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Why Do Church-State Relations Change? Politics, Institutions, and Federal Funding for Parochial Schools in Australia and America, 1945-1985

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Abstract

While church-state relations are increasingly theorized as an important independent variable in sociology, the processes whereby they change remain undertheorized. In this paper, I consider three existing theories in light of the divergent experiences of Australia and the United States since World War II. In the late 1950s and early 1960s, both nations passed legislation to improve science facilities in secondary schools. This legislation constituted the first significant federal involvement in education policy for each country, and both bills provided financial support for both public and private (mostly religious) schools. Whereas in Australia, this legislation paved the way for large-scale government support for religious schools, the American legislation had no such effect. I argue that, while common structural forces favoring federal support for religious schools were at work in both nations, these forces were stymied in the United States by an inhospitable institutional environment. Catholic advocates in the United States were constrained by the legacy of previous legislative battles, the existence of a body of church-state jurisprudence, and the way they were incorporated into the party system. Based on this analysis, I set forth an alternative political-institutional theory for why church-state relations change that better explains this outcome.

Why Do Church-State Relations Change? Politics, Institutions, and Federal Funding for Parochial Schools in Australia and America, 1945-1985

Introduction

The United States and Australia currently take very different approaches to the funding of religious schools. In the United States, there is virtually no direct support for religious schools. What government support exists is largely limited to indirect subsidies such as tax credits for parents, and loans of supplies and services to religious schools that flow (in theory) to the schoolchildren, not to the schools themselves.¹ In Australia, by contrast, 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.² Non-government schools in Australia now rely on government subsidies for more than half of their annual income.³

While these funding patterns may differ dramatically today, their divergence is of relatively recent vintage. In the wake of World War II, the two nations shared remarkably similar funding regimes, allowing (at the state level) some indirect subsidies but no direct support for religious schools. The ensuing divergence becomes more perplexing when one considers that in both nations, the first legislation providing significant federal funding for education included funding for religious schools. Yet whereas in Australia, this legislation

¹ John Witte, Jr. 2005. *Religion and the American Constitutional Experiment*. 2nd ed. Boulder, Co.: Westview Press. It should be noted that even the contentious voucher programs do not pose a major exception to this pattern. As with the loan of books and educational materials, vouchers are justified on the grounds that the benefit flows to the child rather than to the school. Moreover, voucher programs currently operate in only five states, and most programs are targeted at poor or special needs children. On vouchers, see National Conference of State Legislatures. 2007. "School Choice Voucher Programs." Available online at <http://www.ncsl.org/programs/educ/schoolchoicevoucherprog.htm>. Accessed 14 January 2008.

² 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.

³ Lyndsay Connors. 2006. "Funding." Paper presented at the Cornerstones Conference, Sydney, Sept. 23.

proved to be a landmark that opened the door to large-scale government support for religious schools, the American legislation had no such effect. How could such similar measures yield such different results?

The question is important not only for the intrinsic puzzle it presents to the historian, but for its implications for sociological theorizing about church-state relations. Church-state relations, and why they change, lurk in the background of a number of recent scholarly debates and lines of inquiry. Rational choice theorists have argued that “deregulation” of the “religious marketplace” by the state leads to increased religious pluralism and increased religious vitality.⁴ Economic sociologists have posited church-state relations as a distal variable to explain rates of economic growth.⁵ And church-state relations have been cited as important factors contributing to a variety of political developments, among them the emergence of modern states,⁶ the development of anticlerical protest,⁷ and the rise of contemporary conservative religious movements.⁸ Yet despite the important influence attributed to them, there is little consensus about how and why church-state relations change, and the mechanisms leading to these changes remain substantially undertheorized.

⁴ Roger Finke and Rodney Stark. 1992. *The Churching of America, 1776-1992: Winners and Losers in Our Religious Economy*. New Brunswick: Rutgers University Press; Anthony S. Gill. 1998. *Rendering unto Caesar: The Catholic Church and the State in Latin America*. Chicago: University of Chicago Press; Rodney Stark and Roger Finke. 2000. *Acts of Faith: Explaining the Human Side of Religion*. Berkeley: University of California Press.

⁵ Robert J. Barro and Rachel M. McCleary. 2003. “Religion and Economic Growth across Countries.” *American Sociological Review* 68: 760-781, p. 770.

⁶ 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: 138-167; Philip S. Gorski. 2003. *The Disciplinary Revolution: Calvinism and the Rise of the State in Early Modern Europe*. Chicago: University of Chicago Press.

⁷ David Martin. 1978. *A General Theory of Secularization*. Oxford: Blackwell Books; Jose Casanova. 1994. *Public Religions in the Modern World*. Chicago: University of Chicago Press.

⁸ Robert Wuthnow. 1988. *The Restructuring of American Religion*. Princeton: Princeton University Press; Casanova, *Public Religions in the Modern World*; Clyde Wilcox. 2000. *Onward Christian Soldiers? The Religious Right in American Politics*, 2nd ed. Boulder, CO: Westview Press.

More broadly still, understanding why different patterns of state support for religious institutions emerge has implications for sociological debates about secularization.⁹ While the secularization debate has been focused, for the past twenty years, on religious disinvolvement, or declines in individual belief and practice, in recent years attention has returned to the historic concern with secularization as an institutional process, or “differentiation.”¹⁰ Church-state relations are important indicators of the degree to which social sectors are differentiated from religion.¹¹ The different institutional settlements that emerged in Australia and the United States during the latter half of the twentieth century are interesting for the light they can shed on one of the broadest questions motivating the secularization debate: what are the processes and mechanisms that lead religious and non-religious agencies to integrate and collaborate in their provision of services?

In this paper, I examine the events surrounding the entry of the federal government into education in Australia and the United States to explain why it set the two nations off on such different trajectories. I argue that, while common structural forces favoring federal support for religious schools were at work in both nations, these forces were stymied in the United States by an inhospitable institutional environment. Catholic advocates in the United States were constrained by the legacy of previous legislative battles, the existence

⁹ This paper is part of a larger project which examines differentiation as a continuing process consisting of changing institutional relationships between religion and education along three dimensions: control, cultural authority, and integration.

¹⁰ On the disinvolvement debate, see Steve Bruce. 2002. *God Is Dead: Secularization in the West*. Oxford: Blackwell; and Stark and Finke, *Acts of Faith*. For the return to the differentiation debate, see Casanova, *Public Religions in the Modern World*; Gorski, “Historicizing the Secularization Debate;” and Christian Smith, ed. 2003. *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life*. Berkeley: University of California Press.

¹¹ The state, thanks to the multiple functions it coordinates, its monopoly on violence, and the immense resources it has at its disposal, is an unavoidable reference point when considering the institutional dimension of secularization. Many of the church’s traditional functions, such as education, social welfare, law, and health, have been largely secularized into agencies coordinated or run by the state.

of a body of church-state jurisprudence, and the way they were incorporated into the party system. These findings, I argue, challenge three major theories (structural, rational-choice, and political) used to explain changes in church-state regimes;¹² but they also suggest the outlines of a new *political-institutional* model of church-state regime transformation that builds upon the strengths of the existing theories.

I begin by laying out three common theories to explain changes in church-state regimes and explain in broad terms their shortcomings. I then turn to the case study, first explaining the comparison and then providing a broad overview of the development of federal education policy in the United States and Australia during the period in question. I then analyze the cases to identify commonalities and contrasts between the two nations. In brief, I argue that similar structural and political forces were at work in both countries. However, the outcomes differed because these forces were filtered through different institutional environments. Based on this analysis, I conclude by laying out my alternative theory of church-state regime transformation.

¹² The term “church-state regime” is somewhat inelegant, but it measures an inelegant concept. I use the term to refer to an established pattern of interaction between states and religious institutions. It is manifestly clear that an exclusive focus on constitutional language is unsatisfactory in determining church-state relations, as the multiple funding arrangements that have existed under the same Australian constitution since 1901 demonstrate (see below). Moreover, the internal consistency of church-state relations is, I believe, often overstated. I focus exclusively on education rather than on the totality of state relationships with religious institutions because I believe it is possible for multiple “regimes” to exist in different social spheres within the same state. Thus, for example, the relationships that inhere between the United States and religious groups in the sphere of social welfare provision, for example, are far closer than those which inhere in education, and similar discrepancies between connections in social welfare and education characterized much of Australian history. On these disjunctures, see Stephen V. Monsma and J. Christopher Soper. 1997. *The Challenge of Pluralism: Church and State in Five Democracies*. Lanham, Md.: Rowman & Littlefield; and Brian Dickey. 1986. *Rations, Residence, Resources: A History of Social Welfare in South Australia since 1836*. Netley, S.A.: Wakefield Press.

Church-State Regime Transformations: Existing Theoretical Approaches

What accounts for patterns of state support for religious institutions? The answers social scientists give can be broadly divided into three major approaches. The *structural approach* argues that broad social changes lead to changes in church-state relations. This approach draws upon traditional theories of secularization, which predicted a more or less unidirectional decline of religious authority at the hands of modernity.¹³ In a contemporary example, Phillip Hammond argues that the American trend toward strict separation is structurally driven by the growth of the state and the rise of religious pluralism.¹⁴ The *rational-choice approach*, by contrast, argues that individual decision-making by politicians determines how cozy states become with religious groups. Thus, Anthony Gill argues that political actors are motivated primarily by a desire to preserve their ability to remain in office and to maximize their economic resources, and thus “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.”¹⁵ Finally, a nascent *political approach* argues that church-state relations change as the result of conflict between religious and non-religious groups.¹⁶ For example, David Sikkink has argued that a decades-long effort of lawyers to professionalize and rationalize their craft helps explain the transformation of American church-state jurisprudence, as the

¹³ E.g., Peter Berger. 1969. *The Sacred Canopy: Elements of a Sociological Theory of Religion*. New York: Anchor Books; 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.

¹⁴ Phillip E. Hammond. 1998. *With Liberty for All: Freedom of Religion in the United States*. Louisville, Ky.: Westminster John Knox Press.

¹⁵ Anthony Gill. 2008. *The Political Origins of Religious Liberty*. Cambridge: Cambridge University Press, p. 52. See also Roger Finke. 1990. “Religious Deregulation: Origins and Consequences.” *Journal of Church and State* 32: 609-626; and Gill, *Rendering unto Caesar*.

¹⁶ See, e.g., Philip S. Gorski. 2005. “The Return of the Repressed: Religion and the Political Unconscious of Historical Sociology.” Pp. 161-189 in Julia Adams, Elisabeth S. Clemens, and Ann Shola Orloff, eds., *Remaking Modernity: Politics, History, and Sociology*. Durham: Duke University Press; Martin, *A General Theory of Secularization*; Smith, *The Secular Revolution*.

old, Christian-influenced “jurisprudence of the heart” was rejected in favor of case law and “sociological jurisprudence.”¹⁷

As the remainder of this paper will demonstrate, each of these approaches captures important aspects of these transformations, yet provides an incomplete picture of the overall process. The Australian case—where the growth of the state and increasing religious diversity were accompanied by *closer* ties between church and state—challenges the idea that structural forces translate unproblematically into changes in church-state relations. The American case—where unelected judges insulated from political pressures to increase power or revenues played an important role in affecting church-state relations, and where other motivations beyond raw political self-interest are clearly evident—suggests the need for a theory that goes beyond the narrow focus on self-interest central to the rational-choice approach. And both cases illustrate that the political approach needs to be expanded: while conflict between religious and non-religious groups was important to the final outcome, conflict *between* religious groups also mattered to the outcome; and the factors influencing the outcome of these struggles, moreover, require greater explanation.

Why Australia?

Australia is infrequently used as a comparative case for the United States, especially on questions of religion. Yet in many respects, Australia is about as close to the United States, religiously and politically, for the purposes of this paper as we could hope to find. Both are former British “settler colonies” that share democratic systems of government, a common law legal tradition, and a court system empowered with judicial

¹⁷ David Sikkink. 2003. “From Christian Civilization to Individual Civil Liberties: Framing Religion in the Legal Field, 1880-1949.” Pp. 310-354 in Christian Smith, ed., *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life*. Berkeley, CA: University of California Press.

review.¹⁸ While the United States is considerably more religiously diverse than Australia, Australia is nevertheless remarkably religiously diverse in its own right, home to a wide variety of Anglicans, Catholics, Presbyterians, Methodists, Baptists, Congregationalists, Jews, and other religious groups.¹⁹ In the period under consideration, Catholics and Protestants—who have a long history of fighting among themselves²⁰—claimed similar proportions of the population in both countries.²¹

The two countries also share similar constitutional language regarding the relationship between church and state. Section 116 of the Australian Constitution, which reads, “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,”²² is an almost direct echo of the First Amendment of the American Constitution’s “Congress shall make no law respecting an establishment of religion, or

¹⁸ 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; Gerald Baier. 2006. *Courts and Federalism: Judicial Doctrine in the United States, Canada, and Australia*. Vancouver: UBC Press.

¹⁹ Gary D. Bouma. 2006. *Australian Soul: Religion and Spirituality in the Twenty-First Century*. Cambridge: Cambridge University Press; Rodney Tiffen and Ross Gittins. 2004. *How Australia Compares*. Cambridge: Cambridge University Press.

²⁰ Michael Hogan. 1978. *The Sectarian Strand: Religion in Australian History*. Ringwood, Vic.: Penguin Australia.

²¹ In the United States, NORC surveys reveal that Catholics made up about 24% of the population in 1967, while Protestants made up about 66%. In Australia, official census data indicate that Catholics made up 26% of the population in 1966, while Protestants made up 62%. The figures in the United States were comparable for the 1950s. On the United States, see Andrew M. Greeley. 1989. *Religious Change in America*. Cambridge: Harvard University Press, p. 25. On Australia, see Australian Bureau of Statistics. 2008. *Year Book Australia 2008*. Canberra: ABS, table 14.38. Available online at <http://www.abs.gov.au/ausstats/abs@.nsf/7d12b0f6763c78caca257061001cc588/636F496B2B943F12CA2573D200109DA9?opendocument>. In recent years, the religious demographics have diverged somewhat as Australian Protestantism has gone into sharp decline. The 2004 GSS indicates that about 24% of Americans identify as Catholic and 55% identify as Protestant, while the 2006 Australian Census indicates that 26% of Australians identify as Catholic and only 38% identify as Protestant. 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(4): 447-463, p. 457; and Australian Bureau of Statistics, *Year Book*, table 14.38. On the decline in Australian Protestantism, see Bouma, *Australian Soul*.

²² Australian Constitution, Section 116.

prohibiting the free exercise thereof...”²³ In fact, the Australian provisions regarding religion were explicitly modeled after those of the American Constitution,²⁴ in what one Australian scholar has called a “fairly blatant piece of transcription.”²⁵

Finally, the two countries shared a common normative orientation toward the relationship between religion and education until relatively recently. Throughout the nineteenth century and into the twentieth, though with decreasing vigor, both nations embraced a broadly Protestant moral education and devotional exercises as part of the public school curriculum.²⁶ While the United States officially moved to prohibit religion in the public schools beginning in the 1940s, this represented a significant break from the historical pattern, as the angry public reaction indicated.²⁷ Similarly, education in both countries was originally run through private and religious schools with government support. In both countries, this support was consciously withdrawn in the mid- to late-nineteenth century in the name of social unity, nation-building, and anti-Catholicism.²⁸ An observer surveying the scene in both countries at the end of World War II would have found, in both countries, a significant amount of religion in the public schools, and strict

²³ United States Constitution, Amendment I. Note that the “religious test” portion of Australia’s Section 116 is derived from Article V of the United States Constitution.

²⁴ See Richard Ely. 1976. *Unto God and Caesar: Religious Issues in the Emerging Commonwealth, 1891-1906*. Melbourne: Melbourne University Press.

²⁵ Clifford L. Pannam. 1963. “Travelling Section 116 with a U.S. Road Map.” *Melbourne University Law Review* 4: 41-90, p. 41.

²⁶ For good historical overviews of religion in Australian education, see New South Wales. Committee to Consider Religious Education in N.S.W. Government Schools. 1980. *Religion in Education in N.S.W. Government Schools*. Sydney: GPO; and Victoria. Committee on Religious Education. 1974. *Religious Education in State Schools: Report of the Committee on Religious Education*. Melbourne: GPO. For the United States, see Joan DelFattore. 2004. *The Fourth R: Conflicts over Religion in America’s Public Schools*. New Haven, Conn.: Yale University Press; and 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. Note that there was a good deal of variation in law and practice at the state level in both countries through the end of World War II.

²⁷ See generally DelFattore, *The Fourth R*; Philip Hamburger. 2002. *Separation of Church and State*. Cambridge: Harvard University Press.

²⁸ Lloyd P. Jorgenson. 1987. *The State and the Non-Public School, 1825-1925*. Columbia: University of Missouri Press; A.G. Austin. 1965 [1961]. *Australian Education, 1788-1900: Church, State, and Public Education in Colonial Australia*. 2nd ed. Melbourne: Sir Isaac Pitman & Sons.

popular and legal barriers against the funding of church schools. While not a pure natural experiment, then, the many similarities between Australia and the United States make the comparison of their education policies still more compelling.

Federal Education Legislation: A Brief Overview

Prior to the 1950s, neither the Australian nor the American federal government played a major role in education.²⁹ In Australia, education was run through state departments of education that were highly centralized, the legacy of late 19th-century battles to wrest control of education away from the churches.³⁰ In the United States, education was run through a decentralized patchwork of local school districts coordinated at the state level.³¹ Existing alongside these state school systems were a variety of religious and private schools. The Australian private education sector in the mid-1960s represented about 24% of all education, while American private schools educated about 15% of all children during that period.³² The largest nongovernment educational system in each country was run by the Catholic Church. While Catholics frequently requested state support for their school systems, these requests were rejected. In the United States, most

²⁹ While this statement is broadly true, it does gloss over certain interventions. In the United States, the federal government provided support for state and local education through land grants and also subsidized education on Native American reservations; while in Australia, the federal government was responsible for managing education in its territories, such as Papua New Guinea. These interventions were minor, however, in comparison with state and local activities. See Matthew J. Hirschland and Sven Steinmo. 2003. "Correcting the Record: Understanding the History of Federal Intervention and Failure in Securing U.S. Educational Reform." *Educational Policy* 17: 343-364; I.K.F. Birch. 1977. "Commonwealth Participation in Education, 1901-1976." Pp. 12-23 in I.K.F. Birch and Don Smart, eds., *The Commonwealth Government and Education, 1964-1976: Political Initiatives and Development*. Richmond, Vic.: Drummond.

³⁰ 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.

³¹ Carl F. Kaestle. 1983. *Pillars of the Republic: Common Schools and American Society, 1780-1860*. New York: Hill and Wang; Tom Loveless. 1998. "Uneasy Allies: The Evolving Relationship of School and State." *Educational Evaluation and Policy Analysis* 20:1-8.

³² Australia. Commonwealth Bureau of Census and Statistics. 1965. "Social Statistics Australia, No. 27: School Enrolments, 1964." Canberra: Author, p. 2; James C. Carper. 2001. "The Changing Landscape of U.S. Education." *Kappa Delta Pi Record* 37(3): 106-111, p. 109.

states passed laws prohibiting the expenditure of public moneys on “sectarian” schools, and the federal government nearly passed a constitutional amendment to the same effect in 1876.³³ In Australia, too, the various states passed laws eliminating “state aid” for religious schools in an effort to bolster the public school system.³⁴ Battles over funding for religious schools, therefore, had primarily been waged at the state level in both countries through the middle of the twentieth century. However, the expansion of the federal government in the 1930s and 1940s was to shift the education debate to the federal level.

The origins of federal intervention in education can, in both countries, be traced to science education schemes. As early as the 1930s, education advocates in the United States had begun pushing for federal involvement in education. They found themselves repeatedly stymied over issues of federalism, race, and—especially—religion.³⁵ Their luck changed in 1957, when the Soviet Union launched the Sputnik satellite into orbit. This event convinced many politicians that Americans were suffering from insufficient education in science and technology. In response, Congress passed the National Defense Education Act (NDEA) in 1958. The NDEA provided grants for public schools to purchase materials for teaching science, mathematics, and foreign languages. At the same time, it included a provision, inserted largely thanks to behind-the-scenes lobbying by Catholics, which authorized the government to issue loans to non-public (including parochial) schools to enable them to purchase teaching materials and remodel science laboratories.³⁶

³³ Steven K. Green. 1992. “The Blaine Amendment Reconsidered.” *American Journal of Legal History* 36: 38-69; Jorgenson, *The State and the Non-Public School, 1825-1925*.

³⁴ Austin, *Australian Education, 1788-1900*.

³⁵ Hugh Douglas Price. 1962. “Race, Religion, and the Rules Committee: The Kennedy Aid-to-Education Bills.” Pp. 1-71 in Alan F. Westin, ed., *The Uses of Power*. New York: Harcourt, Brace, & World.

³⁶ Lawrence J. McAndrews. 1991. “A Closer Look: The NCWC and the Elementary and Secondary Education Act.” *Records of the American Catholic Historical Society of Philadelphia* 102(1): 45-65, p. 49.

The NDEA was the first real breakthrough by advocates of federal aid to education, and it seemed at the time that it might pave the way for more wide-ranging federal involvement in education. Yet bills that would have provided larger-scale general funding for education faltered repeatedly in the coming years, often on the question of whether funds should be extended to Catholic schools.³⁷ The most dramatic failure occurred in 1961, when a general aid bill sponsored by President Kennedy died in the House, alongside a supplemental measure that would have extended loans to Catholic schools, when public school and Catholic school advocates could not agree on which bill to consider first.³⁸ In the wake of the 1961 fiasco, the federal government abandoned its efforts to provide general aid for salaries and maintenance and instead adopted a categorical approach whereby federal monies would flow through programs targeted to poor children. This new approach, which built upon the “child-benefit” theory that the Supreme Court had previously used to uphold the provision of textbooks to Catholic schools in Louisiana, was expressly designed to evade the controversy over aid to parochial schools.³⁹

Accordingly, when the federal government did eventually pass a large-scale education bill, the Elementary and Secondary Education Act (ESEA) of 1965, it was able to do so only by heavily restricting the services that were extended to religious schools. Early plans to issue some assistance to religious schools in grant form were hastily

³⁷ James L. Sundquist. 1968. *Politics and Policy: The Eisenhower, Kennedy, and Johnson Years*. Washington, D.C.: Brookings Institution Press.

³⁸ Price, “Race, Religion, and the Rules Committee.”

³⁹ Douglass Cater. 1977. “The Political Struggle for Equality of Educational Opportunity.” Pp. 325-340 in David C. Warner, ed., *Toward New Human Rights: The Social Policies of the Kennedy and Johnson Administrations*. Austin: The Lyndon B. Johnson Center for Public Affairs, University of Texas, p. 332; Hugh Davis Graham. 1984. *The Uncertain Triumph: Federal Education Policy in the Kennedy and Johnson Years*. Chapel Hill: University of North Carolina Press, pp. 72-74; and Julie Roy Jeffrey. 1978. *Education for Children of the Poor: A Study of the Origins and Implementation of the Elementary and Secondary Education Act of 1965*. Columbus: Ohio State University Press, p. 70.

abandoned when controversy ensued.⁴⁰ 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.⁴¹

In Australia, too, science education was the leading edge of federal intervention in education policy. The federal government created an Office of Education during World War II, but its activities were largely confined to university education for its first twenty years of existence.⁴² The conservative Menzies government repeatedly asserted that the federal government had no role to play in Australian education, brushing aside questions about assisting schools as being “outside the jurisdiction of this Government.”⁴³ During the 1963 election campaign, however, the Menzies government changed its mind and proposed legislation to provide five million pounds for science education in public and private schools, arguing, as in the United States, that the measures were necessary to improve a perceived deficit in Australian scientific and technological know-how and “keep [Australia] in step with the march of science.”⁴⁴

Menzies’ victory in the 1963 election validated this program, and, in the process, overturned Australia’s political consensus against providing “state aid” to Catholic schools that had reigned since the last quarter of the twentieth century. In a heady atmosphere of educational expansion, additional funding was provided to expand libraries and train

⁴⁰ Dean M. Kelley and George R. LaNoue. 1965. “The Church-State Settlement in the Federal Aid to Education Act.” Pp. 110-160 in Donald A. Gianella, ed., *Religion and the Public Order: An Annual Review of Church and State and of Religion, Law, and Society, 1965*. Chicago: University of Chicago Press, p. 115n.11.

⁴¹ Stephen K. Bailey and Edith K. Mosher. 1968. *ESEA: The Office of Education Administers a Law*. Syracuse, N.Y.: Syracuse University Press; Kelley and LaNoue, “The Church-State Settlement in the Federal Aid to Education Act.”

⁴² I.K.F. Birch and Don Smart, eds. 1977. *The Commonwealth Government and Education, 1964-1976: Political Initiatives and Development*. Richmond, Vic.: Drummond.

⁴³ Robert Menzies, in Australia. House of Representatives. 1960. *Commonwealth Parliamentary Debates*. August 30, p. 154.

⁴⁴ R.G. Menzies. 1963. *Federal Election, 1963: Policy Speech of the Prime Minister*. Sydney: Government Printer, p. 22.

librarians in public and non-public schools in 1968, and in 1969, permanent Commonwealth funding was introduced for non-public schools, in the form of per capita grants to be used for any purpose the schools desired. In 1973, the newly formed Schools Commission expanded these funding patterns under a new federal educational bureaucracy.⁴⁵ Thus, science education was the beachhead for what eventually became wholesale federal support for religious schools.

Explaining Regime Transformation

Why did science education legislation presage direct support for religious schools in Australia, but not in the United States? Common structural forces were at work in both countries that created an opening for transformation in both: the expansion of the federal government, a deep crisis in the Catholic schooling system, and the weakening of Protestant-Catholic animosities that had organized political life for a century. In both countries, Catholics—motivated by the crisis in the parochial schools—were the prime agitators for change. The difference lay in the institutional constraints that Catholics faced in the course of their campaign.

Common Structural Forces, Divergent Institutional Constraints

The primary structural force at work in both countries during this period was the growth of the federal government. In the wake of the Great Depression and World War II, the federal government expanded dramatically in size and power in both Australia and the United States. As part of this expansion, federal (and many state) officials in both countries increasingly saw education—previously reserved to state governments—as the appropriate

⁴⁵ Don Smart. 1978. *Federal Aid to Australian Schools*. St. Lucia: University of Queensland Press.

object of federal activity. However, the question of exactly how the state should relate to education was contentious, and both nations reconsidered all aspects of their educational sector—public as well as private—in the course of developing a federal role in education. The questions confronted in both nations were thus remarkably similar: should public and parochial schools be seen as part of an overall system of national education? Should the state extend its subsidies beyond public schools? What form should federal subsidies take?

However, it was a second structural force that provided most of the tension and dictated the terms in which these questions would be reconsidered: namely, a deepening financial crisis in the Catholic school system. In response to a century's worth of Protestant hostility, Catholics in both countries had built up an extensive independent school system, managed and maintained by the Church.⁴⁶ By the 1960s, Catholic schools educated over eighty percent of all private schoolchildren.⁴⁷ But in the years following World War II, the Catholic school system fell into increasingly dire straits for two primary reasons. First, the postwar baby boom led to a rapid increase in enrollments. Second, this demographic surge contributed to a labor crisis. Catholic schools found themselves increasingly relying on lay teachers, rather than priests and nuns, to staff their schools, which exerted upward pressure on parochial school costs thanks to the higher salaries needed in order to compete with public schools for lay teachers.⁴⁸ Consequently, Catholics became increasingly vocal

⁴⁶ Patrick W. Carey. 2004. *Catholics in America: A History*. Westport, Conn.: Praeger; Hogan, *The Sectarian Strand*.

⁴⁷ In 1966, approximately 87% of all students enrolled in nonpublic schools in the United States were enrolled in Catholic schools. In 1963, approximately 82% of all students enrolled in nonpublic schools in Australia were enrolled in Catholic schools. For the United States, see U.S. Office of Education. 1968. *Statistics of Non-Public Elementary and Secondary Schools, 1965-66*. Washington, D.C.: GPO. For Australia, see figures reported in "Catholic Schools Teach 19.5 p.c." 1964. *Daily Telegraph*, 7 May 1964.

⁴⁸ Frank J. Munger and Richard F. Fenno. 1962. *National Politics and Federal Aid to Education*. Syracuse, N.Y.: Syracuse University Press; 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.

advocates of federal aid for Catholic schools, and were the prime movers in attempts in both countries to increase financial ties between church and state.

Catholics had advocated closer financial ties between their schools and the government before, but their entreaties had fallen on deaf ears. However, a third structural shift during the postwar years created an opening in which the question of funding Catholic schools could be reconsidered. This was the destabilization of the longstanding sociopolitical cleavage between Catholics and Protestants. Historically, Protestant anti-Catholicism had been the biggest factor inhibiting closer financial connections between church and state in education.⁴⁹ However, during the postwar years this conflict between Catholics and Protestants began to wane significantly, as Catholics' socioeconomic status improved and a spirit of ecumenism swept the churches.⁵⁰ The changes in the Catholic Church as a result of Vatican II, in particular, helped to smooth over old differences and usher in a religious détente between Catholics and Protestants.⁵¹ As old religious oppositions weakened, it became possible to seriously conceive of federal support for Catholic schools in both countries for the first time.

Despite having similar structural forces at work, the United States and Australia evolved in different directions. Catholics advocating for aid to religious schools in Australia operated in an environment with fewer institutional constraints than their

⁴⁹ Hogan, *The Catholic Campaign for State Aid*; Jorgenson, *The State and the Non-Public School, 1825-1925*.

⁵⁰ Benjamin Edwards. 2007. "Proddy-Dogs, Cattle-Ticks, and Ecumaniacs: Aspects of Sectarianism in New South Wales, 1945-1981." Unpublished Ph.D. Thesis. School of History, University of Sydney; Robert Wuthnow. 1988. *The Restructuring of American Religion*. Princeton: Princeton University Press.

⁵¹ Edwards, "Proddy-Dogs, Cattle-Ticks, and Ecumaniacs;" Kelley and LaNoue, "The Church-State Settlement in the Federal Aid to Education Act."

American counterparts. This greater relative institutional openness⁵² led to a rapid divergence in policy between the two countries, and the establishment of a new, less separationist church-state regime in Australia. Three differences were paramount in constraining or enabling Catholics in their quest for funding: the legacy of prior conflicts over education funding; the rulings (or lack thereof) of courts regarding the legality of government support for religious schools; and the way that Catholics were incorporated into party political systems. In all three of these dimensions, Australian Catholics faced a more favorable institutional environment, while their American counterparts found themselves constrained.

The Legacy of Previous Conflict

The legacy of previous conflict, or lack thereof, meant that the science education and subsequent proposals met with quite different political and organizational terrain in the two countries. In Australia, the decision to provide state aid for science laboratories in 1963 was not just the first time the federal government had moved to provide state aid to Catholic schools, but also the first time that the federal government had indicated any willingness to finance education whatsoever. Under the Australian constitution, the six state governments retained the responsibility for education, and Commonwealth governments repeatedly affirmed that education was not their province. As late as November 1962 the Menzies government, in a white paper on education, asserted that support for education should be left to the states.⁵³ While a strong campaign to involve the

⁵² Here I am referring to “openness” from the perspective of the Catholic Church in its attempts to gain funding. Elsewhere, Australia proved to be less open, institutionally, than the United States, for example to religious minorities seeking to remove religious exercises from the public schools.

⁵³ Smart, *Federal Aid to Australian Schools*, p. 61.

Commonwealth in education financing had been underway since the end of World War II, therefore, it had never been seriously debated in Parliament, right up to the time that state aid was proposed.⁵⁴

In the United States, by contrast, the 1958 NDEA legislation was not the first effort to obtain federal aid, but rather came some fifteen years after battles over education funding had been joined in the United States Congress. Attempts to pass legislation providing general federal aid to American schools had failed in 1945, 1949, 1950, and 1956. In many of these cases, the issue of federal support for Catholic schools had proven to be an insurmountable stumbling block, as Catholics found themselves lined up against anti-Catholic Protestants and their allies in the public schools, who sought to maintain state support for state schools alone.⁵⁵ These earlier battles had hardened the positions of the opposing camps: Protestants vowed to reject any legislation that provided support for religious schools, on the grounds that the separation of church and state must be defended against the greedy Catholic hierarchy, while Catholics pledged to scuttle any legislation that did not extend funds to Catholic schools.

That science education legislation took place on familiar terrain in the United States and freshly broken ground in Australia had three major effects. First, the terms of the debate were quite different. American educational forces had built opposition to support for parochial schools into their arguments in favor of support for public schools to a greater extent than Australian teachers' unions had. The National Education Association (NEA) was one of the loudest proponents of federal aid for public education throughout the

⁵⁴ Birch, "Commonwealth Participation in Education, 1901-1976."

⁵⁵ Robert Bendiner. 1964. *Obstacle Course on Capitol Hill*. New York: McGraw-Hill; Munger and Fenno, *National Politics and Federal Aid to Education*.

period. It was also one of the fiercest opponents of aid to private schools.⁵⁶ The earlier battles in the 1940s, in particular, had sharpened the NEA's arguments and locked them in to an uncompromising position on public aid. Because federal aid was on the table, in the form of congressional legislation, the key question had become the distribution of that aid. From the NEA's perspective, allowing federal support for private education threatened to cut into support for public education, and was thus unacceptable. In America, then, federal support for public and parochial schools came to be seen as a zero-sum game, and the NEA repeatedly affirmed its opposition to "all efforts to devote public funds to either the direct or the indirect support of these [religious] schools."⁵⁷

The situation was different in Australia. Because federal aid was not up for debate before 1963, the primary energies of all education activists had been focused on convincing federal officials to provide education to schools *at all*, rather than on the appropriate distribution of funds between Catholic and public schools.⁵⁸ In the decade leading up to the Science Laboratories Bill, the Australian Teachers' Federation (ATF) made many resolutions and devoted a great deal of time to attempting to secure federal aid for public schools, but was almost entirely silent about the prospect of state aid for religious schools.⁵⁹ Because the breakthrough on federal financing happened alongside the proposal to provide state aid, the teachers' unions were caught off guard, unprepared to argue opposition to state aid on the merits. They were also faced with a dilemma: opposition to state aid would threaten to derail the tentative steps toward federal

⁵⁶ Munger and Fenno, *National Politics and Federal Aid to Education*; Sundquist, *Politics and Policy*.

⁵⁷ Statement of National Education Association, quoted in Charles A. Quattlebaum. 1952. *Federal Educational Activities and Educational Issues Before Congress*. Washington, D.C.: USGPO, p. 106.

⁵⁸ Although some unions expressed opposition to state aid before 1963, these complaints were tentative, piecemeal, and focused on state-level politics, since the teachers' unions were internally divided over the propriety of getting involved in the state aid controversy. See John O'Brien. 1987. *A Divided Unity! Politics of NSW Teacher Militancy since 1945*. Sydney: Allen & Unwin.

⁵⁹ See Australian Teachers' Federation. 1952-1965. *Report of the Annual Conference*. Sydney: ATF.

intervention, undermining decades of work. Consequently, they tempered their criticism of state support for Catholic schools, and offered only tepid support to state aid opponents.⁶⁰ And, rather than framing the issue in zero-sum terms, Australian teachers' unions argued instead that federal money should go to public schools *first*, rather than to public schools *only*.⁶¹ Thus, the ATF's first resolution against state aid in January 1965 expressed not unequivocal opposition, but rather that it "strongly affirms its opposition to the diversion of public moneys to the subsidizing of non-Government schools, until such time as the needs of Government schools can be fully met."⁶²

Second, a substantial organizational infrastructure had developed in the United States that both hardened participants' positions and kept the issue boiling, whereas in Australia opponents were slow to organize and the locked-in character of the fight over church schools never fully materialized. In the United States, the NEA had long been the loudest opponent of federal funding for nonpublic schools. But it had considerable company on the church-state battlefield. The Federal Council of Churches, representing most mainline Protestant denominations, had first taken an oppositional stance to aid for Catholic schools during the earliest moves toward federal aid in the late 1930s,⁶³ and its leaders were prominent spokesmen against public aid during the 1940s and 1950s.⁶⁴ Fear that Catholics were making headway in the late 1940s spurred the immediate creation of Protestants and Other Americans United for Separation of Church and State as a single-

⁶⁰ The various teachers' unions did not speak with one voice during this period on the question of state aid. The teachers' national body, the Australian Teachers' Federation, was far more open to state aid than the New South Wales Teachers' Federation, for instance. See Simon Marginson. 1985. "The Collapse of the 1973 Karmel Consensus." *ATF Research Papers* 9. Canberra: Australian Teachers' Federation, p. 14n.2.

⁶¹ O'Brien, *A Divided Unity*.

⁶² Australian Teachers' Federation. 1965. *Report of the Forty-Fifth Annual Conference*. Sydney: ATF, p. 6.

⁶³ Anson Phelps Stokes. 1950. *Church and State in the United States*, Vol. II. New York: Harper & Brothers, p. 694.

⁶⁴ See, e.g., G. Bromley Oxnam, in *Public Aid to Parochial Education: A Transcript of a Discussion on a Vital Issue*. 1951. Cambridge: Harvard Law School Forum.

issue organization devoted to fighting aid to Catholic schools.⁶⁵ By the 1950s, a small panoply of organizations had grown up or oriented itself around the school question in the United States.

In Australia, by contrast, the organizational terrain in 1963 was far less developed. The Australian Federation of Teachers, in contrast to the NEA, was a marginal lobby in Canberra with no true constituency and accordingly little influence.⁶⁶ State teachers' unions did issue statements opposing state aid, but normally directed them to state governments. Catholics, too, aimed most of their firepower at state governments, and did not have a significant federal lobbying presence until 1962, when the Australian Parents' Council was organized.⁶⁷ Although lobbying efforts did take place around state aid, particularly by proponents, this activity almost always took place behind the scenes, out of the public eye.⁶⁸ Thus, when the Science Laboratories initiative was announced, a scramble ensued as the various factions attempted to define their positions and organize in light of the new policy proposals. As mentioned above, the educational organizations' sympathies were torn on the issue, and while they provided some support for those opposed to state aid, their support was tepid at best. Likewise, the later emergence of state aid as an issue meant that Australia's Protestant churches were more attuned to the ecumenical spirit of the early 1960s than the oppositional spirit of the 1940s. Consequently, the churches were themselves divided over the issue of state aid, denomination from denomination and

⁶⁵ Hamburger, *Separation of Church and State*.

⁶⁶ Andrew Spaul. 2001. "The Australian Teachers' Federation (1921-1991)." *Melbourne Studies in Education* 42(1): 93-109, pp. 103-105.

⁶⁷ Hogan, *The Catholic Campaign for State Aid*.

⁶⁸ John R. Godfrey and Alexander Pouw-Bray. 2000. "'I Believe in Fair and Bonny Play': David H. Drummond and State-Aid, 1930-1962." *Education Research and Perspectives* 27(2): 63-74, pp. 68-69.

sometimes within denominations.⁶⁹ The task of organization fell to an odd coalition of state-level educational, religious, humanist, and anti-Catholic groups that eventually coalesced as the Council for the Defense of Government Schools (DOGS), which was the driving force behind the 1981 High Court case that eventually upheld the state aid scheme.⁷⁰ However, the opponents were generally extremely slow to organize themselves, not really getting off the ground until the late 1960s.⁷¹ By that point, state aid was an increasingly entrenched feature of Australian partisan politics (see below).

Finally, in the United States previous battles had forced Catholics to articulate the extent of their demands, and in the course of doing so they had stated that their goals were limited to support for incidental and indirect support. Ironically, some of their earlier legal successes may have encouraged them to trim their sails. As I discuss below, between 1930 and 1947, the Supreme Court had upheld certain indirect state subsidies to Catholic schools. In their public statements, Catholics typically attempted to mollify their opponents by claiming to want no more than these auxiliary services. The battle over the 1949 legislation was typical in this respect. During the debate on that bill, Archbishop Francis Keogh had 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

⁶⁹ P.N. Gill. 1965. “The Federal Science Grant: An Episode in Church-State Relations, 1963-1964.” Pp. 271-354 in E.L. French, ed., *Melbourne Studies in Education, 1964*. Melbourne: Melbourne University Press. The lure of funds for their own denominational schools was also hard to resist for some Anglican synods, who eventually plumped for the state aid legislation. Keith Rayner. 2006. Interview with Rachel Kohn. “Faith in the Fifties.” *The Spirit of Things*, 24 September. Australian Broadcasting Corporation Radio National. Available online at <http://abc.net.au/rn/spiritofthings/stories/2006/1744520.htm>

⁷⁰ I.K.F. Birch. 1984. “State Aid at the Bar: The *DOGS Case*.” Pp. 31-54 in Imelda Parker, ed., *Melbourne Studies in Education, 1984*. Melbourne: Melbourne University Press; M.J. Ely. 1981. *Erosion of the Judicial Process: An Aspect of Church-State Entanglement in Australia*. Greenacre, NSW: Defence of Government Schools, Victoria.

⁷¹ Joshua Puls. 2004. “The Goulburn Lockout.” *Australasian Catholic Record* 81(2): 169-183.

teachers.”⁷² In short, Catholics had effectively already become locked in to a more moderate demand for indirect aid by the time NDEA was passed in 1958. Attempts to move beyond these positions were unsuccessful, as Catholics were held to their earlier statements that they would not seek direct aid. In Australia, the lack of previous battles meant that Catholics never made such public statements, and thus were unconstrained to push for direct aid to their schools.

In short, the terrain was already clearly staked out and occupied by 1958 in the United States, and previous battles had limited what Catholics could reasonably hope for as well as the dynamics of the battles they would have yet to fight. In Australia, by contrast, Catholic proponents of “state aid” were not hemmed in by earlier qualifications, and the political landscape was far less defined. Catholics thus were freer to press for greater aid not just to Catholic schoolchildren, but to the schools themselves.

Courts and Jurisprudence: Direct and Indirect Constraints

A major difference between Australia and the United States is the role of the courts. Australian courts upheld the state aid plan, while American courts eventually struck down part of the ESEA’s aid-to-parochial-schools provisions. This stark difference makes it tempting to explain the different outcomes in Australia and the United States as purely a function of the different establishment clause jurisprudence promulgated in each country. Yet this would be a mistake. While court decisions and constitutional interpretation played

⁷² Quoted in Diane Ravitch. 1983. *The Troubled Crusade: American Education, 1945-1980*. New York: Basic Books, p. 33. See also similar statements by Archbishop Richard Cushing and the National Catholic Welfare Conference’s William McManus during the 1950s. Richard J. Cushing. 1955. “State Aid to Schools? ‘I Would Never Accept It,’ Archbishop Cushing Says.” *U.S. News and World Report* 39 (Dec. 23): 67; William E. McManus. 1955. “A Catholic View on Aid to Schools.” *U.S. News and World Report* 39 (Dec. 16): 121-122.

a major role in affecting the outcome in the two countries,⁷³ it would be untrue to ascribe the different paths taken by the two countries entirely to the courts. Instead, it makes more sense to see the courts as an important part of a complex of factors at work, whose influence was more indirect (in shaping the political context in which aid was debated) rather than direct (in striking down or upholding legislation.) This is so for at least two reasons.

First, the definitive court rulings in each country did not take place until the 1980s, well after the direct aid pattern in Australia, and the highly restricted indirect aid pattern in the United States were established.⁷⁴ In both countries, during the 1950s and 1960s when federal education legislation was being considered, there was more uncertainty about the constitutionality of aid than is commonly assumed, and it was far less clear how the courts would rule than it might seem today.⁷⁵ Second, courts were not the only relevant actors

⁷³ Carolyn Evans. 2008. "Religion as Politics Not Law: The Religion Clauses in the Australian Constitution." *Religion, State, and Society* 36(3): 283-302.

⁷⁴ In the United States, the 1985 *Aguilar* decision was the culmination of a series of verdicts that began in the 1970s. Relevant cases finding supports for parochial schools unconstitutional between 1971 and 1985 are *Lemon v. Kurtzman* 401 U.S. 602 (1971), *Committee for Public Education and Religious Liberty (PEARL) v. Nyquist* 413 US 756 (1973), and *Aguilar v. Felton* 473 US 402 (1985). In Australia, the relevant case is *Attorney General (Vic.) Ex Rel Black v. Commonwealth* [1981] 146 CLR 559.

⁷⁵ This was particularly true in the U.S., where the "public welfare" argument (that states could engage in any legislation with public welfare as its intent) was perceived as potentially encompassing nearly all forms of aid to Catholic schools. See "Notes: Public Aid to Establishment of Religion." 1947. *University of Pennsylvania Law Review* 96: 230-241, p. 239n.55; "Notes: Public Funds for Sectarian Schools." 1947. *Harvard Law Review* 60: 793-800, pp. 799-800; "Public Aid for Private Schools? Catholic and Protestant Views." 1955. *U.S. News and World Report* 39 (Dec. 2): 102-105, pp. 104, 105; Donald D. Stark. 1947. "Comments: Constitutional Law—Due Process—Establishment of Religion..." *Southern California Law Review* 21: 61-76, p. 70. While most legal scholars and government officials adopted the view that no aid could be provided to church schools, a variety of alternative considerations were put forward that served to cloud the issue, among them that the Court's inconsistent doctrine supported multiple viewpoints, that the incorporation of the Establishment Clause under the Fourteenth Amendment was not stable judicial doctrine, that the famous "no tax in any form" line in *Everson* was merely dicta and not binding as precedent, and that the federal government's actions on federal aid for education would have a difficult time being challenged thanks to standing rules. In fact, in the middle of the debate on the 1961 education bill, Harvard Law Professor Arthur Sutherland wrote a widely publicized letter to House Speaker John McCormack proclaiming his opinion that "the effect of the relevant constitutional provisions is not clear and evident; it must be guessed at, as a matter of emphasis and degree." Arthur E. Sutherland to Rep. John McCormack, 13 March 1961. Reproduced in United States Congress. 1961. *Congressional Record (Daily Ed.)*. 87th Congress, First Session, 107(50): A2026-A2029, p. A2029.

involved. “State aid” was not extended to religious schools in Australia by the courts, but by the legislature. The actions of both bodies—courts and legislatures—are relevant to explaining the final outcome. In particular, this entails explaining both why Australia’s legislature passed a state aid law, and why the American Congress did not pass large-scale aid to religious schools even though its Australian counterpart did. (After all, Congress does from time to time deliberately pass legislation that is of dubious constitutionality,⁷⁶ yet it did not in this case.) I take up this second aspect in the next section, but for now I turn to the role of the courts.

Australian church-state jurisprudence was highly underdeveloped during the 1950s and 1960s compared with the United States. During the time when federal financial support was being considered, there was effectively no constitutional jurisprudence on the legality of state aid to religious schools. The relevant section of the Australian Constitution, section 116, had only been considered twice before, both times on free exercise rather than establishment grounds.⁷⁷ In neither of these cases had the High Court issued broad statements of principle about the separation of church and state, disestablishment, or freedom of religion, as American courts had done. Thus, Australian jurisprudence provided very little guidance for, and similarly few constraints upon, the political battles over federal funding for religious schools during the 1960s. Catholic advocates thus were freer to press their demands further, up to and including direct ongoing support for their schools.

⁷⁶ For discussion of a recent example of this, see Paul A. Diller. 2008. “When Congress Passes an Intentionally Unconstitutional Law: The Military Commissions Act of 2006.” *Southern Methodist University Law Review* 61: 281-335.

⁷⁷ *Krygger v. Williams* (1912) 15 CLR 366, and *Adelaide Company of Jehovah’s Witnesses v. Commonwealth* (1943) 67 CLR 116.

When the High Court was finally called to rule on the constitutionality of such supports, it upheld the “state aid” program of direct grants. In 1981, the Court heard a challenge brought by the anti-state aid group Council for the Defense of Government Schools (DOGS).⁷⁸ The High Court overwhelmingly rejected the DOGS challenge in a 6-1 decision.⁷⁹ Reading “establishment” in extremely narrow and literal terms as exclusive support for a single church, the High Court ruled that Australia’s constitutional prohibition on laws “for establishing any religion” did not preclude financial support extended to multiple churches, and thus upheld federal support for religious schools.

By contrast, American courts played a major role in defining the terrain upon which advocates and opponents of federal support for church schools were to battle. By 1958, the Supreme Court had already issued a sizable body of cases regarding either the constitutionality of federal subsidies for Catholic schools or the meaning of “establishment,” defining the latter in broad terms and promulgating a principled doctrine of “separation of church and state.”⁸⁰ Yet these decisions evinced a considerable disjuncture between their highly principled dicta explaining the meaning of disestablishment, and their rulings on cases touching the issue of financial support for church schools.⁸¹ In principle, the Court was opposed to such support, yet in practice it repeatedly allowed it, failing to overturn a financing law on establishment grounds until

⁷⁸ Birch, “State-Aid at the Bar.”

⁷⁹ *Attorney-General (Vic.) ex. rel. Black v. Commonwealth* (1981) 146 CLR 559.

⁸⁰ Major cases before 1958 include *Bradfield v. Roberts* 175 US 291 (1899), *Quick Bear v. Leupp* 210 US 50 (1912), *Cochran v. Louisiana Board of Education* 281 US 370 (1930), *Everson v. Board of Education* 330 US 1 (1947), *McCullum v. Board of Education* 333 US 203 (1948), and *Zorach v. Clausen* 343 US 306 (1952).

⁸¹ See 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, esp. section IV.

1971.⁸² This ambiguity meant that American jurisprudence worked mostly indirectly on the battle over federal funding for religious schools during the late 1950s and early 1960s (by shaping the terms of the debate), rather than directly (by halting federal payments).⁸³

The 1947 decision in *Everson v. Board of Education* was the backdrop to the constitutional debates surrounding the federal education legislation. *Everson* was the first decision in which the Court articulated a “strict” separation of church and state, declaring that the establishment clause was intended to erect a “wall of separation” between the two. In the majority decision, Justice Black famously proclaimed that “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.”⁸⁴ In making this statement, the Court had validated a long-standing Protestant argument that had been used against Catholic proponents of financing Catholic schools.⁸⁵ It is thus unsurprising that Protestants regularly defended their position after 1947 on the grounds that the separation of church and state must be upheld. The Federal Council of Churches, for instance, affirmed “our continued adherence to the American principle of the separation of church and state, and to the principle that public funds should not be used for sectarian purposes.”⁸⁶ The separation principle shaped debate right up to the passage of ESEA; in

⁸² The first decision striking down such subsidies was *Lemon v. Kurtzman* 403 US 602 (1971). Earlier decisions permitting such subsidies include *Quick Bear v. Leupp*, *Cochran v. Louisiana Board of Education*, *Everson v. Board of Education* (see cites above); and *Board of Education v. Allen* 392 US 236 (1968).

⁸³ Later, during the 1970s, the court did halt a number of state-run “parochial” schemes that would have paid teacher salary supplements; it did not halt federal payments until the *Aguilar* case in 1985 (see footnote 74 above). But as late as 1969, it appeared that political and legal developments “had helped to open the door for federal assistance to nonpublic schools.” See Lawrence J. McAndrews. 1995. “Unanswered Prayers: Church, State, and School in the Nixon Era.” *U.S. Catholic Historian* 13(Fall): 81-95, p. 95. On the state-level parochial cases of the late 1960s and early 1970s more generally, see Frank J. Sorauf. 1976. *Wall of Separation: The Constitutional Politics of Church and State*. Princeton, N.J.: Princeton University Press.

⁸⁴ *Everson v. Board of Education* 330 US 1 (1947), p. 16.

⁸⁵ See Hamburger, *Separation of Church and State*.

⁸⁶ Resolution of the Federal Council of the Churches of Christ in America, 28 January 1947, quoted in Quattlebaum, *Federal Educational Activities and Educational Issues Before Congress*, p. 116.

the final run-up to the passage of the legislation, President Johnson told a wary Baptist newspaper editor that, “I believe in the American tradition of separation of church and state...Therefore, I would oppose any federal program—including assistance to schools—which does not strictly conform to this constitutional requirement.”⁸⁷

While Catholic supporters of aid to parochial schools challenged some of the premises of the “separation of church and state,”⁸⁸ even they had to pay tribute to it. Most consequentially, it was explicitly endorsed by Catholic Presidential candidate John F. Kennedy in 1960, shortly after the passage of NDEA. During the course of his presidential campaign, Kennedy—in part to appease suspicious Protestants—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 preference.”⁸⁹ Kennedy’s pledge to uphold the Court’s doctrine of separation of church and state hamstrung him as he attempted to pass more comprehensive education legislation in 1961 and 1962.⁹⁰ Catholics and Protestants alike, therefore, paid tribute to the ideal of the separation of church and state in ways that shaped their political activities.

At the same time, the *Everson* decision also provided ammunition to Catholics, in that the very decision that declared that no tax could go to support religious teaching in whatever form it took also upheld the right of a New Jersey school district to provide bus

⁸⁷ Lyndon B. Johnson to E.S. James, editor of the *Dallas Baptist Standard*, 2 Sept. 1964. Quoted in Monroe Billington 1987. “President Lyndon Baines Johnson and the Separation of Church and State.” *Journal of Church and State* 29: 101-111, p. 106.

⁸⁸ E.g., George H. Dunne, in *The Catholic Church and Politics: A Transcript of a Discussion on a Vital Issue*. 1950. Cambridge: Harvard Law School Forum; James M. O’Neill. 1949. *Religion and Education under the Constitution*. New York: Harper; Wilfred Parsons. 1948. *The First Freedom: Considerations on Church and State in the United States*. New York: Declan X. McMullen.

⁸⁹ Speech to Greater Houston Ministerial Association, Houston, TX, 12 September 1960. In U.S. Senate, Committee on Commerce. 1961. *Freedom of Communications*. Senate Report 994, 87th Congress, 1st Session, Part I, p. 208.

⁹⁰ Sundquist, *Politics and Policy*.

transportation for Catholic schoolchildren at taxpayer expense. The *Everson* verdict affirmed a long-standing string of cases that had allowed such indirect forms of taxpayer support for Catholic schools to stand. Catholic advocates of state support for Catholic schools saw in these rulings validation for its own petitions; they thus made requests for such indirect expenses the centerpiece of their campaign, as described above.

In short, the Court's dicta and its decisions worked primarily indirectly to shape the arguments put forward by proponent and opponent alike, channeling energies away from direct aid and toward incidental and indirect forms of assistance. The direct impact on federal support for religious schools was minimal. The Court did not consider NDEA at all, despite its provision of loans and materials to religious schools, and did not strike down ESEA's minimal subsidies until twenty years after the fact.⁹¹ Directly, then, the Supreme Court's effect was quite minimal compared to its indirect effect on the terms of the debate.

Compared with Australia, however, the courts in the United States played a major role in determining the relationship between church and state. Why was this so? The relative irrelevance of the Australian courts in the initial debate, as well as its ultimate decision permitting state aid to religious schools, can be traced to two major differences between the American and Australian constitutions. First, the American constitution is based around the concept of rights, whereas the Australian constitution—despite its language of religious rights—is fundamentally not oriented toward individual rights. Consequently, whereas the American First Amendment is one among many enumerated rights in the American constitution, Australia's section 116 is one of five total enumerated

⁹¹ Even then, the Court reversed its own decision twelve years later and permitted those indirect funds to flow unimpeded. See *Agostini v. Felton* 521 US 203 (1997). More recent decisions have provided still greater leeway for funds to flow to religious schools, though still not to the extent of the direct per capita grant system in place in Australia. See *Zelman v. Simmons-Harris* 536 US 639 (2002).

rights in the Australian constitution. Put simply, This has meant, in practice, that Australian courts have been much more inclined to take a “black-letter,” literalist approach to the law, as opposed to American courts, which are disposed to make broad statements about principles in deciding cases that often must weigh one enumerated right against another.⁹² Hence, the High Court’s extremely narrow definition of establishment was largely built around an analysis of how Australia’s constitutional framers would have understood the word “establishment” in 1901, with several justices even going so far as to quote period dictionary definitions in support of their argument.⁹³ This literalism contrasts greatly with the American Supreme Court, whose church-state decisions featured high-flown statements of principle, agonizing meditations on individual rights, and lengthy expositions on the history of church and state.⁹⁴

Second, most Australian state constitutions similarly lack religious freedom guarantees. Only one Australian state, Tasmania, has a provision in its state constitution protecting freedom of religion.⁹⁵ This contrasts with the United States, where nearly all

⁹² Evans, “Religion as Politics Not Law;” Joshua Puls. 1998. “The Wall of Separation: Section 116, the First Amendment, and Constitutional Religious Guarantees.” *Federal Law Review* 26: 139-164; Haig Patapan. 2000. *Judging Democracy: The New Politics of the High Court of Australia*. Cambridge: Cambridge University Press, ch. 2.

⁹³ *Attorney-General (Vic.) ex. rel. Black v. Commonwealth* (1981) 146 CLR 559, pp. 595, 606, 622. Attorneys in the 1960s anticipated this literalist interpretation fairly accurately: a 1964 legal opinion provided to the New South Wales Teachers’ Federation discounted a legal challenge on establishment grounds by summarily dismissing the idea as a “distortion of language.” See Legal opinion, Edward St. John to NSWTF, 23 July 1964, p. 3. Noel Butlin Labour Archive, N111/1114.

⁹⁴ On the different stances adopted toward history in these decisions, see Damon Mayrl. 2007. “Courting History: Remembering Religious Pasts in American and Australian Court Decisions, 1945-1985.” Paper presented at the First Annual International Social Sciences Conference, Canberra, Australia, 13 December. Indeed, it appears to be the case that Australian courts *in general* are not inclined to look either to history (apart from the history of particular legislative acts) or to the broader community of legal scholars (references to histories and law journals are nearly unheard of in High Court decisions) for broader context in their decisions. This highly contained—isolated even—approach to law is long-standing and more generally distinguishes the Australian courts from those of other countries.

⁹⁵ Pannam, “Travelling Section 116 with a U.S. Road Map.” Since the 1960s, some Australian states have added religious protections to their equal opportunity laws, though not their constitutions; see James T. Richardson. 1995. “Minority Religions (‘Cults’) and the Law: Comparisons of the United States, Europe, and Australia.” *University of Queensland Law Journal* 18: 183-207.

state constitutions have some sort of additional—and frequently stronger—provisions protecting freedom of religion and prohibiting the establishment of religion. Consequently, plaintiffs have had greater difficulty gaining standing to sue in Australia. The earliest establishment cases in the United States came to the Supreme Court on appeal from state supreme courts, where the plaintiffs had been able to challenge laws as violations of state constitutional law. Because Australian state constitutions generally do not guarantee religious freedom, however, this has not generally been a viable pathway for constitutional challenges to ascend to the High Court, accounting in part for the lack of jurisprudence on the matter.⁹⁶ Instead, Australian opponents of state aid had to go through the arduous process of a relator action, in which their case could be brought to the Court by a state attorney general on their behalf.⁹⁷ The difficulty of obtaining fiat from a state attorney general scuttled two legal challenges to state aid by militant anti-Catholic Protestant groups in 1957 and 1964, and was a major obstacle to the DOGS challenge in the 1970s, accounting for much of the procedural delay in the ultimate resolution of that case.⁹⁸

In short, the courts played a more prominent role in the United States than in Australia. Australian advocates of increased cooperation between church and state faced a much more open legal environment in which to work, increasing their ability to push for direct assistance. Catholics in the United States, by contrast, had to adjust their strategy and moderate their demands in light of the court's decisions and jurisprudence.

⁹⁶ As an example of this, a challenge to New South Wales' practice of Bible reading and other religious instruction in the public schools had to be waged as a practical violation of the state law rather than as a constitutional objection due to the lack of a state constitutional guarantee of religious freedom. When this challenge failed in the New South Wales courts, the plaintiffs could not appeal it to the High Court on constitutional grounds. See *Benjamin v. Downs and Another* [1976] 2 NSWLR 199.

⁹⁷ Ely, *Erosion of the Judicial Process*.

⁹⁸ Ely, *Erosion of the Judicial Process*.

Confessional Incorporation into the Party System

While Catholics were the prime movers behind efforts to bring church and state closer together in both nations, their ability to effect change was inhibited in the United States and enhanced in Australia by the way that Catholic voters and politicians were incorporated into the party system. The Liberal and Republican Parties were both heavily Protestant and often anti-Catholic parties throughout the late nineteenth and early twentieth centuries.⁹⁹ Consequently, Catholics traditionally formed part of the parties of the left in both countries—the Democratic Party in the United States, and the Labor Party in Australia. However, they were parts of larger coalitions in both cases, and their position within these coalitions and their relationships with other coalition members had important repercussions for Catholic claims regarding federal support for religious schools.

In Australia, Catholics found themselves allied with socialists in the Labor Party. The alliance worked well throughout the first half of the twentieth century, as many Australian Catholics were part of the working-class. However, the advent of the Cold War altered the relationship between these two factions. Within the Labor Party, a conservative Catholic faction known as “The Movement,” under the leadership of layman B.A. Santamaria, emerged. The Movement was virulently anti-Communist, and targeted trade unions and other Labor strongholds in an effort to expose and root out Communists. Tensions between socialists, many of whom were sympathetic to the Soviet Union, and Catholics rose within the Labor Party, and party leaders attempted to discipline or marginalize the Movement. These efforts eventually led to a split in the Labor Party in

⁹⁹ Judith Brett. 2002. “Class, Religion, and the Foundation of the Australian Party System: A Revisionist Interpretation.” *Australian Journal of Political Science* 37: 39-56; David B. Tyack. 1970. “Onward Christian Soldiers: Religion in the American Common School.” Pp. 212-255 in Paul Nash, ed., *History and Education: The Educational Uses of the Past*. New York: Random House.

1956, when Santamaria and his (mostly Catholic) allies broke away from the main Australian Labor Party (ALP) to form the Democratic Labor Party (DLP).¹⁰⁰

The net result was the creation of, essentially, a conservative Catholic third party in Australian politics.¹⁰¹ The Catholic vote, long associated with the Labor Party, was split and up for grabs. The DLP's platform was largely dedicated to opposing Communism, but one of its major planks was a demand for the reintroduction of financial support to Catholic schools. With the DLP openly advocating federal support for religious schools, the remaining Catholics in the Australian Labor Party also began to press for the ALP to advocate for state aid for Catholic schools. The resulting battles kept the ALP in chaos into the early 1960s.¹⁰²

The chaos in Labor politics was the proximate cause of Menzies' science laboratories proposal. Concerned about winning reelection, Menzies saw the possibility of exacerbating the confessional conflict within the ALP while reaching out to Catholics in the new DLP. Thus his proposal to fund science laboratories in Catholic schools was in part a savvy political ploy.¹⁰³ The resounding Liberal victory in the 1963 election demonstrated that this appeal to Catholic voters was sound electoral strategy, and from 1964 onwards both the ALP and the Liberal Party competed during federal elections to offer further federal moneys for Catholic (and other private) schools. By the time the

¹⁰⁰ Tom Truman. 1960. *Catholic Action and Politics*. London: Merlin.

¹⁰¹ John Warhurst. 2005. "Was the DLP a 'Church' Party?" Pp. 301-310 in Brian Costar, Peter Love, and Paul Strangio, eds., *The Great Labor Schism: A Retrospective*. Melbourne: Scribe.

¹⁰² Henry S. Albinski. 1966. *The Australian Labor Party and the Aid to Parochial Schools Controversy*. Pennsylvania State University Studies No. 19. University Park: Pennsylvania State University.

¹⁰³ P.N. Gill cautions that this is not the entire story, since the move was also consonant with Menzies' longstanding admiration for private religious schooling more generally, which helps account for why the aid was distributed to all nongovernment schools (including elite Protestant schools) and not just to the struggling Catholic system. Nevertheless, the fact that Menzies' shift on the matter coincided with the ALP split and a close election suggests political calculation was involved. See Gill, "The Federal Science Grant," pp. 284-6; and also Bob Bessant. 2006 [1977]. "Robert Gordon Menzies and Education in Australia." *Melbourne Studies in Education* 47(1/2): 163-187, pp. 172-5.

Schools Commission was formed in the early 1970s, both major parties had adopted state support for religious schools as part of their party platforms, and the policy of funding religious schools was written into the new, formalized federal education policy with no major opposition.¹⁰⁴

The situation was different in the United States. There, Catholics found themselves allied in the Democratic Party with conservative Southerners, many of whom opposed federal funding for education, funding for religious organizations, or concessions to Catholics. This alliance held together on most economic issues, where the two groups shared largely populist and liberal goals, but the alliance fell apart over issues of religion and education. Despite controlling Congress, frequently by large margins, from 1932 onwards, the Democratic leadership was unable to pass education legislation in no small part because it was internally divided on the issue of support for Catholic schools. Conservative Southern Democrats frequently held powerful positions in the House of Representatives, and used those positions to take advantage of arcane procedural rules to bottle up education legislation that was favorable to Catholics—much of it sponsored by their own Democratic Party—in the years before and after NDEA.¹⁰⁵

More importantly, Catholics did not become a swing constituency in the 1950s and 1960s. Because both Catholics and Southerners were ardently anti-Communist, the Cold War did not split the Democratic Party as it did the Australian Labor Party. In fact, if anything Catholics *solidified* their support for the Democratic Party during the 1960 election thanks to the candidacy of John F. Kennedy. Catholic support for their fellow Catholic, Kennedy, meant that Catholics voted Democratic at an unusually high rate in the

¹⁰⁴ Hogan, *The Catholic Campaign for State Aid*.

¹⁰⁵ Price, "Race, Religion, and the Rules Committee."

1960 election.¹⁰⁶ However, Kennedy's status as the nation's first Catholic President simultaneously undercut his ability to push for aid to Catholic schools; fearing that he would poison the well for future Catholic candidates if he appeared to support Catholic schools, Kennedy had to publicly disavow pleas to fund Catholic schools even as he worked behind the scenes to placate his coreligionists.¹⁰⁷ Thus, far from becoming a group whose votes and influence were attractive to politicians in both parties, Catholics in the 1960s supported one of their own in overwhelming numbers, but at the price of weakening their ability to press for funding.

Thus, the way Catholics were incorporated into the political system through parties made their demands more or less attractive to politicians. In Australia, Catholics became 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.

Toward a Political-Institutional Theory of Church-State Regime Transformation

What lessons can be learned from the above analysis? First, it suggests some flaws and weaknesses in the three models outlined at the outset. Under the structural approach, which posits that broad social changes such as the growth of the state and religious pluralism should lead inexorably toward greater church-state separation, we would have expected to see Australia and the United States develop similarly. Instead, Australia drew closer links between church and state through its education policies, despite being a modern, pluralistic society with a growing federal government. Similarly, under the

¹⁰⁶ Jeff Manza and Clem Brooks. 1999. *Social Cleavages and Political Change: Voter Alignments and U.S. Party Coalitions*. Oxford: Oxford University Press.

¹⁰⁷ McAndrews, *Broken Ground*.

rational-choice approach, which posits that changes to church-state relations emerge as politicians scramble to maintain their power and revenues, we would have expected to see those motives play a central role in both countries. While the Australian case seems to fit the expected model, the American case is more complicated. There, other motives and logics besides pure political (or economic) self-interest must be recognized as important. For instance, Kennedy's reluctance to push for Catholic school aid was grounded in fear of what such an action might do to *future* Catholic candidates. Likewise, the Supreme Court, whose earlier rulings on the Establishment Clause had created the jurisprudence which shaped the terms of the debate, did so in an environment consciously insulated from the demands of maintaining power. Finally, under the political approach, which argues that changes in church-state relations emerge out of conflicts between religious and non-religious groups, we would have expected to see political groupings that featured religious agents aligned against "secular" actors. Instead, we see sharp divisions among religious groups in both countries (and especially the United States).

The three approaches above share the common problem of trying to trace changes in church-state relations back to a single cause. I argue instead that the two nations' experiences suggest the need to move beyond monocausal analyses and mechanistic explanations in favor of a contingent political-institutional theory of change. This theory posits that changing structural forces create openings for actors to reevaluate church-state regimes. However, it rejects the idea that those forces must necessarily result in the same outcomes everywhere. Instead, the effects of those forces will vary at different times and places because they will be realized through political conflicts and filtered through different institutional environments. In these conflicts, the relative strength of political

groupings and alliances will have a variable effect on the outcome, as will the relative openness of the institutional environment in which those conflicts play out. Even given exact parallels in political groupings and institutional environments, however, different outcomes may ensue thanks to crucial differences in the timing and sequencing of policy battles. Rather than looking for a single explanatory framework for these changes, we should focus instead on the *structural forces* at work, the *political stakes and alliances* that define the terrain, and the *institutional constraints* on political action and policymaking.

Structural Forces. Church-state regimes are crafted to manage the demands of a society at a particular point in time. Changes in the religious composition of society, the character of the state or governance more generally, in the economic system, or in basic demographics more generally can all lead to profound social transformations that make the previous regime a poor fit for the novel conditions. In response to these structural changes, we should expect to see movements develop to challenge the existing regime and to propose new policies that would reposition church and state relative to one another. We see this in the two cases above. Demographic pressure in the form of a rapidly expanding population of school-age children, in conjunction with the growth of the federal state, led to massive pressure on federal governments to provide aid to schools that it previously had not been willing or able to provide. Similarly, socioeconomic and ritual¹⁰⁸ equalization of Catholics and Protestants provided an opportunity for church-state issues to be revisited.

However, this is not to say that structural transformations must inevitably lead to policy changes. As the American case suggests, strong demographic, political, and religious structural changes did not, in the end, significantly alter the church-state regime

¹⁰⁸ By this, I primarily refer to the changes embodied in Vatican II, which included the elimination of distinctively Catholic practices such as not eating meat on Fridays and the Latin Mass. See Melissa J. Wilde. 2007. *Vatican II: A Sociological Analysis of Religious Change*. Princeton: Princeton University Press.

relative to funding for parochial schools (though they did help bring about major changes relative to religious exercises in public schools). Structural changes must be realized through political action, and this action can be frustrated if the political and institutional conditions are not favorable.

Political Stakes and Alliances. Political conflicts over church-state regimes can pit the religious against the non-religious, one religious group against a different group, or members of one religious group against other members of the same group. The stakes may be about divvying up moneys among religious groups, or they may be about preserving the cultural and political supremacy of one group vis-à-vis another. The key to analyzing political conflict is to understand the dominant axes of division at a given time, and to understand the stakes in play. In the two cases above, the dominant division on church-state issues between the mid-nineteenth century and the third quarter of the twentieth century was between Catholics and Protestants. At stake in these battles was not only whether religious schools should receive funding, but also the extent to which Catholics would be fully recognized as equal to the Protestant majority.

However, other political alliances intersect with the dominant political divisions in sometimes unpredictable ways. The partisan coalitions between Labor and Catholics in Australia proved inherently less stable than the one between Southerners and Catholics in the United States, enhancing Catholics' position in Australia. Similarly, the alliance between educators and the Protestant churches in the United States created a strong religious-professional coalition with no true counterpart in Australia, hindering American Catholics' campaign. Thus, external alliances can have important influences on the way dominant religious-political cleavages play themselves out.

The structure of political conflict does not necessarily track with the effects of the structural changes leading to reevaluation, though it helps if it does. The decline of the Protestant-Catholic divide was hastened by the growing similarities between the two groups. As the old political divide that structured conflicts over the church-state regime attenuated, new openings could emerge, as they did in Australia. At the same time, political conflict can dovetail with the institutional and cultural constraints on actors in more or less beneficial ways to challengers.

Institutional Constraints. The institutional environments peculiar to different countries have a profound effect on how structural forces and political campaigns do or do not eventuate in alterations to church-state regimes. The relevant institutional constraints will vary from country to country, but will usually include both political and cultural types. Political institutions, such as courts, bureaucracies, and parties, constrain actors by providing laws and regulations that bound political action fairly directly. Cultural institutions, by contrast, indirectly constrain actors through frames and norms that shape the way actors can conceive of action within a political sphere. The relative inaccessibility of the Australian courts hindered DOGS in its efforts to challenge the new education legislation in a fairly direct way. At the same time, however, the literalist interpretive method of the High Court provided an additional constraint on efforts by DOGS to argue for a more American-style “separation of church and state.” Similarly, American Catholics needed to acknowledge the ideal of “separation of church and state,” and to organize their arguments around it, in ways that limited what they could aspire to, despite the absence of direct rulings against them.

Institutional constraints work over time, such that timing and sequencing become important considerations. When an issue reaches a political boil matters for outcomes, as the two cases clearly demonstrate. The fact that the battles over state aid began 15 years later in Australia than in the United States made a big difference. The more ecumenical atmosphere of the time and the greater structural advance of socioeconomic equality between Catholics and Protestants meant that the political groupings had room to give. In late 1940s and 1950s America, by contrast, the divide was still relatively strong¹⁰⁹ and the Protestant-Catholic political conflicts were still raging. Similarly, policy decisions or settlements reached (or even not reached) at one point in time can structure subsequent battles. Thus, the early battles in the 1940s laid the table in the United States for an extensive organizational infrastructure that locked opponents and proponents of parochial school funding into uncompromising positions. Likewise, the early court decisions in the United States, even though they were not directly against Catholic claims, laid out a jurisprudential language that Catholics had to accommodate themselves to.

The key in all of this, then, is to identify the structural forces, political alliances, and institutional constraints that impact an episode of church-state regime reevaluation. Understanding the way these forces interact with and concatenate with one another over time is the central means through which we may understand why nations adopt different church-state relations despite many apparent similarities.

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¹⁰⁹ The strength of anti-Catholic animus during this period is often understated. For an excellent overview of anti-Catholicism during this period, see John T. McGreevy. 2003. *Catholicism and American Freedom*. New York: Norton.

This political-institutional approach, I argue, conserves and synthesizes the strengths of the three extant approaches to church-state relations, while emphasizing the important constraints that previous political arrangements make upon actors attempting to alter church-state regimes. Like the structural theory of change, this approach argues for the primacy of deep changes in state and society that provide the terrain on which church-state relations unfold. Yet it does not assert that those structural shifts must inevitably lead to specific regimes, but provides a means of explaining why regimes change in some states but not others that experience parallel shifts. Like the rational-choice theory of change, this approach shows how the self-interested actions of political agents can play a major role in determining new regimes. Yet it also provides a means of explaining how those political actors—such as members of judiciaries—who are not primarily self-interested can nevertheless have a profound influence on the course of events, and it avoids the tendency, implicit in the rational-choice model, of reducing all actors' motivations to self-interest.

Finally, like the political theory of change, this approach accepts that ultimately, the tighter or looser connections between church and state are fundamentally about political struggles between groups with a stake in the religious field. However, it provides a way of talking about the institutional strengths and weaknesses of the positions of those actors, allowing us to discuss why different political outcomes emerge in otherwise similar contexts. It also takes an open stance toward the question of whether the dominant political conflicts are between religious and non-religious groups, or between different confessions. The prevalence of one type of conflict as opposed to another will vary depending on the religious composition of a society at a given historical moment.

While this model has potentially broad applicability, further studies of other countries and other aspects of church-state relations will be necessary to determine to what extent the model is applicable. Variations may occur within countries: it is known, for example, that church-state relations can vary from one domain of social life to another; thus, the United States has a far less rigidly separationist stance in social welfare than in education, for example.¹¹⁰ They may also occur within the same domain: changes in state support for religious schools may follow a different logic and be differently motivated from changes in the religious content of public education, for example. And, of course, cross-national variations will be important. Both Australia and the United States share important features, like an Anglo-Protestant heritage, common law system, and democratic systems of government. This model works particularly well for comparing such similar countries, but its mechanisms may prove less determining in other countries where those broad similarities do not hold, such as France, Turkey, or India.¹¹¹

Church-state relations are an increasingly important theoretical variable, and it is important to understand why they change. By examining the interplay of broad structural changes, interested actors, and institutional constraints, we can better understand why similar countries can evolve in different directions.

¹¹⁰ Monsma and Soper, *The Challenge of Pluralism*.

¹¹¹ Indeed, the work of David Martin suggests that the Anglo-Protestant countries have a number of distinctive traits relative to religion in comparison with other nations. See Martin, *A General Theory of Secularization*; and David Martin. 2005. *On Secularization: Towards a Revised General Theory*. Burlington, Vt.: Ashgate Press.