectarian" Protestant lines to make them amenable to children from multiple denominations.[8] The South had its own version of the rural district school, usually known as the "old-field" school, which was typically set up on fallow land on private initiative to provide education for a group of rate-paying parents.[9] Finally, in the cities, much of the education was done on a private basis by individual teachers, such as "dame schools" run by women in their homes, classical education by trained Latin scholars, and a variety of other independent private teachers, all of which blossomed in the late colonial era and were common in the early national period.[10]

Thus, in 1800, formal church "control" of education was strong but somewhat limited. Churches obviously controlled education in their denominational schools, and the town schools in New England were also effectively under the control of the Congregational church. Still, overall, a great deal of education was not conducted under the auspices of the churches, whether it was controlled locally by groups of rural parents, or individually by private teachers.

Nevertheless, education at the turn of the nineteenth century was everywhere thoroughly religious in its content and goals. Religious and moral training was generally understood to be a key component of education, and nearly all schools—denominational and private—engaged in it. Although educational legislation was uncommon, those laws that did exist on the subject—such as Massachusetts' 1789 Education Act or the Northwest Ordinance—stressed the promotion of religion and morality as a preeminent goal of education.[11] The Old and New Testaments were common reading books in all schools, and some schools continued to use denominational catechisms.[12] Some private teachers were themselves ministers,[13] and in general the "clergy were characteristically active in charitable and educational ventures of all kinds" in this period.[14]

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[5] Carl F. Kaestle. 1983. *Pillars of the Republic: Common Schools and American Society, 1780-1860.* New York: Hill and Wang, pp. 32, 37.

[6] Kaestle, *Pillars of the Republic,* p. 13.

[7] William J. Reese. 2005. *America's Public Schools: From the Common School to "No Child Left Behind."* Baltimore: Johns Hopkins University Press, p. 29.

[8] James Pyle Wickersham. 1886. *A History of Education in Pennsylvania: Private and Public, Elementary and Higher, from the Time the Swedes Settled on the Delaware to the Present Day.* Lancaster, PA: Inquirer Publishing Company, p. 185.

[9] Kaestle, *Pillars of the Republic,* p. 13.

[10] Butts and Cremin, *History of Education,* p. 113.

[11] Noah Feldman. 2005. *Divided by God: America's Church-State Problem—and What We Should Do about It.* New York: Farrar, Straus, & Giroux, p. 57; Leo Pfeffer. 1953. *Church, State, and Freedom.* Boston: Beacon Press, p. 282.

[12] Kaestle, *Pillars of the Republic,* p. 17.

[13] Butts and Cremin, *History of Education,* p. 113.

[14] Lawrence A. Cremin. 1980. *American Education: The National Experience, 1783-1876.* New York: Harper & Row, p. 66.

The Rise of State Schooling, 1800-1870

Between 1800 and 1870, but especially between 1840 and 1860, control of education in the United States shifted decisively to the state. This period saw the rise to dominance of the "common school," an educational agency whose control and finance were entrusted to public agencies, rather than any church or private group, leaving the denominational and private sector, which previously had dominated education, in only a residual position. This process was gradual and varied, as the developing common school absorbed, simplified, and systematized the various educational institutions that prevailed at the beginning of the nineteenth century. As historian Timothy Smith has written, the American "common school," which had emerged by 1850 and which was wholly dominant by 1880, was built "in every state and community upon previous efforts of a private and denominational character…[and] stemmed from efforts to harmonize these conflicting traditions."[15] Throughout the North,[16] however, the emergence of state education led to the dramatic sharpening of the line between private and public education—a line which had frequently been blurry in the early nineteenth century--and to the restriction of public financing to schools under public auspices.[17] And it also led to the growth of legislation, bureaucracies, and ultimately constitutional provisions that more clearly regulated the form and content of education under public control.[18]

In New England, where there was the strongest tradition of public education, the town schools shifted completely from ecclesiastical to civic control after the disestablishment of the Congregational Church in the early nineteenth century.[19] In Massachusetts, the state legislature passed a law in 1827 forbidding schools from using books "calculated to favor any particular religious sect or tenet," the first law of its kind in the nation.[20] Other vestiges of clerical influence faded away more slowly; in Connecticut, the use of the short orthodox catechism had largely ceased by the 1820s, and ministers stopped exercising their inspectorial roles as "visitors" by the 1860s.[21] By the Civil War, the town schools of New England had become wholly civic, rather than hybrid civic-ecclesiastical, institutions. Similarly, the interdenominational charity schools in the cities became the backbone of urban public schooling. In many cities, including New York, Philadelphia, and Baltimore, the charity schools literally became the public schools,

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[15] Timothy L. Smith. 1970. "Parochial Education and American Culture." Pp. 192-211 in *History and Education: The Educational Uses of the Past,* edited by Paul Nash. New York: Random House, pp. 194-95.

[16] State schooling did not develop in the South in the antebellum period, and had to be imposed by the North during Reconstruction. The South resisted the common-school movement for a number of reasons, including a greater unwillingness to assess taxes for education, but also, prominently, because the common school was seen as a Northern institution—and it was therefore opposed for this reason. Only in Southern port cities like New Orleans, Mobile, and Charleston, which had stronger ties to Northern cities, did free public schools develop before 1870. On the Southern exception more generally, see Kaestle, *Pillars of the Republic,* pp. 192-216; on the development of education in Southern port cities, see Joseph W. Newman. 1990. "Antebellum School Reform in the Port Cities of the Deep South." Pp. 17-35 in *Southern Cities, Southern Schools: Public Education in the Urban South,* edited by David N. Plank and Rick Ginsberg. Westport, CT: Greenwood Press, pp. 17-19.

[17] See generally Lloyd P. Jorgenson. 1987. *The State and the Non-Public School, 1825-1925*. Columbia: University of Missouri Press.

[18] David Tyack, Thomas James, and Aaron Benavot. 1987. *Law and the Shaping of Public Education, 1785-1954.* Madison: University of Wisconsin Press, pp. 22, 55-57.

[19] This occurred in 1818 in Connecticut, 1819 in New Hampshire, and 1833 in Massachusetts.

[20] Quoted in Raymond B. Culver. 1929. *Horace Mann and Religion in the Massachusetts Public Schools.* New Haven: Yale University Press, p. 22.

[21] Mason, *Church-State Relationships in Education in Connecticut,* pp. 106-9, 113.

initially expanding to take in non-indigent children, and eventually gaining a monopoly on public funding in the cities.[22]

However, the greatest success of the common school movement was the creation of massive numbers of new schools in the Midwest, which had become, by 1870, the most heavily schooled section of the country.[23] The movement to build common schools coincided with the settlement of the Midwest, to the advantage of educational reformers. Because there were fewer private, parochial, or subscription schools on the frontier, common school advocates typically faced an open field with hardly any opposition from vested interests.[24] As I discuss in depth below, these Midwestern schools largely developed along the same locally-inaugurated, district-school pattern prevalent in the rural Northeast, under the leadership of evangelical Protestant clergy. In both the new Midwest and the old Northeast, the quasi-public district schools became free and publicly controlled in the decades before the Civil War. Most northern states abolished school fees (or "rate bills") in the 1850s and 1860s, and passed laws permitting local taxation for educational purposes. These moves, in turn, greatly increased the appeal of the new public schools, eventually crowding out all but the elite private schools (and the Catholic schools, as discussed below).[25] Many denominational schools—the Protestant ones, at least—were simply absorbed into the evolving common school system.[26]

Thus, by 1880, most Protestant denominational education had shuttered or been absorbed, private education had been largely squeezed out of the market by the provision of free public education, and a system of state schooling had become dominant across the United States. The only major countervailing trend to this pattern was the expansion of Catholic denominational schooling, which began to grow in earnest starting in the 1840s. As I discuss below, Catholics perceived the emerging state system as fundamentally Protestant and hostile to their interests, and set about building a network of parochial schools that would permit them to protect their parishioners.

Evangelical Protestantism and State-Building from the Bottom Up

Local Initiative and the Rise of the Common School

The rise of state education in the United States was a bottom-up phenomenon. The campaign to build common schools in the decades before the Civil War, in the words of two prominent American historians of education, was truly a "grass-roots movement," characterized by "local [communities] setting out to build a school with their own hands, then sharing the cost of employing a teacher for their children, and then supervising the course of this education."[27]

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[22] Kaestle, *Pillars of the Republic,* pp. 52, 57-59. See also David L. Angus. 1990. "The Origins of Urban Schools in Comparative Perspective." Pp. 59-78 in *Southern Cities, Southern Schools: Public Education in the Urban South,* edited by David N. Plank and Rick Ginsberg. Westport, CT: Greenwood Press, p. 66.

[23] David Tyack and Elizabeth Hansot. 1982. *Managers of Virtue: Public School Leadership in America, 1820-1980.* New York: Basic Books, p. 32.

[24] Robert G. Bone. 1957. "Education in Illinois before 1857." *Journal of the Illinois State Historical* Society 50: 119-140, p. 128.

[25] Kaestle, *Pillars of the Republic,* p. 117. In Illinois, for example, the passage of a law making public schools free (and restricting funding to non-public schools) in 1855 had a dramatic effect on the educational sector; within two years two-thirds of private schools in that state had ceased to exist or had become common schools. See Daniel W. Kucera. 1955. *Church-State Relationships in Education in Illinois.* Washington DC: Catholic University of America Press, pp. 77-78.

[26] Gabel, *Public Funds,* pp. 375-76, 381.

[27] Butts and Cremin, *History of Education,* p. 253.

Despite considerable action at the state level through the passage of legislation and constitutional provisions, and the development of state offices of education, formal state action typically meant less than local action to the creation of schools thanks to the weak supervisory powers and inconsistent support that legislation granted state officers, particularly before 1850.[28] Thus, the development of common schools in the United States was preeminently a local phenomenon, created through a groundswell of support in thousands of towns and neighborhoods across the country.[29]

In its local organization, the American common school "was born in the countryside and then moved to the city."[30] The district system of local control developed in the rural North in the late eighteenth century, as population dispersed outward from the early colonial towns, and local neighborhoods began to demand greater control over their schools.[31] Under the district system, schools were created locally and incorporated into the system as districts. In Pennsylvania, for instance, the typical pattern was for a group of neighbors to come together and form a committee or board of trustees who would be entrusted with the creation of a local neighborhood school. The trustees would select a site for the school, erect a schoolhouse (often using donated land and volunteer labor), identify school-aged children, fix tuition, employ a teacher, and otherwise manage the school. Trustees would then be elected at annual meetings of those who patronized the school.[32]

The district system proved immensely popular, and it was ultimately extended to the new frontier states of the West.[33] It also proved incredibly successful: in the early nineteenth century enrollment rates in rural parts of Massachusetts and New York were higher than enrollment rates in urban areas.[34] Localized control came later to the cities, often in the form of ward schools, as occurred in New York City after the charity schools were fully incorporated into the state system in the 1840s.[35] The local practice of creating school districts usually preceded the formal recognition of districts in law,[36] but the formal attribution of taxing and supervisory powers to local districts typically had a facilitating feedback effect on the district pattern.[37] Local districts were given nearly complete control over curriculum, staffing, and finance.

Building with God: Evangelical Clergy and the Common School Crusade

The bottom-up, grassroots development of the American common school was facilitated by a widespread, "self-conscious reform movement" of common-school leaders, who

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[28] Cremin, *American Education: The National Experience,* pp. 171-74.

[29] The spread of rural public schools in the North and West continued to retain the features of a nation-building social movement into the early twentieth century. See John W. Meyer, David Tyack, Joane Nagel, and Audri Gordon. 1979. "Public Education as Nation-Building in America: Enrollments and Bureaucratization in the American States, 1870-1930." *American Journal of Sociology* 85(3): 591-613, p. 592.

[30] Donald H. Parkerson and Jo Ann Parkerson. 1998. *The Emergence of the Common School in the U.S. Countryside.* Lewiston, NY: Edwin Mellen Press, p. 20.

[31] Kaestle, *Pillars of the Republic,* pp. 13, 26.

[32] Wickersham, *History of Education in Pennsylvania,* p. 181.

[33] Kaestle, *Pillars of the Republic,* pp. 111-12.

[34] Kaestle, *Pillars of the Republic,* pp. 24-25.

[35] Joan DelFattore. 2004. *The Fourth R: Conflicts over Religion in America's Public Schools.* New Haven: Yale University Press, p. 29.

[36] Kaestle, *Pillars of the Republic,* pp. 13, 26-27.

[37] Bone, "Education in Illinois," pp. 120-21, 125, 131; Benjamin Justice. 2005. *The War That Wasn't: Religious Conflict and Compromise in the Common Schools of New York State, 1865-1900.* Albany: State University of New York Press, p. 29.

"communicated frequently, sought the support of other public figures, imitated the latest educational innovations of popular reformers elsewhere, and devised means for the popular dissemination of their ideas."[38] Their goal, which was successfully attained in the North by 1860, was a system of publicly controlled, free, taxpayer-supported schools that instructed children in the basic tenets of Christian morality and republican civic virtues.[39] The common-school movement drew from men and women from diverse religious and political backgrounds, including many liberal Christians such as the Unitarian Horace Mann in Massachusetts.[40] However, by far the most important contributors to the common-school movement, especially in the Midwest, were evangelical Protestants.

Evangelical Protestantism enjoyed a remarkable efflorescence in the United States at the beginning of the nineteenth century, in a period generally referred to as the Second Great Awakening. Between about 1800 and 1850, American religiosity grew and diversified, expanding both in the settled states of the East and the new states of the Western frontier.[41] Out of this great religious awakening emerged a new, assertive, interdenominational form of evangelical Protestantism, whose theology synthesized and drew upon Presbyterian, Methodist, Baptist, Congregationalist, and Disciples evangelism as it had developed on the frontier.[42] This new evangelical theology was pragmatic and interdenominational, where "the goal was not right faith, but unity in a common task, becoming co-workers in building the kingdom of God."[43]

Thanks to the Second Great Awakening, as educational historian David Tyack has written, "Almost everywhere, Protestant ministers and prominent churchmen were in the forefront of the common school crusade and took a proprietary interest in the institutions they helped to build."[44] Indeed they styled their activity a "crusade" and used the evangelical innovation of nondenominational voluntary societies as central vehicles for their work.[45] Evangelicals understood their task as one of building the kingdom of God, and education formed a central piece of that program. They therefore advocated for common schools alongside an entire complex of educational institutions, including benevolent societies, magazines, colleges, seminaries, and churches, that they hoped would civilize the frontier and usher in the millennium.[46] Thus, in the minds of evangelical educational reformers of the early nineteenth century, common schools were a key means through which "the millennium was being institutionalized."[47]

Evangelicals contributed to the common school crusade in two primary ways. The first was by providing leadership and exhortation. Lyman Beecher, Congregationalist minister and

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[38] Kaestle, *Pillars of the Republic,* p. 105.

[39] David B. Tyack, ed. 1967. *Turning Points in American Educational History.* Waltham, MA: Blaisdell Publishing Company, p. 125.

[40] James W. Fraser. 1985. *Pedagogue for God's Kingdom: Lyman Beecher and the Second Great Awakening.* Lanham, MD: University Press of America, pp. 185-6.

[41] Roger Finke and Rodney Stark. 2005 [1992]. *The Churching of America, 1776-2005: Winners and Losers in Our Religious Economy.* Second ed. New Brunswick, NJ: Rutgers University Press, pp. 22-23, 55-60.

[42] Sydney E. Ahlstrom. 2004 [1972]. *A Religious History of the American People.* Second ed. New Haven: Yale University Press, p. 470; Mark Noll. 2002. *America's God: From Jonathan Edwards to Abraham Lincoln.* New York: Oxford University Press, *passim.*

[43] Fraser, *Pedagogue for God's Kingdom,* p. 28.

[44] David B. Tyack. 1970. "Onward Christian Soldiers: Religion in the American Common School." Pp. 212-255 in *History and Education: The Educational Uses of the Past,* edited by Paul Nash. New York: Random House, p. 217.

[45] Cremin, *American Education: The National Experience,* p. 176; Kaestle, *Pillars of the Republic,* p. 105.

[46] Fraser, *Pedagogue for God's Kingdom,* pp. 5-6.

[47] Fraser, *Pedagogue for God's Kingdom,* p. 100.

President of Lane Theological Seminary in Cincinnati, was among the earliest and most vocal advocates of common schooling. In his 1835 address, *A Plea for the West,* Beecher declared, "The thing required for the civil and religious prosperity of the West, is universal education, and moral culture, by institutions commensurate to that result—the all pervading influence of schools, and colleges, and seminaries, and pastors, and churches. When the West is well supplied in this respect, though there may be great relative defects, there will be, as we believe, the stamina and vitality of a perpetual civil and religious prosperity."[48] Although Beecher mainly exhorted his fellow Protestants to build up universal education, others took a more direct role in leading the crusade. Clergy in Wisconsin acted as educational leaders, principals, and superintendents,[49] while the public schools of Oregon largely owe their existence to the work of the Reverend George Atkinson of the American Home Missionary Society (AHMS).[50] Many of the first state superintendents, both on the frontier and in the East, were clergymen;[51] indeed, two of the first three state superintendents in Kentucky ultimately went on to become Protestant Bishops.[52]

The second contribution of evangelical Protestants was in the actual construction of new schools on the frontier. Protestant voluntary associations, including the AHMS and the National Board of Popular Education (NBPE), were largely responsible for peopling the frontier with capable teachers. Among the first of these waves was the "Yale Band" of ministers sent out by the AHMS in the late 1820s, many of whom became frontier schoolmasters after seeing the neglected state of education in southern Illinois.[53] In the 1840s, the NBPE recruited and trained Christian women in the East, then sent them to the western states to open schools.[54] Ministers and their wives were essential to the spread of public education in the western states in the 1830s and 1840s, since public tax laws did not go into effect until around midcentury, and ministers and their wives were among the few willing to accept the low salaries and hardship conditions associated with frontier schools.[55]

The contribution of the Methodist Church, one of the most rapidly growing evangelical denominations in the early nineteenth century, deserves special mention. Methodists conducted countless religious revivals throughout the country, and used the energy of these revivals to establish schools and other educational organizations—a technique that other denominations and communities soon came to mimic.[56] Not all of these schools were common schools, however; a good number of them were Sunday schools. Especially before 1850, the distinction between Sunday school and common school was rather fluid, often featuring the same teacher, building, and even curriculum in both types of school.[57] Accordingly, along the frontier, "the Sunday

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[48] Lyman Beecher. 1835. *A Plea for the West.* Cincinnati: Truman & Smith, pp. 9-10, 13.

[49] Lloyd P. Jorgenson. 1956. *The Founding of Public Education in Wisconsin.* Madison: State Historical Society of Wisconsin, pp. 122-24.

[50] David Tyack. 1966. "The Kingdom of God and the Common School." *Harvard Educational Review* 36: 447-69, p. 456.

[51] Jorgenson, *State and the Non-Public School,* p. 41; Tyack, "Kingdom of God," pp. 454-55.

[52] Gabel, *Public Funds,* pp. 419n.69.

[53] Timothy L. Smith. 1967. "Protestant Schooling and American Nationality, 1800-1850." *Journal of American History* 53(4): 679-95, p. 690.

[54] James W. Fraser. 1999. *Between Church and State: Religion and Public Education in a Multicultural America.* New York: St. Martin's Press, pp. 37-38.

[55] Smith, "Protestant Schooling and American Nationality," p. 692.

[56] Cremin, *American Education: The National Experience*, pp. 55-56; see also Smith, "Protestant Schooling and American Nationality," p. 693.

[57] Tyack, "Kingdom of God," p. 460.

school served first as forerunner to the common school, and then as its religious partner in a dual pattern."[58] The Indiana Sunday School Union declared in 1827, "Let Sabbath schools be established wherever it is practicable. They will answer the double purpose of paving the way for the common schools, and of serving as a substitute till they are generally formed."[59] Through the creation of new schools, therefore, whether common or Sunday, Methodist ministers and those of other denominations helped literally build the public schools of the Midwest.

Protestantism and the Common School Curriculum

The central role played by evangelical Protestants in the development of the American common school meant that "a vast spiritualizing of the educational institutions" took place.[60] Although the churches did not directly control the new common schools, they nevertheless helped to mold them in their vision, thereby enabling religion to retain substantial influence in the curriculum. Common-school advocates advanced what historian Carl Kaestle has termed a "Native Protestant ideology," a mix of republican and evangelical Protestant values that united behind the desire to assimilate and integrate a diverse population into a common political culture.[61] As historian Robert Handy has described it, "Protestant leaders from many denominations operated on the assumption that American civilization would remain a Christian one, and that its Christian (which for them always meant Protestant) character would become even more pronounced…True Christian churches (i.e., evangelical Protestant churches) and Christian civilization with its developing patterns of freedom and democracy would go on from strength to strength together, mutually reinforcing one another."[62]

To these Protestant educational leaders, the essential fit between American culture, republican government, and Protestant Christianity needed to be aggressively buttressed through the new common schools.[63] Protestant educational leaders, therefore, all agreed that religious and moral training should be an essential aspect of the curriculum of the common schools. At the same time, however, there was the question of how to integrate religious instruction into schools that were growing more religiously diverse by the day. The solution that eventually emerged was "nonsectarian" religious education.[64] Nonsectarian religious education was most forcefully advocated by Horace Mann, the first Superintendent of Schools in Massachusetts. As discussed above, Massachusetts in 1827 had passed a law forbidding the use of books "calculated to favor

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[58] William B. Kennedy. 1966. *The Shaping of Protestant Education.* New York: Association Press, p. 21.

[59] Quoted in Cremin, *American Education: The National Experience,* p. 66.

[60] Cremin, *American Education: The National Experience,* p. 63.

[61] Kaestle, *Pillars of the Republic*, pp. ix-x, 76; see also Noll, *America's God, passim;* and Tyack, *Turning Points,* pp. 123-24. The "common" character of the common schools was an essential aspect of this; proponents sought to use the schools to mold Americans of many religious and ethnic backgrounds into one people. As Calvin Stowe declared in 1835, educating new immigrants was essential, since "To sustain an extended republic like our own, there must be a *national* feeling, a national assimilation." It was taken for granted that Protestantism was a key feature of American culture into which immigrants were to be assimilated, and that Protestant moral and religious instruction was an appropriate means of doing so. See Calvin Stowe. 1836. "On the Education of Emigrants." *Transactions of the Fifth Annual Meeting of the Western Literary Institute and College of Professional Teachers,* October 1835. Cincinnati: Josiah Drake, pp. 68-69.

[62] Quoted in Robert T. Handy. 1984 [1971]. *A Christian America: Protestant Hopes and Historical Realities.* 2nd edition. New York: Oxford University Press, p. 27.

[63] Smith, "Protestant Schooling and American Nationality," p. 680.

[64] Although, as I discuss below, "nonsectarianism" eventually largely became a cudgel to be used against Catholics, in the 1820s and 1830s it was primarily used as a solution to divisions among Protestant churches. See Noah Feldman. 2002. "Non-sectarianism Reconsidered." *Journal of Law and* Politics 18(1): 65-117, pp. 67, 78.

any particular religious sect or tenet," largely in response to a schism between Unitarians and Trinitarians in the Congregationalist Church.[65] Mann was charged with interpreting this law, and he did so by refusing to permit any books into the schools that were "sectarian," which he defined as containing any theological point "which belongs to a *part,* not to the *whole.*"[66] Instead, Mann argued, schools should provide religious education built around the reading of the Bible. By allowing the Bible to "*speak for itself*,"[67] without comment, he thought schools could teach a common religion—i.e., "all the doctrines which the Bible really contains," without any of the "many inventions" that the denominations used to "overlay the text."[68] By making the Bible the centerpiece of religious education, Mann argued that the schools could provide "a religious education for the young upon the most broad and general grounds, purposely leaving it to every individual to add for himself those auxiliary arguments which may result from his own peculiar views of religious truth" through supplementary learning in church, Sunday school, and family.[69]

Mann's faith in the unifying power of Bible reading reflected his somewhat distinctive Unitarian views,[70] but the "nonsectarian" solution of Bible reading without note or comment that he advocated had powerful resonances with developments among evangelicals on the frontier. Already, the theological developments of the Second Great Awakening had weakened the power of theological and doctrinal distinctions and encouraged interdenominational cooperation among Protestants.[71] Charles Finney, perhaps the greatest revivalist of the era, advised his converts not "to dwell on sectarian distinctions, or to be sticklish about sectarian points."[72] In practical terms, too, pioneering educators on the frontier had to teach a broad, nonsectarian religion, in regions where the population was typically small and denominational diversity relatively wide.[73] Because minister-educators on the frontier were responsible for growing their own schools just as they were responsible for building their own congregations, they typically developed nondenominational practices that would appeal to all evangelical families in the area.[74]

By the 1840s, therefore, something of a consensus had developed among evangelical and liberal Protestants alike, that Bible reading should be the central, "nonsectarian" pillar of religious education in the common school.[75] Calvin Stowe, son-in-law of Lyman Beecher and common-school advocate in Ohio, declared in 1844 that "The Bible, the whole Bible, and nothing but the Bible, without note or comment, must be taken as the text-book of religious instruction. Instruction in those points which divide the sects from each other must be confined

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[65] Culver, *Horace Mann and Religion,* pp. 22-28.

[66] Horace Mann, letter to the Editor of the "Witness and Advocate," 30 March 1844. Pp. 18-21 in Horace Mann and Edward A. Newton. 1844. *The Common School Controversy.* Boston: J.N. Bradley & Co, p. 20.

[67] Horace Mann. 1891 [1848]. "Report for 1848." Pp. 222-340 in *Life and Works of Horace Mann.* Vol. IV, *Annual Reports of the Secretary of the Board of Education of Massachusetts for the Years 1845-1848*. Boston: Lee and Shepard Publishers, p. 312

[68] Mann, "Report for 1848," p. 335.

[69] Mann, "Report for 1848," p. 296-97.

[70] Robert Michaelsen. 1970. *Piety in the Public School: Trends and Issues in the Relationship between Religion and the Public School in the United States.* New York: MacMillan, p. 69.

[71] Jorgenson, *State and the Non-Public School,* pp. 24-26.

[72] Quoted in Jorgenson, *State and the Non-Public School,* p. 25.

[73] Smith, "Protestant Schooling and American Nationality," p. 688.

[74] Tyack, "Kingdom of God," pp. 454-55, 463.

[75] Michaelsen, *Piety in the Public School,* pp. 78-79. As Charles Glenn notes, Mann's understanding of "nonsectarian" differed in substantive ways (*viz.*, it typically excluded more) from the understanding of most evangelicals, but this distinction was inconsequential in the realm of Bible reading. See Charles Leslie Glenn, Jr. 1988. *The Myth of the Common School.* Amherst: University of Massachusetts Press, pp. 195-96.

to the family and the Sunday school."[76] Likewise, Rev. Samuel Lewis, the first Superintendent of Schools in Ohio, agreed that "the utmost care should be taken to inculcate sound principles of Christian morality. No creed or catechism of any sect should be introduced into our schools; there is a broad, common ground, where all Christians and lovers of virtue meet."[77] By 1860, doctrinal religious instruction had almost totally disappeared from the common schools, having been replaced with Bible reading, moral instruction, and occasional prayers.[78] For the remainder of the nineteenth century, Bible reading became the central, if not universal, religious practice in American public schools, especially in the Northeast and, later on, the South.[79]

In addition to Bible reading, the typical nineteenth-century American common school featured strongly moralistic and Protestant subject matter. Common school students read from books steeped in Protestant religion and morality. The bestselling books, by far, were the McGuffey Readers, written by an evangelical minister, and estimated to have sold over 122 million copies between 1836 and 1920.[80] The McGuffey readers "read more like a theology text than a schoolbook,"[81] featured repeated references to God, and were sprinkled liberally throughout with Psalms and other devotional texts.[82] Other schoolbooks featured similar content; whether using the McGuffey Readers or not, the typical nineteenth century classroom read from providential histories, theistic science books, and nationalistic geography texts that sang the praises of Protestant countries.[83] These texts were also aggressively and unmistakably Protestant. Indeed, in her study of nineteenth-century textbooks, Ruth Miller Elson observed, "No theme in these schoolbooks before 1870 is more universal than anti-Catholicism."[84] Thus, the curriculum of the nineteenth century common school was steeped in evangelical Protestantism above and beyond the regular devotional reading of the Bible.

Religious Conflict, "Nonsectarianism," and the Consolidation of Public Finance

"Nonsectarianism" and the Common School

Despite the strong synergies between state-building and religious activism, the development of common schools was nevertheless shot through with religious conflict. Although school reformers broadly agreed that the common schools should be "nonsectarian," the question of how exactly that should be accomplished, and how the term itself should be defined, was a point of substantial controversy and struggle throughout the nineteenth century. Indeed, some of the earliest battles over the term took place between liberal and evangelical Protestants. The nonsectarian education advocated by Horace Mann, for instance, was roundly criticized by more

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[76] Quoted in Fraser, *Between Church and State,* p. 36.

[77] Quoted in Fraser, *Between Church and State,* p. 38.

[78] William Kailer Dunn. 1958. *What Happened to Religious Education? The Decline of Religious Teaching in the Public Elementary School, 1776-1861.* Baltimore: The Johns Hopkins Press, p. 236.

[79] R. Laurence Moore. 2000. "Bible Reading and Nonsectarian Schooling: The Failure of Religious Instruction in Nineteenth-Century Public Education." *Journal of American History* 86(4): 1581-99, pp. 1583, 1586. As Moore notes, Bible reading never became as firmly established in the West, however; see also Tyack, "Onward Christian Soldiers," p. 250n.38.

[80] Fraser, *Pedagogue for God's Kingdom,* p. 189.

[81] Warren A. Nord. 1995. *Religion and American Education: Rethinking a National Dilemma.* Chapel Hill: University of North Carolina Press, p. 67.

[82] Fraser, *Between Church and State,* p. 42.

[83] William J. Reese. 2007. *History, Education, and the Schools.* New York: Palgrave MacMillan, pp. 84-88.

[84] Ruth Miller Elson. 1964. *Guardians of Tradition: American Schoolbooks of the Nineteenth Century.* Lincoln: University of Nebraska Press, p. 53.

conservative Protestants as being essentially irreligious. In 1838, Mann was publicly attacked by Frederick Packard, Secretary of the American Sunday School Union, one of the many evangelical voluntary associations promoting education, for Mann's refusal to permit several of the association's preferred reading books into Massachusetts school libraries. Packard believed that the books, which had been approved by a committee of Methodists, Baptists, Episcopalians, and Presbyterians, were sufficiently nonsectarian to pass muster under that state's 1829 law, but Mann demurred, arguing that the books' references to a judgment day and the possibility of eternal damnation, among others, would offend the beliefs of Unitarians and Universalists.[85] To Packard, this understanding of nonsectarianism essentially made the schools irreligious; in a letter to Mann, he acidly inquired, "What 'doctrines of revealed religion' will remain, to be connected with a system of public instruction, after subtracting those about which there are conflicting creeds among men?"[86] Mann faced similar criticism from orthodox Congregationalists and Episcopalians,[87] yet he remained steadfast in his position that "nonsectarian" Bible reading was permissible, while "sectarian" instruction (such as that proposed by Packard and other orthodox Christians) was not.

Indeed, the controversies in Massachusetts reflected a broader trend, in which the term "nonsectarian" came increasingly to be associated with the common-school ideal, and charges of "sectarianism" were used by common-school advocates to marginalize their opponents and solidify their position in the educational domain. One of the earliest instances of this actually took place before the emergence of the common-school crusade, in the early 1820s in New York City. There, the Free School Society of New York had been founded in 1805 to provide nondenominational education to poor children, and had begun to receive an annual grant from the state to conduct their work.[88] In 1820, however, the Bethel Baptist Church requested support from the state to expand its charity schooling system into new neighborhoods. In 1822, concerned at the prospect that Bethel might eat into their subsidies and enrolments, the Society petitioned the legislature to end grants to the Baptists, contrasting the "careful preclusion of all sectarian principles" in their schools with the inherent sectarianism of the Bethel schools.[89] Arguing that the clergy should not control public money, Society spokesmen expressed fear that doing so would lead inexorably to the collapse of common schools in favor of a denominational system, and pleaded that the state must "save untouched the sacred principle of our constitution, that church and state shall not be united."[90] In 1824, the New York City Common Council ruled in favor of the Free School Society, declaring that henceforth no public funds would be expended on denominational schools.[91]

Thus, for the first time, did the Free School Society gain a monopoly on public funding by using "sectarianism" as a weapon. Yet it would not be the last time. Increasingly, religion became a key attribute in determining which schools would become eligible to receive public moneys, and which ones would be excluded. Well into the nineteenth century, the distinction between public and private education was very fluid, with many private, religious, and even

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[85] Culver, *Horace Mann and Religion,* pp. 71-80.

[86] Letter, Frederick J. Packard to Horace Mann, 19 September 1838. Reprinted as pp. 270-84 in Culver, *Horace Mann and Religion,* p. 278.

[87] Glenn, *Myth of the Common School,* pp. 180-96.

[88] Smith, "Protestant Schooling and American Nationality," pp. 681-82.

[89] Quoted in Smith, "Protestant Schooling and American Nationality," pp. 685-86.

[90] Quoted in John Webb Pratt. 1967. *Religion, Politics, and Diversity: The Church-State Theme in New York History.* Ithaca, NY: Cornell University Press, p. 167.

[91] Pratt, *Religion, Politics, and Diversity,* p. 167.

Sunday schools receiving funding.[92] State aid for private (including religious) schools actually increased until about 1820, before slowly declining through the Civil War.[93] As Lloyd Jorgenson has written, however, "By the mid-nineteenth century it had become important to differentiate between 'public' and 'non-public' schools because the former were increasingly considered the only legitimate recipients of public financial support."[94] While private, nondenominational schools were similarly excluded from the public purse, the most vitriolic battles took place over funding for religious schools, and in these battles the degree to which those schools were "sectarian," and the public schools "nonsectarian," became a key point of contention that helped to define the nascent public/private divide.

"Nonsectarianism" Challenged: Catholics and the Protestant Matrix

Part of the reason that these battles were so fierce was that, after 1840, the notion of "sectarianism" became increasingly intertwined with anti-Catholicism. The arrival of massive numbers of Irish immigrants in the 1830s and 1840s created a substantial Catholic population in the United States for the first time,[95] and the controversies between Catholics and Protestants that had haunted Europe since the Reformation came along with them. Faced with a new, common enemy, Protestants set aside any lingering differences and united behind "nonsectarian" education. Although Protestants found the "nonsectarian" education developing in the emerging common schools to be inoffensive, if imperfect, Catholics found the common school curriculum to be objectionably Protestant and, in fact, "sectarian."

Catholic objections were multiple: in addition to opposing the Protestant texts used in the schools which, as discussed above, cast aspersions on Catholics and Catholic countries, Catholics also objected to "nonsectarian" Bible reading. The Bible typically used was the King James Version (KJV), a version that Catholics contended represented an inaccurate and incomplete translation, and was in fact "a version of the Bible made under sectarian bias."[96] On a still deeper level, Catholics also objected to the very idea that children could be allowed to read the Bible "without note or comment" as common school advocates recommended. For Catholics, the idea that students could be allowed to let the Bible "speak for itself" and develop their own interpretation was an inescapably Protestant idea. "The Catholic Church tells her children that they must be taught their religion by AUTHORITY," wrote John Power, a Catholic Vicar-General in New York City, in 1840. "The Sects say, read the Bible, judge for yourselves. The bible is read in the public schools, the children are allowed to judge for themselves. The Protestant principle is therefore acted upon, slily inculcated, and the schools are Sectarian."[97]

Catholics, therefore, took a hard line against religious exercises in the public school. In 1840, their Fourth Provincial Council issued a decree that directed pastors to prevent Catholic children from reading the Protestant Bible or participating in Protestant hymns and prayers, and urged them to resist Protestant devotionals by any available means, including lobbying

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[92] See generally Gabel, *Public Funds.*

[93] Jorgenson, *State and the Non-Public School,* p. 4.

[94] Jorgenson *State and the Non-Public School,* p. 7.

[95] Jay P. Dolan. 1985. *The American Catholic Experience: A History from Colonial Times to the Present.* Garden City, NY: Doubleday & Company, pp. 128-29.

[96] Pastoral Letter of 1843, reproduced in Peter Guilday, ed. 1923. *The National Pastorals of the American Hierarchy (1792-1919)*. Washington, D.C.: National Catholic Welfare Council, p. 152.

[97] *Freeman's Journal,* 11 July 1840, quoted in Diane Ravitch. 1988 [1974]. *The Great School Wars: A History of the New York City Public Schools.* New York: Basic Books, p. 45.

authorities to eliminate the offensive practices.[98] In 1843, Catholic bishops again expressed concern about "efforts made to poison the fountain of public education, by giving it a sectarian hue," and declared that parents should "see that no interference with the faith of their children be used in public schools, and no attempt made to induce conformity in any thing contrary to the laws of the Catholic Church."[99] As their numbers grew, Catholics became increasingly willing to speak out against the "nonsectarian" religion in the common schools.

One of the first, and most consequential, such conflicts over religion and the public schools took place in New York City in 1840.[100] In that year, Catholic Bishop John Hughes petitioned the Common Council for a share of the school fund for Catholic schools, arguing that the teaching in the public schools was sectarian and biased against Catholics and that only a denominational system could protect the interests of Catholic children. The petition stirred up strong opposition both from the Public School Society (PSS) and from local Protestant clergy. After months of contentious arguing, the Common Council ultimately rejected the petition, justifying its position by stating that the PSS schools were nonsectarian, while the Catholic schools were sectarian. Although the PSS offered to black out much of the anti-Catholic material from its textbooks, it insisted that the Bible should continue to be read. Not satisfied, Catholics continued to protest through 1842, when the New York State legislature stepped in, incorporated the New York City schools into the state system under the control of a new Board of Education, and passed a law declaring that "No school…in which any religious, sectarian doctrine or tenet shall be taught, inculcated, or practiced, shall receive any portion of the school moneys to be distributed by this act."[101] In so doing, they definitively placed the Catholic schools outside the purview of the public purse.

Catholic protests ultimately failed to dislodge the strong belief among common school advocates that the pan-Protestant common school curriculum was "nonsectarian." In 1844, just two years after the conclusion of the New York City battle, the state legislature passed an additional act clarifying that the legislation banning the teaching of sectarian doctrine was not to be interpreted by the Board of Education to "exclude the Holy Scriptures without note or comment, or any selections therefrom" from the New York schools, a move that effectively banned the annotated Catholic Douay version of the Bible, but not the Protestant KJV.[102] Elsewhere, too, Protestants argued that the pan-Protestant "nonsectarian" curriculum was sacrosanct. In Detroit, Baptists and Methodists not only convinced the school board that reading of the KJV should be permitted in the schools, but also argued that *not* doing so would be a "sectarian" violation of the rights of Protestants.[103] Even the moralistic, strongly Protestant McGuffey readers were praised by advocates as "excellent for educational purposes" because "their religion is *unsectarian*, true religion—their morality, the morality of the Gospel."[104]

What Catholic protests did succeed in doing, however, was to feed a growing nativist campaign that viewed Catholic immigrants and their schools as threats to the American republic. Some evangelical leaders already entertained nativist sympathies; indeed, much of the

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[98] Dunn, *What Happened to Religious Education,* p. 211.

[99] Pastoral Letter of 1843, in Guilday, *National Pastorals,* pp. 152-53.

[100] This paragraph draws on the summary of events presented in DelFattore, *Fourth R,* pp. 22-29.

[101] Quoted in Donald E. Boles. 1963. *The Bible, Religion, and the Public Schools.* Ames: Iowa State University Press, p. 29.

[102] Quoted in DelFattore, *Fourth R,* p. 31.

[103] David L. Angus. 1980. "Detroit's Great School Wars: Religion and Politics in a Frontier City, 1842-1853." *Michigan Academician* 12(3): 261-80, pp. 263-65.

[104] Lyman Beecher, quoted in Fraser, *Pedagogue for God's Kingdom*, p. 190.

evangelical motivation to build schools in the West was generated by fears of the "multitudes of foreign papists [who] are every year pouring in upon our shores, bringing with them all the passions and prejudices of a foreign education."[105] Lyman Beecher's *Plea for the West* included the apocalyptic declaration that "The conflict which is to decide the destiny of the West will be a conflict of institutions for the education of her sons, for purposes of superstition, or evangelical light; of despotism, or liberty."[106] Nativist societies in the early 1800s had already tried to build support for their cause by arguing that Catholics were enemies of the Bible.[107] After the events in New York City, this argument was amplified and applied to the schools, as propagandists relentlessly argued that "the school controversy clearly demonstrated Rome's enmity to the Scriptures."[108] Protestant defense of the Bible ratcheted up; in short order, a request by Philadelphia Catholics for exemption from reading the KJV led to riots in that city, while in Maine and Massachusetts, Catholic students who refused to read from the KJV were beaten or expelled.[109]

Catholic Parochial Schools, Nativism, and the Solidification of the Public/Private Divide

Catholics took note of the hardening Protestant line on the public schools, and responded by doubling down on the construction of their own parochial schools. In 1850, Bishop Hughes declared that, in light of the hostile climate of the public schools, "the time has almost come when it will be necessary to build the school-house first, and the Church afterward."[110] Two years later, the First Baltimore Plenary Council of Catholic bishops issued a statement saying, "We exhort the bishops…to see that schools be established in connection with all the churches of their diocese; and, if it be necessary and circumstances permit, to provide, from the revenues of the church to which the school is attached, for the support of competent teachers."[111] Hughes followed up this statement with a further exhortation to Catholic parents that they withdraw their children from public schools, "where they are certain to learn evil, and probably very little but evil."[112] In response, Catholics around the country inaugurated a campaign to build new schools and, fatefully, to seek funding for them. These requests alarmed Protestants, and contributed to the explosion of nativism and a rash of laws prohibiting public aid in the decades before and after the Civil War.

The 1850s was the decade when states began to move decisively to limit public expenditures on private and religious schooling. In many of the newer states of the West, a tradition of aid to private schools was never as fully established,[113] and many of those states' first constitutions had included provisions restricting the use of the common school fund to common

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[105] W.W. Turner, address to the American Education Society, quoted in Jorgenson, *State and the Non-Public School*, pp. 33-34. Indeed, many of the most active voluntary organizations, including the American Education Society and the Western Baptist Educational Association, were motivated by the desire to counter "Romanism" in the West. See also Kucera, *Church-State Relationships in Education in Illinois,* p. 46.

[106] Beecher, *Plea for the West,* p. 12.

[107] Ray Allen Billington. 1963 [1938]. *The Protestant Crusade, 1800-1860: A Study of the Origins of American Nativism.* Gloucester, MA: Peter Smith, pp. 142-43.

[108] Billington, *Protestant Crusade,* p. 157.

[109] DelFattore, *Fourth R,* pp. 32-51.

[110] Quoted in John R.G. Hassard. 1866. *The Life of the Most Reverend John Hughes, D.D., First Archbishop of New York.* New York: D. Appleton & Company, p. 338.

[111] Quoted in Jorgenson, *State and the Non-Public School,* p. 84. Similar sentiments were expressed in the Pastoral Letter of 1852. See Guilday, *National Pastorals,* p. 191.

[112] Quoted in Jorgenson, *State and the Non-Public School,* p. 85.

[113] See generally Gabel, *Public Funds*, pp. 455-70.

schools quite independently of any nativist agitation. Thus, Michigan's pioneering constitutional language (1837) was copied more or less directly by Wisconsin, Minnesota, Kansas, Oregon, Indiana, and Ohio.[114] Elsewhere, however, strong restrictions were put in place through campaigns dominated or strongly influenced by the nativist Know-Nothing Party, whose fortunes surged in the mid-1850s thanks to anti-Catholic hysteria. Proudly wearing their anti-Catholicism on their sleeves, nativist campaigners succeeded in prohibiting public aid in California, Illinois, and Massachusetts in 1855 (additionally succeeding in passing mandatory Bible-reading legislation in the latter state), and in defeating bills in Michigan and Minnesota that would have opened the door to some forms of public aid.[115] Even in Alabama, where no significant common school system yet existed, an arrangement subsidizing a Catholic school in Mobile was brought to an end in 1854 by an act prohibiting the expenditure of funds on "sectarian" schools.[116] By 1865, constitutional restrictions on school funds had become "quite general."[117]

A second wave of Catholic petitions and constitutional responses took place in the 1870s, further cementing the hard line against public aid to religious schools. The close of the Civil War had brought a period of relative tranquility to the scene, and Catholics in the Northeast and Midwest thought it safe to request aid for their schools once again.[118] Their campaign began in New York in 1869, where Boss Tweed, head of that city's Democratic political machine, convinced the state legislature to surreptitiously provide funds for Catholic schools.[119] Upon discovery, Protestants around the nation recoiled at what they perceived to be an attack on the public schools. In short order, Illinois and Iowa passed constitutional amendments banning or strengthening their bans on public funding for parochial schools,[120] and by the end of the decade so too had Colorado, Minnesota, Missouri, New Jersey, Pennsylvania, and Texas.[121]

As a result of the strong agitation against Catholic schools, the issue of public aid was brought to the national level for the first time. The Republican Party, beset by scandal in the waning days of Reconstruction, saw in nativist anti-Catholicism a winning issue that could salvage its flagging electoral prospects.[122] Accordingly, in 1875, President Grant gave a speech in which he urged Americans to "Encourage free schools, and resolve that not one dollar, appropriated for their support, shall be appropriated to the support of any sectarian schools."[123] Following Grant's lead, congressional Republicans, under the leadership of Maine Representative James Blaine, proposed an amendment to the Constitution that read, in part:

> No public property and no public revenue, nor any loan of credit by or under the authority of the United States, or any State, Territory, District, or municipal corporation, shall be appropriated to or made or used for the support of any school, educational or other institution under the control of any religious or anti-

[114] Stephen K. Green. 2008. "The Insignificance of the Blaine Amendment." *Brigham Young University Law Review* 2008: 295-333, pp. 312-14.
[115] Jorgenson, *State and the Non-Public School,* pp. 87-90, 100-06.
[116] Gabel, *Public Funds,* p. 298.
[117] Gabel, *Public Funds,* p. 311.
[118] John Higham. 1981 [1955]. *Strangers in the Land: Patterns of American Nativism, 1860-1925.* 2nd ed. Westport CT: Greenwood Press, p. 28.
[119] Jorgenson, *State and the Non-Public School,* pp. 113-14.
[120] Feldman, *Divided by God,* pp. 71-72; Fraser, *Between Church and State,* p. 112.
[121] Jorgenson, *State and the Non-Public School,* p. 114.
[122] Ward M. McAfee. 1998. *Religion, Race, and Reconstruction: The Public School in the Politics of the 1870s.* Albany: State University of New York Press, pp. 6-7.
[123] Quoted in Feldman, "Non-sectarianism Reconsidered," p. 98.

> religious sect, organization, or denomination, or wherein the particular creed or tenets of any organization, or denomination shall be taught.[124]

After spirited debate, the Blaine Amendment passed both houses, but narrowly fell short of the margin required to be approved.[125] Undeterred, Congress began to require future states to include similar constitutional provisions prohibiting public aid to sectarian schools as a condition for statehood, and multiple other states enacted similar constitutional amendments or laws in the ensuing 20 years.[126]

Stung by this rebuke, and facing diminishing prospects for public aid in the states, Catholics moved decisively to expand their parochial school system and finance it independently from the state.[127] Bishop Hughes' advice that parishes should build the school-house first and the church after was taken up by bishops in other parts of the country in the 1870s,[128] and in 1884, the Third Plenary Council of Catholic bishops issued a decree requiring that, within two years, a Catholic school be established near each church, and ordering Catholic parents to send their children to Catholic schools unless given an express exemption by a diocesan official.[129] Bishops followed up on these resolutions by denying the sacraments to parents who sent their children in public schools.[130]

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Thus, by 1880, the nineteenth-century settlement in American education had essentially solidified. The settlement featured a system of free, locally governed "common schools" controlled by the state, which dominated the educational domain, laid claim to a monopoly on public funds, and featured a strongly Protestant-inflected "nonsectarian" curriculum, usually including devotional Bible reading. Under this settlement, religious and "sectarian" schools, especially Catholic denominational schools, were cast in opposition to this system, and strong legislative barriers were erected to prevent the distribution of funds to such schools.

STATE-BUILDING, RELIGION, AND EDUCATION IN AUSTRALIA, 1848-1880

Australia was founded as a penal colony for the transportation of British prisoners after the end of the American Revolutionary War.[131] Its population grew slowly over the early nineteenth century, and then rapidly from the 1840s onwards, facilitated by a massive gold rush in Victoria in the early 1850s. Responsible government—i.e., legislative control over internal

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[124] Quoted in Stephen K. Green. 1992. "The Blaine Amendment Reconsidered." *American Journal of Legal History* 36: 38-69, p. 60.

[125] Green, "Blaine Amendment Reconsidered," pp. 57-68.

[126] Feldman, *Divided by God,* p. 86.

[127] With the exception of some Lutheran groups, Catholics were virtually the only denomination to do so. Most other Protestant denominations that had attempted to build a competing parochial school system in the mid-19th century, such as the Presbyterians and Episcopalians, abandoned them under withering criticism from fellow Protestants, who accused them of acting like Catholics, and being divisive and sectarian. See Jorgenson, *State and the Non-Public School,* pp. 108-10.

[128] James C. Carper and Thomas C. Hunt. 2007. *The Dissenting Tradition in American Education.* New York: Peter Lang, p. 35.

[129] Cremin, *American Education: The National Experience,* p. 169.

[130] William J. Reese. 1986. *Power and the Politics of School Reform: Grassroots Movements during the Progressive Era.* Boston: Routledge & Kegan Paul, p. 16.

[131] Stuart Macintyre. 2004. *A Concise History of Australia.* New York: Cambridge University Press, p. 28.

affairs—was granted in the mid-1850s,[132] after which point the colonial governments[133] began to devote increasing attention to educational matters. Although no state schools existed at all as late as 1848, by the 1870s they had achieved almost total dominance over Australian education. The rise of state education in Australia was a top-down process accomplished through successive waves of centralization that marginalized both the existing system of denominational education and the incipient local boards that governed the earliest state schools. The net result was a series of tightly controlled, centralized educational systems, organized at the colonial level, which embraced religious education to different degrees. In the analysis that follows, I focus most closely on developments in the two most populous colonies, New South Wales and Victoria, although I bring in developments in other colonies where appropriate.

The Rise of Australian Government Schools: An Overview

Australian Education in 1848

By 1848, when state schooling was inaugurated, a substantial educational system had developed. In this system, denominational control was significantly stronger than in the United States. There was no equivalent of the town schools of New England, so private schooling (mostly for the wealthy), which had begun to develop after 1800, provided the only alternative to denominational education.[134] In 1847, private schools slightly outnumbered the denominational schools (53% to 47%), but denominational schools educated the vast majority (around 65%) of all Australian children. Ninety-seven percent of these church schools were under the control of just four denominations: Anglican, Catholic, Presbyterian, and Methodist.[135]

Denominational schooling thrived thanks to the close church-state ties that had developed in the period of early convict transportation. Before 1820, religious and moral education was emphasized as a means of countering the "social consequences of convictism,"[136] and the Church of England was treated as the sole legitimate provider of education. Governors requested that the British Secretary of State send schoolmasters "of the Established Church, untainted by Methodism or other sectarian opinion,"[137] Catholics were barred from opening schools,[138] and private schoolmasters faced legal consequences if they attempted to open a school without permission from the resident Anglican chaplain.[139] After 1820, Catholic and Presbyterian establishments became eligible for government support,[140] but the Church of England retained a privileged position. Under the short-lived Church and School Corporation (1825-28), colonial

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[132] Macintyre, *Concise History of Australia,* p. 91. Responsible government was granted in New South Wales, Tasmania, and Victoria in 1855; South Australia in 1856; and Queensland in 1859. Western Australia, settled later and more sparsely populated, was granted responsible government later, in 1890.

[133] Australian federation and independence was accomplished in 1901; during the duration of this chapter the various states are correctly described as colonies.

[134] John F. Cleverley. 1971. *The First Generation: School and Society in Early Australia.* Sydney: Sydney University Press, p. 127.

[135] Alan Barcan. 1965. *A Short History of Education in New South Wales.* Sydney: Martindale Press, p. 68.

[136] Alan Barcan. 1991. "The Aims of Education in New South Wales, 1788-1867." Pp. 137-153 in *Melbourne Studies in Education, 1991,* edited by David Stockley. Melbourne: University of Melbourne Press, pp. 139-40.

[137] Quoted in A.G. Austin. 1961. *Australian Education, 1788-1900: Church, State, and Public Education in Colonial Australia.* Melbourne: Sir Isaac Pitman & Sons, Ltd., p. 7.

[138] Cleverley, *First Generation*, p. 41.

[139] Austin, *Australian Education,* p. 9.

[140] Michael Hogan. 1987. *The Sectarian Strand: Religion in Australian History.* Ringwood, Vic.: Penguin Books Australia, pp. 32, 36-37.

lands were set aside for the exclusive support of Anglican clergy and schools. This set-up drew loud protests from the large Catholic and Presbyterian communities, and the scheme was quickly dropped.[141] In 1836, the Church Act was passed that created a *de facto* system of multiple establishment: each of the major denominations (Anglican, Catholic, Presbyterian, and Methodist) were given government support for their churches and schools.[142]

Under the auspices, first of the Church of England, and then of the major denominations, schooling expanded throughout Australia on a parish model. Under Governor Macquarie in the 1810s, schools were associated with Anglican parishes, establishing a pattern that became "more pronounced as the colony developed."[143] Catholic schools adopted this parish-based pattern after they became eligible for funding in 1820, and denominational-school development continued to follow the "parish" pattern well into the 1860s.[144] One consequence of this development pattern was that church schooling tended to be strong in the cities, where multiple churches congregated and competed for members, but weak or entirely absent in the countryside, where it was more difficult to sustain congregations. In 1840, despite substantial expansion of settlement, hardly any schools at all existed outside the three major cities of Sydney, Parramatta, and Maitland.[145] A Select Committee on Education in 1844 complained that the "very essence" of the denominational systems was to "leave the majority uneducated," since whenever one denominational school was founded, two or three others would spring up next to it, "not because they [were] wanted, but because it was feared that proselytes [would] be made." Thus, concluded the Committee, "a superfluous activity [was] produced in one place, and a total stagnation in the other."[146]

Under church control, these schools were thoroughly denominational, and featured a curriculum designed to build and maintain students' faith. The curriculum was strongly influenced by the Christian ethic, and "the textbooks of the time were written to compel acceptance of such moral lessons."[147] These textbooks, which carried over into the early national schools in the 1850s, included such texts as *Scripture Lessons, Sacred Poetry, Lessons on the Truth of Christianity,* as well as newer pedagogical works such as W.J. Lake's *Book of Object Lessons,* which was laden with religious and Scriptural references.[148] Religious and moral training was a major object of the curriculum in mid-nineteenth century Australian education.

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[141] Hogan, *Sectarian Strand*, pp. 37-38.

[142] P.M. Correy. 1961. "Religion in New South Wales Schools: An Historical Outline Up to 1880." *Journal of Christian Education* 4(3): 140-49, pp. 141-42; Hogan, *Sectarian Strand*, pp. 38-39. Support for the churches was generally quickly abolished after the introduction of responsible government, although state aid to education typically persisted for several years afterwards. Support for public worship was abolished as follows: South Australia (1851), Queensland (1860), New South Wales (1862), Tasmania (1869), Victoria (1870), and Western Australia (1890).

[143] Ronald Fogarty. 1959. *Catholic Education in Australia, 1806-1950.* Vol. I, *Catholic Schools and the Denominational System.* Melbourne: Melbourne University Press, p. 8.

[144] Fogarty, *Catholic Education,* pp. 20, 49.

[145] Barcan, *Short History*, p. 65.

[146] Report from the Select Committee on Education, 1844, quoted in A.G. Austin, ed. 1963. *Select Documents in Australian Education, 1788-1900.* Melbourne: Sir Isaac Pitman & Sons Ltd., p. 84.

[147] P.W. Musgrave. 1979. *Society and the Curriculum in Australia.* Sydney: George Allen & Unwin, p. 109.

[148] Barcan, *Short History*, pp. 108-09; J.S. Gregory. 1973. *Church and State: Changing Government Policies toward Religion in Australia, with Particular Reference to Victoria since Separation.* North Melbourne, Vic.: Cassell Australia, p. 62.

The Emergence of the Government School, 1848-1880

By 1880, there had been a sharp shift in control in Australian education, as the predominantly denominational system prevalent at mid-century gave way to a system dominated by state-run government schools, leaving only a residual denominational system behind. The initial impetus to create public schools occurred in reaction to the inefficiencies and failures of the denominational system, particularly its inability to adequately educate children in rural areas. Between 1860 and 1880, the state system expanded dramatically, through the systematization and rationalization of the unwieldy "dual" system of state and church schools, and the aggressive expansion of state schools. By 1880, control of education had shifted decisively, with the state replacing the church as the dominant player in the educational domain.

The first state schools were developed in response to mounting concerns about the inefficiency and failure of the denominational system to address rural education. Colonial Governor George Gipps had already raised the alarm by 1839, arguing that the inherent logic of the denominational system meant that "even in our capital, a large proportion of the Population shall remain uneducated; and out of Sydney there shall…be scarcely any education at all," because the various denominations would "stand one in the way of the other, and by competing where they ought to combine, defeat the common object of them all."[149] The cost of the system was also growing unwieldy; the decision, under the 1836 Church Act, to provide funding to the schools of all major denominations quickly proved incredibly expensive, and by 1841 Gipps was forced to cut back on the funding the state was providing to each individual school.[150] The 1844 Select Committee on Education, referenced above, excoriated the denominations for their inefficiency, echoed Gipps' concerns that the denominational system produced unnecessary expenditures through overschooling, and recommended that a uniform system of public schools be established on an interdenominational basis.[151]

Thus, in 1848 the New South Wales government established a pioneering system of National Schools to go alongside the denominational schools, under a dual system of National and Denominational Boards.[152] Over the next 25 to 30 years, as I discuss in detail below, these boards were initially consolidated, while still permitting churches to control denominational schools under increasingly restrictive conditions; and ultimately abolished in favor of a centralized state system of education that left the denominational schools outside the ambit of government control or support.[153] Between 1872 and 1893,[154] each colony ultimately passed an act that created a centralized ministry of education, abolished the appointed boards that had governed education theretofore, eliminated state subsidies for denominational schools, and made education both free and compulsory. As a result of these acts, Protestant denominational schooling collapsed, particularly among the Presbyterians and Methodists, whose schools

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[149] *Votes and Proceedings,* New South Wales Legislative Council, 1839, quoted in Austin, *Select Documents*, p. 61.

[150] Patricia Curthoys. 2002. "State Support for Churches, 1836-1860." Pp. 31-51 in *Anglicans in Australia: A History,* edited by Bruce Kaye. Melbourne: Melbourne University Press, pp. 34-35.

[151] Report from the Select Committee on Education, 1844, quoted in Austin, *Select Documents,* pp. 83-85.

[152] This system was passed on to Victoria and Queensland upon their separation from New South Wales in 1851 and 1860 respectively, while a parallel system developed independently in Van Diemen's Land (Tasmania). See Hogan, *Sectarian Strand*, p. 83.

[153] For a short schematic summary of these developments, see Fogarty, *Catholic Education,* pp. 26-27.

[154] These acts were passed in Victoria (1872), Queensland (1875), South Australia (1875), New South Wales (1880), Tasmania (1885), and Western Australia (1893). See Austin, *Australian Education,* p. 174. Western Australia's timeline is later than the other colonies because it was founded later and was very thinly populated, only attaining self-government (and thus the ability to enact educational legislation) in the 1890s.

essentially vanished; but also among the Anglicans.[155] By 1900, only two percent of all children in New South Wales were attending Protestant schools.[156] The one exception, as it had been in the United States, were Catholic denominational schools, which instead expanded, as I discuss in greater detail below.

Religious education remained an important part of education in most Australian schools even after the passage of these "free, compulsory, and secular" acts, although its form and strength varied from state to state for reasons I discuss below. Australian religious education, as it developed in the state schools, had its origins in the Irish National Board (INB) system initially developed in Ireland and imported to New South Wales in 1848. In addition to the moralistic and theological content of its official readers,[157] the INB system featured two types of religious instruction: (1) selected Scripture readings given by the teacher from a set of readers compiled and approved by a panel of Irish Protestant and Catholic leaders; and (2) denominational instruction given by visiting clergymen to students of their denomination on a weekly basis.[158] The "free, compulsory, and secular" acts drew selectively upon these two types of religious education; in Queensland, only visiting instruction was used; in South Australia, Bible reading was maintained as an optional program at the beginning of the school day; New South Wales, Tasmania, and Western Australia retained both Bible reading and clerical instruction; while Victoria eliminated religious instruction altogether.[159] Thanks to the Protestant-Catholic collaboration that had gone into the INB readers, they tended to be somewhat less overtly anti-Catholic than many American texts, but they (and the new "Australian" readers introduced in the late nineteenth century) continued to promote the virtues of faith, God, and the Bible.[160]

Ecclesiastical Displacement and State-Building from the Top Down

Church versus State: Catholics, Anglicans, and Liberals in the Educational Domain

In contrast to the United States, where the common schools were built primarily from the bottom up with substantial support from Protestant ministers, in Australia, the state school systems were built largely from the top down, often over substantial clerical opposition. At all stages, the growth of state schooling was consciously engineered by central colonial governments, and proceeded by progressively circumscribing already-weak local control. Just as important, this bureaucratic growth faced fierce opposition from Australian religious leaders, particularly those of the two largest and most established denominations, the Church of England and the Roman Catholic Church. Although, as I discuss below, the two churches increasingly found themselves at odds over state schooling, they typically shared a hostile attitude toward the emerging state system that threatened to marginalize their educational efforts.

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[155] Barcan, *Short History*, p. 172.

[156] Richard Broome. 1980. *Treasure in Earthen Vessels: Protestant Christianity in New South Wales Society, 1900-1914.* St. Lucia: University of Queensland Press, p. 50.

[157] See, e.g., S.G. Firth. 1970. "Social Values in the New South Wales Primary School 1880-1914: An Analysis of School Texts." Pp. 123-59 in *Melbourne Studies in Education, 1970,* edited by R.J.W. Selleck. Melbourne: Melbourne University Press, p. 127.

[158] A.A. Langdon. 1986. *The Anatomy of Religious Education in Schools.* Sydney: Christian Education Publications.

[159] Barcan, *Short History,* pp. 156-57; Barcan, *History of Australian Education,* p. 157; Ian Breward. 1993. *A History of the Australian Churches.* St. Leonard's, NSW: Allen & Unwin, p. 102; E.L. French. 1969. "Religious Instruction in State Schools in Educational Perspective." Pp. 7-23 in Australian Frontier, *Religious Instruction in State Schools.* Kingston, ACT: Author, p. 10.

[160] Firth, "Social Values in the New South Wales Primary School," pp. 128, 138, 143.

Catholics staunchly opposed the creation of a state system of education. Their position grew more unyielding over the years, but their objections centered around many of the same objections raised by Catholics in the United States. According to Australian Catholics, the only acceptable kind of education was one in which Catholic doctrine permeated the entirety of the curriculum, such that "the authority of the Church will be fully recognized, and that method of instruction observed which shall have for its first object the eternal welfare of souls."[161] In practice, this meant Catholic parochial schools alone. The various proposed forms of religious instruction in state schools all met familiar objections as well. Bible reading was unacceptable because the Bible could not be used authoritatively if it were not accompanied by the doctrines and interpretations of the Church. It was also unacceptably Protestant: "The reading of the Bible without note or comment" meant "introducing the Protestant principle of private judgment."[162] Nor was nondenominational religious instruction acceptable, since the Church held that there was no common ground between Catholics and Protestants, and insisted that the premise of nondenominationalism led inexorably to "the deadliest of errors, indifferentism—the frightful notion that all religious tenets are mere matters of opinion, that men have neither treasure nor responsibility in the one revealed Divine Truth."[163]

The Church of England, too, opposed the state's entry into education from an early date. Though its period of *de facto* establishment had been brief and legally dubious, the Church continued to think of itself as an established church worthy of special prerogatives throughout the nineteenth century.[164] Accordingly, it viewed efforts to build up state schooling as a challenge to its ascendancy,[165] and opposed them throughout the early-to-mid nineteenth century. In the years before the Dual Board system was established in New South Wales in 1848, Anglican leaders succeeded in scuttling several earlier efforts to introduce a system of government schools. In 1836, Anglican Archbishop William Broughton used anti-Catholic rhetoric to rally a broad Protestant coalition against a proposal to implement an experimental set of national schools under the INB model.[166] The Anglicans were also able to block another proposed national school plan put forward by Gipps in 1842, this time by arguing that it did not include specifically Anglican religious instruction,[167] and therefore constituted "a Bill of Attainder and Exclusion against the Church of England."[168] Only mounting financial pressures upon the church and its schools convinced Broughton to relent to the implementation of National Schools in 1848.[169]

After 1850, the Church of England and the Roman Catholic Church continued to form the mainstay of opposition to state schooling. Anglican and Catholic bishops opposed efforts in New South Wales to implement a more rigorous inspection procedure for denominational schools in

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[161] Provincial Council of 1869, quoted in Austin, *Australian Education,* p. 200.

[162] Archbishop Thomas Carr, quoted in Ronald Fogarty. 1959. *Catholic Education in Australia.* Vol. 2, *Catholic Education under the Religious Orders.* Melbourne: Melbourne University Press, p. 460.

[163] Provincial Council of 1869, quoted in Austin, *Australian Education,* p. 199.

[164] Austin, *Australian Education,* p. 7.

[165] Wendy Relton. 1959. "The Relations of the Church and State in Education in New South Wales, 1788-1880." Unpublished M.Ed. Thesis, University of Sydney, pp. 96-97.

[166] Ross Border. 1962. *Church and State in Australia 1788-1872: A Constitutional Study of the Church of England in Australia.* London: S.P.C.K., pp. 99-102.

[167] Correy, "Religion in New South Wales Schools," p. 142.

[168] Quoted in Relton, "Relations of the Church and State," p. 109.

[169] Kelvin Grose. 1966. "William Grant Broughton and National Education in New South Wales, 1829-1836." Pp. 137-58 in *Melbourne Studies in Education, 1965,* edited by E.L. French. Melbourne: Melbourne University Press, p. 157.

1857, insisting that they be permitted to select inspectors of their own choosing.[170] In Queensland, Anglican and Catholic bishops united in 1864 in opposition to national schools, lobbying Parliament and holding public meetings in an attempt to block strengthening legislation for state schools.[171] And, as we shall see below, Anglican and Catholic opposition to challenges to the denominational system was fierce throughout the 1860s in Victoria. However, the other Protestant denominations , whose school systems were weaker and whose flocks were less numerous, had generally swung around to support of the national schools by 1860.[172] In particular, Baptists and Congregationalists were the staunchest supporters of state schooling, and were also at the forefront of campaigns for both secular education and the elimination of state aid.[173] These denominations, alongside Methodists and Presbyterians, formed the core of a Protestant coalition that was increasingly supportive of state schooling, and which eventually grew to encompass the Church of England by the 1870s, as I discuss below.

The opposition of the two largest churches to state education meant that there was less of a fusion between religious and nationalist sentiments in Australia. Far from possessing a "Native Protestant" ideology, then, as did their American counterparts, Australian advocates of state schooling were motivated more by straightforward liberal ideals. The key tenets of liberalism—that society could and should be improved through concerted action, that societal harmony would emerge by downplaying social divisions, that progress belonged to all members of society, and that the state had the ability and consequently the duty to act in the service of those goals—were the driving ideology of those in favor of state schooling.[174] As J.S. Gregory has written, "at the bottom the abolition of State aid to religion and the introduction of a secular system of public education were pieces of liberal reform, not inspired by any contemptuous rejection of the value of religion nor by any desire to persecute the Roman Catholic or any other church, but rather by a determination to make the State, in action and law, the symbol of a common citizenship."[175]

The Expansion of State Schooling under the Dual Boards

The Dual Board system established in New South Wales in 1848 created two appointed boards—Denominational and National—to manage the two types of schools. The National Board was originally conceived of as "essentially supplementary" in character.[176] Its key goal was to begin the process of constructing state schooling in areas where the denominational system was failing to provide it. To do this, the Board hired two men to ride around the country districts as Board agents, advertising and organizing national schools. To build public interest, these agents organized public meetings, displayed the Board's regulations, helped organize local committees of school patrons, and reported to the Board on the feasibility of schools in the various

[170] Jean Ely. 1978. "The Denominational Board in New South Wales, 1848-1866: A Study in Centralization." Pp. 218-35 in *Melbourne Studies in Education, 1978,* edited by Stephen Murray-Smith. Melbourne: Melbourne University Press, pp. 230-32.

[171] Dispatch by Governor Bowen, 15 December 1864, quoted in C. Turney, ed. 1975. *Sources in the History of Australian Education, 1788-1970.* Sydney: Angus and Robertson, pp. 55, 59.

[172] Austin, *Australian Education*, p. 115.

[173] Ken Elford. 1971. "Church, State, Education, and Society: An Analysis of Aspects of Eastern Australian Society circa 1856-1872." Unpublished Ph.D. Dissertation, University of Sydney, p. 186; Fogarty, *Catholic Education,* pp. 120-23.

[174] On Australian liberalism see, generally, Austin, *Australian Education*, pp. 107-09; Gregory, *Church and State*, pp. 115-18, 127-32.

[175] Gregory, *Church and State,* pp. 117-18.

[176] Gregory, *Church and State,* p. 34.

regions.[177] The agents assiduously avoided trying to set up schools in areas where denominational schools already existed, both in deference to the denominational schools and because many rural ministers were hostile to the new effort.[178] This tactic was remarkably successful; within three years, 42 National schools were in operation in New South Wales and Victoria.[179] In many cases, new National schools were formed from simple conversions of private schools into national schools.[180]After 1857, the Board relaxed its requirements to permit schools whose property was not vested in the Board to operate as National schools, allowing it to quickly double the number of national schools.[181]

Although management of the new state schools was centralized in the National Board, local initiative was important to the creation of the first state schools. Despite the traditional weakness of local government in Australia,[182] the National Board required local initiative as a condition of creating the school. Their policy was to require local communities to contribute to the financial and administrative management of schools by paying one-third of the initial building and ongoing maintenance costs, in exchange for state support for the remaining two-thirds of the cost, plus provision of schoolbooks and payment of the teacher's salary.[183] The board thus required that every new National school be sponsored by a board of Local Patrons, who would take charge of school management, inspect schools and teachers, ensure that the schools operated when they were supposed to, fix tuition rates, and issue yearly reports on the teacher and the school.[184]

From Dual Boards to Combined Boards: Rationalization and Systematization

The Dual Board system proved both unwieldy and ineffective. Beginning in the 1860s, therefore, most states took steps to combine the two boards under a single governing body. Under the new combined boards, the national schools began to overshadow the denominational schools, as the combined boards took steps to suppress or severely restrict the denominational schools, and encourage amalgamation efforts in the denominational sector to promote efficiency. They also substantially weakened the powers that had been allocated to the local boards, and began to consolidate administrative power at the state level.

EFFICIENCY AND THE SUPPRESSION OF DENOMINATIONAL SCHOOLS. By the mid-1850s, it was already apparent that the Dual Board system was failing to meet its objective of improving

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[177] A.G. Austin. 1958. *George William Rusden and National Education in Australia, 1849-1862.* Melbourne: Melbourne University Press*,* pp. 26-29.

[178] Austin, *George William Rusden,* p. 54; Austin, *Australian Education*, pp. 51-52.

[179] Austin, *Australian Education*, p. 54. Settlers in the rural "squatting districts" were usually enthusiastic about the new system, as they had frequently been preyed upon by hucksters posing as private teachers. See Austin, *George William Rusden,* p. 39.

[180] Ray Bass. 1980. *Education in Lismore: A Century and a Quarter of Progress.* Lismore, NSW: Northern Rivers College of Advanced Education, p. 14.

[181] Austin, *Australian Education*, p. 110.

[182] Under the 1842 Constitution, for instance, district councils were created with responsibility to manage public works and public safety, but these languished. Governor Gipps also hoped that the councils would take on the burden of creating a decentralized system of local schools, but this did not eventuate. On the educational plan, see Barcan, *History of Australian Education,* p. 49; on the district councils more generally, see Kelvin Grose. 1965. "Sir George Gipps and Municipal Institutions in New South Wales." *Journal of the Royal Australian Historical Society* 51: 148-53.

[183] Bass, *Education in Lismore,* p. 7.

[184] S.H. Smith and G.T. Spaull. 1925. *History of Education in New South Wales (1788-1925).* Sydney: George B. Philip and Son, p. 184.

educational efficiency. In New South Wales, both boards essentially ran out of money in 1864, pleaded with the treasury for additional funding, then—when no funds were forthcoming—stopped developing new schools and initiated plans to withdraw support from some of their smaller schools.[185] This crisis finally moved the New South Wales legislature to pass a new education act in 1866 that combined administrative control of national and denominational schools under a new, unitary Council of Education. Introducing the bill to Parliament, Henry Parkes insisted that the bill was necessary by pointing to the persistence of the very problems that had led to the creation of the Dual Board system: the existing system continued to be "unnecessarily expensive," inferior, divisive, and "in an alarming degree limited in its supply."[186] New South Wales thus joined Victoria (1862), Queensland (1860), and Tasmania (1854) in instituting a single central board to manage education.[187]

The legislation creating the combined boards decisively favored the national schools, and placed a welter of new restrictions on denominational schools. In each colony, the combined boards tightened up the conditions under which denominational schools could receive aid and transferred many administrative responsibilities from local schools or denominational leaders to the central board. Denominational schools were now required to use the same course of secular instruction as national schools, teach from prescribed textbooks, and open themselves up to official state inspectors. Additionally, state aid for school construction and maintenance was eliminated, although state aid for teachers' salaries continued to be provided.[188] In New South Wales, the 1866 legislation further stipulated that denominational schools had to open their doors to children of other denominations to remain eligible to receive aid; and placed stringent restrictions on when and where new denominational schools could be established.[189] These restrictions both made the expansion of the denominational sector extremely difficult, and reduced the incentives for many Protestant denominations to continue to maintain their schools. In effect, as political scientist Michael Hogan has observed, "denominational schools were being invited to retire gracefully from the field."[190]

These restrictions on denominational school expansion were accompanied by efforts to suppress and amalgamate many existing denominational schools, which were seen as the root of the inefficiencies in the system. In its first five years, the New South Wales Council of Education "energetically engaged in closing down" denominational schools and "assimilating those that survived into the public school system."[191] These efforts were matched in Victoria, where its new Common Schools Board (CSB) aggressively moved to amalgamate denominational schools in 1868. Under the terms of controversial Rule 63, the CSB granted itself increased powers to amalgamate competing schools by withdrawing aid from denominational schools.[192] CSB officials expressed hope that its "system of amalgamation, and where necessary of suppression," would "have the effect of encouraging large and efficient schools, and doing away with small and inefficient ones."[193]

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[185] A.W. Martin. 1962. "Faction Politics and the Education Question in New South Wales." Pp. 25-47 in *Melbourne Studies in Education, 1960-1961,* edited by E.L. French. Melbourne: Melbourne University Press, p. 34.
[186] Quoted in Barcan, *Short History,* p. 128.
[187] Fogarty, *Catholic Education,* pp. 63-67.
[188] Fogarty, *Catholic Education,* pp. 60, 68-71.
[189] Austin, *Australian Education,* p. 118; Barcan, *Short History,* pp. 129-30.
[190] Hogan, *Sectarian Strand,* p. 88.
[191] Barcan, *Short History,* pp. 142-43.
[192] Elford, "Church, State, Education, and Society," pp. 302-03.
[193] Quoted in Elford, "Church, State, Education, and Society," p. 301.

The CSB's amalgamation efforts were part of a more general program to continue building up rural education. Nearly three-quarters of the Australian population lived in rural areas in 1860,[194] and the continued weakness of rural education was a source of concern. Between 1868 and 1870, the CSB relaxed requirements regarding buildings, equipment, and teacher qualifications for schools in rural areas to spur the development of rural schools,[195] and passed a resolution formally declaring its intent to give preference to national schools in rural areas.[196] Because they provided a nondenominational education, state schools were given a decided preference in the countryside.[197]

The net effect of these policies, which gave preference to state schools while increasingly disadvantaging denominational schools, was to dramatically reduce the strength of the denominational sector in the educational sphere. In New South Wales, the number of denominational schools under the Council of Education dropped by almost half over the life of the Council, with a decline of 66% among Protestant schools (18% among Catholic schools).[198] In Victoria, too, the proportion of denominational schools nosedived; whereas in 1862, when the CSB was created, there were two and a half times as many church schools as national schools, by 1870 the number of national schools had surpassed the number of denominational schools.[199]

THE ECLIPSE OF LOCAL CONTROL. In addition to advancing the state schools at the expense of the denominational schools, the combined boards also took steps to centralize control, curtailing the limited powers that had been assigned to local boards under the early national schools. Criticism of the local boards began almost as soon as they were created. In 1854, William Wilkins, an agent of the National Board, conducted a tour of the colony's national schools, and reported that "the majority are in a most unsatisfactory condition" because the local patrons were neglecting the schools. Wilkins recommended that the state take "the power of the local patrons and…place it in the hands of an inspector."[200] When the colony consolidated the boards, therefore, it also replaced the autonomous local patrons with Local School Boards, which were to be staffed by Council appointees.[201] While still locally run, therefore, effective control was shifted substantially to the state under the combined board.

The new consolidated boards also took over many of the functions previously allocated to the local patrons. One of the most important was the management of inspections. In the early years of the Dual System, responsibility for inspection was left to the local level, but already by the 1860s more centralized procedures had emerged on both the Denominational and National Boards.[202] Officials on the National Board declared that "means of adequate supervision, through local patrons, do not in general exist," and that without "an efficient inspection, emanating from

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[194] Brian Dickey. 2002. "Secular Advance and Diocesan Response, 1861-1900." Pp. 52-75 in *Anglicans in Australia: A History,* edited by Bruce Kaye. Melbourne: Melbourne University Press, p. 53.

[195] L.J. Blake. 1973. "The Common Schools Period." Pp. 79-163 in *Vision and Realisation: A Centenary History of State Education in Victoria,* edited by L.J. Blake. Vol I. Melbourne: Education Department of Victoria, p. 135.

[196] P.J. Pledger. 1961. "The Common Schools Board, 1862-1872." Pp. 95-114 in *Melbourne Studies in Education, 1959-1960,* edited by A.G. Austin. Melbourne: Melbourne University Press, p. 109.

[197] Pledger, "Common Schools Board," p. 110.

[198] Fogarty, *Catholic Education,* p. 241.

[199] Blake, "Common Schools Period," p. 105.

[200] Quoted in Bruce Smith. 1990. "William Wilkins's Saddle-Bags: State Education and Local Control." Pp. 66-90 in *Family, School, and State in Australian History,* edited by Marjorie R. Theobald and R.J.W. Selleck. Sydney: Allen & Unwin, p. 66.

[201] Smith and Spaull, *History of Education in New South Wales,* p. 185.

[202] On the Denominational Board, see Ely, "Denominational Board in New South Wales," p. 234; on the National Board, see Smith, "William Wilkins's Saddle-Bags," p. 77.

a central authority, no permanent good can be effected."[203] Thus, under the 1866 law, inspection methods were rigorously prescribed through the Council of Education. Additionally, the combined boards took greater control over curriculum and staffing than had their predecessors. In 1867 in New South Wales, for instance, new regulations were promulgated establishing teacher standards of proficiency and salaries, introducing a new curriculum, specifying textbooks, extending teacher training programs under the pupil-teacher system, elaborating disciplinary measures, creating classification rules for students, and instituting a new system of rewards and punishments.[204] Thus, under the combined boards, those functions of school management and supervision that had previously been left to local boards, were brought under the central control of the combined boards and standardized.

The Final Break: From Boards to Ministries, and the End of State Aid

Although the combined boards raised national schools to a dominant position and substantially weakened local control, these trends were brought to their ultimate fruition in each of the colonies through the creation of Ministries of Education and the abolition of state aid to the denominational schools between 1872 and 1893. The provision of education remained woefully inadequate,[205] and educational officials placed the blame squarely on their inability to squeeze inefficiencies out of the denominational school system. In testimony before a Royal Commission on Education in Victoria in 1866, the secretary of the CSB argued that the denominational system "acts in two ways prejudicially; first it creates a number of unnecessary schools, and then it prevents their diminution in number by amalgamation."[206] Colonial officials responded by eliminating all state aid to denominational schools in their educational bills.[207] These strong barriers against state aid remained in place until the 1960s.[208]

Demands to increase centralized control ultimately contributed to the decision to vest that control in official ministries. As education expanded, the amount of work demanded of the appointed, part-time Boards grew overwhelming. In New South Wales, the Council of Education pleaded with government officials in 1876 to put administration in the hands of a full-time ministry, because the demands of managing the schools had grown beyond their capacity.[209] Likewise, the increasing cost of the burgeoning educational system had raised concerns about the propriety of unelected boards being given charge of disbursing such large sums. In Victoria, James Wilberforce Stephen, the Attorney-General who introduced the 1872 Education Act, declared that a ministry was required because reform had been "placed in the hands of an irresponsible Board, altogether away from the control of this House, and country."[210] In New South Wales, too, Henry Parkes, sponsor of the 1880 Public Instruction Act, expressed a desire to replace the "irresponsible" council, whose form was "not in harmony with the other

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[203] Quoted in Smith, "William Wilkins's Saddle-Bags," p. 81.

[204] Barcan, *Short History*, pp. 130-31.

[205] In Victoria, for instance, the 1866 Royal Commission found that nearly 85,000 children were receiving no formal education even as some towns were providing up to six schools for 537 students. See Gregory, *Church and State,* p. 98.

[206] Quoted in L.J. Blake. 1973, "Free, Compulsory, and Secular." Pp. 167-238 in *Vision and Realisation: A Centenary History of State Education in Victoria,* edited by L.J. Blake. Vol. I. Melbourne: Education Department of Victoria, p. 172.

[207] Hogan, *Sectarian Strand,* pp. 93-94.

[208] See below, Chapter Six.

[209] Martin, "Faction Politics and the Education Question," p. 45.

[210] Quoted in J.R. Lawry. 1972. "The Free, Compulsory, and Secular Education Acts Reassessed." Pp. 211-27 in *Melbourne Studies in Education, 1972,* edited by R.J.W. Selleck. Melbourne: Melbourne University Press, p. 215.

institutions of the colony," with a "responsible" board that could more legitimately manage the growing expenses of education.[211]

The creation of ministries of education "accomplished the ruin of local school government."[212] Whatever residual powers the local boards controlled, such as appointment of teachers, were centralized in the new ministries.[213] In Victoria, the Education Act removed power over appointments, secular instruction, and the use of school buildings from local committees to the ministry, and replaced local boards with "Boards of Advice" with uncertain and very delimited powers.[214] Any thought that the Boards of Advice would use these powers to affect educational change evaporated in a series of power struggles with the Victorian Ministry in the 1870s,[215] and thereafter the boards "became mere ciphers—when they functioned at all."[216] In New South Wales, the Public Instruction Act thoroughly eclipsed local boards by making them optional and honorary.[217] Unsurprisingly, as in Victoria, the local boards rapidly fell into desuetude.[218] The top-down state-building process had reached fruition, with the state firmly in charge of education through a series of centralized state ministries of education.

Religious Conflict and Australian Education

Religious Conflict as Spur to Centralized Control

As in the United States, religious conflict interacted with state-building in multiple ways, helping to shape the ultimate development of the nineteenth-century settlement. First, interdenominational conflict helped accelerate demands to centralize control and weaken local control. In Victoria, for instance, infra-Protestant conflict created havoc in the appointments process. Among the denominational schools, clergy interfered with nominations to the local boards, and used the boards as agents to lobby the CSB for favorable treatment, subverting their purpose as managerial instruments.[219]

A different, but no less pernicious, dynamic played out in the national schools. Because a local board had to be established and recognized by the government to constitute a national school, gaining effective control over those boards—and the decisions about religious instruction that were entrusted to them—became a key goal of denominational leaders. In some locales, Anglicans and non-Anglican Protestants called competing meetings which nominated rival local boards, both of which would then apply to the CSB for support; not surprisingly, this led to administrative chaos.[220] Even when a mixed denominational board was successfully created for a school, board members from different denominations often could not agree how to provide religious instruction.[221] On teaching appointments, too, different denominations interfered with personnel matters, "working their little games" to gain a teacher "useful for…the carrying on of

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[211] Quoted in Lawry, "Free, Compulsory, and Secular Education Acts Reassessed," p. 226.

[212] Denis Grundy. 1972. *"Secular, Compulsory, and Free": The Education Act of 1872.* Melbourne: Melbourne University Press, p. 5.

[213] Grundy, *Secular, Compulsory, and Free,* p. 75.

[214] Grundy, *Secular, Compulsory, and Free,* p. 71.

[215] Grundy, *Secular, Compulsory, and Free,* p. 93.

[216] John W. Collins-Jennings. 1971. "Non-Professional and Non-Governmental Organisations and the Provision of Public Education, 1850-1969." Unpublished M.Ed. Thesis, University of Melbourne, p. 149.

[217] Bass, *Education in Lismore,* p. 59.

[218] Smith and Spaull, *History of Education in New South Wales,* pp. 185-87.

[219] Blake, "Common Schools Period," p. 150.

[220] Elford, "Church, State, Education, and Society," pp. 261, 270-72.

[221] Grundy, *Secular, Compulsory, and Free,* pp. 18-19.

Sunday Schools or in playing the organ."[222] Indeed, teachers actively lobbied for the creation of centralized ministerial appointments in hopes that they would eliminate the local prejudices that threatened the security of their appointments.[223]

One result of these local battles, and the broader opposition by Anglican and Catholic leaders to state education in general, was a growing consensus that the churches were an obstacle to effective education. As a result, religious conflict was regularly invoked in debates surrounding each successive act to centralize control and reduce the power of the denominational system. In New South Wales, Parkes used religious conflict as a justification for creating the Council of Education in 1866; he blamed the inferior quality of education in that colony on "the unseemly contention amongst…the clergy of the various churches," and averred that, as a result of sectarian conflict, there were a multitude of "children who, whilst ministers of religion are caviling over a division of the spoils, are left destitute of all instruction."[224] In Victoria, the ongoing battles over religious education and teaching appointments in the local committees made strong centralized control seem particularly appealing. Stephen declared that only "the central authority—the State" had the power to counter the influence of denominationalism in Victorian education,[225] and expressed his belief that placing teachers under centralized supervision would effectively eliminate "any intermeddling by parents or by committees."[226]

Thus, religious conflict contributed to the decision to reduce local control and centralize decision-making. Beyond this, however, it also influenced decisions regarding religious education. The dynamics of religious conflict were cross-cutting and varied from colony to colony. Although the state rose to supremacy, and cut off state aid, everywhere, variations in the details of religious conflict help explain the varied policies different colonies arrived at regarding religious education, with some embracing a nondenominational (Protestant) religious curriculum, and others rejecting religious instruction altogether. Because Catholics and non-Anglican Protestants represented two equal and opposing blocs, the position taken by the Church of England often proved paramount. The complex effects of religious conflict can be seen through a contrast between events in New South Wales, where a nondenominational approach prevailed, and Victoria, where a strict secularist approach banished religion from the public schools.

Protestant-Catholic Conflict and "General Religious Teaching" in New South Wales

As discussed above, the nondenominational approach to religious education in New South Wales was inherited from the INB system, whose Scripture readings had been developed on an interdenominational basis. In 1866, Parkes' Public Schools Act proposed to incorporate a variant of this system under the new combined board. Catholics flatly opposed the measure, but Anglican support hinged on the content of religious instruction in the public schools. Although the legislation provided for "special religious instruction" (SRI) by visiting clergy, Anglicans were disconcerted by its provisions for "secular instruction" only in the public schools. If guarantees could be made, however, that Scripture reading would be permitted in the schools, Anglicans suggested that they would view the schools as suitable vehicles for the education of Christian children, and support them.[227] Thus Parkes made assurances to Anglican leaders that

[222] Quoted in Grundy, *Secular, Compulsory, and Free,* p. 75.
[223] Lawry, "Free, Secular, and Compulsory Acts Reassessed," p. 217.
[224] Quoted in Austin, *Australian Education,* p. 119.
[225] Quoted in Lawry, "Free, Compulsory, and Secular Acts Reassessed," p. 215.
[226] Quoted in Grundy, *Free, Compulsory, and Secular,* p. 49.
[227] P.D. Davis. 1964. "The 1866 Controversy: Religious Teaching in Public Schools." *Journal of Christian Education* 7(2/3): 83-95, p. 91.

the INB readers would be read, and introduced an amendment to the Act as follows: "In the construction of this Act the words 'secular instruction' shall be held to include general religious teaching as distinct from dogmatic or polemical theology.'"[228] This language evidently emerged from negotiations between Parkes and Anglican representatives, and contemporaries thus referred to the act as the "Bishop's Bill."[229] This "rather extraordinary definition" secured Anglican support for the measure,[230] and New South Wales formally embraced both "general religious teaching" (GRT), in the form of Scripture reading, as well as SRI, in its combined system.

Anglicans quickly proved strong supporters of the public schools in New South Wales. Under the new dual GRT-SRI provisions, many Anglicans found the public schools entirely satisfactory, and even superior, to their own schools. Within three years, leading Anglican journals were openly advocating converting the Church of England's country schools into public schools, and shifting their focus to providing SRI.[231] This was, in fact, precisely what the church did. The Church of England had already begun to redouble their efforts to provide SRI in the immediate wake of the 1866 Act (the only major denomination to do so),[232] and in 1879, as the elimination of state aid loomed, they formed a special committee on SRI to improve their program further.[233] And Anglicans proved increasingly willing to abandon their denominational schools; more than half the Church of England schools in existence in 1866 had closed by 1878.[234] By 1880, therefore, Anglicans had joined the other Protestant denominations in support of the public schools and of the dual GRT-SRI provisions for religious instruction.

This growing accord between Anglicans and other Protestants had important implications for the development of state schooling, because it increasingly meant that educational matters turned on a straightforward Protestant-Catholic divide. Anti-Catholicism had been a part of Australian life from its founding—a legacy both of Reformation-based evangelical hostility imported from England and antipathy to the Irish, who made up nearly the entirety of the Australian Catholic population until the mid-twentieth century.[235] This anti-Catholicism intensified substantially after 1860. An assassination attempt on the Duke of Edinburgh by an Irishman in Sydney in 1868 touched off a wave of anti-Catholic hysteria among Protestants, who rallied to patriotic Protestant orders and attempted to stifle Irish immigration to Australia.[236] Liberal supporters of state education were not shy about fanning the flames of anti-Catholicism, since they found it an effective way to build Protestant support for their program.[237]

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[228] Quoted in Davis, "1866 Controversy," p. 95.

[229] Davis, "1866 Controversy," pp. 92-93.

[230] Davis, "1866 Controversy," pp. 92, 95.

[231] P.D. Davis. 1973. "New Wine in Old Bottles: Another Look at the Case for Denominational Religious Instruction in Public Schools and Some Reflections on the Work of the Council of Education, 1867-1879." *Journal of Christian Education* 16(1): 51-61, p. 58.

[232] Davis, "New Wine in Old Bottles," p. 57.

[233] L.D. Rixon. 1973. "Important Documents about Religious Education in Government Schools in New South Wales, Part II." *Journal of Christian Education* 16(1): 21-50, p. 21.

[234] Austin, *Australian Education,* p. 192.

[235] Hogan, *Sectarian Strand,* pp. 34, 65-67. On Irish dominance of Australian Catholicism, see Patrick O'Farrell. 1993 [1986]. *The Irish in Australia.* Revised ed. Kensington: University of New South Wales Press, pp. 22-53.

[236] Malcolm Campbell. 2005. "A 'Successful Experiment' No More: The Intensification of Religious Bigotry in Eastern Australia, 1865-1885." *Humanities Research* 12(1): 67-78, pp. 68-75; O'Farrell, *Irish in Australia,* pp. 209-12.

[237] Hogan, *Sectarian Strand,* pp. 90-91.

By 1880, therefore, when New South Wales finally moved to eliminate state aid, the Protestant-Catholic conflict had obtained new prominence. Anglican support for public education and the decline of Protestant denominational schools—which tended to reduce the question of state aid to a question of state aid for Catholic schools in the public mind[238]—all contributed to the ferocious Protestant-Catholic conflict that accompanied the final legislation. Events came to a climax in 1879, when the Catholic bishops of New South Wales issued a Joint Pastoral Letter excoriating the public schools as unacceptable to Catholics. In that letter, Archbishop Roger Vaughan declared that the public schools were "seed-plots of future immorality, infidelity, and lawlessness," and reiterated his demand that the state should continue to subsidize a separate system of Catholic schools.[239] In a follow-up address, he decried the public schools as "the most effective instruments invented by man for squeezing very gradually and imperceptibly the Catholic faith out of a Catholic people."[240] Vaughan's letter inflamed public opinion, and the 1880 Public Instruction Act, which directly transferred the 1866 language regarding religious instruction, was passed by an overwhelming margin. A Protestant accord on "general religious teaching" and united opposition to Catholic demands yielded a strongly Protestant-inflected dual system of religious education, where both Scripture reading and denominational instruction were incorporated into the public school curriculum.

Anti-Denominationalism and Strict Secularism in Victoria

In Victoria, by contrast, different religious dynamics prevailed, leading to a significantly different result. The gold rush of the early 1850s dramatically increased Victoria's population, and "quickly produced a society more irreligious and more anti-clerical than that of any other colony."[241] This created an "atmosphere of doubt and questioning" that undoubtedly contributed to the more secular outcomes there.[242] Nevertheless, the movement for secular schools was "not an anti-religious movement," but was instead led by "prominent churchmen of deep religious convictions."[243] Yet these churchmen differed in their proportions and alignment from those in New South Wales. Nonconformists, such as Baptists and Congregationalists, who were the most ardent supporters of state schooling, were more numerous in Victoria. And, critically, the Church of England, which prominently supported the state schools in New South Wales, remained a staunch foe of them until the bitter end in Victoria.[244]

Whereas Anglicans and Catholics in New South Wales found themselves on opposite sides of the school question after 1866, they often took similar positions in Victoria. Like his Catholic counterpart, the Anglican Bishop of Melbourne opposed the "ungodly" state schools, the idea of mixed denominational instruction, and the very idea of a system of education that systematically separated religious and secular instruction.[245] Both churches therefore resisted

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[238] Hogan, *Sectarian Strand,* p. 90.

[239] Pastoral Letter of the Archbishop and Bishops in New South Wales, 1879, quoted in Austin, *Select Documents,* pp. 223-24.

[240] Archbishop Vaughan, address delivered on the occasion of laying the foundation-stone of the School at West Balmain, 9 November 1879, quoted in Austin, *Select Documents,* p. 230.

[241] Pledger, "Common Schools Board," p. 98.

[242] Gregory, *Church and State,* p. 115.

[243] Gregory, *Church and State,* p. 74.

[244] Elford, "Church, State, Education, and Society," pp. 26, 186.

[245] Kenneth E. Dear. 1966. "Bishop Perry and the Rise of National Education in Victoria, 1848-1873." Pp. 159-86 in *Melbourne Studies in Education 1965,* edited by E.L. French. Melbourne: Melbourne University Press, pp. 177-79.

efforts by the CSB to have a bigger say on the management of denominational schools as well as their efforts to amalgamate them.[246] More consequentially, however, combined Anglican-Catholic opposition helped to sink several efforts to end state aid without ending religious instruction in the Victorian public schools. In 1867, legislation known as the Higinbotham Bill would have ended state aid to denominational schools while providing for the continuation of nondenominational religious education in the state schools.[247] Anglican and Catholic leaders flatly opposed the legislation, organizing a vigorous campaign that ultimately helped to scuttle the bill.[248] When another bill was proposed in 1870 that would similarly have maintained religious education while eliminating state aid, the two churches again worked to defeat the bill, Catholics because they did not want to lose state aid, and Anglicans because they thought that the visiting instruction provided for in the legislation was insufficient.[249]

The churches' unstinting resistance to state education led to the rise of "anti-denominationalist" sentiment in Victoria. While anti-Catholicism was evident,[250] and was encouraged by many politicians seeking to build Protestant support for secular education,[251] this anti-Catholicism was part of a broader expression of disgust with the intransigence of the churches in general. Because the Church of England was equally opposed, it was the churches as a whole who took the blame for the failure of educational legislation, rather than simply the Catholic Church. The key catalyst for this development was the failure of the Higinbotham Bill in 1867. The experience soured both Higinbotham and the Melbourne press on the very idea that compromise was possible with denominational leaders, and, by extension, on the idea of nondenominational instruction as well.[252] The failure of the Higinbotham Bill encouraged politicians to enact drastic legislation that would definitively end the ongoing conflict with the churches over education.[253] Frustration with denominationalism was evident in the debate around the 1872 Education Act, which Stephen introduced by declaring that he would not allow children "to grow up in ignorance during the long years that might elapse before the various sects agreed as to the quality and quantity of religious instruction to be imparted in the common schools."[254]

The ultimate result of this anti-denominationalist agitation was a strictly secular education act. Not only did the 1872 Education Act end state aid to denominational schools,[255] it also eliminated all religious instruction in the public schools. In contrast with New South Wales, where "secular" instruction was legally held to encompass "general religious teaching" through nondenominational Scripture reading, there was no such protective caveat in the Education Act. Instead, the law declared that, "In every State school secular instruction only shall be given, and no teacher shall give other than secular instruction in any State school building."[256] Department officials under the new education ministry gave this provision full effect. In 1876, the Victorian school readers were systematically purged not merely of their Scripture sections, but of any and

[246] Dear, "Bishop Perry and the Rise of National Education," p. 183; Pledger, "Common Schools Board," pp. 103-06.
[247] Grundy, *Secular, Compulsory, and Free,* p. 9.
[248] Gregory, *Church and State,* p. 101.
[249] Grundy, *Secular, Compulsory, and Free,* pp. 21-23, 27.
[250] See generally Gregory, *Church and State,* pp. 129-40
[251] Hogan, *Sectarian Strand,* pp. 90-91.
[252] Austin, *Australian Education,* pp. 184-89.
[253] Grundy, *Secular, Compulsory, and Free,* p. 11.
[254] Quoted in Blake, "Free, Compulsory, and Secular," p. 197.
[255] Gregory, *Church and State,* p. 136.
[256] Quoted in Gregory, *Church and State,* p. 144.

all literary references of a religious character as well.[257] Anglican opposition, rationalism, and an "anti-denominational" spirit ultimately yielded what was, at the time, in all likelihood the most secular educational system in the world.[258]

The Catholic Response

As in the United States, Catholics responded to the elimination of state aid by building up their own denominational system. Catholic schools declined at a much slower rate than Protestant schools under the combined boards, largely because Catholics had already begun to transition their schools away from state support and onto an independent basis. By the late 1860s, Catholic textbooks had been drafted or imported, and a Catholic association had been created to organize fundraising for the independent Catholic system.[259] Nuns began to take over most of the teaching responsibility in 1869, thus providing an inexpensive teaching staff.[260] By the 1870s, Catholic schooling had essentially shifted into the independently-supported system that it would remain through the 1960s.

Catholic bishops used their hortatory and ecclesiastical powers to build support for these schools among the laity. At its Provincial Council in 1869, the Catholic bishops absolutely rejected the idea of secular education and reiterated their demand for state aid.[261] However, they also, for the first time, admonished Catholics that they were "bound to use every exertion to erect…Catholic schools in which the authority of the Church [would] be fully recognized."[262] The bishops' 1879 Joint Pastoral letter denouncing the public schools was written as much to push Catholic parents to withdraw their children from public schools and to patronize Catholic schools as anything, and it did in fact have this effect.[263] And, as in the United States, some Catholic bishops began denying the sacraments to parents who did not send their children to Catholic schools.[264] By the end of the century, the Catholic system had survived the abolition of state aid, and persisted as the primary exception to the state-dominated educational sector.

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By 1885, the nineteenth-century settlement in Australian education had solidified.[265] The vast majority of education was in the hands of free, publicly controlled, highly centralized systems of government schools, organized at the state level, that laid claim to a monopoly on public funds and—Victoria aside—featured a curriculum with an established place for religious instruction. Denominational schools, including Catholic denominational schools, were expressly excluded from public funding in order to secure the efficiency and dominance of the single, rationalized, government system.

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[257] Austin, *Australian Education,* p. 230.

[258] Victoria was an extreme case; as discussed above, every other colony made some provision for religious instruction, either through denominational instruction by visiting clergy or by nonsectarian Scripture reading. Indeed, most colonies more closely resembled the outcome in New South Wales, and Western Australia and Tasmania adopted the joint GRT-SRI system wholesale.

[259] Fogarty, *Catholic Education,* pp. 229-30; Hogan, *Sectarian Strand,* p. 94.

[260] Fogarty, *Catholic Education,* pp. 222-27, 232-33.

[261] Hogan, *Sectarian Strand,* pp. 92-93.

[262] Decrees on Education, Provincial Council of 1869, quoted in Austin, *Select Documents,* p. 216.

[263] Fogarty, *Catholic Education,* pp. 250-51.

[264] Barcan, *Short History,* pp. 215-16.

[265] Western Australia did not cut off state aid until 1893, thanks to its later founding, smaller population, and later grant of self-government.

CONCLUSION

By the 1880s, both Australia and the United States had developed strong systems of state-run education featuring remarkably similar secular settlements. Each country placed strong barriers against public financing of religious schools, but permitted religious instruction in the public schools—although the kind of and extent to which religious instruction was given in any state or municipality did vary. Moreover, in both countries the residual denominational sector in education was dominated by Catholic schools. Generally speaking, Catholics in both countries demanded state aid, and rejected the "nondenominational" exercises held in the public schools, whereas Protestants of all stripes supported both the restrictions on state aid and the pan-Protestant religion in the public schools. This established, in each country, a strong Protestant-Catholic divide on matters pertaining to religion and education that persisted throughout the duration of the settlement.

Although the two secular settlements were similar, the state-building processes that brought them to fruition created remarkably different administrative structures. The grassroots movement for common schools in the United States bequeathed a decentralized system where local districts controlled most features of education, including power over curriculum and appointments. By contrast, the top-down creation of national schools in Australia culminated in highly centralized state ministries of education which created uniform rules within each colony on all administrative matters, including staffing and curriculum. These divergent administrative forms would have an important impact on the role of religion over the duration of the nineteenth-century settlement. As we shall see in the next part of the book, the decentralized American system proved far more permeable to religious and professional actors who sought to reduce religion's role than did the insulated, centralized Australian system.

PART TWO
THE NINETEENTH CENTURY SETTLEMENT IN TRANSITION:
ADMINISTRATIVE CENTRALIZATION AND SECULARIZATION, 1880-1945

With state schooling largely established as the dominant partner in the educational domain by 1880 in each country, a durable secular settlement had been established in each country with strongly similar characteristics: religion was permitted in public schools, and financial support was barred from flowing to religious schools. Yet, in the United States, the nineteenth-century settlement began to erode almost immediately. In Australia, by contrast, the nineteenth-century settlement proved remarkably immune to political or professional challenge until its precipitous reformulation in the 1960s.

The two chapters in Part Two of this dissertation examine the divergent fates of the nineteenth-century settlements, and it focuses on how systems of educational administration affected the politics of religion—and hence the trajectory of secularization—between the triumph of state schooling in the late nineteenth century and the end of World War II. In the United States, the decentralized system of local board control made American education *permeable* to religious minorities dissatisfied with the pan-Protestant, "non-sectarian" curriculum that had ascended in the mid-nineteenth century. These minority challenges eroded religion's position in the public schools from the bottom up. At the same time, the decentralized development of education also unleashed strong professionalizing dynamics among American educators, ultimately leading to the development and diffusion of new, professional pedagogical ideas that rapidly marginalized religion from the top down. In Australia, by contrast, centralized control over education *insulated* educational policy from minority challenges, and stifled professional development among teachers. This contributed to a remarkable stasis in Australian education in the early twentieth century, both generally and specifically in regards to religious policies.

Taken together, Chapters Three and Four illustrate how differences in the organization of administrative control can actively shape the development of secularization both by shaping the contours of political contestation and by helping to constitute actors with particular sets of motives and ideas. By the end of World War II, thanks to the action of these processes as facilitated by American administrative institutions, the United States would already have moved substantially in the direction of the strict separationist settlement it would develop in the late twentieth century. In Australia, by contrast, this settlement persisted until attempts to decentralize administrative authority in the 1960s finally altered the institutional dynamics of religious politics.

Chapter Three

American Education: Decentralized Administration

INTRODUCTION

This chapter examines how America's decentralized education system facilitated the secularization of American education in the century or so preceding the Supreme Court's *Engel v. Vitale* and *Abingdon v. Schempp* decisions banning religious exercises in the public schools. While religion retained a place in the curriculum of many schools, its prevalence decreased markedly over the late nineteenth and early twentieth centuries, especially in those cities and states marked by increased religious pluralism. The Supreme Court's rulings in the 1960s were dramatic and did much to accelerate the process of secularization, but Bible reading was already on the decline.

Why did devotional exercises decline during this period? In this chapter, I argue that America's decentralized system of locally controlled education facilitated both religious conflict and professionalization in important ways. Local control over curricular policy, coupled with weak state oversight, meant that religious practices varied widely around the country. More importantly, they were subject to constant contestation in religiously heterogeneous areas. Religious minorities—especially Catholics and Jews—who objected to the pan-Protestant devotional exercises typical of the nineteenth century common school were able to lobby local boards to change their policies. Local control meant that religious practices had to be responsive to local, not statewide, political dynamics, a situation that facilitated countermajoritarian challenges. In areas where they commanded significant political power, religious minorities were able to alter the policy either through effecting compromises or outright eliminating the offending practices. The ongoing conflicts over Bible reading and other religious practices created a context in which school boards came to perceive religion as being dangerously controversial, providing yet another reason for skittish boards to eschew religion in the interest of political harmony.

Decentralized control also facilitated early professionalization in the United States. The decentralized system encouraged the development of professional associations and educational periodicals, which provided a platform for the exchange and development of educational ideas that challenged the traditional religious underpinnings of American education. The development of privately controlled research universities in the late nineteenth century gave impetus to the development of these theories. Perhaps most importantly, the position of district superintendent (a local management position with no analogue in Australia) provided a rich supply of educational leaders who were motivated to advance progressive educational reforms, and who had sufficient local control to enact reforms in their own, autonomous school districts. Squeezed from below by religious conflict, and from above by professionalization, Protestant devotionals declined over the period between 1840 and 1960.

THE DECLINE OF RELIGION IN AMERICAN SCHOOLS FROM 1840 TO 1962: AN OVERVIEW

Although religious exercises declined in American schools in the late nineteenth and early twentieth centuries, this decline was not uniform. Getting a clear picture of religion's position in American schools is somewhat difficult because of the diffuse control and diverse local conditions. Nevertheless, this period saw a slow but steady erosion of religion's place in the curriculum. Religion declined fastest in religiously diverse areas, and especially in large cities

with sizable non-evangelical populations. At the same time, in less heterogeneous areas such as the South, Bible reading and other devotional exercises became somewhat more entrenched.

We can observe the decline of religion by looking at the practice of Bible reading. Bible reading was more common than prayer in the nineteenth century because it was seen as less controversial than prayer, and also because, as discussed in Chapter Two, it was central to the "nonsectarian" scheme for religion in the common schools advanced by Horace Mann and others.[1] The Bible's role changed considerably over the nineteenth century. Whereas at midcentury, it was still being used as a textbook in many parts of the country, over the second half of the nineteenth century it increasingly came to be used exclusively devotionally as a stand-alone segment of the school day.[2] The Bible's use became more exclusively devotional just as controversy over its use became more widespread (see below); accordingly, devotional Bible reading became a rallying cry for many Protestants and educators, who encouraged more consistent use of the Bible in the schools.[3] The Republican Party even took up the cause of Bible reading during the 1870s and 1880s.[4]

Survey statistics prior to 1890 are fairly unreliable,[5] but it can be said that in the late nineteenth century, Bible reading was commonplace, though not universal. In New England, where Bible reading had been a central part of Puritan education since colonial days, and where Horace Mann had made the Bible central to "nonsectarian" education, Bible reading came closest to being a universal practice.[6] Yet elsewhere, its usage was far less uniform. State superintendents' reports in Pennsylvania and New York in the mid-nineteenth century reveal that, especially in rural areas, Bible reading was often absent from many schools.[7] The use of the Bible was most common in cities and other established areas, and less common on the frontier; in many Western states, Bible reading never caught on as a common practice.[8] Still, Bible reading was a dominant practice: memoirs from the period are replete with memories of regular

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[1] R. Laurence Moore. 2000. "Bible Reading and Nonsectarian Schooling: The Failure of Religious Instruction in Nineteenth-Century Public Education." *Journal of American History* 86(4): 1581-1599, p. 1583; Raymond B. Culver. 1929. *Horace Mann and Religion in the Massachusetts Public Schools.* New Haven: Yale University Press.

[2] Moore, "Bible Reading and Nonsectarian Schooling," p. 1597.

[3] See, e.g., Robert T. Handy. 1984 [1971]. *A Christian America: Protestant Hopes and Historical Realities.* 2nd ed. New York: Oxford University Press, pp. 87-90; Lloyd P. Jorgenson. 1987. *The State and the Non-Public School, 1825-1925.* Columbia: University of Missouri Press, pp. 132-34; Robert Michaelsen. 1970. *Piety in the Public School: Trends and Issues in the Relationship between Religion and the Public School in the United States.* New York: MacMillan, pp. 117-22.

[4] Ward M. McAfee. 1998. *Religion, Race, and Reconstruction: The Public School in the Politics of the 1870s.* Albany: State University of New York Press, p. 4.

[5] Less reliable, unsourced claims about the prevalence of Bible reading from the late nineteenth claim that 80% of American schools were conducting Bible reading, a figure which is probably somewhat high. See, e.g., Philip Schaff. 1888. *Church and State in the United States.* New York: G.P. Putnam's Sons, p. 75. The 80% figure was still being given as late as 1916, however. See Sara Whedon. 1916. "The Essential Place of Religion in Education: Synopsis of Essays Presented in Contest." Pp. 93-134 in National Education Association, *The Essential Place of Religion in Education.* Ann Arbor, MI: National Education Association, p. 111.

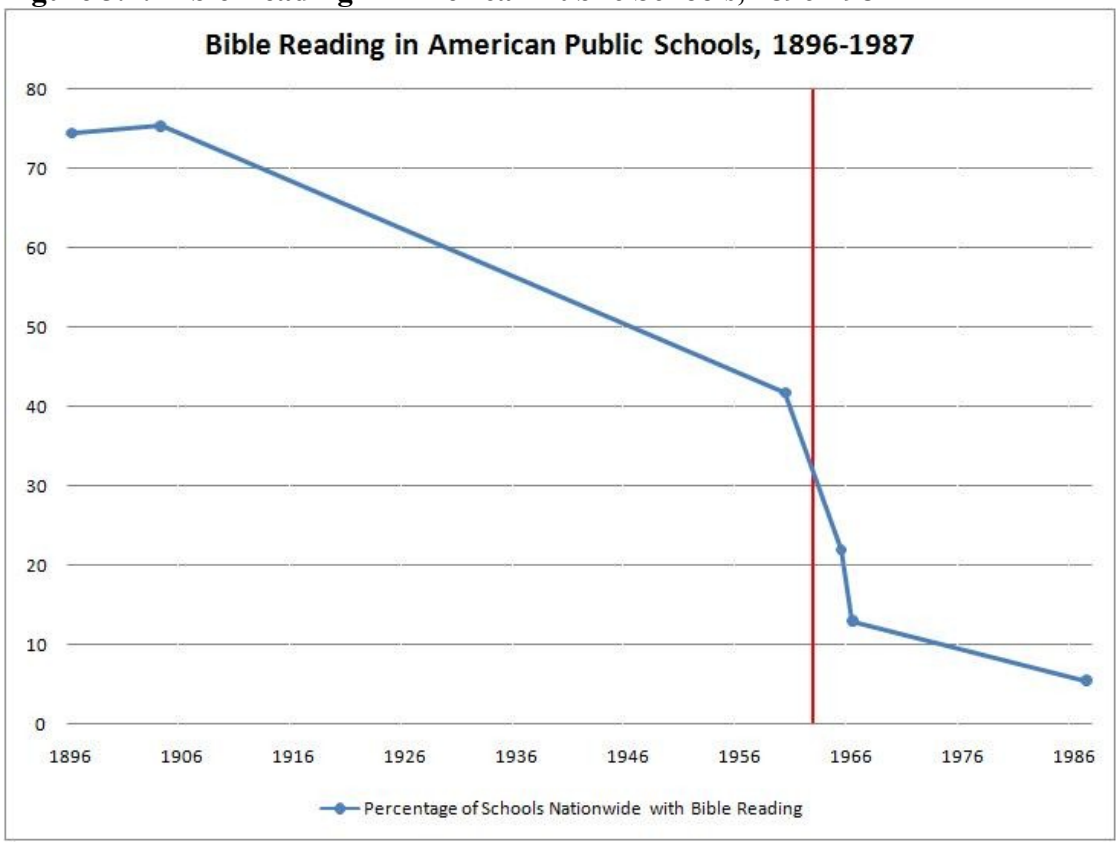
[6] United States Office of Education. 1896. *Report of the Commissioner of Education, made to the Secretary of the Interior for the Year 1894-1895*. Washington, DC: Government Printer, vol. II, p. 1656.

[7] For Pennsylvania, see William Kailer Dunn. 1958. *What Happened to Religious Education? The Decline of Religious Teaching in the Public Elementary Schools, 1776-1861.* Baltimore: The Johns Hopkins Press, pp. 294-7. For New York, see Benjamin Justice. 2005. *The War that Wasn't: Religious Conflict and Compromise in the Common Schools of New York State, 1865-1900.* Albany: State University of New York Press, pp. 38-44.

[8] United States Office of Education. 1904. *Report of the Commissioner of Education, made to the Secretary of the Interior for the Year 1903.* Washington, DC: Government Printer, vol. II, p. 2448.

Bible reading,[9] and most major cities in the Northeast and Midwest experienced serious controversies over Bible reading during the late nineteenth century.

Figure 3.1: Bible Reading in American Public Schools, 1896-1987



Sources: US Office of Education, Report…for the Year 1894-5, *p. 1656; US Office of Education,* Report…for the Year 1903, *p. 2445; Dierenfield,* Religion in American Public Schools, *p. 51; H. Frank Way. 1968. "Survey Research on Judicial Decisions: The Prayer and Bible Reading Cases."* Western Political Quarterly *21: 189-205, p. 199; Richard B. Dierenfield. 1967. "The Impact of the Supreme Court Decisions on Religion in Public Schools."* Religious Education *62: 445-51, pp. 447-8; Bruce J. Dierenfield. 1992. "Secular Schools? Religious Practices in New York and Virginia Public Schools since World War II."* Journal of Policy History *4(4): 361-88, p. 383. The vertical red line indicates the date (1963) of the* Abington v. Schempp *decision banning Bible reading.*

The early twentieth century evinces a much clearer pattern. As Figure 3.1 demonstrates, Bible reading declined slowly over the first half of the twentieth century, before collapsing precipitously after the Supreme Court rulings of the 1960s. The United States Commissioner of Education surveyed school districts in 1896 and again in 1903 regarding their use of the Bible, and found that approximately three-quarters of school districts incorporated Bible reading.[10] Some sixty years later, Richard Dierenfield surveyed school districts and found that only 42% of

[9] See, e.g., the selections in Barbara Finkelstein. 1989. *Governing the Young: Teacher Behavior in Popular Primary Schools in Nineteenth Century United States.* New York: The Falmer Press, pp. 214-27, 258-64, 270-88.

[10] US Office of Education, *Report…for the Year 1903*, vol. II, p. 2445.

schools read the Bible, a sharp decline from the turn of the century.[11] This decline occurred despite a concerted effort by Protestants to pass mandatory Bible reading laws in many states, especially in the South and Northeast. In fact, Dierenfield's survey suggests a sharp decline in Bible reading had occurred in the Midwest, alongside a smaller decline in the Northeast and continued low use in the West; but also that its use had increased in the South. The decline in devotional use of the Bible occurred in conjunction with the secularization of the broader curriculum, as religiously-tinged readers and providential histories were slowly replaced with a more secular and naturalistic set of textbooks.[12] In response to the decline of Bible reading, a number of alternative practices, such as released time, dismissed time, and extramural Bible study for credit, were introduced in some cities, though these practices were never extremely widespread and their use was often fiercely contested.[13]

While the overall trend is clear, the somewhat chaotic variation in particular is important, as it reveals the impact of local control. Because Bible usage was determined locally, a crazy quilt of Bible-reading practice was allowed to develop in the early twentieth century. Local control meant that the prevalence of Bible reading, religious instruction, and other devotional practices came to vary widely by region, by state, and by city. As discussed in detail below, in religiously heterogeneous cities and states, Bible reading declined under persistent attack by religious minorities and indifference by progressive educators. In relatively homogeneous states, however, especially in the South, Protestant majorities (especially those led by persistent Methodists) were able to circumvent local control by appealing to state legislatures to impose uniformity through mandatory Bible-reading legislation. Such actions were relatively rare, however, and only twelve states (and the District of Columbia) had mandatory Bible legislation on the books by 1963.[14] Nevertheless, the great variety in actual practice may help to explain why commentators during the early twentieth century arrived at widely different conclusions about religion's place in the curriculum. Thus, in 1947, V.T. Thayer fretted that "Prior to 1918 and World War I, few Americans would ever have predicted that religion and religious education would ever again become matters of general concern in the United States. Today, it is precisely this that has happened."[15] Yet only six years later, Leo Pfeffer would flatly declare, "The American public school is a secular school…in curriculum, method, and spirit."[16]

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[11] Richard B. Dierenfield. 1962. *Religion in American Public Schools.* Washington, DC: Public Affairs Press, p. 51.

[12] See, e.g., Warren A. Nord. 1995. *Religion and American Education: Rethinking a National Dilemma.* Chapel Hill: University of North Carolina Press, pp. 68-70; and James W. Fraser. 1999. *Between Church and State: Religion and Public Education in a Multicultural America.* New York: St. Martin's Griffin, pp. 120-1.

[13] Michaelsen, *Piety in the Public School*, pp. 170-85. Released-time education was the most popular of these programs, especially in the Midwest, where it originated. By the time of the Supreme Court's *McCollum* decision prohibiting released time on school grounds in 1948, over a million children (around 5% of the national population) participated in released-time, although still only in "a relatively small minority of the nation's schools." Michaelsen, *Piety in the Public School,* p. 175; see also Jonathan Zimmerman. 2002. *Whose America? Culture Wars in the Public Schools.* Cambridge: Harvard University Press, p. 135.

[14] Donald E. Boles. 1963. *The Bible, Religion, and the Pubic Schools.* Ames: Iowa State University Press, p. 51.

[15] V.T. Thayer. 1947. *Religion in Public Education.* New York: Viking Press, p. x.

[16] Leo Pfeffer. 1953. *Church, State, and Freedom.* Boston: Beacon Press, p. 288. These divergent evaluations were visible as early as the 1910s, when Samuel Windsor Brown could state that "there has been going on in the United States a gradual but widespread elimination of religious and church influences from public education," just as the Central Conference of American Rabbis (CCAR) was lamenting that "in practically every city in the country the Bible is read, either with the sanction of the law or, when the law forbids, with the connivance or ignorance of the school authorities." See Samuel Windsor Brown. 1912. *The Secularization of American Education, as Shown by State Legislation, State Constitutional Provisions, and State Supreme Court Decisions.* New York: Teachers

Significantly, funding for parochial schools did *not* evince such wide diversity, precisely because the issue was successfully nationalized in the late nineteenth century. As discussed in Chapter Two, restrictions on funding "sectarian" schools became nearly universal in the late nineteenth century as the issue became a central rallying cry of national politics. The near-passage of the Blaine amendment, which would have amended the Constitution to prevent such expenditures, and the ensuing Congressional requirement that new states include parallel provisions as a condition of statehood, greatly contributed to this trend.[17] By 1962, every state but Vermont had incorporated provisions restricting funds for religious schools into its constitution.[18] Unlike Bible reading, where opposition was to an extent an ecumenical affair (see below), Catholics were unable to recruit allies in their campaign for public aid for their schools—Jews, Unitarians, and liberal Protestants all opposed diverting funds to religious schools. The issue of separation of public purse and religious school was thus easier to leapfrog to the state level, reducing local influence.

THE PERMEABLE STATE: DECENTRALIZED CONTROL AND RELIGIOUS CONFLICT

Education in the United States is highly decentralized by any standard, and especially so in comparison with Australian schools. Although over the past quarter-century, state and federal governments have increased their funding of—and imposed more stringent standards upon—local schools, authority over American education is still fundamentally divided among over fourteen thousand local school districts.[19] As William Reese has recently summarized it, "America still has the most decentralized school governance in the Western world."[20]

Local control has been central to American education since the eighteenth century. As discussed in Chapter Two, American public schools emerged organically through the efforts of a grassroots campaign for common schools. Accordingly, public schools in the early nineteenth century were governed and financed at the local level.[21] Local towns (or the districts they created) were responsible for the employment and oversight of schoolteachers, the maintenance of buildings, and curricular standards.[22]

State officials, by contrast, were limited to little more than cheerleading functions. Although technically the chief educational office in each state, the office of state superintendent was a largely powerless position during the nineteenth century. In Wisconsin, for instance, the state superintendent was given general power to supervise schools, but in many instances (such as the ability to arbitrate disputes between local officials) not the power to enforce his decisions. Local officials accordingly acted essentially as they pleased, ignoring the decisions and orders of

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College, Columbia University, p. 1. The CCAR's 1916 statement is quoted in Naomi W. Cohen. 1992. *Jews in Christian America: The Pursuit of Religious Equality.* New York: Oxford University Press, p. 108.

[17] Steven K. Green. 1992. "The Blaine Amendment Reconsidered." *Journal of Legal History* 36: 38-69; Joseph P. Viteritti. 1998. "Blaine's Wake: School Choice, the First Amendment, and State Constitutional Law." *Harvard Journal of Law and Public Policy* 21: 657-718, pp. 672-3.

[18] Boles, *Bible, Religion, and the Public Schools,* p. 43.

[19] Charles Glenn. 2003. "Public Education Changes Partners." Pp. 299-325 in *Religion Returns to the Public Square: Faith and Policy in America,* edited by Hugh Heclo and Wilfred M. McClay. Washington, D.C., and Baltimore: Woodrow Wilson Center Press and Johns Hopkins University Press, pp. 305-6.

[20] William J. Reese. 2005. *America's Public Schools: From the Common School to "No Child Left Behind."* Baltimore: Johns Hopkins University Press, p. 329.

[21] Carl F. Kaestle. 1983. *Pillars of the Republic: Common Schools and American Society, 1780-1860.* New York: Hill and Wang, chs. 1-3.

[22] Lawrence A. Cremin. 1980. *American Education: The National Experience, 1783-1876.* New York: Harper & Row, pp. 151-3.

the state superintendent.[23] In other states, their allotted powers were even more circumscribed. In Massachusetts, Horace Mann was given power only to gather educational data, distribute a small permanent school fund, and report on the condition of schools.[24] Efforts in the nineteenth century to systematize the schools and transfer greater power to state officials failed; although many of the trappings of a centralized system were instituted, these provisions (such as state superintendents and constitutional declarations) remained more formal than powerful.[25] State bureaucracies remained "small and mostly clerical in function;" even in 1890, the median size of state education departments was two—the superintendent and one assistant.[26]

Local control gave rise, in the nineteenth century, to an important feature of the American educational system not found in Australia: the city superintendent. Urban schools were initially run in the same manner as rural schools, controlled by local boards who in turn selected teachers, chose textbooks, and dictated what would be taught. As cities began to grow, districts initially multiplied in an uncoordinated fashion. To coordinate them, central boards of education were typically superimposed on multiple local districts within a single city. In many cities, these elected boards hired superintendents to help them coordinate multiple districts within a single city.[27] Superintendents were fundamentally local officials, beholden to local boards and not state officials.[28] The actual powers of any given superintendent varied widely from city to city, but typically included the supervision of teachers and preparation of the course of study.[29] Superintendents were generally stronger in areas where local boards either could not or would not exercise control over the management of city schools.[30] By the turn of the twentieth century, city superintendents would become more uniformly powerful, coming to have "probably…more impact on the everyday management of education than any other set of individuals."[31] This power was obtained, in many instances, by arguing from the professional authority of educational expertise, as I discuss in detail below. Superintendents would also come to take on an increasingly important role in the professional development of education in the United States.

In short, American education was governed locally, with effective authority over personnel, examinations, finance, and curriculum residing with local school boards. State officials' roles were largely ceremonial and hortatory, with more formal than real power until well into the twentieth century. And in the cities, authority was often given over to superintendents, with varied powers to coordinate and manage education. These features would have an important impact on the fate of religion in America's public schools in the 1850-1950 period.

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[23] Lloyd P. Jorgenson. 1956. *The Founding of Public Education in Wisconsin*. Madison: State Historical Society of Wisconsin, pp. 97-103.

[24] Cremin, *American Education: The National Experience*, p. 155.

[25] Cremin, *American Education: The National Experience*, p. 152; David Tyack, Thomas James, and Aaron Benavot. 1987. *Law and the Shaping of Public Education, 1785-1954.* Madison: University of Wisconsin Press, p. 55.

[26] Tyack et al., *Law and the Shaping of Public Education*, pp. 50, 61-2.

[27] Jorgenson, *Founding of Public Education,* p. 178-9.

[28] Justice, *War that Wasn't*, pp. 48-50.

[29] David Tyack. 1974. *The One Best System: A History of American Urban Education*. Cambridge: Harvard University Press, pp. 88-91.

[30] See, e.g., Selwyn Troen's description of how the St. Louis superintendency became an early powerful position thanks to the dereliction of duty of that city's educational managers. Selwyn K. Troen. 1975. *The Public and the Schools: Shaping the St. Louis System, 1838-1920.* Columbia: University of Missouri Press, pp. 143-5.

[31] David Tyack and Elizabeth Hansot. 1982. *Managers of Virtue: Public School Leadership in America, 1820-1980.* New York: Basic Books, *Managers of Virtue,* p. 96.

The Politics of Religion in a Decentralized System

Controversy over religious exercises began almost immediately after the creation of common schools. Local boards were the central sites for conflict over religion from the early 19th century onwards. While Catholics were the earliest and most sustained critics of pan-Protestant devotionals, they were not the only ones; as the nineteenth century progressed, other religious minorities, such as Jews, Unitarians, and freethinkers, also raised their voices against such practices.[32] They were often joined by Baptists (who had their own long tradition of opposition to state-supported religion) and a growing number of liberal Protestants, who increasingly objected to the imposition of majority religious exercises on religious minorities as a violation of religious freedom and the golden rule.[33] The broadly dispersed control over curriculum through thousands of local boards created myriad opportunities for these religious minorities and their Protestant sympathizers to influence policy in areas where they commanded political strength.

Local Political Clout and the Elimination of Bible Reading

In large cities and areas where religious diversity was great, local educational control provided opportunities for religious minorities to challenge and outright eliminate majoritarian religious exercises. As discussed in Chapter Two, the earliest and loudest opposition to the "nonsectarian" devotionals in the schools was made by Catholics. Catholics protested religious exercises in several eastern cities as early as the 1840s, but these challenges typically failed because they did not have enough clout. In New York City in 1840, Cardinal John Hughes' challenge to that city's Public School Society created considerable controversy, but ultimately failed to dislodge Bible reading from the city's schools; officials on the Board of Education flatly declared that Bible reading without note or comment was not a sectarian practice, and thus permissible.[34] In Philadelphia, a more modest petition in 1843 to allow Catholic students to read the Catholic Douay Bible sparked two rounds of rioting featuring the destruction of churches and convents, cannon fusillades, and the marshalling of armed militias in the city streets.[35] A controversy over Bible reading in Hartford, Connecticut, in 1865 featured no violence but a similar outcome: despite protests from the august educationist Henry Barnard, the school committee rejected a proposal to end Bible reading.[36]

As religious diversity grew in the cities, however, Catholics and other minorities began to achieve successes. The first major breakthrough, and perhaps the most consequential incident,

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[32] James Hennesey. 1981. *American Catholics: A History of the Roman Catholic Community in the United States.* New York: Oxford University Press, p. 185.

[33] On the broad array of Protestant objections in the 1870s, see David B. Tyack. 1970. "Onward Christian Soldiers: Religion in the American Common School." Pp. 212-255 in *History and Education: The Educational Uses of the Past,* edited by Paul Nash. New York: Random House, p. 232.

[34] Diane Ravitch. 1988 [1974]. *The Great School Wars: A History of the New York City Public Schools.* New York: Basic Books, p. 80. In an unrelated complaint, a subcommittee of the Board rejected the objection that Jewish and Unitarian concerns should be accommodated by declaring that "the Jews…cannot have the same privileges as those who embrace the Christian religion," and defining "sectarian" exercises as those that were "different from the established or prevailing religion," which they defined as Protestantism. See *Report of the Select Committee of the Board of Education.* 1843. New York: Levi D. Slamm, pp. 7, 11, quoted in Joan DelFattore. 2004. *The Fourth R: Conflicts over Religion in America's Public Schools.* New Haven: Yale University Press, p. 30.

[35] Michael Feldberg. 1975. *The Philadelphia Riots of 1844: A Study of Ethnic Conflict.* Westport, CT: Greenwood Press; a compelling abridged account can be found in DelFattore, *The Fourth R,* pp. 35-41.

[36] Jorgenson, *State and the Non-Public School,* p. 38.

was the "Bible War" that shook Cincinnati from 1869 to 1873.[37] In 1869, Cincinnati was one of the largest cities in the American West and also one of the country's most religiously diverse cities. Catholics, Jews, Unitarians, Universalists, and freethinkers all made the city home in sizable numbers. The Cincinnati board of education was similarly diverse, numbering at least ten Catholics and two Jews among its forty members.

In the summer of 1869, acting on the initiative of a Catholic board member's proposal, the Board of Education entered into negotiations with Catholic officials to bring Catholic parochial schools under the control of the Cincinnati public school district. In conjunction with this proposal, a board member "without an obvious institutional commitment"[38] proposed a resolution repealing the regulation requiring opening devotionals, and declaring that "religious instruction and the reading of religious books, including the Holy Bible, are prohibited in the common schools of Cincinnati, it being the true object and intent of this rule to allow the children of the parents of all sects and opinions, in matter of faith and worship, to enjoy alike the benefit of the common-school fund." The proposal was intended as "an olive branch signifying the good faith of the board and the intention to make the common schools religiously neutral."[39] Nevertheless, it touched off an uproar among the press and the public, and the city divided sharply, with the Protestant establishment arguing that the Bible was central to the moral and civic task of the public schools; and a coalition of religious and political liberals, Catholics, Jews, and "a few courageous Protestant evangelicals" arguing that the instruments of the state should be secular. On November 1, 1869, the board passed the resolutions by a vote of 22-15, with all of the Catholic board members voting in favor, and the majority of the Protestants voting against. The Board's action was later upheld by the Ohio Supreme Court as an appropriate exercise of local authority.[40]

The Cincinnati Bible War had several important consequences. Most immediately, it encouraged several other cities in Ohio to follow Cincinnati's example and eliminate Bible reading.[41] More significantly, it represented an occasion for opponents of pan-Protestant devotionals to articulate strong civic arguments against the practices.[42] In the wake of the events in Cincinnati, many liberal Protestants would come to rethink their position and become advocates for the elimination of devotional exercises, giving weight to the ongoing campaign against them.[43]

Perhaps most importantly of all, however, the Cincinnati Bible War instigated an anti-Catholic backlash that turned Bible reading into a major issue for school boards nationwide in the following decades. As the issue was taken up into national politics during the 1870s,[44]

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[37] Except where noted, the next three paragraphs are based upon Robert Michaelsen. 1969. "Common School, Common Religion? A Case Study in Church-State Relations, Cincinnati, 1869-70." *Church History* 38(2): 201-17.

[38] Michaelsen states that the member "appears to have been either a nominal Protestant or a man with no religious affiliation." See Michaelsen, "Common School," p. 204n.12.

[39] Stephan F. Brumberg. 2003. "The Cincinnati Bible War (1869-1873) and Its Impact on the Education of the City's Protestants, Catholics, and Jews." *The American Jewish Archives Journal* 54(2): 11-46, p. 23.

[40] *Board of Education of Cincinnati v. Minor et al.,* 23 Ohio St 211 (Ohio Supreme Court, 1873).

[41] Bernard Mandel. 1949. "Religion and the Public Schools of Ohio." *Ohio Archaeological and Historical Quarterly* 58: 185-206, p. 195.

[42] Michaelsen, "Common Schools," p. 212.

[43] See, e.g., Henry Ward Beecher. 1869. "Henry Ward Beecher on the School Question." *New York Tribune*, 3 December, p. 5; E.P. Hurlbut. 1870. *A Secular View of Religion in the State, and the Bible in the Public Schools.* Albany, NY: Joel Munsell; and Samuel Thayer Spear. 1876. *Religion and the State, or, The Bible and the Public Schools.* New York: Dodd, Mead.

[44] McAfee, *Religion, Race, and Reconstruction.*

religious minorities redoubled their efforts to curtail Protestant devotionals, forcing school boards in multiple cities to address the issue. In 1875, the school board in Buffalo, New York, elected to exclude the Bible from its classrooms.[45] That same year, in neighboring Rochester, a proposal from a Jewish school board member to forbid religious exercises drew support from Baptists, and passed on a 14-2 vote despite evangelical objections. Acknowledging the conscience claims of Jews, Unitarians, and Catholics, the board passed a set of supplementary resolutions declaring that "the spirit of true religion requires that we should show regard for the conscientious scruples of others which we would have them, in similar circumstances, show us."[46] And in Chicago, a two-decade long campaign by Catholics—in which they were joined by a coalition of Jews, Unitarians, liberal Protestants, and nonbelievers—to ban the Bible finally succeeded, also in 1875.[47]

At times, local leadership proved decisive in the decision to eliminate Bible reading. In Atlanta, the Board of Education, facing complaints about the religious curriculum in the schools, decided to exclude Bible reading shortly after inaugurating its public school system during Reconstruction, leading to protestations from the Atlanta City Council.[48] However, the Board of Education was presided over, and dominated, by the august Joseph Brown, the former Governor of Georgia. Brown, a staunch Baptist who took pride in the historical Baptist tradition of disestablishmentarianism,[49] defended the Board's decision to exclude the Bible by declaring that religious exercises would necessarily infringe the religious freedoms of some. "Jews and Catholics are tax payers, just as Baptists and Methodists are," he wrote, and it would not be right to tax them if their children would be indoctrinated in Protestant pieties. Brown's pronouncement effectively ended the debate within the community over the Board's actions, even inspiring the local papers to chastise the City Council for its rash criticism.[50]

While coalitional activity was the most common route to influencing school boards to alter their policies, it was not the only route. Where Catholics held an outright majority in a school district, devotional exercises were sometimes dropped unceremoniously, without any concerted campaign. The unwieldy ward system in large Northeastern cities made this particularly feasible. In 1871, for instance, a muckraking reporter for the *New York Times* conducted an exposé on Bible reading in that city's schools. He found that in heavily Catholic wards, the Bible had been summarily abandoned at the behest of the Catholic ward trustees. In the Fourth Ward, he reported, the city's Board of Education had found out about the trustees' action, and had ordered the clerk not to pay the teachers' salaries in order to compel them to read the Bible. The situation was resolved when one of the Catholic trustees "carried off the Sacred

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[45] Green, "The Blaine Amendment Reconsidered," p. 47.

[46] *Proceedings of the [Rochester, NY] Board of Education,* 21 June 1875, quoted in Justice, *The War That Wasn't,* p. 178.

[47] James W. Sanders. 1977. *The Education of an Urban Minority: Catholics in Chicago, 1833-1965.* New York: Oxford University Press, pp. 24-5.

[48] Melvin W. Ecke. 1972. *From Ivy Street to Kennedy Center: Centennial History of the Atlanta Public School System.* Atlanta: Atlanta Board of Education, pp. 22-5; Philip N. Racine. 1990. "Public Education in the New South: A School System for Atlanta, 1868-1879." Pp. 37-57 in *Southern Cities, Southern Schools: Public Education in the Urban South,* ed. David N. Plank and Rick Ginsberg. Westport, CT: Greenwood Press, pp. 50-1.

[49] Brown clearly maintained a lifelong principled commitment to religious liberty. As Senator, he would argue against legislation that would have prohibited Mormon polygamists from voting in Utah by appealing to Baptists' historical support for religious freedom. See Herbert Fielder. 1883. *A Sketch of the Life and Times and Speeches of Joseph E. Brown.* Springfield, MA: Springfield Printing Company, p. 686.

[50] Derrell Roberts. 1965. "Joseph E. Brown and the Atlanta Public Schools." *Peabody Journal of Education* 43: 42-9, pp. 43-4.

Book from School No. 1 under his arm one morning" in order to definitively prevent the practice.[51] In all of the above cases, local control created pressure points that Catholics and other minorities could use to leverage local political strength into policy change regarding religious education.

Local Control and Church-State Compromises

While religious minorities were able to outright eliminate Bible reading in some cities, in others they leveraged local control over educational policy into compromise measures that contributed to considerable variation in local practice. In his study of church-state conflicts in New York State in the late nineteenth century, Benjamin Justice catalogued multiple instances of such compromises, which he termed "peaceable adjustments."[52] According to Justice, these peaceable adjustments "depended on several factors: small units of governance, schools situated in neighborhoods, school leaders who rejected one-size-fits-all approaches to religious education in public schools, and school boards at once relatively independent of state intervention, overwhelmed by growth, and permeable to the concerns of religious minorities."[53]

Peaceable adjustments appear to have been most frequently realized in financial compromises between public school systems and Catholic parochial schools, especially in smaller towns.[54] In small country towns with overwhelmingly Catholic populations, public schools would sometimes be entirely dissolved, with the school board simply "renting" space in the Catholic school for local children.[55] In somewhat larger cities as diverse as Savannah, Georgia, Poughkeepsie, New York, and Stillwater, Minnesota, Catholic leaders convinced local boards to create "Catholic public schools."[56] Under these plans, parochial school buildings were typically ceded or leased to public officials, with the explicit understanding that various "Catholic" aspects of the school—such as staffing, and/or holiday observances—would be retained. Catholic religious instruction was typically moved so as to occur immediately after the end of the official school day, so that the daily instruction in public and Catholic schools would be equivalent.[57] In practice, Catholic public schools were often indistinguishable from regular Catholic parochial schools.[58] These arrangements typically lasted so long as no one complained;

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[51] *New York Times.* 1871. "The Bible and the Schools." 16 July, p. 8. See also a follow-up report with similar observations in other parts of the city: *New York Times.* 1871. "The Bible and the Schools." 29 November, p. 1.

[52] Justice, *The War That Wasn't,* p. 15.

[53] Justice, *The War That Wasn't*, p. 156. See also Virginia Lieson Brereton. 1998. "Education and Minority Religions." Pp. 279-304 in *Minority Faiths and the American Protestant Mainstream,* edited by Jonathan D. Sarna. Urbana: University of Illinois Press, pp. 282-3.

[54] Larger communities tended to reject such proposals, as occurred in Detroit, Indianapolis, and Kansas City. See Jorgenson, *State and the Non-Public School,* p. 117.

[55] *Knowlton v. Baumhover,* 182 Iowa 691 (1918).

[56] For Poughkeepsie and Stillwater, see Jay P. Dolan. 1985. *The American Catholic Experience: A History from Colonial Times to the Present.* Garden City, NY: Doubleday, pp. 271-5. For Savannah, see Michael Gannon. 1997 [1964]. *Rebel Bishop: Augustin Verot, Florida's Civil War Prelate.* Gainesville: University Press of Florida, pp. 171-91.

[57] Gannon, *Rebel Bishop,* pp. 183-4; Pfeffer, *Church, State, and Freedom,* pp. 449-50.

[58] For example, here is how Catholic public schools worked in Meta, Missouri, in 1941: "We find the usual school day commencing with prayer in the morning. After prayer the pupils are marched, one room at a time, to the Catholic church next door for Holy Mass. After Mass the pupils are marched back to their school rooms where they receive religious instruction. In this they study the Catholic catechism and the child's Catholic Bible. On one or two days of each week the parish priest gives religious instruction to the pupils in the mid-morning, either at the church or in the schoolhouse chapel. On Friday afternoons the pupils are again marched to the church for confession. In the quarterly 'Teacher's Report to the Parents' the subject 'Religion' is included under 'Branches Pursued' and a grade

when objections were raised, however, they were often quickly shut down. Protestant opposition in the 1890s scuttled the plans in Stillwater and Poughkeepsie, for instance.[59] Still, even well into the twentieth century, especially in the Midwest, Catholic public schools persisted, and became a frequent source of litigation in the state courts.[60]

Peaceable adjustments also occurred on the question of devotionals in the public schools. In the early-to-mid-nineteenth centuries, a typical compromise was to allow parents to specify which version of the Bible (Protestant King James or Catholic Douay) they wanted their children to read, as occurred in Baltimore and Cincinnati (well before the Bible War).[61] Later in the century, a similar compromise occurred informally in cities with no formal policy on Bible reading. There, as in many wards of New York City, "teachers could conduct whatever exercises that they deemed appropriate for the pupils and that would preserve their jobs." In largely Catholic districts, therefore, the Douay Bible would be regularly read instead of the King James Bible.[62] Interestingly, some more orthodox Protestants also favored, or took advantage of, local control in order to retain a more sectarian curriculum.[63] In Meridian, Mississippi, for instance, teachers were told that "it is not enough to read a passage from the Bible to children; some comment should be made so that they may be able to understand its meaning." Such instructions made the classroom "in effect a Baptist or Methodist parochial school."[64]

Perhaps the most creative local compromise, however, occurred when local officials simply redrew district boundaries to create religiously homogeneous districts. In rural New York State, as Justice notes, "the issue of religion found resolution in the broader pattern of ethnically based school districts."[65] As demographic patterns changed, Catholics and Protestants appealed to officials to alter district boundaries to create ethnically and religiously homogeneous new districts. In one case, eighteen Protestant families attempted to create a new district separate from a mixed Protestant-Catholic district. A lawyer for the family declared that a new school district was necessary because "All of the children of the eighteen families of 'Raceville' and vicinity are all Protestant, while a large majority of the pupils attending the district school are Catholic. There are a large number of families in district ten who refuse to send their children to the district school under the above-mentioned circumstances."[66]

Local Control as Two-Way Street: Protestants' Defensive Maneuvers

If local control sometimes allowed for compromises that kept a place for religion in the public schools, it also offered Protestants yet another level of government through which they could ensure that majoritarian practices continued to be taught to local children. These moves often occurred in the wake of dramatic national controversies over Bible reading, such as those

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in this subject is given to each pupil." See *Harfst v. Hoegen,* 349 Mo. 808 (1942), p. 811. See also the discussion of a contemporaneous case in Indiana in Russell N. Sullivan. 1949. "Religious Education in the Schools." *Journal of Law and Contemporary Problems* 14: 92-112, p. 104.

[59] Dolan, *American Catholic Experience,* p. 274; Noah Feldman. 2005. *Divided by God: America's Church-State Problem, and What We Should Do About It.* New York: Farrar, Straus, & Giroux, p. 383.

[60] See generally Boles, *Bible, Religion, and the Public Schools,* pp. 150-5; Alvin W. Johnson and Frank H. Yost. 1948. *Separation of Church and State in the United States.* Minneapolis: University of Minnesota Press, pp. 105-12; Pfeffer, *Church, State, and Freedom,* pp. 450-5. See also below, Chapter Five.

[61] Brumberg, "Cincinnati Bible War," pp. 14-5; Dunn, *What Happened to Religious Education,* pp. 223-4.

[62] Justice, *The War That Wasn't*, p. 170.

[63] Kaestle, *Pillars of the Republic*, p. 158.

[64] Tyack, "Onward Christian Soldiers," pp. 224-5.

[65] Justice, *The War That Wasn't*, p. 68.

[66] Quoted in Justice, *The War That Wasn't,* p. 77.

in New York City (1840) and Cincinnati (1869) discussed above. In Detroit, despite near-parity between Catholics and Protestants in the general population, "militant" Protestants leveraged superior numbers on the Board of Education in 1844 to upend that city's decision of two years earlier to exclude Bible reading from the city's schools.[67] In Albany, New York, the school board dismissed a local rabbi's petition to discontinue religious exercises in 1875 by taking a laissez-faire approach to the question and passing the buck to local teachers and principals.[68] Perhaps most dramatically, the town school board in North Branford, Connecticut, took the extreme step of dissolving the local school district in 1869 rather than ceding to the petitions of Catholics. When the Town Board chided the school board for compelling Catholic students to read from the King James Bible and ordered them to stop compulsory Bible reading, the board of education responded by shutting down the district school, and instead "set[ting] up a private [school] in the common schoolhouse from which all Catholic children were excluded."[69] Although the board of education was forced to reopen the public school after state officials intervened, it nevertheless shows the lengths to which local majorities would go to leverage local control in order to maintain Protestant devotionals.

As non-Protestants gained strength, Protestants moved to reduce or bypass local authorities. In Northeastern cities where ward-based systems facilitated minorities' attempts to exclude pan-Protestant practices or substitute them with Catholic practices, Protestants saw centralizing administrative reforms (discussed in greater detail below) as a means of reducing minorities' influence on religious policies. Administrative reform campaigns at times took on an explicitly sectarian dimension in the late nineteenth century. In New York, for example, reformers railed against the ethnic politics that they claimed infested the city's schools. The coalition in favor of abolishing ward boards included moral reformers "determined to uphold Protestant values in polyglot New York City." They urged the Mayor to sign the 1896 legislation reorganizing the New York City schools by arguing that it would weaken the Catholic Church.[70] By contrast, teachers, many of them Catholics, unsuccessfully opposed the reforms, arguing that the city's diversity required community control in order to ensure that religious and cultural differences would be respected.[71]

A more widespread strategy took place in the South, where religious minorities were the weakest. Anti-Catholic sentiment swelled in the rural South in the early twentieth century,[72] and anti-Catholicism and the militant defense of Protestantism also became central to the agenda of the Ku Klux Klan in the 1910s and 1920s. Protecting Bible reading and religion in the public schools became a particular focus of the Klan's energies. Baptists and Methodists in Atlanta, for instance, with the support of the Klan, led a drive to reinstate Bible reading in that city's schools that culminated in an overwhelming victory in a 1920 referendum.[73] Not satisfied with local

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[67] David L. Angus. 1980. "Detroit's Great School Wars: Religion and Politics in a Frontier City, 1842-1853." *Michigan Academician* 12(3): 261-80, pp. 263-5.

[68] Justice, *The War That Wasn't,* pp. 174-5.

[69] Sister Mary Paul Mason. 1953. *Church-State Relationships in Education in Connecticut, 1633-1953.* Washington, DC: Catholic University of America Press, pp. 157-9.

[70] Tyack, *One Best System*, pp. 148-50.

[71] Kate Rousmaniere. 1997. *City Teachers: Teaching and School Reform in Historical Perspective.* New York: Teachers College Press, p. 14.

[72] John Higham. 1981 {1955]. *Strangers in the Land: Patterns of American Nativism, 1860-1925.* 2nd ed. Westport, CT: Greenwood Press, pp. 180-2.

[73] Philip N. Racine. 1973. "The Ku Klux Klan, Anti-Catholicism, and Atlanta's Board of Education, 1916-1927." *Georgia Historical Quarterly* 57: 63-75, pp. 63-66.

solutions, however, Southern Protestants in the early twentieth century attempted to entrench Protestant devotionals by appealing to state officials to impose mandatory Bible-reading legislation. The Klan lent its strong support to compulsory Bible-reading legislation, such as the law passed in Alabama in 1919.[74] Between 1913 and 1930, eleven states, most of them in the South, and the District of Columbia passed mandatory Bible-reading legislation, thereby taking the issue away from local authorities and enshrining the practice in state law.[75]

The Effect of Local Control: Religion as a Controversial Administrative Problem

While local control in many instances allowed religious minorities to eliminate devotional exercises, it is also clear that local control permitted religion to persist in many other schools. Yet local control also contributed to the development of a climate of administrative skepticism toward religion. Local control encouraged ongoing local challenges to religious practices, thereby making religion a real political minefield during the late nineteenth and early twentieth century. Decades of ongoing local conflict over religion created an understanding among principals, superintendents, and school board members that religion was an inherently controversial issue, and therefore a potential administrative headache. By the late nineteenth century, the idea that religion would be likely to do more harm than good, from an administrative perspective, had consolidated into received wisdom. This wariness of controversy, even in places where political dynamics might have favored Protestant successes, often convinced administrators, concerned above all with minimizing conflict and ensuring the smooth operation of their school systems, to exclude religious exercises.

At the turn of the twentieth century, one educator reflected that excising religion to avoid controversy was the American way: "No one seems to want in this country any system whereby school children shall be divided, for any purpose, along sectarian lines. If any form of exercise is found to give offense to any, our procedure is rather to cut out that exercise, not to try to adapt it to differentiated groups."[76] Indeed, excluding controversial (or potentially controversial) religious material from the classroom has a long history in American education. In Massachusetts in the 1830s, committees of clergy met to ensure that religious instruction contained "no hint of doctrinal instruction," but instead only the "great truths of Christian morality, about which there was no controversy."[77] The use of the Congregationalists' Westminster Catechism, once common in colonial times, was an early casualty in the name of noncontroversiality.[78] Indeed, the entire premise of Horace Mann's scheme for religion in common education was predicated upon the presumption that it was possible to teach only those aspects of religion which were uncontroversial.

While particular Protestant doctrines had been excluded in the past, the arrival of large numbers of Catholics caused many officials to begin to understand the Bible *itself* as something

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[74] Higham, *Strangers in the Land,* pp. 293-4.

[75] Johnson and Yost, *Separation of Church and State,* p. 33. However, parallel legislation failed in other states, in part because many Baptists did not share the same zeal as their Methodist counterparts. Proposed mandatory Bible-reading legislation in Virginia, for instance, failed twice in the mid-1920s as the Baptists came out in strong opposition to the bill. See Sadie Bell. 1969 [1930]. *The Church, the State, and Education in Virginia.* New York: Arno Press and the New York Times, pp. 513-21.

[76] Walter L. Hervey. 1907. "Moral Education in the Public Elementary Schools." *Religious Education* 2(3): 81-85, p. 82.

[77] Quoted in Burton Confrey. 1931. *Secularism in American Education: Its History.* Washington, DC: Catholic University of America, p. 137n.59.

[78] Pfeffer, *Church, State, and Freedom,* p. 282.

belonging to the part rather than to the whole. Following past practice, they excluded it. This tendency was visible as early as 1850, when the visiting Swedish educationist Per Siljeström observed that, in "many places" in New England, Bible reading "has been discontinued, and justly so, in accordance with the established principles, as there is one Christian sect, the Roman Catholics, who object to it."[79] Elsewhere in the United States, some local boards, anticipating controversy, excluded the Bible from the very outset of their school systems. In the religiously diverse, formerly French city of St. Louis, the school board prohibited religious instruction from day one in order to prevent any "collision or jealousy among our fellow citizens upon the subject of sectarian influence."[80]

After the Cincinnati Bible War, this view of the Bible as inherently controversial gained currency, and preemptive exclusion began to be advocated as a means of avoiding controversy. In New Haven, Connecticut, in 1877, the Board of Education voted to discontinue religious exercises in that city. Noting the rising Catholic population, they expressed concern that "there was no valid reason why a change in the preponderance of influence in the community should not change the exercises [from Protestant] to Roman Catholic, or Jewish, or Rationalistic form, as the case may be." Fearing that such a prospect would lead to political and sectarian controversy in the school system, they declared they could only avoid such a fate by effecting "its entire secularization, and in no other way."[81] Even where the removal of the Bible had led to an electoral backlash, the memory of prior controversy often disinclined local boards from acting to reinstate devotionals. In Cincinnati, where voters irate about the "Bible War" threw out the old school board in 1870, the newly elected, pro-Bible board chose not to bring the Bible back, instead deciding that "a greater effort should be made to make the Public Schools less objectionable to Catholics if we desire to avoid an irrepressible conflict."[82]

Though not binding upon local boards, noncontroversiality was also put forward as a guiding principle by several State Superintendents of Public Instruction in the 1860s and 1870s. In Illinois, Superintendent John Brooks suggested to local districts that when no one objected to religious exercises, the Bible should be read and daily prayers offered, but that when objections were raised, such exercises should not be held.[83] Similarly, in Virginia, that state's first State Superintendent was asked to clarify state policy on Bible reading after a conflict had arisen in Alexandria in 1871. "The subject of religious worship in the public schools is one which has occasioned great trouble in other States, and I thought it best for the school law to be silent on the subject," he confessed. But noncontroversiality again was to be a guiding principle: "Where it is agreeable to those concerned, and conducive to order and morals to have such exercises, I can see no objection to its being allowed…But if serious complaint, disorder, or trouble of any kind would be likely to result from their introduction, they ought not to be allowed."[84]

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[79] Per Adam Siljeström. 1969 [1853]. *The Educational Institutions of the United States: Their Character and Organization,* trans. Frederica Rowan. New York: Arno Press & The New York Times, p. 230.

[80] Quoted in Troen, *The Public and the Schools*, p. 40.

[81] Quoted in Mason, *Church-State Relationships in Education in Connecticut,* p. 162. The Board was turned out of office the following year by a "Bible ticket" supported by all of the clergy in New Haven. The Catholic leadership, who had entered into a gentleman's agreement with Protestant clergy to create a new system of instruction permitting multiple forms of worship in religiously diverse schools, wound up being betrayed by the new slate of Board members. They declared that the carefully wrought compromise was unpracticable, and simply reinstalled the old system of Protestant Bible reading. Disappointed Catholics withdrew their children from participation.

[82] Quoted in Michaelsen, "Common School," p. 211.

[83] Daniel W. Kucera. 1955. *Church-State Relationships in Education in Illinois.* Washington, DC: Catholic University of America Press, p. 85.

[84] Quoted in Bell, *Church, State, and Education in Virginia,* pp. 425-6.

As the nineteenth century progressed, concerns about controversy and divisiveness melded with rhetoric about the "common" school to cement an understanding of religion as divisive that would rise in counterpoint to the longstanding Protestant claim that religious exercises were necessary to unite Americans. School leaders' rhetoric was shot through with concern about group conflict of all kinds,[85] including religious conflict, and their argument that the common school should combat divisiveness lent itself to policies that excluded potentially divisive religious exercises. As the Bible increasingly came to be understood, not as a common text, but as a sectarian text in and of itself, educators sought to make public education truly nonsectarian by downplaying religious devotionals.[86] "It is impossible to have any such unsectarian religion that is not regarded as sectarian by the more earnest religious denominations," declared U.S. Commissioner of Education William T. Harris in 1903, by way of discouraging use of Bible, prayers, and catechism in the public schools.[87] In the context of an American educational system where professional educators were assuming much greater control over policymaking, the congealing of a received wisdom that devotional exercises were divisive and potentially controversial did little to encourage educators to embrace devotions. By contrast, it likely contributed to their willingness to let religion drop by the wayside as new, progressive educational reforms began to be instituted in the early twentieth century, as I discuss in the next section.[88]

Local control of educational policy thus contributed to the slow erosion of religion's place in the public schools by turning it into a perennial source of real political controversy. Direct political action by religious minorities succeeded in excluding devotionals in those cities where they could muster sufficient political muscle to influence local school boards. Indirectly, the climate of controversy that enveloped religious exercises encouraged administrators to abandon or downplay religious exercises in the name of comity. With administrative control over education dispersed widely, American policy toward religious education fragmented in the late nineteenth and early twentieth centuries, subject to local political conditions and the campaigns of those groups invested in religious education (or its elimination).

DECENTRALIZATION AS SPUR TO EDUCATIONAL PROFESSIONALIZATION

While religious minorities displaced religion from below through thousands of local school boards, religion was simultaneously being marginalized from above by a sustained challenge to religion in the public schools among professional educators. This challenge came alongside new ideas about the form and content of education that flourished under the banner of "progressive education" in the late nineteenth and early twentieth centuries. The emergence of progressive education was part and parcel of a broader process of educational

[85] Tyack, *One Best System,* p. 73.

[86] Stephen K. Green. 2008. "The Insignificance of the Blaine Amendment." *Brigham Young University Law Review* 2008: 295-333, p. 307.

[87] William T. Harris. 1903. "The Separation of the Church from the Tax-Supported School." *Educational Review* 26: 222-27, pp. 226-227.

[88] Even here, however, innovations were sometimes read through the lens of controversy. In 1916, a prize-winning essay in an NEA-sponsored competition on how to improve religious education extolled the promise of teaching the Bible as history and literature rather than devotionally. But still, the author cautioned, "It would not be wise, of course, to push the matter in any locality to the point of open antagonism." See Laura H. Wild. 1916. "The Essential Place of Religion in Education, with an Outline of a Plan for Introducing Religious Training into the Public Schools." Pp. 30-47 in National Education Association, *The Essential Place of Religion in Education.* Ann Arbor, MI: National Education Association, p. 45.

professionalization, in which a particular body of knowledge and set of experts came into being. Basing itself in the newly emerging field of educational psychology, and increasing its influence through a strong network of journals and professional associations, education became a self-conscious and increasingly self-assertive profession around the turn of the twentieth century. The new educational knowledge, standards, and leaders that this professionalization engendered posed a strong challenge to religion's traditional place at the center of the curriculum.

America's decentralized educational system facilitated this professionalization in both indirect and direct ways. Indirectly, decentralized control encouraged the development of an autonomous professional infrastructure of journals, institutes, and associations in which progressive ideas could be debated and refined. Existing apart from the control of any one district, these professional platforms proved receptive to progressive critiques of existing pedagogical practices. Directly, the lack of centralized planning meant that progressive initiatives and ideas could be applied experimentally in single school districts by local progressive leaders; these experimental initiatives often proved successful, spurring other districts to implement them.

The Professionalization of American Education and the Marginalization of Religion

American education professionalized slowly but steadily throughout the latter half of the nineteenth and the early twentieth centuries. This professionalization had many aspects. Educators developed and elaborated a network of local, state, and national associations which came to hold increasing influence among educators. Within these associations, subdivisions such as the National Council of Education within the National Education Association (NEA) increasingly made recognized claims to speak on behalf of educators regarding best practices in the sphere of education.[89] Moreover, whereas teaching had been a largely transient occupation in the early nineteenth century, into which teachers came and went with considerable fluidity,[90] it increasingly developed into a career, with longer tenures, increased training, and higher standards maintained through various instruments of professional closure. Teacher certification requirements began to be implemented with increased frequency in the mid-nineteenth century, and increasingly, training of some sort was required, especially at higher levels of education. In 1896, for instance, the North Central Association of Colleges and Secondary Schools began to require a college degree as a qualification for high school teachers.[91]

More importantly, however, there developed among educators in the last third of the nineteenth century a new form of specialized knowledge, presided over by a cadre of educational experts who made plausible claims to speak with authority on educational matters. As Andrew Abbott has argued, the development of specialized knowledge is perhaps the defining feature of professionalization. According to Abbott, professionalization is fundamentally concerned with the development of a recognized "jurisdiction" over certain activities, and new professions gain jurisdiction by applying a "system of abstract knowledge" to legitimize their jurisdictional claims to certain activities over and against competing claims by other professions.[92] Within education specifically, the development of new specialized educational knowledge and theories, rooted

[89] Tyack and Hansot, *Managers of Virtue*, pp. 99-100.

[90] James W. Fraser. 2007. *Preparing America's Teachers: A History.* New York: Teachers College Press, p. 25.

[91] George M. Thomas, Lisa R. Peck, and Channin G. De Haan. 2003. "Reforming Education, Transforming Religion, 1876-1931." Pp. 355-94 in *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life,* edited by Christian Smith. Berkeley: University of California Press, p. 375.

[92] Andrew Abbott. 1988. *The System of Professions.* Chicago: University of Chicago Press.

mainly in psychology, displaced traditional, largely religiously-based approaches to education that had dominated American education since colonial times.

The Turn to Science: Child Study, Educational Psychology, and Pedagogical Change

For most of the nineteenth century, the practice of education was typically quite austere in both form and content. Pedagogy and curriculum were minimalist. Pupils in the nineteenth century spent most of their time in school memorizing facts and reciting them back to the teacher. Education was typically "teacher-centered"—teachers typically stood at the front of the room and led the entire class as a whole through regimented call-and-response drills of facts to be learned.[93] The teacher behaved as a "drillmaster" or an "overseer,"[94] with "a specific unit of information to drill willy-nilly into the submissive child."[95] These didactic practices complemented a relatively small and basic curriculum, consisting of Christian morality, personal discipline, and a few basic academic subjects, typically including spelling, geography, and mathematics.[96]

Beginning in the mid-nineteenth century, however, and accelerating dramatically toward the turn of the twentieth, these traditional educational practices and curriculum were rapidly transformed by a new set of approaches that displaced religion from its traditional position at the center of the curriculum. The didactic, "teacher-centered" pedagogy of the early nineteenth century was discarded in favor of a "child-centered" pedagogy that accorded a central position to the child's learning process.[97] "Child-centered" education drew on the work of late eighteenth century European reformers such as Johann Pestalozzi and Johann Froebel, who argued that education should be tailored to meet the child's needs and interests, not the other way around. Pestalozzian ideas and methods became highly fashionable in the United States in the 1860s, especially after Edward Sheldon's successful use of object teaching in the schools of Oswego, New York, became well known nationally.[98] From the 1880s onward, educational journals declared that "the nature of the child" "lies at the basis of modern primary education…[and is] the master-key to the whole mystery of education,"[99] and encouraged teachers to reform their teaching to harmonize it with this new understanding of the learning process. "The child should be the center of all educational work," exhorted C.H. McGrew before the NEA in 1888. "The child's nature is sacred, and its harmonious culture according to its nature and destiny should be our highest aim."[100]

While child-centered education called traditional pedagogical practices into question, new scientific approaches to education posed a more fundamental challenge. The rise of educational psychology provided an alternative, scientific knowledge base that rapidly replaced religion as the epistemic foundation of educational practice. Whereas Pestalozzi and Herbart had argued the case for child-centered education from traditional philosophical (even religious) grounds, the emergence of psychology created a scientific rationale for a child-centered approach

[93] Larry Cuban. 1993. *How Teachers Taught: Constancy and Change in American Classrooms, 1890-1990.* 2nd ed. New York: Teachers' College Press, p. 26.

[94] Finkelstein, *Governing the Young*, p. 137.

[95] Ravitch, *Great School Wars,* p. 111.

[96] Reese, *America's Public Schools*, p. 29.

[97] Reese, *America's Public Schools*, ch. 3.

[98] Cuban, *How Teachers Taught,* p. 39; Reese, *America's Public Schools,* p. 89.

[99] Quoted in Thomas et al., "Reforming Education," p. 372.

[100] C.H. McGrew. 1888. "An Ideal Professional Training School for Kindergartners and Teachers." *Journal of Proceedings and Addresses of the National Educational Association* 1888: 339-53, p. 339.

to education. This move was advanced most notably by G. Stanley Hall. Hall was an early proponent of "child study," whereby children's learning process was meticulously tracked and analyzed through scientific experimentation in order to glean the stages of child development, to understand how children's learning experiences differed, and to devise ways of altering pedagogy to better fit the developmental process.[101] While earlier versions of child study had been around since the late 1860s,[102] Hall revolutionized child study by applying insights from psychology to the process. Hall was an ardent promoter of the psychological approach, declaring in 1894 that he aimed to use child study to "place education for the first time on a scientific basis," and to make child study "the center around which the education of the future will be organized."[103] He largely succeeded; speaking before the NEA in 1907, for instance, one speaker proclaimed the triumph of scientific over religious understandings: "The old theological notion that children are conceived and born in sin is dying out, and child study has hastened its coming extinction."[104]

Beyond child study, the scientific cachet of psychology had a still broader impact on educational leaders. New scientific approaches to learning seemed to many educators to provide a superior basis for education than the religiously-based approaches of the nineteenth century. As educational psychology began to be more widely known and admired, it led to a wide array of pedagogical innovations, including the "individualization" of schooling to adjust it to the abilities of different types of children;[105] the breakdown of traditional subject barriers in an attempt to make knowledge more relevant and readily understood by children;[106] and the promotion of children's autonomy, particularly efforts to encourage children to have a greater say in what they learned.[107] Moreover, the explosion of educational research that child study inspired increasingly gave educational professionals an institutional base in America's growing research universities.[108] Educational researchers increasingly came to take on prominent leadership roles in educational matters, reaping new influence and respect for deploying "knowledge based exclusively upon rules of logic and reference to the empirical, rather than on the social status of the speaker or the authority of God."[109] As I discuss below, the ongoing interaction of professionals in the universities and the professional associations played an important role in spreading these new educational ideas and practices throughout America's decentralized educational system. By 1920, psychology was the acknowledged "master science" of education, its theories influencing nearly every aspect of educational thought and practice.[110]

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[101] Lawrence A. Cremin. 1961. *The Transformation of the School: Progressivism in American Education, 1876-1957.* New York: Vintage Books, pp. 101-5.

[102] Ellen Condliffe Lagemann. 2000. *An Elusive Science: The Troubling History of Education Research.* Chicago: University of Chicago Press, p. 25.

[103] G. Stanley Hall. 1894. "Editorial." *Pedagogical Seminary* 3(Oct.): 3-7.

[104] Fletcher B. Dresslar. 1907. "The Contributions of Twenty-Five Years of Organized Child Study in America to Educational Theory and Practice, as Applied to Grammar Grades." *Journal of Proceedings and Addresses of the National Education Association* 1907*:* 910-914, p. 914.

[105] G. Stanley Hall. 1901. "The Ideal School as Based on Child Study." *Journal of Addresses and Proceedings of the National Educational Association,* 1901*:* 474-88

[106] Cuban, *How Teachers Taught,* p. 40.

[107] Cuban, *How Teachers Taught,* p. 50; Arthur Zilversmit. 1993. *Changing Schools: Progressive Education, Theory and Practice, 1930-1960.* Chicago: University of Chicago Press, p. 18.

[108] Lagemann, *Elusive Science.*

[109] Thomas S. Popkewitz. 1991. *A Political Sociology of Educational Reform: Power/Knowledge in Teaching, Teacher Education, and Research.* New York: Teachers College Press, p. 80.

[110] Ellwood P. Cubberley. 1920. *The History of Education.* Boston: Houghton Mifflin.

Professionalization and the Rise of Progressive Education

As new educational theories and pedagogies emerged, they drove the development of an enlarged and increasingly powerful set of educational leaders based in universities and professional associations. Loosely united under the banner of "progressive education,"[111] these educational leaders began to develop new ideas about the purpose of education that posed a fundamental challenge to the entire educational enterprise.[112] Educational progressives embraced a broad-ranging set of educational reforms, including administrative reforms that would increase the power of educational experts to direct public schools (see below). More importantly, however, progressives advanced a view of education that saw it not simply as a means of instructing children in established bodies of knowledge, but as a tool of social transformation.

Education had previously been understood primarily as the transmission of culture and knowledge from one generation to the next. Progressive educational reformers, by contrast, increasingly recast education as a tool of social reform. Rapid industrialization, increased immigration, and the explosive growth of American cities in the late nineteenth century created new demands upon the public schools and a host of social problems. Progressive educators saw the schools as a potential solution to these social dislocations in several senses. Most concretely, they advocated for the expansion of the curriculum in ways that befitted an increasingly modern, industrial society. In particular, they called for increased offering in the sciences, vocational and industrial education, physical and sex education, and so forth.[113]

More profoundly, however, progressive educators argued for a dynamic conception of education that could be tailored to a changing society. Education was increasingly cast as a tool of deliberate social reform, "the principal engine of an 'intentionally progressive' society."[114] John Dewey, perhaps foremost among these educators, saw the public schools as sites for inculcating democratic values and a reforming spirit among its students.[115] In the eyes of educational progressives, schools were, and should be, actively engaged in social transformation. To adjust education to changing social conditions, traditional aspects of the curriculum with less relevance to modern conditions were phased out, and newer subjects brought in to replace them.[116] By the 1920s, the view that the curriculum "should not be based on traditions of the past or the customs of a community," but rather should constantly be altered and reevaluated "to keep

[111] Historians of education tend to identify a wide array of reform movements with the progressive label. Lawrence Cremin identifies four major reform movements with the term: "the effort to render schools more individually and socially useful by introducing vocational instruction into the curriculum; the effort to turn schools into social centers; the effort to remove the schools from politics; and the effort to make schooling scientific." These four reform movements had five major effects on American education: the expansion of school systems to embrace an ever-larger percentage of the population; the enlargement and reorganization of the curriculum; changes in the materials of instruction; variation in the grouping of students, including increased grouping based on aptitude; and relentless systematization and bureaucratization. See Lawrence A. Cremin. 1988. *American Education: The Metropolitan Experience, 1876-1980.* New York: Harper & Row, pp. 223, 230-1.

[112] Cremin, *Transformation of the School.*

[113] Cremin, *Transformation of the School*; Edgar B. Wesley. 1957. *NEA: The First Hundred Years: The Building of the Teaching Profession.* New York: Harper & Brothers, p. 111.

[114] Cremin, *American Education: The Metropolitan Experience,* p. 154.

[115] Cremin, *American Education: The Metropolitan Experience,* p. 172.

[116] Wesley, *NEA,* pp. 115-6.

abreast of the progress made in social and economic organization," had become official wisdom among educators.[117]

More radical still, an increasing number of educators argued that the schools' goal should be to raise children capable of making these adjustments and contributing to social reform on their own. Progressive educators emphasized critical thinking skills, for instance, in order to encourage children to question authority, abandon atavistic institutions, and devise novel solutions to social challenges.[118] Children were no longer to be instructed in received truths, but rather to be encouraged to question and challenge social conventions. As the Massachusetts Education Commissioner summarized it succinctly in 1931, "It is not the function of the public school to teach children what to think, it is the function of the public school to teach them how to think."[119]

Educational Professionalization and the Marginalization of Religion

The professionalization of education had important implications for the position of religion in the school. As administrators and educational researchers increasingly claimed jurisdiction over educational theory and practices, religious voices and concerns—previously central to educational debates—became marginalized. The decreasing influence of religious voices can be seen in the authorship of educational articles during the nineteenth century. Whereas over one-third of the material published in educational journals prior to 1855 had been written by ministers, only 2% of the material published after 1870 was.[120] As these religious voices were marginalized, religion was increasingly left without strong advocates in the educational arena.

The shift to a child-centered pedagogy and the rise of new progressive understandings of education as a mission also undercut religion's traditional place at the center of the curriculum in multiple ways. The expansion of the curriculum to include multiple new subjects forced religion to compete for limited time and space during the school day.[121] One churchman lamented, in 1912, that "the pressure upon the teacher to get a certain definite and rather large amount of work accomplished within the semester is so great" that "pointing out the religious implications and spiritual lessons of the subjects at hand" had become nearly impossible.[122]

Further, new scientific approaches to learning seemed to many educators to provide a better basis for education than the religiously-based approaches of the nineteenth century. For many, this meant that traditional religion would have to be subordinated to science. As the United States Commissioner of Education, Elmer Ellsworth Brown, stated, "Science rules the thoughts of men, and modern education is allied with modern science…and we may confidently expect that in this age it will mold religious education to its standards and processes."[123] These

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[117] NEA Department of Superintendence. 1925. *Third Yearbook: Research in Constructing the Elementary School Curriculum.* Washington, DC: Department of Superintendence of the National Education Association of the United States, p. 24.

[118] B. Edward McClellan. 1999. *Moral Education in America: Schools and the Shaping of Character from Colonial Times to the Present.* New York: Teachers College Press, p. 59.

[119] Quoted in Thomas et al, "Reforming Education," p. 373.

[120] Sheldon Emmor Davis. 1970 [1919]. *Educational Periodicals during the Nineteenth Century.* Metuchen, NJ: Scarecrow Reprint Corporation, p. 51.

[121] McClellan, *Moral Education,* p. 46.

[122] Richard C. Hughes. 1912. "The Limitations of Public Schools, the Opportunity of the Churches." *Religious Education* 6: 578-86, p. 584.

[123] Elmer Ellsworth Brown. 1907. "Some Relations of Religious Education and Secular Education." *Religious Education* 2(4): 121-26, p. 121.

new scientific understandings spelled particular trouble for the devotional reading of the Bible. Precisely because "the contemplative, individualistic, and supernaturalistic type of religious thought and life is being superseded by the active, social, and scientific way of considering and accomplishing things," said one educator in 1909, the Bible itself would have to be put to the ends of professional education, and not vice versa: "There may be found a way to use the Bible for instruction and training…[since] the Bible furnishes much material that the school might well turn to account for the development of character and service, without any sectarianism, mysticism, or speculative doctrine. [But it] would be necessary to select biblical material that would be suitable for childhood and youth, and to use it in accordance with pedagogical principles."[124]

More fundamentally, however, the transformation of education from a teacher-centered, didactic, and static enterprise, to a child-centered, experiential, and dynamic one, had important implications for religious education. Religious education fit easily in a pedagogical approach that emphasized the transmission of culture through direct instruction from authority. It fit much less easily in a pedagogy of experience-based learning in the service of social reform. Progressive educators were inclined to be skeptical of attempts to teach specific religious or moral beliefs, and they pressed their case in the early twentieth century. By the 1930s, this approach was formulated into explicit policy within the NEA:

> The development of a philosophy of life, or a religion, is based on the learning process…No imposition of the thinking of another, however well fortified with threats and promises, can give the individual a ready-made philosophy, or a set of superior values. Any other mode than following the processes of education through their natural course of questioning, testing, and forming judgments, is poorly suited to self-realization through democratic processes.[125]

Progressive educators argued that instead of teaching specific religious or moral tenets, the goal should be to teach children how to make sound moral judgments in general.[126] This belief was so strongly held that it even influenced those progressives in favor of more religion in the schools; for instance, Philip Lotz, in his 1925 survey of released time programs, expressed dismay at how "Bible-centered" and focused on memorization most programs were, and how few programs began with the needs and interests of the students and worked outwards.[127]

Moreover, in an atmosphere in which educational discussions were increasingly oriented to science, traditional understandings of religion came to be looked upon with suspicion. The supernatural elements of religious education, in particular, were marginalized and treated with suspicion. Thus, argued one president of the Religious Education Association in 1919, education should not "encourage the delusive belief in supernatural agencies and dependence upon them, but it should be such as to convince everybody that things can be controlled and moulded by the power of man; that existing situations need not be accepted with resignation but may be

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[124] Clyde Weber Votaw. 1909. "Method of School and Church in Moral and Religious Education." *Religious Education* 4(5): 410-17, pp. 411-12, 416.

[125] Educational Policies Commission. 1946. *Policies for Education in American Democracy.* Washington, DC: National Education Association of the United States, p. 211. (Originally published in 1938 as part of *The Purposes of Education in American Democracy.*)

[126] McClellan, *Moral Education,* p. 57.

[127] Philip H. Lotz. 1925. *Current Week-Day Religious Education.* New York: Abingdon Press, pp. 70-71.

transformed by human effort."[128] By 1937, the NEA's Educational Policies Commission rejected the very idea of using revealed religion in the classroom, calling instead for "the utmost possible emancipation from the dictates of a priori or dogmatic notions, whether of theological revelation, Colbertian mercantilism, Ricardian individualism, or Marxian communism."[129]

In this context, many progressive educators increasingly came to reimagine and redefine religion in ever-woollier terms that obviated religion's more problematic aspects. As Robert Michaelsen has observed, among progressive educators, "Religious education came to be understood not as a branch of education in either function or subject matter but rather as 'education itself.' And 'education itself' was understood as 'participation' in 'life itself.'"[130] In this vein, religious education advocates variously reimagined religion as "an all pervading, infinite and eternal energy,"[131] as "an attitude, a spiritual relationship,"[132] or even as the simple appreciation of truth.[133] In 1916, a prize-winning essay in a competition sponsored by the NEA flatly declared that "religious education is something other and something more than instruction in the Bible," and that true religious education would emerge organically from the "inner religious vitality" of the school.[134] Another popular move was to conceive of religion and democracy as being substantially similar, such that the promotion of either worked to the advantage of the other. Within the Religious Education Association, founded in 1903 to promote religious education, this theme developed over the early twentieth century to such a degree that, by 1940, its annual meeting featured a debate over whether the two concepts were, in fact, identical.[135]

Thus, as educational practice was professionalized and made more scientific, religious voices were marginalized in favor of new ideas put forward by a cadre of professionals basing their claims to legitimacy in educational psychology. These ideas, and their practical implementations, increasingly crowded religion out of an expanding curriculum, called religion's educational value into question, and encouraged the merging of religion with inoffensive popular concepts such as democracy and "education itself." In the process, religion became almost entirely marginal to professional understandings of education, seen as less important or irrelevant compared with other educational foci.

The Infrastructure of Educational Professionalization

Why did educational professionalization advance so quickly in the United States? In large part, professionalization was abetted by a vibrant and autonomous infrastructure of professional and professionalizing organizations, publications, and institutions. This autonomous professional infrastructure consisted of journals and other educational periodicals; teachers' associations; and

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[128] Arthur Cushman McGiffert. 1919. "Democracy and Religion." *Religious Education* 14: 156-61, p. 157.

[129] Educational Policies Commission, *Policies for Education,* p. 48. (Originally published in 1937 as part of *The Unique Function of Education in American Democracy.*)

[130] Michaelsen, *Piety in the Public School*, p. 164.

[131] Joseph Swain. 1909. "Religious Education and the Public Schools." *Religious Education* 4(4): 348-52, p. 351.

[132] Benjamin S. Winchester. 1911. "The Religious Element in Current Public Education." *Religious Education* 6: 261-67, p. 265.

[133] Thomas A. Mott. 1906. "The Means Afforded by the Public Schools for Moral and Religious Training." *Journal of Addresses and Proceedings of the National Education Association* 1906: 35-42, p. 41.

[134] Charles E. Rugh. 1916. "The Essential Place of Religion in Education and an Outline of a Plan to Introduce Religious Teaching into the Public Schools." Pp. 5-30 in National Education Association, *The Essential Place of Religion in Education.* Ann Arbor, MI: National Education Association, pp. 12, 23.

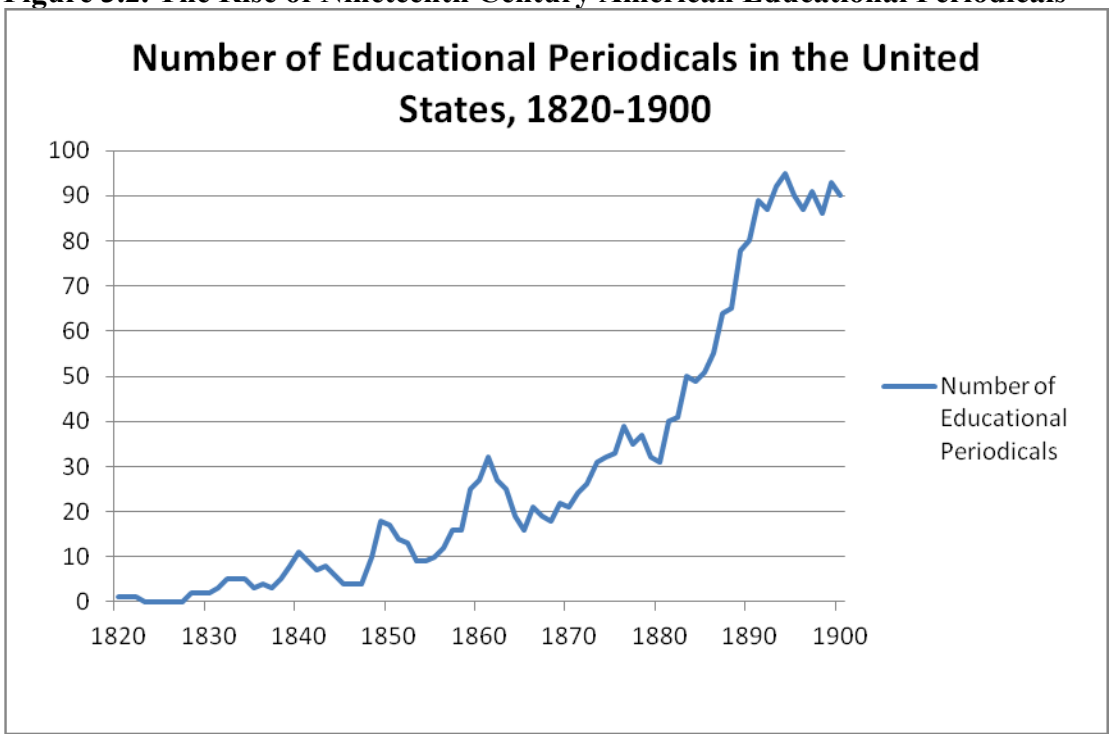
[135] Sister Mary of St. Michael Hubner. 1944. *Professional Attitudes toward Religion in the Public Schools of the United States since 1900.* Washington, DC: Catholic University of America Press, p. 118.

institutes of teacher training and (later) universities and research centers. It provided a space in which traditional educational practices could be criticized and analyzed, and in which new educational ideas could be raised, discussed, debated, elaborated, and disseminated.

America's Autonomous Professional Infrastructure

American education was built upon an impressive infrastructure of professional and professionalizing institutions. First among them were educational periodicals—journals, magazines, and reviews devoted to educational issues and/or aimed at educational audiences. The first important educational periodical was the *Academician,* published in New York from 1818-1820.[136] As Figure 3.2 demonstrates, the number of periodicals grew by fits and starts between 1830 and 1870, and then dramatically in the last quarter of the nineteenth century. By 1900, over ninety such publications were in existence in the United States.

Figure 3.2. The Rise of Nineteenth Century American Educational Periodicals



Source: Davis, Educational Periodicals*, pp. 92-117.*

In addition to periodicals, the American professional infrastructure included a vast number of educational associations. Such associations, as Tocqueville noted, were commonplace in the early nineteenth century. The earliest teaching associations were local, typically beginning as social ventures in the cities of the Northeast at the turn of the nineteenth century.[137] They were supplemented, beginning in the 1840s, with state-level associations;[138] and later, national ones. Several early efforts to build a national educational association in the 1830s were abortive or

[136] Davis, *Educational Periodicals*, p. 11.
[137] Fraser, *Preparing America's Teachers*, p. 64.
[138] Mildred Sandison Fenner. 1945. *NEA History: The National Education Association: Its Development and Program.* Washington, DC: National Education Association, p. 13.

only attained regional influence. But with the creation of the National Teachers' Association (later the National Education Association) in 1857, educational associations persisted at local, state, and national levels.[139] In addition to their important role as forums for the development of professional educational knowledge (discussed below), these associations were important sites where educators built an identity as a "self-conscious profession with a philosophy and a program of its own."[140]

It should be noted that education had a self-consciously *professional* orientation from a very early date in the United States. At the opening session of the National Teachers' Association, for instance, the association declared that, among its several aims, it desired "to advance the interests of the profession of teaching."[141] Attendees heard an address by William Russell that called upon teachers to "make their work a profession—not just an ordinary vocation."[142] Indeed, throughout the nineteenth century and into the twentieth, the NEA had a resolutely professional focus, displaying a marked lack of interest in working conditions or other industrial issues. As one historian summarized it, "The [NEA's] leaders assumed that the building of a profession took precedence over problems of the personal welfare of teachers."[143] In part, this professional orientation may have stemmed from the close ties between evangelical religion and American education in the early nineteenth century. Teacher training in the early 1800s used training for the ministry as a model, and early teachers' institutes were self-consciously modeled after Methodist revivals.[144] This religious conception of teaching may have encouraged a professional attitude among some teachers. In Wisconsin in the 1850s, for instance, some local teachers' associations passed resolutions denigrating material concerns: "One who teaches merely for money does not deserve the name of teacher," stated one resolution.[145]

Beyond journals and associations, America's professional infrastructure included a wide array of educational institutions with significant-to-total autonomy from those local school boards who made hiring decisions. Teachers' institutes were among the most common. First devised in 1839, teachers' institutes were central to teacher education from an early date, often providing the primary means of educating teachers in rural areas.[146] Typically sponsored by state superintendents of education, teachers' institutes slowly evolved over the course of the nineteenth century into a major force in teacher education. In 1887, the U.S. Office of Education reported that nearly half of all American teachers attended teachers' institutes, usually to receive

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[139] Wesley, *NEA*, p. 20.

[140] R. Freeman Butts and Lawrence A. Cremin. 1953. *A History of Education in American Culture.* New York: Holt, Rinehart, and Winston, p. 456.

[141] Quoted in Butts and Cremin, *History of Education*, p. 288.

[142] Wesley, *NEA*, p. 23.

[143] Wesley, *NEA*, p. 280. Cf. Butts and Cremin, *History of Education*, p. 289.

[144] Paul H. Mattingly. 1975. *The Classless Profession: American Schoolmen in the Nineteenth Century.* New York: New York University Press, pp. 36, 67. More dramatic still, the American Institute for Instruction organized a series of "lyceums," or occasional meetings designed to build support for education. To do so, they employed a series of circuit riders to travel around New England to educate the public and recruit teachers for common schools. The lyceum organizers deliberately adopted Methodist practices, and considered themselves to be "missionaries" in the cause of education. See Mattingly, *Classless Profession*, pp. 36-8.

[145] Quoted in Jorgenson, *Founding of Public Education*, p. 130. However, as Jorgenson notes, this position was far from dominant, contested even in the 1850s. The professional orientation of educational leaders, and their conservative approach to teachers' working conditions, eventually gave rise to teacher unionism in the early twentieth century. See, e.g., Cremin, *American Education: The Metropolitan Experience,* pp. 238-9; William Edward Eaton. 1975. *The American Federation of Teachers, 1916-1961.* Carbondale: Southern Illinois University Press.

[146] Fraser, *Preparing America's Teachers,* pp. 65, 72.

ongoing in-service education in contemporary educational developments.[147] In addition to teachers' institutes, a wide array of private educational institutions, universities, and research centers thrived in nineteenth-century America. These private institutions of advanced education, crucially, were not dependent upon state or municipal financial support, nor did they have to answer to state officials in terms of their curriculum. They therefore had sufficient autonomy from educational employers to allow them to function as sites for the development of new ideas, and as platforms from which to criticize the existing system with relative impunity.

The Autonomous Professional Infrastructure and the Rise of Professional Knowledge

This vibrant autonomous professional infrastructure was essential to the professionalization of American education because it provided multiple sites where professionalizing ideas could be raised, debated, and disseminated relatively free from threat of official censure. Journals and other educational periodicals played a crucial role in this regard. Many of the earliest professionalizing ideas were initially imported to the United States through educational journals. Among the earliest educational periodicals, Pestalozzian material was commonplace; William Russell's short-lived *American Journal of Education* (1826-1839), for instance, was important in publicizing Pestalozzi's ideas, particularly his criticisms of rote, mechanical instructional methods.[148] Even beyond Pestalozzi, however, many journals dedicated themselves to the spread of professional ideas and sustained debate over educational issues. The first issue of Russell's *American Journal of Education,* for instance, stated that "The conductors of the Journal will make it their constant endeavor to aid in diffusing *enlarged and liberal views of education.*"[149] More important than Russell's *American Journal of Education*, however, was Henry Barnard's journal of the same name, begun in 1855. Barnard's journal, too, featured much professional material, including "a long series of extracts from a book for young teachers, model lessons from foreign schools, extended descriptions of the work of Pestalozzi, the Mayos, and Wilderspin, and long quotations from Diesterweg's Wegweiser."[150] Aimed squarely at a sophisticated audience, the *American Journal of Education's* articles on comparative education, educational history, and educational biography brought European ideas before American educational audiences and were highly influential upon educational leaders in the late nineteenth century.[151]

As the nineteenth century progressed, professional associations became increasingly important sites for debates over new educational ideas, practices, and approaches. One of the earliest of these was the American Institute for Instruction (AII), a Boston-based association that was founded in 1830 and lasted until the end of World War I. The AII was largely a debating society, devoted to presenting and subsequently publishing a series of educational lectures by educational leaders of high renown.[152] The directors of the AII viewed themselves as promoting discussion of educational innovations. As Paul Mattingly has described it, "the directors of the Institute seemed to have preferred those essays which discussed educational experiments undertaken by the most enlightened private schools. Practical means of teaching, rhetoric, linear drawing, grammar, music, languages, the principles of physiology and other subjects were

[147] Fraser, *Preparing America's Teachers,* p. 67.
[148] Davis, *Educational Periodicals*, p. 13; Mattingly, *Classless Profession*, p. 125.
[149] Quoted in Davis, *Educational Periodicals*, pp. 14-5.
[150] Davis, *Educational Periodicals*, p. 55.
[151] Davis, *Educational Periodicals*, pp. 54-5; Tyack and Hansot, *Managers of Virtue,* p. 50.
[152] Mattingly, *Classless Profession*, p. 91.

presented."[153] In particular, the AII promoted a scientific approach to education; in its first volume of proceedings and lectures, its leaders declared its hope that the Institute would "hardly fail to show that education is a science, to be advanced, like every other science, by experiment; whose principles are to be fixed, and its capacities determined, by experiment."[154] The AII served as a forum for presenting such ideas, and also for disseminating them; in addition to publishing an annual volume of erudite lectures, the Institute also published certain "exceptional" essays as pamphlets which it distributed widely at reduced rates or gratis.[155]

More important, in the long run, were the debates and publications of the National Education Association (NEA). Until the early twentieth century, the NEA had limited political influence.[156] However, its influence within the teaching profession was profound, thanks to its role as the central clearinghouse for educational discussion and debate. It functioned as "a kind of super-holding company that coordinated the state associations by providing an annual convention where ideas, theories, and principles were discussed…The annual conventions became marts for the interchange of educational ideas."[157] In 1884, the NEA formed the National Council of Education, whose declared object was "the consideration and discussion of educational questions of general interest and public importance, and the presentation, through printed reports, of the substance of the discussions and the conclusions formulated. It shall be its object to reach and disseminate correct thinking on educational questions."[158] In this pursuit, it proved largely successful, sponsoring reports on controversial issues and promoting investigation, research, and debate within the NEA and among educators more generally.[159]

More specifically, as Kraig Beyerlein has demonstrated, the NEA was a crucial forum in which nineteenth-century educators debated the appropriate role for religion in the public schools.[160] In the mid-nineteenth century, NEA leaders favored religion in the public schools, going so far as to pass a resolution commending devotional Bible reading in 1869.[161] Yet over the last quarter of the nineteenth century, religion's place in the public school became a central topic of debate within the organization. Concerns that religious exercises could provoke conflict and controversy in an increasingly pluralistic society were often heard. Thus, James Pyle Wickersham argued before the NEA in 1881, "[Public schools] have changed because the times have forced changes upon them—changed to suit the complex demands of modern society, with its multiplied sects and varied religious opinions. In circumstances like the present, public education must either be in good degree secular, or it must be abandoned."[162] By the turn of the twentieth century, the argument that religion was unscientific and unsuited for modern society was also heard in the association's debates.[163] These arguments proved persuasive, and in 1902,

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[153] Mattingly, *Classless Profession*, p. 93.

[154] George B. Emerson, in *Lectures and Proceedings of the American Institute of Instruction* 1 (Boston, 1831), Preface. Quoted in Mattingly, *Classless Profession*, p. 93.

[155] Mattingly, *Classless Profession*, p. 92.

[156] Tyack and Hansot, *Managers of Virtue*, p. 50.

[157] Wesley, *NEA*, p. 24.

[158] National Education Association. 1885. *The National Council of Education: Proceedings of Fourth Annual Meeting.* Boston: New England Publishing Co., p. 64.

[159] Wesley, *NEA*, p. 267.

[160] Kraig Beyerlein. 2003. "Educational Elites and the Movement to Secularize Public Education: The Case of the National Education Association." Pp. 160-96 in *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life,* edited by Christian Smith. Berkeley: University of California Press.

[161] Beyerlein, "Educational Elites," p. 169.

[162] Quoted in Beyerlein, "Educational Elites," p. 178.

[163] Thomas et al., "Reforming Education," pp. 384-5.

the NEA passed a new resolution, calling for the Bible to be read as literature rather than as a "theological book."[164] Some twenty years later, the NEA's Department of Superintendence would go still further, declaring that "religious teaching belongs to the church. The purpose of the school is to give morale and encouragement to such teaching but not to undertake it."[165]

In addition to serving as a forum for professional debates, the NEA's various committee reports were extremely important in disseminating novel educational ideas and practices. As early as 1864, a National Teachers' Association report was instrumental in promoting Pestalozzian object teaching.[166] Between 1894 and 1906, the papers and reports of the NEA's Department of Child Study helped to promote educational research, and in the years leading up to World War I, committee reports favorable to community study, group cooperation, and an integrated curriculum helped to promote those progressive educational practices.[167] The 1893 Committee of Fifteen on elementary education promoted a scientific approach to education, advocating that teachers be trained in the latest scientific practices, including child study and psychology, and for the curriculum to be "realistically related to the child's social and natural environment." [168] These reports, alongside the more self-consciously promotional publications of the independent Progressive Education Association, were written "in highly palatable forms…[with] wide circulation," and proved to have considerable influence on curriculum and pedagogy.[169]

Toward the end of the nineteenth century, and with increasing force in the twentieth century, research universities grew into sites for the development, testing, and promulgation of novel educational ideas and practices. These ideas, developed by professors in fledgling departments and schools of education, were often subsequently published and debated in

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[164] "Report of the Committee on Resolutions." 1902. *Journal of Proceedings and Addresses of the National Education Association* 1902: 26-28, p. 27. Similar debates took place in other educational associations throughout the second half of the nineteenth century at both the state and national levels. In many cases, those educators opposed to Bible reading won the debates, as occurred in the Ohio Teachers' Association in 1886. Yet in others, advocates of Bible reading maintained the upper hand well into the twentieth century. In Illinois, for instance, the Illinois State Teachers' Association not only refused to abandon Bible reading, it went so far as to provide financial sponsorship for a legal challenge to the Illinois Supreme Court's *Ring* decision in 1910. On the Ohio Teachers' Association, see Mandel, "Religion and the Public Schools of Ohio," p. 196. On the Illinois State Teachers Association, see Kucera, *Church-State Relationships in Education in Illinois*, pp. 135-42.

[165] NEA Department of Superintendence. 1924. *Second Yearbook: The Elementary School Curriculum.* Washington, DC: Department of Superintendence of the National Education Association of the United States, p. 93. It should be noted, however, that the NEA equivocated on the issue of religious education during the first half of the twentieth century. Thus, despite stating that religion belonged to the churches in 1924, only four years later the same department would declare that "No greater task rests upon the secondary school than to help its pupils find their God." (See NEA Department of Superintendence. 1928. *Sixth Yearbook: The Development of the High School Curriculum.* Washington, DC: NEA, p. 54.) Such vacillation likely reflected deep divisions among educators over the place of religion in the public school, divisions which persisted into the late twentieth century. In the wake of the *McCollum* decision prohibiting released time programs on school premises, the annual conference of the American Association of School Administrators "witnessed a sharp division" over the question of released time, while after the *Engel* and *Abingdon* decisions, surveys found school administrators were nearly evenly divided on the propriety of school prayer and Bible reading. On released time, see Edward N. Saveth. 1950. "Education." *American Jewish Year Book* 51: 89-99, pp. 96-7. On school prayer and Bible reading, see Donald E. Boles. 1967. *The Two Swords: Commentaries and Cases in Religion and Education.* Ames: Iowa State University Press, p. 113.

[166] Wesley, *NEA*, pp. 151-2.

[167] Wesley, *NEA*, pp. 199-200.

[168] National Education Association. 1895. *Report of the Committee of Fifteen on Elementary Education, with the Reports of the Sub-Committees.* New York: National Education Association.

[169] Eaton, *American Federation of Teachers*, p. 182.

educational journals and associations. G. Stanley Hall, pioneer of educational psychology and child study, taught at Johns Hopkins University, the first true American research university, in the 1880s.[170] John Dewey, perhaps the foremost proponent of progressive education, developed his ideas at the University of Chicago, where he was instrumental in creating that institution's Department of Education.[171] Likewise, Nicholas Murray Butler, a key progressive educational leader, helped to create Teachers' College at Columbia University in 1887.[172] These research universities provided institutional resources for the development of scientific and progressive educational ideas. They also provided strong motivation for the development and elaboration of such ideas. In order to justify its position as a discipline, educational academics needed to provide a compelling rationale that education—theretofore seen as a relatively straightforward and banal occupation—was worthy of study in a university setting. Thus, for example, in 1898, Edward Cubberley was given three years to make the fledgling education department at Stanford "intellectually respectable."[173] This dynamic helped to drive the move toward more scientific approaches to education in the late nineteenth century.

Further, the wide array of teacher-training institutions, from normal schools to teachers' institutes, served as vehicles for the dissemination of progressive ideas. Child-centered, scientific, and progressive educational ideas permeated the curriculum of the normal schools quite rapidly in the late nineteenth century. Pestalozzian object-teaching was "entrenched" as a feature of the normal school curriculum by the 1860s.[174] Educational psychology began to filter into the state normal schools as early as the 1870s, and was a regular feature in many by the 1890s. In Michigan, for example, prospective teachers were required to undertake observation and analysis in required psychology classes, and the normal school's catalog of classes declared that "instruction in Psychology must precede any…instruction in methods of teaching" because "the art of teaching must be based upon the science of education, and [] the science of education has its ultimate basis in the science of mind."[175] An NEA survey of normal schools in 1886 found that psychology and science of education were among the most frequently provided courses provided in normal schools.[176] Additional courses in history and philosophy of education gave most normal school students a broadly liberal education, and gave them occasion to consider contemporary practices from a critical perspective.[177]

In short, the highly elaborated autonomous professional infrastructure in the United States in the late nineteenth century provided a series of platforms in which professionalizing ideas could be developed, debated, and disseminated, thereby promoting the professionalization of education. The increasing interconnections between journals, professional associations, and institutions of higher education allowed new scientific and progressive approaches to the theory and practice of education to insinuate themselves deeply into the educational community.

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[170] Fraser, *Preparing America's Teachers*, p. 142.
[171] Cremin, *American Education: The Metropolitan Experience,* p. 168.
[172] Ravitch, *Great School Wars,* p. 144.
[173] Tyack, *One Best System*, pp. 135-6.
[174] Christine A. Ogren. 2005. *The American State Normal School: "An Instrument of Great Good."* New York: Palgrave MacMillan, pp. 36-7.
[175] Quoted in Ogren, *American State Normal School,* pp. 129-30.
[176] NEA, *Proceedings, 1886,* pp. 393-8, cited in Wesley, *NEA*, p. 83.
[177] Ogren, *American State Normal School*, p. 133.

Decentralization's Contribution to America's Vibrant Professional Infrastructure

Why did the United States have such a vibrant autonomous professional infrastructure? At least in part, the United States developed this infrastructure in response to the decentralized control of the educational system. The pattern of local development of common schools encouraged general educational boosterism, which in turn encouraged the development of journals and associations promoting education. More important still was the juxtaposition of strong local district control with weak state supervision. The largely powerless state superintendents had an incentive to promote professionalization in order to enhance their own influence. Meanwhile, strong local control produced a cohort of local educational leaders—city and county superintendents—who had their own administrative incentives to push for a more professional approach to education. Finally, America's laissez-faire approach to higher education provided ample room for private universities to pioneer the research university model, and its corresponding departments of education and educational research programs, largely free of any state controls or restrictions.

Organic Educational Development, Boosterism, and Professional Infrastructure

As discussed in Chapter Two, the creation of public education in the United States was largely achieved from the bottom up, by the concerted action of educational campaigners—many of them evangelicals—working to encourage the local development of common schools. As part of this campaign, these common school advocates engaged in boosterism to encourage local communities to buy into the common school. Two of their most effective weapons in this strategy were the educational periodical and the educational association. Many associations were founded to function simultaneously as forums for discussion and as agents of educational promotion. The American Institute of Instruction (AII), for example, in addition to acting as a learned debating society for educational issues, saw itself as fundamentally concerned with promoting the public understanding of education in New England and the Midwest. One of its key activities was the support of a series of "lyceums," which traveled from town to town to challenge public apathy toward education.[178]

Even more centrally connected to educational boosterism were many early nineteenth century educational periodicals. Especially in the 1840s, state-level education journals proliferated, and many of these were explicitly devoted to the promotion of public education.[179] Eighteen of the earliest educational periodicals had the word "advocate" in their title, indicating their fundamentally hortatory purpose.[180] In some cases, educational boosters used both associations and journals in a multi-pronged strategy to build public support for public education. In Illinois, for instance, leading clergy founded associations and journals as part of their overall campaign for public education in the mid-nineteenth century.[181]

State Superintendents: The Professionalizing Incentive of Weakness

As discussed above, state superintendents typically possessed highly circumscribed formal powers. Accordingly, they sought any means possible to extend their informal influence over teachers. Promoting enhanced professional standards was one popular means by which their

[178] Mattingly, *Classless Profession*, pp. 36, 91-2.
[179] Davis, *Educational Publications,* pp. 16-8.
[180] Tyack and Hansot, *Managers of Virtue,* p. 50.
[181] David Tyack. 1966. "The Kingdom of God and the Common School." *Harvard Educational Review* 36: 447-69, p. 454.

influence might grow. In Massachusetts, for example, Horace Mann was famous for using his office as a bully pulpit to press for educational best practices, in an attempt to rationalize the fragmented educational system in that state. In 1837, Mann complained that, "As the system is now administered, if any improvement in principles or modes of teaching is discovered by talent or accident, in one school, instead of being published to the world, it dies with the discoverer. No means exist for multiplying new truths, or even for preserving old ones."[182] Accordingly, he sought to use his office to advance "those general principles on which intelligent educational choice inevitably depended," and did so through his widely-read Reports.[183] Similarly, John Swett, Superintendent of Education in California, encouraged the professionalization of teachers as a means of counteracting arbitrary decisions by local school boards. From his position, he pushed for enhanced training and certification of teachers, increased support for teachers' institutes and normal schools, and distributed a state-funded educational journal to teachers and school trustees around the state.[184]

Indeed, state superintendents commonly used educational journals not only to promote professionalization among educators, but as a means of dispersing their own opinions and dictates throughout their states. In many states, the first efforts to create state school journals were done by state superintendents or commissioners of schools. In other states, state superintendents took to subsidize school journals that were already in production by state teachers' associations. State officials saw these journals as an important means of communicating with local and district officials.[185] In some cases, in fact, they were accused of exercising undue influence over the content of educational journals. A column in the *Wisconsin Journal of Education* in 1881, for instance, accused the editors of that journal of lacking the "freedom and independence which are essential to vigorous journalism…It is quite impossible for them to divest themselves of their official characters and speak from the standpoint of untrammeled citizenship; and so they must say only what is right and becoming to emanate from this department of public service, and a multitude of things that ought to be said through the columns of an educational journal are never uttered."[186]

In addition to journals, state superintendents used educational associations as means of extending their influence. In fact, something of a symbiotic relationship between the associations and the state superintendents emerged in the nineteenth century, as each used the other to advance its goals and interests. In Massachusetts, the AII lobbied the state legislature in 1837 and 1838 in favor of creating a Board of Education and office of state superintendent.[187] In Illinois, the connections were even more intimate. On the day after Christmas, 1853, the Secretary of State, who also served as *ex officio* Superintendent of Common Schools, met with several school principals in a Methodist church to form the Illinois State Teachers' Association so that they might better agitate on behalf of public education. Two years later, the State Teachers' Association successfully lobbied the legislature for the formal creation of an independent Office of State Superintendent.[188] Nor was it only that associations helped to create state superintendencies; state superintendents helped to create and to direct educational

[182] Quoted in Cremin, *American Education: The National Experience*, p. 155.
[183] Cremin, *American Education: The National Experience*, p. 155.
[184] Tyack et al., *Law and the Shaping of Public Education*, p. 93.
[185] Davis, *Educational Periodicals*, pp. 23-5.
[186] *Wisconsin Journal of Education* (1881) IX, p. 554, quoted in Davis, *Educational Periodicals*, pp. 45-6.
[187] Mattingly, *Classless Profession*, p. 92.
[188] Robert G. Bone. 1957. "Education in Illinois before 1857." *Journal of the Illinois State Historical Society* 50: 119-40, pp. 133-5.

associations. State educational associations, in the mid-nineteenth century, "tended to be dominated by the state superintendents, who used them to extend their own influence in standardizing educational practice."[189] In California, the State Superintendent convinced the legislature to pass a law in 1852 that authorized the state superintendent to sponsor yearly meetings for all school teachers.[190]

Finally, state superintendents viewed teachers' institutes as a central means of extending their influence through the professional development of teachers. Connecticut's first Superintendent of Public Instruction, Henry Barnard, is usually credited with devising the teachers' institute. Barnard and Horace Mann were ardent advocates of teachers' institutes, successfully convincing state legislatures to require teachers' institutes, or to otherwise support their creation.[191]

City Superintendents: Motivated Professional Leadership

A third way that decentralized education encouraged the early professionalization of American education was through the local office of city superintendent. City superintendents played an important role in professionalization, because professionalization, for them, provided a route to increase their own power over policy in local school systems. In other words, city superintendents had clear incentives to promote the development of professional knowledge and standards. Accordingly, superintendents provided key professional leadership during the late nineteenth and early twentieth centuries, pushing the professionalizing process forward in the process.

Local superintendents provided a seemingly bottomless fount of leadership for America's professional educational associations. Perhaps nowhere was this more true than in the NEA. City superintendents provided a rich source of leadership for the NEA in the late nineteenth and early twentieth centuries.[192] Superintendents such as James Greenwood of Kansas City and Jesse Newlon of Denver served as presidents of the NEA.[193] More importantly, perhaps, superintendents saturated the smaller committees and subsections of the NEA most closely concerned with setting professional standards. The Department of Superintendence, the superintendents' subsection of the NEA, was an "annual clearinghouse of evolving theories and practices" where curricular policies and educational standards were hammered out.[194] It was the Department of Superintendence, for instance, who recommended that the elementary school curriculum should not deal with religion, despite its acknowledged value, because "religious teaching belongs to the church."

In addition to the Department of Superintendence, superintendents provided a "galaxy of devoted leaders"[195] to the even more influential Council of Education, the "inner sanctum within the NEA" where disputed educational issues were resolved, and "heresies and false notions of education" were rooted out.[196] Superintendents such as Andrew Rickoff and John Hancock of Cincinnati, John Philbrick of Boston, William Maxwell of New York, Aaron Gove of Denver,

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[189] Tyack and Hansot, *Managers of Virtue*, p. 49.
[190] Tyack et al., *Law and the Shaping of Public Education*, p. 89.
[191] Butts and Cremin, *History of Education*, p. 287.
[192] Fenner, *NEA History,* pp. 29-30; Tyack and Hansot, *Managers of Virtue*, p. 137.
[193] Raymond E. Callahan. 1964. *Changing Conceptions of the Superintendency in Public Education, 1865-1964.* Cambridge: New England School Development Council, p. 16; Wesley, *NEA*, p. 284.
[194] Wesley, *NEA*, p. 284.
[195] Wesley, *NEA*, p. 284.
[196] Tyack and Hansot, *Managers of Virtue*, pp. 99-100.

and Susan Dorsey of Los Angeles, were prominent members of the Council of Education.[197] Superintendents played an important role on various, more specific, committees as well. Thirteen of fifteen members of the Committee of Fifteen on Elementary Education—the committee which called for major changes in the program of studies in line with new scientific and progressive ideals—were city superintendents.[198] Superintendents also served as editors of prestigious educational journals, university professors and presidents, and as important advisors and conduits to the United States Commissioner of Education in the late nineteenth and early twentieth centuries.[199] One of the most famous, William Torrey Harris, onetime superintendent of schools in St. Louis, actually rose to become United States Commissioner of Education following an extended stint in leadership in the NEA.[200]

Not surprisingly, the superintendents who led the NEA had a favorable view toward expanding the powers of the office of the city superintendent. And professional knowledge was a key weapon they used in making the case for their expanded powers. As the twentieth century dawned, superintendents and their allies pointed to new educational developments both as a remedy to educational problems, and as a source of knowledge to which they alone had access: "Superintendents increasingly argued that only experts, not laypeople on school boards, could keep apprised of the latest pedagogical ideas through wide reading, professional correspondence, and association with other urban leaders."[201] An 1896 article in the *Journal of Education* described the ideal superintendent as one "who by study is thoroughly versed in the science and art of pedagogy, the principles and methods of teaching, the philosophy of child-training, and the educational value of school subjects, in order that he may formulate a rational course of study for schools, and direct and systematize the work."[202] In Pittsburgh, the local teachers' association successfully argued in 1911 that educational matters should be put in the hands of the superintendent because of the superintendent's perceived expertise in educational matters:

> *Teaching is a profession that renders an expert service; consequently only experts can decide with uniform wisdom and success regarding the qualifications of members or would-be members of the profession…[A]t no point in the public school system may laymen properly set in to interfere with the due order of its educational affairs…*Arrangement of courses of study, daily programs, plans for grading, examinations, and promotions are matters within the function of an expert superintendent, which no school board member need interfere with, except for final approval or rejection. So, too, the appointment, promotion and dismissal of teachers requires prolonged special training and observation. Similarly, the

[197] Wesley, *NEA*, pp. 284-5.
[198] Wesley, *NEA*, pp. 296-7.
[199] Callahan, *Changing Conceptions,* p. 5; Tyack and Hansot, *Managers of Virtue*, p. 137.
[200] Harris was well known as a vocal proponent of secularized public schools. "So long as Protestants insist on some remnant of the Church ceremonial, such as the reading of the Scriptures or prayers," he wrote in 1890, "the Catholic may be expected to see in the public school an instrument for proselytizing his children." See Jorgenson, *State and the Non-Public School,* p. 133.
[201] Reese, *America's Public Schools,* p. 60.
[202] Quoted in Thomas et al., "Reforming Education," p. 370.

> provisions for supervision, the selection of textbooks and other forms of school apparatus and equipment, presupposes expert knowledge and service.[203]

The superintendents' promotion and deployment of a new, professional educational discourse had concrete benefits: the expansion of their powers in urban school districts. In cities around the country between 1890 and 1920, control over the daily affairs of urban districts, including authority over curriculum, hiring, and supervision, were increasingly consolidated in the person of the superintendent.[204] In many cases, superintendents wrote the very charters that expanded their powers.[205] In this way, the superintendents who provided the leadership that helped to professionalize education ultimately benefited from the authority it bestowed upon them as educational experts. And, as discussed below, they used these increased powers to implement professionalizing reforms in their local school systems that worked to marginalize religious practices.

Private Higher Education, Tertiary Innovation, and the Rise of Educational Research

A final way that decentralized education contributed to the professionalizing of American education was through its widely dispersed system of higher education. The dispersed and often private control over higher education made it much easier for novel educational ideas to have relative autonomy from state controls. Unlike in Australia, where, as I will show in the next chapter, centralized educational systems interfered with institutions of higher education, there were virtually no centralized controls over hiring, association, or criticism in private universities. Decentralization fostered autonomy among institutions of higher education—academies, normal schools, and universities—which helped them develop into sites where novel educational ideas, practices, and research could take place.

Unlike in Australia, where teacher training was quickly wrapped up tightly in state-run normal schools, teacher training in the United States took place in a wide array of private as well as public institutions. Teacher training found its earliest home, not in state-controlled institutions, but in private academies, which trained the majority of American teachers before the civil war.[206] In some states, such as New York and Pennsylvania, teacher training was effectively outsourced to private academies—in the case of Pennsylvania, well into the twentieth century.[207] Even after state-sponsored normal schools came to predominate in the late nineteenth century, however, they still remained independent of local school boards.[208] By the turn of the twentieth century, over 200 colleges and universities offered teacher preparation courses.[209]

With this great diversity came great autonomy. Thanks to the decentralized and varied nature of higher education in the United States, it became a great site for theoretical innovation.[210] America's dynamic private educational sector, with its still greater autonomy, was

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[203] Quoted in William H. Issel. 1967. "Teachers and Educational Reform during the Progressive Era: A Case Study of the Pittsburgh Teachers Association." *History of Education Quarterly* 7(2): 220-33, p. 230. Emphasis in original.

[204] Tyack, *One Best System,* pp. 144-5.

[205] Troen, *Public and the Schools*, p. 219.

[206] Butts and Cremin, *History of Education*, p. 286.

[207] Fraser, *Preparing America's Teachers*, pp. 16-7, 115, 176-7.

[208] In fact, many local boards were entirely indifferent to the training and certification provided at normal schools and ignored those credentials when hiring teachers. See, e.g., Fraser, *Preparing America's Teachers,* pp. 71-2, 131-2, 189-90.

[209] Lagemann, *Elusive Science*, p. 10.

[210] Popkewitz, *Political Sociology of Educational Reform,* p. 85.

of particular importance. It was in private universities that the great innovation of the American research university took place from the 1870s onward. Whereas the American college at midcentury looked more like a high school, with a limited curriculum and focus on the transmission of existing knowledge, the research university which developed in the late nineteenth century was focused on the production of new knowledge in a novel structure organized around disciplinary departments.[211] The research university was largely inspired by developments in Germany, where many American scholars had studied in the mid-nineteenth century.[212] They imported back to the United States a new model of education, focused around research, graduate education, disciplinary specialization, elective courses, seminars, academic freedom, and student independence.[213] The research university moved the model of professorial research to the fore, and encouraged the development of disciplines, departments, and their concomitant specialized knowledge.[214]

Importantly, the first universities that gave themselves over to this model were private institutions. Many of these were in fact new institutions, created through the newfound largesse of charitable American industrialists.[215] Johns Hopkins University, founded in 1876, was the first institution devoted primarily to graduate education. Later, both Clark University and Catholic University opened as institutions devoted exclusively to graduate study.[216] Other newly established primary universities, such as Cornell and the University of Chicago, also embraced this model, as did several established colleges such as Harvard, Yale, and Stanford, and a few public universities, such as the Universities of Michigan and Wisconsin. America's large network of private institutions of higher education, given wide berth from state control, allowed the research university model—and, ultimately, the development of education as a scholarly discipline—to flourish in the late nineteenth century.

Decentralization and the Spread of Progressive Practices

Decentralization therefore contributed to the development of a vibrant, autonomous professional infrastructure. However, it also contributed more directly to the ultimate spread of new professional knowledge and practices in the early twentieth century. Novel educational practices, including progressive educational ideas, were able to spread relatively rapidly thanks to fragmented control over educational policy. City superintendents with effective control over local policy served as conduits for secularizing professional norms, attitudes, and reforms. Progressively-inclined superintendents could use their local districts as sites for the introduction of novel practices and policies; these educational experiments, in turn, were then often copied by other local districts. Local control, therefore, meant that educational reforms could spread effectively, even if entire states did not adopt them as official policy.

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[211] See, e.g., Laurence R. Veysey. 1965. *The Emergence of the American University.* Chicago: University of Chicago Press.

[212] Roger L. Geiger. 2000. "Introduction: New Themes in the History of Nineteenth-Century Colleges." Pp. 1-36 in *The American College in the Nineteenth Century,* edited by Roger Geiger. Nashville, TN: Vanderbilt University Press, pp. 30-4.

[213] Christian Smith. 2003. "Introduction: The Secularization of American Public Life." Pp. 1-96 in *The Secular Revolution: Power, Interests, and Conflict in American Public Life.* Berkeley: University of California Press, pp. 56-7.

[214] Cremin, *American Education: The Metropolitan Experience,* p. 559; Geiger, "Introduction," p. 33.

[215] Cremin, *American Education: The Metropolitan Experience,* p. 557; Smith, "Introduction," p. 75.

[216] Geiger, "Introduction," pp. 30-1.

It should be noted at the outset, however, that the practical spread of educational reforms was decoupled considerably from their acceptance in professional forums. Progressive educational ideas and theories had become widely acknowledged by the 1920s, and had become entirely mainstream by 1940.[217] Yet at the same time, those ideas were only incompletely adopted: in some schools, progressive practices were instituted alongside other, more traditional educational practices.[218] Although educational leaders were quick to declare that reforms were occurring on a weekly basis, nationwide surveys of high school principals showed, by 1920, that only half had taken steps to reorganize their curriculum.[219] Nevertheless, in matters of religious education, the decoupling of theory and practice provided plenty of room for compromises to be negotiated locally over religious instruction,[220] even though, on the whole, its prevalence declined in the early twentieth century.

The local superintendency, again, was central to the spread of professional reforms. Superintendents were situated at a unique crossroads—as administrative leaders at the local level, and as members of an emergent educational elite developing policy ideas at the national level. They were thus strategically positioned to simultaneously develop and enact professional reforms. City superintendents were "carriers of an adapted cosmopolitanism," acquired through their professional training and participation in professional associations.[221] This was especially true in big cities, where administrative reforms had massively expanded and insulated the powers of the superintendents, where "professionals with cosmopolitan rather than local perspectives were extremely influential in shifting the scope of interest and level of decision making."[222]

Because of their unique position, superintendents were also ultimately able to implement those reforms in their own districts. As William Reese has written, "the most important arena for school reform in the first half of the twentieth century was in the cities, the traditional site of educational experimentation. What happened in New York and Chicago, Detroit and Milwaukee, and Louisville and Birmingham was widely publicized at state, regional, and national education conferences and in numerous books, articles, and addresses that tried to direct the course of school improvement."[223] Reforms thus typically spread slowly and unevenly, but also widely, through a pattern of experimentation, publicity, and imitation. Even if entire states did not adopt a given reform, they could still become relatively widespread thanks to local initiative and imitation.

Progressive superintendents used their local districts for such experiments. St. Louis provides an excellent example. St. Louis became nationally known as a site of educational innovation in the 1870s, when its schools were run by William Torrey Harris. St. Louis schools were the first in the country to introduce the kindergarten, for instance,[224] and were among the first to pioneer science education in the elementary grades.[225] In the 1910s, St. Louis

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[217] Cuban, *How Teachers Taught*, p. 45; McClellan, *Moral Education*, p. 60.

[218] McClellan, *Moral Education*, pp. 61.

[219] Rousmaniere, *City Teachers*, p. 68.

[220] As Thomas and colleagues discuss, some superintendents facilitated pragmatic accommodations with local communities that perpetuated religious exercises. See Thomas et al., "Reforming Education," p. 357.

[221] David Tyack. 1988. "Pilgrim's Progress: Toward a Social History of the School Superintendency, 1860-1960." Pp. 165-208 in *The Social History of American Education,* edited by B. Edward McClellan and William J. Reese. Urbana: University of Illinois Press, p. 182.

[222] Samuel Hays, quoted in Tyack and Hansot, *Managers of Virtue*, p. 108. See also Tyack and Hansot, pp. 113-4.

[223] Reese, *America's Public Schools,* pp. 122-3.

[224] Reese, *America's Public Schools*, pp. 95-6.

[225] William J. Reese. 2007. *History, Education, and the Schools.* New York: Palgrave MacMillan, p. 67.

Superintendent Benjamin Blewett encouraged both democratic and pedagogical reforms. Blewett instituted a weekly conference of principals, teachers, and normal school faculty to discuss educational innovations. "Participants prepared papers on a wide variety of topics, including 'Experimental Studies in the Measurement of Children's Progress in Spelling,' 'Studies in Attendance and Progress of Pupils in the St. Louis Public Schools,' and 'Report on an Arithmetic Study in the Wyman School,'" and by the end of the decade these meetings were supplemented by special lectures on new educational technologies.[226]

St. Louis was far from the only city where such experimental reforms took place. In Chicago, Superintendent Ella Flagg Young used her schools as a site to experiment with the theories of educational democracy expounded by local progressive educators John Dewey and Colonel Francis Parker; in the 1910s, she instituted a series of teachers' councils to give teachers a greater say in the development of the elementary curriculum.[227] In Denver, Jesse Newlon built upon such experiments by instituting a system whereby teachers would be directly responsible for the development and ongoing revision of the curriculum. He also encouraged teachers and principals in the Denver schools to develop "flexible, activity-centered schools that linked daily life to what students learned."[228] And in New York City, a slate of reforms in 1921 under Superintendent William O'Shea attempted to reorient the curriculum in a more child-centered direction: "We learn to do by doing…The greatest possible participation of all the children is the real measure of success, and such success cannot be attained where the old type of individual question and answer recitation is used too largely."[229]

As with other features of the traditional curriculum, the slow spread, district by district, of progressive and other pedagogical reforms helped to marginalize religion's position in the early twentieth century. This was true not only in cities, but in smaller towns as well. Robert and Helen Lynd's description of life in Muncie, Indiana, helps to illustrate. In the mid-1920s, conducting research for their classic study *Middletown*, the Lynds observed a public school system rich with religious elements. During basketball season, students attended two chapel services led by various local Reverends,[230] and teachers were seen to pressure students to attend optional Bible classes run by the YMCA.[231] Even more strikingly, the city's "Course of Study of the Elementary Schools" was studded with religious ideas and practices:

> The first paragraph in the 'Course of Study of the Elementary Schools' enjoins upon the teachers that 'all your children should join in opening the day with some exercise which will prepare them with thankful hearts and open minds for the work of the day…The Bible should be heard and some sacred song sung.' The School Board further instructs its teachers that geography should teach 'the spirit of reverence and appreciation for the works of God—that these things have been created for [man's] joy and elevation…that the earth in its shape and movements, its mountains and valleys, its drought and flood, and in all things that grow upon it, is well planned for man in working out his destiny'; that history should teach 'the earth as the field of man's spiritual existence'; that hygiene create interest in

[226] Troen, *Public and the Schools*, pp. 219-20.
[227] George S. Counts. 1928. *School and Society in Chicago.* New York: Harcourt, Brace and Company, pp. 66-7.
[228] Cuban, *How Teachers Taught*, pp. 78-80.
[229] Quoted in Cuban, *How Teachers Taught*, p. 60.
[230] Robert S. Lynd and Helen Merrell Lynd. 1957 [1929]. *Middletown: A Study in Modern American Culture.* San Diego: Harcourt and Brace, p. 217.
[231] Lynd and Lynd, *Middletown*, pp. 395-6.

> the care of the body 'as a fit temple for the spirit'; finally that 'the schools should lead the children, through their insight into the things of nature that they study, to appreciate the power, wisdom, and goodness of the Author of these things. They should see in the good things that have come out of man's struggle for a better life a guiding hand stronger than his own…The pupils should learn to appreciate the Bible as a fountain of truth and beauty through the lessons to be gotten from it…'[232]

Although the Lynds concluded that religion was less central to Muncie's schools than thirty-five years before, it still clearly held a central position in the mid-1920s.

When the Lynds returned to Muncie in 1937, the picture had changed dramatically. Gone are the references to chapel services. Nor do the Lynds note the religious tone of the Course of Study. The only reference to religion in the public schools is a brief footnote indicating that the optional YMCA Bible classes continued to draw students.[233] Instead, their description of the schools is given over to a discussion of the impact of a "ten-year program of school planning and reorganization" that had been implemented in 1928. This reorganization entailed nothing less that "the redefinition of the philosophy of education in Middletown" into a child-centered program with "emphasis upon small classes and individual differences as over against mass education and conformity."[234] The Lynds illustrated this transformation by quoting from a 1933 district planning report:

> From the beginning of time until recent years, world change has developed slowly. As a result, knowledge was traditionally handed down. Such a process became authoritative and the accepted basis of knowledge. Many held to such a traditional philosophy and advocated that to learn is basically acquisition and acceptance on authority. Ours is a different philosophy. It *advocates that the aim of education should be to enable every child to become a useful citizen, to develop his individual powers to the fullest extent of which he is capable, while at the same time engaged in useful and lifelike activities…We believe in the doctrine of equal educational opportunity for every child to develop according to his abilities, interests, and aptitudes*.[235]

It is hardly surprising that, under this new regime, the Lynds found so little religion of note in the schools' formal program.

CONCLUSION

Religion's position in American public schools declined between 1860 and 1960 as a result of challenges by religious minorities to the prevailing system of pan-Protestant devotionals, and the displacement of traditional curriculum and pedagogy by new, professional educational ideas and practices. Both minority challenges and professional development were facilitated by the permeable, decentralized character of American educational administration.

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[232] Lynd and Lynd, *Middletown*, p. 204.

[233] Robert S. Lynd and Helen Merrell Lynd. 1937. *Middletown in Transition: A Study in Cultural Conflicts.* New York: Harcourt, Brace and Company, p. 84n.17.

[234] Lynd and Lynd, *Middletown in Transition,* pp. 219-20.

[235] Quoted in Lynd and Lynd, *Middletown in Transition*, pp. 220-1. Emphasis in original.

Because educational policies and practices were decided locally, they could be challenged locally in areas where religious minorities attained critical mass; and they could be altered locally by superintendents strategically positioned at the intersection of local control and an emerging national profession. Moreover, the local development of common schools encouraged the development of the very professional infrastructure that helped construct and disseminate those professional reforming ideas that would eventually displace religion in the early-to-mid twentieth century. In all of these aspects, American education contrasted sharply with the highly centralized, tightly controlled system of administration prevalent in Australia, to which we turn in the next chapter.

Chapter Four
Australian Education: Centralized Administration

INTRODUCTION

In 1938, the eminent comparative educationist Isaac Kandel surveyed the structure and operation of Australian education. He was struck by its "high degree of centralization," which had commendably "brought facilities for education within the reach of all children of school age."[1] Nevertheless, Kandel sounded an alarm. "The efficiency attained by centralized control may be purchased at too great a price. A central authority tends to grow by the power which it wields and when such an authority exercises at once the rights to legislate,…to execute, and to judge, the result is inevitably rule by a bureaucracy which imposes its will and ultimately secures uniformity in aspects of the educational process where uniformity is least desirable."[2]

Kandel was hardly the first observer to remark upon the strong central administration of Australian education, nor to raise concerns about its conservative effects on educational practice. Just a year before Kandel published his study, an education conference held in Sydney featured a virtual parade of speakers urging Australians to break the shackles of bureaucratic rule. The *Sydney Mail* reported, "Behind all the discussions and lectures at the conference was an evident urge to condemn educational methods that are based on rigid centralization."[3] Indeed, to this day Australian education remains remarkably centralized, with strong central departments and very few real powers delegated to the local level. Before 1960, this centralized control was even stronger: staffing, curriculum, and teacher training were all coordinated through a central bureaucracy operating out of each state capital, bound tightly by public service regulations. Local schools were responsible first and foremost to the state Departments of Education, not to local communities. As a retrospective report described the system in 1978:

> It was a three tiered structure, simple and hierarchical. Schools operated in a highly centralized system and their curriculum, policies, activities and even teaching techniques were thoroughly prescribed and monitored from the center by the inspectorate. A system so centralized and predictable insulated the schools from administrative problems of any magnitude and where local decisions were called for they could be taken quickly and with a strong sense of security.[4]

This chapter examines how Australia's centralized education system affected the pace and timing of secularization in Australian schools. In contrast to the United States, where devotional Bible reading declined over the first half of the twentieth century, religious instruction persisted, and even became more widespread, in Australian schools. In many states, students in 1960 encountered religion in the curriculum in much the same way that their great-grandparents might have encountered it in 1880. After 1960, however, religion's place in the public school was called into question, and ultimately transformed. Yet while much had changed by 2000,

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[1] I.L. Kandel. 1938. *Types of Administration, with Particular Reference to the Educational Systems of New Zealand & Australia.* Auckland: New Zealand Council for Educational Research, pp. 47, 50.

[2] Kandel, *Types of Administration,* p. 51.

[3] *Sydney Mail,* 18 August 1937, cited in John P. Hughes. 1999. "Harold Wyndham: A Study in Education and Administration." Unpublished Ph.D. Thesis, Faculty of Education, University of Sydney, p. 66.

[4] New South Wales. Department of Education. 1978. *The Executive Structure in N.S.W. Primary Schools: A Discussion Paper.* Sydney: Author, p. 1.

students still found "scripture" to be a regular component of their public education. Secularization occurred, but it was only partial; while some religious aspects of the curriculum were eliminated, others were retained, and even strengthened.

Why was religious education so secure for so long in Australian schools? And when secularization occurred, why was it only partial? The answer can be found in Australia's highly centralized system of educational administration. The centralized administrative pattern had a generally conservative influence upon Australian education, and this was true of Australian schools' relationship to religious education as well. Centralization inhibited two key secularizing processes, religious conflict and professionalization, before 1960. The strong central administrative apparatus insulated departmental policies, including policies regarding religious education, from complaints and challenges by religious minorities. There was almost no opportunity for those opposed to religious instruction to "capture" or otherwise influence the administrative apparatus. Accordingly, the Protestant-friendly nineteenth-century settlement continued to function undisturbed for nearly a century. Even more consequentially, the strong centralized system suppressed professionalization among educators. Centralized control over teacher training, public service regulations prohibiting criticism of government policy, and a strong inspectorate retarded the influence of progressive education and promoted conservatism among teachers. Only when this tight control was relaxed after 1960 did religious instruction come in for consequential criticism. Attempts to decentralize curricular decision-making, give teachers more professional freedom, and emphasize local involvement in the schools both created new problems for the old system and provided a frame within which to rework official policy on religious instruction.

RELIGIOUS EDUCATION IN AUSTRALIAN SCHOOLS FROM 1880 TO 2000

Before beginning, a brief overview of developments in the Australian states will help to set the scene. As discussed in Chapter Two, the struggle to establish common schools in Australia yielded state educational systems with varied policies regarding religious education. Victoria took the hardest line against religious education, forbidding teachers and clergy from conducting Bible reading or providing anything other than "secular instruction," and expunging all religious material from school readers.[5] By contrast, New South Wales embraced religious education. Under the Public Instruction Act of 1880, teachers were required by law to provide "general religious teaching" (GRT), including Scripture reading, from official, state-sanctioned Scripture readers. Additionally, clergy were given the "right of entry" to visit the state schools once a week in order to provide supplementary "special religious instruction" (SRI) to the children of their denomination.[6] This dual system of GRT and SRI proved popular; it was also adopted in Western Australia and Tasmania.[7] Other colonies allowed religious instruction subject to restrictions. Queensland forbade Bible reading but allowed SRI by visiting clergy, but only outside of school hours; while South Australia forbade SRI but permitted teacher-led Bible reading, though only at the beginning of the school day and without mandatory attendance.[8]

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[5] J.S. Gregory. 1973. *Church and State: Changing Government Policies towards Religion in Australia, with Particular Reference to Victoria since Separation.* North Melbourne, Vic.: Cassell Australia, pp. 144-145, 172-173.

[6] Walter Phillips. 1981. *Defending "A Christian Country:" Churchmen and Society in New South Wales in the 1880s and after.* St. Lucia: University of Queensland Press, pp. 208-209.

[7] Alan Barcan. 1980. *A History of Australian Education.* Melbourne: Oxford University Press, pp. 156-157; Peter Wellock. 1977. "The Search for Educational Respectability: Religious Education in Australian Government Schools in the Twentieth Century." *Journal of Christian Education* 58(June): 30-47, p. 44.

[8] Barcan, *History of Australian Education,* pp. 134-137.

Over the course of the twentieth century, these various arrangements would begin to converge. Queensland would join New South Wales, Western Australia, and Tasmania in providing both GRT and SRI during school hours. Meanwhile, South Australia and Victoria would pass legislation permitting SRI.[9] In those states that had adopted the dual GRT/SRI system from the start, there was little to no change. By 1950, SRI by visiting clergy was essentially a universal practice throughout the country, and most Australian states also required mandatory, teacher-led Bible reading.[10] This period of consensus lasted slightly less than two decades. Beginning in the late 1960s, Australian schools grew more secular—but only partially so. Facing a crisis in religious education, the states responded by establishing formal commissions to reconsider their religious education policies. Most reached similar conclusions: SRI was to be retained, while GRT was to be transformed from Christian Scripture reading to a broader and more objective "studies of religion" type course, or phased out altogether. The only exceptions were South Australia, where SRI was abolished and replaced with a studies of religion course; and Queensland, where schools retain the option of including Scripture reading as part of their regular course of instruction.[11] The general trend, however, was clear: didactic, Christian Scripture reading by teachers would go, while denominational instruction by visiting clergy would be retained. The position of religious education in each state over time is illustrated graphically on the next page in Table 4.1.

In this chapter, I draw heavily (though not exclusively) upon evidence from New South Wales. I do so in part because, as the oldest and most populous state in the federation, its policies influenced developments in other states and affected more people than those of any other state. More importantly, however, its trajectory allows us to examine the political dynamics surrounding *both* SRI *and* GRT—the most controversial and dynamic element of religious education—in particular detail. Battles over Scripture reading were not the only flashpoints, but they did tend to throw into high relief the politics of symbolic representation and professional autonomy that lie at the heart of the secular impulse. A close examination of the politics of religious education in New South Wales, then, gives us particular insight into the dynamics surrounding religion in Australia more generally.

[9] E.L. French. 1969. "Religious Instruction in State Schools in Educational Perspective." Pp. 7-23 in Australian Frontier, *Religious Instruction in State Schools*. Kingston, ACT: Australian Frontier, pp. 11-12.

[10] L. Wigney. 1958. "Provisions for Religious Education in the State School Systems of Australia and in the Territory of Papua New Guinea." *Journal of Christian Education* 1(2): 69-80.

[11] Nicolee Dixon. 2006. *Religious Instruction under the Education (General Provisions) Bill 2006 (Qld.).* Research Brief No. 2006/22. Brisbane: Queensland Parliamentary Library, pp. 7-16; Graham M. Rossiter. 1981. *Religious Education in Australian Schools.* Canberra: Curriculum Development Centre, p. 65; Queensland. Department of Education and Training. 2011. "Bible Lessons." Accessed 14 December 2011. Available online: http://education.qld.gov.au/strategic/eppr/schools/scmpr021/biblelessons.html.Developments in South Australia reflect the effect of unilateral abandonment of SRI by Protestant churches in the late 1960s, while developments in Queensland reflect the strong influence of religious conservatives in state politics.

Table 4.1: Religious Education Provisions in the Australian States, 1880-2000

State	Religious Education Provisions in 1880	Religious Education Provisions in 1950	Religious Education Provisions in 2000
New South Wales	• Bible reading required • Clergy have right of entry to instruct students (SRI)	• Bible reading required • Clergy have right of entry to instruct students (SRI)	• General studies of religion course • Clergy have right of entry to instruct students (SRI)
Western Australia	• Bible reading required • Clergy have right of entry to instruct students (SRI)	• Bible reading required • Clergy have right of entry to instruct students (SRI)	• General studies of religion course • Clergy have right of entry to instruct students (SRI)
Tasmania	• Bible reading required • Clergy have right of entry to instruct students (SRI)	• Bible reading required • Clergy have right of entry to instruct students (SRI)	• Clergy have right of entry to instruct students (SRI)
Queensland	• Clergy permitted to give instruction before or after school day	• Bible reading required • Clergy have right of entry to instruct students (SRI)	• Bible reading permitted as local option • Clergy have right of entry to instruct students (SRI)
South Australia	• Optional Bible reading at start of school day	• Optional Bible reading at start of school day • Clergy have right of entry to instruct students (SRI)	• General studies of religion course
Victoria	• None	• Clergy have right of entry to instruct students (SRI)	• Clergy have right of entry to instruct students (SRI)

THE INSULATED STATE: CENTRALIZATION AND THE ECLIPSE OF LOCAL INPUT

As discussed in Chapter Two, the Education Acts passed by the Australian states between 1872 and 1895, which ended state support for religious schools, also greatly increased the power of the state education departments. To facilitate educational efficiency and reduce sectarian conflict, political leaders created strong centralized systems capable of establishing and operating schools, distributing teachers, and propounding a uniform curriculum. In the process, local input into education was effectively eradicated as responsibilities were systematically removed to the capital cities.

With control centralized in the capital cities, there was little to stimulate local engagement in education. The lack of local interest in educational matters became a consistent lament among Australian educators. "Local interest is dead," complained Henry Hill in 1891, "for the people have already become the true Lotus-eaters of education, the only prevailing

thought among them being the right to have their children taught in Government schools."[12] Nearly a half-century later, Kandel observed that "the long tradition of centralization has resulted in apathy or misdirected interest on the part of the public."[13]

Despite such grousing, department officials tended to view local participation with suspicion throughout much of the twentieth century. After 1906, the local boards in New South Wales were replaced by "Parents and Citizens' Associations."[14] These "P&Cs" were chartered and tightly regulated by the Department; the associations were "not [to] exercise any authority over the teaching staff…or management of the school," and any "political or religious discussions" were strictly forbidden.[15] Far from being independent bodies, then, P&Cs were essentially school booster clubs, treated (by the department) as a useful administrative tool rather than as a forum for political engagement.

In fact, at times administrators took active steps to ensure that the P&Cs did not take on any political role. When the Federation of Parents and Citizens' Associations threw its weight behind an aggressive campaign for federal aid for education in 1960, the august Director-General of Education, Harold Wyndham, reminded them, "It is not the function of parents and citizens' associations and similar bodies to constitute themselves a political pressure group."[16] The fact that P&Cs were subject to departmental regulations helped the Department keep them in line. When, in the 1960s, several P&Cs attempted to use their organizations as a basis to fight the reintroduction of state aid, the Department responded by using Regulation 2A, which declared, "No political or religious discussions shall be allowed at any meeting," to quash many such endeavors. Principals and department officials used the regulation to scuttle proposed debates and symposia on the merits of state aid, and even went so far as to shut down local clubs' fundraisers for the anti-state aid cause.[17] Though Departmental officials, under pressure, conceded that P&Cs could *discuss* state aid, they were unyielding in their refusal to permit P&Cs to be used for any active *organizing*.[18] Departmental regulations made local bodies inhospitable sites for political activity.

From Localism to Legalism: Political Insulation and Administrative Politics

With local influence largely eliminated, educational developments were determined effectively by forces internal to the Australian bureaucracy. Administrative officials in New South Wales hewed to a strongly legalistic approach that placed great emphasis on interpreting the Public Instruction Act and enforcing departmental regulations in a uniform manner. Subject

[12] Quoted in A.G. Austin and R.J.W. Selleck. 1975. *The Australian Government School, 1830-1914: Select Documents with Commentary.* Carlton, Vic.: Pitman Publishing, p. 120.

[13] Kandel, *Types of Administration,* p. 52.

[14] R.J.W. Selleck, B.K. Hyams, and E.M. Campbell. 1983. "The Directors: F. Tate, W.T. McCoy, and S.H. Smith." Pp. 12-80 in *Pioneers of Australian Education.* Vol. 3, *Studies of the Development of Education in Australia, 1900-1950*, edited by C. Turney. Sydney: Sydney University Press, p. 63.

[15] I.S. Henry, Memorandum, "Review of Status of Parents and Citizens' Associations," 6 December 1965. State Records New South Wales, Kingswood, NSW [hereafter SRNSW] 5/8312.2.

[16] Letter, Harold Wyndham to T.L. Robertson, 6 April 1960. SRNSW 19/8242.

[17] Memorandum, "Parents and Citizens' Associations: Deputation to the Minister," 26 May 1967. SRNSW 5/8312.2, p. 2; Letter, Nan O'Brien to J.B. Renshaw, 11 March 1965. SRNSW 13/7159 – 67/41667; Letter, Dora Elizabeth French to A.W. Stephens, 9 March 1965. SRNSW 13/7159 – 67/41667; Letter, A.G. Bond to C.B. Cutler, 29 June 1967. SRNSW 5/8312.2; Letter, Joan Edwards to E. Willis, 20 July 1972. SRNSW 13/7159 – 67/41667; Letter, E.A. Willis to J. Edwards, 29 August 1972. SRNSW 13/7159 – 67/41667.

[18] P.W. Beckenham, Memorandum, "State Aid for Non-Government Schools: Fighting Fund," 4 September 1972. SRNSW 13/7159 – 67/41667.

to the demands of the Minister and Parliament, but otherwise insulated from political pressures, educational bureaucrats pursued a conservative administrative approach that preserved traditional practices, attempted to avoid controversy, and treated complaints dismissively. Consequently, external influences on departmental policy were minimal.

The early years under the Education Acts in the late nineteenth century were characterized by rigid enforcement of the new law under departmental regulations. The ever-watchful gaze of the department's cadre of inspectors ensured that teachers strictly adhered to regulations. In New South Wales, for instance, the Department of Public Instruction sent teams of inspectors out to the state schools to ensure that the officially prescribed scripture readers were being faithfully used.[19] When an observer noted in 1893 that Scripture readers were not being read diligently, the inspectors were again sent out to inquire into the use of the readers.[20]

There was little room for local variation, experimentation, or compromise under this system.[21] Any alterations or changes in protocol had to be run through the central office for approval, which often was not granted. For example, official regulations in New South Wales held that special religious instruction (SRI) was only to be held on the school premises. In 1922, an Anglican minister in the Sydney neighborhood of Leichhardt wrote to the Department to request an exemption to this rule that would permit him to hold his burgeoning SRI classes on church grounds. In this case, the school had rented a hall from the local church that it used for classroom purposes. The minister pointed out that the children were already regularly "marched several times daily from the school *past the Church in question,*" and suggested that the local Head Mistress was in favor of making an alteration.[22] The Department refused the request, stating simply that "the Minister has found it necessary and desirable that the provisions of the Act in this regard be fully observed."[23]

Accordingly, changes in educational practice were almost entirely the result of internal administrative action. The central administration was remarkably impervious to external petitions. With no responsible local officials available to hear complaints, the only path of influence was through correspondence with and deputations to department and governmental officials. Ministers, Premiers, and Directors of Education, however, had the power to summarily refuse to meet with any deputation without giving any reason. More often, however, deputations were given a "polite hearing" that amounted to little more than "polite procrastination." Most written complaints were typically ignored by departmental officials, as petitioners were routinely brushed away with vague assurances that matters were under consideration.[24]

Even those groups with considerable political power and in the good graces of the department often found it difficult to move the bureaucratic machine. Between 1880 and 1940

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[19] E. Johnson to District Inspectors, Memorandum, "Irish National School Books: As to Their Use in Public Schools," 15 December 1880. SRNSW 20/13030.

[20] Memorandum to Chief Inspector, "Scripture Reading in Schools," 6 March 1893. SRNSW 20/13030.

[21] The exception to this rule appears to have been those rural schools, where distance and small size sometimes led local teachers to relax department regulations. For example, Catholic priests in "remote country districts" were known to take students "to a neighboring house, if available, or otherwise gathering them under a gum tree" in order to hold SRI off school premises, in contravention of official policy. See *Catholic Education Conference of New South Wales, 17-20 January 1911: Statement, Resolutions, Proceedings*, cited in Patrick O'Farrell, ed. 1969. *Documents in Australian Catholic History.* Vol. II, *1884-1968.* London: Geoffrey Chapman, pp. 88-89.

[22] Letter, Paul Dryland to Peter Board, 7 February 1922. SRNSW 20/13031/"Religious Instruction 1913-21." Emphasis in original.

[23] Letter, Peter Board to Paul Dryland, 28 February 1922. SRNSW 20/13031/"Religious Instruction 1913-21."

[24] John W. Collins-Jennings. 1971. "Non-Professional and Non-Governmental Organizations and the Provision of Public Education, 1850-1969." Unpublished M.Ed. Thesis, University of Melbourne, pp. 106-107.

Protestants in both Victoria and New South Wales regularly petitioned state Departments of Education to increase the amount of religious content in the public schools. In Victoria, where religious education had been entirely excluded from the school day in 1872, a concerted popular campaign to introduce Scripture lesson books and religious services into the school convulsed the state. Yet neither the favorable recommendations of a Royal Commission on Education nor the petitions of the Local Boards of Advice nor the lobbying of the Bible in State Schools League could convince the government to alter its secular policies.[25] The Minister for Public Instruction, Robert Ramsay, declared in 1876 that "it would be unwise to disturb the practice established by Mr. Justice Stephen who first administered the present act and which has been subsequently followed by my predecessors."[26] In New South Wales, too, the Protestant churches were unable to advance some of their claims, especially regarding their longstanding goal of formalizing morning prayers in the public schools. In the mid-1930s, the Council of Religious Education met several times with department officials and the Minister for Education, David Drummond, in hopes of convincing him to institute a formal departmental policy of opening the day in each school with a devotional service.[27] Drummond, though stating his "personal interest in the objects of the Deputation," referred the proposal to legal counsel, where presumably it died.[28]

The Politics of Religion in an Insulated System

Department officials' conservative, legalistic approach ultimately favored Protestant interests, however. The Public Instruction Act in New South Wales (and parallel legislation in Western Australia, Tasmania, and [after 1910] Queensland) was a Protestant-friendly settlement. Simply allowing the law to be applied as written worked in Protestants' favor. Yet, because administrators were ultimately responsible to elected officials (in the person of the Minister for Education), dominant, well-organized groups that could credibly claim to speak for the majority of Australians had to be taken seriously. In Australia's centralized educational systems, majoritarian groups could influence policy by directly lobbying administration officials, but they could also go above them by lobbying legislators to change the law in their favor. Protestants successfully used both of these strategies to their advantage in early twentieth-century Australia. Meanwhile, Catholics and other religious minorities found themselves frozen out with few options to seek recourse against policies they felt discriminated against them.

The Politics of Inclusion: Protestants and Religious Education

Administrators in New South Wales regularly expressed their strong support for religious education. The 1920s saw a conservative push to make instruction "more prescriptive,

[25] L.J. Blake. 1973. "Free, Compulsory, and Secular." Pp. 165-238 in *Vision and Realisation: A Centenary History of State Education in Victoria*, edited by L.J. Blake. Vol. I. Melbourne: Education Department of Victoria, p. 225; Edward Sweetman, Charles R. Long, and John Smyth. 1922. *A History of State Education in Victoria.* Melbourne: The Education Department of Victoria, p. 147.

[26] Quoted in Blake, "Free, Compulsory, and Secular," p. 223.

[27] NSW Council of Religious Education Executive Minutes, 6 April 1933. Uniting Church Archives, North Parramatta, NSW [hereafter UCA] 70327; NSW Council of Religious Education Minutes, 1 May 1933. UCA 70327; NSW Council of Religious Education Minutes, 7 August 1933. UCA 70327.

[28] NSW Council of Religious Education Executive Minutes, 17 July 1935. UCA 70327. The Council of Religious Education was still calling for opening worship in the early 1950s. See Council for Christian Education in Schools, Annual Report, March 1952. UCA 70322, p. 2.

systematic, frequently tested, and thoroughly inspected."[29] Renewed emphasis on religion was part of this reassertion of centralized control; in 1929, the Director of Education, Stephen Smith, delivered an address in which he encouraged teachers to "put first things first, and stress the importance of the spiritual elements in our work," and urged them to "lay special emphasis upon that portion of your syllabus which deals with Civics and Morals." [30] As the years went by, Department officials continued to actively support and promote religious instruction. In the late 1940s, a memorandum from the Inspectorate to Principals asked them to evaluate how well the primary syllabus met a number of objectives, one of which was "foster[ing] the highest religious aspirations and hopes of mankind."[31] In 1952, the Department reprinted "The Call," a statement by the Churches calling for a "restoration of the moral order" and for all Australians to "FEAR GOD, HONOUR THE KING!" in its official *Education Gazette,* and forwarded a copy of The Call to all schools in 1956.[32] And throughout the 1950s, the Department regularly sponsored post-college courses designed to improve teachers' skills in teaching Scripture.[33]

The Department's support for religious instruction went hand in hand with its cozy relationship with major Protestant groups advocating for religious instruction. In particular, the Council of Religious Education (after 1948 the Council for Christian Education in Schools [CCES]) worked assiduously from the 1920s to build relationships with department officials and Ministers for Education in order to improve and expand religious education in the state schools. Although many of their petitions were not accepted (see above), Department officials regularly expressed their support for Protestant aims and even colluded with Protestants to expand religious education in the absence of legal or regulatory change. In 1951, the Director-General told CCES representatives that "every encouragement is being given to opening acts of worship but no regulations can be issued as the practice is not in accordance with the Public Instruction Act." Nevertheless, CCES took away the impression that "the Department was prepared to consider any reasonable request and do anything possible to encourage religion in schools" short of amending the Act, which it deemed politically impossible.[34] The following year, CCES boasted that it had "established itself [to the Department] as the responsible organization in matters affecting Religion in Schools."[35] Nor was this idle boasting; Departmental representatives sat in on CCES' planning conference in 1952 where they worked on a new syllabus for Protestant special religious instruction (SRI), and provided suggestions for how to improve the syllabus and how to work with principals to ensure its successful functioning.[36] The

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[29] Cliff Turney. 1972. "Continuity and Change in the Public Primary Schools, 1914-32." Pp. 32-76 in *Australian Education in the Twentieth Century,* edited by J. Cleverley and J. Lawry. Camberwell, Vic.: Longman Australia, p. 50.

[30] S.H. Smith. 1929. "The Director's Address." *Education Gazette* 23 (June), pp. 81-82.

[31] Memorandum, "Objectives of a Primary School Syllabus." Appended to Office of the Inspector of Schools, Memorandum, "Revision of Courses of Instruction for Primary Schools,"no date [1949?]. Noel Butlin Archives, Australian National University, Canberra [hereafter NBLA], N111/2014.

[32] "A Call to the People of Australia," *Education Gazette*, 1 September 1952, p. 295; "A Call to the People of Australia," *Education Gazette,* 2 April 1956, p. 100.

[33] See, e.g., *Education Gazette,* 1 October 1952, p. 339; *Education Gazette*, 1 July 1954, p. 161; *Education Gazette*, 1 September 1959, p. 304; *Education Gazette,* 1 September 1960, p. 356; *Education Gazette,* 1 July 1962, p. 377.

[34] Council for Christian Education in Schools, "Report on Interviews with Director- General of Education," unattributed report, no date [1952]. UCA 70322.

[35] Council for Christian Education in Schools, "Annual Report," March 1952, p. 2. UCA 70322.

[36] Letter, Dudley Hyde to John McKenzie, 18 August 1952. SRNSW SZ72; Letter, Director of Secondary Education to Dudley Hyde, 28 August 1952. SRNSW SZ72.

representative "strongly emphasized the warm sympathy for the Council's efforts that is felt by [the Director of Secondary Education] and [his] inspectors."[37]

Where Protestants enjoyed a less favorable relationship with administrators, they were still able to advance their interests through appeals to politicians and the public. Using this strategy, Protestants made headway in those states which had adopted more starkly secular education acts in the late 19th century. In Queensland, a campaign led by the Anglican Church and the "Bible in Schools League" won a referendum that made Bible reading mandatory in public schools.[38] In South Australia, where religious instruction had been limited to Bible reading before the beginning of the school day, Protestant leaders finally succeeded in 1941 in convincing legislators to pass legislation to provide for SRI by visiting clergy.[39] Subsequent regulations also expanded the amount of time allotted to Bible reading.[40]

Even in Victoria, where "the stern…defense of the principle of secularism" was the watchword of the early educational administrators,[41] the country's dominant Protestant establishment eventually succeeded in reintroducing religious education. In the early 1940s, Catholics grew increasingly concerned about the "complete secularization of culture" and the perceived imminent "perishing of Christianity."[42] Consequently, they joined Protestants in their ongoing campaign to introduce SRI by visiting clergy into the Victorian schools. Their approaches met a sympathetic departmental response; the Minister of Education, W.S. Kent Hughes, sympathetically critiqued "over 70 years of secular education which…is to a certain extent responsible for a great deal of the materialistic outlook in our community."[43] With all major Christian groups on board, the legislature passed the 1950 Education Act amendment, making SRI an official part of the regular public school curriculum. Under the new law, Protestant children were to receive religious instruction on an interdenominational basis by instructors accredited by CCES, while Catholic and Jewish children could be segregated during the same time for instruction in their own faiths.[44] Four years later, these SRI classes were supplemented with Protestant chaplains whose salaries were paid by CCES.[45]

The Politics of Exclusion: Catholics and Other Religious Minorities

While Protestants enjoyed positive relations with the Department and the Ministers, Catholics encountered a frosty reception. This was particularly so on the question of subsidies for their denominational schools. Department officials took a hard line against anything that looked like support for the Catholic system. In 1930, as the Depression gripped New South

[37] A.H. Pelham to Director of Secondary Education, Report, "Syllabus Conference of the Council for Christian Education in Schools," 21 September 1952. SRNSW SZ72.

[38] E.R. Wyeth. [1955?] *Education in Queensland: A History of Education in Queensland and in the Moreton Bay District of New South Wales.* Melbourne: Australian Council for Educational Research, pp. 163-170.

[39] D.M. Waddington, W.C. Radford, and J.A. Keats. 1950. *Australian Council of Educational Research Review of Education in Australia, 1940-1948.* Melbourne: Melbourne University Press, p. 80.

[40] French, "Religious Instruction in State Schools," p. 11.

[41] Gregory, *Church and State,* p. 174.

[42] Denys Jackson, quoted in Anthony William Hannan. 1982. "The Catholic Campaign for State Aid in Victoria, 1939-63." Unpublished Ph.D. thesis, Monash University, p. 39.

[43] Quoted in Phillip K. Newell. 1968. "The Enactment and Operation of the 1950 Amendment to the Victorian Education Act." Unpublished M.Ed. thesis, University of Melbourne, p. 45.

[44] R.M. McDonnell, W.C. Radford, and P.M. Staurenghi. 1956. *Review of Education in Australia, 1948-1954.* Melbourne: Australian Council for Educational Research, pp. 110-111.

[45] Ray Bass. 1976. "Chaplaincy in Victorian State Secondary Schools." *Journal of Christian Education* 57(2): 7-19.

Wales, the Department halted a program in operation in Sydney that brought starving schoolchildren to local churches for charitable meals during school hours. "Once we permit one Church or one private organization to encroach on school time, others will come along with a like request and the result will be chaos," declared the Director-General of Education.[46] The Minister agreed, ruling that "under no circumstances can the Department authorize, nor countenance its teachers, in an official capacity, conducting children outside the schools to denominational institutions."[47] Catholics could do little but rail against the state government; in 1935, the Bishop of Goulburn told members of the Holyname Society: "An appeal to reason, to justice, and fair play is useless where prejudice prevails, and it is therefore necessary for you, the Catholic men of N.S.W., to appeal in the only way that has any telling effect—that is, the appeal of the ballot box."[48]

But if Catholics had little success persuading department administrators, they faced similarly little sympathy from parliamentarians. Unlike in the United States, where local control created some incentives for Catholic claims to be considered, state legislators had few incentives to entertain Australian Catholics' requests to change educational law and policy. The larger politics of the state legislature worked against their interests. After the Labor Party gained control of New South Wales in 1912 with strong Catholic support, many Catholics expected the resumption of state aid, but their hopes were dashed as Labor refused to move beyond extending bursaries to students at Catholic high schools.[49] The militant Catholic Federation bitterly complained, "[W]e left no stone unturned in our efforts to have an understanding with the leader of that [Labor] Party, and could not induce them even to listen to us. Indeed, we found a strong undercurrent amongst nominally Catholic Labourites against introducing the education question at all, lest it might 'injure the movement'…Indeed, one day last week, a selected Labour candidate said to Mr. Cleary 'personally I believe in your claims, officially I must oppose them.'"[50]

Catholics did not simply oppose the ban against state aid, but also the religious education in the state schools which they viewed as "officially Protestant."[51] Catholic children who attended state schools were typically withdrawn from the prescribed religious instruction for at least the first 35 years of its operation in protest against the system.[52] However, Catholics did lodge protests at other "sectarian" matters that made their way into the system; these protests were typically dismissed out of hand. In December 1920, the Catholic Federation complained unsuccessfully against the use of the Protestant Lord's Prayer to open school days, and asked for the Catholic version to be used in addition to the "Authorized" version. The Department acknowledged that its policy did not condone the use of the Lord's Prayer in state schools, but

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[46] S.H. Smith, Memorandum, "Auburn and Newtown: Distribution of Soup to Children," 18 July 1930. SRNSW 19/8239.4.

[47] D.H. Drummond, Memorandum, "Auburn and Newtown: Distribution of Soup to Children," 22 July 1930. SRNSW 19/8239.4.

[48] "Subsidy for Schools: Urged by Bishop of Goulburn." *Labour Daily*, 23 January 1935. Copy in SRNSW SZ74.

[49] Jeff Kildea. 2002. *Tearing the Fabric: Sectarianism in Australia, 1910-1925.* Sydney: Citadel Books, p. 3.

[50] P.S. Cleary, quoted in O'Farrell, *Documents in Australian Catholic History,* pp. 313-315. These negative encounters discouraged Catholic activism around state aid in the second quarter of the twentieth century; see below, Chapter Six.

[51] P.S. Cleary, quoted in O'Farrell, *Documents in Australian Catholic History,* p. 315.

[52] "Scripture-Reading in Schools: Mr. Hartley on the New South Wales System," *South Australian Register,* 27 February 1893. Copy available in SRNSW 20/13030; Peter Board to William Holman, Memorandum, "New Zealand: Religious Instruction in State Schools," 16 July 1914. SRNSW 20/13031/"Religious Instruction 1913-21;" *Catholic Education Conference,* p. 88.

added that as the difference between the two versions appeared to be of "little consequence," it was not prepared to act on the Federation's proposal.[53] Another Catholic complaint in 1931 was disposed of by asserting that the Lord's Prayer was allowed so long as it was said in the context of "general religious teaching."[54] Catholic complaints about anti-Catholic bias in schoolbooks were likewise dismissed. The Catholic Federation petitioned the Department in 1920 to remove several offensive statements regarding the Christianization of Ireland, the split between Henry VIII and Rome, and various other matters, from the history textbooks.[55] Department officials held an audience with Federation representatives the following February, where they rejected nearly every claim, either by rejecting Catholic authorities, or by dismissing some complaints as "ridiculous" or "trivial." Magnanimously, officials did agree that future printings could be altered "without any sacrifice of honor" to remove a "conjecture" that "Had [King] John been slain, the murderer would probably have been accounted a saint."[56]

As for other religious minorities, they faced significant obstacles just to be able to conduct the SRI that the Act allegedly guaranteed them. Jehovah's Witnesses, in particular, were prevented from giving SRI on the grounds that their lack of appointed clergy meant they did not constitute a religion, and teachers were specifically advised in departmental regulations not to permit Jehovah's Witnesses to give SRI until as late as 1987.[57] However, even those religious groups who received departmental approval to give instruction sometimes faced obstacles. Religions with only one student in a school were prevented from giving instruction on the grounds that "to isolate a single pupil…would be most unfortunate."[58] If a principal suspected that a religious group was not on the list of approved denominations, that group would have to wait until the principal received confirmation of formal approval from the Department before giving SRI.[59]

The lack of local control over any aspect of educational administration, and the concentration of authority in strong centralized bureaucracies, therefore created a political climate favorable to majority (Protestant) demands, and decidedly hostile to religious minorities. Insulated to a considerable extent from political pressure, parliamentarians and administrators were able to adopt a legalistic, conservative, and fundamentally majoritarian approach to religious education and state aid that easily dismissed non-Protestants' complaints about the system. With such tight control, it is not surprising that religious instruction survived—and even grew stronger—in the years up to 1960.

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[53] Memorandum, Peter Board, "Use of Lord's Prayer in Schools: Letter from Catholic Federation," 28 February 1921. SRNSW 19/8239.5.

[54] Memorandum, "Repetition of the Lord's Prayer and Use of Hymns in Schools," unattributed, 26 June 1931. SRNSW 19/8239.5, p. 5.

[55] Letter, C. Lawlor to Thomas Mutch, 28 April 1920. SRNSW 20/13220.

[56] Memorandum, K.R. Cramp and J.H. Smairl to P. Board, 1 March 1921. SRNSW 20/13220, p. 5.

[57] New South Wales Department of Education. 1975. *Handbook: Instructions and Information for the Guidance of Teachers.* Book 3. Third edition. Sydney: Author, p. 65; *Education Gazette,* 9 June 1987, p. 104.

[58] Harold Wyndham, Memorandum, "Special Religious Instruction in Schools (Section 18): The case of the Nazarene Bible College," 3 August 1961. SRNSW 8/2268.

[59] This occurred to both Christian Scientists and Mormons. See Letter, V.E. Armstrong to Director of Primary Education, 18 February 1967. SRNSW 12/5971 – 67/40846; Letter, Frederick J. Walker to H.M. Morgan, 12 November 1975. SRNSW 12/11011.2 – 68/42885.

CENTRALIZATION AND THE SUPPRESSION OF PROFESSIONALIZATION

If the centralized educational systems of Australia insulated administrators from political pressure, it also inhibited educational professionalization. Educators in Australia were, relative to their American counterparts, conservative, disorganized, and subordinated. The progressive educational ideas and theories that defined education as a self-conscious discipline in the United States and Europe were slow to take root in Australia. Australian teachers, constrained by civil service regulations and subject to detailed scrutiny by a corps of antagonistic inspectors, found it difficult to organize or to implement professionalizing changes. Meanwhile, close ties between education departments and tertiary institutions limited the amount of educational research, and the number of places where educational leadership might take place. Consequently, teachers organized on a primarily industrial rather than professional basis, and those educational reforms that were introduced tended to alter the structure of education more than its content or method. Professional educational knowledge had a very limited impact on Australian education—and on religious instruction—until the 1960s.

The Department as Panopticon: Administrative Controls and Teacher Conservatism

Under the centralized education departments, teachers faced tight controls over what and how they could teach, what they could say, and where they could work. A system of inspectors and restrictive public service regulations combined to limit teachers' ability to organize, criticize, or innovate. Consequently, teachers remained largely silent about pedagogical matters and fundamentally conservative in their approach to education. To the extent that they did mobilize to improve their lot, they did so as unions concerned with salaries and working conditions, rather than as a profession concerned with teaching standards or educational methods.

The Inspectorate and the Production of Conformity

One of the most important controls on teachers was a system of departmental inspectors. Inspectors visited each school at least once a year to examine students and observe teachers to ensure that departmental regulations and syllabi were being carried out faithfully and successfully. During the late nineteenth century, teachers' pay and promotions were dependent upon positive reports by the inspectors. This system gave inspectors great power and gave teachers incentives to tailor their lessons to the demands of the inspectors. In Victoria, where teachers' pay was dependent on inspectors' reports until the early twentieth century, teachers kept to "the beaten tracks which the inspector had laid out,"[60] and devised a "system whereby *they used to pass on the Inspector's questions from one to another"* so as to know what material to prepare for the inspections.[61] In New South Wales, payment was not dependent on performance at inspections, but promotions were; there, too, "every departmental statement was studied with the greatest care and its implication for examinations anxiously assessed."[62] The inspectors, for their part, were often meticulous in ensuring that the syllabus was strictly adhered

[60] R.J.W. Selleck. 1965. "The Strange Case of Inspector Robertson." Pp. 53-162 in *Melbourne Studies in Education, 1964,* edited by E.L. French. Melbourne: Melbourne University Press, p. 58.

[61] Robert Gregory, *The System of Payment by Results,* quoted in Austin and Selleck, *Australian Government School,* p. 115. Emphasis in original.

[62] Austin and Selleck, *Australian Government School,* p. 66.

to; one teacher recalled that in 1900, inspectors took exception to an English lesson on an Australian novel "because it was not in the Reading Book."[63]

Recognizing that the powerful inspectorate was proving a hindrance to teachers and to education, a series of administrative reforms in the first years of the twentieth century attempted to forge a kinder, gentler inspectorate that would give teachers greater freedom to teach creatively. However, resistance from conservative administrators and inspectors and departmental inertia often combined to frustrate many of the attempted reforms.[64] Although many inspectors declared themselves to be champions of progressive education, in reality, "they adopted the names, slogans, and messages of 'the new education' but then identified them with their own practices which were conservative."[65] Especially in the years after World War I, departments moved to reassert the dominance of the inspectorate. Thus one Victorian inspector declared, regarding educational reform, "There must be activity…but it should be freedom and activity to do what ought to be done."[66] And in New South Wales, the Director of Education told teachers in 1926 that the freedoms they had experienced under the first years of the reforms were to be replaced by "reasonable freedom" within the confines of the syllabus, and under the watchful eye of the inspector.[67] The inspectorate remained a conservative force in Australian education throughout the first half of the twentieth century.

That the inspectorate looked with disapproval upon teachers displaying pedagogical initiative, thereby stifling innovation and experimentation,[68] was not lost on outside observers. Visiting Australia on a grant from the Carnegie Corporation in 1936, Oregon Superintendent of Schools John Cramer observed that "freedom for teachers is conditioned, in the last analysis, more by the attitude of the inspectors and the comprehensiveness and rigidity of the examinations than by the syllabus."[69] Two years later, Kandel concurred that "Originality and initiative are discouraged, and a teacher or headmaster who introduces some experiment or innovation may even be written off by an inspector for 'showmanship.'"[70] Far from experimenting with new practices, then, Australian teachers regularly requested more detailed (and restrictive) syllabi from departmental officers.[71] In Queensland, for instance, the Teachers' Union in 1937 requested that the syllabus be redesigned to show the expected progress on a month-to-month basis.[72] In the end, the inspectors' power over the teachers bred conformity: "Since a teacher's promotion depended on the good opinion of his inspector, he kept his own

[63] Quoted in A.R. Crane and W.G. Walker. 1957. *Peter Board: His Contribution to the Development of Education in New South Wales.* Melbourne: Australian Council for Educational Research, p. 83.

[64] John Lawry. 1972. "Understanding Australian Education, 1901-14." Pp. 1-31 in *Australian Education in the Twentieth Century: Studies in the Development of State Education*, edited by J. Cleverley and J. Lawry. Camberwell, Vic.: Longman Australia, pp. 13-14.

[65] John Cleverley. 1972. "The State Primary School Teacher Between the Wars." Pp. 77-98 in *Australian Education in the Twentieth Century: Studies in the Development of State Education*, edited by J. Cleverley and J. Lawry. Camberwell, Vic.: Longman Australia, p. 88.

[66] Victoria, *Report 1924-25*, p. 35, quoted in Cleverley, "The State Primary School Teacher," p. 88.

[67] Selleck et al., "The Directors," p. 71.

[68] Turney, "Continuity and Change," p. 55.

[69] J.F. Cramer. 1936. *Australian Schools through American Eyes.* Melbourne: Australian Council for Educational Research, p. 44.

[70] Kandel, *Types of Administration,* p. 62.

[71] Kandel, *Types of Administration,* p. 63.

[72] P.W. Musgrave. 1979. *Society and the Curriculum in Australia.* Sydney: George Allen & Unwin, p. 67.

opinion in the background and he made sure that he did what was most likely to 'please the inspector.'"[73]

A series of reforms beginning in the 1940s (see below) began to decrease the influence of the inspectorate. Yet even as their powers were curtailed, their influence on teachers remained strong, and "the average teacher of 1954 probably stood almost as much in awe of the district inspector as did his counterpart…a century earlier."[74] Well into the 1960s, the District Inspectors ensured that Scripture was being taught according to the approved syllabus—exactingly, in some cases.[75] And as late as 1970, a teacher complained that an inspector had threatened to "rubbish" him for using a disfavored textbook in his English classes: "All initiative and democratic freedom of thought and ideas is being stifled by these whims and fancies of inspectors and apparently they can impose their whims from the top so that the classroom teacher has to dance to the tune or policy laid down or else."[76]

Departmental Regulations and the Quieting of Criticism

Departmental regulations provided a further constraint on teachers' ability to professionalize. Australian teachers, as state employees, were treated as part of the civil service, subject to the same regulations as other civil servants. Although status as civil servants created job security, it also restricted teachers considerably. In New South Wales, where teachers were most fully integrated into the civil service, teachers were enjoined from "publicly comment[ing] upon the administration of any Department of the State,"[77] and "discussion on the state of education and religious topics was banned."[78] In South Australia, teachers were told to "carefully refrain from the expression of opinions calculated to offend the religious or political views of either the pupils or their parents."[79] In Victoria, a constitutional amendment prohibited teachers from criticizing the administration of any government department.[80] In Queensland, even the inspectors were silenced when they attempted to criticize the department; a Civil Service Commission report in 1888 found that the inspectors were "given to understand that they are not to indulge in any outspoken expression of opinion" about the workings of the department.[81] And in Western Australia, the Inspector-General confessed to feeling "gagged" and constrained from criticizing the educational system he himself led.[82] Not surprisingly, from a very early date the educational systems were denounced for perpetuating a "conspiracy of adulation with regard to

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[73] Crane and Walker, *Peter Board,* p. 89.

[74] N.M. Logan. 1974. "Reform in School Administration in New South Wales: The Role of the Inspector." *Journal of Educational Administration* 12(2): 95-111, p. 96.

[75] K.J. Burns. 1963. "Education in Religion and Morals in the Primary Schools of New South Wales." Unpublished M.Ed. Thesis, University of Sydney, pp. 260-261.

[76] Letter, I.G. Lancaster to Secretary, Primary Education Committee, 19 March 1970. NBLA N111/433.

[77] New South Wales. Department of Education. 1962. *Handbook: Instructions and Information for the Guidance of Teachers.* Sydney: Government Printer, p. 174

[78] Robert Marden Pike. 1965. "'The Cinderella Profession:' The State School Teachers of New South Wales, 1880-1963: A Sociological Profile." Unpublished Ph.D. Thesis, Department of Sociology, Australian National University, p. 15.

[79] R.D. Goodman. 1955. "Teachers' Status in Australia." Unpublished Ph.D. Thesis, Australian National University, p. 213.

[80] Goodman, "Teachers' Status," p. 213.

[81] Queensland Civil Service Commission, *First Progress Report,* quoted in C. Turney. 1975. *Sources in the History of Australian Education, 1788-1970.* Sydney: Angus and Robertson, p. 71.

[82] B.K. Hyams. 1972. "Cyril Jackson and the Introduction of the New Education in Western Australia." Pp. 240-70 in *Pioneers of Australian Education.* Vol. 2, *Studies of the Development of Education in the Australian Colonies, 1850-1900*, edited by C. Turney. Sydney: Sydney University Press, p. 249.

its undoubted merits, [and a] conspiracy of silence with regard to its equally undoubted defects."[83]

Especially in early years, the attitude of many state departments was that teachers' conduct even outside of work should be subject to strict regulation. In 1889, the New South Wales Minister for Public Instruction created a stir when he told a deputation that "the State should have the fullest control over the teachers, not only in school hours, but in their general action in life."[84] Indeed, teachers' private lives were subject to all sorts of restrictions well into the twentieth century. According to John Cleverley, "Teachers were required by law to be financially solvent and were prohibited from engaging in part-time employment without their employers' permission. In Queensland they were expressly forbidden from acting as local correspondents for newspapers; and they could not work as bookmakers or publicans."[85] During the Great Depression, teachers were scrutinized for communist sympathies. Speaking from retirement in 1931, Peter Board warned New South Wales teachers that "the Education Department is also justified in expressing in a very effective way its disapproval of those teachers who fail to realize to what extent their liberties are restricted by the conditions of their employment."[86] In 1956, the *Sydney Morning Herald* published an article entitled, "Does the Public Service Board Govern New South Wales?" in which it observed that the Board "exercises a detailed control over the life and prospects of individual teachers" that was degrading and humiliating.[87]

The public service regulations were wielded by Department officials on an as-needed basis to keep teachers in line. When teachers tried to raise concerns about educational practices, department officials were often quick to silence them. In the 1870s, teachers in New South Wales published an article in a fledgling teacher's journal calling for the legislature to heed teachers' concerns. Department officials responded dramatically to this mild criticism by shutting down the journal, suspending the editors from the teaching service, and exiling the journal's editor to a remote Outback school.[88] In 1898, a teacher who encouraged parents to petition the Department for improved accommodation was officially censured for "disloyal and insubordinate conduct."[89] During the 1920s, directors and ministers invoked the regulations to stifle criticism of educational policy on at least two occasions, and in 1939 the Minister for Education accused the president and deputy president of the NSWTF of violating department regulations for negative statements they had made to the press.[90] Even though enforcement of such regulations waned over time, the threat of their enforcement had a chilling effect both on teachers' willingness to criticize the system, and on their ability to organize. As Bruce Mitchell notes, the regulations were "an excuse for the timid to remain silent. Most teachers had neither the desire nor the courage to voice their grievances publicly."[91]

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[83] Francis Anderson, *The Public School System of New South Wales,* quoted in Austin and Selleck, *Australian Government School,* p. 152.

[84] Quoted in Geoffrey Cooke. 1967. "Public Opinion, Political Activity and Ministerial Influence in Education, N.S.W., 1873-1941." Unpublished M.Ed. Thesis, University of Sydney, pp. 129-30.

[85] Cleverley, "The State School Teacher," p. 91.

[86] Quoted in B. Bessant and A.D. Spaull. 1976. *Politics of Schooling.* Carlton, Vic.: Pitman Publishing, p. 13.

[87] "Does the Public Service Board Govern New South Wales?" *Sydney Morning Herald*, 14 January 1956.

[88] Pike, "The Cinderella Profession," p. 44.

[89] Lesley Dunt. 1993. *Speaking Worlds: The Australian Educator and John Dewey, 1890-1940.* Melbourne: University of Melbourne History Department, p. 18.

[90] Bruce Mitchell. 1975. *Teachers, Education, and Politics: A History of Organizations of Public School Teachers in New South Wales.* St. Lucia: University of Queensland Press, pp. 89, 149-150.

[91] Mitchell, *Teachers, Education, and Politics,* p. 89.

The Effect of Administrative Controls: Industrialism over Professionalization

The combination of close inspectorial supervision and strict departmental regulations made teachers a highly conservative lot. It also affected how they organized. Unlike their American counterparts, who organized first on a professional basis, Australian teachers organized instead on an industrial basis. Although their legal rights regarding criticism of department policies may have been curtailed, their rights under trade union laws provided a basis for organizing.[92] Yet organizing on this basis meant that Australian teachers' groups focused heavily on industrial issues and wages, rather than on professionalizing reforms to pedagogy or curriculum. The constitution of the NSWTF, for instance, discouraged consideration of curricular issues; conference discussions throughout the 1920s focused on federation finances, arbitration, service conditions, and salaries to the near-total exclusion of educational matters.[93] Although the NSWTF's professional journal, *Education,* did provide some space for the discussion of educational ideas, it changed its format after 1949, "virtually abandoned its general discussion of educational questions and became a fairly unimaginative vehicle for federation organization and propaganda."[94]

The focus on industrial issues to the near-total exclusion of professional education questions was frequently criticized. In 1962, a New South Wales teacher lamented that "Australian teachers, imbued with trade union tradition, are under-organized with respect to professional stimulation, exchange of ideas, and mutual criticism."[95] In 1975, A.G. Maclaine observed that:

> …teachers' unions have been criticized for directing their activities mainly towards improving salaries and conditions of service and public recognition of professional status of teachers without making any notable corresponding efforts towards professionalizing the service, particularly by helping to improve educational practices and to upgrade professional expertise among teachers….In fact, teachers' unions have so far taken no major responsibility for the professional growth of teachers as expressed, for example, in the active initiation of in-service courses for teacher improvement or significant research…Even the journals published by teachers' unions in Australia generally give more space to material concerned with working conditions than to articles and information designed to stimulate professional thought and practice.[96]

The industrial focus of the teachers' unions, coupled with teachers' conservative approach to educational matters (reinforced by departmental inspections and regulations), functioned throughout the first half of the twentieth century to render the curriculum essentially free from teacher criticism or experimentation. This was as true of religious education as it was of other subjects. When a radical communist faction developed in the NSWTF in the late 1920s, it initially called for the abolition of scripture and religious teaching from the schools. However, as its leaders gained power within the Federation in the 1940s, it dropped these radical demands

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[92] Mitchell, *Teachers, Education, and Politics,* pp. 32-39; Andrew Spaull. 1986. "The State and the Formation and Growth of Australian Teachers' Unions, 1915-1925." *History of Education Review* 15(1): 34-48, p. 43.

[93] Mitchell, *Teachers, Education, and Politics,* p. 80.

[94] Mitchell, *Teachers, Education, and Politics,* p. 194.

[95] E.H. Graham. 1962. "The Influence of Teachers' Organizations on the Administration of Public Education in Australia, Britain, and U.S.A." *Education* (NSW), 13 June, p. 3.

[96] A.G. Maclaine. 1975. *Australian Education: Progress, Problems, and Prospects.* Sydney: Ian Novak, p. 127.

in the face of widespread disagreement on the part of teachers, who evinced "indifference or conservatism about the quality of education, and anxiety about salaries."[97] Indeed, a 1963 analysis of NSWTF policy toward religion concluded that:

> …nothing has been added to thought on education in religion and morals by the Teachers' Federation as a body representative of the opinions of over twenty thousand teachers. The inability of the Federation to offer any one policy as its own in this matter is not surprising, having regard to the variation in opinion of its members. However it is significant that very little discussion has been reported. The Federation has been too busy with economic and political problems and issues upon which teachers are agreed to spend valuable time on a topic so open to subjective judgments and widespread disagreement.[98]

When it came to professional reforms, regarding religion or any other matter, Australian teachers were simply not major advocates in the years before 1960.

A Profession without Apostles: Centralization and the Taming of Progressive Education

The centralized education system also contributed to the slow development of progressive educational thought in Australia. Unlike in the United States, where educational leaders developed innovative theoretical knowledge about teaching and learning, and pressed for organizational and curricular reforms from an early date, these innovations and professionalizing developments were slow to permeate the Australian scene. There were a number of reasons behind this, including the great distance from American and European centers of educational development. However, the centralized state departments of education also made the terrain of tertiary education a much less hospitable place for the reception of these ideas. Tight central control over teacher training discouraged the development of innovative thought in the teachers' colleges, and discouraged the development of education programs in the universities. Consequently, there were far fewer forums in which progressive educational ideas could develop, and those that did develop tended to develop in an attenuated fashion that did not threaten religious education.

Teacher Training and the Reproduction of the Status Quo

Teacher training in Australia was bound up with state departments of education from an early date. In the late nineteenth century, most states relied on a "pupil-teacher" model for teacher training, whereby promising students would be recruited at age 13 and passed through a five-year apprenticeship program, at the end of which they would be given a full teaching position at a departmental school.[99] Criticism of this system led to the establishment of formal institutions for teacher training in the early twentieth century. These state-run teachers' colleges quickly developed a near-monopoly in teacher education, largely thanks to state action. In New South Wales, the Department decided that the Training College in Sydney should be the unique gateway to the teaching profession as early as 1906.[100] There and elsewhere, state departments

[97] Mitchell, *Teachers, Education, and Politics,* pp. 173-174.
[98] Burns, "Education in Religion and Morals," pp.136, 137.
[99] Pike, "The Cinderella Profession," pp. 6-7.
[100] S.H. Smith and G.T. Spaull. 1925. *History of Education in New South Wales (1788-1925).* Sydney: George B. Phillip and Son, p. 218.

also provided aspiring teachers with scholarships to the training colleges, a feature that concentrated training in those colleges.[101]

As departmental organs subject to complete central control and operating to serve the needs of the department, the colleges did not encourage educational innovation, but instead promoted the status quo. Because teachers' colleges operated as part of the public service, they were required to hire staff from within the state teaching service, and these employees tended to support and perpetuate existing methods and ideas predominant in the teaching systems.[102] This "closed circle" organization meant that "the system tend[ed] to perpetuate itself in a form of professional inbreeding and an accent on conformity."[103] Departments meddled mightily in the internal affairs of the teachers' colleges, deciding their curricula and even the content of their syllabi, in accordance with the perceived needs of the departments;[104] hiring and firing faculty over the heads of the college principals;[105] and even suspending college principals for insubordination.[106] Thus, concluded B.K. Hyams, "even though…a spirit of enquiry and innovation [might] flourish in them, the colleges were frequently reminded of their role in serving the ultimate objectives and even specific purposes of the state provider of their clients."[107] The fact that "the employing agency was also the training authority" promoted conservatism in Australian education through the 1950s.[108]

Universities had greater autonomy. In contrast with the United States, however, where by 1895, "well over 100 publicly financed teacher-training institutions were operating, while the most illustrious universities, including Chicago, Columbia, Harvard, and Stanford, had established chairs of education and laboratories for educational research,"[109] Australian universities were slow to develop programs in education or to encourage educational research. Again, the tightly centralized system of teacher training had an impact. In the years before World War II, university programs in education typically relied upon part-time staff from the teachers' colleges, who were still subject to departmental regulations constraining criticism.[110] The conflict between academic freedom and departmental control discouraged some universities from expanding their offerings in education.[111]

Moreover, state education departments encouraged teacher trainees to focus on the practical, rather than the theoretical, aspects of education.[112] At times, education directors would even act to prevent teachers' college students from attempting to further their education in

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[101] B.K. Hyams. 1979. *Teacher Preparation in Australia: A History of Its Development from 1850 to 1950.* Hawthorne, Vic.: Australian Council for Educational Research, p. 94.

[102] Hughes, "Harold Wyndham," p. 197.

[103] Maclaine, *Australian Education*, p. 36.

[104] Hughes, "Harold Wyndham," pp. 193-194.

[105] Hyams, *Teacher Preparation,* p. 94. In Victoria, before 1912 teachers' college staff were typically sent back to departmental schools after only two or three years at the College. See A.D. Spaull and L.A. Mandelson. 1983. "The College Principals: J. Smyth and A. Mackie." Pp. 81-117 in *Pioneers of Australian Education.* Vol. 3, *Studies of the Development of Education in Australia, 1900-1950*, edited by C. Turney. Sydney: Sydney University Press, pp. 89-90.

[106] Spaull and Mandelson, "The College Principals," pp. 110-111.

[107] Hyams, *Teacher Preparation,* p. 95.

[108] Hyams, *Teacher Preparation*, p. 102.

[109] Hyams, *Teacher Preparation,* p. 53.

[110] Alan Barcan. 2000. "The Andersonians and Progressive Education, 1930-1968." *Melbourne Studies in Education* 41(1): 91-114, p. 100.

[111] Hyams, *Teacher Preparation,* pp. 98-100.

[112] Hyams, *Teacher Preparation,* p. 62.

universities; in 1923 and again in 1925, the Director of Education in New South Wales imposed restrictions upon college students who attempted to extend their scholarships to continue with university work, sending them into the teaching service instead.[113] This naturally presented something of a disincentive for universities to invest in their education programs, and universities remained largely dissociated from teacher training—especially at the primary level—into the 1960s.[114] With faculty laboring under departmental restrictions, and with little formal role in the process of teacher training, university education programs stagnated. Research programs into various aspects of education were extremely limited before 1930.[115]

Educational Infrastructure and Professional Development

Centralized control thus contributed to an anemic professional infrastructure in Australian education. Simply put, there were few forums for the expression or dissemination of professional educational ideas. Before 1930, when the Australian Council for Educational Research (ACER) was founded through a grant from the Carnegie Foundation, there were no independent educational research centers in Australia. Nor, apart from the teachers' unions, did any professional organizations exist; no system of in-service training kept teachers abreast of educational developments; and few journals devoted to professional debates were published. This aspect of Australian education shocked Kandel when he visited in 1937:

> The [Australian Council for Educational Research is] all the more important because there are no other centers for educational research in [Australia]…As contrasted with England and the United States with literally hundreds of organizations there is an almost complete absence of associations and societies for the study of education and allied subjects. The directors and the inspectors of the Australian States have annual meetings of their respective groups, but their proceedings are not published…The absence of professional organizations is paralleled by an absence of professional journals except those published by the teachers' associations and unions; articles of general educational interest appear in these journals but their pages are in the main devoted to a consideration of matters affecting the status of teachers, fresh regulations, news, and occasionally notes of lessons on the courses of study as they are.[116]

Without any independent forums in which progressive educational ideas could develop, progressive education arrived in Australia in an attenuated form. Australia's distance from the centers of educational reform in Europe and the United States made matters worse, since progressive ideas arrived mostly in secondhand form from British reports. With few indigenous educational and research centers, educational leadership fell to departmental administrators, who were, as Austin and Selleck note, "isolated men reading books about books."[117] Although these administrators had early success in reforming some of the most egregious shortcomings of the nineteenth century system, such as discouraging rote memorization and eliminating the pupil-

[113] Hyams, *Teacher Preparation,* p. 82.

[114] G.W. Bassett. 1964. "The Training of Teachers." Pp. 142-161 in *Education for Australians: A Symposium,* edited by R.W.T. Cowan. Melbourne: F.W. Cheshire, p. 151.

[115] T. Findlay Mackenzie. 1935. *Nationalism & Education in Australia, with Special Reference to the State of New South Wales.* London: P.S. King & Son, Ltd., p. 117.

[116] Kandel, *Types of Administration,* pp. 80-81.

[117] Austin and Selleck, *Australian Government School,* p. 193.

teacher system,[118] their reforms were almost always directed at the organization of education—such as the introduction of kindergartens, technical, and secondary schools; and secondary subjects such as manual work, art, music, and physical education—rather than to pedagogy or the core curriculum, which remained more or less unchanged throughout the first half of the twentieth century.[119] Only with the creation of ACER and the introduction of American-financed international scholarship opportunities in the 1930s did the curriculum begin to face more serious scrutiny by Australian educators.[120] Even still, in the 1950s reformers would complain that "literally thousands of good books on education have been published in England and America, but…few of them become widely known among Australian teachers."[121]

As interpreted and implemented by administrators, the "new education" certainly did not pose any radical challenge to religious education. The ideas of John Dewey, for instance, arrived in Australia in a greatly attenuated form. As Lesley Dunt convincingly argues, whereas Dewey envisioned his educational reforms as part of a broader strategy of social change, Australians tended to see them as practical reform measures that could be implemented while maintaining the social status quo.[122] Indeed, Australians tended to draw most heavily on those ideas of Dewey's that viewed educational reform as a means of preserving and stabilizing social order, such as his focus on moral education.[123] Within the context of preserving the status quo, an emphasis on "moral education" left plenty of room for traditional Christian virtues and practices to persist in the schools.[124] In Australia, overall, the derivative educational reforms of the early twentieth century posed little threat to the continuation of religious instruction throughout the first half of the twentieth century.

DECENTRALIZATION AND SECULARIZATION: THE CASE OF NEW SOUTH WALES, 1960-2000

Beginning in the 1960s, state education departments, responding to external criticisms and new political incentives, began to loosen their tight grip on educational administration. Through the decentralization of administrative and curricular authority to regions and, ultimately, individual schools, local voices gained greater influence over the content of the curriculum. By relaxing restrictive regulations over teachers and teachers' colleges, new educational ideas and innovative practices permeated Australian education with remarkable speed. Not surprisingly, religious education was transformed in these years in ways that made it somewhat more secular. Unlike the United States, religious instruction retained a place in the school curriculum, but its position, content, and meaning were transformed. While this

[118] Dunt, *Speaking Worlds*, p. 15; Hyams, "Cyril Jackson," pp. 250-254.

[119] Austin and Selleck, *Australian Government School,* p. 138; S.G. Firth. 1970. "Social Values in the New South Wales Primary School 1880-1914: An Analysis of School Texts." Pp. 123-159 in *Melbourne Studies in Education, 1970,* edited by R.J.W. Selleck. Melbourne: Melbourne University Press, pp. 124-125; Andrew Spaull. 1998. "Public Education in Australia: An Historical Essay." Pp. 3-8 in *Going Public: Education Policy and Public Education in Australia*, edited by Alan Reid. Deakin West, A.C.T.: Australian Curriculum Studies Association, p. 6; Turney, "Continuity and Change," p. 47.

[120] Dunt, *Speaking Worlds,* pp. 84, 108-109; Musgrave, *Society and the Curriculum,* pp. 72-73.

[121] Donald McLean. 1955. "Reading for Teachers." *Education* (NSW), 6 July, p. 4.

[122] Dunt, *Speaking Worlds,* pp. 14, 33, 36, 52-53, 58-59, 66, 90, 104.

[123] Dunt, *Speaking Worlds*, pp. 33, 36, 59, 66.

[124] Dunt, *Speaking Worlds,* p. 60.

transformation was not entirely attributable to decentralization,[125] decentralization contributed to secularization by altering the administrative patterns that had sustained traditional religious education for nearly a century.

The Emergence of an Independent Educational Infrastructure, 1930-1970

Progressive educational theories became a dominant force in Australian education beginning in the late 1960s. In part, this was due to the development of an expanded professional educational infrastructure in which progressive ideas could be developed, expounded, and transmitted. Between 1945 and 1970, the number of professional forums for intellectuals, educationists, and other educational specialists expanded; the university system more than doubled in size and began to devote more attention to educational research and the training of teachers; and the teacher training process was extended from two to three years, creating room for educational theory to permeate what had been an extraordinarily practical curriculum. Within the departments, too, the development of research departments and the rise of administrators trained in scientific research methods made the administration more hospitable to new educational ideas and educational research. These changes allowed progressive educational ideas to gain traction and a position from which they would ultimately transform Australian education.

As discussed above, educational research and discussion began to grow in Australia with the creation of ACER in 1930 and the inauguration of the New Education Fellowship in 1937. These organizations promoted educational research and progressive educational ideas, respectively, and from the end of World War II onwards, the federal government provided financial support for ACER in recognition of its contribution to educational research.[126] These forums were soon complemented by the creation of a series of prestigious academies established to promote knowledge, advise government officials, and create forums for intellectual discussion. The Australian Academy of Science was founded in 1954, the Australian Academy for the Humanities was founded in 1969, and the Social Science Research Council of Australia was founded in 1971.[127] In education, discussion was furthered by the development of subject associations, such as the Australian Association of Mathematics Teachers, which was formed in 1966.[128] The growth in the number of venues where educational ideas could be discussed and the status quo criticized relatively free from restrictions encouraged the spread of progressive and even radical educational ideas.

Even more important, however, was the growth and transformation of the Australian university. Prior to World War II, Australian universities had essentially been undergraduate institutions that paid little attention to research. Despite some notable research in the first half of the twentieth century, most university research was conducted by staff in their spare time rather than as a central feature of their employment, and postgraduate education was almost unheard of.[129] Yet in the decade after World War II, most Australian universities introduced the Ph.D.

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[125] Religious ecumenism and practical difficulties associated with increased ethnic and religious pluralism were other major factors altering the politics of religious education during this period, as I discuss below.

[126] W.F. Connell. 1993. *Reshaping Australian Education, 1960-1985.* Melbourne: Australian Council for Educational Research, p. 255.

[127] Connell, *Reshaping Australian Education,* pp. 23-4.

[128] Connell, *Reshaping Australian Education,* p. 154.

[129] Australia. 1964. *Tertiary Education in Australia,* Vol. I. Report of the Committee on the Future of Tertiary Education in Australia. Melbourne: Government Printer, p. 57; Alan Barcan. 1965. *A Short History of Education in New South Wales.* Sydney: Martindale Press, p. 268.

degree and expanded their Master's degree offerings.[130] At the same time as they expanded their research agenda, the universities were increasingly becoming responsible for educating secondary teachers.[131] The growth of university education departments meant the development of new courses in educational theory and curriculum. Though these courses were initially introduced in the 1950s, they took off in the 1960s, and many secondary teachers were trained in the design, evaluation, and theory of curricula. Consequently, the content and methods of education began increasingly to draw the focus of teachers and administrators alike.[132]

Even the tightly-controlled teachers' colleges were not immune to the infiltration of progressive ideas. By the end of the 1960s, most states had extended their teacher-training courses from two to three years.[133] This additional year was typically filled with courses that delved into educational theory. Already by the mid-1960s, "foundations of education" courses designed to situate the educational process in a social and developmental context were being taught in the teachers' colleges.[134] These foundations courses encouraged teachers to see their work in a broader social and developmental context, to evaluate it critically, and to be open to experimentation and change.[135] More important still was the expansion of in-service education. These courses, which were introduced in the postwar years but were really promoted beginning in 1959 in New South Wales, were specifically designed to keep teachers abreast of contemporary educational developments. In-service education was premised on the idea that existing practices needed continuing modification, and encouraged teachers to pay attention to developments in educational theory and methods.[136]

As a result of this renewed attention to research and educational theory, progressive educational ideas gained currency in Australian education beginning in the 1960s. The works of Dewey, Piaget, and others who argued for a developmental approach to education, organizational self-government, democratic and community involvement, and a downplaying of absolutes in favor of relative and practical instruction, came into intellectual favor.[137] These ideas influenced both the content of the curriculum, and the pattern of educational administration. In Victoria, where progressive ideas were the strongest, curricular control began to be devolved to local schools as early as 1966.[138] Progressive ideas were also ascendant in New South Wales by the early 1970s. In 1974, the Department published a statement of the *Aims of Primary Education in N.S.W.* that represented a radical departure from previous syllabi. It emphasized diversity; explicitly declared its reliance upon "the evidence which has accumulated, particularly over the last decade, on child growth and development;" and told teachers that syllabi were to be understood as "guides rather than detailed prescriptions," and that they were to focus more on "fundamental aims and objectives than on detailed content."[139] For the next decade, progressive

[130] Connell, *Reshaping Australian Education,* p. 118-9.
[131] Hyams, *Teacher Preparation,* pp. 139-40.
[132] Connell, *Reshaping Australian Education,* pp. 172-3.
[133] Connell, *Reshaping Australian Education,* p. 390.
[134] Connell, *Reshaping Australian Education,* pp. 388-9.
[135] Connell, *Reshaping Australian Education,* p. 195.
[136] Barcan, *Short History,* p. 297; Connell, *Reshaping Australian Education,* pp. 195, 388.
[137] Barcan, *Short History,* p. 259; Connell, *Reshaping Australian Education,* pp. 142-4.
[138] Musgrave, *Society and the Curriculum,* p. 84
[139] New South Wales. Department of Education. 1974. *Aims of Primary Education in N.S.W.: An Interim Statement.* Sydney: Government Printer, p. ii.

education, reduced structure, and child-centered education dominated education in New South Wales—a marked turn-around from the hyper-traditional curriculum of the early 1960s.[140]

Administrative Decentralization and the Triumph of Progressive Education, 1960-1980

This dramatic turnaround coincided with—and helped to advance—the loosening of tight central control characteristic of Australian education since the late nineteenth century. Teachers successfully extricated themselves from most public service regulations and the minute supervision of the inspectorate by 1971, and teachers' colleges were formally emancipated from the state departments of education in 1973. Moreover, state education departments began a conscious policy of devolving administrative and curricular control as early as the late 1940s, but especially after 1960. As decision-making powers were devolved, first to principals, and then to teachers, experimentation ensued, allowing the new ideas which had been percolating in the expanding universities and research centers to transform the curriculum from within.

From Head Office to Local Principal: The Devolution of Administrative Authority

In the wake of World War II, the New South Wales government encouraged a policy of decentralization in all government services in the interests of reducing the drift of population to the major cities. The Department of Education was, at the same time, dealing with an increasingly unmanageable volume of work at the head office in Sydney.[141] In the service of both objectives, the Department opened a regional office in the southwestern country town of Wagga in 1948, five more in 1952, and an additional five regional offices by 1968.[142] Initially, these regional offices had little power, and in fact most matters—even those in principle delegated to the regions—still went to the head office for final approval. Yet by the end of the 1960s, the administrative regions had managed to develop a number of increasingly important functions, including consultant services, in-service training, and curricular conferences for primary and secondary teachers.[143]

Even as administrative devolution was begun, control over courses of study remained tightly held by the central administration. However, by the 1950s, the Department was beginning to relax its control over the curriculum ever so slightly, and to experiment with administrative devolution. For one thing, teachers were increasingly being given leeway to allocate time and select content within the context of the course syllabus. In 1952, the Department revised its social studies curriculum to include an array of topics so extensive that they could not possibly all be covered in one semester, thereby forcing teachers to select the topics they would teach.[144] When the syllabus was revised again in 1959, the NSWTF's representative on the revisions committee told teachers that one of the "freedoms… inherent in the syllabus" was "the right of the individual teacher to determine the proportion of the available time to be allotted to the various topics."[145] In the late 1960s, a series of revisions to syllabi in English, mathematics, and science presaged the shift from a content-based curriculum to an aims-based one. These less

[140] Alan Barcan. 1988. *Two Centuries of Education in New South Wales.* Kensington, NSW: New South Wales University Press, pp. 287-88.

[141] Hughes, "Harold Wyndham," pp. 88, 91.

[142] New South Wales. Department of Education. 1973. *The Community and Its Schools: A Consultative Paper on Regionalization and Community Involvement in Schools.* Sydney: Government Printer, p. 9.

[143] Hughes, "Harold Wyndham," p. 93.

[144] Barcan, *Short History,* p. 254.

[145] NSWTF Executive Minutes, 7 June 1960, p. 238. NBLA Z327/108.

prescriptive syllabi provided further room for teachers to experiment with content and methods.[146]

Another decentralizing move was to give school principals greater responsibility for the program and character of their individual schools. In 1962, the New South Wales Director of Primary Education declared the beginning of "a new era for the principalship" that would feature "the lifting of direction and the encouragement of individuality."[147] By 1970, academics were noting that "many principals are taking the initiative in developing highly distinctive features in their school programmes," and that in so doing they were aided by administrative officials who were "encouraging the present generation of teachers to try out new ideas."[148]

In the 1970s, the devolution of authority over curricular and administrative matters to schools accelerated as it was explicitly taken up as departmental policy.[149] In 1973, the New South Wales government floated an ill-fated proposal to create local "school councils," which would have been given partial responsibility for school governance;[150] and subsequent years saw them take a series of steps to promote "school-based decision making." In 1978, the Director-General of Education told a group of educators gathered in Sydney to discuss school-based decision making that New South Wales education needed to be understood as a "three-tiered" system, with head office, regional office, and local school seen as partners in "shared decision-making"[151] That same year, the department celebrated the fact that "the apparent uniformity of previous generations of schools is disappearing as schools develop a more visible individuality. In determining aims and objectives, curriculum programmes and evaluation procedures, the teachers of the primary service have responded thoughtfully and diligently."[152]

The shift of responsibility from head office to school was designed to increase local influence over the educational process. From the late 1940s onwards, department officials were inspired by decentralization's potential to "enabl[e] education to become a matter of community interest."[153] As early as 1962, principals were being advised to "give very real consideration to the community's characteristics" and to "use their initiative in adapting the course of studies to local needs and conditions."[154] While it did not always lead to greater community participation, devolution did encourage schools to pay closer attention to their communities, and to devise and adjust their curriculum in accordance with local needs.

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[146] Connell, *Reshaping Australian Education,* p. 144.

[147] O.R. Jones. 1962. "The Complete Principal." Pp. 288-98 in *The School Principal: A Symposium,* edited by O.R. Jones. Melbourne: F.W. Cheshire, p. 293.

[148] David Dufty. 1970. "Changing the Social Studies Curriculum." *Education Gazette*, 1 June, pp. 212-21, p. 218. Already by the early 1960s, teachers had responded to the creation of area offices by seeking permission for innovative educational programs "which in the past they would have hesitated to suggest." See W.G. Walker. 1964. "Educational Administration." Pp. 193-217 in *Education for Australians: A Symposium,* edited by R.W.T. Cowan. Melbourne: F.W. Cheshire, pp. 201-202.

[149] New South Wales was actually a laggard in this regard; the push to give schools greater control over their curricula actually began in 1966 in Victoria and 1970 in South Australia. See Musgrave, *Society and the Curriculum,* pp. 84, 91-92; Connell, *Reshaping Australian Education,* pp. 203-207.

[150] NSW Department of Education, *The Community and Its Schools.*

[151] D. Swan. 1978. "Opening Address." Pp. 1-5 in *School Based Decision Making: Report of the N.S.W. State Conference, Sydney, November 3-5, 1978.* Sydney: NSW School Based Decision Sharing Project, p. 1.

[152] NSW Department of Education, *Executive Structure*, p. 4.

[153] Letter, H.S. Wyndham to David Verco, 25 October 1971, p. 2. Appended to Memorandum, J.D. Graham to David Verco, "Precis of Official Department of Education Files on Decentralization: Notes from Sir Harold Wyndham," 4 November 1971. SRNSW 12/1716.1; Hughes, "Harold Wyndham," p. 90.

[154] L.M.J. Gordon. 1962. "The Principal and the Community." Pp. 254-87 in *The School Principal: A Symposium,* edited by O.R. Jones. Melbourne: F.W. Cheshire, p. 259.

Beginning in the mid-1970s, the emphasis on community engagement accelerated as the department embraced multicultural education, and began to actively encourage schools to adapt their curriculum to suit local needs. By 1976, the Minister for Education Eric Willis was already able to reassure the Chairman of the Ethnic Communities Council of New South Wales that the schools were accommodating diversity: "In communities with high migrant density, schools have developed policies and procedures which reflect the many cultures and backgrounds of those communities."[155] Regional offices began providing multiculturalism consultants and in-service programs to help principals and teachers learn how to "analyze a school and its community" and devise culturally sensitive programs,[156] and by 1983, the Department had devised a formal Multicultural Education Policy, as well as an "intercultural" policy statement that advised teachers that "The identification of specific cultural values, attitudes, and beliefs is a skill essential to the *management* of cultural difference."[157] As control over administrative and curricular matters was decentralized in this context, curricular diversity among schools increased, and was increasingly tailored to the (cultural) particularities of local settings.

Administrative Decentralization and the Atrophy of Central Controls

The devolution of authority over the curriculum to local schools was accompanied by the reduction of the administrative constraints that had kept teachers in conformity with the central syllabi in previous years—namely, public service regulations and the inspectors' examinations. Public service regulations gave way under a continual onslaught by the Teachers' Federation.[158] The Federation cast the Public Service Board as a tyrannical villain in the press and called for education to be placed under the authority of an independent education commission.[159] In 1970, an education advisory commission was created that removed teachers from control of the Public Service Act but retained their legal status as civil servants, and transferred many of the Board's powers to the Director-General.[160] In a context where department officials were increasingly transferring responsibility to teachers and principals, this move greatly reduced restrictions on the teachers. An independent education commission was ultimately established in 1980, removing the last vestiges of Public Service control.

The inspectorate, likewise, was effectively neutered as a force constraining educational innovation. From World War II onwards, the inspectorate's power vis-à-vis teachers waned slowly. In 1942, the new Minister for Education declared that inspections would be suspended for the duration of World War II. After objections from departmental officials, inspectors, and the Public Service Board, a compromise system was introduced that granted greater recognition to teachers.[161] The abolition of promotion-by-examination the following year further reduced the power of the inspectorate over teachers.[162] Over the course of the 1960s and 1970s, the inspectors' functions were progressively reduced or redistributed to other agents, rendering them

[155] Letter, Eric Willis to W. Jegorow, 13 January 1976. SRNSW 12/11020.1 – 74/27481.

[156] L.A. Findlay, Memorandum, "Minister's Annual Report, 1977," 29 December 1977, p. 3; and P.W. Mattthews, Memorandum, "Annual Report 1977," 22 February 1978, pp. 7-8. SRNSW 12/11034.1 – 77/29395.

[157] New South Wales. Department of Education. 1983. *Intercultural Education: A Support Document to the Multicultural Education Policy, 1983.* Sydney: Government Printer, p. 3. Emphasis in original.

[158] Mitchell, *Teachers, Education, and Politics,* pp. 176-178.

[159] E.g., most dramatically, New South Wales Teachers' Federation. 1959. *The Case for an Education Commission.* Sydney: Author.

[160] Mitchell, *Teachers, Education, and Politics,* p. 192.

[161] Mitchell, *Teachers, Education, and Politics,* pp. 152-154.

[162] Pike, "The Cinderella Profession," p. 151.

increasingly irrelevant. Their role as formal assessors and examiners was increasingly given over to principals. By the early 1960s, principals were already responsible for writing reports on teachers.[163] In 1971, a departmental working party on inspection and advisory services recommended a decrease in the frequency of inspections, greater responsibility for ongoing evaluation for school principals and staff, and the decentralization of the inspectorate.[164] Inspectors' advisory role—always more theoretical than real—was increasingly supplanted by the provision of in-service education and consultative services.[165] And while the growth of the educational system initially increased inspectors' administrative responsibilities, they eventually outstripped their capabilities, and were outsourced to consultants and specialist officers. In the interim, however, their increased administrative duties had removed much of their direct contact with local schools, reducing the shadow they had long cast on the schools.[166] By the early 1980s, the inspectorate had effectively ceased to have an inhibiting influence on teachers.

Finally, centralized departmental control over the teachers' colleges also gave way in the 1960s and 1970s. In part, this was in response to pressure from the federal government, which was increasingly taking on financial responsibility for tertiary education.[167] Faced with Commonwealth objections to the close integration of teachers' colleges and the departments, most states took steps to grant colleges greater autonomy in the late 1960s and early 1970s. In New South Wales, the government established an Advanced Education Board with the responsibility of coordinating all non-university tertiary education, and in 1971 it designated its teachers' colleges as "colleges of advanced education" under state legislation.[168] This had the effect of opening the colleges up to a more diverse curriculum, and—they hoped—making them eligible for Commonwealth financial assistance.[169] In any event, the point soon became moot, as the federal government decided the following year to assume all financial responsibility from the state teachers' colleges beginning in 1974. From that point forward, the administration of teacher education was transferred from the state education department to a new, independent higher education authority.[170] Given this greater freedom, "teacher education gained a richness and depth that it had never previously had,"[171] expanding its course offerings in the humanities and social sciences and providing a more supportive environment for "politically and socially radical interpretations of the nature of teaching and the curriculum."[172]

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[163] Connell, *Reshaping Australian Education,* p. 648; Walker, "Educational Administration," p. 204.

[164] Connell, *Reshaping Australian Education,* p. 643.

[165] Connell, *Reshaping Australian Education,* p. 645.

[166] Connell, *Reshaping Australian Education,* pp. 646-647.

[167] Australia, *Tertiary Education in Australia*; see also quotes from Malcolm Fraser in Andrew Spaull. 1987. *A History of the Australian Education Council, 1936-1986.* Sydney: Allen & Unwin, p. 151.

[168] Bruce Williams. 1978. *Systems of Higher Education in Australia.* New York: International Council for Educational Development, pp. 41-43.

[169] Diverse curricular content was one of the recommendations of a Commonwealth Committee on Colleges of Advanced Education in 1966. See Australia. 1966. *Colleges of Advanced Education, 1967-1969.* First Report of the Commonwealth Advisory Committee on Advanced Education. Canberra: Government Printer, p. 24.

[170] Connell, *Reshaping Australian Education,* p. 390.

[171] Connell, *Reshaping Australian Education,* p. 391.

[172] Alan Barcan. 2001. "The Nineteen Eightees: Prelude to Curricular Reform." *Melbourne Studies in Education* 42(1): 45-78, p. 61.

Decentralization and the Transformation of Religious Education

The effect of these changes on religious education was similarly profound. Nowhere were these changes more visible than in New South Wales.[173] As discussed above, religious instruction in New South Wales consisted of teacher-led lessons from Department-produced Scripture readers (general religious teaching, or GRT) and weekly denominational instruction by visiting clergy (special religious instruction, or SRI). In addition, schools typically opened assemblies with a corporate act of worship, the Lord's Prayer, or Christian hymn-singing.[174] The system worked without much controversy until the 1960s.[175] In 1962, the Secular Education Defence Committee (SEDC), an offshoot of the New South Wales Humanist Society, complained that the social studies syllabus' Scripture provisions were intolerably Christian, and represented a violation of the law's requirement that only "secular instruction" be held in the public schools. SEDC was supported in its efforts by the New South Wales Teachers Federation, who expressed concern that teachers were being forced to teach beliefs they did not hold, and that those teachers who objected conscientiously might be penalized for doing so. The Department—possibly in fear of a lawsuit[176]—agreed to revise the syllabus.

However, the new syllabus that emerged set off another uproar. In 1964, the Minister for Education, Ernest Wetherell, issued two new syllabi that separated out religious education from social studies. The new social studies syllabus was uncontroversial, but the "General Religious Teaching" syllabus was a radical departure from previous syllabi. It eschewed any prescriptive detail, redefined GRT as "the teaching of ethical principles," called upon teachers to "scrupulously avoid any invasion of the private right to religious belief which is the domain of the church and the home," and encouraged teachers to "think of the Bible as a rich source of teaching material" to be used in conjunction with "suitable additional material in writings of other religions."[177] In short, it made the study of religion objective. The humanists rejoiced, but the churches erupted in protest. The Premier of New South Wales, chastened by the Archbishop of Sydney, withdrew the syllabus and had a new "General Religious and Moral Education" (GRME) syllabus drafted that essentially recreated the 1959 syllabus, minus the parts that had caused offense. Although it instructed teachers that "Stories are to be presented objectively," it continued to rely exclusively upon the official Scripture readers as its sole text.[178] A final legal challenge by the SEDC was resolved in 1976, when the New South Wales Supreme Court upheld the legality of Christian religious instruction in the public schools.[179]

Although the dual system appeared to have weathered the storm, the controversy over GRT was but a harbinger of more dramatic transformations yet to come. Between 1965 and

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[173] For a fuller discussion of the developments in New South Wales, with greater focus on administrators' motives, see Damon Mayrl. 2011. "Administering Secularization: Religious Education in New South Wales since 1960." *European Journal of Sociology* 52(1): 111-42.

[174] See, e.g., A.A. Langdon. 1986. *The Anatomy of Religious Education in Schools.* Sydney: Christian Education Publications.

[175] This paragraph and the next draw upon the excellent overview of the controversy over the Scripture syllabus that can be found in Grant S. Harman. 1975. "Pressure Group Politics in Education: A Case Study." Pp. 84-100 in *Sociology of Australian Education: A Book of Readings,* edited by Donald E. Edgar. Sydney: McGraw-Hill.

[176] Harman, "Pressure Group Politics," p. 94.

[177] "Full Text of Syllabus," *Sunday Telegraph*, 16 August 1964, p. 4.

[178] New South Wales Department of Education. 1964. *Curriculum for Primary Schools: General Religious and Moral Education.* Sydney: Government Printer, p. 5.

[179] *Benjamin v. Downs and Another* [1976] 2 NSWLR 199. As discussed further in Chapter Six, this case was litigated as an administrative infraction rather than as a constitutional violation, in order to obtain standing within the Australian system.

1977, several things happened to destabilize religious education further. First, for a variety of reasons that I discuss below, many teachers quietly stopped providing GRT. A survey of teachers in 1977 found that 43% of infants and 61% of primary teachers were never giving GRT, while only 19% of infants (kindergarten) and 10% of primary teachers were providing it on a weekly basis as required by the Department.[180] More alarming still, almost one third of primary school teachers, including majorities of those trained since 1972, were not even acquainted with the GRME syllabus.[181] Second, a severe crisis emerged in the provision of SRI. As the school system expanded, clergy began to have difficulty providing SRI to all schools, especially in rural areas where there were fewer ministers; and some denominations, influenced by the spirit of ecumenism rampant at the time, were beginning to question the wisdom and propriety of continuing to provide SRI altogether.[182] By the late 1960s, the churches' inability to provide SRT had reached crisis stage, and in many places denominational religious instruction was irregular when it happened at all. As SRI became a burgeoning administrative headache, it drew attention away from problems with GRT, and pressure grew on the Department to reconsider its entire policy regarding religious education. A committee was appointed in 1974 to consider the matter.

In 1980, the committee issued its report. The Rawlinson Report, as it was known, called for a series of legislative and administrative changes designed to strengthen the position of SRI, including greater flexibility in its forms and timetabling, and local administrative assistance to smooth issues around timetabling and organization. It also called for the retention of GRT, but in a modified form that emphasized objectivity and multiplicity of viewpoints; and the retention of religious observances, but only to the extent that they were "appropriate to the local situation."[183] The New South Wales Government accepted and implemented its recommendations regarding SRI, but did nothing regarding GRT,[184] which continued to fall further into abeyance during the 1980s. However, educational reforms in 1990 accorded religion a prominent place in the new "Human Society and Its Environment" section of the primary curriculum, and supported the development of a "Studies of Religion" course at the secondary level.[185] By 2000, the Rawlinson reforms had effectively been adopted as government policy, and religious education transformed: GRT was changed from prescriptive Bible reading to objective studies of religion, religious exercises were approved to the extent that they were "appropriate" to local circumstances, and the rights of visiting clergy were preserved and the provision of SRI streamlined.[186] In the other

[180] New South Wales. Department of Education. 1980. *Religion in Education in N.S.W. Government Schools* [hereafter *Rawlinson Report*]. Report of the Committee Appointed by the Minister for Education to Consider Religious Education in N.S.W. Government Schools. Sydney: Government Printer, p. 43.

[181] NSW Department of Education, *Rawlinson Report,* p. 201, Table F.37.

[182] A.W. Black. 1975. *Religious Studies in Australian Public Schools.* Melbourne: Australian Council for Educational Research.

[183] NSW Department of Education, *Rawlinson Report,* pp. 107-115.

[184] A.A. Langdon. 1991. "Religious Education in the Public (Government) Schools of New South Wales: Part I: General Religious Education." *Journal of Christian Education* 101: 29-46, p. 44.

[185] Terry Metherell. 1989. *Excellence and Equity: New South Wales Curriculum Reform: A White Paper on Curriculum Reform in New South Wales Schools.* Sydney: NSW Ministry of Education and Youth Affairs, pp. 16, 39.

[186] These characteristics (objective GRT, protected SRI, and religious exercises on an "appropriate" basis), were probably already implemented by the 1990s, and can be seen in the state's current religious education policy. See New South Wales. Department of Education and Training. 2011. "Religious Education Implementation Procedures." Accessed 14 December 2011. Available online: http://www.curriculumsupport.education.nsw.gov.au/policies/religion/assets/pdf/implementation.pdf.

states, similar developments occurred, as teacher-led Scripture reading was dropped while instruction by visiting clergy was retained.

Decentralization and Secularization

The relaxing of central control and the decentralization of administrative and curricular authority to local schools had an important impact on these changes. The relaxation of central control was in part (especially after 1970) conscious policy, as described above, designed to bring the schools closer to their local communities. But in the realm of religious education specifically, devolution occurred early, and complemented a pragmatic attempt by administrators to avoid a repeat of the syllabus controversies of the early 1960s. Responding to the syllabus affair had absorbed a great deal of the Department's time and attention, and officials were determined to avoid any steps that might rekindle the dispute. Department officials recognized that the syllabus was problematic, but they also realized that "There are certain elements in the long-established provision of Scripture stories and reading which cannot be abandoned…without great public outcry."[187] Their solution appears to have been simply to scale back on any efforts to promote GRT, even as they allowed it to remain on the books.

In the immediate wake of the controversy, a number of active supports to GRT were quietly abandoned. In-service courses on religious education that had been offered with some degree of regularity in the 1950s were dropped after 1962.[188] Perhaps most strikingly, the Department appears to have quietly abandoned the production of additional Scripture readers at some point in late 1965 or early 1966, despite the fact that the GRME syllabus relied heavily on the readers.[189] By the 1970s, GRME had essentially disappeared from departmental correspondence and planning documents. In departmental newsletters, religious education was not mentioned as part of the "content of a modern primary school curriculum" in 1976.[190] The Directorate of Studies made few efforts to develop support materials for RE.[191] Consultants, though provided for other areas, were almost never provided for RE.[192] Given that the Department essentially stopped actively promoting its own syllabus, it is hardly surprising that, in 1975, the Committee on Religious Education received many plaintive letters from teachers inquiring whether the GRME syllabus was still in effect, and lamenting both the lack of department policy on religious education and the absence of adequate training in religious education.[193] Although the GRME syllabus was still technically in effect, a lax departmental attitude had rendered it effectively unknown.

The lack of enforcement from above was complemented by moves to devolve authority over religious instruction to principals and teachers. In many respects, religious education was

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[187] H.S. Wyndham, Memorandum, "Primary Curriculum Scripture," 21 June 1963. SRNSW 8/2268.

[188] The last of these, "The Gospel Environment," was offered in 1962. See *Education Gazette*, 1 July 1962, p. 377.

[189] Requisition forms and requests up to 1965 bore the heading "School Readers and Scripture Books;" beginning in 1966 they referred only to "School Readers." Likewise, through 1965 "Scripture Stories – Junior" and "Scripture Stories – Senior" were regularly included in calculations regarding how many additional copies to order, but these disappeared beginning in 1966. This may reflect decreased demand for the books, but more likely reflects decreased departmental emphasis. See e.g., N.McG. Johnston, Memorandum, "School Readers and Scripture Books," 3 June 1965; and M. Curnow, Memorandum, "Supply of School Readers for 1967," 23 February 1966. SRNSW 67/40613.

[190] *Newsletter from the Director of Primary Education* 5(1), March 1976, p. 4.

[191] W.J.A. Vaughan, Memorandum, "Contribution of the Directorate of Studies for the Minister's Annual Report for the Department of Education, 1976," 23 December 1976. SRNSW 12/11034.1 – 77/29286.

[192] E.g., B.S. Gillett, Memorandum, "Report for Minister – 1976: Primary and Secondary Education in the South Coast Region," undated [1976]. SRNSW 12/11034.1 – 77/29286, p. 6.

[193] NSW Department of Education, *Rawlinson Report,* p. 26.

one of the first curricular areas to experience greater teacher and school autonomy, although it was not specifically stated as a matter of policy at the time. The 1964 GRME syllabus told teachers that they were "free to select topics in these [Scripture] books for presentation when and where they are considered appropriate to the needs of [their] pupils."[194] Three years later, the Minister for Education advised a constituent that GRT was provided "under quite elastic conditions" in order to accommodate variation in teachers' beliefs.[195] While hard data on teacher practices is unavailable, it seems undeniable that this elasticity contributed to teachers' quiet extralegal abandonment of GRT in the late 1960s and early 1970s. While some teachers undoubtedly continued to teach the Scripture Readers as they had before, those who were hostile to GRT, or who taught large numbers of non-Christian students,[196] stopped providing GRT altogether when it became clear that they would face no consequences for doing so. Others, in the absence of clear departmental directives, appear to have begun to avoid "an aspect of the curriculum about which they were unsure."[197] Still others appear to have downplayed or dropped Scripture reading in favor of the less controversial moral education, eventually dissolving GRT into an objective component of their social studies curriculum.[198] By 1976, a NSWTF ad hoc committee on religious instruction concluded that "in the primary schools even the present provision is being ignored [as the result of] less prescriptive curricula requirements."[199]

The collapse of GRT was further hastened by the advance of progressive educational ideas and methods in the 1960s and 1970s, a development which undercut the rationale for GRT and complicated its ability to be integrated into the school program. The breakdown of subject barriers and the new emphasis on projects and open learning that progressive education entailed both complicated the provision of GRT and called into question the utility of keeping "Scripture" as a separate course of study.[200] More importantly, progressive education, which emphasized social values and a focus on education rather than instruction, was deeply at odds with the certainties of religion in important ways. The official departmental publication, the *Education Gazette,* reprinted an article in 1969 by the Director of Britain's National Foundation for Educational Research that advised teachers that education's purpose was to help students "accept, tolerate, and live with doubt," and that while "this does not mean that faith should be destroyed," it did mean that "knowledge of the roots of faith [and] continuous examination of

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[194] NSW Department of Education, *General Religious and Moral Education,* p. 5.

[195] Letter, Charles Cutler to B.G. Judd, 5 July 1967. SRNSW 19/8249.

[196] New South Wales Jewish Board of Deputies, Memorandum, "Department of Education Curriculum for Primary Schools on General Religious and Moral Education," September 1965, pp. 3-4. Archive of Australian Judaica, Sydney, New South Wales, NSWJBD Box 39.

[197] Alan Langdon. 1976. "New South Wales." Pp. 3-6 in *Religious Education in the State Schools of the Australian States, the A.C.T., and New Zealand.* Mount Martha, Vic.: Australian Council of Churches Division of Education, p. 4.

[198] A.J. Craig, Memorandum, "Submissions to Committee: Summary of Main Points," May 1977. SRNSW 12/11024.2 – 75/47882, p. 15. This was made possible because the two revised syllabi overlapped considerably, to the point where the General Religious and Moral Education syllabus and the Social Studies Syllabus repeated entire sentences verbatim. Cf., e.g., New South Wales Department of Education. 1963. *Curriculum for Primary Schools: The Social Studies (1963 Revision).* Sydney: Government Printer, pp. 9-10; and NSW Department of Education, *General Religious and Moral Education,* p. 9.

[199] Bronwyn Marks, Memorandum, "Recommendations to Executive/Council on Religion in Government Schools Ad Hoc Committee," 4 June 1976, p. 1. NBLA N111/440. Principals had been told in 1974 that GRT "derives from the topics set forth" in the GRME syllabus, "but is not restricted to it." See Letter, J. Buggie to H.F. Muller, 6 December 1974. SRNSW 13/7191 – 71/45181.

[200] H.J. Neil. 1971. "Policy Proposals of the Council for Christian Education in Schools." Paper presented at the National Conference on Christian Education in Government Schools, Southport, Qld., November.

principle…are matters for which education should prepare and equip children."[201] This vision, clearly incompatible with traditional religious instruction, was explicitly adopted in the Department's 1974 *Aims of Primary Education* statement, which declared that "the central aim of education" was, in part, "to guide individual development...[towards] moral autonomy."[202] Indeed, some teachers saw these new guidelines as superseding the GRME syllabus, contributing to the further decline of GRT.[203]

Finally, the Department's decision in the 1970s to pursue school-based curriculum management had a huge impact on the fate of religious education more generally. As with teacher flexibility, localization was extended early to schools in the case of religious education. The relevant concern throughout was the growth of religious pluralism, initially among teachers, but increasingly among students, in many schools. Localization was increasingly constructed as the solution to the problem of religious pluralism. The Minister for Education observed in 1967 that one reason why no "formal decision" had been made to implement a "corporate act of worship" at the beginning of the school day was that "the establishment of such a practice in any school, to be of value, must be on the initiative of the school principal and with the support of staff and parents."[204] As principals were given increased responsibility over the curriculum more generally, so too was the entire question of how much religion, and of what variety, devolved to them. By 1975, one parents' group observed, "It appears that it devolves upon the individual school to develop its own policy" in regard to religious education.[205] The department's policy to localize control and stimulate local interest encouraged the matching of religious education policy to community context, primarily by departicularizing GRT and by making sure that religious observances had local support.

The Rawlinson Report and the Triumph of Localism

When the Rawlinson Report was issued in 1980, its recommendations solved the problem of religious pluralism by recasting GRT as part of the progressive curriculum, and relying upon local control as an administrative solution to the problems of SRI and religious exercises in schools. In deliberating over the position of GRT, it quickly became clear that there would be no return to the days of a relatively didactic Christian syllabus. The relaxation of Australia's immigration laws in the wake of World War II, and especially of its "White Australia" policy in the 1960s, had led to an influx of new religious groups whose beliefs had to be taken into account. In particular, migrants from Greece, Turkey, and Lebanon had brought sizable Orthodox and Muslim communities to the state, to live alongside its longstanding Jewish community.[206] Given this increased religious diversity, the Committee acknowledged the impossibility of coming up with "certain common data" for GRT: "how can you demand teaching about Christianity in predominantly Jewish or Muslim communities?"[207]

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[201] R.D. Wall. 1969. "New Tasks for Education." *Education Gazette*, 1 October, pp. 490-7, p. 496.
[202] NSW Department of Education, *Aims of Primary Education*, p. 1.
[203] Craig, "Submissions to Committee," May 1977, p. 15.
[204] Cutler to Judd, 5 July 1967.
[205] Letter, L. Frame to K. Burns, 13 October 1975, pp. 2-3. NBLA N111/745.
[206] Between 1947 and 1976, the proportion of non-Christians in Australia doubled (from 0.5% to 1.0%). In the 1970s alone, the number of Muslims in Australia more than tripled. See Gary D. Bouma. 1995. "The Emergence of Religious Plurality in Australia: A Multicultural Society." *Sociology of Religion* 56(3): 285-302, p. 288; and Gary D. Bouma. 1997. "The Settlement of Islam in Australia." *Social Compass* 44(1): 71-82, p. 72.
[207] A.J. Craig, Memorandum, "Progress Report by Subcommittee on Place of Religion in Education," February 1977, p. 2. SRNSW 12/11024.2 – 75/47882.

In light of this problem, the Committee advocated a shift from "General Religious Teaching" to "General Religious Education." The difference was in line with the overall shift from instruction to education advocated by educational progressives. "The Committee sees value in such a broader concept of General Religious Education, which aims to provide understanding of the major forms of religious thought and expression characteristic of our society and also of other societies in the world."[208] The move effectively objectivized GRT (now GRE) and laid the groundwork for a new course that embraced the idea of teaching *about* religion more completely.

However, the Report was unwilling to throw all religion out of the schools. In preserving denominational instruction and occasional religious observances, it allowed religion to retain a place in the public schools. Importantly, the Committee worked diligently to insulate these religious exercises from controversy. In this, localization was their weapon of choice, especially when it came to religious observances. Unable to come to a clear position on religious observances, the Committee decided that eliminating all religious observances would "be in conflict with the [larger] community's cultural norms" and would create "a gulf between the school and the community."[209] The Report advocated putting the decision in the hands of local schools, such that "religious observances as are appropriate to the local situation should continue to be permissible."[210] The Report said that these decisions should be based on three principles: (1) Sensitivity to the Local Community, (2) The Criterion of Corporateness, and (3) The Right of Non-Participation. Any observances which occurred should "reflect the general view of parents and teachers," who would have "the opportunity to consult with the school staff on the types of religious observances, if any, which will take place." Moreover, schools should "employ forms of observance which maximize corporateness and minimize divisiveness," the precise character of which would be entirely context-dependent:

> In this way the needs of the particular local community will be met and there is less likelihood of non-participation rights needing to be exercised by either parents or teachers. While the Committee recognizes that, in certain closely-knit communities with religious homogeneity, corporate acts of worship in school might be an appropriate expression of the life of the community, it nevertheless considers that, in many cases, the goal of corporateness will be best achieved through a movement away from situations requiring public worship and commitment towards situations which allow for acts of respect and private prayer, reflection, or meditation. Thus in a school serving a multi-religious local community, it cannot be assumed that teachers and pupils will believe in any one religion and can therefore, with good conscience, meaningfully share in corporate worship. In such a situation the proper place for religious worship would be in the context of Special Religious Education or in voluntary meetings.

Thus, concluded the Report, "different practices will occur in different communities," matching faith to practice and maximizing corporateness all around.[211]

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[208] NSW Department of Education, *Rawlinson Report,* p. 73.

[209] "Religious Observances in Government Schools: A Paper Prepared by the R.E. Subcommittee," July 1978. SRNSW K283992 – 75/47957.

[210] NSW Department of Education, *Rawlinson Report,* p. 66.

[211] NSW Department of Education, *Rawlinson Report,* p. 67.

Even SRI was cast in terms of the policy of adapting religious education policy to local circumstances. Denominational instruction was cast as a positive good: "by allowing students to study in their own tradition, the school is catering for the religious plurality of the community…In adjusting to a new culture, [migrant] children could be reassured by the teaching of their own particular religious heritage in the same setting as their general schooling."[212] And in the context of an objectivized GRT and religious exercises done on an as-appropriate basis, SRI was reconceived as a firewall for contained particularism within the school: "for many schools serving multi-religious communities, there should be a movement away from situations requiring public worship and commitment in school assemblies or individual classrooms," and SRI would provide a setting in which particularistic religious education could take place in a multifaith setting.[213]

Thus, the decentralization of educational administration that took place in New South Wales after 1960 facilitated the curricular transformations that undermined traditional religious instruction in the government schools after that time. The devolution of curricular control and the lifting of departmental monitoring mechanisms, coupled with an administrative policy of benign neglect, created space where GRT could fall into abeyance.

CONCLUSION

Religious education in Australia was sustained throughout the late nineteenth and early twentieth centuries by the centralized character of its administration. A near-total lack of local control meant that religious minorities had a very difficult time affecting policies regarding religious education. Tight centralized control of teacher training, public service regulations, and a watchful inspectorate inhibited professionalization in the late nineteenth and early twentieth centuries. As a consequence, the settlement on religion and education reached in the last quarter of the nineteenth century remained nearly unchanged until the 1960s. Only when Australian education departments began to loosen their control over schools and teachers in the postwar era did significant change come. Given the freedom to innovate and implement progressive educational ideas, and encouraged to pay greater heed to their increasingly religiously diverse local settings, teachers and principals increasingly eschewed the more didactic elements of the traditional religious curriculum. Even still, Australian education managed to preserve a position for religious instruction to the present day.

[212] NSW Department of Education, *Rawlinson Report,* p. 74.
[213] NSW Department of Education, *Rawlinson Report,* p. 75.

PART THREE
FORGING THE TWENTIETH CENTURY SETTLEMENT:
POLITICAL MOBILIZATION AND (DE)SECULARIZATION SINCE 1945

The previous part of the dissertation dealt with the dynamics of religion and education under the duration of the nineteenth-century settlement, focusing on how educational administration functioned to advance or retard two key secularizing processes, professionalization and religious conflict. As we have seen, the period between 1870 and 1945 saw the slow partial decline of devotionals in the American public schools as religious minorities and educational professionals took advantage of decentralized administrative structures to implement more secular policies. And it also saw the persistence of religious education in the Australian schools, as its centralized administrative structures stymied efforts either to challenge from without or transform from within the educational policies put in place in the 1870s and 1880s.

Part Three takes up the story from 1945 onwards. In the face of significant changes to the dynamics of religious conflict, and the growth of the federal government in each country, the nineteenth century settlement, common to both countries, finally broke down, leading to the emergence of a new settlement in each country. The twentieth-century American settlement featured "strict separation," rejecting both public aid to religious schools and public school devotionals. In Australia, by contrast, the twentieth-century "religious neutrality" settlement permitted both public aid ("state aid") to religious schools and devotional religious exercises in the public schools. While religious conflict and state-building were central to the emergence of both of these settlements, the institutional pathways that the renegotiation of policy toward religion and education took varied significantly. Strict separation was forcefully promulgated through the American courts, which effectively nationalized what had been a fragmented and fundamentally local policy toward religion. Meanwhile, religious neutrality was worked out through traditional parliamentary processes in Australia, an avenue made available through characteristic features of the Australian party system. Thus, while institutions played a key role in channeling secularizing processes into novel secular settlements, the particular institutions that were most important in each country varied.

Part of the reason that the institutions varied was because they were differently available to those political forces who were most active in defining the terms of the new settlements. A key feature of the postwar debates about religion and education was their increased organization and coordination. In both Australia and the United States conscious and coordinated efforts developed to drive devotionals from the public schools or to reinstate state aid to religious schools after World War II. Thus, the negotiation of the new twentieth-century settlement can be said to represent the outcome of *active campaigns*—by "strict separationists" in the United States, and by Catholics in Australia. The settlements that emerged were in large measure dependent on the strategic choices made by those campaigns. Each group succeeded in redefining the appropriate relationship between religion and education by identifying favorable institutional terrain, taking advantage of rules and procedures that accorded them maximum leverage in obtaining their aims.

Accordingly, the two chapters that follow focus on the secularizing (United States) or desecularizing (Australia) campaigns that dominated the renegotiation of policies toward religion

and education in the postwar era. While situating those campaigns in the context of changing dynamics of religious conflict and the new turn to federal state-building in the postwar era, they also use those campaigns to demonstrate how particular political institutions provided opportunities for political action that were not available in the other country. In so doing, these two chapters both explain the emergence of strict separation or religious neutrality in each country, and also demonstrate how the secular settlements that emerged reflect not only concerted political action, but also the influence of each country's particular political institutions.

Chapter Five

Secularization and the Courts in Postwar America

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof…"[1]

"The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth."[2]

INTRODUCTION

On March 2, 1898, delegates to Australia's constitutional convention voted, 25-16, to include a section guaranteeing religious freedom and prohibiting religious establishment in their new Constitution.[3] Australia's Section 116 was deliberately modeled on the religion clauses of the American First Amendment in what one Australian scholar has termed "a fairly blatant piece of transcription."[4] Yet despite its nearly identical language to the First Amendment, section 116 has been interpreted vastly differently from its American progenitor. While American courts have read the First Amendment broadly, as creating a "wall of separation" between church and state, the Australian High Court has read section 116 extremely narrowly, as prohibiting only a "statutory recognition" of a single church. These divergent interpretations have in turn led the courts to play decidedly different roles in defining how secular education would be in Australia and the United States: while American courts have, since the late 1940s, taken the lead in defining the appropriate relationship between religion and education, Australian courts have been only minor players.

Why did the courts play such a central role in the negotiation of America's new secular settlement? The question becomes more curious when one considers that the Supreme Court had been essentially unconcerned about religious matters in the schools (or elsewhere) before World War II. In this chapter, I argue that the court's central role in defining and nationalizing a policy of "strict separation" of church and state was driven largely from below, by a bevy of "separationist" organizations, religious and nonreligious, who were motivated by a pastiche of concerns ranging from fear of rising Catholic power, to opposition to religious dogmatism, to the desire to protect religious minorities from indoctrination and discrimination. Accordingly, this chapter focuses on the campaign through the courts, led by Protestants, civil libertarians, and Jews, which eventually nationalized and redefined American policy on devotional practices in the public schools (while sustaining its policy against public aid to religious schools). In so doing, I demonstrate that this shift was an *achieved phenomenon*, advanced by a set of organized interests through strategic litigation.

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[1] United States Constitution, Amendment I.

[2] Australian Constitution, Section 116. Note that the "religious test" portion of this section is derived from Article V of the United States Constitution.

[3] Richard Ely. 1976. *Unto God and Caesar: Religious Issues in the Emerging Commonwealth, 1891-1906.* Melbourne: Melbourne University Press, p. 86.

[4] Clifford L. Pannam. 1963. "Travelling Section 116 with a U.S. Road Map." *Melbourne University Law Review* 4:41-90, p. 43.

However, I also argue that these organized interests found American courts particularly receptive terrain for their campaign for a variety of reasons. American courts were institutionally available, both procedurally and hermeneutically, in the postwar era in ways that mattered for the separationists' campaign. Separationist interests took advantage of the access to the courts that was available to them in the American legal system, and also of the Supreme Court's realist hermeneutic, ascendant at midcentury, which encouraged it to look at broader social and political factors in reaching its decision. The importance of this institutional availability can be seen when the American courts are contrasted with the Australian courts, whose restrictive standing procedures and highly text-driven legalist hermeneutic combined to suppress and reject would-be separationist litigants in that country. Thus, a synergy developed between the Supreme Court; its interpretive techniques, identity, and procedural rules; and the strategic actions of separationist litigants in the postwar era that led the Court first to restrict, and then to outlaw, public school devotionals.

I begin with an overview of the role of the courts in defining religion and education, first in the state courts before World War II, then in the Supreme Court after 1947. I then situate the analysis in the context of the changing dynamics of religious conflict at midcentury, a time when old divisions persisted, but new divisions and new actors were emerging to complicate alliances and positions on policy toward religion and education. Following that, I focus on the strict separationists' strategic litigation campaign, highlighting the organizational, strategic, and tactical efforts that contributed to their success. I then contrast the American experience with the Australian, and show how American courts were more institutionally available than their Australian counterparts, making the courts an attractive institutional target for the strict separationists. Finally, I consider how a political-institutional analysis can help make sense of the Supreme Court's mild softening on the issue of public aid since 1997.

RELIGION AND EDUCATION IN THE AMERICAN COURTS: AN OVERVIEW

Intimations of Separation: Litigation in the State Courts, 1854-1947

While battles over the relationship between religion and education exploded into the Supreme Court in the postwar era, the American legal system had already been intimately involved in crafting the acceptable parameters of that relationship for nearly one hundred years. Prior to 1947, legal challenges to public school devotionals and public aid for religious schools were waged almost entirely at the state level, relying on those state constitutional provisions governing religion. While the number of cases touching on religion and education in any given year was typically small, their cumulative effect was quite substantial, such that by the end of World War II, state courts had decided 78 cases on these topics. These court battles were essentially an extension of the ongoing battles between Catholics and Protestants that, as discussed in Chapters Two and Three, had preoccupied many local school boards since the 1830s. Catholics were the dominant force behind challenges to religion in the public schools. Of the 21 cases before 1947 challenging public school devotionals—usually Bible reading, recitation of the Lord's Prayer, and the singing of devotional hymns—at least sixteen (76%) were brought by Catholics or Catholic sympathizers;[5] of the six cases where the state supreme

[5] Catholics or their supporters initiated challenges in *Donahoe v. Richards,* 38 Me. 379 (1854); *Commonwealth v. Cooke,* 7 Am. Law Reg. 417 (Police Ct., Boston, Mass. 1859); *Spiller v. Inhabitants of Woburn,* 94 Mass. (12 Allen) 127 (1866); *McCormick v. Burt*, 95 Ill. 263 (1880); *State ex rel. Weiss v. District Board*, 76 Wis. 177, 44 N.W. 967 (1890); *Nessle v. Hum*, 2 Ohio Dec. 60 (1894); *Pfeiffer v. Board of Education*, 118 Mich. 560, 77 N.W. 250 (1898);

court had ruled against religious exercises in the schools, all but one case was initiated by a Catholic plaintiff.[6] Protestants, for their part, used the courts to proactively challenge municipal and state actions on state and federal constitutional grounds. Protestants also challenged indirect aid to Catholic schools through such means as bus transportation subsidies and textbook loans, though they had less success in these efforts.[7] Nevertheless, by 1946, Protestants and other groups opposed to public aid had launched over fifty challenges through the state courts, challenging everything from direct financial support for Catholic schools to the provision of public water to parochial schools.[8]

State ex rel. Freeman v. Scheve, 65 Neb. 853, 91 N.W. 846 (1902); *Billard v. Board of Education*, 69 Kan. 53, 76 Pac. 422 (1904); *Hackett v. Brooksville Graded School District,* 120 Ky. 608, 87 S.W. 792 (1905); *Church v. Bullock*, 20 Tex. Ct. Rep. 917, 109 S.W. 115 (1908), brought with Jewish and atheist co-plaintiffs; *People ex rel. Ring v. Board of Education,* 245 Ill. 334, 92 N.E. 251 (1910); *Herold v. Parish Board,* 136 La. 1034, 68 So. 116 (1915), brought with a Jewish co-plaintiff; *State ex rel. Conway v. District Board,* 162 Wis. 482, 156 N.W. 477 (1916); *People ex rel. Vollmar v. Stanley,* 84 Colo. 276, 255 Pac. 610 (1927); and *State ex rel. Finger v. Weedman,* 55 S.D. 343, 226 N.W. 348 (1929). Challenges in *Moore v. Monroe,* 64 Iowa 367, 20 N.W. 475 (1884); *Hart v. School District,* 2 Lanc. Law Rev. 346 (Pa., Mercer County Ct. 1885); *Stevenson v. Hanyon,* 7 Pa. Dist. 585 (1898); and *Kaplan v. Independent School District,* 171 Minn. 142, 214 N.W. 18 (1927) were brought by plaintiffs of unknown background, while *Lewis v. Board of Education*, 276 N.Y. 490; 12 N.E.2d 172 (1937) was brought by a "missionary atheist." Four additional cases concerning religious instruction were brought by plaintiffs (at least two of whom were Protestant) seeking to *require* such instruction in the schools: *Board of Education v. Minor*, 23 Ohio St. 211 (1872); *State ex rel. Dearle v. Frazier,* 102 Wash. 369, 173 P. 35 (1918); *Wilkerson v. Rome*, 152 Ga. 762, 110 S.E. 895 (1922); and *State ex rel. Clithero v. Showalter,* 159 Wash. 519; 293 P. 1000 (1930). Information on the religious backgrounds of the plaintiffs was culled from Joan DelFattore. 2004. *The Fourth R: Conflicts over Religion in America's Public Schools.* New Haven: Yale University Press, pp. 47-49, 58-60; Otto Templar Hamilton. 1927. *The Courts and the Curriculum*. New York: Bureau of Publications, Teachers College, Columbia University, pp. 112-13; Leo Pfeffer. 1953. *Church, State, and Freedom*. Boston: Beacon Press, p. 165; and a review of the court decisions. "Catholic sympathizers" is Otto Hamilton's term.

[6] *State ex rel. Weiss v. District Board*; *State ex rel. Freeman v. Scheve*; *People ex rel. Ring v. Board of Education,*; *Herold v. Parish Board*; *State ex rel. Finger v. Weedman*. The exception was in Washington state, where the Supreme Court ruled that a program giving students credit for Bible courses constituted an expenditure of public funds in support of a "religious establishment," and was hence unconstitutional. The case was brought by a student seeking to force the district to grant him credit for such a course. See *State ex rel. Dearle v. Frazier*. A similar petition requesting that the courts enforce Bible reading in 1930 was denied citing *Dearle* as a justification. See *State ex rel. Clithero v. Showalter*.

[7] See, e.g., "Catholic Schools and Public Money." 1941. *Yale Law Journal* 50: 917-27, p. 925; Richard J. Gabel. 1937. *Public Funds for Church and Private Schools.* Washington, DC: Catholic University of America, pp. 566-68.

[8] *People v. Board of Education of Brooklyn,* 13 Barb. (NY) 400 (1851); *St. Patrick's Orphan Asylum v. Board of Education,* 34 How. Pr (NY) 227 (1867); *People v. McAdams*, 82 Ill. 356 (1876); *Nichols v. School Directors*, 93 Ill. 61 (1879); *State ex rel. Nevada Orphan Asylum v. Hallock,* 16 Nev. 373 (1882); *McLean County v. Humphreys*, 104 Ill. 378 (1882); *Scripture v. Burns*, 59 Iowa 70 (1882); *Millard v. Board of Education,* 121 Ill. 297 (1887); *County of Cook v. Chicago Industrial School for Girls*, 125 Ill. 540 (1888); *Atchison, Topeka & Santa Fe Railway v. Atchison*, 47 Kan. 712 (1892); *Nance v. Johnson*, 84 Tex. 401 (1892); *Stevens v. St. Mary's Training School*, 144 Ill. 336 (1893); *Richter v. Cordes*, 100 Mich. 278 (1894); *Swadley v. Haynes*, 41 S.W. 1066 (1897); *Sargent v. Board of Education,* 177 NY 317 (1904); *Dorner et al. v. School District no. 5 et al.,* 137 Wis. 147 (1908); *St. Patrick's Church Society v. Hermanns*, 124 NY 705 (1910); *Oklahoma Railroad Co. v. St. Joseph's Parochial School*, 33 Okla. 755 (1912); *In re Opinion of the Justices,* 214 Mass. 599 (1913); *Dunn v. Chicago Industrial School,* 280 Ill. 613 (1917); *Williams v. Stanton District,* 173 Ky. 708 (1917); *Dunn v. Addison Manual Training School,* 281 Ill. 352 (1917); *Pronovost v. Barnette,* 36 ND 288 (1917); *Knowlton v. Baumhover,* 182 Iowa 691 (1918); *Trost v. Ketteler Manual Training School,* 282 Ill. 504 (1918); *St. Hedwig's Industrial School v. Cook,* 289 Ill. 432 (1918); *State ex rel. Atwood v. Johnson*, 170 Wis. 251 (1919); *Collins v. Kephart*, 271 Pa. 428 (1921); *The Matter of Roche,* 26 NY St. Dept. Rep. 217 (1921); *Smith v. Donahue*, 195 NY Supp. 715 (1922); *State ex rel. Van Straten v. Milquet,* 180 Wis. 109 (1923); *Crain v. Walker,* 222 Ky. 828 (1928); *Borden v. Louisiana State Board of Education,* 123 So. 655 (1929); *Cochran v. Board of Education,* 168 La. 1030 (1929); *Ford v. O'Shea,* 244 NY Supp 38 (1929);

Between the Civil War and World War II, state courts generally upheld the Protestant-friendly settlement reached in the mid-to-late nineteenth century. State courts were typically unsympathetic to Catholic arguments that the Bible was a sectarian text, placing it in violation of state constitutional provisions prohibiting "sectarian instruction" in public schools; or that Bible reading constituted a form of forced worship, running afoul of constitutional guarantees of freedom of conscience or protections against compelled support of religion. By a greater than two-to-one margin, courts rejected challenges to religious devotionals, often reasoning that America was a Christian nation, and that the Bible and prayers accurately and unproblematically reflected majority opinion and sustained civic life.[9] At the same time, courts generally struck down public aid arrangements. Protestants' challenges to such practices were not uniformly successful,[10] but by 1940, eight of nine state courts that had considered the legality of "Catholic public schools" had ruled against them.[11]

Nevertheless, cracks in the settlement began to show during this period, as a few courts began the slow process of working out an alternative understanding of how church and state ought to relate to one another in the educational domain. In those cases where a court struck down religion in the public schools, in particular, some state courts began to move away from a "Christian nation" view toward a more expansive understanding of pluralism. The Illinois Supreme Court, for example, in striking down Bible reading in 1910, declared that "All stand equal before the law—the Protestant, the Catholic, the Mohammedan, the Jew, the Mormon, the free-thinker, the atheist."[12] Even while conceding that "this is a Christian State...[even] a Protestant state," the court emphatically declared that "the law knows no difference between the Christian and the Pagan, the Protestant and the Catholic. All are citizens. Their civil rights are precisely equal…There can be no distinction based on religion."[13] Moreover, the decline of the "Christian nation" assumption increasingly led some courts to consider devotional exercises not as a source of unity, but instead as a potential source of conflict. The Wisconsin Supreme Court, in striking down Bible reading in 1890, expressed particular concern about religious conflict; it insisted that the state must be "Godless, in the same sense that the executive, legislative, and administrative departments are Godless" because "There is no such source and cause of strife,

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Hlebanja v. Brewe, 58 SD 351 (1931); *State ex. rel. Public School District No. 6 v. Taylor,* 122 Neb. 454 (1932); *State ex rel. Traub v. Brown,* 36 Del. 181 (1934); *Lewis v. Board of Education,* 275 NY 480 (1937); *Board of Education v. Wheat,* 174 Md. 314 (1938); *Judd v. Board of Education,* 278 NY 200 (1938); *State ex rel. Johnson v. Boyd,* 217 Ind. 348 (1940); *Wright v. School District,* 151 Kan. 485 (1940); *Chance v. State Textbook Board,* 190 Miss. 453 (1941); *Gurney v. Ferguson,* 190 Okla. 254 (1941); *Adams v. County Commisioners,* 180 Md. 550 (1942); *Harfst v. Hoegen,* 349 Mo. 808 (1942); *Sherrard v. Board of Education*, 294 Ky. 469 (1942); *Mitchell v. Consolidated School District,* 17 Wash.2d. 61 (1943); *Everson v. Board of Education,* 133 NJL 350 (1945); *New Haven v. Town of Torrington,* 132 Conn. 194 (1945); *Nichols v. Henry,* 301 Ky. 434 (1945); *Bowker v. Baker,* 73 Cal. App.2d 653 (1946).

[9] H. Frank Way. 1987. "The Death of the Christian Nation: The Judiciary and Church-State Relations." *Journal of Church and State* 29: 509-29, p. 519. The Texas Supreme Court probably provided the most sweeping such argument in a 1908 decision affirming Bible reading, prayers, and hymn-singing: "Christianity is so interwoven with the web and woof of the State government that to sustain the contention that the Constitution prohibits reading the Bible, offering prayers, or singing songs of a religious character in any public building of the government, would produce a condition bordering on moral anarchy" that could only yield "absurd and hurtful consequences." See *Church v. Bullock,* p. 519.

[10] See, e.g., *Millard v. Board of Education*; *Swadley v. Haynes*.

[11] "Catholic Schools and Public Money," p. 924. Way found the number of courts who had ruled against Catholics in no-aid cases more generally was eight out of twelve by 1920. See Way, "Death of the Christian Nation," p. 522.

[12] *People ex rel. Ring v. Board of Education*, p. 346.

[13] *People ex rel. Ring v. Board of Education*, p. 349.

quarrel, fights, malignant opposition, persecution, and war, and all evil in the state, as religion…Let it once enter our common schools, they would be destroyed."[14]

Although few in number, these state court decisions were significant insofar as they began to develop an alternative jurisprudence, one skeptical of religion in the schools, thereby helping to lay the groundwork for the rise of strict separationism in the Supreme Court after World War II. Indeed, the Supreme Court—though not bound by any state court decision—would draw upon their eloquently reasoned decisions in the course of defining its own position on the questions.[15]

Nationalization through Separation: The Supreme Court, Religion, and Schools since 1947

While religious education was debated in state courts from the nineteenth century, it went unlitigated in the federal courts before World War II. Beginning with the 1947 case *Everson v. Board of Education*, however, the Supreme Court moved to clarify and nationalize policy regarding religion and education, in a series of cases over the ensuing 25 years. In *Everson*, the Court "incorporated" the Establishment Clause (i.e., declared that it applied to the states as well as the federal government), and equated disestablishment with a "wall of separation between church and state" that was to be "kept high and impregnable."[16] Writing for the Court, Justice Hugo Black declared that this meant that:

> …neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, and vice versa.[17]

The establishment clause, therefore, "comprehensively forb[ade] every form of public aid or support for religion."[18] The following year, in *McCollum v. Board of Education,* the court applied this interpretation to a released-time education program[19] in Champaign, Illinois.

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[14] *State ex rel. Weiss v. District Board*, p. 219 (Orton J., concurring).

[15] See especially *Abington Township v. Schempp,* 374 U.S. 203 (1963), pp. 215 (Clark J., majority opinion), 278 (Brennan J., concurring), in which the Court explicitly referred to state court decisions on devotional exercises. Writing in the immediate wake of the prayer and Bible reading decisions in the late 1960s, Richard Morgan observed that state supreme court decisions mattered in part because "The United States Supreme Court is interested not only in history, but also in the climate of reasonably informed opinion in the country. It is always possible that some state court utterance will strike one or more of the Justices as having the timbre of the vox populi." See Richard E. Morgan. 1980 [1968]. *The Politics of Religious Conflict: Church and State in America.* 2nd ed. Washington, DC: University Press of America, p. 72.

[16] *Everson v. Board of Education,* 330 U.S. 1 (1947), pp. 16, 18.

[17] *Everson v. Board of Education,* pp. 15-16.

[18] *Everson v. Board of Education,* p. 32 (Rutledge J., dissenting).

[19] "Released-time" education was a system under which children were released from their regular schedule for an hour a week to meet with church representatives for denominational instruction. For a good overview of released-

Rejecting the idea that "the First Amendment was intended to forbid only government preference of one religion over another,"[20] the court struck down on-premises released-time education, declaring that "in the relation between Church and State, 'good fences make good neighbors.'"[21]

In *Everson* and *McCollum,* the Supreme Court established a jurisprudence of "strict separation," which raised the longstanding American ideal of "separation of church and state" into formal judicial doctrine.[22] While the court did permit off-premises released-time instruction in *Zorach v. Clauson* in 1952,[23] this strict separationist doctrine otherwise led the court to reject a series of state and local programs providing for public school devotionals. In *Engel v. Vitale*,[24] decided in 1962, the Supreme Court outlawed school prayer; the following year saw the Court strike down Pennsylvania's Bible-reading statute in *Abington Township v. Schempp.*[25] Subsequent decisions extended the prohibition on public school devotionals to encompass officially sponsored student prayer, prayer at graduation ceremonies, silent meditation, the display of the Ten Commandments, and the teaching of creationism.[26] In these decisions, the Court has consistently rejected the possibility of devotionals in the public schools as a violation of the Establishment Clause, declaring that "the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which 'establishes a [state] religion or religious faith, or tends to do so.'"[27]

In the course of these decisions, the Supreme Court drew upon the arguments previously laid out in state court decisions, focusing on religious diversity and the potential for conflict that inhered in devotional exercises. In *McCollum,* Justice Frankfurter noted that released time education "actively furthers inculcation in the religious tenets of some faiths [only], and, in the process, sharpens the consciousness of religious differences."[28] In *Engel*, similarly, Justice Black noted that the "controversies over the Book [of Common Prayer] and what should be its content repeatedly threatened to disrupt the peace" in England, contributing to the colonial exodus in search of religious freedom.[29] Concurring, Justice Douglas averred that "once government finances a religious exercise, it inserts a divisive influence into our communities," noting in particular that the "nondenominational" prayer in question "does not conform to all of the tenets of the Jewish, Unitarian, and Ethical Culture groups."[30] And in his concurrence to *Schempp,* Justice Brennan pointed out that:

> our religious composition makes us a vastly more diverse people than were our forefathers…including as it does substantial minorities not only of Catholics and Jews but as well of those who worship according to no version of the Bible and

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time and the political dynamics surrounding it at midcentury, see Jonathan Zimmerman. 2002. *Whose America? Culture Wars in the Public Schools.* Cambridge: Harvard University Press, pp. 135-50.

[20] *McCollum v. Board of Education,* 333 U.S. 203 (1948), p. 211.

[21] *McCollum v. Board of Education*, p. 232.

[22] Phillip Hamburger. 2002. *Separation of Church and State.* Cambridge: Harvard University Press, p. 479.

[23] *Zorach v. Clauson*, 343 U.S. 306 (1952).

[24] *Engel v. Vitale,* 370 US 421 (1962).

[25] *Abington Township v. Schempp*.

[26] *Epperson v. Arkansas*, 393 U.S. 97 (1968); *Stone v. Graham,* 449 U.S. 39 (1980); *Wallace v. Jaffree*, 472 US 38 (1985); *Lee v. Weisman*, 505 US 577 (1992); *Santa Fe Independent School District v. Doe,* 530 US 290 (2000).

[27] *Lee v. Weisman*, p. 587. This interpretation was subsequently reaffirmed in *Santa Fe Independent School District v. Doe,* p. 302.

[28] *McCollum v. Board of Education,* pp. 227-28 (Frankfurter J., concurring).

[29] *Engel v. Vitale,* pp. 426, 433.

[30] *Engel v. Vitale,* p. 442 (Douglas J., concurring)

> those who worship no God at all. In the face of such profound changes, practices which may have been objectionable to no one in the time of Jefferson and Madison may today be highly offensive to many persons, the deeply devout and the nonbelievers alike.[31]

Thus, an awareness of religious diversity and concern about the potential for religious conflict suffused the Court's opinions on devotionals, and buttressed their call for strict separation in the public schools.

Yet even as the Court moved to strike devotionals from the public schools, it also acted to uphold the prohibition on public aid. Although *Everson* permitted indirect public aid (in the form of bus transportation) to flow to parochial schools, the Supreme Court moved in 1971 to extend its broad reading of "disestablishment" to cover public aid. In *Lemon v. Kurtzman,* the Court rejected plans in Pennsylvania and Rhode Island that would have provided state subsidies for parochial schoolteachers' salaries. The Court declared that the establishment clause required that laws must (1) "have a secular legislative purpose," (2) have an effect that "neither advances nor inhibits religion," and (3) not lead to "excessive government entanglement with religion."[32] This so-called "*Lemon* test" was used through the 1970s and 1980s to strike down a number of laws providing direct and indirect assistance to religious schools,[33] culminating in 1985's *Aguilar v. Felton* decision in which the Supreme Court struck down portions of the Elementary and Secondary Education Act which provided auxiliary services to religious schools as a violation of the Establishment Clause.[34] Since that time, however, as I discuss below, the Court has relaxed its understanding of "separation" somewhat, allowing some indirect forms of aid that are provided in a "nondiscriminatory" manner, including voucher programs that support religious schools.[35] However, direct grants to religious schools continue to be forbidden under the Supreme Court's definition of "establishment."[36]

In short, the Supreme Court since 1947 has nationalized American policy regarding religion and education, adopting a "strict separationist" reading of the First Amendment that prohibits devotionals in the public schools. At the same time, it has generally rejected efforts to provide public aid to religious schools except in the case of minor auxiliary supports, although some recent decisions have the potential to permit more indirect aid. Yet while the Court has been a major force for policy change in the arena of devotionals, it did not act alone. Rather, "strict separationism" was brought before the Court through the concerted and sustained advocacy of a wide-ranging coalition of separationist groups. These groups reflected the altered dynamics of religious conflict that dominated mid-twentieth-century America, and their campaign took advantage of both historical changes and institutional features of the courts that made the Court open to their arguments.

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[31] *Abington Township v. Schempp,* pp. 239-40 (Brennan J., concurring).

[32] *Lemon v. Kurtzman,* 403 US 602 (1971), pp. 612-13.

[33] E.g., *Committee for Public Education and Religious Liberty (PEARL) v. Nyquist*, 413 US 756 (1973); *Meek v. Pittinger,* 421 US 349 (1975); *Wolman v. Walter,* 433 US 229 (1977).

[34] *Aguilar v. Felton,* 473 US 402 (1985).

[35] *Mitchell v. Helms*, 530 US 793 (2000); *Zelman v. Simmons-Harris,* 536 US 639 (2002).

[36] Douglas Laycock. 2006. "Church and State in the United States: Competing Conceptions and Historic Changes." *Indiana Journal of Global Legal Studies* 13: 503-541, p. 523.

THE NEW DYNAMICS OF RELIGIOUS CONFLICT AT MIDCENTURY

The campaign to redefine and nationalize America's policy toward religion and education in the postwar era took place in the context of—and partly as the result of—changes in the relationships among religious groups in American society. The longstanding divide between Catholics and Protestants, while still fundamental, began to weaken at midcentury as new theological divisions emerged among Protestants, and as Catholics began to integrate socially and politically. As the old divide weakened, Protestants and Catholics alike found themselves adopting unfamiliar positions, especially on public school devotionals. Meanwhile, new players—Jews and civil libertarians most prominently among them—aggressively entered into the old debates about the relationship between religion and education, inserting powerful and organized voices for strict separation of church and state into the conversation for the first time. These changes opened the door for a renegotiation of the nineteenth-century settlement and the emergence of strict separation.

Protestant-Catholic Divisions in Flux

In the period from 1920-1960, the Protestant-Catholic divide, so fundamental to the battles over religion and education in the nineteenth century, began to weaken. Until the 1960s, it continued to play a preeminent structuring role in debates over religion and education. Still, as early as the 1930s there were signs that Protestant-Catholic antagonism was beginning to weaken. While Protestants remained united in opposition to public aid for parochial schools, they were increasingly divided on both theological and policy matters. The unity of the Protestant Establishment had been permanently fractured in the 1920s by theological conflict between modernists and fundamentalists,[37] ultimately resulting in serious organizational division: by the 1940s, the new National Association of Evangelicals was coordinating conservative evangelicals, while the Federal (later National) Council of Churches served as an umbrella group for the increasingly liberal mainline churches.[38] This theological and organizational division had a feedback effect, as conservatives began to demand increased orthodoxy and doctrinal purity to prove they were not tainted with modernism, while liberal Protestants began to adopt ever-more inclusive and tolerant stances to avoid being cast as fundamentalists.[39] One important result was that liberal Protestants began to engage more in interfaith work, ecumenism, and goodwill

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[37] Robert T. Handy. 1984 [1971]. *A Christian America: Protestant Hopes and Historical Realities.* Rev. 2nd ed. New York: Oxford University Press, pp. 159-84. These two theological camps diverged over the appropriate response to scholarly developments such as Darwinian evolution, Higher Criticism, and positivistic naturalism, which challenged the traditional Protestant worldview. Modernists sought to adapt religious understandings to align them with modern science, emphasizing the place of reason alongside faith. Fundamentalists rejected this approach in favor of a reassertion of the truth of Scripture. The groups broke into open warfare in the first three decades of the twentieth century. For an introduction, see Sydney E. Ahlstrom. 2004 [1972]. *A Religious History of the American People.* 2nd ed. New Haven: Yale University Press, pp. 763-84, 805-16; William Hutchison. 1976. *The Modernist Impulse in American Protestantism.* Cambridge: Harvard University Press; George M. Marsden. 1980. *Fundamentalism and American Culture: The Shaping of Twentieth-Century Evangelicalism, 1870-1925.* New York: Oxford University Press; Martin E. Marty. 1991. *Modern American Religion.* Vol. 2. *The Noise of Conflict, 1919-1941.* Chicago: University of Chicago Press, pp. 155-214; Mark A. Noll. 1992. *A History of Christianity in the United States and Canada.* Grand Rapids, MI: William B. Eerdmans, pp. 363-86; and Ferenc Morton Szasz. 1982. *The Divided Mind of Protestant America, 1880-1930.* University: University of Alabama Press.

[38] Christian Smith. 1998. *American Evangelicalism: Embattled and Thriving.* Chicago: University of Chicago Press, pp. 11-12. Conservative evangelicals similarly founded their own magazines, seminaries, and colleges in opposition to the mainline during the 1940s and 1950s.

[39] Noll, *History of Christianity,* pp. 385-86.

movements.[40] By midcentury, a substantial number of Protestants had begun to actively embrace a more tolerant approach to religious difference.

While Protestants grew increasingly divided and open to religious pluralism over the first half of the twentieth century, Catholics moved inexorably toward the mainstream of American society, entering the managerial and professional classes in large numbers,[41] and rising to prominent positions in national politics.[42] After World War II, Catholics' integration into American society accelerated. John F. Kennedy was elected as the nation's first Catholic president in 1960. The G.I. Bill brought higher education to massive numbers of Catholics, who thrived in the universities and parlayed their educational gains into increased participation in law, business, and medicine.[43] By 1970, Catholics had attained occupational and educational parity with—and economic superiority to—Protestants.[44] Catholic intellectuals, such as John Courtney Murray, articulated a more moderate stance on social and political questions that "Americanized" Catholicism in a more liberal, Protestant-friendly direction.[45] These stances were ultimately endorsed in the early 1960s by the Second Vatican Council, which broke down theological, liturgical, and devotional barriers between Protestants and Catholics and swept away whatever residual suspicions many Protestants might have had about their Catholic neighbors.[46]

The slow breakdown of the Protestant-Catholic divide destabilized the longstanding positions each group held regarding religion and education, and allowed new configurations to emerge. Protestants remained united in opposition to public aid, but they grew increasingly divided over the issue of public school devotionals. Conservative Protestants maintained their support for devotionals, and until the 1950s, most mainline Protestants continued to support efforts at religious education as well. However, liberal Protestants, perhaps influenced by their interfaith interactions, increasingly began to object to "the imposition of Christian customs" such as Bible-reading, prayers, and hymns.[47] Protestant groups divided sharply over the propriety of released-time education in the late 1940s.[48] Yet the more pluralistic views in the liberal wings of

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[40] For example, the Federal Council of Churches sponsored the creation of the National Conference of Jews and Christians (NCJC) in 1928 to promote interfaith dialogue among Protestants, Catholics, and Jews. The NCJC sponsored goodwill tours where a rabbi, a priest, and a minister toured the country together, discussing their faiths in a friendly and respectful manner, in an effort to encourage tolerance and mutual understanding. See Diana Selig. 2008. *Americans All: The Cultural Gifts Movement.* Cambridge: Harvard University Press, pp. 115-19.

[41] Liston Pope. 1948. "Religion and the Class Structure." *Annals of the American Academy of Political and Social Science* 256: 84-91, pp. 85-86; Andrew M. Greeley. 1989. *Religious Change in America.* Cambridge: Harvard University Press, pp. 78-79.

[42] Under Roosevelt, Catholics were awarded several cabinet positions, and one in four appointments to the federal courts went to Catholics, a dramatic change from the one-in-twenty-five ratio under his three predecessors. See James Hennesey. 1981. *American Catholics: A History of the Roman Catholic Community in the United States.* New York: Oxford University Press, p. 260.

[43] Hennesey, *American Catholics,* pp. 283, 288; Martin E. Marty. 1996. *Modern American Religion.* Vol. 3. *Under God, Indivisible, 1941-1960.* Chicago: University of Chicago Press, p. 417.

[44] Charles R. Morris. 1997. *American Catholic: The Saints and Sinners Who Built America's Most Powerful Church.* New York: Times Books, p. 256; cf. Robert Wuthnow. 1988. *The Restructuring of American Religion: Society and Faith since World War II.* Princeton: Princeton University Press, p. 86.

[45] Jay P. Dolan. 1985. *The American Catholic Experience: A History from Colonial Times to the Present.* Garden City, NY: Doubleday, p. 407; James T. McGreevy. 2003. *Catholicism and American Freedom: A History*. New York: W.W. Norton, pp. 189-215.

[46] Wuthnow, *Restructuring of American Religion,* p. 94. On Vatican II, see generally Melissa J. Wilde. 2007. *Vatican II: A Sociological Analysis of Religious Change.* Princeton: Princeton University Press.

[47] Selig, *Americans All,* p. 136.

[48] On Protestant divisions on released-time circa 1950, see Pfeffer, *Church, State, and Freedom,* pp. 290-92

the mainline churches were increasingly influential. By the 1960s, the mainline churches had become increasingly amenable to strict separation and wholly secular public schools. The transition was heralded by the prominent mainline publication *Christian Century*, which went from championing the constitutionality of school prayer in 1947, to tepidly defending prayer while acknowledging it was spiritually and pedagogically unsound in 1952, to openly endorsing the *Engel* decision outlawing it in 1962 as "faithful to the First amendment."[49] Meanwhile, the National Council of Churches (NCC) moved, in less than a decade, from endorsing "the reverent reading of selections from the Bible"[50] to complete opposition. In 1963, the NCC embraced the *Schempp* decision banning Bible reading with the resounding admonishment that "Neither the church nor the state should use the public school to compel acceptance of any creed or conformity to any specific religious practice."[51] Yet even as the mainline churches shifted against religion in the schools, conservative Protestants redoubled their support. The National Association of Evangelicals declared its opposition to *Engel* and *Schempp*,[52] while evangelist Billy Graham decried the *Engel* decision for perverting "freedom of religion" into "freedom from religion."[53]

Catholics, too, switched their position on devotionals. While maintaining their demands for public aid, they began, in the 1940s, to formally call for more religious content in public education. In part, this was a strategic move to highlight the secularity of public schools as a means of building support for their broader goal of obtaining public aid for their parochial system.[54] But their changing position also reflected increased confidence as they became more fully incorporated into American society. So long as the devotionals were not overtly Protestant, Catholics were willing to sign off.[55] As the Court issued its decisions nationalizing religious education according to a strict separationist design, Catholics responded by becoming ever more vocal in their support for public school devotionals. In the 1950s and 1960s, Catholic publications launched a series of attacks on "secular humanist" and Jewish organizations, accusing them of attempting to drive religion out of the schools.[56] By the end of the 1960s, Catholics had become "the most vigorous defenders of religious practices in the public schools."[57]

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[49] *Christian Century.* 1947. "Getting Down to Cases." 10 December, pp. 1512-14; *Christian Century.* 1952. "Prayers in Public Schools Opposed." 9 January, p. 35; *Christian Century.* 1962. "Prayers, Bibles, and Schools." 24 October, pp. 1279-80.

[50] Quoted in Vincent J. Flynn. 1954. "Strategies for Making Adequate Provision of Religious Education for All Our Young." *Religious Education* 49: 93-103, p. 103.

[51] Quoted in Stephen D. Solomon. 2007. *Ellery's Protest: How One Young Man Defied Tradition & Sparked the Battle over School Prayer.* Ann Arbor: University of Michigan Press, p. 321.

[52] John C. Jeffries, Jr., and James E. Ryan. 2001. "A Political History of the Establishment Clause." *Michigan Law Review* 100: 279-370, pp. 320-21.

[53] Quoted in Leo Pfeffer. 1984. *Religion, State, and the Burger Court.* Buffalo, NY: Prometheus Books, p. 86.

[54] Jeffries and Ryan, "Political History of the Establishment Clause," pp. 323-24.

[55] Kevin M. Schultz. 2007. "'Favoritism Cannot Be Tolerated': Challenging Protestantism in America's Public Schools and Promoting the Neutral State." *American Quarterly* 59(3): 565-90, pp. 576-78. However, in places where Protestants retained a dominant numerical majority, Catholics tended to continue opposing religious education. In the South, for instance, Catholics and Jews worked together to oppose public school devotionals, which were typically "straight Protestant Christianity." See Gregg Ivers. 1995. *To Build a Wall: American Jews and the Separation of Church and State.* Charlottesville: University Press of Virginia, p. 142.

[56] Ivers, *To Build a Wall,* p. 83, 103; cf. David O'Brien. 1989. *Public Catholicism.* New York: MacMillan, p. 206.

[57] Leo Pfeffer, quoted in Zimmerman, *Whose America,* p. 175.

Beyond the Protestant-Catholic Divide: Jews and Civil Libertarians

As Protestant and Catholic positions entered into flux in the postwar years, new groups emerged as influential voices within the religious field. Most consequential among these were civil libertarians and Jews. Civil libertarians provided a strong, nonreligious voice on behalf of a purely secular state. Devoted to the protection and advancement of "civil liberties"—those individual rights that citizens may assert against the government—and of the Bill of Rights in particular, civil libertarians understood the Establishment Clause to mean absolute "separation of church and state," in education and elsewhere. Civil libertarians' general orientation was liberal and broadly humanist, and in this regard, they followed in the footsteps of earlier freethinking proponents of a strongly secular state.[58] Civil libertarians, however, did not so much continue this tradition as attract members of that tradition to a cause that was considerably more broad-based, topically and demographically. By dint of their focus on constitutional issues and personal freedoms, civil libertarians also drew strong support from many liberal Protestants, Unitarians, and Jews.[59] ACLU affiliates worked closely with religious groups and attracted many religious leaders to its ranks, especially in more conservative corners of the country.[60] These religious connections gave civil libertarians a much broader, and stronger, base of support than their more anticlerical predecessors, while their dogged defense of the Bill of Rights—not just religious freedom issues—gave them widespread support in the overwhelmingly religious American society.

More consequential, in the long run, was the emergence of a strong and overtly *religious* voice on behalf of strict separation: the voice of the American Jewish community. The immediate postwar years saw Jews become, essentially, fully integrated into American civic life. In the shadow of the Holocaust, anti-Semitism declined dramatically, and the formal and informal barriers that had excluded Jews from politics, universities, corporations, and residential developments came tumbling down.[61] In the process, Jews became coequal participants with Protestants and Catholics in American public life. References to America's "Judeo-Christian heritage" became commonplace after World War II, and the term was used frequently by Eisenhower as he stumped for the presidency in the early 1950s.[62] The affirmation of Judaism as a thoroughly American religion was authoritatively announced in 1955 with the publication of Will Herberg's *Protestant-Catholic-Jew.* In portraying the "three great branches or divisions of 'American religion,'" Herberg concluded that Judaism had joined Protestantism and Catholicism "as one of the three 'religions of democracy.'"[63]

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[58] For example, the National Liberal League of the 1870s, discussed in Hamburger, *Separation of Church and State,* pp. 287-334.

[59] For instance, the first chair of the ACLU's Committee on Religious Issues was Rev. Harold Fey, a Disciples of Christ minister, and the New York Civil Liberties Union's lawyers' committee was almost entirely composed of Jewish lawyers. On the former, see David Edison Bunting. 1942. *Liberty and Learning: The Activities of the American Civil Liberties Union in Behalf of Freedom of Education.* Washington, DC: American Council on Public Affairs, p. 29; on the latter, see Samuel Walker. 1999 [1990]. *In Defense of American Liberties: A History of the ACLU.* 2nd ed. Carbondale: Southern Illinois University Press, p. 219. Catholics were notably absent from the ACLU leadership from the 1930s through the 1970s. See Walker, *In Defense of American Liberties,* pp. 98, 222.

[60] Judy Kutulas. 2006. *The American Civil Liberties Union and the Making of Modern Liberalism, 1930-1960.* Chapel Hill: University of North Carolina Press, pp. 46, 61.

[61] Edward S. Shapiro. 1992. *A Time for Healing: American Jewry since World War II.* Baltimore: Johns Hopkins University Press, pp. 28-59.

[62] Marty, *Under God, Indivisible,* p. 332.

[63] Will Herberg. 1983 [1955]. *Protestant- Catholic-Jew: An Essay in American Religious Sociology.* Chicago: University of Chicago Press, pp. 38, 198.

The new prominence and acceptance of Jews in American society both coincided with and encouraged greater Jewish activity on church-state matters. In the century leading up to World War II, a quiet but staunch defense of strict separation had been developing in the Jewish community. Jews generally believed that "public religion in the United States could never be truly neutral, for it always connoted an advantage to Christianity."[64] Beginning in the early twentieth century, therefore, Jews began to publicly advocate against public schools devotionals at the local level.[65] After World War II, however, Jews became more vocal and more aggressive in their protestations, ultimately becoming "the key player in the campaign to deny religion a privileged position in the public sphere."[66] Most importantly, the Jewish attitude switched from one of responding to immediate threats, to attempting to forge a new, different version of America which would better protect Jewish interests.[67] Nowhere was this attitude more evident than in education, where strict separation was seen as an essential defense against Christian hegemony: in the words of the American Jewish Congress, "Experience has shown that whenever religion intrudes into the public school, sooner or later Jewish children will be hurt."[68] As they had done since the nineteenth century, Jews opposed Bible reading and prayer in the schools.[69] They also opposed any attempts at public aid. Jews had a longstanding "passionate love affair with public schooling," in no small part because they saw it as a means of breaking down religious prejudice and integrating Jewish children further into American society.[70] Their opposition to public aid, therefore, derived both from concerns that public aid would weaken support for public schools, and that parochial schools would help to sustain religious prejudice.[71]

The emergence of the Jewish community as a strong and active advocate for strict separation in the postwar years was a fateful development for a number of reasons, but none moreso than that they were more capable of successfully pressing the case for strict separation in public education than any other group. Jewish protests exposed the sectarian aspects of "nonsectarian" devotionals in a way that Catholics' could not; as historian David Hollinger has

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[64] Naomi W. Cohen. 1992. *Jews in Christian America: The Pursuit of Religious Equality.* New York: Oxford University Press, p. 5.

[65] See, e.g., Cyrus Adler, ed. 1917. *The American Jewish Year Book, 5677.* Philadelphia: The Jewish Publication Society of America, p. 85; Leonard Bloom. 1980. "A Successful Jewish Boycott of the New York City Public Schools – Christmas 1906." *American Jewish History* 70(2): 180-88; Cohen, *Jews in Christian America,* p. 105; Robert T. Handy. 1998. "Minority-Majority Confrontations, Church-State Patterns, and the U.S. Supreme Court." Pp. 305-334 in *Minority Faiths and the American Protestant Mainstream,* edited by Jonathan D. Sarna. Urbana: University of Illinois Press, p. 323; and Joseph Jacobs, ed. 1916. *The American Jewish Year Book, 5676.* Philadelphia: The Jewish Publication Society of America, p. 204.

[66] Kenneth D. Wald. 2005. "American Jews and the Public Role of Religion." Pp. 27-43 in *Taking Religious Pluralism Seriously: Spiritual Politics on America's Sacred Ground,* edited by Barbara A. McGraw and Jo Renee Formicola. Waco, TX: Baylor University Press, p. 37.

[67] This shift had multiple roots, among them the lessons of Nazism and the Holocaust, and the decline of anti-Semitism (which freed up time to work on positive interventions). See Cohen, *Jews in Christian America*, pp. 123-25; Ivers, *To Build a Wall,* pp. 49, 61; and Michael Klarman. 1996. "Rethinking the Civil Rights and Civil Liberties Revolutions." *Virginia Law Review* 82: 1-67, p. 55.

[68] AJC pamphlet (1957), quoted in Schultz, "Favoritism Cannot Be Tolerated," p. 577.

[69] Jewish organizations initially showed some openness to dismissed-time programs, but came down firmly against them in the postwar era. See Cohen, *Jews in Christian America*, pp. 115-19.

[70] Naomi W. Cohen. 1984. *Encounter with Emancipation: The German Jews in the United States, 1830-1914.* Philadelphia: Jewish Publication Society of America, p. 91. See also Virginia Lieson Brereton. 1998. "Education and Minority Religions." Pp. 279-304 in *Minority Faiths and the American Protestant Mainstream,* edited by Jonathan D. Sarna. Urbana: University of Illinois Press, pp. 290-94.

[71] Selig, *Americans All*, p. 142.

noted, Jewish complaints threw the "Protestant matrix" of American public life into "bold relief."[72] And unlike civil libertarians, whose large humanist constituency threw them open to the charge of "godlessness," Jews were an undeniably *religious* voice on behalf of secularism. As Reform leader Simon Wolf put it in 1905, while protesting religious exercises in the Washington, D.C. schools: "If there be any contributions which the Jews have made to the world, it is the Bible and the religions which are derived therefrom. They, of all people, cannot be suspected of hostility either to the Bible or to religion."[73]

Thus, by the mid-twentieth century, the dynamics of religious conflict in the United States had changed considerably in some ways, and were in a great deal of flux in others. While Protestants remained united in opposition to public aid, they were increasingly divided over the propriety of public school devotionals, even as Catholics increasingly warmed to them. These changes opened the door for a renegotiation of the nineteenth-century settlement, largely through the work of two new entrants: civil libertarians and Jews. Together, those two groups—alongside some Protestants—helped to forge a new, strict separationist settlement through an active litigation campaign.

CRAFTING STRICT SEPARATION: STRATEGIC LITIGATION AND THE SUPREME COURT, 1947-1980

America's system of strict separation is properly understood neither as the inevitable result of modernization or religious pluralism, nor solely as the product of the whimsical dictates of an "activist" Supreme Court. Rather, it is best understood as a political accomplishment, actively advanced by organized interests through a campaign of strategic litigation. As political scientist Gregg Ivers has noted, "the major cases responsible for landmark decisions did not arrive on the Supreme Court's doorstep like orphans in the night. They were instead the result of concerted and calculated efforts often supported by organized interests."[74] Strict separation was advocated by organized groups dedicated wholly or in part to that cause, and advanced through a careful yet relentless campaign to use the courts to nationalize education policy on religious issues.

The Organized Interests behind Strict Separation

During the two decades following World War II, strict separation was advanced by three major organizations: Protestants and Other Americans United for the Separation of Church and State (POAU), the American Civil Liberties Union (ACLU), and the American Jewish Congress (AJC). These groups represented, respectively, the three major groups advocating strict separation: conservative Protestants, civil libertarians, and Jews. And each had a specific niche in the organizational ecology of strict separation: POAU defended the "no-aid" leg of the nineteenth-century settlement, the ACLU took the lead on sponsoring cases, and the AJC served as the intellectual center of the effort, particularly in its efforts to expunge devotionals from the public schools.

[72] David A. Hollinger. 1996. *Science, Jews, and Secular Culture: Studies in Mid-Twentieth-Century American Intellectual History.* Princeton: Princeton University Press, p. 19.
[73] Quoted in Cohen, *Jews in Christian America*, p. 105.
[74] Ivers, *To Build a Wall,* p. 13.

Protestants and Other Americans United

Protestants and Other Americans United for Separation of Church and State (POAU) was the most traditional of the three groups. It represented the voice of conservative Protestant separationism, and was largely motivated by the desire to preserve Protestant dominance against a perceived Catholic threat.[75] Founded in 1947 in response to the *Everson* decision, the group had close ties to the Protestant establishment: Its first officers were seminary presidents, and its board included many prominent Protestant clergy, including the secretary of the National Association of Evangelicals and the President of the Southern Baptist Convention.[76] POAU's strong opposition to public aid attracted those whose vision of separation was motivated by suspicion of Catholics—indeed, Paul Blanshard, the prominent author of the bestselling anti-Catholic polemic *American Freedom and Catholic Power*,[77] was a POAU staff member. Consequently, charges of anti-Catholicism dogged the group well into the 1960s, making it something of an "organizational pariah" among more ecumenically oriented Protestant groups such as the Federal Council of Churches and the National Council of Christians and Jews.[78] Still, it commanded enormous popular support, especially in the South and Midwest, and had substantial financial resources.[79]

During the postwar period, POAU's major goal, and major contribution to the development of strict separation, was its campaign to prevent the funding of "Catholic public schools."[80] In New Mexico, Missouri, Kentucky, Ohio, Colorado, Illinois, and other states, POAU sued to shut down local funding arrangements for Catholic schools during the 1950s.[81] These suits were designed as much to capture attention and sway public opinion in favor of separation as they were to end the violations; nevertheless, POAU's legal advocacy blocked public aid arrangements in dozens of localities in the 1950s and 1960s.[82] While POAU was eager to defend against the possibility of public aid for parochial schools, it was, following traditional Protestant practice, much less interested in challenging devotionals in the public schools. POAU attorneys often saw no problem with devotionals; in one Catholic public school challenge, the local attorney alleged as part of his initial complaint that the nuns at the school were failing to conduct daily Bible readings as the law required.[83] As the Supreme Court interpreted the Establishment Clause in stricter terms, however, POAU modified its positions to include opposition to devotionals. By the 1960s, POAU was on board with secular public schools, even though doing so created serious divisions within the organization.[84] Conservative Protestants, long the lifeblood of the organization, began to abandon it, so that by the 1970s the group would

[75] Frank J. Sorauf. 1976. *The Wall of Separation: The Constitutional Politics of Church and State.* Princeton: Princeton University Press, p. 33.

[76] Leo Pfeffer. 1981. "Amici in Church-State Litigation." *Law and Contemporary Problems* 44: 83-110, pp. 88-89.

[77] Paul Blanshard. 1949. *American Freedom and Catholic Power.* Boston: Beacon Press.

[78] Sarah Barringer Gordon. 2007. "'Free' Religion and 'Captive' Schools: Protestants, Catholics, and Education, 1945-1965." *DePaul Law Review* 56: 1177-1220, pp. 1198-1201.

[79] Luke Eugene Ebersole. 1951. *Church Lobbying in the Nation's Capital.* New York: MacMillan, p. 71; Gordon, "Free Religion and Captive Schools," p. 1200; Morgan, *Politics of Religious Conflict,* p. 53.

[80] For more on Catholic public schools, see above, Chapter Three.

[81] C. Stanley Lowell. 1966. *Embattled Wall: Americans United: An Idea and a Man.* Washington, DC: Americans United, pp. 95-115.

[82] Gordon, "Free Religion and Captive Schools," pp. 1203-04; Lowell, *Embattled Wall,* p. 114.

[83] Sorauf, *Wall of Separation*, p. 35.

[84] Gordon, "Free Religion and Captive Schools," pp. 1210-11, 1214-16.

change its name to simply "Americans United" and reinvent itself as the liberal, secular, special-purpose organization familiar to most Americans today.[85]

Of the three major separationist organizations, POAU was the most traditional. This was so in terms of its understanding of "separation"—i.e., the traditional Protestant version opposing public aid but permitting devotionals—until well into the 1960s. But it was also traditional in terms of its legal campaigns, which it waged in the traditional style, through state courts and relying on state constitutional provisions, without any serious effort to build up a strict separationist jurisprudence. In this regard, it was unlike the ACLU and AJC, which (as I discuss below) advocated a far stricter version of separation, focused on the federal courts, and actively attempted to shape jurisprudence through targeted legislation.[86] Nevertheless, POAU was an important part of the strict separationist campaign in its dogged, systematic challenges to Catholic public schools in the postwar era.

The American Civil Liberties Union

The ACLU was the first of the three major separationist groups to enter the arena of litigation. It represented a liberal ideal of separation, motivated in large part by opposition to dogmatic political restrictions on expression.[87] Its activities on behalf of strict separation initially emerged out of its primary preliminary focus on free speech rights. The ACLU was not particularly interested in religious issues at all in its early years.[88] Instead, ACLU directors were very divided on the merits and strategic wisdom of opposing religion in the schools in the 1920s.[89] Its first formal statement on devotionals, written in 1932, was very moderate by later standards, with opposition to compulsory Bible-reading but support for released-time education.[90] But support for a stricter reading of separation grew throughout the 1930s, so that when the ACLU formed its Committee on Religious Issues in 1937, under the leadership of Rev. Harold Fey, it expressed opposition to attempts to force majority dogma on children in violation of their religious freedom, and voiced support for the separation of church and state.[91]

By the early 1940s, "a more aggressive attitude began to prevail" within the organization on matters of church and state.[92] In the late 1930s, the ACLU began working with the Jehovah's Witnesses on a series of cases where Witnesses challenged compulsory flag-salute laws in

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[85] Sorauf, *Wall of Separation*, p. 31n.2.

[86] Zealous against Catholic public schools as POAU was, its challenges could at times be rash and indelicately stated. Accordingly, it had a lower success rate in the courts than the more deliberate ACLU and AJC, who tended to regard POAU as something of a "loose cannon" and avoided working with them when possible, especially before the 1960s. See Gordon, "Free Religion and Captive Schools," p. 1208.

[87] Sorauf, *Wall of Separation*, p. 33.

[88] William A. Donohue. 1985. *The Politics of the American Civil Liberties Union.* New Brunswick, N.J.: Transaction Books, p. 301; Walker, *In Defense of American Liberties,* p. 68. The ACLU took no formal stance on devotionals until 1925, for instance, and did not intervene in the *Meyer* or *Pierce* cases concerning government regulation of religious schools. Even the famous *Scopes* trial, where ACLU lawyers challenged Tennessee's ban on the teaching of evolution, was as much (if not more) about academic freedom than about religion, although it may have encouraged the ACLU to take religious freedoms more seriously. See Bunting, *Liberty and Learning,* p. 28; Walker, *In Defense of American Liberties,* pp.72-73, 81; and Diane Garey. 1998. *Defending Everybody: A History of the ACLU.* New York: TV Books, p. 89.

[89] Bunting, *Liberty and Learning,* pp. 28, 67-69; Walker, *In Defense of American Liberties,* pp. 76-77.

[90] Bunting, *Liberty and Learning,* pp. 28-29. Support for released-time education was rescinded the following year, however.

[91] Bunting, *Liberty and Learning,* pp. 29-30.

[92] Walker, *In Defense of American Liberties,* p. 219.

various states.[93] Though initially conceived as free speech cases, the Witness cases increasingly shaded over into religious freedom, spurring further activity within the ACLU on religious issues.[94] By the early 1940s, the ACLU was expressing opposition to Bible reading, released-time, and public aid, and beginning to get involved in court cases challenging those practices—most notably, in the *Everson* case challenging transportation subsidies.[95] In the 1950s, the push toward an even stricter interpretation of separation was driven by local ACLU affiliates. Although the national ACLU tried to back away from strict separation somewhat in the early 1950s, hedging on the permissibility of prayer, for instance, and stocking its church-state committee with prominent accommodationist clergymen,[96] independent-minded local ACLU affiliates drove strict separation forward by sponsoring the high-profile devotionals cases of the 1960s. The New York Civil Liberties Union, much to the chagrin of national officers, sponsored the *Engel* case outlawing school prayer,[97] while it was the Philadelphia Civil Liberties Union that sponsored Ellory Schempp's challenge to Bible reading in Pennsylvania.[98]

In the campaign for strict separation, the ACLU was a great sponsor and innovator. The ACLU sponsored more religion cases than any other group between *Everson* and *Lemon,* acting as the driving force bringing these cases to the courts.[99] Moreover, alongside the Jehovah's Witnesses, the ACLU pioneered the strategy of repeated litigation as a means to social change on religious matters.[100] Through its sustained campaigns, the ACLU was a leader in "constitutionalizing" public controversies, in religion as in other areas of public life.[101] Finally, the ACLU also played a key role in pressing the court to take civil liberties seriously more generally. Through its participation in a series of cases beginning in the 1920s,[102] the ACLU was instrumental in developing modern Fourteenth Amendment jurisprudence and the doctrine of incorporation, under which the Bill of Rights was applied to the states and not just to the federal government.[103] And it contributed mightily, through its work on the free speech rights of

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[93] The ACLU had shown interest in defending Witnesses' right not to salute the flag as early as the 1920s. See Jennifer Jacobs Henderson. 2005. "Conditional Liberty: The Flag Salute Before *Gobitis* and *Barnette.*" *Journal of Church and State* 47: 747-67. On the Witnesses' campaign more generally, see Shawn Francis Peters. 2000. *Judging Jehovah's Witnesses: Religious Persecution and the Dawn of the Rights Revolution.* Lawrence: University Press of Kansas.

[94] Pfeffer, "Amici in Church-State Litigation," p. 89.

[95] Bunting, *Liberty and Learning,* pp. 29, 66; Daryl R. Fair. 1997. "The *Everson* Case in the Context of New Jersey Politics." Pp. 1-21 in Everson *Revisited: Religion, Education, and Law at the Crossroads,* edited by Jo Renée Formicola and Hubert Morken. Lanham, MD: Rowman & Littlefield, pp. 8-11.

[96] In response, the AJC's Leo Pfeffer quit the committee in protest. See Walker, *In Defense of American Liberties,* p. 223.

[97] Bruce J. Dierenfield. 2007. *The Battle over School Prayer: How* Engel v. Vitale *Changed America.* Lawrence: University Press of Kansas, pp. 91-92; Walker, *In Defense of American Liberties*, p. 224.

[98] Solomon, *Ellery's Protest*, pp. 31-40.

[99] Ivers, *To Build a Wall,* pp. 240n.2; Sorauf, *Wall of Separation*, p. 69.

[100] Ivers, *To Build a Wall,* pp. 15-17, 51. The Witnesses litigated 39 free speech and freedom of religion cases between 1938 and 1946. See Peters, *Judging Jehovah's Witnesses,* pp. 12-13.

[101] Walker, *In Defense of American Liberties,* p. 221; cf. Charles R. Epp. 1996. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective.* Chicago: University of Chicago Press, p. 49. Only the NAACP adopted the "test-case" litigation approach earlier than the ACLU, as early as 1915. See Mark Tushnet. 2008. "The Rights Revolution in the Twentieth Century." Pp. 377-402 in *The Cambridge History of Law in America.* Vol. 3, *The Twentieth Century and After (1920-),* edited by Michael Grossberg and Christopher Tomlins. New York: Cambridge University Press, p. 370.

[102] E.g., *Gitlow v. New York,* 268 U.S. 652 (1925), *DeJonge v. Oregon,* 299 U.S. 353 (1937).

[103] Walker, *In Defense of American Liberties,* pp. 79-81, 106-7.

Jehovah's Witnesses during World War II, to the emergence of the judicial doctrine that religious liberty held a "preferred position" requiring broad legal protection.[104]

The American Jewish Congress

The American Jewish Congress provided the dominant Jewish voice advocating strict separation. It was motivated by traditional Jewish concerns to defend the rights of religious minorities by advocating for a de-Christianized public sphere,[105] having dedicated itself in the postwar era to "challenging the actions of those who were the enemies of pluralism."[106] The AJC was formed in 1917, alongside the other Jewish defense agencies, the American Jewish Committee (AJCommittee) and the Anti-Defamation League of B'Nai B'rith (ADL).[107] Primarily supported by recent Jewish immigrants from Eastern Europe and Russia, the AJC was the least afraid of the defense organizations of rocking the boat, least wedded to social norms and assimilationism, and most receptive to agnostic or secular Jews.[108] These characteristics made it a leader within the Jewish community in its advocacy of strict separation, and "the most vocal Jewish organization in America" on church-state matters at midcentury.[109]

Although the AJC was at the forefront of the Jewish campaign for strict separation, it was joined at varying times and to varying degrees by the other major Jewish defense organizations at the forefront of the legal debate over religion and education. The "Big Three" (AJC, AJCommittee, and ADL) worked together to articulate the Jewish position on religion and education, especially during the crucial years between 1945 and 1965. Between 1947 and 1952, the Big Three worked together through a Joint Advisory Committee, but separated thereafter,[110] freeing the AJC "to cast the terms of the debate in the church-state battles yet to come in the courts" in a resolutely strict separationist direction.[111] Still, even though the three organizations had separate legal departments, they often worked together to craft amicus briefs.[112] Indeed, the AJCommittee and ADL participated as *amicus curiae* in more church-state cases between 1947 and 1969 than even POAU, making the three Jewish defense organizations (along with the ACLU) three of the top four petitioners before the Supreme Court during that period.[113] And from 1968 to 1980, no organization other than the ACLU participated in church-state litigation

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[104] Justice Harlan Stone articulated the "preferred position" rationale in dissent in *Jones v. Opelika,* 316 U.S. 584 (1942), p. 608. See further discussion below. The ACLU was heavily involved in the case, filing briefs and working on legal strategy with Hayden Covington, counsel for the Witnesses. See Merlin Owen Newton. 1995. *Armed with the Constitution: Jehovah's Witnesses in Alabama and the U.S. Supreme Court, 1939-1946.* Tuscaloosa: University of Alabama Press, pp. 89-90, 98-101.

[105] Sorauf, *Wall of Separation*, p. 33.

[106] Steven Windmueller. 2002. "'Defenders': National Jewish Community Relations Agencies." Pp. 13-66 in *Jewish Polity and American Civil Society: Communal Agencies and Religious Movements in the American Public Sphere,* edited by Alan Mittleman, Jonathan D. Sarna, and Robert Licht. Lanham, Md.: Rowman and Littlefield, p. 39.

[107] Windmueller, "Defenders," pp. 29-30.

[108] Cohen, *Jews in Christian America,* p. 126; Ivers, *To Build a Wall,* pp. 46-50; Pfeffer, "Amici in Church-State Litigation," p. 87.

[109] Schultz, "Favoritism Cannot Be Tolerated," p. 576.

[110] Territorial disputes helped to accelerate the divide, but the division was driven more fundamentally by differences over how to manage relations with Christian churches. The AJCommittee and ADL, more assimilationist in orientation, were hesitant to challenge public devotionals out of fear of harming relations with the Christian churches. See Cohen, *Jews in Christian America,* pp. 124-25; Ivers, *To Build a Wall,* pp. 20-22.

[111] Ivers, *To Build a Wall,* pp. 55, 99.

[112] Cohen, *Jews in Christian America,* p. 125.

[113] Ivers, *To Build a Wall,* pp. 100-01.

more than the three Jewish defense organizations.[114] Together, these Jewish groups pursued a legal strategy focused initially primarily on driving devotionals from the public schools, then from the 1970s onwards on defending the principle of separation through challenges to public aid to parochial schools.[115]

If the ACLU was the great sponsor of separationist litigation, the AJC was its intellectual center. Although the entire legal department at the AJC had a very high reputation,[116] the AJC's nationwide recognition as the central intellectual node in the legal campaign for strict separation was primarily due to the prominence of its main counsel, Leo Pfeffer. Pfeffer was an Orthodox Jew who was a member of the Orthodox organization Young Israel and who educated his children in Jewish day schools.[117] He was also a prolific author and scholar of church-state relations, whose "books, articles, and briefs constitute[d] the most polished expression of the strict separationist constitutional position,"[118] and who was "by general consensus…the dominant, driving force among separationist attorneys."[119] Pfeffer was an adroit legal strategist, articulating the arguments for strict separation not only through the AJC's *amicus* briefs, but also through briefs that he ghost-wrote for other organizations (such as the ACLU) in cases where the AJC was not a formal participant.[120] Indeed, until the very end of the twentieth century, the Supreme Court essentially adopted Pfeffer's analysis on church-state matters in education wholesale. Pfeffer and the AJC "became household words among supporters and opponents alike" during the postwar decades,[121] to the point where critics of strict separation directed their attention at Jews in general and Pfeffer specifically after controversial cases restricting public school devotionals, even where the AJC was not the formal sponsor of the case.[122]

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Separationist organizations thus drew from a wide array of positions in the changing field of religious conflict, Protestant, liberal, humanist, and Jewish. That strict separationists in the United States were well organized was crucial to their success campaigning in the courts. Not only did this greater organization concentrate expertise and experience, permit coordination, and provide greater continuity; the greater resources that national groups could bring to bear on litigation also facilitated challenges by helping individual plaintiffs overcome the considerable

[114] Ivers, *To Build a Wall,* p. 187.
[115] See generally Ivers, *To Build a Wall.*
[116] Sorauf, *To Build a Wall*, pp. 75-76.
[117] Lawrence Grossman. 2002. "Mainstream Orthodoxy and the American Public Square." Pp. 283-310 in *Jewish Polity and American Civil Society: Communal Agencies and Religious Movements in the American Public Sphere,* edited by Alan Mittleman, Jonathan D. Sarna, and Robert Licht. Lanham, Md.: Rowman and Littlefield, pp. 293-95.
[118] Morgan, *Politics of Religious Conflict,* p. 55.
[119] Sorauf, *Wall of Separation*, p. 159. This recognition is widespread; according to political scientist Gregg Ivers, it is "impossible to overestimate the impact that Leo Pfeffer, as an individual and as a public-interest lawyer, had on the development of church-state law during the latter half of this century." See Ivers, *To Build a Wall*, p. 222.
[120] Because Pfeffer had a vision of separation that was even stricter at times than what the AJC would support, Pfeffer ended up ghost-writing the ACLU's *amicus* brief in *Walz v. Tax Commission* (397 U.S. 664 [1970]), a case challenging tax exemption for religious institutions, after the AJC refused to support that challenge. See Jonathan D. Sarna. 2002. "Church-State Dilemmas of American Jews." Pp. 47-68 in *Jews and the American Public Square: Debating Religion and Republic,* edited by Alan Mittleman, Jonathan D. Sarna, and Robert Licht. Lanham, Md.: Rowman and Littlefield, pp. 59-60.
[121] Cohen, *Jews in Christian America*, p. 125.
[122] As took place after *Engel* and *Schempp*. See Ivers, *To Build a Wall*, pp. 137-40.

financial barriers to litigation.[123] Through this organization, litigation could become more sustained, continuous, frequent, and nationally oriented. As historian Frank Sorauf has concluded, "the major separationist litigating groups have been the major influence transforming church-state litigation in American courts. They have not only heightened its politicality, they have, as well, centralized and nationalized it."[124] But organization alone did not give the strict separationists the opportunities they needed. Instead, they actively worked to create their own opportunities through coordinated, long-range strategic action.

The Strategic Campaign for Strict Separation

Separationist groups engaged in a coordinated campaign, guided by a long-range strategy, in pursuit of their goal of strict separation. Compared to nineteenth- and early-twentieth-century plaintiffs, who tended to emerge organically and disconnectedly from local struggles, postwar separationist litigation was far more systematic and sustained, employing "test case tactics" such as the careful selection of favorable cases, the recruitment of sympathetic plaintiffs, the deliberate selection of optimal courts, and meticulous attempts to control the timing and sequence of litigation.[125] Nor was their goal simply to rectify perceived local injustices through judicial means. Instead, strict separationist litigators during the mid-twentieth century had a much larger overarching goal: creating precedents, shaping legal opinion, and crafting an entirely new body of federal jurisprudence that would effectively nationalize policy regarding religion in public life, including its role in education.

Cultivating the Law

The litigation campaign on behalf of strict separation deliberately targeted the Supreme Court as the ultimate venue for legal resolution.[126] The logic behind this move was straightforward: as the court of ultimate review, Supreme Court decisions would effectively nationalize American policy regarding religion in education along the way. Leaders and counsel at the ACLU and AJC, in particular, thus worked tirelessly to build a strong set of official decisions that would progressively build the wall of separation, especially in the field of education. While the strategy of targeting the Supreme Court had the potential for unmatchable rewards, it was also extremely risky: an unfavorable decision would set the cause back just as much as a favorable decision would advance it. Thus leaders carefully selected the cases they chose to bring up for review, as well as the content of those cases.

Separationist leaders selectively chose their battles, selecting those they believed would best allow for the creation of lasting precedents and favorable jurisprudence. This was particularly germane in the 1950s, when the issue of religious devotionals in the public schools was largely an open question. At times, the ACLU and AJC diverged considerably in their estimations of the merits of particular cases. Nowhere was this more in evidence than in their attitudes toward the *Engel* case. When the New York Civil Liberties Union agreed to sponsor the challenge to New York's Regents' Prayer, Leo Pfeffer was deeply concerned that pursuing a

[123] Morgan, *Politics of Religious Conflict,* p. 81.

[124] Sorauf, *Wall of Separation*, p. 346.

[125] Richard C. Cortner. 1981. *The Supreme Court and the Second Bill of Rights: The Fourteenth Amendment and the Nationalization of Civil Liberties.* Madison: University of Wisconsin Press, p. 283; see also Tushnet, "Rights Revolution in the Twentieth Century," pp. 380-81.

[126] Will Maslow, Executive Director of the AJC, told political scientist Richard Morgan in the mid-1960s that "we usually strive for a decision in the Supreme Court" as their ultimate goal. See Morgan, *Politics of Religious Conflict,* p. 56.

challenge to that prayer was strategically unwise, because the prayer was insufficiently sectarian.[127] Pfeffer thought that the *Schempp* case, which involved Bible reading, was a more promising case; and he preferred still more strongly a third case, *Chamberlin*,[128] because it featured a multitude of questionable practices that could be amply documented in the trial record.[129] Pfeffer viewed *Engel* as a loser that could potentially sabotage the prospects of both *Schempp* and *Chamberlin*, and urged the ACLU to drop the suit. He warned the ACLU attorneys bluntly: "You take this up and you're going to foul up *Schempp*."[130] As it turned out, *Engel* was a victory for the ACLU, but the strategic battle over its wisdom reflected the deep concerns separationist attorneys had with selecting the best vehicles for presenting their views.

On the flip side, the ACLU and AJC also had to determine when to back off on less-promising cases that threatened to set a bad precedent.[131] During the 1950s, Cold War anticommunist fervor and McCarthyism made perceived attacks on religious practices politically suspect. Accordingly, Pfeffer began "stepping hard on the brakes" when it came to litigation, fearing that the zeitgeist would incline the judges to look unfavorably on challenges to devotionals.[132] For example, in 1955 the AJC began to inquire into a challenge to Tennessee's Bible-reading law by a Nashville newspaper editor. However, when the Tennessee Supreme Court upheld the constitutionality of the practice,[133] the AJC withdrew their support and discouraged the plaintiff from appealing the case to the Supreme Court, judging that the case was insufficiently strong to sustain scrutiny upon appeal.[134]

In addition to selecting optimal cases, separationist organizations also attempted to control the trial record during the earliest stages of litigation, in order to ensure that "the right question" would come before the Supreme Court once the case had run its course.[135] In the *Schempp* case, for instance, the ACLU carefully structured its lines of questioning and the evidence it introduced during the trial phase in order to "educate the judges as to what transpired each morning in the Abington schools"[136]—that is, the specifics of the offending practices—so that they could clearly make their case that the practices were both devotional and sectarian. They also brought in expert witnesses to establish the diversity of religious opinions regarding devotionals, and thus enhance the power of their ultimate claims that such practices were inevitably sectarian.[137] Through these various means of selecting and managing optimal cases, separationist litigators closely cultivated the issues and questions that came before the Court.

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[127] Ivers, *To Build a Wall*, pp. 124-26; Solomon, *Ellery's Protest,* pp. 173-75.

[128] *Chamberlin v. Dade County Board of Public Instruction*, 17 Fla. Supp. 183 (1961). The case was decided by the Supreme Court favorably the year after *Schempp* in a perfunctory opinion.

[129] These practices, occurring in the Miami public schools, included not only prayers and Bible-reading, but also "the in-class singing of religious hymns; the display of religious symbols in classrooms; religious holiday observances; a school-based requirement that teachers take a religious oath as a condition of employment; and that teachers conduct a religious census of their students." See Ivers, *To Build a Wall*, p. 133; cf. Solomon, *Ellery's Protest*, pp. 189-92.

[130] Quoted in Dierenfield, *Battle over School Prayer,* p. 105.

[131] Ivers, *To Build a Wall*, pp. 114-15.

[132] Solomon, *Ellery's Protest*, pp. 47-48.

[133] *Carden v. Bland*, 288 S.W.2d (Tenn., 1956).

[134] Ivers, *To Build a Wall*, pp. 127-29.

[135] The AJC, for instance, was reluctant to join in on cases after the trial stage because it would thus be unable to influence the trial record in ways that would allow it to strategically compose its arguments. Morgan, *Politics of Religious Conflict,* p. 80.

[136] Solomon, *Ellery's Protest*, p. 145.

[137] Solomon, *Ellery's Protest*, pp. 144-152, 156-71.

Amicus Curiae *Briefs as Intellectual Tactic*

Another means of influencing the Court's thinking was the use of the *amicus curiae* ("friend of the court") brief. *Amicus* briefs' formal role was to buttress the primary litigants' cases before the courts, but they also provided a convenient means for separationist groups to raise issues for the court's consideration—and thereby potentially influence its decision—in those cases where they either could not or would not directly sponsor the litigation. *Amicus* briefs were an especially prominent tactic for the Jewish organizations, who were typically cautious about being the public face of potentially explosive challenges to public school devotionals. Thus in *McCollum, Engel* and *Schempp*, the ACLU or another entity formally sponsored the cases, but Pfeffer and the AJC presented many of the separationists' most forceful and influential arguments to the court through its clearly articulated *amicus* briefs.[138]

In the context of religion and education decisions, separationists' *amicus* briefs proved highly influential. In *McCollum*, the first case touching on religion in the public schools, the *amicus* brief Pfeffer authored on behalf of the Jewish community[139] clearly shaped Justice Frankfurter's understanding of the issues in the case. Pfeffer argued in that brief that "divisiveness…inevitably results whenever sectarianism enters the public school."[140] Frankfurter kept a copy of Pfeffer's brief before him during the oral argument in *McCollum,* and was clearly influenced by its arguments as he crafted his concurring opinion.[141] Noting the "divergent views expressed in the [*amicus*] briefs submitted…on behalf of various religious organizations," Frankfurter concluded that the released-time movement "has been a divisive and not an irenic influence in the community."[142] Likewise, in his brief in *Schempp*, Pfeffer raised the distinction between permissible and impermissible uses of religion in the public schools:

> It is not contended that, for example, the Bible may not be studied in the public schools as a work of literature…Nor is it contended that the influence of religion and religious influences upon history may not be studied…If the approach to the Bible or religious music or art is as an intellectual study, it is proper in the public schools; if the approach is worship or faith, it belongs in the home, church, and synagogue.[143]

In his concurrence in that case, Justice Brennan agreed that "The holding of the Court today plainly does not foreclose teaching about the Holy Scriptures or about the differences between religious sects in classes in literature or history."[144] In these cases and others, separationists' (and particularly Pfeffer's) *amicus* briefs helped to frame the questions that the court ultimately decided in a strict separationist direction.[145]

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[138] E.g., Ivers, *To Build a Wall,* pp. 77-78, 102, 127, 131.

[139] As formally represented through the Synagogue Council of America and the National Community Relations Advisory Council (SCA/NCRAC).

[140] Quoted in Pfeffer, "Amici in Church-State Litigation," p. 106.

[141] Fowler V. Harper and Edwin D. Etherington. 1953. "Lobbyists before the Court." *University of Pennsylvania Law Review* 101: 1172-77, p. 1174.

[142] *McCollum v. Board of Education,* p. 228n.19 (Frankfurter J., concurring).

[143] Quoted in Stephen M. Feldman. 2003. "Religious Minorities and the First Amendment: The History, the Doctrine, and the Future." *University of Pennsylvania Journal of Constitutional Law* 6: 222-77, p. 250.

[144] *School District of Abington Township v. Schempp,* pp. 300-01 (Brennan J., concurring).

[145] For instance, Pfeffer's brief in *Engel* advanced the argument that Jews were equal partners and that America could not conduct itself as a Christian nation, while the AJC/ACLU brief in *Epperson v. Arkansas* (393 U.S. 97 [1968]) was the only brief in that case raising the point that laws prohibiting the teaching of evolution violated the

Framing Disestablishment: Negotiating the Religious Politics of Separation

In their briefs and elsewhere, separationist groups worked assiduously to determine how best to frame their case in order not only to convince the judges, but also to negotiate the religious politics of church-state separation. First and foremost, they had to defend themselves against the challenge that strict separation was tantamount to atheism. Those opposed to strict separation were not afraid to accuse separationists of attempting to foster godlessness and skepticism through their campaigns against religion in the public schools. Pfeffer observed this dynamic with concern, writing to lawyers at the ACLU that they had to work against those who would "make it appear that the fight against released time is a fight of atheism against religion."[146] In the context of the Cold War in particular, the charge that strict separationists were really atheists or communists was a regular charge that needed to be constantly defended against. In its brief in the *Engel* school prayer case, the school board alleged that the plaintiffs had confused the "wall of separation between church and state" with an "iron curtain."[147] In response, the ACLU's lawyer specifically defended his clients against this veiled accusation of atheism: "My adversaries are attempting to place me and my clients as the leaders of godlessness in our society. They point to us as atheists…Nothing could be further from the truth. We come before this Court, representing four individuals with deep religious convictions" who believed "fervently in the right to prayer and belief in God ."[148]

In fact, separationist groups steered clear of opportunities to work with atheist plaintiffs to challenge religion in the public schools. Both the AJC and POAU regarded atheists as a "kiss of death" because they inflamed both judges and their constituencies, who were heavily religious and disapproved of "alliances with the aggressively godless."[149] In writing his brief in *McCollum,* for instance, Pfeffer took pains to consciously distance the Jewish community from the plaintiff, Vashti McCollum, an avowed atheist who had charged in her original complaint that religion was an opiate of the masses and a virus injected into the minds of children.[150] In his *amicus* brief, Pfeffer wrote:

> We wish to make clear our regret that the appellant chose to use the case as a medium for the dissemination of her atheistic beliefs and injected into the record the irreligious statements it contains. We wish not only to disassociate ourselves completely from the anti-religious views of the appellant, but wish to deplore the fact that the sponsors of the original petition chose the case as a means of inscribing such matter on the public record and confusing the basic issues in the case by dragging into it the unrelated issues of atheism vs. religion.[151]

Nor was avoiding atheism a feature of the religious separationists alone. The ACLU, too, demurred on proposed lawsuits led by atheists on several occasions, out of fear of being tarred

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Establishment Clause—an argument that the case ultimately turned on. On *Engel*, see Windmueller, "Defenders," p. 47; on *Epperson*, see Pfeffer, "Amici in Church-State Litigation," p. 107.

[146] Quoted in James E. Zucker. 2007. "Better a Catholic than a Communist: Reexamining *McCollum v. Board of Education* and *Zorach v. Clauson.*" *Virginia Law Review* 93: 2069-2118, p. 2109.

[147] Quoted in Dierenfield, *Battle over School Prayer,* p. 121.

[148] Quoted in Dierenfield, *Battle over School Prayer,* p. 113.

[149] Sorauf, *Wall of Separation*, p. 49.

[150] Ivers, *To Build a Wall,* p. 79.

[151] Quoted in Ivers, *To Build a Wall,* p. 79.

with the atheist label.[152] Most famously, perhaps, it refused to take on crusading atheist Madalyn Murray's challenge to Maryland's Bible-reading laws, preferring instead to work on *Schempp* and *Chamberlin,* which were similar but were not burdened by an atheist plaintiff.[153]

To counter arguments that they only wanted to impose atheism in the schools, separationists focused on religious differences, arguing that diverse opinions among religious citizens required public institutions to be fully secularized. The argument was premised on the idea that religious pluralism easily shaded over into sectarian conflict, dividing one religious group from another. This theme was central to many of Pfeffer's *amicus* briefs; his brief in *McCollum*, for example, not only emphasized the potentially divisive influence of released-time education, as discussed above, but also made the affirmative case-from-pluralism for strict separation.[154] Pfeffer elaborated on this theme in his briefs in *Tudor v. Board of Education*, a case challenging the distribution of Gideon Bibles in New Jersey public schools.[155] Pfeffer drew a sharp distinction between challenges to religion brought by "some atheists, some individual trouble makers," and challenges brought by religious citizens.[156] The latter challenges were really about sectarianism, he argued, and required the courts to honor the scruples of all religious citizens by embracing strict separation as a means to neutrality.[157]

To further ensure that religious differences, and not the contrast between religion and atheism, would be central to the debate over the interpretation of the Establishment Clause, separationist organizations deliberately selected plaintiffs with religious objections. Tessim Zorach, the plaintiff in the second released-time case, was chosen as plaintiff by the ACLU and AJC because he was an Episcopalian who was "active in church affairs," and thus a more sympathetic figure than Vashti McCollum, the atheist plaintiff in the first released-time case.[158] Although this foregrounding of religious plaintiffs was strategic, it was not simply cosmetic. There were an abundance of plaintiffs with real, substantive objections to devotionals in the schools. Steven Engel, for instance, was an observant Jew who believed that prayer was intended to be meaningful, and objected to what he perceived as the trivializing of devotions that the Regents' Prayer represented.[159] Likewise, the Schempp family were Unitarians who genuinely objected that the King James Bible conflicted with their beliefs through its representations of the divinity of Christ, the Immaculate Conception, the efficacy of petitional prayer, and the nature of God. As Ed Schempp testified, "A human father would not visit the sins upon the children of a fourth generation, in my opinion. That makes God less than man and I do not want my children believing that God is a lesser person than a human father. My concept of God is bigger than that."[160] Through the careful selection of plaintiffs such as these, strict separationist groups were

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[152] For example, it passed on a released-time lawsuit by the "missionary atheist" Joseph Lewis in the late 1940s. See Zucker, "Better a Catholic than a Communist," p. 2102.

[153] The flamboyant Murray responded, "The ACLU can go to hell, and take their opinions with them!" Quoted in Dierenfield, *Battle over School Prayer,* p. 172.

[154] Because it was home to so many different denominations, Pfeffer wrote, the state was required to separate church and state to "mak[e] it impossible for the state to become a battleground for sectarian preference and favor." Quoted in Feldman, "Religious Minorities and the First Amendment," p. 243.

[155] *Tudor v. Board of Education*, 14 N.J. 31 (1953). The case, a victory for Pfeffer and the AJC, was appealed to the Supreme Court, but it refused to hear the case (*certiorari* denied).

[156] Quoted in Schultz, "Favoritism Cannot Be Tolerated," p. 582.

[157] Schultz, "Favoritism Cannot Be Tolerated," p. 582.

[158] Ivers, *To Build a Wall*, p. 86.

[159] Dierenfield, *Battle over School Prayer,* p. 96.

[160] Quoted in Solomon, *Ellery's Protest*, pp. 147-49.

able to steer the conversation away from atheism and toward the implications of religious difference.

Buttressing the Wall: From Policy to Practice through Sustained Litigation

If separationist groups engaged in a deliberate strategy to convince the courts to strike devotionals from the public schools, the courts were equally central to their follow-up campaign to turn those decisions into practical changes on the ground. Despite the resounding decisions invalidating school prayer and Bible reading, the rulings were greeted with widespread noncompliance—even defiance—in the 1960s, especially in the South, where fully half of schools continued to feature Bible reading three years after *Schempp*.[161] In the face of this civil disobedience, separationist organizations leveraged the new First Amendment jurisprudence they had helped to create in order to compel compliance in recalcitrant districts, becoming, in effect, "watchdog[s] fighting for implementation of civil liberties principles that were now law."[162] Where local administrators were simply unresponsive to the Court's decisions, preferring to take no action rather than stir up controversy over practices that often enjoyed broad community support,[163] lawsuits often spurred administrative action because their great expense "made disobedience on school devotions an unaffordable luxury."[164] Eventually, the mere threat of a lawsuit was enough to make officials enforce the law.[165] By the 1970s, this sensitivity to legal costs encouraged most districts to become proactive about excluding devotionals.[166] Nevertheless, individual districts, usually in rural or religiously homogeneous areas, continue to engage in forbidden devotionals to the present day, fostering occasional lawsuits.[167]

Ongoing legal action was similarly essential in sustaining the battle against public aid. After the *Lemon* decision decisively outlawing public aid to parochial schools came down in 1971,[168] it did not prevent many states with large Catholic populations from trying to find ways to circumvent the ruling. Thus, legal action became central to sustaining that precedent throughout the 1970. As Leo Pfeffer observed, a pattern emerged among the states regarding public aid bills: "enact a law, appropriate monies to carry it out until the Supreme Court declares it unconstitutional, then enact a new one that hopefully avoids the provisions upon which the Court based its opinion, and continue paying under the new law…[This is] a strategy that can be employed as long as the ingenuity of statutory-drafting lawyers lasts."[169] Separationist groups brought multiple challenges against each new attempt to craft a constitutional bill providing

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[161] Richard B. Dierenfield. 1967. "The Impact of Supreme Court Decisions on Religion in Public Schools." *Religious Education* 62: 445-51, p. 451. While Southern schools were the least compliant, Midwestern schools also were less compliant than the national average: only about half of school complied, although devotionals were characteristic of only a minority of Midwestern schools even before the Court rulings. See Kenneth Dolbeare and Phillip Hammond. 1971. *The School Prayer Decisions: From Court Policy to Local Practice.* Chicago: University of Chicago Press, pp. 32-33.

[162] Walker, *In Defense of American Liberties*, p. 226.

[163] Dolbeare and Hammond, *School Prayer Decisions*, pp. 74, 113-15.

[164] Bruce J. Dierenfield. 1992. "Secular Schools? Religious Practices in New York and Virginia Public Schools since World War II." *Journal of Policy History* 4(4): 361-88, p. 383.

[165] Dierenfield, "Secular Schools," p. 377.

[166] John Witte, Jr. 2006. "Facts and Fictions about the History of Separation of Church and State." *Journal of Church and State* 48:15-45, pp. 41-42.

[167] E.g., DelFattore, *Fourth R,* pp. 232-36, 275-78. For a recent example, see Neela Banerjee. 2006. "Families Challenging Religious Influence in Delaware Schools." *The New York Times,* July 29, p. A10.

[168] *Lemon v. Kurtzman*.

[169] Pfeffer, *Religion, State, and the Burger Court,* p. 37.

public aid to Catholic schools, several of which reached the Supreme Court. Sustained litigation, therefore, was central to upholding restrictions on public aid after *Lemon*.

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In short, the emergence of strict separation and the elimination of devotionals in American public schools was not an inevitable response to modernity or the product of zealous judges alone. Instead, it was largely an achieved outcome, advanced by organized religious and nonreligious interests through a deliberate and coordinated campaign that targeted and managed cases, actively worked to frame the issue in favorable terms, and followed through to entrench and enhance their victories in the courts. Yet this by itself is not an adequate explanation. American advocates were assisted in their campaign by a legal system that was institutionally accessible and hermeneutically available in ways that the Australian courts were not. In the last section of this paper, I place this campaign in its institutional context, to demonstrate that the emergence of strict separation in America was facilitated not only by its skilled advocates, but by favorable institutional terrain.

COURTS AS INSTITUTIONAL CONTEXTS: STRICT SEPARATION IN COMPARATIVE PERSPECTIVE

Strict Secularists in the Australian Courts, 1964-1981

Legal challenges on matters of religion and education have been quite rare in Australia. Since World War II, only one challenge to public aid and one challenge to public devotionals have been brought in the Australian courts. The only constitutional challenge was a challenge to the reintroduction of state aid, which came before the High Court in 1981.[170] In response to the reintroduction of state aid through the science laboratories legislation in 1964 (see Chapter Six), the Council for the Defence of Government Schools (DOGS), a coalition of educational groups, humanist associations, and militant Protestant defense agencies, launched a legal challenge in September 1971.[171] DOGS believed that section 116's prohibition against "establishing any religion" should be interpreted in the same way as the American Establishment Clause, and argued that the provision of state aid to religious schools should therefore be held to violate section 116 of the Australian Constitution.[172] Because of a series of procedural delays associated with initiating and continuing a relator action (see below), the case did not reach the High Court

[170] *Attorney-General (Vic.) ex rel. Black v. Commonwealth* (1981) 146 CLR 559. An earlier challenge by the Victorian Protestant Federation to the federal government's decision in 1956 to subsidize interest payments of religious schools in Canberra did not make it to the courts, as I discuss below.

[171] Benjamin Edwards. 2008. *WASPS, Tykes, and Ecumaniacs: Aspects of Australian Sectarianism, 1945-1981.* Brunswick East, Vic.: Acord Press, p. 222; M.J. Ely. 1981. *Erosion of the Judicial Process: An Aspect of Church-State Entanglement in Australia, 1956-1980.* Melbourne: Defence of Government Schools, Victoria, p. 9.

[172] I.K.F. Birch. 1984. "State-Aid at the Bar: The *DOGS Case.*" Pp. 31-54 in *Melbourne Studies in Education, 1984,* edited by Imelda Parker. Melbourne: Melbourne University Press, pp. 51-52. DOGS' interpretation was encouraged by their contacts with prominent American strict separationists. POAU's C. Stanley Lowell was present at the group's lawsuit kickoff event, while the AJC's Leo Pfeffer also served as a paid advisor early in the process. See Ely, *Erosion of the Judicial Process*, p. 9; Council for the Defence of Government Schools (N.S.W.). 1973. *D.O.G.S. Newsletter* 5(1), May. Sydney: DOGS, p. 5. Copy available in Noel Butlin Labour Archives, Australian National University, Canberra [hereafter NBLA], N111/1119.

until 1981.[173] However, the Australian High Court rejected the Supreme Court's broad reading of "establishment," instead electing to read section 116 in a very narrow and literal sense. They interpreted "establishment" to mean only the "statutory recognition of a religion as a national institution"[174] or the "constitut[ing of] a particular religion or religious body as a state religion or state church."[175] Under this interpretation, Australia's constitutional prohibition on laws "for establishing any religion" was held not to preclude financial support extended to multiple churches, and so the Court overwhelmingly upheld the federal "state aid" plan in a 6-1 decision.

While the *DOGS Case* remains the only time the High Court has ruled on the legality of state aid, it has never had the occasion to rule on the constitutionality of public school devotionals. Nor has that issue been dealt with in the state courts; in the postwar era, the only case dealing with public school devotionals that I am aware of was a 1976 statutory challenge to the Public Instruction Act in New South Wales.[176] That challenge originated in the controversy over the provision of "general religious teaching" in the New South Wales public schools between 1962 and 1964, discussed above in Chapter Four. In the wake of that controversy, the Secular Education Society (SES), an offshoot of the New South Wales Humanist Society, with the support of the New South Wales Council for Civil Liberties (NSWCCL), decided to attempt to pursue legal action after receiving favorable legal opinions.[177] Following legal advice, SES determined not to challenge the devotionals as a constitutional violation of section 116, but instead to argue that the Christian prayers, scripture readings, and hymn-singing included as part of the "general religious teaching" curriculum were a violation of the Public Instruction Act's prohibition against the teaching of "dogmatic or polemical theology in the public schools."[178] The New South Wales Supreme Court disagreed, ruling instead that "general religious teaching meant teaching in the Christian religion," and that the prohibition on "dogmatic and polemical theology" meant only "the doctrine authoritatively laid down by a *particular* Christian church."[179]

Between 1964 and 1981, therefore, Australian courts saw one challenge apiece to devotionals in the public schools, and to "state aid" for religious schools that were roughly parallel to those that took place in the United States. Yet neither of these challenges succeeded. In light of the Australian experience, America's legal history becomes more puzzling. In comparative perspective, American courts both (1) played a larger role in the development of policies regarding religion and education, and (2) were far more open to interpretations of "establishment" that suggested or required "strict separation." In the remainder of this chapter, I explain both of these characteristics in terms of the institutional dynamics of the courts that rendered them more available, structurally and hermeneutically, to strict separationist challenges.

Explaining the Prominence of Courts in the United States

Courts have been central to American politics from a very early date. Political scientist Stephen Skowronek observed that the courts played a crucial role in America's decentralized

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[173] Ely, *Erosion of the Judicial Process.*

[174] *Attorney-General (Vic.) ex rel. Black v. Commonwealth*, p. 653 (opinion of Wilson J).

[175] *Attorney-General (Vic.) ex rel. Black v. Commonwealth,* p. 598 (opinion of Gibbs J).

[176] *Benjamin v. Downs* (1976) 2 NSWLR 199.

[177] "Religion in Primary Schools." 1967. *Viewpoints* 5(9): 38; "Religion in Schools." 1967. *Council for Civil Liberties Newsletter* 12: 6.

[178] *Benjamin v. Downs*, p. 199.

[179] *Benjamin v. Downs*, p. 209. Emphasis added. General religious teaching was subsequently changed to dilute its Christian character through non-legal processes. See above, Chapter Four.

nineteenth-century system of government, providing a nonpartisan foundation that helped to routinize and define the appropriate character of governmental action in the "state of courts and parties."[180] But the law also held an important cultural position in America from the beginning as well. Tocqueville famously observed, in the 1830s, that "a legalistic spirit…extends far beyond" the courts, such that "judicial authority [is] invoked in almost every context," and "[t]here is hardly a political question in the United States which does not sooner or later turn into a judicial one."[181] The widespread popular awareness of the law derived at least in part from the American Constitution, whose language was suffused with the "Lockian creed" of individualism, and whose Bill of Rights placed individual protections at the center of popular consciousness from an early date.[182] Accordingly, "Americans were fascinated by rights, made extravagant claims in the name of rights, and developed social movements behind the banner of rights," drawing legal and constitutional considerations into the political sphere on a regular basis from at least the Civil War onwards.[183]

In Australia, by contrast, courts have been less central to political processes, both structurally and culturally. The Australian Constitution is not rights-oriented: it contains no Bill of Rights, and the right to religious freedom in section 116 is one of only four enumerated rights in the entire constitution, alongside the right to vote, the right to trial by jury, and the right to equal treatment in the various states.[184] The absence of a Bill of Rights has undoubtedly acted to reduce rights litigation generally by reducing the constitutional grounds on which such claims can be lodged.[185] But more generally, the lack of rights protections in the Australian Constitution reflects the Australian belief that courts are and should be subordinate to Parliament. Australia's founders debated and deliberately rejected an American-style Bill of Rights during their constitutional convention; placing their trust in the rule of law and the wisdom of parliamentarians instead, they saw parliamentary democracy and the common law as sufficient protectors of civil rights.[186]

Thus, to a certain extent, American courts played a larger role in determining the relationship between religion and education than Australian courts because American courts have historically played a bigger role *in general* in the United States. Americans have always seen courts as a uniquely powerful way to resolve their differences, and have been more inclined to understand public controversies as matters of constitutional rights rather than legislative prerogative. At the same time, however, as multiple scholars have observed, the Supreme Court's role in protecting individual rights has expanded dramatically since World War II, and the courts have come to play a still larger role as a venue for resolving rights disputes—on

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[180] Stephen Skowronek. 1982. *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920.* Cambridge: Cambridge University Press, pp. 24, 27-28.

[181] Alexis de Tocqueville. 1969 [1835-1840]. *Democracy in America,* edited by J.P. Mayer. New York: Harper Perennial, pp. 99, 269-70.

[182] Louis Hartz. 1955. *The Liberal Tradition in America.* San Diego: Harcourt, Brace, and Jovanovich.

[183] Epp, *Rights Revolution*, p. 32; see also Jason Kaufman. 2009. *The Origins of Canadian and American Political Differences.* Cambridge: Harvard University Press, pp. 9, 303.

[184] Australian Constitution, sections 41, 80, and 117.

[185] Henry Burmester. 2000. "Limitations on Federal Adjudication." Pp. 227-264 in *The Australian Federal Judicial System,* edited by Brian Opeskin and Fiona Wheeler. Melbourne: Melbourne University Press, p. 261; Anthony Mason. 2000. "The Evolving Role and Function of the High Court." Pp. 95-122 in *The Australian Federal Judicial System,* edited by Brian Opeskin and Fiona Wheeler. Melbourne: Melbourne University Press, p. 114.

[186] J.A. LaNauze. 1972. *The Making of the Australian Constitution.* Melbourne: Melbourne University Press, pp. 227-32; Haig Patapan. 2000. *Judging Democracy: The New Politics of the High Court of Australia.* New York: Cambridge University Press, pp. 42-43.

religious matters and in education as in other areas.[187] The widespread "constitutionalization" of public controversies[188] is a more recent development. As I discuss further below, much of this recent change reflects changes in the courts' identity and hermeneutic approach. But it also reflects certain constitutional and procedural features of the legal system which provided American litigants with greater access to the courts. In Australia, these laws and procedures either did not exist or operated in such a way that they actively inhibited plaintiffs' attempts to gain a hearing before the courts. Accordingly, those plaintiffs who wanted to challenge the legality of religious education often found the legal system to be either an unavailable or a hostile institutional pathway to their preferred political ends.

Constitutional Parallelism: Multiple Access Points for Legal Challenges

The plentiful state-level constitutional provisions protecting religious rights gave American religious minorities additional grounds for legal challenges, making state courts an early and frequent venue for deciding the relationship between religion and education. Nearly every American state constitution contains some language delimiting governmental action in religious affairs. By 1945, 42 states had some constitutional provision protecting freedom of conscience, 29 states had constitutional provisions prohibiting compulsory attendance at worship ("compelled support" clauses[189]), 15 state constitutions had provisions prohibiting "sectarian instruction" in the public schools, and seven had an explicit disestablishment clause.[190] Just as important, many state constitutions contained explicit provisions banning the expenditure of state funds on religious schools. While some states had included "no-aid" provisions in their constitution as early as 1816,[191] the number skyrocketed after the failed attempt in Congress to pass the Blaine Amendment in 1876 (see Chapter Two). In response, many states amended their state constitutions to include "no-aid provisions,"[192] while new states often were required by Congress to include such clauses in their state constitutions as a condition of statehood.[193] The number of states with no-funding provisions rose from 14 in 1876, to 29 by 1890, and to 37 by

[187] For instance, Robert Kagan refers to this development as the rise of "adversarial liberalism," and declares contemporary litigation to be "both more extensive and more intense than that of the nineteenth century and the first half of the twentieth." See Robert A. Kagan. 2001. *Adversarial Legalism: The American Way of Law.* Cambridge: Harvard University Press, p. 36. Others observing the shift include Abram Chayes. 1976. "The Role of the Judge in Public Law Litigation." *Harvard Law Review* 89(7): 1281-1316, p. 1284; William A. Fletcher. 1988. "The Structure of Standing." *Yale Law Journal* 98: 221-91, p. 227; and Tushnet, "Rights Revolution in the Twentieth Century," pp. 377, 388.

[188] Walker, *In Defense of American Liberties,* p. 221.

[189] Ellen M. Halstead. 2004. "After *Zelman v. Simmons-Harris,* School Voucher Programs Can Exclude Religious Schools." *Syracuse Law Review* 54: 147-92, pp. 170-71.

[190] John Witte, Jr. 2005 [2000]. *Religion and the American Constitutional Experiment*. 2nd edition. Boulder, Colo.: Westview Press, pp. 108-16.

[191] Jill Goldenziel. 2006. "Blaine's Name in Vain? State Constitutions, School Choice, and Charitable Choice." *Denver University Law Review* 83: 57-99, p. 69n.98.

[192] G. Alan Tarr. 1989. "Church and State in the States." *Washington Law Review* 64: 73-110, pp. 93-4.

[193] Joseph P. Viteritti. 1998. "Blaine's Wake: School Choice, the First Amendment, and State Constitutional Law." *Harvard Journal of Law of Public Policy* 21: 657-718, pp. 672-3.

1920.[194] By 1963, only Vermont lacked some constitutional provision restricting public expenditures on religious schools.[195]

The presence of these state constitutional provisions, many of which were even stronger than the First Amendment, was made more salient in the last half of the nineteenth century as the various American states began to develop their own practice of judicial review.[196] In claiming the right to declare state laws unconstitutional, the state courts opened themselves up to litigation on issues of religion and education. As discussed above, religious plaintiffs drew on these state constitutional provisions to cast their preferred policies as uniquely constitutional. Catholics tended to draw on the "compelled support" provisions or those provisions prohibiting expenditures on "sectarian instruction" to challenge devotionals in the public schools. Protestants, meanwhile, used the various "no-aid" provisions to shut down Catholic public schools. Both before and after the incorporation of the Establishment Clause, state constitutions provided additional grounds on which to bring religious debates into the courts.

In Australia, by contrast, these parallel state constitutional provisions generally do not exist. Only Tasmania has a constitutional provision, enacted in 1934, protecting "freedom of conscience…and practice of religion."[197] It was therefore not possible for potential litigants to challenge state actions on religion and education on state constitutional grounds. Nor was it possible to challenge state actions through the federal courts, because the religious freedom protections of section 116 are held only to bind the action of the Commonwealth, not the individual states.[198] Thus, challenges to devotionals, for instance, could only be waged on statutory grounds. The humanist challenge in New South Wales was waged as a challenge to the education act's provisions concerning "dogmatic religious teaching," because section 116 was not thought to be legally applicable to the case.

Public Law and Taxpayer Standing: Enhanced Access to Courts

While parallel state constitutional provisions made state courts an additional set of venues for American challenges, American rules governing public law—that is, law dealing not with personal injuries but with the public good—made those challenges procedurally possible. Understandings of public law governed whether plaintiffs had standing to file a suit—i.e., whether they were legally recognized as an authorized party before the court.[199] Standing rules

[194] Goldenziel, "Blaine's Name in Vain," p. 69. Goldenziel does not include Louisiana among these states, but its 1879 constitution enacted prohibitions against the diversion of public money to sectarian institutions. See Gabel, *Public Funds for Church and Private Schools*, p. 541.

[195] Donald E. Boles. 1963. *The Bible, Religion, and the Public Schools.* Ames: Iowa State University Press, pp. 43, 291nn.19-23.

[196] Lawrence Friedman. 2005 [1973]. *A History of American Law.* 3rd ed. New York: Touchstone, pp. 256, 266-72.

[197] Tasmania, Constitution Act 1934, c.94, section 46. Statutory Bills of Rights have been enacted very recently in the Australian Capital Territory (2002) and Victoria (2007), and religious discrimination laws likewise exist in all states except New South Wales and South Australia, but these do not provide constitutional grounds for court challenges. See Reid Mortensen. 2007. "The Unfinished Experiment: A Report on Religious Freedom in Australia." *Emory International Law Review* 21: 168-203, pp. 177-86, 191.

[198] Carolyn Evans. 2008. "Religion as Politics Not Law: The Religion Clauses in the Australian Constitution." *Religion, State, and Society* 36(3): 283-302, pp. 286-87; Mortensen, "Unfinished Experiment," p. 170. The Secular Education Society initially thought that other constitutional provisions, such as Covering Clause 5 in the British enabling statute and section 109 of the Australian Constitution, might constrain state action, but these were never adjudicated. See Secular Education Society. 1967. *Honest to Children.* Sydney: Secular Education Society, p. 7.

[199] Louis L. Jaffe. 1968. "The Citizen as Litigant in Public Actions: The Non-Hohfeldian or Ideological Plaintiff." *University of Pennsylvania Law Review* 116: 1033-47, p. 1033.

were typically more salient for challenges to public aid, because, unlike school devotionals, plaintiffs could not claim standing on the grounds that they had been personally affected by public expenditures.[200] American and Australian observers alike recognized the obstacle standing requirements presented to constitutional challenges to public aid.[201] Yet despite these common concerns about standing, American challengers to public aid had an advantage in gaining standing that their Australian comrades did not: a tradition of public law that allowed citizens to gain standing to challenge local expenditures through their status as taxpayers.

The Australian understanding of public law derived from British law.[202] Under that model, the attorney-general was understood to be the unique "representative of the public interest," and had, for all intents and purposes, a monopoly on standing in public law cases, including constitutional challenges.[203] Individual citizens had no standing "to bring action to prevent the violation of a public right if they have no interest in the subject matter beyond that of any other member of the public."[204] Those who wished to challenge public expenditures thus had to convince the attorney-general to "grant fiat"—that is, file the suit on their behalf—through what is known as a "relator action."[205] This different understanding of public law generally reduced incentives to litigate, by discouraging the general populace from being "vigilant about constitutional limitations that operate for the benefit of the general public."[206] But more importantly still, the relator process presented an enormous procedural obstacle to those who wished to litigate. As sole formal representative of the public interest, the attorney-general had "absolute and unreviewable discretion to grant or refuse the fiat."[207] Yet a potential conflict of interest always existed between the attorney-general's role as guardian of the public interest, and his role as an elected official who is part of a ruling cabinet and possessed with administrative responsibilities.[208] Particularly for smaller or politically less important plaintiffs, attorneys-general had an incentive to refuse fiat in potentially politically explosive constitutional lawsuits.[209]

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[200] Standing is generally granted without question to parties who can demonstrate personal injury or specific interest in the outcome of a case. Thus students being forced to read the King James Bible against their wishes would typically be able to claim standing on the grounds that they were personally affected by the policy.

[201] For the United States, see Morgan, *Politics of Religious Conflict,* p. 83. For Australia, see "Current Topics." 1964. *Australian Law Journal* 38: 145-46, p. 146.

[202] Christos Mantziaris. 2004. "The Federal Division of Public Interest Suits by an Attorney-General." *Adelaide Law Review* 25: 211-56, pp. 214, 217. Standing rules were liberalized in the late 1990s, but the account of public law sketched here held through the early 1990s. See Mantziaris, "Federal division of Public Interest Suits," pp. 219-22.

[203] Australian Law Reform Commission. 1985. *Standing in Public Interest Litigation.* Report No. 27. Canberra: Australian Government Publishing Service, pp. 54-55; Graham D.S. Taylor. 1979. "Standing to Challenge the Constitutionality of Legislation." Pp. 143-72 in *Locus Standi*, edited by Leslie A. Stein. Sydney: The Law Book Company Limited.

[204] Burmester, "Limitations on Federal Adjudication," pp. 246-47.

[205] L.J. King. 2000. "The Attorney-General, Politics, and the Judiciary." *University of Western Australia Law Review* 29: 155-79, p. 165.

[206] Simon Evans and Stephen Donaghue. 2005. "Standing to Raise Constitutional Issues in Australia." Pp. 115-44 in *Standing to Raise Constitutional Issues: Comparative Perspectives*, edited by Richard S. Kay. Brussels: Bruylant, p. 138.

[207] Australian Law Reform Commission, *Standing in Public Interest Litigation,* p. 60.

[208] See generally King, "Attorney-General, Politics, and the Judiciary."

[209] This was harder to do when the plaintiff was powerful or had a large constituency. In the weeks after the initial passage of the Science Laboratories Bill in 1964, it was rumored that the Sydney Anglican Synod might support an application for fiat, in which event it was thought that the Commonwealth Attorney-General would "have no option but to grant authorization for legal procedures." (The rumored action never came to pass.) See P.N. Gill. 1965. "The

In short, the Australian model of public law placed tremendous obstacles in the path of would-be litigants interested in posing constitutional challenges to religious education. The refusal of attorneys-general to grant fiat quashed at least two proposed lawsuits to stop state aid, including a 1957 attempt by the Victorian Protestant Federation (VPF) to challenge interest subsidies to religious schools in Canberra; the VPF's petition for fiat was rejected by the Catholic Attorney-General, a supporter of state aid.[210] The DOGS lawsuit, as well, was repeatedly delayed by the need to obtain and then retain fiat. The suit took a decade to get to the High Court in large part because, first, it took a year to convince an attorney-general to file a relator action; and second, the suit was held up on several occasions when motions to amend the initial lawsuit (to address newly implemented legislation, for instance) required reapproval from the Attorney-General of Victoria in order to maintain the fiat.[211]

In the United States, by contrast, public law prerogatives were not monopolized by attorneys general, but were instead extended more broadly through the doctrine of "taxpayer standing." Taxpayer standing was a doctrine that allowed any taxpayer to challenge public expenditures. The doctrine initially developed in municipal courts in the United States in the 1840s, and spread to state courts by the 1880s.[212] Within fifty years, 19 states had begun to permit taxpayers' suits, and by 1960, they were available in 34 states and in virtually every municipal jurisdiction.[213] However, taxpayers' suits were not permitted at the federal level, as the Supreme Court in 1923 rejected a taxpayers' challenge to federal expenditures.[214] At the same time, however, the Supreme Court accepted appeals from lower courts where standing was secured using taxpayers' suits, leading to the ironic situation where cases could rise to the Supreme Court via state or local taxpayer challenge, but not from a federal challenge.[215]

The doctrine of taxpayer standing represented a democratic model of public law, where taxpayers were effectively commissioned as "an army of private attorneys general" permitted to defend the public interest, control public officials, and prevent illegality.[216] Importantly, taxpayer standing also provided a means of entry into the courts for constitutional challenges, and taxpayers' suits were a common means of challenging state and local expenditures on religious schools from the nineteenth century onwards. Protestants used taxpayer standing to challenge Catholic public schools and textbook and transportation subsidies.[217] Perhaps most notably, *Everson v. Board of Education*, the case that formally applied the Establishment Clause to the states and heralded the nationalization of educational policy on religious matters, began as a

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Federal Science Grant: An Episode in Church-State Relations, 1963-1964." Pp. 271-354 in *Melbourne Studies in Education, 1964,* edited by E.L. French. Melbourne: Melbourne University Press, pp. 339-40.

[210] Anthony William Hannan. 1982. "The Catholic Campaign for State Aid in Victoria, 1939-63." Unpublished dissertation, Faculty of Education, Monash University, p. 316; Ely, *Erosion of the Judicial Process*, p. 4.

[211] Ely, *Erosion of the Judicial Process*; Birch, "State-Aid at the Bar," p. 39;

[212] "Taxpayer Suits: A Survey and Summary." 1960. *Yale Law Journal* 69:895-924, pp. 898-900.

[213] Kenneth Culp Davis. 1955. "Standing to Challenge Governmental Action." *Minnesota Law Review* 39: 353-430, p. 388; Louis L. Jaffe. 1960. "Standing to Secure Judicial Review in Public Actions." *Harvard Law Review* 74:1265-1314, pp. 1277-82; "Taxpayer Suits," pp. 900-06.

[214] *Frothingham v. Mellon*, 262 U.S. 447 (1923).

[215] Jaffe, "Citizen as Litigant in Public Actions," p. 1036; Jaffe, "Standing to Secure Judicial Review," p. 1281.

[216] "Taxpayer Suits," p. 904. The phrase "private attorneys general" is Judge Jerome Frank's, from *Associated Industries, Inc., v. Ickes,* 134 F.2d 694 (2d Cir. 1943), p. 704.

[217] POAU's challenge to Catholic public schools in New Mexico was brought as a taxpayers' suit, as was the unsuccessful challenge to textbook subsidies in Louisiana in *Borden v. Board of Education*. See Davis, "Standing to Challenge Governmental Action," pp. 388, 395n.166.

taxpayer's suit.[218] And when, following a strategic campaign by strict separationist groups to overcome the federal taxpayer standing prohibition, the Supreme Court in 1968 permitted taxpayers' suits on establishment clause issues to federal expenditures,[219] it facilitated efforts in the 1970s and 1980s to challenge not just state and local, but federal appropriations as well.[220] In short, taxpayer standing rendered American courts far more available to challengers than the Australian relator action, thereby facilitating challenges to public aid.

Explaining the Receptiveness of American Courts to Strict Separationist Arguments

While polity differences, state constitutions, and public law traditions help explain why religious education was litigated to a greater extent in the United States, the question still remains as to why American courts were so much more receptive to strict separationist arguments. The answer lies in a confluence of factors present in the United States but not in Australia: beneficial timing, sympathetic plaintiffs, and—most crucially—a favorable legal hermeneutic.

Timing Differences

Political scientists have long observed that courts respond to their political environments.[221] The broader sociopolitical climate in which key legal decisions are made doubtless influences the courts by making certain considerations more salient and certain arguments more persuasive. The initial Supreme Court decisions on the relationship between religion and education took place in the immediate wake of World War II and the Holocaust, and at the outset of the Cold War. Accordingly, the Court was particularly concerned with the fate of democracy and the threat of totalitarianism. In this context, the hierarchical Catholic Church appeared threatening; in the late 1940s, Protestant elites eyed the Vatican warily, and openly wondered whether Catholic schools were capable of promoting democracy.[222] Likewise, the Holocaust sensitized the Court to the steep downside of intolerance toward religious minorities, and particularly Jews.[223] These dynamics helped predispose the court to skepticism of Catholic claims, and sympathy for Jewish claims. Moreover, as discussed in Chapter Three, the Court's decisions on religion in the public schools took place in the context of declining devotionals. Its moves to eject Bible reading and prayer from the schools fundamentally only accelerated a preexisting trend.[224]

In Australia, by contrast, the courts were called to pass on religion and education in the late 1970s and early 1980s. This placed it well into an ecumenical period, when Catholic-Protestant relations had improved dramatically and old sectarian hostilities among Christians had

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[218] Arthur E. Sutherland. 1949. "Due Process and Disestablishment." *Harvard Law Review* 62: 1306-44, p. 1330n.67.

[219] *Flast v. Cohen,* 392 U.S. 83 (1968). On the separationists' campaign to liberalize standing, see Ivers, *To Build a Wall*, pp. 150-64.

[220] Ivers, *To Build a Wall,* p. 162.

[221] See, e.g., Robert A. Dahl. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker." *Journal of Public Law* 6(2): 279-295; Howard Gillman and Cornell Clayton, eds. 1999. *The Supreme Court in American Politics: New Institutionalist Perspectives*. Lawrence: University Press of Kansas; and Gerald N. Rosenberg. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: University of Chicago Press.

[222] McGreevy, *Catholicism and American Freedom,* pp. 175-88.

[223] Klarman, "Rethinking the Rights Revolution," p. 47.

[224] This point is resonant with Rosenberg's argument about the courts and social change. See Rosenberg, *Hollow Hope.*

dwindled.[225] In such a context, critiques of Catholic schools were themselves subject to charges of sectarianism and anti-Catholicism. Moreover, the decision upholding state aid took place well after state aid had been reinstituted and become settled practice; even the school organizations, early opponents, had come to terms with the new reality and begun to work within the new system.[226] As with the Supreme Court, in many respects the High Court was simply affirming a policy development that had already come to fruition through the Australian Parliament.

Litigant Differences

If timing attuned the courts to particular dynamics and predisposed them to be sympathetic to certain claims, the plaintiffs in the United States were uniquely positioned to take advantage of the zeitgeist. In the United States, the strict separationist coalition included a large number of explicitly *religious* actors. The leading role played by Jewish organizations, of course, was particularly important, both because their presence highlighted the inevitably partial character of pan-Protestant devotionals, and because their pleas for protection for religious minorities had special resonance in the post-Holocaust era. Yet Jews were not the only religious secularists to come before the courts. Liberal Protestants were a large constituency among civil libertarians and provided several plaintiffs before the court, while the Mainline churches became staunch defenders of strict separation by the mid-1960s. And conservative Protestant groups, such as the Seventh-Day Adventists, Jehovah's Witnesses, and Southern Baptists, also contributed through their various campaigns for expansive free exercise protections or for restrictions on public aid. While atheists and humanists were active participants in the strict separationist coalition as well, the sheer number and diversity of religious voices defending strict separation lent legitimacy and power to the movement. The leadership of religious voices made it possible to cast the issue of religion and education as one of differences among religious groups, and not one of differences between atheists on the one hand and religious people on the other. It also legitimized the argument that separation was the antidote to sectarianism, not a contributor to it.

In Australia, by contrast, "strict separationist" litigants were drawn disproportionately from two stigmatized groups: humanists, and militant, anti-Catholic Protestants. In contrast with the United States, Australian Jews largely sat out the battle over devotionals.[227] Australian civil libertarians provided some initial financial and legal assistance to the legal campaign against devotionals, but essentially disengaged shortly thereafter in favor of focusing on other matters. Accordingly, the fight devolved to the Secular Education Society, a group with a largely humanist membership, virtually alone. Unlike American religious plaintiffs, these nonreligious plaintiffs had difficulty casting the issue of religion and education as one of differences among

[225] See, e.g., Edwards, *WASPS;* Michael Hogan. 1987. *The Sectarian Strand: Religion in Australian History.* Ringwood, Vic.: Penguin Australia.

[226] Michael Charles Hogan. 1978. *The Catholic Campaign for State Aid: A Study of a Pressure Group Campaign in New South Wales and the Australian Capital Territory, 1950-1972.* Sydney: Catholic Theological Faculty, pp. 237, 242.

[227] Although they opposed Scripture reading (though not released time), their smaller numbers led them to be wary of taking a public stand in opposition to a popular Christian practice, and they decided to try to work behind the scenes to influence policy instead of trying to advance their arguments through the courts. Moreover, Australia's Jewish communal organizations were preoccupied with managing the massive postwar influx of new Jewish immigrants. See Suzanne D. Rutland and Sophie Caplan. 1998. *With One Voice: A History of the New South Wales Jewish Board of Deputies*. Darlinghurst, N.S.W.: Australian Jewish Historical Society, pp. 111-12; and Suzanne D. Rutland. 2005. *The Jews in Australia.* Cambridge: Cambridge University Press, pp. 51, 66-78.

religious groups. Likewise, the campaign against state aid was led by militant anti-Catholic Protestants and humanists, without the support of the mainstream churches or the Jewish community. DOGS, especially in its early years, had close ties with militant Protestant defense agencies, and its campaign literature was suffused with traditional anti-Catholic rhetoric.[228] DOGS' rash and militant style eventually alienated it from almost all allies, including the Protestant churches, who were increasingly on board with state aid as they saw its potential to assist their own elite private schools.[229] Thus, while there were some "religious secularists" involved in the campaign, they were, effectively, the *wrong kind* of religious secularists—that is, religious voices that raised fears of sectarianism in an ecumenical era. The militant Protestantism of DOGS cut an unsympathetic profile, and "limit[ed] its own effectiveness by reintroducing a discredited anti-Catholic sectarianism into the debate."[230] Its actions inevitably associated separation with sectarianism, rather than as its antidote.

Hermeneutic Differences: Realism versus Legalism

LEGAL REALISM IN AMERICAN COURTS. While both timing and plaintiffs were important, these external factors were particularly influential in the United States because of the legal hermeneutic, or interpretive approach, dominant in the Supreme Court at midcentury: legal realism. Legal realism was a legal philosophy that rejected the traditional idea that lawmaking was a process purely intrinsic to the law itself in favor of one that saw judges as necessarily responding to extrinsic contextual factors. Because realists understood judges as active agents "making" the law, rather than dispassionate observers "discovering" the law through the application of purely legal rules,[231] it opened up considerable space for judges to consider a wide range of social and political factors in interpreting the law. The influence of legal realism has been profound, becoming a distinguishing characteristic of American law; in the words of political scientist Robert Kagan, "Compared to most national judiciaries, American judges are less constrained by legal formalisms; they are more policy-oriented, more attentive to the equities (and inequities) of the particular situation."[232]

The adoption of a realist hermeneutic in the Supreme Court was the result of the intersection of two processes, one professionalizing, one state-building. The first and most important was the professionalization of the legal profession from the mid-nineteenth century onwards. Law schools emerged as centers for the training and development of professional knowledge in the late nineteenth century largely in response to the chaotic character of antebellum legal practice in the United States.[233] Legal theory was a central feature of the law school, serving both to justify the law schools' existence and to rationalize and standardize legal practice.[234] Early American legal theorists developed a "science of law" approach that

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[228] Edwards, *WASPS,* pp. 223-25; see also Council for the Defence of Government Schools (N.S.W.), *D.O.G.S. Newsletter* 3(6), October 1972, p. 2. Copy available in NBLA N111/1119.

[229] See, e.g., DOGS (NSW) Press Release, 27 June 1972. NBLA N111/1119.

[230] Hogan, *Sectarian Strand*, p. 254.

[231] Stuart Banner. 1998. "When Christianity Was Part of the Common Law." *Law and History Review* 16: 27-62, pp. 58-59.

[232] Kagan, *Adversarial Legalism*, p. 16.

[233] Before the Civil War, lawyers had few professional standards and were held in "general contempt" by the public at large. See Anton-Hermann Chroust. 1965. *The Rise of the Legal Profession in America.* Vol. 2. *The Revolution and the Post-Revolutionary Era.* Norman: University of Oklahoma Press, p. 286.

[234] David Sikkink. 2003. "From Christian Civilization to Individual Civil Liberties: Framing Religion in the Legal Field, 1880-1949." Pp. 310-54 in *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life,* edited by Christian Smith. Berkeley: University of California Press, pp. 311-15.

emphasized formalistic interpretation, asserted that rules and precedents could be mechanically applied, and claimed that the judge's only role was to "discover the proper rules and precedents involved and apply them to the case as first premises."[235] The science of law movement successfully reoriented American law and bolstered the status of the legal profession, while instilling formalistic legal methods as the dominant practice by the end of the nineteenth century.

Realism arose as an oppositional theory within the legal academy against the formalism of the science of law approach.[236] Responding to the apparent injustice of formally-derived judicial decision on the one hand,[237] and a mass of conflicting interpretations of precedents on the other,[238] realists argued that, rather than deciding cases by "finding" law through the disinterested application of naturally existing, purely legal rules, courts actually decided cases based on their sense of what would be fair. Realism "cleared the way for judges and lawyers to talk openly about the political and economic considerations that in fact affect many decisions,"[239] and encouraged judges to look to sources outside the law, such as history and the social sciences, to inform their decision-making processes.[240] From its base in the law schools, realism gradually displaced the classical science-of-law approach as the dominant approach to law as legal realists began to assume positions in the federal judiciary, and as lawyers trained in realist theory began to dominate the practicing profession.[241]

Legal realism's influence was bolstered through its elective affinity with the effort to expand the powers of the federal government in the 1930s. In the wake of the Great Depression, President Franklin D. Roosevelt instituted a variety of new programs that massively expanded the boundaries of the federal government,[242] but these initiatives were frequently struck down in the courts as unconstitutional expansions of federal power.[243] Roosevelt responded, first, by trying (unsuccessfully) to "pack" the Supreme Court with sympathetic judges in 1937,[244] and then, following a spate of retirements, by appointing new justices who were devoted to the New

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[235] Edward A. Purcell, Jr. 1978 [1969]. "American Jurisprudence between the Wars: Legal Realism and the Crisis of Democratic Theory." Pp. 359-74 in *American Law and the Constitutional Order: Historical Perspectives,* edited by Lawrence M. Friedman and Harry N. Scheiber. Cambridge: Harvard University Press, p. 360.

[236] Sikkink, "From Christian Civilization to Individual Civil Liberties," pp. 328-35.

[237] Sikkink, "From Christian Civilization to Individual Civil Liberties," p. 329.

[238] Purcell, "American Jurisprudence between the Wars," p. 362.

[239] Brian Leiter. 2005. "American Legal Realism." Pp. 50-66 in *The Blackwell Guide to the Philosophy of Law and Legal Theory,* edited by Martin P. Golding and William A. Edmundson. Oxford: Blackwell Publishing, pp. 59-60.

[240] Michael Rustad and Thomas Koenig. 2000. "The Supreme Court and Junk Social Science: Selective Distortion in Amicus Briefs." *North Carolina Law Review* 72: 91-162, pp. 100-14.

[241] Leiter, "American Legal Realism," p. 51; Purcell, "American Jurisprudence between the Wars," p. 360. Law schools had become the dominant mode of legal training by 1915, disconnecting training from "the conservative interests of the practicing legal profession," and eventually transforming it. See Epp, *Rights Revolution,* p. 54.

[242] See, e.g., William E. Leuchtenburg. 2009. *Franklin D. Roosevelt and the New Deal: 1932-1940.* New York: Harper.

[243] See, e.g., *Schechter Poultry Corp. v. United States,* 295 U.S. 495 (1935), and *Carter v. Carter Coal,* 298 U.S. 238 (1936). Supreme Court jurisprudence prior to 1937 generally held that the primary rights guaranteed by the constitution were property rights, and that consequently Congress was allowed only limited reign in economic matters. See Howard Gillman. 1994. "Preferred Freedoms: The Progressive Expansion of State Power and the Rise of Modern Civil Liberties Jurisprudence." *Political Research Quarterly* 47(3): 623-53; Risa L. Goluboff. 2007. *The Lost Promise of Civil Rights.* Cambridge: Harvard University Press, pp. 8-9, 21-22; and Tushnet, "Rights Revolution in the Twentieth Century," p. 389.

[244] William E. Leuchtenburg. 1995. *The Supreme Court Reborn: The Constitutional Revolution in the Age of Roosevelt.* New York: Oxford University Press, pp. 132-42.

Deal.[245] Not surprisingly, Roosevelt appointed justices with realist understandings of law, who were predisposed to take social and policy considerations into account in rendering decisions.[246] As a realist hermeneutic became entrenched on the bench, the Supreme Court after 1937 increasingly abandoned its traditional role as protector of property rights and guardian against executive overreach, reinterpreting the Constitution to allow for deference to Congressional power on economic matters and to executive power in general.[247]

Although its initial impact was in redefining the contours of state power in the economic sphere, the purposive, socially-attuned approach that realism required also had implications for the court's position on religious matters. Religious freedom would have to be understood in its social and political context. Moreover, the Court's new willingness to approve broader executive and legislative powers also required the Court to begin to specify those fundamental rights that those powers could not abridge.[248] In 1938, the Court first suggested that "prejudice against discrete and insular minorities may be a special condition" requiring "correspondingly more searching judicial inquiry;"[249] four years later, it further suggested that freedom of speech and freedom of religion held a "preferred position" that required aggressive Court protection.[250] Building off of these two opinions, the Supreme Court increasingly developed a new focus on protecting individual rights and civil liberties, including religious rights;[251] and began to develop an identity as an institution dedicated in large part to the protection of the rights of minorities, including religious minorities. This shift in the Court's self-perception would further incline it toward the arguments of strict separationists after 1947.

LEGALISM IN AUSTRALIAN COURTS. In contrast to the American Supreme Court, the Australian High Court in the mid-to-late twentieth century was dominated by a highly formalistic hermeneutic known as legalism. Legalism requires courts to use the text as its touchstone, adhering closely to the particular words of the statute or constitutional provision; and insists that, in the absence of amendment, the meaning of the text remains constant from the moment of its

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[245] Barry Cushman. 2008. "The Great Depression and the New Deal." Pp. 268-318 in *The Cambridge History of Law in America.* Vol 3. *The Twentieth Century and After (1920-),* edited by Michael Grossberg and Christopher Tomlins. New York: Cambridge University Press, p. 270.

[246] Lest this be construed as a purely naked power grab, however, it should be noted that realist ideas had already begun to influence the Supreme Court well before Roosevelt's first appointment in 1937. See, e.g., Holmes' dissent in *Lochner v. New York*, 198 U.S. 45 (1905), p. 76; and *Nebbia v. New York,* 291 U.S. 502 (1934), as discussed in Barry Cushman. 1998. *Rethinking the New Deal Court: The Structure of a Constitutional Revolution*. New York: Oxford University Press, p. 155. This earlier, broader turn to realism was encouraged by the severe dislocations of the Great Depression, which were *prima facie* evidence for many that social and economic conditions required a place in legal analysis. See Sikkink, "From Christian Civilization to Individual Civil Liberties," p. 342.

[247] Edward A. Purcell, Jr. 2008. "The Courts, Federalism, and the Federal Constitution, 1920-2000." Pp. 127-74 in *The Cambridge History of Law in America.* Vol 3. *The Twentieth Century and After (1920-),* edited by Michael Grossberg and Christopher Tomlins. New York: Cambridge University Press, p. 145.

[248] Gillman, "Preferred Freedoms," pp. 625, 642-48.

[249] *United States v. Carolene Products Co.,* 304 U.S. 144 (1938), p. 152n.4.

[250] *Jones v. Opelika,* p. 608 (Stone J, dissenting). Though first articulated in dissent, the "preferred freedoms" doctrine would come to be a "cornerstone of modern constitutional law." See Christopher Wolfe. 1994. *The Rise of Modern Judicial Review: From Constitutional Interpretation to Judge-Made Law.* Lanham, MD: Rowman & Littlefield, p. 250.

[251] Indeed, the Supreme Court's caseload came to be dominated by rights issues; the proportion of the caseload devoted by rights issues rose from less than 10% in the mid-1930s to almost 70% by the late 1960s. See Epp, *Rights Revolution,* p. 2.

initial enactment.[252] This narrow focus on the text necessarily downplays the role of principle, policy, values, and justice considerations in adjudication; the legalist approach argues that context and consequence should not play any role in the decision-making process.[253] Legalism has dominated (and still, to a slightly lesser extent, continues to dominate) the High Court's hermeneutic approach since the 1920s.

The adoption of legalism in Australia was entwined with the Australian state-building process—and, as in the United States, more specifically with attempts to expand the powers of the federal government. In 1920, the High Court decisively embraced the strict legalism and methodological formalism of the British courts, proclaiming that the "settled rules of construction" required reading constitutional language according to its "natural sense."[254] In adopting legalism, the High Court provided a means of progressively expanding the powers of the federal government, allowing for the development of a muscular central state.[255] By insisting that the constitution be read in its "ordinary and natural sense," it allowed the Commonwealth to expand into areas previously reserved to the states. The High Court used a formal, legalist reading of the Constitution to restrict the states' claims to federal tax monies, deprive the states of the power to levy their own taxes, and permit the Commonwealth to impose binding conditions on the distribution of tax monies. As a result, revenue-raising authority was firmly centralized in Canberra, in effect forcing the states to agree to implement federal policies.[256] At the same time, legalism was a tool for building the power and legitimacy of the High Court itself. The adoption of legalism, with its claims to disinterestedness, allowed the High Court to legitimize judicial review against potential attacks while simultaneously acceding to demands for a stronger federal government.[257]

But the High Court's embrace of legalism was not solely driven by sympathies toward a stronger federal government or its own self-interest. It also reflected ongoing institutional links between Australia and Britain which oriented Australian jurists toward British law, which was dominated in the early twentieth century by formalism, literalism, and legal positivism.[258] Australia had formal legal ties with Britain until 1986, and until that time the High Court's decisions were subject to ultimate review at the Privy Council in London. The reality or threat of Privy Council review was a subtle but important influence on Australian courts.[259] The High Court alluded to Privy Council review as a partial justification for the turn to formalism in 1920. According to Justice Isaac Isaacs, writing for the Court, the "common sovereignty of all parts of

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[252] Jeffrey Goldsworthy. 2006. "Australia: Devotion to Legalism." Pp. 106-60 in *Interpreting Constitutions: A Comparative Study,* edited by Jeffrey Goldsworthy. New York: Oxford University Press, p. 121; Rachael Gray. 2008. *The Constitutional Jurisprudence and Judicial Method of the High Court of Australia: The Dixon, Mason, and Gleeson Eras.* Adelaide: Presidian Legal Publishers, pp. 19-20.

[253] Michael Taggart. 2008. "'Australian Exceptionalism' in Judicial Review." *Federal Law Review* 36: 1-30, p. 7; see also Brian Galligan. 1987. *Politics of the High Court: A Study of the Judicial Branch of Government in Australia.* St. Lucia: University of Queensland Press, p. 32.

[254] *Amalgamated Society of Engineers v. The Adelaide Steamship Co Ltd* (1920) 28 C.L.R. 129.

[255] Greg Craven. 1992. "The Crisis of Constitutional Literalism in Australia." Pp. 1-32 in *Australian Constitutional Perspectives,* edited by H.P. Lee and George Winterton. North Ryde, NSW: The Law Book Co., Ltd, p. 7; Galligan, *Politics of the High Court,* p. 96.

[256] Bradley Selway and John M. Williams. 2005. "The High Court and Australian Federalism." *Publius: The Journal of Federalism* 35(3): 467-488, p. 485-86.

[257] Galligan, *Politics of the High Court,* pp. 37, 96-97.

[258] Goldsworthy, "Australia," pp. 115, 155.

[259] Jason L. Pierce. 2006. *Inside the Mason Court Revolution: The High Court of Australia Transformed.* Durham: Carolina Academic Press, pp. 227-31.

the British Empire" pervaded the Constitution and had to be "taken into account in determining the meaning of its language":

> The settled rules of construction which we have to apply have been very distinctly enunciated by the highest tribunals of the Empire. To those we must conform ourselves: for, whatever finality the law gives to our decisions on questions like the present, it is incumbent upon this Court in arriving at its conclusions to adhere to principles so established as it is admittedly incumbent upon the House of Lords or Privy Council.[260]

In subsequent years, in fact, the High Court reversed some of its own decisions to bring them into line with British law.[261] The fact that Privy Council decisions were binding on Australian courts meant that there was, in the words of former Chief Justice Anthony Mason, "little disposition on the part of the High Court to develop a jurisprudence that was in any sense distinctively Australian or different from English law."[262]

The strength of legalism was likewise facilitated by the dynamics of the Australian legal profession. Australian lawyers venerated all things British, maintaining all sorts of British traditions from the graded bar[263] to the ceremonial use of powdered horsehair wigs in court.[264] This veneration of British law carried over into the law schools, where as late as the 1970s professors "treat[ed] the decisions of English courts as seriously as if they were Australian."[265] In part because there was less of a need to professionalize through law schools in Australia (compared with the United States),[266] legal education remained somewhat underdeveloped in Australia, with law essentially remaining an undergraduate degree until quite recently.[267] Australian law schools favored an "expository rather than creative" form of scholarship that was disinclined to challenge legalist ideas.[268] Legal realism only arrived in Australian law schools from the 1960s onwards, and did not begin to influence judicial decisions until the mid-1980s.[269]

THE IMPACT OF HERMENEUTICS. The different hermeneutic approaches of the two courts led them to analyze issues in the religion cases very differently. In the United States, according to the realist approach, cases were interpreted in light of the social and political realities of the postwar era. Supreme Court decision cases reflected a much greater interest in history, for

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[260] *Amalgamated Society of Engineers v. The Adelaide Steamship Co Ltd*.

[261] F.C. Hutley. 1981. "The Legal Traditions of Australia as Contrasted with Those of the United States." *Australian Law Journal* 55: 63-70, p. 68.

[262] Mason, "Evolving Role and Function of the High Court," p. 100. As Mason notes, the impact of these formal ties on the British orientation of the court can be seen by the "Australianisation" of the law that occurred after the formal abolition of Privy Court appeals in 1986 (p. 102).

[263] I.e., the distinction between "barristers" and "solicitors." For a discussion of the conservative impact of the graded bar on High Court personnel at midcentury, see Sanford H. Kadish. 1959. "Judicial Review in the High Court and the United States Supreme Court." *Melbourne University Law Review* 2: 127-71, p. 154.

[264] High Court justices wore wigs until 1987, and wigs only now are beginning to be phased out in the state courts. See Michael Kirby. 1998. "The Future of Courts—Do They Have One?" *Journal of Law, Information, and Science* 9(2): 141-51, fn.12; "WA Judges Ditch Horsehair Wigs." 2010. *ABC News*, 1 January. Accessed 14 December 2011. Available online: http://www.abc.net.au/news/stories/2010/01/01/2783946.htm.

[265] Bruce Kercher. 1995. *An Unruly Child: A History of Laws in Australia.* St. Leonards, NSW: Allen & Unwin, p. ix.

[266] Hutley, "Legal Traditions of Australia," p. 69.

[267] Arie Freiberg. 2006. "Deaning Down-Under." *University of Toledo Law Review* 38: 617-22, p. 618.

[268] Hutley, "Legal Traditions of Australia," p. 69.

[269] Kercher, *Unruly Child*, p. 189; Patapan, *Judging Democracy*, pp. 20-22.

instance, and especially in the history of religious conflict.[270] Justice Hugo Black's decision in *Everson*, for instance, was centrally concerned with the problem of religious conflict in Europe as it pertained to the Founders' intent in framing the religion clause.[271] And in Justice Brennan's concurrence in *Schempp*, he undertook an extensive historical look at the history of Bible reading in the American public schools in order to justify his ultimate decision that "the panorama of history permits no other conclusion than that daily prayers and Bible readings in the public schools have always been designed to be, and have been regarded as, essentially religious."[272]

Additionally, American courts were far more interested in the social dynamics surrounding their decisions. These concerns are vividly illustrated in the discussions the various justices had in conference discussions after oral arguments in each case. During debate on the *Everson* case, for instance, the Protestant justices explicitly situated the New Jersey bus fares case in the context of ongoing Catholic-Protestant conflicts over educational control. Justice Wiley Rutledge, for instance, expressed concern that, "If you can justify this law, then you can go much further…Every religious institution in the country will be reaching into the hopper for help if you sustain this…We must stop this thing right at the threshold of the public schools."[273] Likewise, in deliberations on *Schempp*, the justices considered the practicality of declaring who could and could not teach their religions in the public schools. "Schools can't be opened to every sect," claimed Justice Goldberg; "how about the Black Muslims? How about screwball groups? You can't draw a line that is a viable one. It would mean drawing lines that would interfere with free exercise."[274] Finally, in conference discussions over the *Lemon* case officially banning direct public aid to religious schools, the justices expressed concern that publicly-funded private schools could serve as an "escape valve" for parents fleeing desegregation in the South.[275] Justice Brennan, himself a Catholic, assuaged his fellow justices' fears about the stability of the Catholic school system by reminding them "it won't be many years until Notre Dame is like Harvard."[276] These external considerations, which were often highlighted in the oral arguments and *amicus* briefs of the strict separationists, encouraged the Supreme Court's to read "establishment" in broad terms as a Jeffersonian "wall of separation" ultimately disallowing devotionals in the public schools.

In Australia, by contrast, the cases that came before the courts were interpreted solely in terms of the text and legal history of the constitutional provision or statute in the particular case posed to the court, leading to highly literalist opinions. In the *DOGS* case, the High Court decided how to interpret section 116 with the aid of an early twentieth-century dictionary,[277] while in *Benjamin v. Downs*, the New South Wales Supreme Court likewise devoted nearly its entire opinion to determining what "general religious teaching" and "dogmatic instruction" meant to parliamentarians in 1880.[278] Neither court expressed any interest in history apart from

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[270] Damon Mayrl. 2007. "Courting History: Remembering Religious Pasts in Australian and American Court Decisions, 1945-1985." Paper presented at the First International Social Sciences Conference, Canberra, Australia, 13 December.

[271] *Everson v. Board of Education,* pp. 8-9.

[272] *Abington School Dist. v. Schempp*, p. 278 (Brennan J, concurring).

[273] Quoted in Del Dickson, ed. 2001. *The Supreme Court in Conference (1940-1985): The Private Discussions behind Nearly 300 Supreme Court Decisions.* New York: Oxford University Press, pp. 401-02.

[274] Quoted in Dickson, *Supreme Court in Conference,* p. 427.

[275] Thomas C. Berg. 2001. "Anti-Catholicism and Modern Church-State Relations." *Loyola University of Chicago Law Journal* 33: 121-72, p. 160.

[276] Quoted in Dickson, *Supreme Court in Conference,* p. 411.

[277] *Attorney General (Vic.) ex rel. Black v. Commonwealth*, pp. 595, 606, 622.

[278] *Benjamin v. Downs*, pp. 207-08.

the history of the statutory enactment.[279] In a legalist world, slight textual differences thus came to be magnified into profound constitutional ones. This was especially so in the High Court, where the interpretation of section 116 hinged not only on the meaning of "establishment," but on minute distinctions between "*respecting* an establishment" and "*for* establishing," and "establishing *any* religion" versus "*an* establishment *of* religion."[280] Legalism thus contributed significantly to the extremely narrow interpretation given by the High Court to "establishment," and to the New South Wales Supreme Court's very partial reading of "general" religious teaching, upholding, in the end, the legality both of devotionals and of public aid.

POSTSCRIPT: DEVELOPMENTS IN AMERICAN CONSTITUTIONAL LAW SINCE 1997

As many observers have noted, recent years have seen some softening in the Supreme Court's stance on public aid to religious schools. This new "accommodationism" was visible beginning with some cases in the 1980s and early 1990s,[281] but it has accelerated since 1997, when the Supreme Court overruled one of its prior, stricter decisions in *Agostini v. Feldman.*[282] In 2002, it agreed to permit essentially unlimited indirect funding of religious schools when it upheld a school voucher program in *Zelman v. Simmons-Harris*.[283] (Direct aid, of the type provided in Australia, remains unconstitutional.[284]) These decisions do not require states to instantiate public aid programs, but they do give them the freedom to construct voucher programs that could potentially provide extensive indirect support for religious schools.[285] In an important sense, then, on the issue of vouchers and indirect supports at least, the Supreme Court has essentially denationalized policy on public aid.

The increased receptiveness of the courts to indirect aid makes sense in light of the arguments sketched in this chapter. The process of religious conflict and the institutional context of the American legal system helps to explain the Court's new openness to accommodationist arguments. Just as the dynamics of religious conflict had shifted at midcentury, providing an opening for the strict separationists, they have shifted again at the end of the century to provide an opening for accommodationists. Most consequentially, the midcentury "tripartite" division of Protestant-Catholic-Jew has slowly given way to a new division between conservative and liberal believers that transcends denominations.[286] At the same time, mainline and liberal Protestants have seen their numbers decline sharply, while conservative Protestants' numbers have increased.[287] These changing dynamics have coincided with important transformations within the religious schools sector. Catholic schools, which once constituted an overwhelming majority of

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[279] In this, they were following British rule regarding historical evidence, which generally ruled that only previous iterations of a given act could be taken into account, and not any other potentially relevant historical documents. See Goldsworthy, "Australia," pp. 123-24; see also James A. Thomson. 1982. "Constitutional Interpretation: History and the High Court: A Bibliographic Survey." *University of New South Wales Law Journal* 5: 309-326.

[280] Evans, "Religion as Politics Not Law," pp. 288-89.

[281] e.g., *Mueller v. Allen,* 463 U.S. 388 (1983); *Witters v. Washington Dept. of Services for the Blind,* 474 U.S. 481 (1986); *Zobrest v. Catalina Foothills School District,* 509 U.S. 1 (1993).

[282] *Agostini v. Felton*, 521 U.S. 203 (1997), overruling *Aguilar v. Felton*.

[283] *Zelman v. Simmons-Harris*.

[284] Laycock, "Church and State in the United States," p. 523.

[285] Mark Edward DeForrest. 2003. "An Overview and Evaluation of State Blaine Amendments: Origins, Scope, and First Amendment Concerns." *Harvard Journal of Law and Public Policy* 26: 551-626, p. 553.

[286] James Davison Hunter. 1991. *Culture Wars: The Struggle to Define America.* New York: Basic Books; Wuthnow, *Restructuring of American Religion.*

[287] E.g., Michael Hout, Andrew Greeley, and Melissa J. Wilde. 2001. "The Demographic Imperative in Religious Change in the United States." *American Journal of Sociology* 107: 468-500.

private schools, have declined dramatically as a proportion of the private school sector since the 1970s.[288] In their place, conservative Protestants have been aggressive in developing a system of "Christian academies," while Orthodox Jews have similarly built up a substantial system of Jewish day schools.[289]

These changes have transformed the alliances and organizational dynamics bearing upon religion and education. Declining memberships and resources have led to reduced advocacy work among mainline Protestants[290] and Jewish groups[291] who had previously strongly advocated for strict separation. The most prominent role in defending strict separation has thus shifted to nonreligious advocacy groups like the ACLU, Americans United (in its reconstituted secular form[292]), and the Freedom From Religion Foundation. By contrast, there has been significant new countermobilization among religious conservatives, especially evangelicals, opposed to strict separation. The diversification of the private school sector has led many evangelical Protestants and Orthodox Jews to become supporters of aid to religious schools, creating a new alliance of evangelicals, Catholics, and Orthodox Jews on behalf of public aid.[293] This alliance has also taken to the courts with increased frequency since 1980. Contending that strict separationism infringes upon the right to free exercise of "people of faith," religious conservatives typically argue the "principle that religion can be an equal participant with other ideas and activities in public life."[294] Religious conservatives have also founded their own organizations such as the Christian Legal Society and the American Center for Law and Justice, and have threatened school districts with lawsuits on religious matters.[295] In short, just as the strict separationists had done in the mid-twentieth century, accommodationists have fashioned an organized campaign to undo strict separationism, using strategic litigation to attain their goals.

The Supreme Court has been responsive to these changing dynamics and campaigns. And again, the realist hermeneutic has played a key role in permitting the court to consider external factors and policy considerations. But since the realist hermeneutic does not dictate which specific factors the court should consider, this hermeneutic has lately begun to work on behalf of accommodationist arguments. As conservatives (many of them Catholics) sympathetic to the claims of the new pro-public-aid alliance have been appointed to the courts in the past quarter-

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[288] By the 2007-2008 school year, Catholic schools made up only 22% of all private schools, teaching only 43% of all pupils. See National Center for Education Statistics. 2009. *Characteristics of Private Schools in the United States: Results from the 2007-2008 Private School Universe Survey.* Washington, DC: Department of Education, p. 6. Accessed 14 December 2011. Available online: http://nces.ed.gov/pubs2009/2009313.pdf.

[289] Gordon M. Freeman. 2002. "The Conservative Movement and the Public Square." Pp. 235-260 in *Jewish Polity and American Civil Society: Communal Agencies and Religious Movements in the American Public Sphere,* edited by Alan Mittleman, Jonathan D. Sarna, and Robert Licht. Lanham, Md.: Rowman and Littlefield, p. 246; Grossman, "Mainstream Orthodoxy and the Public Square;" Jeffries and Ryan, "Political History of the Establishment Clause," pp. 328-38.

[290] Derek H. Davis. 2002. "From Engagement to Retrenchment: An Examination of First Amendment Activism by America's Mainline Churches, 1980-2000." Pp. 317-42 in *The Quiet Hand of God: Faith-Based Activism and the Public Role of Mainline Protestantism,* edited by Robert Wuthnow and John H. Evans. Berkeley: University of California Press.

[291] Ivers, *To Build a Wall,* pp. 192-205.

[292] Jeffries and Ryan, "Political History of the Establishment Clause," p. 355.

[293] Jeffries and Ryan, "Political History of the Establishment Clause," pp. 358-61.

[294] Berg, "Anti-Catholicism and Modern Church-State Relations," p. 163. Laycock refers to this as the "nondiscrimination principle;" see Laycock, "Church and State in the United States," p. 523.

[295] DelFattore, *Fourth R*, p. 220. This is especially so of evangelical Protestants, who had not participated in any church-state cases before 1979. See Ivers, *To Build a Wall,* pp. 190-91.

century, they have drawn upon different evidence to fashion more conservative rulings.[296] On the question of public aid, for instance, the Court has rejected "divisiveness" or "strife" as a relevant consideration,[297] but has paid considerable attention to the number of educational choices available to parents with children in failing schools.[298] More forcefully, some justices have begun to draw on the history of Protestant-Catholic conflict over education to impugn the entire concept of "separation of church and state" as illegitimate. In his concurring opinion in *Mitchell v. Helms,* for instance, Justice Clarence Thomas declared separation to be a "doctrine born of bigotry" that "should be buried now."[299]

Still, even though the Supreme Court has given the green light to more extensive indirect aid, the anticipated flood of new voucher programs has not materialized; such programs are restricted to only a few states and municipalities.[300] This is largely thanks to popular opposition; in fact, voucher proposals failed in over 34 states in the five years after *Zelman* was decided.[301] But those factors promoting the availability of courts as a venue have also contributed to the anemic spread of indirect aid. In several instances where voucher programs have been implemented, they have been challenged successfully in the state courts as a violation of state constitutional prohibitions on public aid to religious schools, or on other state constitutional grounds.[302] And taxpayer standing continues to provide a basis for such challenges, although recent decisions have dialed back taxpayer standing at the federal level to a certain extent.[303] Thus, while changes in the dynamics of religious conflict have provided the impetus to this nascent accommodationism, structural features of the courts like state constitutions and taxpayer standing have acted as a firewall to wholesale introduction of indirect aid.

CONCLUSION

Postwar secularization in the United States took place in the courts because they were accessible, procedurally and hermeneutically, to organized, determined, and sympathetic litigants who pressed the courts to adopt strict separation. Strict separation was not the inexplicable

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[296] This is consistent with broader patterns in Supreme Court jurisprudence during this time. See Purcell, "Courts, Federalism, and the Federal Constitution," p. 161.

[297] *Zelman v. Simmons-Harris*, p. 662.

[298] E.g., *Zelman v. Simmons-Harris,* pp. 680-84 (Thomas J, concurring).

[299] *Mitchell v. Helms,* p. 829

[300] As of 2011, programs were in effect in the District of Columbia, Indiana, Louisiana, Ohio, and Wisconsin (Milwaukee only). Arizona, Florida, and Colorado had established programs prior to 2009 that were subsequently ruled unconstitutional, while a program in Utah was blocked through a referendum in 2007. See National Conference of State Legislatures. 2011. "School Choice: Vouchers." Accessed 14 December 2011. Available online: http://www.ncsl.org/Default.aspx?TabId=12942.

[301] James Forman, Jr. 2007. "The Rise and Fall of School Vouchers: A Story of Religion, Race, and Politics." *UCLA Law Review* 54: 547-604, p. 550. This may be, in part, attributable to evangelical ambivalence over vouchers—while they support the constitutional principle of public aid, they are also wary of the regulation such aid typically entails—but it may also be attributable to the continuing strong support for public education. See Forman, "Rise and Fall of School Vouchers," pp. 591-96.

[302] For an example of a decision upholding vouchers programs, see *Jackson v. Benson,* 578 N.W. 2d 603 (Wis. 1998); for an example of an unfavorable decision, see *Cain v. Horne,* 183 P.3d 1269 (Ariz. Ct. App. 2008). Note that other states have seen proposed voucher programs invalidated thanks to constitutional provisions unrelated to church and state, such as guarantees of local control of education (*Owens v. Colorado Congress of Parents, Teachers, and Students,* 92 P.3d 933 [Colo. 2004]) and constitutional requirements to "adequately provide" for public education (*Bush v. Holmes*, 919 So. 2d 392 [Fla. 2006]).

[303] *Hein v. Freedom From Religion Foundation*, 551 U.S. ____ (2007); *Arizona Christian School Tuition Organization v. Winn et al.,* 563 US ___ (2011).

decree of activist judges, but was instead an achieved phenomenon brought about by a sustained and coordinated campaign that targeted a receptive Supreme Court in the postwar years. While religious conflict inspired many of the strict separationist litigants to turn the courts, widespread access made possible by constitutional parallelism and taxpayer standing allowed them actually to do so. And while the postwar era featured favorable timing, the interpretive dynamics on the court, shaped by the interaction of professional dynamics, New Deal state-building, and an emergent identity on the Supreme Court as a protector of minorities and civil liberties ensured that the strict separationists' challenge would find a receptive audience.

Chapter Six

Desecularization and Electoral Institutions in Postwar Australia

INTRODUCTION

Between 1964 and 1973, the nineteenth-century settlement that banned "state aid"[1] to religious schools in Australia collapsed. A series of federal initiatives, mirrored in the states, extended a trickle, then a torrent, of money to Catholic and other religious schools. By 1974, state aid was an accepted part of the Australian political landscape, formally institutionalized in a new Schools Commission that doled out aid to religious schools on a recurrent per capita basis. The reintroduction of state aid represents the creation of a new settlement decidedly less "secular" than the one that preceded it. Whereas the former had refused any supportive relationship between the state and the churches in education, the new one treated church and state as collaborative partners in educational endeavors, under the banner of "religious neutrality."

Why was state aid reintroduced in Australia, but not the United States? In this chapter, I argue that Australian Catholics developed a wide-ranging, multifaceted, and aggressive campaign for state aid that systematically took advantage of those political opportunities available to them in the 1960s. The position of Catholics had improved dramatically by the late 1950s, both because of demographic and ecumenical changes in the religious field that lessened the power of state aid to provoke sectarian conflict, and because a partisan split in the Australian Labor Party effectively transformed Catholics into political free agents whose votes were highly sought after in a series of close elections. Timing and opportunity created the conditions where Australian Catholics could successfully wage a campaign for state aid through legislative channels.

At the same time, I also argue that the unprecedented political opportunities facing Catholics came into being thanks in large part to Australia's electoral institutions. In particular, voting systems and partisan coalitional breakdown combined to facilitate a legislative solution to the state aid question. Australia's preference-voting system created real political space for third parties that Catholics were able to enter following their exit from the Labor Party in the mid-1950s. The institutional availability of the legislative pathway can be seen when the Australian experience is contrasted with the parallel campaign for public aid in the United States. There, the two-party system buttressed by plurality voting locked Catholics into an unfavorable party coalition with Southerners, who opposed their claims and compromised Catholics' efforts to obtain legislation that would have benefited Catholic schools.

I begin with an overview of the development of state aid through Australian legislatures, focusing primarily on federal events but noting developments in the states. I then situate the analysis in the context of declining religious conflict in the postwar era. Next, I discuss the great split in the Australian Labor Party that was the root cause of Catholics' political opportunity, and illustrate how Australia's electoral institutions—and Catholics' savvy manipulation of them—helped turn a political disaster for Catholics into a political advantage. Following that, I delve into the Catholic campaign for state aid in the 1960s, showing how Catholics engaged with the Australian public and politicians intellectually, tactically, and politically, in order to maximize their opportunity. Finally, I contrast the Australian experience with the American one, showing

[1] "State aid" is the common term for aid to religious schools in Australia. In the United States, a variety of terms were used, including "state aid," "parochaid," and "public aid." Of these, "public aid" appears to have been used most frequently, and I will use the dominant term for each country throughout the course of this chapter.

how Australia's electoral institutions made a legislative pathway a realistic option that was not open to American Catholics.

FUNDING FOR AUSTRALIA'S RELIGIOUS SCHOOLS, 1945-1974: AN OVERVIEW

The nineteenth-century settlement prohibiting financial support for religious schools proved remarkably durable through the early twentieth century. Opposition to state aid was a consensus position across political parties, and as a result there were no moves to seriously reinstate direct aid to religious schools before World War II.[2] Persistent low-level agitation by Catholics did yield some indirect supports in the form of student scholarships, transportation concessions, and tax exemptions by midcentury.[3] Yet political opposition by Protestants and widespread support for the nineteenth-century settlement made direct state aid an inconceivable proposition through the early 1950s.

However, by the early 1950s, uniform opposition to state aid showed signs of weakening. In 1951, under pressure from Catholic delegates (discussed in detail below) the opposition Labor Party resolved "That financial aid be granted to the States for the purpose of assisting all forms of education."[4] Although it later rescinded this plank in 1957,[5] this marked the first time a major political party expressed openness to providing some form of state aid. During the early 1950s, the federal government under Liberal leadership also showed some openness to some forms of state aid. Between 1952 and 1954, the federal tax code was altered to permit tuition fees and capital gifts to private schools to be counted as tax deductions, and in 1956 the federal government agreed to reimburse interest payments on loans for the construction of religious schools in the Australian Capital Territory.[6] Although many Protestant leaders raised howls of protest at this move, Prime Minister Robert Menzies assured them that the program was not a precedent for future aid. Claiming the federal government's hands were tied by constitutional limitations on the power of the federal government, Menzies declared in August 1960 that the entire question of state aid to denominational schools was "outside the jurisdiction of this government."[7]

Despite Menzies' assurances that he had no plans to inaugurate an expansive scheme of state aid to denominational schools, however, this is precisely what occurred. After narrowly winning reelection in 1961 in a campaign where education had been a major issue, the Liberal Party and its coalition partner, the Country Party, began to rethink their positions on state aid. At about the same time, as I discuss below, the issue of state aid was dramatically thrust onto the agenda in New South Wales thanks to a "strike" among Catholic parents in the city of Goulburn, suggesting increased desperation among Catholic voters and the increased electoral power of state aid as a political issue. Conflict over state aid threw the Australian Labor Party (ALP) into chaos, and Menzies, sensing political advantage, called an early election for December 1963. In a

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[2] Benjamin Edwards. 2008. *WASPS, Tykes, and Ecumaniacs: Aspects of Australian Sectarianism, 1945-1981*. Brunswick East, Vic.: Acorn Press, pp. 166-67.

[3] Ian R. Wilkinson, Brian J. Caldwell, R.J.W. Selleck, Jessica Harris, and Pam Dettman. 2006. *A History of State Aid to Non-Government Schools in Australia.* Canberra: Department of Education, Science, and Training, pp. 23-24.

[4] Quoted in Kim Beazley. 1983. "The Australian Labor Party and State Aid, 1950-1980." *Education Research and Perspectives* 10(2): 52-56, p. 53.

[5] Beazley, "Australian Labor Party and State Aid," p. 55.

[6] Wilkinson et al., *History of State Aid,* pp. 24-25.

[7] Australia. House of Representatives. 1960. *Commonwealth Parliamentary Debates* 28. Canberra: Government Printer, p. 514.

surprise move, Menzies announced in his pre-election policy speech that he intended to set aside five million pounds annually to provide buildings and equipment for science teaching, to be made "available to all secondary schools, government or independent, without discrimination."[8] This announcement put direct state aid on the agenda for the first time, and instantly turned the 1963 election into a referendum on state aid. Although state aid was only one issue on the agenda, and the election results owed as much if not more to foreign policy issues, Menzies' decisive win in December opened the door to state aid.

With the Liberal Party—long the party with the most implacable opposition to state aid—on board with state aid, and (as I discuss below) with sectarian tensions declining in an increasingly ecumenical atmosphere, the political dynamics of state aid decisively shifted. As one political observer concluded, "The speed with which a settled policy that state aid was not possible became a settled policy that state aid was right and proper was indeed impressive."[9] Indeed, the science laboratories proposal was merely the opening salvo in a decade in which state aid was reintroduced in ever-larger amounts and ever-diversifying formats. In the wake of the successful 1963 election, Liberal parties in the Australian states cautiously began to experiment with their own state aid policies. In Queensland and Western Australia, secondary scholarship schemes were expanded and made payable directly to the schools,[10] while loans for school construction were introduced in New South Wales and Victoria in 1966.[11] While these programs were important, they did not break new ground. However, in 1967, the state of Victoria introduced per capita grants to be paid directly to both primary and secondary schools, a major concession that committed the government to the payment of ongoing costs in religious schools.[12] This program quickly spread, and by 1968, governments in every Australian state had introduced or were poised to introduce some form of per capita grant to independent schools.[13]

ALP politicians watched these developments with envy and trepidation. For reasons I elaborate below, the ALP had been controlled since the mid-1950s by leadership based in the socialist trade unions who were unremittingly hostile to state aid. However, three straight disastrous elections between 1963 and 1965, in which its losses were most pronounced in heavily Catholic areas, drove home to ALP leaders the need to reconsider its stance on state aid.[14] In 1965, the Deputy Party Leader, Gough Whitlam, declared that state aid was an accomplished fact and opined that the ALP should develop a new policy recognizing that fact.[15] At a pair of Federal Conferences in 1965 and 1966, Whitlam and his reformist allies fought the old guard over the

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[8] R.G. Menzies. 1963. *Federal Election, 1963: Policy Speech of the Prime Minister*. Sydney: Government Printer, p. 22.

[9] Don Aitkin. 1977. *Stability and Change in Australian Politics.* New York: St. Martin's Press, p. 168.

[10] Wilkinson et al., *History of State Aid,* p. 36.

[11] Henry S. Albinski. 1966. *The Australian Labor Party and the Aid to Parochial Schools Controversy.* Pennsylvania State University Studies 19. University Park: Pennsylvania State University, pp. 31-32; L.J. Blake. 1973. "Free, Compulsory, and Secular." Pp. 167-238 in *Vision and Realisation: A Centenary History of State Education in Victoria,* edited by L.J. Blake. Vol. I. Melbourne: Education Department of Victoria, p. 233.

[12] Wilkinson et al., *History of State Aid,* p. 36.

[13] Australia. Senate. 1968. *Commonwealth Parliamentary Debates*, 13 June. Canberra: Government Printer, pp. 1740-43.

[14] Albinski, *Australian Labor Party,* p. 33; B. Bessant and A.D. Spaull. 1976. *Politics of Schooling.* Carlton, Vic.: Pitman Publishing, p. 123

[15] Bessant and Spaull, *Politics of Schooling,* p. 123.

issue of state aid, ultimately succeeding in passing a motion favoring state aid by a 19-17 vote.[16] The ALP ran on a platform favoring state aid in the 1966 election, and in all subsequent elections.[17]

By 1966, therefore, the stage was set for what political scientist Michael Hogan has termed an "electoral auction," wherein Australia's political parties competed with each other for Catholic votes by proposing ever-greater amounts of state aid.[18] In 1968, the federal government introduced grants to fund the construction of school libraries in both government and non-government secondary schools.[19] The following year, after an investigation into the needs of Australia's nongovernment schools, federal Liberal leaders followed the lead of their state counterparts and introduced recurrent annual grants to both government and nongovernment schools on a per capita basis.[20] At around the same time, the ALP had settled upon its own state aid proposal. It proposed the creation of an independent Schools Commission which would administer a greatly expanded program of educational funding for both government and non-government schools, to be impartially distributed on a per capita basis according to the "needs" of the schools.[21]

Whitlam's election in 1972 signaled the arrival of a new, durable secular settlement that permitted greater financial entwining between church and state in education. Whereas the state aid concessions of the mid-to-late 1960s had been granted in a somewhat ad hoc manner, Whitlam's Schools Commission, instituted in 1974, formalized and rationalized the federal presence in education funding, and placed it on a more permanent footing. Although the "needs" formula was progressively watered down and had been essentially eliminated by the mid-1970s,[22] religious schools continued to receive copious amounts of government funding from both state and federal sources. This was so even after the Schools Commission was folded into the Commonwealth Department of Education in 1987. Religious schools currently receive general recurrent grants (issued on a per capita basis), grants for capital purposes, and grants for targeted programs.[23] Most religious schools in Australia now rely on these subsidies for more than half of their annual income.[24]

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[16] Albinski, *Australian Labor Party,* pp. 34-36; Kim Beazley. 1985. "The Australian Labor Party and State Aid, 1950-1980 – Part II." *Educational Research and Perspectives* 12(2): 40-49; Ross McMullin. 1991. *The Light on the Hill: The Australian Labor Party, 1891-1991.* New York: Oxford University Press, pp. 312-13.

[17] Helen Praetz. 1982. *Public Policy and Catholic Schools.* Hawthorn, Vic.: Australian Council for Educational Research, p. 14.

[18] Michael Hogan. 1984. *Public versus Private Schools: Funding and Directions in Australia.* Ringwood, Vic.: Penguin Books, p. 3.

[19] Don Smart. 1974. "Origins of the Secondary Schools Libraries Scheme." Pp. 105-27 in *Influences in Australian Education,* edited by D.A. Jecks. Perth: Carroll's.

[20] Wilkinson et al., *History of State Aid,* p. 41.

[21] Lindsay Tanner. 1983. "The Policy Formulation Process of an Australian Political Party in Opposition: A Case Study of the Australian Labor Party's Schools Commission Proposal." Pp. 44-75 in *Melbourne Studies in Education, 1983,* edited by Imelda Palmer. Melbourne: Melbourne University Press, p. 46.

[22] Geoffrey Bolton. 2006 [1996]. *The Oxford History of Australia.* Vol. 5, *The Middle Way, 1942-1995.* New York: Oxford University Press, p. 220.

[23] Marilyn Harrington. 2011. "Australian Government Funding for Schools Explained." Parliamentary Library Background Note. Canberra: Commonwealth of Australia, pp. 4-5, 7. Accessed 14 December 2011. Available online http://www.aph.gov.au/library/pubs/bn/sp/SchoolsFunding.pdf.

[24] Ministerial Council on Education, Employment, Training, and Youth Affairs. 2007. *National Report on Schooling in Australia 2007.* Carlton, Vic.: Ministerial Council on Education, Employment, and Youth Affairs, p. 27. Accessed 14 December 2011. Available online: http://cms.curriculum.edu.au/anr2007/pdfs/2007Stats.pdf.

THE NEW DYNAMICS OF RELIGIOUS CONFLICT AT MIDCENTURY

The Catholic campaign for state aid benefited from the improved interdenominational relationships of the 1960s. Even moreso than in the United States at midcentury, the Protestant-Catholic divide had begun to weaken by the late 1950s. The ecumenical climate, nourished by the reforms of the Second Vatican Council, contributed to a softening of Protestants' opposition to state aid, and opened the door to the creation of a new secular settlement featuring greater church-state collaboration.

The Decline of the Protestant-Catholic Divide

The longstanding divide between Protestants and Catholics persisted into the early 1960s. Ensconced in largely separate religious and social worlds, Protestants and Catholics continued to engage in sectarian sniping throughout the 1950s.[25] Yet between 1945 and 1970, this divide weakened dramatically. Multiple factors contributed to the weakening of this divide, including suburbanization[26] and upward socioeconomic mobility among Catholics,[27] both of which disrupted established religious behaviors and weakened social and geographic barriers between religious groups. Yet the three factors that most contributed to the weakening of this divide were sharp demographic and cultural changes in Australian society brought about by the relaxation of immigration policy after World War II, a vigorous ecumenical spirit among the Christian churches, and the ritual and doctrinal changes that occurred in the Catholic Church as a result of the Second Vatican Council.

In the wake of World War II, Australia significantly relaxed its immigration policy. The surge of new immigrants, most of whom hailed from beyond the British Isles, contributed to the attenuation of the Protestant-Catholic divide. The primary mechanism by which it did this was by further dissociating the Protestant-Catholic religious cleavage from the English-Irish ethnic cleavage. Until the postwar era, the Australian Catholic Church was decidedly Irish, and Protestant anti-Catholicism was interlaced with ethnic anti-Irish sentiment.[28] The arrival of Catholic "New Australians" from Poland, Hungary, Italy, Spain, and Yugoslavia in the postwar years dramatically diversified Catholic congregations, attenuating the link between Catholicism and Irishness.[29] On the Protestant side, changes in immigration policy were among the first signs of a slow cultural divorce from the British Empire and the development of a new more purely "Australian" identity that began after the fall of Singapore in 1942.[30] As Australia turned away from London and began to develop in its own right, the association between Protestantism and

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[25] Edmund Campion. 1982. *Rockchoppers: Growing Up Catholic in Australia.* Ringwood, Vic.: Penguin; Edwards, *WASPS,* pp. 76-77; David Hilliard. 1998. "The Ties that Used to Bind: A Fresh Look at the History of Australian Anglicanism." *Pacifica* 11: 265-80, p. 274; Graham Wilson. 2003. "Error of Judgement or Outright Bigotry? The Colours Controversy of the 1950's." *Sabretache* 44(Sept.): 15-22.

[26] David Hilliard. 1991. "God in the Suburbs: The Religious Culture of Australian Cities in the 1950s." *Australian Historical Studies* 24(97): 399-419, p. 409.

[27] Michael Hogan. 1984. "Whatever Happened to Australian Sectarianism?" *Journal of Religious History* 13(1): 83-91, p. 88; David Hilliard. 1997. "The Religious Crisis of the 1960s: The Experience of the Australian Churches." *Journal of Religious History* 21(2): 209-27, p. 216.

[28] See, e.g., the conflict over conscription during World War I, in Russel Ward. 1977. *The History of Australia: The Twentieth Century.* New York: Harper and Row, p. 113.

[29] Michael Hogan. 1987. *The Sectarian Strand: Religion in Australian History.* Ringwood, Vic.: Penguin Australia, p. 238.

[30] Stuart Ward. 2001. *Australia and the British Empire: The Demise of the Imperial Ideal*. Melbourne: Melbourne University Press.

Englishness similarly declined.[31] Thus, as Australian Catholicism became more internally diverse and less Irish, and the Protestant churches—including the Church of England—became less English, the "tribal" dimension of the Protestant-Catholic divide ceased to fan the embers of sectarian conflict.[32]

A second factor contributing to the weakening of the old sectarian cleavage was the rise of an ebullient ecumenical spirit among the Christian churches. Cooperative ventures among Australia's Protestant churches had begun even before World War II, but these interdenominational and ecumenical efforts took on greater urgency after 1945.[33] Over the course of the 1950s, Protestants increasingly engaged in combined efforts in the fields of education, evangelism, politics, and worship.[34] These efforts in turn led to substantial ecumenical organizational development among the Protestant churches.[35] Owing to lingering sectarian divisions and doctrinal restrictions on interfaith efforts, Catholics were not initially included in this ecumenical blossoming. Yet from the 1950s onwards, Catholics were inexorably drawn into the ecumenical movement. Mutual antagonism to communism and secularism provided early grounds for collaboration; a joint Protestant-Catholic effort was instrumental in reinstating religious education in Victorian schools in 1950.[36] Over the course of the 1950s, Catholics and Protestants slowly engaged in further ecumenical moves, including a recurrent Week of Prayer for Christian Unity in Melbourne beginning in 1954, and an ecumenical Christmas pageant in Sydney beginning in 1957.[37]

These nascent Catholic-Protestant ecumenical ventures accelerated rapidly beginning in 1959 with the summoning of the Second Vatican Council. Vatican II revolutionized the Catholic Church, ultimately ushering in drastic liturgical changes; relaxing dietary, ritual, and vestment requirements; and changing the Church's self-understanding—in particular, by relinquishing its claim to being the one true church, and by endorsing religious freedom and ecumenical contacts.[38] These changes led to the breakdown of the last social and theological barriers separating Catholics and Protestants. From 1959 onwards, the spirit of ecumenism brought Catholics and Protestants ever closer. Even before the first Council meetings were officially called to order in 1962, the excitement among Protestants and Catholics alike led to an increasing number of "ventures of pragmatic ecumenism," such as the construction of non-denominational chapels, the creation of interdenominational religious services on Anzac Day, and the exchange of Catholic and Protestant speakers at denominational meetings.[39] After the promulgation of the Decree on Ecumenism in 1964, and the issuance of new directives for ecumenical cooperation by the Australian Bishops the following year, Catholics moved to join the various inter-Protestant

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[31] Hogan, "Whatever Happened to Australian Sectarianism," p. 88.

[32] Bolton, *Middle Way,* p. 113.

[33] Douglas Dargaville. 1997. "Ecumenical Life in the Diocese of Melbourne." Pp. 179-94 in *Melbourne Anglicans: The Diocese of Melbourne, 1847-1997,* edited by Brian Porter. Melbourne: Mitre Books, p. 186; Edwards, *WASPS,* pp. 78-79; New South Wales Council on Religious Education Minutes, 10 July 1922. Uniting Church Archives, North Parramatta, NSW, Box 70327.

[34] Edwards, *WASPS*, pp. 82-84.

[35] Frank Engel. 1993. *Christians in Australia.* Vol. 2, *Times of Change, 1918-1978*. Melbourne: The Joint Board of Christian Education, pp. 230-31, 238-39, 246, 251.

[36] Phillip K. Newell. 1968. "The Enactment and Operation of the 1950 Amendment to the Victorian Education Act." Unpublished M.Ed. thesis, University of Melbourne, pp. 64-71. See also above, Chapter Four.

[37] Dargaville, "Ecumenical Life in the Diocese of Melbourne," p. 187; Edwards, *WASPS*, p. 150.

[38] Melissa J. Wilde. 2007. *Vatican II: A Sociological Analysis of Religious Change.* Princeton: Princeton University Press, p. 1.

[39] Edwards, *WASPS,* pp. 152-53.

ecumenical bodies already in existence, such as the Australian Council of Churches.[40] As Catholics grew less distinct in belief and practice, and as intra-Christian dialogue expanded, the last vestiges of the Protestant-Catholic divide withered away. As the result of Vatican II, Australian sectarianism had virtually "evaporated overnight."[41]

Ecumenism and the Religious Politics of State Aid

This rapprochement between Protestants and Catholics had important implications for the dynamics of the state aid question. In brief, it weakened the passion behind Protestant opposition to state aid, thereby creating room for a new, favorable Protestant attitude to develop in the late 1960s. The Protestant churches had remained steadfast in their opposition to state aid into the early 1960s. The Australian Council of the World Council of Churches issued a resolution opposing state aid in 1956, and over the course of the next five years so too would the Baptist, Presbyterian, Congregational, and other churches, in sometimes florid terms.[42] The Methodist Conference of New South Wales, for instance, resolved in October 1961 that it would "resist with every means at its disposal this baneful, segregationist, and anti-social measure."[43] Throughout the early 1960s, the Protestant churches loudly and visibly opposed the forces gathering in favor of state aid, holding multiple rallies featuring prominent church leadership.[44]

However, after state aid was reintroduced in 1964, the churches' opposition rapidly waned. Although many churches initially denounced the proposal,[45] the Australian Council of Churches appears not to have made any official resolution opposing state aid.[46] And the Protestant churches' complaints decreased over the ensuing five years. The Methodists, for instance, who protested in 1963 that "there is no justification for the State to provide State aid to denominational schools,"[47] had changed their tune by 1966, opposing only those forms of state aid that might "require the beliefs or teaching of the Church to be subservient to any government direction."[48] Although, as I discuss below, the Protestant churches were influenced in their change of position by the allure of money for their own denominational schools, the ecumenical climate and improved relations with Catholics also contributed to the rapid breakdown of their opposition to state aid. The promising atmosphere of Vatican II made the Protestant churches sensitive to the charge of sectarianism. The Methodists, for instance, qualified their 1963 resolution opposing state aid by declaring that it "would not willingly be a party to arguments

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[40] Hilliard, "Religious Crisis of the 1960s," p. 216.

[41] Stuart Piggin. 1996. *Evangelical Christianity in Australia: Spirit, Word, and World.* New York: Oxford University Press, p. 173.

[42] Letter, ACWCC General Secretary to Sir Arthur Fadden, 20 August 1956. National Library of Australia Manuscripts Collection [hereafter NLA], Australian Council of Churches Papers, MS 7645/Box 69/Folder "State Aid 1961, 1956;" and "Official Pronouncements of the Churches in Australia Regarding 'State Aid.'" No date [1962?]. Unpublished manuscript. NLA, Australian Council of Churches Papers, MS 7645/Box 69/Folder "State Aid 1961, 1956," p. 4; and "State Aid to Church Schools." 1962. *The Methodist*, 21 July 1962, p. 2.

[43] "State Aid to Church Schools," p. 2.

[44] Edwards, *WASPS*, pp. 168, 174, 177.

[45] See P.N. Gill. 1965. "The Federal Science Grant: An Episode in Church and State Relations, 1963-1964." Pp. 271-354 in *Melbourne Studies in Education 1964,* edited by E.L. French. Melbourne: Melbourne University Press, pp. 286-98.

[46] Letter, B.L. Langford to T.A. Robertson, 3 April 1964. NLA, Australian Council of Churches Papers, MS 7645/Box 69/Folder "State Aid 1961, 1956."

[47] Methodist Church of Australasia. 1963. *Minutes of the Twentieth General Conference of the Methodist Church of Australasia, May 1963.* Adelaide: Gillingham & Co., p. 77.

[48] Methodist Church of Australasia. 1966. *Minutes of the Twenty-First General Conference of the Methodist Church of Australasia, May 1966.* Redfern, NSW: Epworth Printing and Publishing, p. 214.

based on denominational prejudices, particularly at a time when there are signs of growing mutual understanding between the divisions in Christendom."[49] The Presbyterian Assembly of New South Wales likewise watered down its 1964 resolution opposing state aid to remove language suggesting that they were concerned about the potentially "hurtful divisions" Catholic schools might create.[50]

Perhaps most notably, the dissolving of religious boundaries contributed to declining opposition to state aid among the Protestant laity. Polls from 1960 onwards, though they fluctuated in their strength, showed substantial openness to various forms of state aid among Protestants. An October 1960 Gallup Poll already found that 47% of Presbyterians, 46% of Methodists, and 44% of Anglicans were in favor of federal support for the running of Church schools. By May 1964, support for grants to denominational schools had risen to 59% of Anglicans, 56% of Presbyterians, and 55% of Methodists.[51] As Protestant hostility to Catholics weakened, so too did their hostility to state aid. And since this new openness occurred just as Catholics intensified their demands for state aid, the religious politics of state aid shifted rapidly in favor of the Catholic campaign.

The decline of hostility toward Catholics among mainline Protestants had more irenic effects in Australia in part because the Protestant churches were less sharply divided internally in Australia than in the United States.[52] In part, this reflects the weaker position of evangelical Protestantism in Australia. Just one in six Australians is an evangelical Protestant, a figure approximately half that in the United States.[53] Thus, although Australian evangelicals resisted liberalizing trends within their churches—including ecumenism—there were simply far fewer of them.[54] Some conservative Protestants did reject ecumenical overtures toward Catholics from the 1950s through the 1970s, refusing to attend ecumenical services and withdrawing from interdenominational bodies in protest.[55] And while maintaining their anti-Catholicism, these groups were also among the most likely to maintain their opposition to state aid, forming an important piece of the Defence of Government Schools (DOGS) coalition that challenged state

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[49] Methodist Church of Australasia, *General Conference Minutes, 1963,* p. 326.

[50] Quoted in Gill, "Federal Science Grant," p. 313.

[51] Gill, "Federal Science Grant," p. 352; Roger C. Thompson. 1994. *Religion in Australia: A History.* New York: Oxford University Press, p. 120.

[52] Fundamentalist-modernist controversies, for instance, tended to be much smaller and more localized in Australia in the early twentieth century than they were in America. See, e.g., Ian Breward. 1993. *A History of the Australian Churches.* St. Leonard's, NSW: Allen & Unwin, pp. 113, 120, 128; and Malcolm D. Prentis. 2008. "The Presbyterian Church of Australia, 1901-1977: An Overview." *Church Heritage* 15(4): 227-43.

[53] Australian figures are reported in Stuart Piggin. 1994. "The American and British Contributions to Evangelicalism in Australia." Pp. 290-309 in *Evangelicalism: Comparative Studies of Popular Protestantism in North America, the British Isles, and Beyond, 1700-1990,* edited by Mark A. Noll, David W. Bebbington, and George A. Rawlyk. New York: Oxford University Press, p. 290. Piggin reports that the evangelical proportion of the population has more or less held constant since the 1950s (p. 304n.4). Studies peg the American evangelical population as low as 25% and as high as 45%. (For low estimates, see Mark A. Noll. 2001. *American Evangelical Christianity: An Introduction.* Malden, Mass.: Blackwell Publishers, p. 33; for high estimates, see Christopher D. Bader, F. Carson Mencken, and Paul Froese. 2007. "American Piety 2005: Content and Methods of the Baylor Religion Survey." *Journal for the Scientific Study of Religion* 46: 447-63, p. 458.) The General Social Survey puts the evangelical share of the American population at around one in three, a figure which has been reasonably constant since the 1950s. For a clear overview of the GSS data, see Mike Hout. 2005. "Religion in the USA with some European Comparisons." Lecture presented at the University of California, Berkeley.

[54] At midcentury, for instance, conservative and mainline Protestants had roughly equal constituencies in the United States, but Australian liberal Protestants outnumbered evangelicals by more than 3 to 1.

[55] Edwards, *WASPS*, pp. 154, 213, 218; Engel, *Times of Change*, p. 252.

aid in the High Court.[56] Yet their relatively small numbers and increasingly minority views failed to sway political leaders or public opinion, and by the 1980s, many evangelicals had come around to supporting state aid, on behalf of their own evangelical Christian schools.[57]

Finally, the decline of Protestant opposition to state aid was not counterbalanced by the emergence of strong new voices against it. Although the three decades after World War II, and especially the years from 1965 to 1975, saw considerable growth in the number of Australians professing no religion and disbelieving in God,[58] these unchurched Australians played only a supporting role in the DOGS coalition.[59] More importantly, the Jewish community, which staunchly opposed any public aid to religious schools in the United States—and which expressed opposition to Bible reading in the Australian public schools[60]—was studiously quiet on the matter of state aid in Australia. In large part, this reflected the influence of new Jewish immigrants in the wake of World War II. The size of the Jewish population nearly tripled between 1938 and 1961 with the arrival of new immigrants.[61] Significantly, many of these new immigrants were from Eastern Europe who tended to be more assertive in their Jewishness, and who quickly created a new system of Jewish day schools from 1947 onwards.[62] By the time state aid was being debated in 1962, these new schools and their supporters had created a Jewish constituency amenable to state aid. Accordingly, the Jewish community was divided on the issue and remained silent in the political debates on state aid.[63] Once state aid became available, Jewish day schools eagerly accepted it, and protested against any attempts to reduce their allotted amounts.[64]

ELECTORAL INSTITUTIONS AND POLITICAL OPPORTUNITY: CATHOLICS AND PARTY POLITICS

While the ecumenical atmosphere of the 1960s reduced religious conflict with Protestants to the benefit of the Catholic state aid campaign, Catholics also succeeded thanks to an

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[56] See Chapter Five for more on the DOGS coalition and legal challenge to state aid.

[57] Brian Fletcher. 2008. *The Place of Anglicanism in Australia: Church, Society, and Nation.* Mulgrave, Vic.: Broughton Publishing, p. 194; David Hilliard. 2002. "Pluralism and New Alignments in Society and Church, 1967 to the Present." Pp. 124-48 in *Anglicanism in Australia: A History,* edited by Bruce Kaye. Melbourne: Melbourne University Press, p. 130.

[58] The number of Australians declaring they had no religion on the census grew from one percent to eight percent between 1966 and 1976, while the number declaring they believed in God declined from 95 percent to 87 percent between 1949 and 1969. See Hugh McLeod. 2007. *The Religious Crisis of the 1960s.* New York: Oxford University Press; and Hans J.J. Mol. 1971. *Religion in Australia: A Sociological Investigation.* Melbourne: Nelson, p. 41.

[59] Edwards, *WASPS*, p. 223.

[60] Damon Mayrl. 2011. "Administering Secularization: Religious Education in New South Wales since 1960." *European Journal of* Sociology 52(1): 111-142, p. 121; see also above, Chapter Three.

[61] Suzanne D. Rutland. 2005. *The Jews in Australia.* Cambridge: Cambridge University Press, p. 51. This growth in absolute numbers did not increase the Jewish proportion of the population, which remained around 0.5%, thanks to increased non-Jewish immigration as well.

[62] Daniel J. Elazar and Peter Medding. 1984. *Jewish Communities in Frontier Societies: Argentina, Australia, and South Africa*. New York: Holmes & Meier, pp. 278, 287.

[63] P.Y. Medding. 1968. *From Assimilation to Group Survival: A Political and Sociological Study of an Australian Jewish Community*. Melbourne: F.W. Cheshire, p. 56; Suzanne D. Rutland and Sophie Caplan. 1998. *With One Voice: A History of the New South Wales Jewish Board of Deputies*. Darlinghurst, NSW: Australian Jewish Historical Society, p. 115.

[64] Elazar and Medding, *Jewish Communities in Frontier Societies,* p. 311; W.D. Rubinstein. 1991. *The Jews in Australia: A Thematic History.* Vol. 2, *1945 to the Present*. Port Melbourne, Vic.: William Heinemann Australia, p. 241.

unprecedentedly favorable political opportunity structure from the mid-fifties onwards. In response to an intraparty showdown over communism, many anticommunist Catholics left the Australian Labor Party and formed a new, overwhelmingly Catholic third party. Australia's preference-voting system made Catholics' "second-preference" votes a highly valuable commodity in an era of close elections. The pursuit of Catholic votes gave Catholics leverage in the early 1960s that immeasurably helped to advance their claims for state aid.

Odd Bedfellows: Catholics, Socialists, and the Australian Labor Party, 1901-1955

By the middle of the twentieth century, Catholics had become an integral part of the Labor Party coalition. Australia's political parties had begun to polarize along religious lines shortly after federation in 1901.[65] This polarization became more pronounced in 1916, when Irish Catholics, led by the Archbishop of Melbourne, Daniel Mannix, vigorously opposed a referendum to permit conscription during World War I. The issue quickly devolved into a sectarian showdown, which in turn reinforced the religious dimension of Australia's partisan cleavage.[66] Consequently, the Labor Party became substantially more Catholic,[67] and between 1910 and 1955, Catholics were one of the pillars of the Labor Party. Over the first half of the twentieth century, the proportion of Catholics in the ALP hovered between 49% and 51%.[68] Among Labor parliamentarians, the proportion of Catholics rose steadily, from 21% in the 1910-16 era to 49% in the 1917-49 era and 56% in the 1949-54 era.[69] Labor could also count on Catholics to turn up at the polls; in Gallup polls conducted between 1946 and 1954, around 70% of Catholics indicated that they planned to vote for Labor.[70]

While Catholics were one key component of the Labor coalition, they shared power in an uneasy alliance with socialists. As befits a true labor party, one created by trade unions in the wake of industrial unrest and a brutal government crackdown in 1891,[71] trade unions have formed the backbone of the Australian Labor Party from the beginning. Trade unions affiliate with the Labor Party and send dues to state parties, and in exchange they are permitted to send delegates to party conferences. These ongoing formal links give trade unionists considerable power and strong representation within the Labor Party[72]—in the 1950s and 1960s, 70 to 80 percent of delegates at state conferences were union representatives.[73] This strong labor presence also contributed to a strong socialist contingent in the Labor Party, and to ongoing problems with communism within the party. For the most part, Labor was generally anti-communist, but the strong union presence in its ranks meant that there was often substantial factional sympathy for

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[65] Aitkin, *Stability and Change*, p. 164.

[66] Judith Brett. 2003. *Australian Liberals and the Moral Middle Class: From Alfred Deakin to John Howard.* Cambridge: Cambridge University Press, p. 49; Hogan, *Sectarian Strand*, pp. 176-82.

[67] In the New South Wales Labor Party, for instance, the proportion of Catholic politicians increased from 35% in 1913 to 61% in 1922. See Thompson, *Religion in Australia*, p. 65.

[68] James Jupp. 1968 [1964]. *Australian Party Politics.* 2nd ed. Carlton, Vic.: Melbourne University Press, p. 33.

[69] Joan Rydon. 1986. *A Federal Legislature: The Australian Commonwealth Parliament, 1901-1980.* Melbourne: Oxford University Press, p. 142.

[70] Brett, *Australian Liberals and the Moral Middle Class*, p. 35.

[71] Stuart Macintyre. 2004 [1999]. *A Concise History of Australia.* 2nd ed. Cambridge: Cambridge University Press, pp. 121-28.

[72] Jupp, *Australian Party Politics,* p. 55; Geoffrey Hawker, R.F.I. Smith, and Patrick Weller. 1979. *Politics and Policy in Australia.* St. Lucia: University of Queensland Press, p. 34; Gwynneth Singleton, Don Aitkin, Brian Jinks, and John Warhurst. 2009. *Australian Political Institutions.* 9th ed. Frenchs Forest, NSW: Pearson Education Australia, pp. 350-51.

[73] Robert Murray. 2004. "Looking Back on Evatt and the Split." *Quadrant* 48(10): 20-25, p. 21.

communist goals within the party.[74] Many Catholic party members, however, inspired by papal encyclicals, were suspicious of communists and socialists alike, and Labor leaders had to spend a fair amount of time massaging the ideological divide.[75] But the divide persisted just below the surface, and in the postwar era, communism was to be the factor that broke the Labor Party in two and created a new political opportunity for Catholics.

Coalitional Breakdown: Anticommunism, the Movement, and the Labor Party Split

During the decade following World War II, the issue of communism festered within the Labor Party, undermining and eventually destroying the alliance between Catholics and socialists. The social dislocations of the Great Depression were a boon to Australia's communists,[76] and by the end of World War II, communists had attained leadership positions in a number of major Australian unions.[77] Catholics viewed these communist gains in the unions with dismay, and determined to try to turn them back. In January 1942, the Archbishop of Melbourne, Daniel Mannix, gave moral and financial backing to a group—the Catholic Social Studies Movement (or "the Movement" for short)—whose explicit goal was to wrest control of the unions back from communist control.[78] Under the leadership of a devout young lawyer, B.A. Santamaria, the Movement designed a plan whereby small, hand-picked cells of Catholic unionists would infiltrate the communist-controlled unions and organize to roust out the communist leadership.[79] In 1945, the Movement received the official blessing of the Australian Catholic hierarchy in its mission "to permeate the whole of society with [positive] ideals [of Christian social teaching]."[80]

The swelling power of the communists also alarmed some in the Labor Party. Communist control of trade unions had serious implications for Labor, since the unions' formal links to party conferences meant they had the potential to shape or even determine the party line on an array of issues.[81] Labor leaders concluded that their political survival required that they intervene in union elections to reduce communists' power.[82] They did this by creating "industrial groups" within the trade unions, which would openly campaign for Labor's preferred candidates in union elections.[83] Although the groups were formally separate from the Movement, their aims were the same; and since the Movement had already begun to campaign against the union communists, Movement members quickly came to dominate the industrial groups.[84] With the industrial groups as cover, the Movement grew dramatically in the postwar years, claiming some 5,000 "really

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[74] D.W. Rawson. 1966. *Labor in Vain? A Survey of the Australian Labor Party.* North Clayton, Vic.: Longmans, pp. 77-99.

[75] McMullin, *Light on the Hill,* pp. 23,56; Rawson, *Labor in Vain*, p. 86.

[76] Macintyre, *Concise History of Australia*, pp. 180-81, 183.

[77] Jupp, *Australian Party Politics*, p. 91.

[78] Bruce Duncan. 2001. *Crusade or Conspiracy? Catholics and the Anti-Communist Struggle in Australia.* Sydney: University of New South Wales Press, p. 58; Patrick O'Farrell. 1968. *The Catholic Church in Australia: A Short History, 1788-1967*. Melbourne: Thomas Nelson (Australia) Limited, pp. 263-64.

[79] Robert Murray. 1970. *The Split: Australian Labor in the 1950s.* Melbourne: Cheshire, pp. 53-54.

[80] Quoted in Ross Fitzgerald. 2003. *The Pope's Battalions: Santamaria, Catholicism, and the Labor Split.* St. Lucia: University of Queensland Press, p. 76.

[81] Rawson, *Labor in Vain*, pp. 91-2.

[82] Graham Freudenberg. 1991. *Cause for Power: The Official History of the New South Wales Branch of the Australian Labor Party.* Leichhardt, NSW: Pluto Press, pp. 211-2.

[83] Murray, *The Split,* pp. 16-17.

[84] Hogan, *Sectarian Strand,* pp. 245-46.

active fighters against Communism" by 1947.[85] Ultimately, the Movement/Group strategy paid dividends within the trade unions: Between 1945 and 1949, the industrial groups won back control of nearly every trade union.[86]

Once the communist threat in the trade unions had been neutralized, however, the Movement did not disband. Instead, they turned their sights on the Labor Party itself, with the goal of weeding out those party members they found insufficiently committed to the anticommunist cause. Santamaria ultimately hoped that the Movement would "be able to completely transform the leadership of the Labor Movement" and thus be able to "implement a Christian social programme in both the Federal and State spheres."[87] Movement members swamped local party branches in Victoria in 1949 as part of a concerted movement campaign to secure the nomination and election of ardent anticommunists.[88] Their campaign paid dividends: 60% of the Labor caucus elected in the 1949 election were Catholic; in Victoria, six of eight new representatives were militant Movement-supporting Catholics.[89] By 1953, the Movement had come to dominate the Labor Party in the two largest states, Victoria and New South Wales. Further, Movement politicians were committed to pushing Catholic issues, including not just anticommunism but also state aid, in an aggressive manner. In 1950, the Victorian Labor Party passed a resolution supporting state aid, and the following year, Movement supporters had enough influence to convince the federal Labor Party to adopt a resolution "That financial aid be granted for the purpose of assisting all forms of education."[90]

This shift in Movement ambitions had a predictably destabilizing effect on the Labor Party. The radical new Movement Catholics began to create enormous headaches for Labor leaders, at times refusing to support party policy on communism-related matters.[91] Further, the Movement's brazen advocacy of Catholic aims created enemies among the old guard of the Labor Movement, including many trade unionists who were resentful of the Movement's incursions into union politics.[92] Conditions were such that it would only take one spark to bring the simmering divide to the surface. That spark occurred in 1954. In that year, Labor, under Evatt's leadership, lost the federal election. Evatt blamed his loss on a conspiracy masterminded by Menzies and anticommunists in the Labor Party. On October 5, Evatt issued a press statement denouncing the Movement, accusing "a small minority group of members" of "subversion"," and announcing his intention to discipline insubordinate members at the upcoming federal conference.[93] The intraparty conflict quickly spiraled out of control. Over the next months, the federal party leadership purged the Victorian leadership, dissolved the industrial groups, and expelled seven Victorian parliamentarians from the party.[94] The expelled parliamentarians in turn formed a new Australian Labor Party (Anti-Communist), and ran candidates against Labor in the

[85] Duncan, *Crusade or Conspiracy,* p. 106.
[86] Tom Truman. 1960. *Catholic Action and Politics.* Melbourne: Georgian House, pp.155-56.
[87] Letter, Santamaria to Mannix, 11 December 1952, quoted in Phillip Deery. 2001. "Santamaria, the Movement, and the Labor Split of 1954-55." *Journal of the Australian Catholic Historical Society* 22: 47-58, p. 53.
[88] Thompson, *Religion in Australia,* p. 103. Murray cautions that they other factors contributed to the success of Catholic politicians in the 1949 election, however. See Murray, *The Split,* p. 67.
[89] Murray, *The Split,* pp. 66-67.
[90] Beazley, "Australian Labor Party and State Aid [Part One]," p. 53.
[91] McMullin, *Light on the Hill*, p. 263.
[92] Murray, *The Split*, pp. 32-35, 38-40, 129.
[93] Quoted in Murray, *The Split,* pp. 179-81.
[94] Duncan, *Crusade or Conspiracy,* pp. 246-50; Murray, *The Split,* pp. 243-62; P.L. Reynolds. 1974. *The Democratic Labor Party.* Milton, Qld.: Jacaranda Press, p. 13.

1955 election.[95] The following year, the Victorian party merged with Movement-supporting defectors in New South Wales and Tasmania to form the new Democratic Labor Party (DLP).[96] Eventually, over ten percent of the Labor membership left and joined the DLP.[97]

The Consequences of the Split: Catholics as Political Free Agent

The Split inaugurated a mass exodus of relatively conservative Catholics from the Labor Party (hereafter, the ALP[98]).[99] This in turn meant that power in the party quickly shifted to the socialists in the trade unions.[100] These unionists were bitter at what they perceived as a betrayal by Movement members, and determined to eradicate all vestiges of Movement influence from the ALP. The party's friendly state aid plank was among the first to go. As ALP leader Arthur Calwell reported in a retrospective interview, "the anti-state aid movement developed as a revenge weapon and backlash against the movement and DLP."[101] At the 1957 annual conference, the language supporting state aid was stripped from the platform on a unanimous vote and replaced with more constrictive support for limited indirect forms of aid such as scholarships.[102] In the short term, Catholics found the ALP far more hostile to their requests for state aid than they had found it before the Split.

Yet in the long term, the Split fundamentally altered political dynamics in ways that would help to bring about state aid. As historian Patrick O'Farrell has written, "the end of [Catholics'] slavish attachment to Labor changed the status of the political activities and votes of Catholics from those of prisoners to those of desirable, sought-after supporters."[103] While Catholics had been bound tightly to the Labor coalition, their prospects for gaining state aid remained dim. The creation of the Democratic Labor Party, however, effectively transformed Catholics into political free agents, increasing their ability to lobby for concessions, including state aid.

The DLP was, for all intents and purposes, a Catholic party.[104] Although the ALP retained the votes of a majority of Australian Catholics throughout the 1950s and 1960s,[105] a substantial minority, on the order of 10-20% of Catholic voters, defected to the DLP. However, even if only a modest number of Catholics joined the DLP, the vast majority of DLP members were Catholic; a national survey in 1966 found that 88 percent of DLP voters were Catholic.[106] What was true of its mass base was also true of its politicians; in Victoria, all but two of the

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[95] Duncan, *Crusade or Conspiracy,* pp. 273-74.

[96] Peter Love. 2005. "The Great Labor Split of 1955: An Overview." Pp. 1-20 in *The Great Labor Schism: A Retrospective,* edited by Brian Costar, Peter Love, and Paul Strangio. Melbourne: Scribe Publications, pp. 14-15. A separate Queensland Labor Party formed about the same time, but did not affiliate with the DLP until 1961.

[97] Bolton, *Middle Way,* p. 143.

[98] Australian Labor Party.

[99] For instance, the proportion of Catholics in party leadership declined from almost 60% in 1949 to 34% in 1972. See Thompson, *Religion in Australia,* pp. 121-2.

[100] Bolton, *Middle Way,* p. 146.

[101] Quoted in Anthony William Hannan. 1982. "The Catholic Campaign for State Aid in Victoria, 1939-63." Unpublished Ph.D. Thesis, Monash University, p. 248.

[102] Beazley, "Australian Labor Party and State Aid [Part One]," p. 55.

[103] O'Farrell, *Catholic Church in Australia*, p. 273.

[104] See generally John Warhurst. 2005. "Was the DLP a 'Church' Party?" Pp. 301-10 in *The Great Labor Schism: A Retrospective,* edited by Brian Costar, Peter Love, and Paul Strangio. Melbourne: Scribe Publications.

[105] Robert R. Alford. 1963. *Party and Society: The Anglo-American Democracies.* Chicago: Rand McNally & Company, p. 205; Aitkin, *Stability and Change,* p. 166; Reynolds, *Democratic Labor Party*, p. 58.

[106] Aitkin, *Stability and Change,* p.178. By 1969, however, this figure had declined to 64 percent.

DLP's parliamentarians were Catholic, while in Queensland, 70 percent of DLP politicians were Catholic.[107] The party was strongest in those areas where it had the support of church leaders, particularly in Victoria, where Archbishop Mannix gave full-throated support to Santamaria and the DLP until his death in 1963;[108] and it was strongest among those Catholics who were most committed to their faith.[109]

As a party with such strong connections to the Catholic community, the DLP effectively functioned as a vehicle for Catholic interests. This was most evident in its continuing opposition to communism, where it adopted an aggressive anticommunist stance.[110] Yet it was also notably true on the issue of state aid. As political scientist Paul Reynolds observed, during the 1950s and 1960s the DLP was "the one political force in Australia which consistently advocated state aid" even when the other parties refused to consider it.[111] In 1958, the DLP promised student endowments for all students attending private schools as part of its federal election campaign, a policy which it continued to support into the late 1960s.[112]

Preference-Voting and Political Power

Although its continuous advocacy of state aid helped to keep the issue on the agenda in the late 1950s and early 1960s, the DLP was never in a position to enact its preferred policies. In fact, in pure electoral terms, the DLP was not terribly successful, never drawing more than 9.4% of the vote in any election.[113] Nevertheless, its influence was outsized in proportion to its voter base thanks to a feature of the Australian electoral system which magnifies the influence of third parties: preference voting. Under the preference-voting system,[114] voters rank candidates in numerical order. If no candidate attains an absolute majority, the least popular candidates are excluded, with their votes redistributed to their second-choice candidates. The process is repeated until one candidate obtains an absolute majority.[115] Preference voting increases the power of minor parties because it gives well-disciplined parties the ability to bargain their second-preference votes to the major parties in exchange for concessions.[116] In the annals of Australian political history, few minor parties have been more successful at manipulating the preference-voting system to enhance their power than the DLP.

Prior to 1955, second-preferences were primarily used by non-Labor coalition partners, the Liberal and Country Parties, to run candidates in the same electorate without worrying that the competition between them would allow Labor to win the seat: Liberals directed their second-

[107] Warhurst, "Was the DLP a Church Party," p. 307.

[108] John Warhurst. 1979. "Catholics, Communism, and the Australian Party System: A Study of the Menzies Years." *Politics* 14(2): 222-42, p. 237; Warhurst, "Was the DLP a Church Party," p. 306. Victoria was the heart and soul of the DLP throughout the 1950s and 1960s. See Reynolds, *Democratic Labor Party,* p. 51.

[109] Aitkin, *Stability and Change,* p. 176; Reynolds, *Democratic Labor Party,* p. 59.

[110] Reynolds, *Democratic Labor Party,* p. 33.

[111] Reynolds, *Democratic Labor Party,* p. 45.

[112] Reynolds, *Democratic Labor Party,* pp. 43-44.

[113] Reynolds, *Democratic Labor Party,* p. 50.

[114] In the United States, this system is known as "instant runoff voting," and is used in some municipal elections, such as elections for the San Francisco Mayor and Board of Supervisors.

[115] Scott Bennett and Rob Lundie. 2007. *Australian Electoral Systems*. Parliament of Australia Research Paper No. 5. Canberra: Parliament of Australia, pp. 4-6.

[116] Singleton et al., *Australian Political Institutions*, p. 284.

preference votes to the Country Party, and vice versa.[117] The DLP used its second-preference votes in a much different manner. By disciplining its voters to cast their second-preference votes for non-Labor candidates, it transformed second-preference votes into a weapon they could use to keep the ALP out of office. Even in electorates where the ALP candidate drew the most first-place votes, DLP second-preference votes could allow the Liberal or Country candidate to win the seat. In his memoir, B.A. Santamaria wrote that the disciplining of preferences was a major early focus of the DLP:

> Above all, there was a most difficult educational task. What were originally about half a million voters had to be instructed that, in marking their ballot papers in federal and state elections, the second preference was as important as the first. Sufficient conviction had to be secured among the great majority, who had been traditional Labor voters, that they should mark their preferences in favour of the Liberal and against the Labor candidate.[118]

As it happened, the DLP was incredibly successful in disciplining its second-preference votes. Between 1958 and 1969, nationwide, 82% of its second-preference votes were directed against the ALP.[119] For the DLP, the goal was to keep Labor—viewed as a tainted party—out of office. The desire to punish Labor for its transgressions persisted in the DLP until the bitter end; among three reasons for the party's existence outlined in a 1969 party document, two were "to erect a road block of DLP votes across the ALP's path and so deny it the fruits of office" and "to wage a war of attrition against the ALP."[120] Whatever its merits, this strategy was remarkably successful. DLP second-preference votes determined the outcome of at least one seat in every federal election between 1958 and 1972,[121] and clearly saved the Liberal coalition government from defeat (thus keeping the ALP out of office) in 1961 and 1969.[122] The Liberal Party retained control of Parliament for an unprecedented 23 years between 1949 and 1972, and were reliant upon DLP second-preference votes for a large portion of that time.

During the late 1950s and early 1960s, the DLP was primarily content with using its preferences to keep the ALP out of office. However, by the mid-1960s, as the Liberals' position grew more tenuous and dependent on DLP second-preferences, the DLP began to make demands on Liberal politicians in exchange for their continued direction of preferences. As I discuss below, on at least one important occasion these demands included state aid.

More indirectly, however, the very fact that an overwhelmingly Catholic third party had the ability to direct its second-preference votes in ways that could make or break parliamentary power gave that party, and the issues it sponsored, an enormous amount of power and importance. Even without any direct preference trading, politicians were incredibly cognizant of the "Catholic vote." No longer wedded to the ALP, and increasingly influential electorally,

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[117] Paul Reynolds. 2005. "The Democratic Labor Party: A Retrospective." Pp. 290-300 in *The Great Labor Schism: A Retrospective,* edited by Brian Costar, Peter Love, and Paul Strangio. Melbourne: Scribe Publications, p. 294.

[118] B.A. Santamaria. 1997 [1981]. *Santamaria: A Memoir.* Melbourne: Oxford University Press, p. 198.

[119] Reynolds, *Democratic Labor Party,* p. 49.

[120] Quoted in Brian Costar. 2005. "Was the DLP a Labor or a Centrist Party?" Pp. 311-23 in *The Great Labor Schism: A Retrospective,* edited by Brian Costar, Peter Love, and Paul Strangio. Melbourne: Scribe Publications, p. 315.

[121] Rydon, *Federal Legislature*, p. 41.

[122] Reynolds, "Democratic Labor Party," p. 295.

Catholic issues were suddenly of substantially greater interest to politicians. And after 1960, state aid would eclipse communism as the predominant Catholic issue, thanks in large part to a highly visible and concerted campaign by Catholics of all stripes to regain state aid.

FROM OPENING TO REALIZATION: THE CATHOLIC CAMPAIGN FOR STATE AID, 1954-1972

While Catholics had always maintained their demand for the resumption of state aid, the pace and force of their campaign accelerated dramatically from the late 1950s onwards. While Catholics' campaign was not the only factor leading to the return of state aid, Catholics were undoubtedly its leading advocate and played an essential role in establishing the form and timing of the new twentieth century settlement. The Catholic campaign was important for several reasons. First, Catholics played a major role in formulating new arguments for state aid, disseminating them, and shaping public opinion in favor of state aid from World War II onwards. Second, Catholics effectively forced the issue of state aid onto the national political agenda through direct actions, most spectacularly the school "strike" in the city of Goulburn in 1962. Third, largely through the mass meetings they created, Catholic state aid organizations kept the pressure on politicians to deliver ever-larger amounts of state aid by creating what political scientist Michael Hogan has termed an "auction" climate in the late 1960s.[123] And finally, Catholics influenced the form and style that state aid eventually developed through direct electoral pressure from the late 1960s through the early 1970s. In short, between 1954 and 1972, the Catholic campaign created a viable public space for their demands, forced the issue onto the political agenda, and shaped the ultimate form that state aid eventually took.

The Catholic Campaign for State Aid: Genesis and Form

The Catholic campaign for state aid that developed in Australia in the 1950s and 1960s had its roots in a long string of political activity stretching back to the foundation of the nineteenth century settlement. However, when they took strong political action to try to attain state aid, as they did in the 1910s with the formation of the ill-fated Catholic Federation, Catholics typically succeeded only in stirring up a fierce backlash among Protestants, not in obtaining their sought-after funding.[124] From this bitter experience, Catholics took to heart the lesson that mass political mobilization risked creating a "Roman fever" whose consequences were not worth the push for state aid, and their campaign for state aid was generally much more subdued over the ensuing thirty years.

All this changed in the years following World War II, as the Catholic campaign took on extra urgency because of increased financial pressures on the Catholic school system. These pressures had their roots in three trends: skyrocketing enrolments thanks to the baby boom and increased Catholic immigration, demand for more teachers and plant in response to the expansion of secondary schooling, and increased reliance on lay rather than religious teachers.[125]

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[123] Hogan, *Public versus Private Schools*, p. 3.

[124] Jeff Kildea. 2002. *Tearing the Fabric: Sectarianism in Australia, 1910 to 1925.* Sydney: Citadel Books,; see also Hogan, *Sectarian Strand,* pp. 84-94.

[125] Michael Charles Hogan. 1978. *The Catholic Campaign for State Aid: A Study of a Pressure Group Campaign in New South Wales and the Australian Capital Territory, 1950-1972.* Sydney: Catholic Theological Faculty, p. 4. Catholic school enrolments more than doubled between 1950 and 1964, while the proportion of lay teachers increased from 20% to 49% in Melbourne between 1950 and 1963, and from 28% to 52% nationwide between 1965 and 1971. On enrolments, see David Stapleton. 1998. "Catholic Regional Secondary Schools in the Archdiocese of

Catholics responded to these increased pressures by stepping up their campaign for state aid. Yet the campaign that developed was very fragmented. The Australian Episcopal Conference, the Australian hierarchy's national body, issued a statement in support of state aid in 1961, but otherwise did little to coordinate the campaign until the formation of two federal bodies in 1967 (see below).[126] In the interim, a fragmented, vital, and multifaceted campaign developed that engaged with all avenues of political influence. These included a quiet, behind-the-scenes negotiating strategy by individual bishops and clergy; a loud and confrontational movement by lay Catholics that engaged in direct action; and formal politicking through the DLP and the Movement's successor organization, the National Civic Council.

Although the Catholic hierarchy as a group did not take a leading role in pressing for state aid, individual Catholic bishops did contribute to the campaign through low-key approaches to political officials, usually at the state level. These ventures were important, because Catholic bishops could negotiate in the name of Catholics as a whole in ways that lay groups could not. In New South Wales, where the bishops had good relations with leaders in the Labor Party, the hierarchy acted in concert, establishing a state aid steering committee in 1954 under the direction of Bishop James Carroll, which ran a nonconfrontational public relations campaign and coordinated negotiations on state aid with state officials throughout the 1950s.[127] Elsewhere, individual bishops also took initiative to press for state aid from time to time. In 1955, for instance, Eris O'Brien, Archbishop of Canberra-Goulburn, petitioned the Select Committee on the Development of Canberra for aid, arguing that the relocation of large numbers of public servants to the new capital had created a situation where the federal government was obligated to provide some sort of subsidies to private schools to enable them to expand to meet educational demand. Menzies recalled, in his memoir, that O'Brien was "one of the best-informed, mildest-mannered and persuasive of advocates,"[128] and his personable and low-key approach appear to have helped convince Menzies to introduce interest subsidies for construction costs within the ACT in 1956.[129] Through these and other formal petitions to political leaders, exploratory discussion with political allies, and behind-the-scenes negotiations over substantive policies, Catholic bishops quietly contributed to the campaign for state aid.

In contrast to the bishops' quiet campaign, more confrontational grassroots activism by Catholics emerged in Western Australia and Victoria in the late 1950s as a response to the crisis in the schools.[130] In deliberate contrast with the more low-key negotiations style of the hierarchy, the lay Catholic groups specialized in direct action. They conducted publicity stunts to embarrass the government, erecting prominent signs outside Catholic schools listing the number of students enrolled and the cost of educating them.[131] Most dramatically, as I discuss below, they temporarily shut down Catholic schools in Goulburn to illustrate the plight of their schools. Their most consistently effective tactic, however, was the mass meeting. These events, which often drew thousands of attendees, brought political leaders face to face with the problems with

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Melbourne in the 1950s and 1960s." *Melbourne Studies in Education* 39(1): 1-25, p. 94; on the teaching staff, see Edwards, *WASPS*, p. 166; and Praetz, *Public Policy and Catholic Schools,* p. 11.

[126] Hogan, *Catholic Campaign,* pp. 155-56, 164; Wilkinson et al., *History of State Aid,* p. 26.

[127] Hogan, *Catholic Campaign*, pp. 38, 41.

[128] Robert Gordon Menzies. 1970. *The Measure of the Years.* London: Cassell, p. 95.

[129] Hannan, "Catholic Campaign," p. 301; A.W. Martin. 1999. *Robert Menzies: A Life.* Vol. 2, *1944-1978*. Melbourne: Melbourne University Press, p. 469.

[130] Hogan, *Catholic Campaign,* pp. 48-51; David Mossenson. 1972. *State Education in Western Australia, 1829-1960.* Nedlands: University of Western Australia Press, pp. 158-59.

[131] Hannan, "Catholic Campaign," p. 457.

Catholic schools as well as Catholics' demands. Mass meetings were pioneered in Victoria in the early 1960s,[132] but they were most prominently and effectively used in New South Wales toward the end of the 1960s, as I discuss below. Lay groups were not particularly successful in extracting concessions from governments in the early 1960s, but their dramatic actions did force the issue of state aid onto the agenda, expose the Australian public to the problems in the Catholic schools, and soften public opinion on the matter of state aid.

A third wing of the Catholic campaign consisted of formal partisan action through the Catholic-dominated DLP. In 1957, Santamaria had reconstituted the Movement as the National Civic Council (NCC), independent from ecclesiastical authorities. For the next fifteen years, the NCC acted as the organizational wing of the DLP and Santamaria's personal vehicle for influencing party politics in Australia.[133] The NCC provided the DLP with members, finance, and organization. In the states where the DLP was weakest, the NCC actually ran the party, financially and clerically, between elections.[134] In Victoria, by contrast, where the DLP was strongest, the NCC effectively controlled the party apparatus, and the NCC's newspaper, *The News-Weekly,* was for all intents and purposes the "national organ of the D.L.P."[135] Nationwide, eighty percent of DLP branch members were simultaneously members of the NCC, and NCC leaders (including Santamaria and the NCC's vice-president and secretary) met regularly with DLP leaders to plot political strategy.[136]

Both the NCC and the DLP were primarily focused on communism throughout the 1960s, rather than on state aid, although state aid was consistently part of the DLP party platform from 1958 onwards. Nevertheless, Santamaria did use his position as a *de facto* leader of the DLP to advocate for state aid. Between the 1961 and 1963 elections, for instance, Santamaria met with Menzies' Treasurer (and future Prime Minister), Harold Holt, on at least three occasions to discuss how a state aid proposal could benefit both Catholics and the Liberal Party.[137] Santamaria told Holt that "erosive factors" threatened the DLP's ability to keep its voters directing second-preference votes to the Liberal Party, and suggested that "some 'breakthrough' in the matter of education allowances, however meager the initiative might be," offered an excellent chance for the Liberals to secure DLP second-preference votes.[138] While this was only one input into Menzies' eventual decision to enact the science laboratories scheme (see below), it reflects how the Catholic campaign worked through formal party channels as well.

Honing the Argument for State Aid: Ideological Work in the Catholic Campaign

One of the major tasks for Catholics in the fifties and sixties was to create an argument for state aid that was convincing to the broader Australian population at large. Catholic arguments for state aid in the early twentieth century had a somewhat parochial character, tending to emphasize arguments from religious premises and making the case for aid to Catholic schools only.[139] From the late 1950s onwards, however, the various wings of the Catholic

[132] Hannan, "Catholic Campaign," pp. 436-48.
[133] Santamaria, *Santamaria,* p. 201.
[134] Patrick Morgan, ed. 2008. *B.A. Santamaria: Running the Show: Selected Documents, 1939-1996.* Carlton, Vic.: The Miegunyah Press and State Library of Victoria, p. 312.
[135] Jupp, *Australian Party Politics,* p. 86.
[136] Costar, "Was the DLP a Labor or a Centrist Party," p. 312.
[137] McMullin, *Light on the Hill*, p. 292.
[138] Santamaria, *Santamaria,* p. 217.
[139] Anthony William Hannan. 1973. "Victorian Catholics and the State Aid to Catholic Schools – Religion in State Schools Issues, 1901-1939." Unpublished M.Ed. Thesis, Monash University, pp. 346, 350, 367.

campaign retooled their arguments for state aid, recasting their fight as a nondenominational one, emphasizing pluralist themes of rights and fairness rather than the need for education to be religious, and incorporating economic arguments more squarely into their ideological repertoire. After 1963, Catholics also began to shift their arguments away from demands for financial *equality* to demands for financial *equity*, a strategic retreat that made their claims appear more reasonable and feasible.

Beginning in the early 1950s, Catholic leaders began to change their rhetoric to reposition their claims, not as claims for Catholic schools, but as claims for all schools and all schoolchildren. Recognizing that, given their minority status, a straightforward contest between Catholics and the rest of Australia meant sure defeat, they sought instead to portray religion as irrelevant to their argument. In a meeting of the Australian hierarchy in 1951, Archbishop Beovich of Adelaide presented a memorandum that suggested focusing on the "*Australian child*" rather than on Catholic schools. "By presenting our long-standing problem [as a Catholic one]…we emphasize inevitably the denominational side of the issue." Downplaying the religious aspect, he argued, would inhibit "irresponsible or bigoted talk about sectarian use of public funds."[140] Similarly, Catholics began to cast their arguments in terms of "private," "independent," or "nongovernment" schools, rather than Catholic schools.[141] In a petition to the New South Wales Premier in September 1962, for instance, Cardinal Gilroy presented his appeal on behalf of "the children enrolled at independent schools and their parents," rather than on behalf of Catholics alone.[142] This broader framing also permitted Catholics to reach out to potential allies among Protestant school headmasters and their supporters. Indeed, most of the Catholic lay organizations, including the Association for Educational Freedom (AEF) and Australian Parents Council (APC) explicitly adopted a nondenominational framing and identity in the mid-1960s. This framing was useful as a rhetorical device even if it did not really succeed in creating truly interdenominational organizations.[143]

In addition to casting their arguments in nondenominational terms, Catholics also developed a new set of rhetorical justifications drawing from the languages of rights and pluralism. These arguments were formulated most clearly and forcefully in a pamphlet by Kathleen Woolf, *Freedom of Choice in Education*, which was published in 1962. It combined a straightforward assessment of the crisis in Catholic schools with a full-throated pluralist case for state aid, based on the principles of democracy, choice, equality, and rights.[144] Woolf's pamphlet became the touchstone for the lay campaign that developed after Goulburn; as Brian Keating, president of the New South Wales AEF and later the APC, described it, the pamphlet was "our Great Bible, our Koran, our New Testament," as "no more effective document existed" to make

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[140] Matthew Beovich. 1951. "The Social Service Analogy." Pp. 268-70 (Appendix A) in Michael Charles Hogan, *The Catholic Campaign for State Aid: A Study of a Pressure-Group Campaign in New South Wales and the Australian Capital Territory, 1950-1972.* Sydney: Catholic Theological Faculty, pp. 268-69. Emphasis in original.

[141] Ronald Fogarty. 1959. *Catholic Education in Australia, 1806-1950.* Vol. II, *Catholic Education under the Religious Orders.* Melbourne: Melbourne University Press, p. 463.

[142] N.T. Cardinal Gilroy. 1962. "Cardinal Gilroy's 5 Point Petition, September 1962." Pp. 271-75 (Appendix B) in Michael Charles Hogan, *The Catholic Campaign for State Aid: A Study of a Pressure-Group Campaign in New South Wales and the Australian Capital Territory, 1950-1972.* Sydney: Catholic Theological Faculty, p. 271.

[143] Hogan, *Catholic Campaign*, pp. 124-26; Wilkinson et al., *History of State Aid,* pp. 46-47.

[144] Kathleen Woolf. 1962. *Freedom of Choice in Education.* Melbourne: The Australian Catholic Truth Society. Woolf had been influenced by the ideas of Virgil Blum and the Council for Educational Freedom during time she had spent in the United States. See Hogan, *Catholic Campaign,* pp. 52, 55.

the case for state aid.[145] One important part of this argument that the real fight was not between the Catholic Church and the government, but rather between parents (who had the right to determine how to educate their children) and the state.[146] By reframing the conflict in these terms, Catholics were able to raise the specter of totalitarianism to strengthen their argument. "The freedom to be different is what constitutes a democracy, whereas conformity characterizes the totalitarian state," argued the AEF in one mid-1960s pamphlet.[147] They were also able to draw on the United Nations' Declaration of Human Rights, which guaranteed parents the right to choose their children's education, to bolster their case. Bishop Stewart of Victoria, for instance, declared that Australian policy "makes a mockery of the [nation's] signature" to the Declaration in 1962.[148] The new focus on rights also led Catholics to reject the very language of "state aid." Catholics "were not seeking 'aid' or 'grants' or concessions from anyone," stated Bishop Lyons in 1962, but instead simply justice for their children and parents.[149]

Third, Catholics also began to foreground the economic needs of their schools, and the benefits of Catholic education to Australian society as a whole, as part of their case for state aid. In 1962, Father Patrick Farrell published an essay in a debate on state aid in the *Current Affairs Bulletin* that argued that "the rounded well-being of Australian education" required the state to address the needs of the Catholic school sector.[150] Cardinal Gilroy, too, prefaced his 1962 proposal for state aid by leaning heavily on the needs of Catholic schools. Catholic schooling "concerns intimately the welfare of the whole community," he argued, and without financial assistance, Catholic schools would be unable to "maintain the present high standards" that contributed to the education of Australian children.[151] Catholics coupled this positive argument with the threat of chaos in state schools if the Catholic system collapsed. The New South Wales AEF argued that "It is economically sounder for the government to help the independent schools to carry on," they argued, since "the cost of replacement would be colossal."[152] These economic arguments were eventually taken up by politicians in the late 1960s and early 1970s as they introduced wave after wave of increased state aid. In a policy address in 1971, for instance, New South Wales Premier Robert Askin declared that "the economic argument is impossible to deny. The burden on the taxpayer as children leave the independent schools and enroll at State Schools is immeasurably heavier than if they had been assisted to stay at the independent schools."[153]

Finally, as the Catholic campaign began to score successes in the mid-1960s, it also retooled its claims to draw them more into line with its emphasis on rights. In the early 1960s, Catholic claims had emphasized "equality" in education.[154] Yet as the campaign progressed, Catholics increasingly shifted to an argument based on equity – that is, on a fair share of

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[145] Interview, Brian Keating, in John Luttrell. 2003. *Regaining State Aid: Interviews Relating to the Campaign for State Aid for Non-Government Schools, 1960-1980.* Sydney: Catholic Education Office, Sydney, p. 55.

[146] Santamaria was making a similar case along these lines in the early 1960s, arguing that on the matter of state aid, "The dispute—if there is one—is not between Church and State, but between the State and the parents." See B.A. Santamaria. 1960. *Equality in Education.* Kew, Vic.: Institute of Social Order, p. 8.

[147] New South Wales Association for Educational Freedom. No date. *State Aid Means…* [Sydney]: Author, pp. 1-2. Copy available in Noel Butlin Labour Archives, Australian National University, Canberra, N111/1114.

[148] *The Advocate.* 1962. "Australia's Attitude Mocks Signing of UN Charter." 9 August, p. 4. See also Santamaria, *Equality in Education*, pp. 6, 8.

[149] Quoted in Fogarty, *Catholic Education in Australia*, p. 469.

[150] Patrick Farrell. 1962. "State Aid for Independent Schools? The Case For." *Current Affairs Bulletin* 30(6).

[151] Gilroy, "5 Point Petition," pp. 271-72.

[152] New South Wales Association for Educational Freedom, *State Aid Means…*, pp. 2-3.

[153] Press Release, "Policy Speech by the Premier of N.S.W.," 28 January 1971. SRNSW, 12/1694, p. 8.

[154] See, e.g., Santamaria's *Equality in Education.*

government funding. According to Farrell, equity "would recognize the greater operational economy of the Catholic system; the devotedness of the parents who use it; the need to retain a proper independence and the injurious social effects probable with any greater claim. Equity, therefore, could be something less than financial equality."[155] The rise of the equity argument ceded the demand for full equality, but made the Catholic case appear more reasonable to the broader population. As the AEF stated, hopefully, "A fair-minded people will agree that [Catholic children] deserve a fair share of public funds expended on education."[156]

Thus, over the course of the 1960s, the Catholic campaign honed new arguments for state aid in order to make their case more forcefully and compellingly to the broader Australian population. Different wings of the campaign emphasized different themes – the lay movement more forcefully advocated for rights and justice, while the clergy tended to emphasize needs and standards – and as a result the case for state aid was somewhat "eclectic" throughout the 1960s.[157] But the ideological work that the campaign conducted provided a stronger principled argument for state aid during the political contests for state aid in the mid-to-late 1960s and early 1970s.

Direct Action: The Goulburn School Strike, Agenda-Setting, and the Science Laboratories Proposal

A second contribution that the Catholic campaign made to the reinstatement of state aid was to force the issue onto the political agenda through direct action. This was done, most dramatically, by the decision to temporarily close all the Catholic schools, and send Catholic children to enroll in public schools, in the New South Wales city of Goulburn in July 1962. The Goulburn school "strike" created a national and international media spectacle that forced politicians to begin to respond to Catholic demands in a more sustained fashion.[158] For the decade after the Goulburn school strike, state aid became "one of the most important domestic issues in both State and Federal politics."[159] And this, consequently, ultimately led to a donnybrook over state aid in the ALP, which was the proximate cause of Menzies' science laboratories proposal in 1963.

In 1962, after several years of warnings, the New South Wales Department of Education refused to certify one of the city's Catholic schools because of its failure to provide satisfactory toilet facilities. In response, the local bishop, John Cullinane, publicly stated that there might be no choice but to close the school, and called a meeting of the Catholic community to discuss how to proceed.[160] Although Cullinane had initially only contemplated closing the single school in question, the laymen who attended the meeting sought a more radical response, and instead overwhelmingly voted to close every school in the city as an act of protest.[161] At the end of the week, all six Catholic schools in Goulburn were closed, and on Monday the Catholic schoolchildren showed up at the doors of the local public schools and requested admittance. The spectacle drew intense media coverage, and the strike dominated the headlines for the ensuing

[155] Farrell, "State Aid for Independent Schools," pp. 94-95.
[156] New South Wales Association for Educational Freedom, *State Aid Means…*, p. 2.
[157] Hannan, "Catholic Campaign for State Aid," p. 492.
[158] Joshua Puls. 2004. "The Goulburn Lockout." *Australasian Catholic Record* 81(2): 169-83, p. 176.
[159] Hogan, *Catholic Campaign,* p. 72.
[160] J.N. Cullinane. 1989. *Goulburn School "Strike": The Inside Story.* Canberra: Catholic Education Office, Archdiocese of Canberra & Goulburn, pp. 15-30.
[161] Cullinane, *Goulburn School Strike,* p. 32.

week. Although most of the coverage was negative, the Goulburn parents felt they had proved their point, and quickly ended the strike.[162]

In the wake of the Goulburn strike, the campaign at both the lay and clerical levels expanded to take advantage of the momentum and attention that the strike had produced. In cities around New South Wales, local meetings were held in the weeks after Goulburn to organize an ongoing lay organization; these meetings eventuated in the formation of the New South Wales AEF the following year.[163] Likewise, the New South Wales hierarchy ramped up its approach to state aid in the days following Goulburn. The bishops met on July 26 and decided to take action.[164] On September 10, Cardinal Gilroy met with the Premier of New South Wales, Robert Heffron, and presented him with five specific requests for state aid: an annual scholarship allowance for secondary students, the introduction of teachers' college scholarships to Catholic school teachers, capital grants for new schools in expanding suburbs, subsidies for teachers' salaries, and grants to construct science laboratories and train science teachers.[165] By stimulating Catholics to greater activity and organization, the Goulburn protest forced the issue of state aid onto the political agenda in an undeniable way.

The Fruits of Protest: ALP Conflict and the Science Laboratories Proposal

One unexpected result of Goulburn was a new focus on science education. In his petition to Heffron in September 1962, Cardinal Gilroy had indicated that "The needs of scientific education are so great" that he was compelled to make "a separate plea" for help building new science laboratories.[166] The following January, another group of Catholics approached the Minister for Education with a request that Catholic schoolchildren there might be permitted to use the science facilities at a nearby government school.[167] The repeated requests for aid on the topic of science made an impression on some ALP members, and at the New South Wales ALP's annual conference in June 1963, the party's Education Committee brought forth a report that recommended state subsidies for science facilities in all schools, public and private.[168] Heffron saw an opportunity to cement Labor's position with the Catholic community by proposing both a science laboratories measure and an expanded scholarships program for which Catholic students would be eligible in his budget later that year.[169]

However, Heffron's plan precipitated a disastrous faceoff with federal party officials. Although the ALP was built around state parties, it was coordinated at the federal level by a Federal Executive that had the power to set binding party policy and to discipline maverick state branches.[170] During the late 1950s and early 1960s, the Federal Executive was dominated—even moreso than the party as a whole—by the socialist trade unionists who had come to dominate the

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[162] Wilkinson et al., *History of State Aid,* p. 28.

[163] Hogan, *Catholic Campaign*, pp. 92, 113.

[164] John Luttrell. 2008. "Come to Our Aid: Funding Catholic Schools in NSW since 1800." Unpublished manuscript, Catholic Education Office Sydney, p. 10.

[165] Gilroy, "5 Point Petition," pp. 273-74.

[166] Gilroy, "5 Point Petition," p. 274.

[167] Hogan, *Catholic Campaign,* pp. 78-79.

[168] Albinski, *Australian Labor Party,* pp. 17-18.

[169] Freudenberg, *Cause for Power,* p. 238.

[170] Joan Rydon. 1986. "The Federal Structure of Australian Political Parties." Working Paper No. 6, Australian Studies Centre, Institute of Commonwealth Studies, University of London, pp. 4-5. On the consolidation of federal power within the party, see also Patrick Weller and Beverly Lloyd. 1978. "Introduction." Pp. 3-16 in *Federal Executive Minutes, 1915-1955,* edited by Patrick Weller and Beverly Lloyd. Melbourne: Melbourne University Press, pp. 15-16.

party after the ALP-DLP Split.[171] At its conference in August, the federal ALP reiterated its stance against direct state aid, insisting that aid to Catholic schools could extend to scholarships paid to the students, but no further.[172] However, the New South Wales branch refused to back down, unanimously adopting a report at the end of the month that recommended aid to independent schools.[173] The conflict between the state and federal branches came to a head about a month later, when the Federal Executive censured the New South Wales party for proposing a policy that was a "direct contravention of Federal ALP policy," and declared that in the future any proposal to extend aid to private schools would require Federal Executive approval.[174]

The showdown over state aid in 1963 was disastrous for the ALP. For many of those Catholics in New South Wales who had stood by the Labor Party through the Split, it signaled that the powers-that-be in the ALP were irredeemably arrayed against them.[175] More importantly, the chaos in the ALP over state aid convinced Menzies to call an election for December 1963, and contributed to his decision to introduce his own legislation providing state aid for science laboratories. The timing and content of Menzies' proposal strongly suggest that it was a direct reaction to the ALP conflict over state aid. The fact that Menzies proposed aid to science laboratories, the very form of state aid that Heffron had proposed and that the Federal ALP had rejected, was by no means coincidental; indeed, according to Liberal politicians, it was explicitly designed to "embarrass the Labor Opposition."[176]

It was also designed to consolidate the support of Catholic voters, whose support (either direct, or through DLP second preferences) was seen as shaky in the wake of the 1961 election. Menzies was working with a House majority of only one vote, and the Liberal Party had only narrowly retained control in the 1961 election thanks to DLP preference votes. By the early 1960s, some party officials had begun to see state aid as one important measure that could help to secure DLP preferences.[177] Internal analyses in 1962 suggested that the party's opposition to state aid had hurt them among Catholics in New South Wales,[178] and in fact the New South Wales Liberal Party's Policy Committee had recommended abandoning opposition to state aid as a means of wooing Catholic voters.[179] Thus, the chaos in the ALP provided the needed opening, and an attractive issue, for Menzies to solidify the support of DLP voters, and therefore his own political future. But the opening and the issue were present thanks in large part to the direct action in Goulburn. By forcing the issue onto the political agenda in New South Wales, it set off a chain of events that ultimately contributed to the introduction of the science laboratories proposal.

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[171] Clem Lloyd. 1983. "The Federal ALP: Supreme or Secondary?" Pp. 231-56 in *Machine Politics in the Australian Labor Party,* edited by Andrew Parkin and John Warhurst. Sydney: George Allen & Unwin, p. 235.

[172] Gill, "Federal Science Grant," p. 277.

[173] Albinski, *Australian Labor Party,* p. 18.

[174] Albinski, *Australian Labor Party,* pp. 20-21.

[175] Freudenberg, *Cause for Power,* p. 239.

[176] Ken Jones, quoted in Wilkinson et al., *History of State Aid,* p. 31.

[177] John Roskam. 2005. "The Liberal Party's Response to the Split." Pp. 260-76 in *The Great Labor Schism: A Retrospective,* edited by Brian Costar, Peter Love, and Paul Strangio. Melbourne: Scribe Publications, p. 271.

[178] J.R. Willoughby to Robert Menzies, Preliminary Analysis of 1962 NSW State Election Returns, 3 March 1962. NLA Manuscripts Collection, Sir Robert Menzies Papers, MS 4936/Series 14(a)/Box 411/Folder 12

[179] Martin, *Robert Menzies,* p. 470.

Building Alliances: Protestant Schools and the Science Laboratories Scheme

Although Catholics were the driving force behind the campaign for state aid, they did not act entirely alone. As discussed above, Protestant opposition to state aid had begun to weaken somewhat by the early 1960s. However, those Protestants associated with Protestant schooling had swung much further, often to vocal support for direct state aid, by 1960, since their schools were facing similar demographic and educational pressures as were Catholic schools. Accordingly, during the 1960s—and before, in some cases—Catholics worked assiduously to build alliances with Protestants, particularly those associated with Protestant private schools, to bolster their campaign for state aid. These alliances lent credence to the "nondenominational" claims of Catholics as they argued for state aid. More important still, the influence of Protestant school headmasters had an important independent influence on politicians in the Liberal Party, especially Prime Minister Robert Menzies, which contributed to his ultimate decision to propose the science laboratories proposal in 1963.

In the years following World War II, the leading edge of Protestant support for state aid came from the leaders of Protestant schools. Although Protestants had thrown their support behind state schooling in the late nineteenth century, they had continued to support a system of elite, usually single-sex, secondary schools along the model of Britain's "great public schools." Like the Catholic sector, these schools were reliant upon their own fundraising to remain operational, and from time to time the leaders of those schools looked covetously at state governments as a potential source of funding.[180] This was particularly true of Protestant school officials in country areas, where state aid was seen as a promising means of expanding programs and facilities in areas where religious schooling was essential yet undersupported.[181] As anti-Catholic sectarian feeling declined in the postwar years, Catholics began to find some allies among these Protestant headmasters, even though Protestant leaders and laity continued to be overwhelmingly opposed to state aid.

Catholics were initially ambivalent about the prospects that alliances with Protestants held for gaining the concessions that their struggling primary schools truly needed. Because they were primarily engaged in elite secondary education, these sympathetic Protestant schoolmasters tended to favor indirect forms of state aid, such as tax credits for fees and gifts, rather than direct aid for construction and salaries; and were more interested in eliciting state support for secondary, rather than primary, education.[182] Nevertheless, Catholics were happy to act in concert with Protestant school officials whenever possible in the postwar years. In 1950, Victorian Catholics, with the support of Archbishop Mannix, joined forces with several members of the Protestant Headmasters Conference of Independent Schools in Australia (HMC) to form the Association of Independent Schools in Victoria (AISV), an organization devoted to gaining state aid for private schools.[183] The AISV and HMC worked together to successfully lobby Menzies' federal government for income tax concessions in 1952.[184] Despite these occasional alliances, the Protestant campaign was largely independent of the Catholic campaign. Still, as the

[180] Breward, *History of the Australian Churches,* p. 161.

[181] Letter, Bishop of Riverina to ACC Assistant General Secretary, 1 August 1961. NLA, Australian Council of Churches Papers, MS 7645/Box 69/Folder "State Aid 1961, 1956;" Gill, "Federal Science Grant," p. 330; Keith Rayner. 2006. Interview with Rachel Kohn. "Faith in the Fifties." *The Spirit of Things*, 24 September. Australian Broadcasting Corporation Radio National. Accessed 14 December 2011. Available online: http://abc.net.au/rn/spiritofthings/stories/2006/1744520.htm.

[182] Hannan, "Catholic Campaign," p. 605.

[183] Hannan, "Catholic Campaign," pp. 105-7.

[184] Hannan, "Catholic Campaign," pp. 154-56, 189-91.

1960s progressed, and as the Catholic campaign accelerated, Catholics maintained "cordial contacts" with Protestant groups in their mutual pursuit of state aid.[185]

In the late 1950s and 1960s, Protestant pressure groups increasingly warmed to more direct forms of state aid, as the demographic pressures of the Baby Boom and rising costs put a squeeze on their operations. In 1959, the HMC released a public statement arguing that non-government schools should accept grants for capital improvements, so long as those improvements did not compromise their independence.[186] The fact that a prominent and influential Protestant voice was now on the record in support of direct state aid helped give credence to Catholics' push to redefine state aid as a nondenominational issue. More importantly, however, the Protestant voices in favor of state aid likely helped persuade Menzies to introduce state aid in 1963. The vast majority of Liberal Party members (upwards of 70% according to one 1968 survey) had typically attended elite Protestant schools.[187] These politicians were often quite sympathetic to the problems of Protestant schools, if not the Catholic schools. By the early 1960s, several of them, including members of Menzies' cabinet, were quietly expressing support for direct state aid.[188]

Although his decision ultimately owed more to political calculation and the pursuit of Catholic votes, Protestant support for state aid likely also influenced Menzies. Menzies had attended a private Protestant school as a teenager, and was a longstanding and vocal supporter of religious schools. Menzies believed that religion was an essential part of education, if schools were to turn out "Christian men and women, civilized men and women, and not merely…clever pagans."[189] As early as 1943, he had expressed openness to state aid as a means of preserving religious private schools. Writing in response to a newspaper editor who had written to him in opposition to state aid, Menzies declared that since "the Church schools – of whatever denomination" offered a superior education, "If I found after the war that economic stringency in many homes threatened the continued existence of these schools, I would strongly advocate some State assistance to them."[190] Menzies' belief in religious schools thus predisposed him to sympathy for state aid, especially once the calls for state aid were supported by both Protestant and Catholic voices. And by using the science laboratories proposal as he did to introduce federal supports for both religious and government schools, Menzies assured that state and private schools would be linked in any federal aid package, preventing religious schools from being left out as the federal government entered the educational sphere.[191]

From Concession to Settlement: Keeping State Aid on the Agenda after 1963

The science laboratories legislation was a "breakthrough in political perception" about the electoral feasibility of state aid: "The dogma of a century that state aid was political suicide

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[185] Hogan, *Sectarian Strand,* p. 254.

[186] Don Smart. 1978. *Federal Aid to Australian Schools.* St. Lucia: University of Queensland Press, pp. 52-53; Wilkinson et al., *History of State Aid,* p. 26.

[187] Bessant and Spaull, *Politics of Schooling*, p. 116.

[188] Smart, *Federal Aid*, pp. 70-71.

[189] Robert Menzies, speech delivered to the Sydney Church of England Grammar School Old Boys' Union 75th Dinner, Menzies Hotel, Sydney, 1 May 1964. Transcript available in NLA Manuscripts Collection, Sir Robert Menzies Papers, MS 4936/Series 6/Box 279/Folder 199. A similar comment in 1960 about "clever pagans" had created a small controversy; see *The Age,* 29 February 1960, p. 5.

[190] Letter, Robert Menzies to H.P. Smith, 7 May 1943. NLA Manuscripts Collection, Sir Robert Menzies Papers, MS 4936/Series 14/Box 419/Folder 70

[191] Bessant and Spaull, *Politics of Education,* p. 117. On the growing pressures bearing on the federal government to begin to fund education, see generally Smart, *Federal Aid,* pp. 33-74.

had been completely overturned. The new dogma was that state aid was a vote-winner."[192] Yet the new federal aid was small in real terms; although the legislation provided needed assistance to Catholic schools, it was nowhere near enough to address the crisis in the Catholic system. Catholics thus cultivated the new political environment to extract additional concessions from federal and state governments, to turn the symbolic breakthrough into a durable settlement of financial aid to religious schools. The Catholic campaign for state aid, which continued into the early 1970s, helped cement a new secular settlement through ongoing public opinion work, a sustained media campaign, and, most dramatically, a series of public meetings that created an "auction" climate among the political parties.

Although they were thrilled by Menzies' science laboratories proposal, Catholics clearly saw the need to keep pressing for state aid after 1963. Although the measure did assist some Catholic schools, it did nothing to reduce the major costs burdening the Catholic system, including staff salaries, teacher training, and capital development.[193] In 1966, Santamaria expressed the feelings of many Catholics when he declared that "the process of reform has barely begun," decried the existing concessions as "tiny" and "niggardly," and warned his followers that "Not everyone has had a blinding conversion to the value of religious schools!"[194] Accordingly, the Catholic campaign, which had accelerated after the Goulburn strike, intensified its education and public opinion work. The New South Wales AEF, at the forefront of these efforts, put out a journal, conducted substantial original research, and published pamphlets that included distillations of the Catholic argument, information about state aid in other countries, statements by non-Catholic supporters of state aid, and a statistical abstract of the financial hardships of the private school sector.[195] Supportive politicians made use of the information and arguments put forth in AEF literature to argue the case for state aid.[196] By the middle of 1964, polls were already showing significant changes in Protestant opinion on state aid, with a May Gallup Poll revealing for the first time that nearly two-thirds of Australians as a whole, and majorities of Anglicans, Presbyterians, and Methodists, supported sharing federal aid between government and church schools.[197]

However, of all the tactics used by the Catholic campaign in the mid-to-late 1960s, none was more successful than the strategy of holding public meetings. Between August 1968 and June 1969, Catholics organized a series of ten meetings, of increasing size, culminating in a mass meeting in Sydney Town Hall in June 1969 that attracted over 5000 people. Typically, these meetings combined elements of confrontation and propaganda. The general format included speeches by politicians defending their party's educational policy, as well as speeches by Catholic spokesmen that highlighted the needs of Catholic schools. The meeting was then thrown open to allow politicians to respond to questions from the floor; cannily, the organizers typically planted questioners armed with pointed questions that clearly illustrated Catholic frustrations on state aid to party spokesmen in the audience beforehand.[198] While politicians were usually happy to use the meetings as an occasion to plead their case to Catholic audiences, SPFF organizers were not shy about issuing veiled threats to coerce attendance. Federal Treasurer and future Prime Minister William McMahon, for instance, was badgered into attending one meeting by an

[192] Hogan, *Catholic Campaign,* p. 87.
[193] Luttrell, "Come to Our Aid," p. 6.
[194] B.A. Santamaria. 1966. *"State Aid" in Perspective.* Melbourne: The Hawthorn Press, pp. 1, 3.
[195] Hogan, *Catholic Campaign,* pp. 120-21.
[196] Hogan, *Catholic Campaign,* pp. 135-36.
[197] Gill, "Federal Science Grant," p. 312.
[198] Hogan, *Catholic Campaign,* pp. 144-45.

organizer who told him, "If you don't arrive on that night, I personally will stand on the platform and say that Mr. McMahon is not interested in the Catholic schools of this electorate."[199]

These meetings were important not only because they vividly illustrated the crisis in the Catholic schools and the passion of Catholic activists to political leaders, but because they helped to create a literal "auction" situation in which Labor and Liberal leaders competed to provide the most compelling promises for state aid to Catholic audiences. Gough Whitlam, who had only recently convinced the ALP to accept state aid, used the town hall meetings as an occasion to sell his new policies to suburban Catholics concerned about the future of their schools. Liberals, for their part, used the forums as occasions to remind voters about their contributions to state aid and promise them further concessions as a means of staying in power.[200] Through these direct competitions before Catholic audience, state aid became solidified as an accepted policy in Australian politics, and the real concessions in terms of funding grew consistently over the late 1960s and early 1970s.

Form and Content: Formalizing Catholic Organization after 1967

Finally, the Catholic campaign, and in particular its clerical wing, influenced the shape and form that state aid eventually took on through its increased organizational activity after 1967. As discussed above, Catholics sought ongoing aid for recurrent expenditures such as staff salaries and teacher training, and they had identified per capita grants as the easiest and most effective means of directly injecting their system with the financial support they so desperately needed. They were to achieve their first key breakthrough in Victoria in 1967,[201] and the direct trading of DLP preference votes was central to their success. In that year, the state government, which the Liberal Party controlled outright without any coalition support, faced an election which threatened to force them into a coalition with the Country Party. DLP politicians, and their patron, Santamaria, sensed an opportunity. Although the DLP refused to allocate its second-preference votes to the ALP, it had no compunctions about allocating them to the Country Party rather than the Liberals. Accordingly, they leaked a story to a Melbourne newspaper hinting that the DLP was planning on changing its second-preference votes from the Liberals to the Country Party. The Premier, Henry Bolte, fumed that the DLP was attempting to "blackmail" him, but ultimately acquiesced, and agreed to introduce per capita grants to primary and secondary independent schools in exchange for DLP votes.[202] The breakthrough in Victoria quickly spread to other states; by June 1968, per capita grants had been enacted or were pending in every Australian state.[203]

Per capita grants were also advanced at the federal level after 1967 thanks to the intensification of lobbying efforts by the Catholic bishops. As politicians began actively seeking out the cooperation of Catholic authorities on state aid in 1967, the bishops decided to create a formal organization, the Federal Catholic Schools Committee (FCSC), to better coordinate negotiations.[204] The formation of the FCSC created an entity which could speak with episcopal authority on the matter of state aid for the first time. They also centralized many of the strategic

[199] Interview, Monica Turner, in Luttrell, *Regaining State Aid,* p. 139.
[200] Hogan, *Catholic Campaign,* pp. 147-48.
[201] The ALP had proposed per capita grants in its 1966 election speech, but did not win the election.
[202] The exact details of this exchange are unclear. For various versions, see Costar, "Was the DLP," pp. 313-14; Santamaria, *Santamaria,* pp. 222-23; Wilkinson et al., *History of State Aid,* p. 36.
[203] See speech of Senator Wright, in Australia. Senate. 1968. *Commonwealth Parliamentary Debates,* 13 June. Canberra: Government Printer, pp. 1740-43.
[204] Hogan, *Catholic Campaign,* pp. 165-66, 175.

functions that had previously been distributed among the diffuse Catholic campaign. One of the tasks entrusted to the FCSC was to make an explicit set of demands and expectations for state aid. At its first meeting, it devised a policy specifying Catholic hopes for state aid. It formally declared that Catholics were aiming for "not the whole, but a substantial proportion of operational costs based on the comparative operational costs of State schools," and that "the most effective way [of doing so]…would be per capita payments to the appropriate educational authority, based on the enrolments of the schools." They also requested capital supports for new buildings and maintaining old ones, as well as subsidies for the cost of training teachers.[205] This statement of policy goals both reflected the focus on equity (rather than strict equality) that had developed in the campaign in the mid-1960s, as well as the desire for per capita grants as the preferred form of state aid.

Armed with these goals, the FCSC entered into negotiations with the federal government. In these negotiations, they were very successful. Political scientist Michael Hogan has argued that, between 1967 and 1972, "Not only did State and Federal governments increase their aid to Catholic schools progressively…but they also gave the aid very largely in was which the Catholic negotiators demanded"—i.e., as per capita grants.[206] In 1969, following deputations by Catholic authorities and the HMC (which had been won over to the idea of recurrent grants in 1967), the Liberal Party introduced a scheme of per capita grants at the federal level for the first time.[207] Although their formulation would be changed on occasion over the years, the recurrent grant issued on a per capita basis remains the primary form of state aid in Australia to this day.[208]

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Thus, the Catholic campaign for state aid, fragmented as it was, played a crucial role in creating the conditions under which state aid could be granted, forcing the issue onto the agenda, and shaping the ultimate form that state aid actually took. In this regard, the campaign was instrumental in transforming a cynical political concession into a durable new secular settlement that brought church and state into closer alignment in education for the first time since the late nineteenth century. That Catholics were able to do this reflected not simply their strategic capacity, however, but also the favorable institutional terrain that they encountered thanks to Australian electoral institutions and partisan coalitional politics. The importance of these institutional factors can be readily seen when the Australian experience is contrasted with the parallel campaign by American Catholics in the postwar era.

ELECTORAL INSTITUTIONS AS CONTEXTS: STATE AID IN COMPARATIVE PERSPECTIVE

The Catholic Campaign for Public Aid in the United States

As in Australia, American Catholics never completely gave up the quest for public aid for their parochial schools, though their efforts were typically locally-oriented in the late nineteenth and early twentieth centuries. In the 1920s, however, statewide campaigns for public aid became

[205] Quoted in Hogan, *Catholic Campaign,* pp. 171-72.

[206] Hogan, *Catholic Campaign,* p. 177. Catholics did not win every concession they asked for, however; as Hogan notes, requests for teacher training subsidies were rejected at both state and federal levels.

[207] Wilkinson et al., *History of State Aid,* p. 41.

[208] Harrington, "Australian Government Funding," pp. 4-5, 7.

more concerted. In a few states, most with large Catholic populations, Catholic pressure convinced state and local governments to make allowances for Catholic schoolchildren to receive health care, textbooks, or rides on public school buses.[209] As discussed in Chapter Five, most of these indirect forms of public aid were challenged in the courts as violations of state constitutional provisions, with mixed results.[210] However, in two cases that reached the Supreme Court, textbooks and transportation were upheld as constitutional under the so-called "child-benefit" theory. According to this theory, the beneficiaries of textbook loans were children (and ultimately the state) rather than the schools.[211] Similarly, transportation to parochial schools was permissible as "public welfare legislation" akin to police protection and sidewalks.[212] These court successes encouraged Catholics to step up their press for public aid, especially for "auxiliary services," at both the state and federal levels.

At the federal level, Catholics had been staunch opponents of all federal education legislation from the late nineteenth century onwards.[213] By the early 1940s, however, their position had begun to soften.[214] In 1944, the Catholic bishops issued a pastoral letter through their main organizational body, the National Catholic Welfare Conference (NCWC), expressing openness to federal aid, provided that it were "equitable to all children…without regard to color, origin, or creed," and that it not "impose in our country federal control of education either in law or practice."[215] Congressional leaders took note of the new Catholic attitude as the drive for a federal educational bill accelerated after World War II. Legislation that would have provided direct or indirect aids to Catholic schools was introduced in 1945, 1947, and 1949. Ultimately, however, all of these bills failed. Those bills providing aid to Catholic schools were sunk by opposition from national educational groups and Protestant separationists, who wanted federal aid to go only to public schools. Catholics, for their part, retaliated by refusing to support any legislation that *failed* to provide at least some supports for Catholic schools; they, too, prevailed upon their supporters in Congress to block alternative public school-only legislation that was sponsored in the two decades following World War II.[216]

This impasse was temporarily broken in 1958, with the passage of the National Defense Education Act (NDEA), which provided long-term low-interest loans to Catholic schools for the purchase of equipment for use in science, mathematics, and foreign language courses.[217] The

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[209] "Catholic Schools and Public Money." 1941. *Yale Law Journal* 50: 917-27, p. 922n.32; Richard J. Gabel. 1937. *Public Funds for Church and Private Schools.* Washington, DC: Catholic University of America, p. 761.

[210] Leo Pfeffer. 1953. *Church, State, and Freedom.* Boston: Beacon Press, pp. 466-68.

[211] *Cochran v. Louisiana State Board of Education,* 281 U.S. 370 (1930), p. 375.

[212] *Everson v. Board of Education,* 330 U.S. 1 (1947), pp. 16, 18.

[213] Patrick W. Carey. 2004. *Catholics in America: A History.* Westport, Conn.: Praeger, p. 96; see also Douglas J. Slawson. 2005. *The Department of Education Battle, 1918-1932: Public Schools, Catholic Schools, and the Social Order.* Notre Dame, IN: University of Notre Dame Press.

[214] Gilbert E. Smith. 1982. *The Limits of Reform: Politics and Federal Aid to Education, 1937-1950.* New York: Garland Publishing, *passim.*

[215] National Catholic Welfare Conference. 1984 [1944]. "Statement on Federal Aid to Education." Pp. 50-51 in *Pastoral Letters of the United States Catholic Bishops.* Vol. 2, *1941-1961,* edited by Hugh J. Nolan. Washington, DC: United States Catholic Conference, p. 50.

[216] On federal education legislation between 1945 and 1950, see generally Frank J. Munger and Richard F. Fenno, Jr. 1962. *National Politics and Federal Aid to Education.* Syracuse: Syracuse University Press; and Smith, *Limits of Reform*. During the 1950s, the religious conflict was subordinated to an escalating series of conflicts over segregation. On the effect of race, see Munger and Fenno, *National Politics and Federal Aid,* pp. 12-13, 68, 134.

[217] Wayne J. Urban. 2010. *More than Science and Sputnik: The National Defense Education Act of 1958.* Tuscaloosa: University of Alabama Press. Although NDEA represented the first major federal concession to

passage of NDEA, along with the election of Catholic John F. Kennedy as President in 1960, gave Catholics hope that further aid might be forthcoming (as it would be in Australia after the passage of the Science Laboratories Act). However, their hopes were dashed when Kennedy refused to countenance any aid to parochial schools. His 1961 federal education bill offered support for teacher salaries and school construction for public schools, but provided no aid to nonpublic schools, "in accordance with the clear prohibition of the Constitution."[218] In response to Catholic protests, Kennedy proposed a second bill expanding the NDEA provisions to include loans for the construction of classrooms to be used for the teaching of a variety of secular subjects.[219] Yet although both bills were ultimately sent out of the Labor and Education Committee, they died in the House Rules Committee, which could not resolve Protestant-Catholic differences over which bill to send up first for a vote.[220] Ultimately, no legislation was passed in 1961, and an attempt to revisit the legislation the following year similarly failed.[221]

Catholics were finally able to score another federal victory in 1965, with the passage of the Elementary and Secondary Education Act (ESEA). ESEA embraced the "child-benefit" theory, and used poor children as its primary funding mechanism, allowing some aid to parochial schools to flow through them.[222] Thus, ESEA provided for a range of services to be provided by public school teachers in private school settings, library books which would be made available to all poor children irrespective of school, and the creation of "supplementary educational centers" that would offer assistance to both public and private school students after hours.[223] However, ESEA only passed by heavily restricting the services that were extended to religious schools. In the end, the supplementary services, instructional materials, and library resources made available to religious schools under the Act had their titles vested in public agencies in uncompromising language.[224] ESEA was the last major Catholic success at the federal level;[225] in sum, their efforts there had yielded them some low-cost loans and indirect access to auxiliary educational supports.

Catholic schools, it passed without controversy, largely because it was presented as an essential national security measure in the wake of the Sputnik crisis.

[218] John F. Kennedy. 1961. "Special Message to the Congress on Education, February 20, 1961." *The American Presidency Project*, edited by Gerhard Peters and John T. Wooley. Accessed 14 December 2011. Available online: http://www.presidency.ucsb.edu/ws/?pid=8433.

[219] Hugh Davis Graham. 1984. *The Uncertain Triumph: Federal Education Policy in the Kennedy and Johnson Years.* Chapel Hill: The University of North Carolina Press, p. 21.

[220] Hugh Douglas Price. 1962. "Race, Religion, and the Rules Committee: The Kennedy Aid-to-Education Bills." Pp. 1-71 in *The Uses of Power: 7 Cases in American Politics,* edited by Alan F. Westin. New York: Harcourt, Brace, & World, pp. 61-64.

[221] Graham, *Uncertain Triumph,* pp. 26-30.

[222] Diane Ravitch. 1983. *The Troubled Crusade: American Education, 1945-1980.* New York: Basic Books, p. 148.

[223] Richard E. Morgan. 1980 [1968]. *The Politics of Religious Conflict: Church and State in America.* 2nd ed. Washington, DC: University Press of America, p. 87.

[224] United States Office of Education. 1965. *"The First Work of These Times…": A Description and Analysis of the Elementary and Secondary Education Act of 1965.* Washington, DC: United States Department of Health, Education, and Welfare, Office of Education.

[225] On the failure of further public aid campaigns from the late 1960s onwards, see generally Lawrence J. McAndrews. 2006. *The Era of Education: The Presidents and the Schools, 1965-2001.* Urbana: University of Illinois Press, ch. 6. In recent years, various voucher and scholarship tax credit programs have been adopted in some states, although the campaign for those programs has not been an exclusively Catholic one. See National Conference of State Legislatures. 2011. "School Choice: Scholarship Tax Credits." Accessed 14 December 2011. Available online: http://www.ncsl.org/?tabid=12950; National Conference of State Legislatures. 2011. "School Choice: Vouchers." Accessed 14 December 2011. Available online: http://www.ncsl.org/Default.aspx?TabId=12942.

Catholics had somewhat greater success in state legislatures during the 1960s. As in Australia, the crisis in Catholic schools deepened in the 1960s, as enrolments skyrocketed and the proportion of lay teachers rose sharply.[226] This challenge was met with increased pressure for greater public subsidies, which yielded significant results, especially in those states with large Catholic populations. During the 1960s, 17 states passed transportation legislation, four states passed textbook laws, and four states provided some other forms of auxiliary supports (for health services, guidance, etc.).[227] More dramatically (and hopefully, for Catholics), eight states—all with large Catholic populations and high Catholic school enrolments—passed laws providing for direct supports for Catholic schools between 1968 and 1971.[228] These laws permitted the state to "purchase" the "secular services" of religious schools by paying them grants to cover teacher salaries, textbooks, or instructional materials in secular subjects.[229] These gains for direct aid were decisively quashed in 1971, however, when the Supreme Court ruled Pennsylvania's and Rhode Island's direct aid plans unconstitutional. In *Lemon v. Kurtzman,* the Supreme Court weighed in definitively against direct public aid, and in a series of decisions over the following decade, against much indirect public aid as well.[230]

In short, the Catholic campaign for public aid in the United States succeeded in gaining only a limited array of indirect concessions from the federal government during the two decades after World War II. At the state level, they gained a considerable number of auxiliary supports in states with large Catholic populations, and even direct aid in some states before the final constitutionalization of public aid in 1971. Yet overall, their successes were quite limited compared with the successes enjoyed by their counterparts in Australia. This was especially so at the federal level, where, after all, Australian Catholics enjoyed their most significant breakthrough in 1963. Why were Australian Catholics able to get state aid through legislative means while American Catholics were not? In the remainder of this chapter, I argue that Australia's institutions facilitated the Catholic campaign. Specifically, I focus on the way that voting systems and political parties freed Australian Catholics from an unfavorable coalition while trapping American Catholics in one; and the relative absence of constitutional limitations placed on Australian Catholics relative to their American counterparts.

The Catholic Campaign in the Electoral System: Voting Systems, Parties, and Coalitional Dynamics

One major reason why Australian Catholics had success in the legislative arena was that Australia's voting and party systems worked together to bolster their political opportunities. As discussed above, Australia's preference-voting system created space for third parties to succeed. This multiparty system, in turn, allowed Australian Catholics to escape the detrimental party coalition that had hampered their quest for state aid since the late nineteenth century, become a political free agent, and ultimately wield outsized influence in Australian politics, contributing to

[226] Frank J. Sorauf. 1976. *The Wall of Separation: The Constitutional Politics of Church and State.* Princeton, N.J.: Princeton University Press, pp. 14-15, 321-22.

[227] Joanne Golding. 1977. "State Aid to Nonpublic Schools: A Legal-Historical Overview." *Journal of Church and State* 19: 231-40, p. 235.

[228] Janet Shedd Foerster. 1971. "Public Aid to Nonpublic Education." Report to the President's Commission on School Finance, October 1971, pp. 11-12; Sorauf, *Wall of Separation,* pp. 327-28.

[229] Joseph Richard Preville. 1992. "Constitutional Quarrels: Roman Catholics, Jews, and the Aftermath of *Lemon v. Kurtzman.*" *Catholic Historical Review* 78(2): 217-31, p. 221.

[230] *Lemon v. Kurtzman,* 403 US 602 (1971); *Committee for Public Education and Religious Liberty (PEARL) v. Nyquist*, 413 US 756 (1973); *Meek v. Pittinger,* 421 US 349 (1975); *Wolman v. Walter,* 433 US 229 (1977).

the reintroduction of state aid there. By contrast, the first-past-the-post, plurality voting system in the United States created strong institutional incentives toward a two-party system. The reduction of politics to two parties, in turn, reduced Catholics' political opportunities. Catholics were aligned with Southerners in the Democratic Party at midcentury, a coalition which was exceedingly unfavorable to Catholics on the issue of public aid. Because Southerners regularly voted against public aid proposals, Catholics were unable to move legislation despite Democratic control of Congress and the White House for much of the postwar era.

Catholics were a major piece of the Democratic Party's "New Deal" coalition that dominated American politics from 1933 through 1980. Catholics (and other non-Protestant immigrants) were first incorporated into the Democratic Party in the late nineteenth century through the political machines of major Northern cities.[231] The groundbreaking 1928 presidential candidacy of Catholic Al Smith helped to cement Catholic attachments to the Democratic Party; by the 1930s, "Catholic voters were more heavily Democratic than in the 1920s or in Woodrow Wilson's 1910s."[232] By 1960, Catholics made up nearly one-quarter of the Democratic congressional delegation, and 86% of all Catholic congressmen were Democrats.[233] Yet Catholics were not the only component of the Democratic Party, however. The largest single Democratic constituency was white Southerners.[234] The "Solid South" moved en masse to the Democratic Party in the wake of the Civil War and Reconstruction in the 1870s, and from 1876 to 1965 Southerners dominated the party.[235] Over the first three decades of the twentieth century, the Democratic Party was known informally as the "party of the South;" Southerners comprised nearly two-thirds of the party, and even after 1933 over 40% of Democrats hailed from the white South.[236]

This tenuous coalition of religious outgroups and an aggrieved regional minority created a particularly fractious partisan situation in the mid-twentieth century. While Southerners and Catholics could join forces on many economic matters (such as the New Deal), the coalition fell apart when faced with issues with a strong sectarian dimension. This was especially true on the question of public funds for parochial schools. Southern Democrats represented an overwhelmingly Protestant constituency that was strongly committed to the principle of separation of church and state as it was understood in the nineteenth century.[237] Thus, even though Southern politicians were often vocal champions of federal aid to education, they were

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[231] See, e.g., Steven P. Erie. 1988. *Rainbow's End: Irish-Americans and the Dilemmas of Urban Machine Politics, 1840-1985.* Berkeley: University of California Press, *passim*.

[232] Michael Barone . 2003. "Franklin D. Roosevelt: A Protestant Patrician in a Catholic Party." Pp. 3-10 in *FDR, The Vatican, and the Roman Catholic Church in America, 1933-1945,* edited by David B. Woolner and Richard G. Kurial. New York: Palgrave MacMillan, p. 7; see also A. James Reichley. 1985. *Religion in American Public Life.* Washington, DC: Brookings Institution, p. 222.

[233] John H. Fenton. 1960. *The Catholic Vote.* New Orleans: The Hauser Press, pp. 87-89.

[234] Other important members of the New Deal coalition included the working class, blacks, and Jews. See Harold W. Stanley and Richard G. Niemi. 2006. "Partisanship, Party Coalitions, and Group Support, 1952-2004." *Presidential Studies Quarterly* 36(2): 172-88, p. 172.

[235] Nicol C. Rae. 1994. *Southern Democrats.* New York: Oxford University Press, p. 10; see also V.O. Key, Jr. 1949. *Southern Politics in State and Nation.* New York: Alfred A. Knopf, pp. 315-82.

[236] Ira Katznelson, Kim Geiger, and Daniel Kryder. 1993. "Limiting Liberalism: The Southern Veto in Congress, 1933-1950." *Political Science Quarterly* 108(2): 283-306, p. 284.

[237] As discussed in Chapter Five, Protestants and Other Americans United drew much of its support from the South and was dominated at midcentury by Southern Baptists, Southern Presbyterians, and evangelicals. See Sarah Barringer Gordon. 2007. "'Free' Religion and 'Captive' Schools: Protestants, Catholics, and Education, 1945-1965." *DePaul Law Review* 56: 1177-1220, p. 1200; Morgan, *Politics of Religious Conflict,* p. 52.

often "compelled by their Protestant constituencies to vote against bills that included church schools."[238] These divisions help explain why, despite Democratic political dominance from 1933 to 1980,[239] the party was unable to pass any substantial federal aid to education until 1965, and no direct aid to Catholic parochial schools. In brief, Catholics were locked into an unfavorable partisan coalition with Southerners who were antagonistic to their public aid campaign.

Three features of the American electoral system helped to stabilize this fractious coalition: plurality voting, the electoral college, and an independent executive. In the American plurality-voting system, the top vote-getter wins an election irrespective of how many votes he or she receives. No fringe benefits accrue to runners-up, as can happen to minor parties in a preference-voting system, where second-preference votes can become a valuable political asset. This helps to create a perception among voters that votes for third parties are "wasted" votes. Moreover, while third parties might be able to win some local seats where their voters were particularly concentrated, they stand virtually no chance at the state or national level. The electoral college system of electing a president dilutes the potential power of geographic concentration, and strongly encourages the perpetuation of a two-party system for the purposes of national electoral competitiveness. Finally, because the American President is elected independently from the legislature and is thus not dependent upon its support, there is greater room within parties for disagreement and less incentive toward party discipline. Thus, as Lipset and Marks observe, "Because of the enormous pressure toward party consolidation exerted by the electoral system, factional coalitions have always taken place within, rather than between, political parties."[240]

In the two-party American system, Catholics had few options if dissatisfied with their political situation, since the Republican Party remained the party of the Protestant Establishment, and the prospects for a third party were quite grim. However, Catholics were not particularly interested in leaving the Democratic Party at midcentury. Unlike Australia, where anticommunism had been the crucial issue that drove a wedge between Catholics and socialists, anticommunism actually had a unifying effect on the Democratic coalition. During the postwar decades, the Cold War catapulted anticommunism into a hegemonic position in American politics.[241] The hegemony of anticommunism meant that communism did not become a salient political issue that threatened to destabilize the Democratic coalition.[242] On the contrary, it helped to strengthen it, because both Southerners and Catholics were among the most ardent anticommunists in the country. Evangelical Protestants were strong in the South, and they had a long tradition of opposition to political and economic radicalism. The Southern Baptist Convention declared in 1938 that there was "no room" for "radical Socialism" or "atheistic Communism" in the United States,[243] and evangelical leaders were vocal opponents of

[238] Irving Bernstein. 1991. *Promises Kept: John F. Kennedy's New Frontier.* New York: Oxford University Press, pp. 221-22.

[239] Democrats controlled both houses of Congress for all but four years between 1933 and 1980 (excepting only 1947-49 and 1953-55), and controlled both Congress and the Presidency from 1933-47, 1949-53, and 1961-69.

[240] Seymour Martin Lipset and Gary Marks. 2000. *It Didn't Happen Here: Why Socialism Failed in the United States.* New York: W.W. Norton & Company, pp. 45, 49, 65-66 (quote p. 49).

[241] M.J. Heale. 1991. *American Anticommunism: Combating the Enemy Within, 1830-1970.* Baltimore: The Johns Hopkins University Press, p. 167.

[242] Paul Blanshard. 1960. *God and Main in Washington.* Boston: Beacon Press, p. 106.

[243] Quoted in Heale, *American Anticommunism*, p. 118.

communism during the postwar years.[244] Catholics, too, were among the most vigilant anticommunists in the country. Catholic officials early on opposed the establishment of diplomatic relations with the Soviet Union in 1933,[245] and the Catholic hierarchy issued a regular series of pastorals in the 1940s and 1950s decrying communism.[246] In fact, Catholics' reputation for staunch anticommunism was so strong during the 1950s, that Daniel Patrick Moynihan once quipped that, during the Cold War, Fordham men checked the anticommunist and patriotic credentials of Harvard men.[247]

Anticommunism also failed to play a disruptive role in the Democratic Party because labor was both less important to the party, and less radical, than it was in Australia. Whereas the Australian Labor Party was a true labor party, where trade unions had direct input into party decision-making, the Democratic Party was not. Further, socialism was relatively weak in American unions. The largest labor organization, the American Federation of Labor (AFL), was "conservative, loath to strike, respectable, and impervious to radicalism in any form."[248] Although communists made some small inroads into the Congress of Industrial Organizations (CIO), in the 1930s,[249] the advent of the Cold War quickly snuffed out any incipient radicalism in the unions. The passage of the Taft-Hartley Act, which required union officials to sign an affidavit declaring that they were neither Communist Party members nor sympathizers, or else be denied the services of the National Labor Relations Board;[250] and communist support for Henry Wallace's disastrous third-party Progressive presidential campaign in 1948, convinced the CIO to pass a resolution barring communists from the CIO executive board, and purge those union officials who failed to toe the line.[251] By 1949, radicalism had been successfully routed from the labor movement in favor of the Cold War's anticommunist orthodoxy.

If Catholics felt ideologically at home in the Democratic Party thanks to its rejection of communism, they were further drawn to it by the nomination of John F. Kennedy for President in 1960. Catholic support for their fellow Catholic, Kennedy, meant that—far from becoming a political free agent—Catholics voted Democratic at an unusually high rate in the 1960 election.[252] However, Kennedy was unable to champion public aid to parochial schools precisely *because* he was a Catholic. Kennedy feared that the fate of future Catholic candidates hinged on his performance in office. He was particularly concerned that granting concessions to the Catholic Church would confirm the worst suspicions Protestants harbored about Catholic politicians, and be held against any future Catholic candidate.[253] Accordingly, Kennedy so

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[244] Heale, *American Anticommunism,* pp. 170-72.

[245] George Q. Flynn. 1976. *Roosevelt and Romanism: Catholics and American Diplomacy, 1937-1945.* Westport, CT: Greenwood Press, pp. 137-38.

[246] See generally Hugh J. Nolan, ed., *Pastoral Letters of the United States Catholic Bishops.* Vol. 2, *1941-1961.* Washington, DC: United States Catholic Conference.

[247] Charles R. Morris. 1997. *American Catholic: The Saints and Sinners Who Built America's Most Powerful Church.* New York: Times Books, p. ix.

[248] Douglas P. Seaton. 1981. *Catholics and Radicals: The Association of Catholic Trade Unionists and the American Labor Movement, from Depression to Cold War.* Lewisburg, PA: Bucknell University Press, p. 21.

[249] Ellen Schrecker. 2004. "Labor and the Cold War: The Legacy of McCarthyism." Pp. 7-24 in *American Labor and the Cold War: Grassroots Politics and Postwar Political Culture,* edited by Robert W. Cherny, William Issel, and Kieran Walsh Taylor. New Brunswick, NJ: Rutgers University Press, p. 8.

[250] Schrecker, "Labor and the Cold War," pp. 10-11.

[251] Heale, *American Anticommunism,* pp. 141-48.

[252] Jeff Manza and Clem Brooks. 1997. "The Religious Factor in U.S. Presidential Elections, 1960-1992." *American Journal of Sociology* 103(1): 38-81, pp. 65-67.

[253] Theodore C. Sorensen. 1965. *Kennedy.* New York: Harper and Row, p. 358.

adamantly opposed any concessions to Catholic schools that the Commissioner of Education, Francis Keppel, remarked that Kennedy "was the most Protestant president I ever saw on this issue."[254] Although Kennedy's obdurate defense of church and state successfully helped to defuse Protestant fears of Vatican control,[255] it nevertheless came at the price of public aid for Catholic schools.

Thus, the way parties sorted Catholics into and out of political coalitions made their demands more or less attractive to politicians. In Australia, anticommunism split the Labor Party, transforming Catholics into a swing constituency whose votes and issues the major parties competed over. In the United States, by contrast, Catholics remained tightly linked to a party whose internal composition served as a continual drag on Catholic ambitions regarding funding for their schools. The Cold War and the election of John F. Kennedy strengthened Catholics' attachment to the Democratic Party, but at the price of weakening their ability to obtain funding.

The Constitutional Context of the Catholic Campaign

A second set of institutional constraints that hampered American but not Australian Catholics were not electoral institutions, but rather courts and constitutions. Just as the courts provided limited assistance for Australian strict secularists opposed to religious education, they also provided limited obstacles to Australian Catholics pursuing state aid. The question of constitutionality played only a minor role in discussions of state aid in Australia before 1963, thanks to the absence of High Court jurisprudence on the matter. Accordingly, Catholics were typically able to ignore or dismiss constitutional concerns respecting establishment.[256] After the introduction of the Science Laboratories legislation in 1964, the constitutionality of state aid (by the federal government) became more central to opponents' arguments, and the eventual court challenge by the Defence of Government Schools organization placed the constitutional question squarely in the center of the debate from the late 1960s through the 1970s.[257] These more regular references to constitutionality had an effect on the Catholic campaign, but only after the crucial breakthrough had already been accomplished. Consequently, the issue of constitutionality did not encourage Catholics to place limits on their claims. It did, however, encourage them to support particular formulations for funding; part of the reason that Catholics strongly favored per capita grants was their belief that that funding mechanism provided a buffer against potential constitutional challenges under section 116.[258]

In the United States, by contrast, constitutional issues loomed large over the Catholic campaign from the start, and shaped both the demands and the prospects for aid in the postwar years. The Supreme Court's initiation of Establishment Clause jurisprudence in 1947

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[254] Francis Keppel, quoted in Bernstein, *Promises Kept,* p. 244.

[255] Thomas J. Carty. 2004. *A Catholic in the White House? Religion, Politics and John F. Kennedy's Presidential Campaign.* New York: Palgrave MacMillan, p. 159.

[256] E.g., Santamaria, *Santamaria,* p. 217. In fact, Catholics were more likely to spend time defending the constitutionality of federal aid to education more generally. Menzies and other politicians uniformly cited the Australian Constitution as a barrier to federal involvement in education right up to 1963, but Catholics argued that the federal government could make grants to the states under section 96 of the Constitution. In fact, in his pamphlet *Equality in Education,* Santamaria devoted far more space to arguing the constitutionality of federal aid under section 96 than he did to arguing the constitutionality of state aid under section 116. See Santamaria, *Equality in Education*, pp. 5, 19-21.

[257] See above, Chapter Five.

[258] See, e.g., The Central Commission of the Catholic Bishops of Australia, "Statement on Government Financial Assistance to Independent Schools," 30 May 1973. SRNSW, K283933 – 73/47084; and Interview, Margaret Slattery, in Luttrell, *Regaining State Aid,* p. 111.

supercharged longstanding arguments about "separation of church and state" with weighty constitutional significance. Yet the *Everson* decision itself, while affirming a strict separationist definition of the Establishment Clause, also ruled that a transportation program in New Jersey passed constitutional muster. Accordingly, a relatively ambiguous constitutional climate on the question of public aid persisted until the court firmly ruled against public aid in 1971's *Lemon* decision. Although the majority of legal scholars understood, along with eminent constitutional scholar Anson Phelps Stokes, that "laws permitting…grants [to parochial schools] of passed would be declared unconstitutional,"[259] Catholic jurists and other scholars were quick to develop arguments that interpreted *Everson* in a much more permissive light. Supporters of public aid argued, *inter alia,* that "child benefit" and "public welfare" arguments could be extended to a variety of other appropriations, including grants, scholarships, and tuition subsidies; that Justice Black's famous "No tax" proclamation was simply "dicta" not binding upon the Court; and that the actual findings in favor of textbooks and transportation suggested that the Court was, in practice, open to public aid.[260] By the early 1960s, many constitutional scholars viewed the constitutionality of public aid as an open question.[261] As University of Chicago Law Professor Philip Kurland concluded in 1962, "Anyone suggesting that the answer, as a matter of constitutional law, is clear one way or the other is either deluding or deluded."[262]

While these ambiguities provided a constitutional opening for Catholic claims, the intense debate around constitutionality also indirectly shaped the political context in which the Catholic campaign was waged in ways detrimental to the American Catholic case, even before the *Lemon* decision resolved the constitutional ambiguity in 1971. For starters, the *Everson* decision encouraged Catholics to scale back their claims for public aid. Seeing that the Supreme Court had assented to transportation and textbook subsidies, Catholics focused their campaigning on these "auxiliary services" under the child-benefit theory, rather than for more general programs of aid.[263] In 1949, the chair of the NCWC's education department (and Archbishop of

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[259] Anson Phelps Stokes. 1950. *Church and State in the United States.* Vol. II. New York: Harper & Brothers, p. 729. For other prominent analyses that reached similar conclusions, see also Fred F. Beach and Robert F. Will. 1958. *The State and Nonpublic Schools, with Particular Reference to Responsibilities of State Departments of Education.* Washington, D.C.: United States Department of Health, Education, and Welfare, p.15; Virgil C. Blum. 1958. *Freedom of Choice in Education.* New York: MacMillan, pp. 23; Leo Pfeffer. 1948. "Religion, Education, and the Constitution." *Lawyers' Guild Review* 8: 387-399, p. 387; and Allanson W. Willcox, "Memorandum on the Impact of the First Amendment to the Constitution upon Federal Aid to Education," 28 March 1961. Reprinted in United States. House of Representatives. 1961. *Congressional Record.* Washington, DC: Government Printer, 87th Congress, First Session, 107(4): 5382-89, p. 5382.

[260] See, e.g., National Catholic Welfare Conference. 1962. "The Constitutionality of the Inclusion of Church-Related Schools in Federal Aid to Education: The Roman Catholic Viewpoint." *Journal of Church and State* 4(2): 159-65; James M. O'Neill. 1951. "Address of Dr. James M. O'Neill." Pp. 32-41 in *Public Aid to Parochial Education: A Transcript of a Discussion on a Vital Issue.* Cambridge: Harvard Law School Forum; Arthur Sutherland, in United States. House of Representatives. 1961. *Congressional Record.* Washington, DC: Government Pritner, 87th Congress, First Session, 107(50): A2026-A2029; Speech of Senator Keating, 24 April 1961, in United States. Senate. 1961. *Congressional Record*. Washington, DC: Government Printer, 87th Congress, First Session, 107(5): 6591-94

[261] In his testimony before the Senate Subcommittee on Education, NCWC representative Lawrence X. Cusack cited a litany of Protestant constitutional lawyers who saw public aid as potentially constitutional, including Mark DeWolfe Howe, Arthur Sutherland, Wilber G. Katz, and Paul G. Kauper. See Lawrence X. Cusack, in United States Senate. 1963. *Education Legislation – 1963.* Subcommittee on Education, Committee on Labor and Public Welfare, Report 98-466, 88th Congress, First Session, Vol. III. Washington DC: Government Printer, p. 1799.

[262] Philip B. Kurland. 1962. *Religion and the Law: Of Church and State and the Supreme Court.* Chicago: Aldine, p. 111.

[263] Smith, *Limits of Reform,* p. 175.

Baltimore), Francis P. Keough, declared, "All we want for our children are just the necessary services where they are now difficult to get—a textbook, a bus ride, some medical and dental aid. We don't want anyone to build our schools. We don't want a penny for the salaries of our teachers."[264] This delimited approach characterized the Catholic campaign throughout the 1950s.[265] Only as the crisis in the parochial schools deepened in the early 1960s did Catholics again begin to demand more substantial concessions.[266] Thus, the American Catholic campaign had considerably more qualified demands than did the Australian campaign, especially during the debates over federal aid between 1947 and 1961.

Second, the constitutional question directly affected the position taken by America's first Catholic president, John F. Kennedy. Kennedy's Catholicism was a major issue in the 1960 campaign, and many Protestants were deeply suspicious that a Catholic president would undermine the separation of church and state.[267] Accordingly, Kennedy was obliged to tread a firm separationist line. He repeatedly met with Protestant audiences in an attempt to prove his separationist bona fides,[268] most famously in a September 1960 speech to the Greater Houston Ministerial Association, where he flatly declared, "I believe in an America where the separation of church and state is absolute…where no church or church school is granted any public funds or political preferences."[269] The need to oppose public aid was the price Kennedy paid to become the first Catholic president, but it created great difficulties for the Catholic campaign for public aid during his presidency. Thus, American Catholics ran into constitutional difficulties both directly (in terms of the *Lemon* decision), and indirectly (in terms of the way the Establishment Clause affected their goals and political prospects).

CONCLUSION

Australian Catholics successfully obtained state aid through legislative means in the 1960s and 1970s for a number of reasons. The timing was right, thanks to ecumenical trends in the religious field; and resistance to state aid softened relatively easily, since it was tied more to legislative tradition than to binding constitutional interpretation. But Catholics were also successful in no small part because they were able to leverage partisan coalitions and electoral institutions to their advantage. The Labor Party split made Catholics into political free agents, whose votes became a sought-after commodity. That Catholic votes were so valuable owed much to Australia's preference-voting system. Despite its small size, the Democratic Labor Party, through the disciplining of its second-preference votes, was able to wield outsized influence. The Catholic campaign for state aid which developed in the 1960s acted strategically to maximize their position and to take advantage of the remarkable political opportunity that the Labor schism

[264] Quoted in *New York Times.* 1949. "Advised to Recast Catholic Curricula." 18 February, p. 18. See also similar comments by Cardinal Spellman in the wake of his spat with Eleanor Roosevelt, quoted in Douglas S. Dales. 1949. "Cardinal Gives School Ideas; 'Fair,' Says Mrs. Roosevelt." *New York Times*, 6 August, pp. 1ff, p. 10.

[265] See, e.g., William E. McManus. 1955. "A Catholic View on Aid to Schools." *U.S. News and World Report* 39 (Dec. 16): 121-122; and Neil G. McCluskey. 1959. *Catholic Viewpoint on Education*. Garden City, NY: Hanover House, pp. 168-76.

[266] See, e.g., National Catholic Welfare Conference, "Constitutionality of the Inclusion."

[267] Carty, *Catholic in the White House*, pp. 58-63.

[268] Shaun A. Casey. 2009. *The Making of a Catholic President: Kennedy vs. Nixon 1960.* New York: Oxford University Press, p. 17.

[269] John F. Kennedy. 1998 [1960]. "John F. Kennedy: 'Remarks on Church and State,' Delivered to the Greater Houston Ministerial Association, September 12, 1960." Pp. 140-43 in *A Wall of Separation? Debating the Public Role of Religion*, edited by Mary C. Segers and Ted G. Jelen. Lanham, MD: Rowman and Littlefield, p. 140

and ecumenical zeitgeist provided them. Shrewd politicians like Robert Menzies and Henry Bolte granted state aid in calculated bids to gain Catholic votes, but Catholics put themselves in a position to benefit through their sustained campaign for state aid and their savvy manipulation of Australia's electoral institutions.

Chapter Seven

Conclusion

INTRODUCTION

By 1975, the new twentieth-century settlements had solidified in each country. Australia's system of public funding for religious schools, and America's strictly secular public schools, had become more or less accepted as the law of the land, despite ongoing legal and administrative challenges. Yet as taken-for-granted as these arrangements can seem today, they reflect the sedimentation of multiple and longstanding political processes, as well as the unmistakable imprint of each country's peculiar political institutions.

In this conclusion, I return to the questions posed at the beginning of the dissertation. I revisit the political-institutional approach that has guided this dissertation, pointing out its advantages vis-à-vis the four dominant approaches to secularization outlined in Chapter One. I then turn my focus to what this study can tell us about religion and education in the United States more broadly. I argue that the focus on political institutions I have maintained in this study contributes to our understanding of the persistence of conflict over religion in American education, and also helps to explain the puzzling paradox of how a country as pious as America can have such a secular educational system. Finally, I consider what the future might hold for America's contemporary secular settlement. Reviewing the political, legal, and institutional developments that pose challenges to the status quo, I consider to what extent the United States may be moving toward a more "Australian-style" settlement, and whether such a development would promise to be any less discordant than the current one.

REVISITING THE POLITICAL-INSTITUTIONAL APPROACH TO SECULARIZATION

I began this study by laying out the theoretical stakes motivating this analysis, presenting my political-institutional approach as a contrast to, and improvement over, four traditional approaches to the study of secularization. The political-institutional approach I advance here has several advantages over these approaches. To begin, it provides a lens that makes sense of a wider array of historical details, providing a more accurate accounting of the development of the secular settlements in each country. Further, it has done this while still allowing us to identify common political processes that have been central to the development of each nation's different settlements. The two cases are not idiosyncratic, but rather display important continuities that reflect the patterned nature of secularization, and indeed of the fate of religion in the modern world. Through a focus on politics and institutions, the two cases, different as they are, speak to one another, and potentially to other cases beyond the scope of this study. It is thus worthwhile to specify the advantages that this approach has over the other four models.

The modernization approach, which attributes secularization to broad macrostructural shifts, would have predicted more secular policies emerging alongside economic growth. Thus, it cannot explain the return of state aid in Australia in the 1960s, which occurred during a period of rapid economic expansion and industrialization. The modernization approach fails in large part because it pays insufficient attention to agency, and therefore attributes to "modernization" what should properly be attributed to political processes advanced by interested agents. For example, economic development *per se* does not lead to secularization, but it can (and, in both countries, did) lead to increased immigration (and hence religious diversity) and an expanded system of higher education (part of the professional infrastructure), as discussed in Chapters Three and Four above. These social and institutional transformations, in turn, encouraged two secularizing

political processes, religious conflict and professionalization, which were the actual drivers of secularization. The political-institutional approach thus improves on the modernization approach by bringing politics—as filtered through institutional contexts—into the equation.

Relative to the *ancien régimes* approach, on the other hand, the advantage of the political-institutional approach lies more in its focus on a wider array of institutions. The *ancien régimes* approach, which attributes secularization to the presence or absence of an established church, cannot distinguish between our two cases, neither of which truly featured an established church. Further, this approach would have predicted a fair degree of continuity after disestablishment, something we do not see; on the contrary, we see a multiplicity of and dramatic variation in secular settlements over the past two hundred years in both countries. By reintroducing political institutions into the equation, however, this approach becomes more germane to our cases. The absence of an *ancien régime* was *one* essential institutional condition, but only one among many, and not a determinative one for the purposes of this comparison. By broadening our purview to examine other political institutions besides an established church, however, we introduce a sufficient degree of variation (and sites for contestation) to allow us to explain the difference between the two countries, both comparatively in the present and internally throughout the past.

The rational choice approach, which attributes secularization to the self-interested calculation of political actors, simply asserts that secularizing actors are inspired by a particular, delimited set of interests, rather than inquiring into them. While these assertions are sometimes applicable—they do a good job of explaining the action of Australian politicians in the 1960s, for instance—they just as often fail to explain the behavior of other actors, motivated by different concerns. This is particularly so for the United States. In some cases, the argument totally fails: The reaction of American mainline Protestants—dominant at midcentury—to the Supreme Court's rulings, for instance, is inexplicable in terms of those groups' self-interest, as the rational choice approach would have predicted. At other times, they reduce a complex set of motivations to the singular pursuit of power: Kennedy's stance on public aid, for instance, did reflect his own political interests, but it was just as powerfully influenced by group solidarity and concern for the electoral prospects of *future* Catholic candidates. And still other essential actors, such as Supreme Court justices, who have reached the pinnacle of their profession and are insulated from political pressures, appear not to fit into the scheme whatsoever. The utter diversity of motivations and positions that manifest over the course of American history are largely unintelligible according to the rational choice approach.

What these lacunae suggest is that the motives and interests behind changes in secular settlements are something that should be interrogated, rather than accepted a priori according to rational-choice criteria. It turns out that closer attention to political institutions can help here as well. While not all motives are influenced by institutions—for instance, the complex positions taken by Kennedy and mainline Protestants owe more to group allegiance, legitimacy, and theological change than to institutional effects—some are. For instance, Supreme Court justices' decisions were shaped by their emerging identity as protector of individual rights, a development that was shaped by transformations internal to the legal system itself. Further, institutions can help to explain the very "self-interested" motives that are presumed to motivate all political actors; Menzies' shift to support for state aid, for instance, was spurred by the tenuous political position he found himself in thanks to party dynamics in the Australian legislature. Institutions can thus help us better explain the motives and positions-taking of those political actors advancing secular settlements, whether those motives are overtly self-interested or not.

Finally, there is the secular movements approach, which focuses on opportunities and resources available to strategic campaigns by secularizing actors. There is much to commend this approach, yet there are reasons why a political-institutional approach gives additional leverage. The first has to do with motivations. The idea of a "secular movement" suggests organized and concerted action toward a particular, secular goal. While this is a common dynamic, this study also indicates that we should be wary about imputing too much strategy to secularizing actors. Not all actors deliberately set out to reduce the power and influence of religion; administrators in New South Wales, for instance, were animated to no small degree by the desire to manage religious controversies that impinged on the smooth functioning of the educational bureaucracy. Their decisions created a degree of secularization largely as a byproduct of their attempts to attain this goal. In short, we should be careful not to assume that all action that leads to secularization is necessarily strategic. By taking institutions seriously, not simply as targets for campaigns but as sites populated with actors with institutionally-derived interests, these less strategic motives become more evident.

The political-institutional approach also has an advantage in that it is better suited for cross-national comparison. While the secular movements approach is well designed for explaining why particular secularizing campaigns succeed or fail, it is somewhat less useful for explaining cross-national variation in secular settlements. The secular movement theory treats political opportunities largely as the product of the weakness of the dominant, oppositional regime.[1] Yet for comparative purposes, it makes sense to think of political opportunities more in terms of variations in the formal structures of political power—i.e., institutions.[2] Indeed, European social movement scholars have often looked to political institutions to help explain cross-national variation in social movement outcomes and characteristics,[3] so introducing a greater focus on institutions is in some respects a natural complement to the secular movements approach. Political institutions are in this respect *essential contexts* that help to explain the success or failure of political action in cross-national perspective, and should be treated not simply as targets or mechanisms of secularization, but as an integral part of the political opportunity structure.

In sum, the focus on political institutions that the political-institutional approach brings to bear provides essential contextual information that supplements and bridges the various existing approaches, ultimately allowing us to better explain cross-national variation in secular settlements. It combines a focus on agency with a rigorous structural analysis that yields greater explanatory power than any of these four existing approaches alone. In so doing, it provides comparative leverage, helps generate analyses that can encompass the full array of motives evident from the historical record, and can even help explain the emergence of key secularizing actors and how their motivations came to be constituted.

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[1] See, e.g., Christian Smith. 2003. "Introduction: Rethinking the Secularization of American Public Life." Pp. 1-96 in *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life.* Berkeley: University of California Press, p. 61.

[2] Doug McAdam, John D. McCarthy, and Mayer N. Zald. 1996. "Introduction: Opportunities, Mobilizing Structures, and Framing Processes—Toward a Synthetic, Comparative Perspective on Social Movements." Pp. 1-20 in *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings.* New York: Cambridge University Press, p. 17.

[3] McAdam et al., "Introduction," pp. 3, 12, 17; see also Hanspeter Kriesi. 2004. "Political Context and Opportunity." Pp. 67-90 in *The Blackwell Companion to Social Movements,* edited by David A. Snow, Sarah A. Soule, and Hanspeter Kriesi. Malden, MA: Blackwell Publishing, pp. 70-71.

How Do Political Institutions Affect Secularization?

Political institutions work in two primary ways to shape the course of secularization: by distributing power unequally among actors, thereby providing essential mediating contexts that shape those actors' strategic decision-making; and by actively constituting secularizing (and anti-secularizing) actors by shaping their identities and worldviews, and even helping call them into existence.

The most straightforward way that institutions affect secularization is by shaping the terrain of political contestation, tilting it in ways that favor certain actors over others. Two facets of this dynamic stand out in this study: institutions' impact on political access and on political coalition dynamics. First, political institutions in the United States and Australia varied dramatically in the extent to which they were accessible to groups outside the Protestant establishment, creating divergent opportunities for those actors to pursue and obtain their goals. American administrative and legal institutions were far more accessible to minority claimants than were Australian ones. The localized administrative system in the United States magnified the importance of religious diversity, and encouraged both compromise and conflict. Local concentrations of religious minorities could make credible claims on these smaller administrative bodies that they could not have made in a more centralized system, where their power would be diluted. What emerged was a great diversity of policy, much of which exhibited sensitivity to religious difference through the exclusion of nonconsensual religious practices such as Bible reading. Similarly, the American legal system, thanks to its constitutional parallelism and doctrine of taxpayer standing, afforded more opportunities for religious conflict to be played out in the courts. America's legal institutions thus provided both more resources and more points of entry for litigants than did the more restricted Australian legal system. More accessible political institutions permitted more challenges to the nineteenth century secular settlement, and generated a greater number of opportunities to mobilize localized pockets of opposition, both of which ultimately sped secularization.

Second, political institutions shaped the dynamics of political coalitions in ways that furthered or hindered attempts to transform the nineteenth century settlement. Political parties bundled Catholics in the two countries into or out of coalitions with hostile partners, while electoral institutions created space (or foreclosed opportunities) for Catholics to pursue their interests independently. Variations in electoral institutions, therefore, shaped the dynamics of political coalitions in ways that dramatically enhanced the power of Catholics in Australia, while limiting it in the United States.

These contextual dynamics are important, but far from the whole story. Political institutions are more than just a contextual factor, facet of the political opportunity structure, or black box processing the exogenous demands of political actors. They are themselves resources, actively cultivated and manipulated by actors to enhance their prospects. More crucial still, they actively help to constitute some of the actors most responsible for secularization.

While institutions may provide generally favorable terrain, they are also actively and deliberately cultivated by secularizing actors to enhance their favorability. One sees this, for instance, in the way that American Jews and civil libertarians used strategic litigation campaigns in the postwar era to build a novel jurisprudence of strict separation. They thus not only took advantage of the favorable terrain (accessible legal institutions), but they also transformed that terrain into a dominant policymaking instrument through the cultivation of strict separation jurisprudence in the late twentieth century. One sees a similar dynamic in Australia, where Catholics actively manipulated the second-preference vote system to enhance their political

power in the multiparty Australian system. Again, although the terrain of electoral institutions was favorable to them, the actions they took to maximize its utility transformed the nature of second-preference voting, turning it into a potent political weapon after 1955.

Finally, and most importantly, political institutions actively assist in constituting some of the very actors who advance secularization. These groups are not merely exogenous forces influencing events, they are the creatures of those political institutions themselves. This is clearly evident in the United States, where civil libertarians, Jews, and professional educators—all of whom were among the most important advocates of more secular policies—in many respects formed in response to dynamics unleashed by America's political institutions. The positions taken by civil libertarians and Jews were thoroughly shaped by the cultural dominance of the American constitution, and the strong belief that "separation of church and state" was an essential feature of American society. That civil libertarians were a negligible force in Australia, and that Jews there were not ardent defenders of strict separation, speaks to the importance that the First Amendment had upon the development both of secularizing groups and the motives and position-takings of already-existing collectivities.

The professionalization (or lack thereof) of educators in Australia and the United States provides perhaps an even better example. America's weak state administrative bodies and strong local school boards created strong personal career incentives that encouraged educational professionalization in the mid-nineteenth century, and which helped spawn generations of educational leaders in the late nineteenth and early twentieth centuries. In Australia, where those administrative positions had different degrees of authority or did not exist, leadership and professionalization were much weaker. Educators in Australia thus did not develop into an important, autonomous force in educational policymaking in Australia before 1960. Perhaps more striking yet, the state encouraged teachers to adopt very different conceptions of the goals they sought to attain in their professional associations. In the United States, a professional orientation, encouraged by weak state administrators, encouraged attention to curricular and pedagogical reforms; while in Australia, an industrial orientation, encouraged by the presence of strong public service regulations, discouraged such attention in favor of a focus on working conditions. In this respect, the institutional structure of the state helps to explain variation in teachers' *interests,* which in turn helps to explain why expert knowledge was differentially incorporated into policy, and why teachers' political involvement varied in those two countries.[4]

This constitutive aspect is important because analyses that take the existence of these groups for granted miss an important part of the story. It is true that professional educators, civil libertarians, and Jews were strong proponents of strict separation in the United States. But their interests had been molded in the forge of administrative and legal institutions in unique ways that did not preexist those institutions. Those key groups were in fact partially created by political institutions.

Varieties of Secularists: Secularizing Agents and Their Motivations

Although political institutions are at the heart of the approach outlined in this study, the actors whose political campaigns and other organized activity intersect with those institutions are an essential component to the approach. Beyond simply identifying those agents who played an essential role in forging the various secular settlements in each country, this study has also

[4] Other professions, such as economics, have likewise been shown to have been strongly shaped by their interaction with the state. See Marion Fourcade-Gourinchas. 2001. "Politics, Institutional Structures, and the Rise of Economics: A Comparative Study." *Theory and Society* 30: 397-447.

revealed the heterogeneity of those actors. Although attention to the agents behind secularization and their motives has grown in recent years,[5] we have developed a fairly limited picture of who those actors are and what has motivated them. Most analyses view the political side of secularization through a lens of religious versus secular, with secularizing actors being motivated by some combination of instrumental self-interest and antipathy to religion. The dominant narrative is one of "secularists" mobilizing to drive "religion" out of the public sphere.

This study suggests that, just as we should think about varieties of "secular settlements," so too should we think about "varieties of secularists." For the unified category of "secularists" conceals wide variation in motivation. Although "secularists" are perhaps united in the pursuit of a smaller public role for religion, in no way does this suggest that they all share the same motivations. Some—like many members of the DOGS coalition in late twentieth-century Australia or the freethinkers in late nineteenth century America—are motivated by purely antireligious motives. Yet these actors, prominent in many dominant narratives of agentic secularization, exist alongside religious minorities motivated by community defense or theological interests, professional administrators motivated by the institutional demands of their bureaucratic homes, evangelical ministers possessed by a desire to build the kingdom of God through the expansion of state schooling, and many others. While the category of "secularists" may be useful in speaking of the shared goals of these actors, it is highly problematic in thinking about their motivations.

Perhaps most consequentially, the sharp distinction often drawn (explicitly or implicitly) between "secularists" and "religion" obscures the fact that many of the actors in this story who played an essential role in advancing secularizing reforms of the educational domain were themselves deeply religious. In fact, "religious secularists" appear with startling regularity throughout this dissertation. In the United States, evangelical ministers on the frontier worked steadfastly to construct common schools under the auspices of the state rather than the churches. It was religious Catholics and Jews in the late nineteenth and early twentieth centuries who were at the forefront of local and legal activism to displace Bible reading from the public schools. And the coalition who led the legal campaign for strict separation in the postwar era included many deeply religious individuals and groups. Protestants and Other Americans United, staunch defender of the "no-aid" principle, had its roots in a strongly evangelical membership, while the jurisprudential framework and strategy of the separationist campaign was the brainchild of Leo Pfeffer, an Orthodox Jew. In Australia, "religious secularists" are less common, but they nevertheless make an appearance. Dissenting clergy led the campaign for government schools and the abolition of state aid in the nineteenth century, for instance.

Finally, this study demonstrates that some secularizing actors may be motivated, not by pro- or anti-religious motivations, but instead by practical motives orthogonal to the question of religion's role in public life. This is perhaps most visible among administrative actors, both in late nineteenth century America and in late twentieth century New South Wales, who altered policies respecting religion in the public schools, not out of any pro- or anti-religious motivations, but out of concern for the smooth and successful functioning of their school systems. For such actors, the religious conflict that can accompany religious pluralism is first and foremost a practical obstacle to governance, and the desire to minimize conflict and controversy can be a powerful motivator to reduce or eliminate nonconsensual religious symbols and

[5] For recent works that have engaged with this question, see Anthony Gill 2008. *The Political Origins of Religious Liberty.* Cambridge: Cambridge University Press; Ahmet T. Kuru. 2009. *Secularism and State Policies Toward Religion: The United States, France, and Turkey.* Cambridge: Cambridge University Press; Smith, "Introduction."

practices. It is not surprising that administrators, when given a choice and sufficient political leeway, have often sought to reduce controversy by diluting or eliminating religious content. Yet this represents quite a different picture of agency and motive from that evoked by such concepts as a "secular revolution."[6]

RELIGIOUS CONFLICT, EDUCATION, AND AMERICAN CULTURE

In addition to its implications for secularization theory, this dissertation also speaks to a number of questions about the relationship between religion and education in the United States more specifically. In particular, it provides new insights into two key questions: Why is there so much conflict over religion in American education? And why is American education so secular despite the religiosity of the American people?

Why Is There So Much Conflict over Religion in American Education?

According to a recent book by historian David Sehat, American religious history is best understood as a history of religious conflict.[7] The history of American education might be similarly best understood in this fashion. Although there was plenty of religious conflict in Australia, especially over the issue of state aid, religious conflict has clearly played a more prominent role in the United States than in Australia. In fact, it might be stated, with only limited exaggeration, that religious conflict appears to be a structural condition of American education. Conflict over religion and education did not begin with the *Everson* case; it has been present since the creation of public schooling. What accounts for the prevalence of religious conflict in American education?

Part of the reason, I argue, has to do with the structure of the American state. As historian William Novak has argued, the decentralized American state is not "weak," as social scientists have long declared it to be, but instead has substantial capacity to regulate and direct social life.[8] The intense "infrastructural power" that decentralized, local political administration generates provides substantial power to regulate, and this regulation in turn inevitably spurs resistance. In a decentralized and highly permeable state, conflicts over such issues as religion in the public schools (which in reality encompasses at least three issues: which religion, in what form, and how much) tend not to be resolved because the differences are deep and the opportunities to constantly reengage them are legion. Every school board election becomes an opportunity to contest religious policy, and every perceived infraction can (relatively) easily be taken into the courts thanks to democratic standing rules and multiple layers of constitutional protections. The easy access to the instruments of policy formation that those who dissent from any given secular settlement possess encourages perpetual conflict.

When it comes to religion, therefore, I argue that American political institutions should be understood as *engines of conflict*, whose very structure encourages regular contestation around issues of religion and education. The issues may change, but the structure of the conflict has remained consistent since the late nineteenth century: conflict is channeled through those institutional vehicles most open and accessible to political actors—courts and local school boards. Those venues act as innumerable combustion chambers in which diverse and divergent

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[6] For elaboration of this idea, see Damon Mayrl. 2011. "Administering Secularization: Religious Education in New South Wales since 1960." *European Journal of Sociology* 52(1): 111-42.

[7] David Sehat. 2011. *The Myth of American Religious Freedom.* New York: Oxford University Press, p. viii.

[8] William J. Novak. 2008. "The Myth of the 'Weak' American State." *American Historical Review* 113(3): 752-72, pp. 763-64.

religious, irreligious, professional, and political groups battle over the appropriate role of religion in public life. Even today, school boards and courts continue to be sites for conflict; religious conservatives actively strategize to take over local boards to implement policies more to their liking, while separationists dutifully challenge those actions in the courts.[9] If anything, these venues have become more dialogically related: court decisions are imposed on local boards, and local transgressions of those decisions get taken up into the courts, in a cycle of perpetual controversy. The structure of the state encourages religious conflict in American education.

It is not like this in other countries, such as Australia, where access to courts and to the levers of educational administration are harder to come by. There, centralized control of education at the state level encourages top-down decision-making. The strong centralized state insulates administrators from popular demands, while the absence of local administrative bodies functionally enhances the power of majorities. Change is thus much more difficult to come by. These dynamics help explain the relative lack of campaigning and public controversy over religious policy. Indeed, it is noteworthy that the reintroduction of state aid in Australia was largely accomplished by *bypassing* the state-level centralized educational system through an appeal to the federal government. The temporary political power Catholics marshaled in the 1960s gave them enough clout to perform an end-run around the sclerotic state bureaucracies that acted as guardians of the nineteenth-century settlement.

Why Is American Education So Secular?

The way that American political institutions act as engines of conflict goes much of the way to explaining one of our central empirical puzzles: the stark secularism of American education despite the robust religiosity of the American populace. Yet there is another dimension to this explanation, relating to particularities in American religious culture. This study suggests that, ironically, American education is as secular as it is precisely *because* the country is so religious. Because religion matters so much, the symbolic stakes attached to religion are higher. The accessibility and permeability of American political institutions has meant that deep theological disagreements have more easily been translated into serious political disagreements about educational policy, which has ultimately led to decisions to exclude problematic religious connections from public support.

I have already referred to the surprising prominence of "religious secularists" in the United States. Particularly when viewed against Australia, the distinct role of evangelical Protestants and Jews in defining the nineteenth and twentieth century American secular settlements, respectively, stand out. The profound fusion between nationalism and evangelicalism in early nineteenth century America, and the leadership role played by evangelical clergy in helping to create the common school system, meant that the "spiritualizing" of the public schools was more intense than in Australia, where the strong influence of the Irish National System from the beginning tempered the religious character of national schooling. Thus, for example, American Protestants vigorously defended the use of the overtly anti-Catholic King James Version of the Bible in their "nonsectarian" Bible reading exercises, whereas Australian Bible readings consisted of selected passages encompassed in official Scripture readers. The nineteenth-century settlements, therefore, both embraced religion, even Protestant religion, but this embrace was somewhat tighter in the United States. The religious baseline of

[9] See, e.g., Lauri Lebo. 2008. *The Devil in Dover: An Insider's Story of Dogma v. Darwin in Small-Town America.* New York: The New Press.

the nineteenth century American common school, in other words, was narrower, and thus more likely to provoke objections from non-evangelicals.

Likewise, the different positions taken by the Jewish community in each country affected the transition to the twentieth-century settlement. The American Jewish community, larger in size and more diverse in character by the mid-twentieth century, was more assertive than the Australian Jewish community. It had also been steeped in the constitutional culture of the United States for a century, and had embraced the principle of separation in a way that was not characteristic of Australian Jews. These differences led Jewish defense agencies in the United States to take a leading role in advocating strict separation in the mid-twentieth century; whereas Australian Jews, both less assertive and not committed to the principle of separation, took a back seat in the battles over state aid and religious instruction in Australian schools in the 1960s and 1970s.

Although professionalization and state-building both played important roles in secularizing American education, religious conflict was in many respects the key to the ultimate profundity of its secularity. In the United States, battles over secularization have been shot through with religious conflict to a degree unseen in Australia, reflecting the deeply religious motivations of many of its most prominent "secularists" in driving secularization forward. Taken as a whole, these observations suggest that the hypersecular character of American education has its roots not only in its permeable state institutions, but also in the public piety of its population. Ironically, the very intensity of American religion likely contributed to its absence from education today—and some of the most intensely public religious groups, who today agitate most strongly for desecularization, played important (if now conveniently forgotten) roles in bringing that settlement about.

PROSPECTS FOR THE FUTURE: TOWARD A TWENTY-FIRST CENTURY SECULAR SETTLEMENT?

The political-institutional approach to secularization emphasizes the contingency of any given secular settlement, and encourages us to see it as but a temporary achievement. This dissertation has shown that the contemporary twentieth-century settlement in the United States was not simply the product of "activist judges," as many conservative critics would have it, nor an obvious and direct application of the First Amendment, as many liberal supporters believe.[10] Instead, it is the product of a continual and ongoing set of political struggles reflecting both elite action and popular mobilization. Nor do its roots lie simply in the transformative campaigns of the mid-twentieth century, but also in the slow-moving action of longstanding secularizing processes dating back to the earliest days of the nineteenth-century settlement. As political dynamics and alliances shifted, new conditions of possibility emerged that made possible the creation of a new secular settlement in the twentieth century. The remainder of this dissertation thus considers whether conditions are shifting again in ways that point toward a new, twenty-first century settlement, and what the future might hold for secularization in American education.

The Coming Breakdown of Strict Separation?

At the end of Chapter Five, I alluded to developments in the American legal sphere that have called the ideal of strict separation into question among the courts. The breakdown of the Protestant-Catholic divide and the emergence of new orthodox and progressive camps straddling

[10] See also Sehat, *Myth of American Religious Freedom*, p. 7.

the religious-nonreligious boundary have destabilized the politics of strict separation, particularly around questions of funding for religious schools, since the late 1990s. "Accommodationist" legal scholars, many hailing from conservative religious camps, have conducted a counterattack on separationist jurisprudence using the Free Exercise clause of the First Amendment, arguing that current policy infringes upon the ability of religious groups to practice their religion freely. In so doing, they have used strategic litigation and test cases to roll back strict separation in much the same way that civil libertarians and Jews used them to advance strict separation in the mid-twentieth century.

The Secularization of Separationism

An important corollary to these developments, on the separationist side, has been what might be termed a "secularization of separationism." Prior to 1980, the separationist cause was most actively and successfully advocated by a panoply of groups with a distinctively religious orientation: the American Jewish Congress, the Joint Baptist Committee on Public Affairs, and Protestants and Other Americans United for Separation of Church and State led the legal campaign for strict separation, and they were supported by important mainline religious groups, such as the National Council of Churches. Since 1980, however, these groups have declined in prominence, thanks to declines in mainline Protestant church membership, personnel changes, and intraorganizational conflicts.[11] In their stead, the defense of strict separation has increasingly fallen to a new constituency, made up of groups that value strict separation for its own sake, apart from any religious motivations. As their names suggest, new plaintiff groups such as the Freedom from Religion Association and the American Atheists are often aggressively and outspokenly antireligious in character and membership.[12]

Two features of this development merit discussion. First, the marginalization of the religious dimension of debates around separation of church and state correlates with moves by the Supreme Court to reject religious division as a motivating concern in deciding cases regarding religion and education. Both in organizational and jurisprudential terms, then, conflict among religious groups has slowly been erased as a relevant consideration in legal debates around separation. Given the centrality of religious difference to the rise of strict separationism, this development is significant.

Second, the ascent to leadership of an overtly separationist constituency has altered the dynamics of litigation. Rather than using strategic case selection to construct and sustain a jurisprudence of strict separation, these new organizations have tended to be more indiscriminate in their attacks on all forms of contact between church and state—filing lawsuits challenging the phrase "under God" in the Pledge of Allegiance, for instance. Legal historian John Witte has

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[11] See, e.g., Derek H. Davis. 2002. "From Engagement to Retrenchment: An Examination of First Amendment Activism by America's Mainline Churches, 1980-2000." Pp. 317-342 in *The Quiet Hand of God: Faith-Based Activism and the Public Role of Mainline Protestantism,* edited by Robert Wuthnow and John H. Evans. Berkeley, CA: University of California Press.

[12] For instance, in their press release announcing a lawsuit against a memorial cross at the World Trade Center site, Dale Silverman, President of American Atheists, prefaced his explanation for the lawsuit by saying, "The WTC cross has become a Christian icon. It has been blessed by so-called holy men and presented as a reminder that their god, who couldn't be bothered to stop the Muslim terrorists or prevent 3,000 people from being killed in his name, cared only enough to bestow upon us some rubble that resembles a cross. It's a truly ridiculous assertion." See American Atheists. 2011. "Atheists File Suit to Block WTC Memorial Cross." Press release, 25 July. Accessed 14 December 2011. Available online: http://www.atheists.org/press_releases/atheists_file_suit_to_block_wtc_memoiral_cross.

usefully distinguished between using separation as a shield to protect free exercise, and as a sword with which to wage cultural warfare.[13] In many respects, these newer cases adopt a more "swordlike" approach to separationism, moving further afield of those earlier challenges on which separationist jurisprudence was originally built. These are the kinds of cases that mid-twentieth century separationists would have been exceedingly reticent to take on, because they face the real risk of a negative decision. In part, such cases reflect the contemporary dominance of the separationist ideal. But they also run a real risk of overextension and the construction of negative precedents that would contribute to the development of a new, accommodationist jurisprudence on issues pertaining to religion and education.

New Hybridities: The Eclipse of the Public/Private Divide?

All of this suggests that the twentieth century settlement may be being eroded in the legal realm, ultimately leading to a situation where courts are no longer as friendly a terrain for strict separationist arguments as they have been since the late 1940s. But this is not the only dimension where changes have been taking place. The ideal of strict separation is predicated on a sharp public/private divide, where public and religious schools are clearly distinguished in terms of organization, content, and funding patterns. Increasingly, however, these divisions are being undermined by the development of new hybrid educational institutions, whose presence provides new institutional nodes through which strict separationism may be challenged.

Charter schools, for instance, represent one way in which the boundary between public and religious schools is being blurred. Technically falling under the realm of public schools, and eligible for public financing, many charter schools are lawfully operated by religious groups. Although they are required to abide by the same constitutional restrictions as public schools, they nevertheless are permitted to have faith leaders on their governing board, observe religious holidays, and support voluntary faith-based after-school activities and prayers.[14] In Philadelphia and Washington, DC, Catholic parochial schools have been directly converted into charter schools, foregoing many of their specifically Catholic trappings in the process, while maintaining the same buildings and staff and continuing to emphasize "values education."[15] Others are more overtly religious; in Texas, religious charter schools teach creationism and intelligent design, offer Bible classes as electives, encourage faith development, and are housed in churches.[16] Some have even faced lawsuits for violations of the Establishment Clause; in Minnesota, for instance, a Muslim charter school that shares a building with a mosque, is headed by an imam, and has a curriculum featuring prayer and after-school Muslim religious programs, has been sued

[13] John Witte, Jr. 2006. "Facts and Fictions about the History of Separation of Church and State." *Journal of Church and State* 48: 15-45, p. 43.

[14] United States Department of Education. 2008. *Preserving a National Asset: America's Disadvantaged Students and the Crisis in Faith-Based Urban Schools.* Washington, DC: United States Department of Education, p. 40. Accessed 14 December 2011. Available online: http://www2.ed.gov/admins/comm/choice/faithbased/report.pdf.

[15] Michel Martin and Claudio Sanchez. 2009. "Religion a Big Part of the Charter School Debate." *National Public Radio*, 16 June. Accessed 14 December 2011. Available online at: http://www.npr.org/templates/story/story.php?storyId=105461721.

[16] Jessica Meyers. 2010. "Charter Schools with Ties to Religious Groups Raise Fears about State Funds' Use." *Dallas Morning News,* 22 November. Accessed 14 December 2011. Available online: http://www.dallasnews.com/news/community-news/dallas/headlines/20101122-charter-schools-with-ties-to-religious-groups-raise-fears-about-state-funds_use.ece.

by the ACLU for constitutional violations.[17] Nevertheless, in 2008, President Bush released a report that called for further development of religious charter schools.[18]

If charter schools epitomize the blurring of the public/private boundary, scholarship foundations represent a second weakening of the divide through the creation of new institutional intermediaries. Most significant, in this regard, are the scholarship tax credit organizations that currently exist in seven states (Arizona, Florida, Georgia, Indiana, Iowa, Pennsylvania, and Rhode Island).[19] These programs allow either citizens, corporations, or both, to receive tax deductions for contributions made to independent charitable organizations for the purpose of providing scholarships to needy children for private education. As private entities, these organizations can provide scholarships to students irrespective of whether a school is religious or not. These programs effectively establish public subsidies for religious schools through the vehicle of personal charitable contributions. The Supreme Court has recently refused to disallow such programs.[20]

The weakening of the public/private divide, whether through the creation of hybrid quasi-governmental entities such as charter schools, or through the development of new publicly subsidized private intermediaries such as scholarship foundations, introduces conceptual confusions into the structure of contemporary jurisprudence and public financing. By introducing new institutional features into the mix, therefore, many of the existing institutional supports for strict separation have become correspondingly weaker.

This is not to say, however, that all institutional obstacles for strict separationists are falling by the wayside. To the contrary, the institutional features of American courts that made them attractive venues for a separationist campaign remain potent obstacles to those whose goals include greater connections between church and state in education. State constitutions continue to provide a second line of defense for separationist policies, while standing laws continue to provide access to challengers eager to defend separation. Not surprisingly, therefore, these two institutional supports have come under strong attack by accommodationist lawyers, judges, and politicians alike. State constitutional provisions have been vilified as "baby Blaine" amendments tainted by anti-Catholicism,[21] and the Supreme Court has in recent years begun the process of rolling back some of the expansive standing protections awarded in the 1960s—disallowing, for example, taxpayer challenges on First Amendment grounds to administrative actions (as opposed to legislation)[22] or to tax-credit decisions.[23] To the extent that these institutional supports can be undermined, the emergence of a new secular settlement will become more probable.

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[17] Katherine Kersten. 2008. "Teacher Questions Muslim Practices at Charter School." *Minneapolis Star-Tribune,* 19 May. Accessed 14 December 2011. Available online: http://www.startribune.com/featuredColumns/17406054.html;Sarah Lemagie. 2010. "Judge: TiZA Students May Not Join Suit." *Minneapolis Star-Tribune*, 7 May. Accessed 14 December 2011. Available online: http://www.startribune.com/local/south/93169179.html.

[18] U.S. Department of Education, *Preserving a National Asset*, p. 40.

[19] Nicole Stelle Garnett. 2011. "A *Winn* for Educational Pluralism." *Yale Law Journal Online* 121: 31-37, p. 31. Accessed 14 December 2011. Available online: http://yalelawjournal.org/images/pdfs/995.pdf.

[20] *Arizona Christian School Tuition Organization v. Winn et al.,* 563 US ___ (2011).

[21] See, e.g., Mark Edward DeForrest. 2003. "An Overview and Evaluation of State Blaine Amendments: Origins, Scope, and First Amendment Concerns." *Harvard Journal of Law and Public Policy* 26: 551-626; Joseph P. Viteritti. 1998. "Blaine's Wake: School Choice, the First Amendment, and State Constitutional Law." *Harvard Journal of Law and Public Policy* 21: 657-718.

[22] *Hein v. Freedom From Religion Foundation*, 551 U.S. ____ (2007).

[23] *Arizona Christian School Tuition Organization v. Winn.*

The Australian Solution in the American Context

The political, jurisprudential, and institutional changes outlined above are part and parcel of an accommodationist counterattack on the idea of strict separation. This counterattack is built first and foremost upon the argument that the state should not discriminate between religious and nonreligious organizations, especially when it comes to public funding. This suggests that, should these advocates succeed in forging a new, twenty-first century secular settlement in the United States, strict separationism would give way to some version of "neutrality" in which religious and nonreligious (including public) schools would be treated equally (financially at least) by the federal government. This would bring the system much more into line with the Australian system. And, intriguingly, several advocates of a more accommodationist American policy in religion and education have pointed to Australia as an appropriate model (among others) for forging a new secular settlement in this country.[24] How viable would this project be?

The United States and Australia have tended to adopt very different solutions to the problem of religion in education. In the United States, the tendency has been to exclude the nonconsensual from public support, whether symbolic or financial. Financially, religious schools have been seen as inherently partial and nonconsensual since the nineteenth century, and thus ineligible for public funding. Symbolically, the number of religious practices and symbols that are seen as nonconsensual has continually expanded since the nineteenth century as religious pluralism has expanded, and public schools have seen the elimination first of catechisms and denominational education, then Bible reading, and ultimately prayer and the Ten Commandments. This reflex toward exclusion has been a remarkably consistent pattern across both the nineteenth and twentieth century settlements, suggesting it may have deep roots in American culture. It also, it should be added, has definite advantages for skittish administrators as a pragmatic solution to controversy.

In Australia, by contrast, the tendency has been to embrace religious particularism through institutional formats that permit support for multiple religions. Whether through state aid policies that distribute money to religious schools of a variety of denominations, or special religious education (SRE) classes that are open to clergy or lay instructors of multiple "persuasions," the Australian solution has been to attempt to broaden the symbolic and financial circle to embrace a multitude of particularisms. This solution echoes of the system of multiple establishment embodied in the Church Act of 1836 that reigned prior to the consolidation of the nineteenth century settlement, yet it has been much less consistently applied in Australia, considering the intervening abolition of state aid and the abeyance of the SRE program in the early twentieth century relative to Scripture reading in most states.

Would a new settlement that provided state aid to all religious schools, or which provided denominational education to all comers, as in Australia, reduce religious conflict in education? The multidenominational aspects of the Australian system have indeed been rather uncontroversial for the past forty years. Australian denominational leaders are nearly unanimous in support for the system of state aid, and in substantial agreement on the merits of SRE—although very recently, in New South Wales, they have divided on whether a secular "ethics"

[24] See, e.g., Stephen V. Monsma and J. Christopher Soper. 1997. *The Challenge of Pluralism: Church and State in Five Democracies.* Lanham, MD: Rowman & Littlefield, pp. 12, 218; and Charles L. Glenn, in U.S. Department of Education, *Preserving a National Asset,* p. 74.

course should be provided for children not participating in SRE.[25] By creating programs open to all denominations, the system has effectively co-opted many potential resistors who might otherwise object to a system that did not include them.

At the same time, however, the extent to which the Australian system is truly "neutral" and open to all persuasions is an open question. On the one hand, it tends to benefit disproportionately those religious groups who are most capable of investing in SRE and/or who already have a substantial denominational school system.[26] This is particularly so when it comes to religion in public education. Surveys have shown conservative Protestants to be overrepresented among SRE volunteers in Australia, for instance, where SRE classes are often run as combined "Protestant" or "Christian" courses, especially in smaller areas.[27] The organizational advantage of larger groups, and/or those with more established mission programs, results in outsized influence within the contours of the program. Indeed, in the United States, where a comparably "neutral" program already exists for military chaplains, Protestants are overrepresented among the chaplaincy.[28] The flip side of this coin is the well documented truism that smaller groups will inevitably be excluded even from the most "neutral" of systems. Under the SRE program in New South Wales, groups must be formally approved by the Minister of Education, and some groups (such as Jehovah's Witnesses) were denied access for decades, as discussed in Chapter Four. This dynamic has a parallel in American educational history; small religious groups, Jehovah's Witnesses among them, faced additional barriers to adequate participation in released-time education programs in the United States in the immediate postwar era.[29]

The likeliest outcome, then, would be that the adoption of an Australian-style solution might shift the specific parameters of conflict over religion, but would not reduce that conflict more generally. Especially given the greater religious diversity of the United States, with its multitudinous small sects, the difficulty in creating systems that are truly "neutral" would increase manifold. Rather than having debates about religion versus secularism, older dimensions of the debate would become more prominent—namely, *whose* religion, and in what form, would be recognized. America's permeable political institutions, especially its school boards and courts, would continue to be filled with religious conflicts, and it is possible that administrators might fall back on America's reflexive solution of eliminating the controversial program. Such programs might be viewed as an improvement by some, but they would be unlikely to reduce conflict or be the final word overall.

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[25] "Major Churches Back NSW Ethics Classes." 2011. *ABC News,* 21 July. Accessed 14 December 2011. Available online: http://www.abc.net.au/news/2011-07-21/major-churches-back-nsw-ethics-classes-210711/2804492.

[26] Catherine Byrne. 2009. "Public School Religion Education and the 'Hot Potato' of Religious Diversity." *Journal of Religious Education* 57(3): 26-37, p. 29.

[27] Catherine Byrne. 2010. "Special Religious Education: The Good, the Bad, and the Ugly." *ABC Religion and Ethics,* 1 November. Accessed 14 December 2011. Available online: http://www.abc.net.au/religion/articles/2010/11/01/3054122.htm.

[28] James Dao. 2011. "Atheists Seek Chaplain Role in the Military." *New York Times,* 26 April. Accessed 14 December 2011. Available online: http://www.nytimes.com/2011/04/27/us/27atheists.html?pagewanted=all.

[29] Joan DelFattore. 2004. *The Fourth R: Conflicts over Religion in America's Public Schools.* New Haven: Yale University Press, p. 64.

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