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– Gerard V. Bradley

The “Blaine Amendment of 1876” comprised a series of related proposals to amend the United States Constitution, which were debated and voted upon by both houses of Congress in August 1876¹. The central aim of all the proposals was to prohibit *states* from giving financial aid to “sectarian” schools. After that the many formulations debated (several in the Senate alone) diverged over, for example, whether the *federal* government should be so hamstrung, too; whether all tax revenues and other public resources should be placed within the prohibition (not just moneys raised precisely to support the public schools); and whether Congress should be given explicit enforcement power, as had been done with the three Reconstruction Amendments.

The House of Representatives passed a version composed solely of the “central aim” described above by a vote of 180 -7 (with 98 members not voting). The Senate failed to pass a more ambitious version (containing all the above complications, and then some) by a vote of 28 -16 (27 not voting). This substantial Senate majority was just a bit short of the two-thirds approval necessary to present an amendment to the states for ratification.

The Senate version which so nearly passed also included a disclaimer: “This article shall not be construed to prohibit the reading of the Bible in any school or institution”. The disclaimer supports an argument I make later in the paper, namely, that the “Blaine Amendment’s” aim was to make public schools “non-sectarian”, and *not* to secularize them.

¹ The best account of the Congressional career of the Blaine Amendment is F. O’Brien, “The Blaine Amendment of 1875- 1876”, 16 *Detroit L. J.* 137 (1963). The best treatment from a wider historical perspective is (Sister) M. Klinkhamer, “The Blaine Amendment of 1875: Private Motives for Political Action”, 42 *Cath. Hist. Rev.* 15 (1957).

And so the Sixteenth Amendment did not come until 1913. It brought us the federal income tax.

I

Before turning to what the Blaine Amendment episode tells us – and does not tell us – about the secularization of public life in American history, I should like to make five preliminary observations about its significance in other respects. *First.* This Congressional “failure” was pretty popular. I mentioned above that the proposal fail to pass Congress despite attracting overwhelming majority votes. Similar proposals were introduced in Congress about twenty times by 1929. (See E. Corwin, “The Supreme Court as National School Board”, 14 *J. Law & Contemp. Problems* 3, 12 (1949). None of the subsequent proposals made it to the floor for a vote. Congress nonetheless imposed Blaine-like restraints on many states. Starting with Colorado in 1876 Congress made it a condition of admission of new states to the Union that the proposed state constitution ban public aid to “sectarian” schools. The Congressional enabling act for Washington, for instance, required that the state constitution include a provision for the establishment of public schools “which shall be...free from sectarian control”. State constitutional provisions of this sort are often called “baby-Blaines”, implying that our topic is, I suppose, “Daddy Blaine”. Fair enough. Washington’s “baby-Blaine” was recently challenged in the Supreme Court as violating (at least as applied) the Free Exercise Clause. (See *Locke v. Davey*, 124 S.Ct. 1307 (2004). The Supreme Court rejected the challenge.

Second. The Blaine Amendment of 1876 is often thought to be a telling episode in the “incorporation” saga. “Incorporation” refers here not to business associations but to the

application of the Bill of Rights (the first eight amendments, really) to the states. The Supreme Court early on confirmed that these norms constrained only the acts of the national government. In *Barron v. Baltimore*, 7 Peters 243 (1833) Chief Justice Marshall wrote that this question – the question of whether the Bill of Rights applied to the states – was one “of great importance, but not of much difficulty”: “Perceiving that in a constitution framed by the people of the United States for the government of all, no limitation ...would apply to the state government, unless expressed in terms”.

If you glance at your pocket Constitution you will indeed see that none of the Bill of Rights provisions expressly refers to states. On the other hand, only the First Amendment unequivocally limits its address to the national government -- “*Congress shall make no law...*”. The rest (with the probable exception of the civil jury trial guarantees, involving courts *of*, and importantly not *in*) state unaddressed norms of government conduct which, strictly as a matter of language, could apply to the states.

Curiously (or boldly, I suppose) the Court began its “incorporationist” line of decisions with the First Amendment. The Court has most often relied upon history to justify “incorporation”. The “incorporationist” argument of the Court has been mostly historical, though not the history of the Founding. (*Barron* got that right: the near-universal original understanding was that they bound only the national government created by the Constitution.) Stated in pure form by Justice Black, in the 1947 case, of *Adamson v. California*:

My study of the historical events that culminated in the Fourteenth Amendment, and the expressions of those who sponsored and favored, as well as those who opposed its submission and passage, persuades me that one of the chief objects that the provisions of the Amendment’s first section, separately, and as a whole, were intended to accomplish was to make the Bill of Rights applicable to the States.
332 U.S at 71(dissenting opinion)

What light does the Blaine Amendment show on the rectitude of the Court's "incorporation" decisions? Well, the Blaine Amendment in all its version took over the no-establishment and free exercise language of the First Amendment, saying (in paraphrase here): "No state shall make a law respecting an establishment of religion. or abridging its free exercise". The argument against Justice Black, then, is that just a few years after ratification of the Fourteenth Amendment, Congress evidently did *not* think that the Fourteenth Amendment "incorporated" the First Amendment. Otherwise, those who supported the Blaine Amendment supported a redundancy, and those opposed could have opposed it on the same grounds. But none of the opponents did so. Nor did any of Blaine's supporters (as far as I have been able to discover) mention its possible redundancy.

Third. The Blaine Amendment was as much a *political* creature as it was a real effort at constitutional change. Maybe it was *more* political than constitutional. What I mean is that Democrats criticized the proposal an election-time gimmick, meant to stir up the Republican base by awakening and inflaming anti-Catholic fears. The Democrats were right: the Blaine Amendment was an election-year political tool. The leading historian of the 1876 Presidential contest writes: "During the closing days of the Congressional session, Republicans in both houses, hoping to capitalize on anti-Catholic sentiment, pushed unsuccessfully for a constitutional amendment to prohibit the use of public funds by parochial schools. [Presidential nominee Rutherford] Hayes vigorously supported the proposal and counseled Senator John Sherman on ways to strengthen it". (K. Polakoff, *The Politics of Inertia*, 115 (1973)). The very raw Senate debate over the Pope's infallibility and the Church's retrograde social philosophy, among a superabundance of other evidence, amply supports Polakoff's reading. The Blaine

Amendment was, more than anything else, an episode of Catholic baiting.

The Blaine Amendment was, in part, a political gimmick. It was about party politics as well as about constitutional substance. Like the recent US Senate vote on a marriage protection amendment, the main idea is to distinguish the two parties by making everyone *vote* on the issue. But also like the marriage amendment, the Blaine Amendment crystallized and gave expression to deep concerns clustered around convictions on fundamental matters affecting the common good of American society.

The Democrats sought to neutralize Republican charges about their subservience to the Roman Church by going along with the proposal, just as the vast majority of House Democrats did. At the front end of the Blaine Amendment debate – on January 4, 1876 – the *New York Times* reported that “[t]here has been a great deal of anxiety on the part of Democrats in forecasting the political future on account of the prominence of the school question. They see but one way out of the trouble, and that is for the party to agree to the Blaine Amendment, as it is called, and to bring the Catholic Church itself to the support of it”. (P. 1, col. 4) The *New York Herald* two weeks earlier offered the same advice to troubled Democrats, noting in addition that the common schools were one of two subjects “on which the people of the Northern states are quite capable of becoming crazy”. (Dec. 23, 1875). The other was “the rights and lives of southern Negroes”.

On the day after the House vote *The New York Times* correctly reported it as “part of the Democratic policy mapped out by [Presidential nominee] Tilden, and is designed to take the Catholic question out of politics”. (August 5, 1876, p. 5) Professor O’Brien reports correctly, too, that “not a single member of the House rose to oppose the amendment as such”. (*Supra* note

1 at 159) It surely seems, then, that the felt political necessities of that day required anyone with political ambition to avoid being tagged as “pro-Catholic”. Someone with political ambition could safely be anti-Catholic, and many successful politicians were. One could also be, as some Senators were that August, “anti”anti-Catholic. But could someone with political ambitions be “pro-Catholic”? No.

How could so many Senators safely resist the anti-Catholic tide pushed along by Blaine-backers? Because, *fourth*, the matters *in addition* to the central ban on public aid to Catholic schools in the ultimate Senate version offered a safe harbor. Opposition to a much enlarged Senate proposal was *said* by its Democratic opponents to be rooted in 1) federalism concerns: elementary education as such was entirely a state matter; 2) variations on the theme, “if it ain’t broke don’t try to fix it”, meaning that there was no evidence of a movement to divert state school funds to Catholic schools; 3) refusals to be made party to Republican demagoguery. Democratic Senator Eli Saulsbury (Delaware) said that the Amendment was nothing more than an appeal to “the fear which had been raised throughout the country for political purposes” of the Catholic Church’s political ambitions and resistance to true American spirit. 4 Cong. Rec. 5246 (1876); 4) simple overkill. Now, let me explain.

The most ambitious versions of the proposed amendment, including that which the Senators voted upon, went way beyond cutting off aid to certain “schools”. The reach of the final Senate draft extended to all “other institutions, under the control of any religious or anti-religious sect, organization, or denomination, or wherein the particular creed or tenets of any religious or anti-religious sect..shall be read or taught”. Leading Democrats seized this political gift and made strategic use of it. New York Senator Francis Kernan pointed out that “sectarian”

orphanages, asylums, and hospitals would thus be cut off from public contracts. And not just Catholic institutions. For while the number of non-Catholic schools was relatively minor in this era of heavy Protestant influence upon public education, there were many non-Catholic hospitals and other charitable works. The Republicans' overreach permitted Democrats to stand opposed, then, on neutral – that is, not entirely Catholic – grounds.

Democrats outside Congress resisted the Blaine Amendment by exploiting (and, perhaps, by instigating) a rumor that the Republican nominee Rutherford Hayes was a member of the American Alliance, a nativist organization opposed to the voting rights of all foreign born residents of America. The basic move here was to turn the Republican attack against *some* immigrants – those who were Catholic and, most especially, Irish-Catholics – into an attack upon *all* newcomers, especially German Protestants who were bulwarks of the Republican party. This strategy recognized that, while the Irish Catholic vote was essential to the Democratic coalition, there was no chance that Irish-Catholics would vote Republican – *and* that the immigrant Germans who voted Republican could be shorn away from the GOP. The Democrats tried to make *nativism* – and not Catholicism – the issue. That the Democrats were “wet” (opposed to Prohibitionist measures) and the Republicans “dry” also promised Democrat dividends among the supposedly the beer-loving Germans.²

The Democrats' strategy worked. The Blaine Amendment failed in Congress, and the

² The Congressional debate and the whole surrounding political commentary were mostly about common schools as cultivators of “intelligence” and how Catholic resisted the invitation to become as “intelligent” as native Americans. There was also considerable concern expressed for the plight of “ignorant” ignorant freedmen, and praise for the medicinal properties of free public education in the South. These important and lasting concerns were, however, secondary to the Catholic issue.

“schools” issue petered out during the fall Presidential canvass. It certainly played nowhere near the critical role which Republican operatives predicted for it in the late autumn of 1985. (*See* the discussion in Part II, *infra*.) That the Blaine Amendment was a political production and that it flopped in the end does not imply, though, that it had no bottom, no substance, that it was purely symbolic or that it was solely about what we call “status politics”. After all, even demagogues, and even if they are race-baiters or fomenters of ethnic or religious hostility, have a foot (or two) in reality. One remarkable thing about the Blaine Amendment is that it repays careful study for what it reveals *substantively* about American identity and secularism.

To that I now turn.

II

The precise idea for a constitutional treatment of the “schools question” originated with President U.S. Grant. In September 1875 he gave a speech to Union Army veterans assembled at Des Moines, in which he decried the looming threats of “ignorance and superstition” to the republic. These evils had to met with the same decisiveness and force, Grant warned, with which those whom he addressed met the slavepower a half-score and more years earlier. Then of course Grant was at their head, as he endeavored to be now. For Grant wanted an unprecedented third term in the White House.

Political events later that autumn burnished the credentials of Grant’s idea. Ohio’s gubernatorial contest between Democrat warhorse William Allen and Rutherford Hayes tested the political potential of the schools-Catholic issue. In those days Hayes and other Republicans were pessimistic about the party’s electoral fortunes, given the corruption of the incumbent Presidential administration; the unpopularity of the Party’s “hard money” stand in times of

economic recession; and the waning appeal of the “bloody shirt”. (The “bloody shirt” meant appeals to the northern electorate to retain their party – Lincoln’s party -- in power so as not to jeopardize the fruits of victory in the Civil War.) Hayes sought to energize his base and to attract available Protestants to the GOP by warning of the Catholic Church’s resistance to, and even rejection, of the “common” school in favor of their own school system.

Hayes won the Governor’s office. And he attributed his victory to the “schools question”.

Within a month or so of Hayes’ victory Grant elaborated upon his Des Moines speech in his annual message to Congress, on December 7, 1875:

We are a republic whereof one man is as good as another before the law. Under such a form of government it is of the greatest importance that all should be possessed of education and intelligence enough to cast a vote with a right understanding of its meaning. A large association of ignorant men cannot for any considerable period oppose successful resistance to tyranny and oppression from the educated few, but will inevitably sink into acquiescence to the will of intelligence, whether directed by the demagogue or by priestcraft. *Cong. Rec. 44th Cong., 1st session, 175.*

Grant called for that a constitutional amendment, one which required each state to establish and maintain free public schools to instruct all children “irrespective of sex, color, birthplace, or religions”. In these schools no “religious doctrines” could be taught, nor could schools in which such doctrines were taught receive public money. It was widely said that by this salvo Grant launched his bid for that third term.

The “Blaine Amendment” owed its name to its House sponsor, Representative James Gillespie Blaine of Maine, who introduced it on December 14, 1875. Almost everyone at the time understood Blaine’s proposal to be part and parcel of his quest for the Republican presidential nomination. In the event Blaine played no role in the debate of his proposal. By the

time it reached the House floor in August 1876 he had resigned his seat; Blaine accepted an appointment to fill out deceased Senator Lot Morrill's term. Because Blaine did not take his Senate seat until December, 1876, he missed the Senate debate too. Hayes was the eventual party nominee. But in late 1875 he was a dark-horse possibility for compromise at a deadlocked convention. In late 1875 there were at least five party heavyweights running ahead of him: Blaine, Grant, Senator Oliver Morton (Indiana), New York Senator Roscoe Conkling, Treasury Secretary Benjamin Bristow.

During Hayes's gubernatorial campaign Blaine wrote to one prominent Ohio Republican (not Hayes) of the lessons to be learned from that state's canvass: "The issue forced [sic] upon you in regard to the public schools ... may yet have more far-reaching consequences". (See Klinkhamer, *supra* note 1 at 22, where she opines that Blaine was already tipping his hand about the coming Congressional session.) Blaine wrote to his Ohio correspondent that a republican (small "r") form of government required "free" schools, "free" from "the bitterest of all strifes" – the strife between religious sects. Taking next a wider look, Blaine asserted that "[w]e must have absolute religious toleration, and toleration can only be maintained by general intelligence". In fact, "[t]hose who would abolish the non-sectarian school necessarily breed ignorance – and ignorance is the parent of intolerance and bigotry". (Blaine to Wikoff, Oct. 29, 1875, *quoted in* Klinkhamer at 22.)

Interestingly, Blaine's mother was a devout Catholic. Several of his siblings were baptized in the Catholic Church. There were also rumors afoot in 1876 that Blaine, too, had been baptized a Catholic, and also that he remained a crypto-Catholic up to the day. (There was no dispute that Blaine, ca. 1876, held himself out as a Protestant and attended Protestant

services.) We would today describe Blaine's situation as one in which he was open to charges to being "soft" on Catholicism, or that he was a Catholic "sympathizer". Blaine's position was unenviable: Protestants would be incensed by his "softness" while Catholics would resent his unwillingness to stand tall for the faith (by hypothesis, the faith of his childhood), indeed for his apostasy. As a matter of fact, the adult Blaine was a who retained throughout his life a genuine affection and respect for the Catholic faith of his mother. (*See generally* Klinkhamer at 28 -32). It is nonetheless plausible to view Blaine's activism on the schools issue as the stone with which he killed two birds: he could put to rest rumors of his own Catholicity, at the same time he could skillfully advance his presidential prospects.

Blaine's Resolution (the "Blaine Amendment") was the first one offered in the House of Representatives for the session which began in December of 1875. It was "H.R, 1". Blaine excised from Grant's omnibus proposal any mention of color, gender, birthplace. HR 1 said nothing about requiring the establishment of public schools. Blaine's amendment would have prevented any state from establishing a religion or prohibiting its free exercise and, further, that "no money raised by taxation in any state for the support of any public schools or derived from any public fund therefore, nor any public lands devoted thereto, shall ever be under the control of any religious sect". *Id. at 205, Dec. 14, 1975.* This was the text which, with one an alteration making clear that Congress received no new power therefrom, passed overwhelmingly in the House during August 1876.

Republican Senators quickly pointed out that the prohibition could be easily evaded by channeling public money raised for some *other* – that is, non-school – purpose to institutions controlled by religious sects. These Senators also pointed out that, to have any real effect, the

amendment's prohibitions needed Congressional clout behind them. Republicans in the Senate added to the House version an "enforcement" clause like those attached to the three Reconstruction amendments to the Blaine text. ("Congress shall have the power to enforce this article by appropriate legislation".) These Senators also expanded the substantive norm forbidding public support of sectarian institutions to include *all* public monies. This more formidable text was defeated by the party-line vote in the Senate during the wee hours of August 15..

III

What does the Blaine Amendment episode tell us about secularism in the Gilded Age? Even within the partisan politics and bruising rhetoric of this squabble about Catholic schools, we can see the animating insight of substance: a growing and increasingly panicky conviction that (in the words of the *New York Times*) "the safety of the Republic depends upon the intelligence as well as the virtue of its citizens". *NYT* 1, 1876, p. 1. This was a war cry for the Republican party, ca. 1876. "Intelligence" was partly defined in contrast to "ignorance" and "superstition". Both terms were obvious references to the Irish Catholic immigrants then crowding cities and voting – Republicans said – according to the orders of bosses and priests. "Intelligence" soon became a commodious synonym for what free common schools, and *only* free common schools, cultivated in the average youth. The common school delivered goods unavailable, and even subverted, in "sectarian" classrooms. The common school became the "bulwark of the republic".

The most systematic and revealing elaboration of this close-knit set of ideas appeared a few years before our main story.. The piece was titled "New Departure for the Republican

Party”. It appeared in *The Atlantic Monthly* in January, 1871. The author was the nationally prominent Republican Senator, Massachusetts’ Henry Wilson.³

Wilson’s main point was that, with the slaveholding aristocracy recently put out of business by force of arms, the great threat to American democracy was now the *demos*, the people, the citizenry. They were, in a word, *unfit* for the job placed before them by the Constitution, the job of self-government. Wilson observed what the founders had long ago observed: republican government required a certain measure of virtue in its citizens. There was nothing “new” in Wilson’s “departure” so far. Then Wilson identified another essential quality in democratic citizens. He called it “intelligence”. To my knowledge the founders never identified this quality as a prerequisite of republican government. I hesitate to say that the founders were somehow were OK with stupidity. But they stressed over and over again the moral virtues inculcated by traditional religion. They rarely (if ever) spoke of intelligence in as a prerequisite of our political institutions. Public education was not the “bulwark” of *their* republic (for there was very little of it). For the founders, traditional religion which characteristically inculcated sound morality, was the republic’s safeguard.

Wilson opined that both qualities – virtue and intelligence – were lacking in the newly freed slaves *and* in the rising tide of mostly Catholic immigrants. He admitted that there was hope for the freedmen (as the emancipated slaves were called); after all, their degraded condition had been imposed upon him by the southern master class. The slavocracy had been smashed at Appomattox; the Thirteenth Amendment outlawed its rebirth by freeing the slaves. With good schooling perhaps the freedmen could yet be made fit to bear the yoke of democratic

³ All quotations in the balance of this Part of the paper are from Wilson’s article.

responsibility.

The immigrant case was different. The mostly Catholic newcomers to our shores lacked virtue *and* intelligence, Wilson thought. Some of the immigrants' shortcomings could be explained by their poverty and their incomprehension of American traditions. The real problem, as Wilson saw it, was that their shortcomings were a corollary of their faith. Their *Catholicity* made them inferior Americans. To illustrate his point about the un-republican character of Catholic peasants Wilson chose France, "fair and fertile", possessed of a brilliant military record. "But with a population ignorant, priest-ridden, and emasculated of their manhood", France "lies beaten on every field and helpless at the conqueror's foot". *Atlantic Monthly* readers (who were the "best men" of their time, and very largely WASP) knew what to infer: political bosses allied to an oppressive clergy flourished by keeping the Catholic underclass down.

Wilson knew that America's priests and bosses could not simply be put out of business, as had the slave owners. The First Amendment protected the Catholic church from annihilation (even if one could wish it a slow death). The whole Constitution effectively protected local politics, boss-ridden as it was in some cities. In these "new" circumstances, Wilson tellingly argued, "voluntary" efforts within civil society to shape citizens for civic responsibilities were inadequate. Of these "humble Christian toilers" and their "voluntary" efforts Wilson had nothing but good things to say. But their day has passed; the task at hand far outstripped their resources and abilities. Wilson said that the "work is outgrowing the workers". "It is becoming a question in the minds of many whether the government should not here recognize a responsibility of its own which it has heretofore left entirely to others".

Wilson left no doubt as to the answer: the great necessities of the day were "unification"

and “education”. That was his expression, though his message more transparently rendered would be: “unification *through* education”. Wilson stated that “[t]here can *no question* either of the necessity or legitimacy of *legislation*” to those ends. He called for a national system of compulsory public education; the public schools to which all would be called would shape each and every child into sturdy American citizens.

In terms more familiar to us: the founders and Wilson agreed that a lot of socializing was necessary to make free government work. Wilson differed from the founders, in part, on what the necessary republican equipment actually was. The founders aimed to promote the institutions of civil society to achieve the necessary socialization. The founders could scarcely imagine, and surely did not countenance, direct *government* cultivation of citizen “virtue”. Wilson did. In fact, he thought such hands-on work was essential.

IV

Now, for the Catholic riposte. Orestes Brownson was a the nineteenth century’s leading Catholic polemicist, not quite a philosopher, but an extraordinarily learned and vigorous man of letters – a “public intellectual” insofar as a strident Catholic could be at the time. Brownson was neither an immigrant nor a cradle Catholic. He was raised in Vermont by guardians; his father’s death and his mother’s poverty made it impossible for him and his siblings to remain at home, together. He was baptized at age nineteen in an upstate New York Presbyterian church. After sampling many of American Protestantism’s flavors, Brownson was finally received into the Catholic Church in 1844, when he was 41. At first what then counted as a “liberal” Catholic (though still conservative by today’s standards) Brownson was, by the time he took issue with Henry Wilson, a deeply traditional-minded Roman Catholic. It is thus hard to say that his

response to Wilson “typified” American Catholic thought, or that it “typified” anything else. Probably it did not. But Brownson captured enough of the view which Wilson had in his sights, and enough of the prevailing Catholic “dissent” from Wilsonian orthodoxy, to make it worth a long look at Brownson’s riposte.

Brownson wrote in the pages of Fr. Isaac Hecker’s *The Catholic World*.⁴ His main thesis was that the “state, or secular society, does not and cannot suffice for itself, and is unable to discharge its own proper functions without the cooperation and aid of the spiritual society.” This puts Brownson squarely in the Founders’ company, save for his usage of the term “secular society.” The Founders’ terms would rather be the “state” or, better and more commonly, “republican institutions”. The term “secular society” does not appear in their leading writings; they did not need the term anyway to explain anything which needed explanation.

“Of all the dispositions and habits which lead to political prosperity, Religion and Morality are indispensable supports.” So Washington said in his Farewell Address. The founders wrote in the Northwest Ordinance that religion (along with morality and knowledge) is “essential to good government and the happiness of mankind”. Washington, again: “[L]et us with caution indulge the supposition, that morality can be maintained without Religion. Whatever may be conceded of the influence of refined education on minds of peculiar structure; reason and experience forbid us to expect that national morality can prevail in exclusion of religious principle”.

Madison asked in Federalist Fifty-five: are “nothing less than the chains of despotism”

⁴ “Unification and Education”, April 1871, pages 1 - 14. All quotations in this Part of the paper (unless otherwise indicated) are from this essay.

required to “restrain [men] from destroying and devouring one another?” The answer was, “no” or, at least, “not necessarily”. Madison allowed that republican government presupposed the existence of virtuous qualities in men “in a higher degree than any other form” of government. But a free society’s government was limited in its authority to cultivate these virtuous qualities; the limitation was a distinguishing feature of that government as *free*. For Madison even the serious problem of religious divisions – the problem of religious “faction” – must never be resolved by trying to give everyone the same religious opinions and habits.

The founders did not use the term “civil society” or, as far as I know, the word “culture”. But they surely referred to those complex realities, albeit by different names. The founders almost invariably spoke as did Washington, straight-on about, simply, “religion” and “morality” and a composite of them called “virtue”. They thought you could not have one without the others. My judgment, then, is that Brownson so far considered rightly called out Wilson for proposing a radical “new” departure in American constitutional (small “c”) thinking on the relationship between government and civil society. Wilson would have authorized the government to mold or make the citizens it needed for successful operation of political life.

Returning to the *Catholic World* we can now see the target at which Brownson aimed: an officious hyper-moralism. Brownson denounced in the *Catholic World* “Evangelicals, their Unitarian offshoots, and their humanitarian allies, [all] “busy bodies who fancy they are the Atlas who upholds the world, and that they are disputed to take charge of everybody’s affairs, and put them to rights”. But for these “intolerant zeal[ots]” a “just and equitable system of public schools” along the denominational model of Prussia, he opined: state funded and chartered, but run by religious bodies. For Brownson such a model respected the primordial

rights of parents as well as it respected and religious liberty. And it secured for the body politic the rightly formed citizenry it presupposed.

Brownson saw clearly what the Evangelicals of his day were up to: they sought “to make the public schools an instrument for securing the national, social, and religious unification of the country,” which would eventually “extirpate Catholicity from American soil.” The “Evangelicals” aspired to take over civil society. And they would, according to Brownson, “mould[] the whole American population into one homogeneous people” modeled after the New England Evangelical. Plainly put, he was opposed to the proposition that only Protestants could be genuine Americans, and to the project of using compulsory schooling to make all Americans into (at least) small “p” Protestants. If Brownson is guilty of exaggeration (and he is) it is probably of the misdemeanor – not the felony – kind. He went too far in extending and then generalizing from the Protestant (capital “P”) principle of private religious judgment. But he was basically on track.

Brownson’s indictment of the “Evangelical” model surely has enough truth in it to forestall any characterization of the Blaine Amendment as, simply, a secularizing agent. For Brownson and, I think, for anyone who then (or now) who saw the Amendment episode clearly, it had nothing to do with secularism. The Amendment was, in part, a political gambit which was meant to capitalize on deep Protestant anxiety about how America would retain its distinctive character, which meant (in part) its special Protestant character. Seeing Blaine this way allows us to make sense of the Senate version, which retained Bible reading in schools. Seeing Blaine as an agent of secularism makes this retention unintelligible.

How do the Founders factor into the picture *now*? Was Wilson's "new departure" an aberration, an exogenous growth on our constitutional order? Or were the founders somehow complicit in the "New England conspiracy" that Brownson described? What can we say about the *radicalness* of Wilson's call for legally compelled character formation for all in public schools? Of such formation which somehow straddled the Evangelical's idea of truth and the statesman's need of citizen raw material?

Wilson exploited an equivocation or uncertainty or tension in the founders' thinking on church and state. To switch images, we can say that he took one fork in the road of their thinking. Wilson was willing to sacrifice the independence of civil society from the state, if that was the price of securing enough citizen raw material to make democracy work. . Brownson, too, stood within the tradition of American thought on civil society and the state. He forsook Wilson's "new departure". He proposed instead to tweak the founders' approach to generating the right kind of American citizen.

Brownson called for modest revision of the traditional partnership between the state America's religious and civil institutions, each working for the common good of the polity (though with the churches retaining an additional important, distinctive mission). It is perhaps strange to describe a partnership between church and state as an arrangement of equals. But in an important sense it was. It was a collaboration between forces each with the resources to take care of itself and to negotiate with the other foe of intimidation or differences. This arrangement in which American identity and destiny were incomplete without the distinctive contributions of priests and ministers and prophets – along with the contributions of distinctively political actors – is all the more remarkable because American religion has been, well, free. In that important

way, America's *political* identity and fortunes were in the hands of the Spirit which, according to Christian belief, blows where it wills.

Precisely this partnership was under fire in the Blaine imbroglio. An August 1876 article in the *Atlantic Monthly* captured the stakes exactly. Though Congressional Republicans did not always speak as candidly or as clearly as did this writer, he thematized, and cogently expressed, what they held.

I have not been able to learn anything about the author, one William T. Harris. But he said in "The Division of School Funds for Religious Purposes" that Grant's December 1875 Message "makes an epoch in our political history". He wrote that "we have just now come upon a crisis in the development of our political theory". The "crisis" was the "first practical collision" of the state "with the ecclesiastical organization of the people". Heretofore it had been *laissez faire*: the state and the church roamed freely, the latter in "civil society" (Harris's term), the state in the realm of law and politics. But now there is a "disputed province", an arena of overlapping interest where the interests of the two conflict: that of "secular education in the conventionalities of intelligence". "Civil society claims this province by right of eminent domain, taking from the family or the individual what it finds necessary for the benefits of the community at large". This was, by the way, Wilson's view and, in fact, the view of the Gilded Age Republican Party. I think that the Blaine Amendment makes it clear that the state (the polity, the political community) held an inalienable mortgage upon citizens' "virtue" and "intelligence" (and anything else you wish to list), a lien which could be called in at will.

CONCLUSION

The Blaine Amendment heralded a two-fold shift in Americans' understanding of their political institution's relationship to citizens' character. The shifts were, first, to "intelligence" as the distinguishing feature of "virtuous" citizens, and second, to the state as bearer of ultimate moral responsibility and political authority for cultivating "intelligent" citizens. The Blaine Amendment was not itself a herald of secularism. Nor was it meant to be in the minds of its sponsors. Nonetheless, each of the two shifts – to "intelligence" as bulwark of the republic and to the state as cultivator of "intelligence" – is intimately related to the eventual emergence of secularism in constitutional law, in educational theory, and in elite thinking, by the middle of the twentieth century.