The Blaine Amendment Reconsidered

by Steven K. Green

Constitutional scholars rarely agree on the significance of any historical event. A possible exception to this maxim has been the near unanimity of thought surrounding the Blaine Amendment of 1876. Congressman James G. Blaine introduced this constitutional amendment in December 1875 as a means of garnering support for his blossoming presidential campaign. As finally proposed, the amendment sought to apply the first amendment's religion clauses directly to state actions, to prohibit the disbursement of public funds for parochial education, and to forbid the exclusion of the Bible from the nation's public schools. Congress debated the measure during the heat of the 1876 summer presidential campaign. Even though the proposal passed the House of Representatives by an overwhelming margin, it fell four votes short in the Senate of being submitted to the states as the Sixteenth Amendment to the United States Constitution. Had the amendment passed and been ratified by the states—a likely possibility—it would have radically altered the historical development of American constitutional law.

Despite the ostensibly controversial nature and far-reaching implication of its provisions, scholars and commentators have all but agreed on the significance of the Blaine Amendment. According to the accepted interpretation, the near passage of the Blaine Amendment—with its provision applying the first amendment religion clauses to the states—reveals that the members of the 44th Congress did not believe

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*Visiting Assistant Professor, Vermont Law School. I wish to thank Professors John Seonche and Susan McGuigan who read earlier drafts of this article.

1. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

2. "No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools, or derived from any public fund therefor, not any public lands devoted thereto, shall ever be under the control of any religious sect; nor shall any money so raised or lands so devoted be divided between religious sects or denominations."

3. The amendment passed the House by a vote of 180 to 7. Id. at 5191.

4. Id. at 5595.

5. While it is always futile to speculate on historical "what ifs," at a minimum, the application of the first amendment religion clauses to state actions in 1876 would have dramatically altered the development of church and state law while serving as ready ammunition for both proponents and opponents of an expanded view of the due process and equal protection clauses of the fourteenth amendment. Moreover, the inherent inconsistency between the Blaine Amendment's disestablishment and Bible reading provisions would have been a litigant's nightmare and a lawyer's dream.
the fourteenth amendment already applied the first amendment—or the subsequent seven amendments for that matter—to state actions. Under this view, the fact that Congress considered the Blaine Amendment within seven years of the passage of the fourteenth amendment, and that several lawmakers voted for both amendments, indicates that none of the lawmakers understood the protections of the first amendment to be included within the concept of liberty under the fourteenth amendment's due process clause. As one commentator has stated:

In other words, both proponents and opponents of the Blaine Amendment agreed that nothing in the Constitution prohibited the states from establishing a religion or from interfering with the free exercise thereof. Certainly no one imagined that the Fourteenth Amendment had extended the religion clauses of the First Amendment to the states. As many members of the Congress which considered the Blaine Amendment had sat in the Congress which voted for the Fourteenth Amendment seven years earlier, it is unlikely they overlooked its possible significance.

Moreover, the argument continues, the fact that the Blaine Amendment was defeated in Congress—albeit by a slim margin—reveals

6. "... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

7. As all students of American government know, the rights enumerated in the first eight amendments do not directly restrict or affect laws, regulations or actions of state and local governments; instead the Bill of Rights have power and force over state actions through the mechanism of the "liberty" provision of the fourteenth amendment's due process clause. The due process clause applies or "incorporates" those rights found in the Bill of Rights that are considered "implicit in the concept of ordered liberty." Palko v. Connecticut, 302 U.S. 319, 325 (1937). According to Justice Cardozo, those rights protected under the due process clause of the fourteenth amendment include "those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions" and are "so rooted in the traditions and conscience of our people as to be ranked as fundamental." Id. at 325. See H. Abraham, Freedom and the Court, Cpt. III (4th ed. 1982). Other terms commonly utilized include "nationalization" and "absorption." While these terms may not be technically synonymous, see Frankfurter, "Memorandum on 'Incorporation' of the Bill of Rights into the Due Process Clause of the Fourteenth Amendment," 78 Harv. L. Rev. 746 (1965), they will be used interchangeably in this article.


9. Goldberg, supra n. 8 at 15.
that lawmakers believed free exercise and establishment disputes were best resolved by state authorities. As one critic of both incorporation and the Supreme Court's church and state decisions has written:

[For the second time within eighty-seven years, Congress was polled on the subject of incorporation, and for the second time it refused to depart from the Constitution as written by the Founding Fathers. Thus the national government was again denied any authority to dictate to the States on the subject of religion, the States being left free to establish churches and even to limit religious freedom.]

The significance of this interpretation is obvious. If the framers of the fourteenth amendment and their contemporaries did not consider the due process clause to include the protections of the first amendment, then those 20th century proponents of incorporation have been sadly mistaken. Not only was Justice Hugo Black wrong to advocate total incorporation of the Bill of Rights, but so were those who believed the religion clauses were assimilated under the due process clause as fundamental freedoms. In essence, if one takes this argument to its logical extreme, the entire legal basis for the modern-day Supreme Court decisions concerning church and state matters is completely ahistorical.

This interpretation of the Blaine Amendment also serves as a powerful argument for those who advocate a return to the "original intent" of the framers of the first amendment. While historians acknowledge the framers of the first amendment intended their

10. O'Brien (1965), supra n. 8 at 92-93.
11. In Gilow v. New York, 268 U.S. 652, 666 (1925), the Supreme Court for the first time suggested that freedom of speech and the press were protected under the fourteenth amendment's due process clause.
12. See Black's dissent in Adamson v. California, 332 U.S. 46, 68 (1947), where he called for "total incorporation" of the first nine amendments to the Constitution within the concept of liberty under the fourteenth amendment. Accord Duncan v. Louisiana, 391 U.S. 145, 166 (1968) (Black, J., concurring). Justice Black's stance was severely criticized at the time and has never been accepted by a Court majority. Abraham, supra n. 7 at 37-40. For a sampling of the debate over this issue, see Fairman, "Does the Fourteenth Amendment Incorporate the Bill of Rights?" 2 Stan. L. Rev. 5 (1949); Crosskey, "Charles Fairman, 'Legislative History,' and the Constitutional Limits on State Authority," 22 U. Chi. L. Rev. 1 (1954); J. James, The Framing of the Fourteenth Amendment (1956). The debate over total incorporation was recently revised in R. Berger, Government by Judiciary: The Transformation of the Fourteenth Amendment at 134-56 (1977); Curtis, "The Bill of Rights as a Limitation on State Authority: A Reply to Professor Berger," 16 Wake Forest L. Rev. 45 (1980); Berger, "Incorporation of the Bill of Rights in the Fourteenth Amendment: A Nine-Lived Cat," 42 Ohio St. L. Rev. 435 (1981); and M. Curtis, No State Shall Abridge (1985).
amendment to restrict the national government solely,\textsuperscript{16} most scholars believe the fourteenth amendment changed the rules of the game.\textsuperscript{17} Originalists counter, however, that the Blaine Amendment reveals Congress reaffirmed the original restriction in 1876, some seven years after the ratification of the fourteenth amendment.\textsuperscript{18} Thus the framers of the fourteenth amendment never intended their amendment to nationalize the Bill of Rights.

Such analysis, often politically based, is short-sighted because it fails to consider fully the myriad forces that were at work during the debate over the Blaine Amendment. As is often the case with historical events, the amendment, which represented different things to different lawmakers, does not fit neatly into a modern-day schema.

The Blaine Amendment arose as a result of a nationwide controversy over the still developing public school system. Following the conclusion of the civil war Catholics began challenging the religious practices common in the public schools. Catholics, seeing the obvious evangelical Protestant overtones to public education, set up parochial schools and sought shares of the common school fund or exemptions from taxation. Additionally, Catholics challenged the practice of hymn singing, praying, and reading from the King James Bible in the public schools.\textsuperscript{19}

This controversy, similar to a school funding issue some thirty years earlier,\textsuperscript{20} captivated public attention during the 1870s. The “School Question” became a topic of public debate and political acrimony.\textsuperscript{21} Protestant churches and interdenominational “voluntary societies” fought any division of the school fund while they worked to ensure that religious exercises remained part of the nation’s school curriculum.\textsuperscript{22}


\textsuperscript{17} Id.; see also Van Alstyne, “Interpreting This Constitution: The Unhelpful Contributions of Special Theories of Judicial Review,” 35 U. Fla. L. Rev. 209 (1983).

\textsuperscript{18} Supra, n. 8.


In this latter area Catholics were supported by a growing number of liberal Protestants and free-thinkers. See generally, J. Turner, Without God, Without Creed - The Origins of Unbelief in America (1985). The Liberal League and the Free Religious Association were two such organizations. The Liberal League, headed by Francis Abbot, published The Index, a journal of free-thought. See S. Green, “The National Reform Association and the Religious Amendments to the Constitution, 1864–1876,” (1987) (unpublished thesis).


\textsuperscript{21} See “Recent Publications on the School Question,” 42 Presbyterian Quarterly and Princeton Review 313 (April 1870).

\textsuperscript{22} New York Tribune, Jan. 31, 1876 at 1; The Index, Dec. 30, 1875 at 613.
New nativist groups, such as the Order of American Union, the Alpha Association, and the American Protective Association, arose to do battle against the growing Catholic-immigrant menace.23 Not surprisingly, Congressmen and Senators found themselves subject to the attitudes and pressures of the times. One of the several measures proposed to deal with this controversy was the Blaine Amendment.

This article will examine the Blaine Amendment within the context of events that brought about its creation and demise. Contrary to the recent focus on the amendment's incorporation clause,24 contemporaries were more concerned with the issues of school funding, public support for religious institutions, and the polarization of political parties along religious lines. The issue of the nationalization of the first amendment was of minor importance.25 While the amendment does provide insight into 19th century attitudes toward fundamental rights and the concept of federalism, its significance for late 20th century judicial decision-making is far from conclusive. No simple conclusion can be drawn from either its proposal or ultimate defeat. Thus, the Blaine Amendment is not a rosetta stone for determining the intent of the framers of the fourteenth amendment. While several explanations exist for the amendment's origin and failure, it is all but impossible to attach precise constitutional significance to the amendment. The Blaine Amendment must be viewed within the context of the events that brought about both its creation and demise, and not from a post-incorporation bias.26

Background

The Blaine Amendment came about in response to two related controversies: the public funding of sectarian education and the issue of religious exercises in the public schools. Beginning in the 1830s, immigration from Ireland and Germany began to swell the previously small ranks of Catholics in the United States.27 Catholic leaders, gaining new-found political strength through their increased numbers, began petitioning state legislatures for public support of parochial schools.28 The first battle for a share of the common school fund occurred in New York during the 1840s—a battle Catholics lost.29 By the end of

24. See supra, n. 8.
25. Consequently, this article will not enter into the debate over the original meaning and purpose of the fourteenth amendment. See supra n. 12.
27. R. Billington, The Protestant Crusade Cpt. VI (1938); Lannie, supra n. 20.
29. Roman Catholic Orphan Asylum v. Board of Education, 13 Barb. 400 (N.Y. 1851); Billington, supra n. 27; Ravitch, supra n. 19 at 56-57.
the Civil War, however, Catholics constituted a majority in several northern cities and started receiving indirect public support for their parochial schools and charitable institutions. According to Harper's Weekly, in 1871, the same year it petitioned for the exclusion of the Protestant Bible from New York schools, the Catholic diocese of New York City received over $700,000 from the public treasury for parochial education. Even though the state assembly placed a ban on public support for sectarian education in 1871, by 1875 Catholic charities were still receiving over $370,000 a year from the state through indirect means.

As information about the syphoning of monies from school funds became public, many Protestants began calling for legislation prohibiting sectarian control over public schools and the diversion of public funds to religious institutions. State legislatures responded quickly. By 1876 fourteen states had joined New York in passing measures prohibiting the division of public school funds, often in the form of constitutional amendments. By 1890, the number of states with constitutional prohibitions against the transfer of public funds would rise to twenty-nine.

Congress also reacted to the school funding issue. On January 19, 1871, Senator Willard Warner of Alabama proposed a constitutional amendment to prohibit any governmental entity from appropriating money or property for the benefit of any religious body or sect. The proposal was referred to the Judiciary Committee, where it apparently died.

In the following session, Senator William Stewart of Nevada proposed a more specific amendment to the Constitution:

There shall be maintained in each State and Territory a system of free and common schools; but neither the United States nor any State, Territory, county, or municipal corporation shall aid in the support of any school wherein the peculiar tenets of any religious denomination are taught.

Senator Francis Blair of Missouri objected to the proposed amendment and prevented its referral to the Judiciary Committee. Eight months later, with Blair apparently absent from the floor, Stewart reintroduced his amendment in the form of a unanimous joint resolution. The

30. Higman, supra n. 23 at 28.
31. Harper's Weekly, January 1, 1876, as reprinted in The Index, January 13, 1876, at 16; The Nation, Dec. 16, 1875 at 383.
32. Ravitch, supra n. 19; see "The Division of School Funds for Religious Purposes,"
35. Id., 42nd Cong., 1st Sess. 730 (1871).
proposal was referred to the Judiciary Committee which on May 27, 1872, reported the amendment adversely without comment.\textsuperscript{36} As can be expected, the furor over the school issue quickly took on partisan overtones. In an editorial titled “A Coming Struggle,” the \textit{New York Tribune} declared that the school funding issue was threatening “the very existence of the republic.”\textsuperscript{37} The question over the division of public funds for parochial education “excites sharp controversy, and seems likely to have an important part in the re-adjustment of party lines,” stated the \textit{Tribune}. “The admission of parochial schools as a part of the public-school system is openly demanded. Sooner or later the broad question must be met, ‘Whether popular education belongs to the State or the churches.’”\textsuperscript{38}

Both political parties, the \textit{Tribune} continued, were scheming to turn the issue to their political advantage. “Even the \textit{St. Louis Republican} recently said: ‘The signs of the times all indicate an intention on the part of the managers of the Republican party to institute a general war against the Catholic Church. . . Some new crusading cry thus becomes a necessity of existence, and it seems to be decided that the cry of ‘No popery’ is likely to prove most available.’”\textsuperscript{39}

When Catholics were unsuccessful on the funding issue they often turned to challenging the informal practice of daily Bible reading and religious exercises in the public schools.\textsuperscript{40} Initially, these challenges were no more successful than Catholic requests for a division of the school funds. In 1854, Maine Catholics sued over the reading of the Protestant King James Bible in the public schools.\textsuperscript{41} On appeal, the Maine Supreme Judicial Court upheld the practice of Bible reading as not infringing upon the petitioner’s religious liberty. The Court declared that while the state “does not recognize the superiority of any form of religion, or any sect or denomination,” reading from the King James version could not be considered sectarian in the sense that its use in the schools infringed upon individual religious rights.\textsuperscript{42}

The outcome in Maine was characteristic of challenges to Bible

\begin{footnotes}
36. \textit{Id.}, 42nd Cong., 2nd Sess. 206 (1871), 3892 (1872).
38. \textit{Id.}
39. The Democrats, too, were guilty of manipulating the issue. “It so happens that every emphatic demand for division of public-school funds, recognition of parochial schools, or abolition of the system of secular education, has come from adherents of the Democratic party. It so happens, too, that many of those who have been most prompt and earnest in resisting these demands have acted with the Democratic party as Liberals.” \textit{Id.}
40. Lannie, supra n. 20 passim; On this issue Catholics were often supported by liberal Protestants and Jews. See supra at n. 19.
41. \textit{Donahoe v. Richards}, 38 Me. 376, 379 (1854). The petitioner was expelled from school for her refusal to read from the King James Bible.
42. \textit{Id.} at 407.
\end{footnotes}
reading prior to the Civil War. Most nineteenth century Americans believed that morality and Christianity were inseparable and that both were necessary for the preservation of republican society. However, too many people failed to attend church to risk leaving the instruction of morality to religious institutions. Thus the common school quickly became the primary institution for inculcating public morality. In all levels of education, both public and private, primary through collegiate, the moral teachings of the Bible were taught and, to varying degrees, religious services were conducted. But public schools did more than serve as surrogates for church instruction. The entire curriculum centered around general assumptions of God's existence, the sense of His universe, and the "spirituality" of human nature. Schools were the primary promulgators of this Protestant way of life. As an editorial in the respected Presbyterian Quarterly and Princeton Review declared:

"It is past all doubt that the sectarian character of our civil constitutions does not mean atheism or infidelity, or the disowning of our common Christianity... It is religious and moral truths, ideas of the infinite and perfect, God and eternity, that most quicken, expand, and sublime the human, and especially the youthful, intellect. Education, therefore, divorced from morality and religion, becomes shrunken, distorted, and monstrous." 49

In 1870, the practice of Protestant Bible reading and religious

45. "As educators, as friends and sustainers of the Common School system," Horace Mann once declared, "our great duty is to give to all so much religious instruction as is compatible with the rights of others and with the genius of our government." M.P. Mann and G. Mann, Life and Works of Horace Mann II, 289-290 (1891). See R. Handy, A Christian America 34 (2nd ed. 1985).
47. In fact, as Professor Timothy Smith has shown, many early "public" schools were founded as private nonsectarian (Protestant) schools that received public funds. Smith, "Protestant Schooling and American Nationality, 1800-1850," 55 J. American History 679 (1966-1967).
48. Id. at 691-694; D. Matthews, Religion in the Old South 89-96 (1977). Both the religious instruction and inspirational readings were based on the Protestant King James Bible.
49. "What happened was that the States carried on a system of education in which practically all the traditions and most of the influences were religious... The spirit of the schools were religious and continued so. So deeply embedded was the spirit of religion in the common schools of America that nothing short of a revolution, or a trend immensely long, could have uprooted it." Handy, supra n. 44 at 88.
exercises in public schools received its first serious challenge. On November 1, 1869, the Cincinnati school board passed two resolutions prohibiting the reading of all religious books, including the Bible, and religious instruction in public schools. Before the new resolutions were put into practice a group of local Protestants quickly obtained an injunction from the state superior court against their enforcement. The school board then appealed the matter to the Ohio Supreme Court.

In December, 1872 the Ohio Supreme Court reversed the trial court's injunction and reinstated the school board's resolutions based on broad school board authority over educational matters. In passing, the Court addressed the issue of religious exercises in the public schools. The Court acknowledged that the state legislature could pass laws to protect all religions because the Ohio Constitution recognized that "religion, morality and knowledge are essential to good government." But, the Court continued, this did not mean that only Protestantism was protected or that Christianity could be considered part of the state's common law.

Those who make this assertion can hardly be serious... If Christianity is the law of the State, like every other law, it must have a sanction. Adequate penalties must be provided to enforce obedience to all its requirements and precepts. No one seriously contends for any such doctrine in this country, or, I might almost say, in this age of the world... (U)nited with religion, government never rises above the merest despotism; and all history shows us that the more widely and completely they are separated, the better it is for both.

The Cincinnati decision was reported nationwide and drew harsh criticism from evangelical circles. "The recent decision of the Supreme Court of Ohio shows the necessity for a distinct recognition of the Christian religion," declared the Christian Statesman. "Armed with the recent judgment of the Supreme Court, a minority of unbelievers will be able ultimately to drive the Bible out of all Schools in the State. With the expulsion of the Bible, come expurgated school books from

50. See Spiller v. Inhabitants of Woburn, 94 Mass. 127 (1866) (Bible reading with excused absences upheld as nonsectarian).
51. Board of Education of Cincinnati v. Minor, 23 Ohio State Rep. 211 (1872); The Bible in the Public Schools: Arguments in the Case of John D. Minor, et al., versus the Board of Education of the City of Cincinnati (1870).
52. The Ohio Supreme Court's decision was based in large part on the dissenting opinion of Superior Court Judge Alfonso Taft, the father of the future President and Supreme Court Chief Justice. Id. at 390-417.
53. 23 Ohio St. Rep. at 246-247.
54. Id. at 256-258.
55. What all Protestants were concerned about, declared the Presbyterian Quarterly and Princeton Review, was "that the Bible, the Lord's Prayer, the recognition and assertion of fundamental moral and religious truth shall not be prohibited in our public schools on any pretext whatsoever." 42 Presbyterian Quarterly and Princeton Review at 324-325.
which every trace of Christian thought has been carefully erased.\textsuperscript{56} However, to the dismay of many Protestants, the decision evinced a growing trend in the nation's urban centers. In June 1872, prior to the Ohio decision, the State Superintendent of the New York public schools ordered several school boards on Long Island to suspend the practice of daily Bible readings and religious exercises in response to Catholic complaints.\textsuperscript{57} Following the Cincinnati case, the New York and Chicago city school boards prohibited Bible reading and religious instruction in their respective schools. Similar moves to ban religious exercises began in Michigan and other northern states.\textsuperscript{58} In March 1875, the Buffalo school district excluded Bible reading and religious exercises from its schools, followed by the Rochester school board in June.\textsuperscript{59} For the first time, many Protestants became aware of challenges to the cultural and religious hegemony in America.\textsuperscript{60}

The Proposals

The climate was ripe for someone to captivate the public imagination by taking a stance on the School Question. It came from an unlikely source. On September 30, 1875 President Ulysses S. Grant delivered a speech before the convention of the Society of the Army of the Tennessee meeting in Des Moines, Iowa. After commenting on the sacrifices and hardships endured by the members of the society in their efforts to preserve the republic, Grant entered into what became the most significant part of his address.

Now, the centennial year of our national existence, I believe, is a good time to begin the work of strengthening the foundations of the structure commenced by our patriotic forefathers one hundred years ago at Lexington. Let us all labor to add all needful guarantees for the security of free thought, free speech, a free press, pure morals, unfettered religious sentiments, and of equal rights and privileges to all men irrespective of nationality, color, or religion. Encourage free schools, and resolve that not one dollar, appropriated for their support, shall be appropriated to the support of any sectarian schools. Resolve that neither the State nor Nation, nor both combined shall support institutions of learning other than those sufficient to afford to every child growing up in the land the opportunity of a good common school education, unmixed with sectarian, pagan, or atheistical dogmas. Leave the matter of religion to the family altar, the Church, and the private school, supported entirely by

\textsuperscript{56} The Christian Statesman, Feb. 28, 1874, at 35.
\textsuperscript{57} New York Times, June 12, 1872.
\textsuperscript{58} New York Times, Dec. 9, 1872, at 8.
\textsuperscript{59} The Independent, April 8, 1875, at 14; The Index, June 24, 1875, at 295; The Index, Aug. 12, 1875, at 372.
\textsuperscript{60} As historian Robert Handy has written, "At no point did the evangelical consensus which bridged denominational and theological gulfs show itself more clearly in action than in the common effort to maintain the public schools as part of the strategy for a Christian America." Handy, supra n. 44, at 87.
private contributions. Keep the Church and State forever separate. With these safeguards, I believe the battles which created the Army of the Tennessee will not have been fought in vain.61

Newspapers throughout the country reprinted Grant’s speech and its affect was immediate.62 As the correspondent for the Chicago Tribune stated, the speech “set the nation agog.”63 The Protestant Christian Advocate wrote that the speech was “full of wisdom” and called for a constitutional amendment to put the suggestions into practice.64 Even The Index, a journal of free thought, called the speech “great,” in spite of its negative reference to atheism.65

The sole voice of protest came from the Catholic Church. Vicar General John F. Brazill of Chicago sharply criticized the speech as anti-Catholic.66 The Catholic World, the Church’s respected monthly, concurred stating that if the President’s speech could be accepted at face value, Catholics would have few complaints with its content. Catholics, the journal asserted, also were for “no ‘sectarianism’ in our common schools.”67 But the journal agreed with Brazill that Grant’s proposal was a veiled attack on Catholicism. The journal called upon Grant to free Catholics from the tax burden of supporting public schools if they could not receive their fair “pro rata” share of the school fund for their schools. “We ask for nothing which we are not willing to concede to all our fellow-citizens - viz., the natural right to have their children brought up according to their parents’ conscientious convictions.”68

Despite the generally favorable response to Grant’s speech, most observers recognized the partisan nature of the proposal.69 The speech clearly aligned the Republican Party with the Protestant cause.70 Grant

63. Id. at 3.
64. Christian Advocate, Oct. 7, 1875, at 316.
65. The Index, Nov. 4, 1875, at 522.
67. “The President’s Speech at Des Moines,” The Catholic World, Jan. 1876, at 440, 443. “(T)he reading of the Protestant Bible makes the schools Protestant, ’sectarian’ institutions, and therefore unjust towards all other religious bodies.” at 438.
68. Id. at 437.
69. Strong evidence exists to support the argument that Grant’s proposal was politically motivated. On December 16, 1875, The Nation reprinted portions of a letter by the editor of a Newark newspaper to Congressman Blaine suggesting he join forces with a “secret anti-Catholic order” in order to secure the Republican nomination. According to the editor, “a ‘potent faction’ in the next convention will be the ‘secret anti-Catholic order,’ that ‘Grant is a member;’ that it ‘has a good deal of strength in Congress,’” and that Grant “no doubt relies upon it to promote his aims.” Id. Dec. 16, 1875, at 380.
also knew the political advantages of such a speech, the least of which was the nomination for a third term. 71 His administration was racked by corruption and his political future, as well as that of the Republican party, depended on diverting public attention away from the revelations of the Whiskey Ring. In the last national election, the Republicans had lost control of the House of Representatives and seven seats in the Senate. 72 Crucial off-year elections were being held in New Jersey and Ohio, where in the latter, Republican governor Rutherford B. Hayes' reelection hopes relied on tying the Democrats to papal plots and Catholic designs. 73 Challenges to Republican ascendancy came from all sides.

According to one Grant biographer, William Heseltine, the President was concerned that the Democrats were monopolizing on the "reform" issue and would recapture either the presidency or the Senate in 1876. "Realizing that the Republican Party had inherited a devotion to public education while the Democratic Party, thanks to its Southern conservative wing and its Catholic following in the North, had never been regarded as favoring free public schools, Grant sought to realign the party in favor of education." 74 Being in favor of free education made the Republicans appear moral and once again the party of reform.

One of the casualties of the Democratic victory in 1874 had been the loss of the House Speaker's chair by James G. Blaine. Blaine, now a common congressman, had already set his sights on a higher prize: the Republican nomination for President. Unlike Grant, Blaine was untainted by scandal and considered a viable candidate for the presidency. 75 And no one wanted the nomination more than Blaine. Quickly recognizing the value of Grant's proposal, Blaine made public a copy of a letter he had recently written to a friend in Ohio:

71. The Index, Oct. 7, 1875, at 469.
73. Higman, supra n. 23, at 28–29. In a letter written by Hayes to James G. Blaine on June 16, 1875, Hayes remarked:

"We have been losing strength in Ohio for several years by emigration of Republican farmers and especially of the young men who were in the Army. In their place have come Catholic foreigners. Last year in a tolerably full vote they had [a] 17,000 majority. . . . Whether the reaction has spent its force is the question. We shall crowd them on the school and other state issues."

Reprinted in Klinkhamer, supra n. 26, at 21.
75. Later during the spring of 1876 Blaine was charged with having received a commission for facilitating the award of a federal land grant for an Arkansas railroad. Blaine successfully defended his actions although his candidacy remained blemished. D. Muzzey, James G. Blaine, A Political Idol of Other Days 83–100 (1934); P. Boller, Presidential Campaigns 138 (1985).
The public school agitation in your late campaign is liable to break out elsewhere, and occurring first in one State and then in another, may keep the whole country in a ferment for years to come. This inevitably arouses sectarian feelings and leads to that bitterest and most deplorable of all strifes, the strife between religious denominations. It seems to me that this question ought to be settled in some definite and comprehensive way, and the only settlement that can be final is the complete victory for non-sectarian schools. 76

The problem, Blaine continued, is that the first amendment was written as a restriction on the federal government only. "At the same time the States were left free to do as they pleased in regard to 'an establishment of religion'. . . A majority of the people in any State in this Union can, therefore, if they desire it, have an established Church, under which the minority may be taxed for the erection of church-edifices which they never enter, and for the support of which they do not believe." 77 The only lasting solution, Blaine maintained, was a new constitutional amendment, to wit:

"No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no money raised by taxation in any State, for the support of the public schools or derived from any public fund therefor, shall ever be under the control of any religious sect, nor shall any money so raised ever be divided between religious sects or denominations." 78

"This," Blaine concluded, "does not interfere with any State having such a school system as its citizens may prefer, subject to the single and simple restriction that the schools not be made the arena for sectarian controversy or theological disputation. This adjustment, it seems to me, would be comprehensive and conclusive, and would be fair alike to Protestant and Catholic, to Jew and Gentile, leaving the religious faith and the conscience of every man free and unmolested." 79

Blaine's letter, if it too is to be accepted at face value, apparently indicates that he did not believe, some six years after the ratification of the fourteenth amendment, that the first amendment's religion clauses restricted state actions. Most likely Blaine was familiar with the coverage of the fourteenth amendment, having been an active member of the Thirty-Ninth Congress, and would have had an opinion as to whether that amendment incorporated the protections of the religion clauses. 80 However, it is also likely that Blaine was aware of the Supreme Court decisions, both pre- 81 and post-1868, 82 limiting

77. Id. at 352.
78. Id. at 353.
79. Id.; The Index, Dec. 2, 1875, at 570.
80. See Dobson, supra n. 72, at 87-97 on the political career of Blaine.
82. The Slaughter-House Cases, 83 U.S. 36 (1873).
the coverage of the Bill of Rights to actions of the federal government. Only two years earlier, in the *Slaughterhouse Cases*, the Supreme Court had gutted the fourteenth amendment of much of its authority over state and local actions. Whatever the basis for his statement, Blaine did not share it with his friend or the general public which, as became clear, was the intended audience for the letter.

The combination of Grant’s speech and Blaine’s letter broke open the flood-gates of public opinion. Catholics continued their opposition to any restriction on parochial aid. While Protestants generally supported the school funding ban, they opposed any restriction on “nonsectarian” religious exercises. “Everywhere the indications of a rising tide of Evangelical Protestant sentiment on the school question are visible,” declared a November 4th editorial in *The Index*: “Chicago ministers are almost a unit in protesting against the exclusion of the Bible from the schools; a great mass meeting has just been held in New York, and an ‘American Common School League’ has just been formed at another mass meeting in the Cooper Institute, for the same purpose.”

On October 21, a large rally was held in the Broadway Tabernacle in New York attracting the most influential clergymen in the city. The meeting, under interdenominational sponsorship, was filled “from the pulpit’s edge to the outer doors, by the opponents of the measure that would banish the Bible from the public schools,” reported the New York *Sun*. According to the report, the national flag was displayed

83. Id.

84. Blaine may have decided to adopt the language of the first amendment as a result of several earlier proposals employing similar language. In 1872, the National Reform Association, a conservative Protestant group, proposed a constitutional amendment to recognize the authority of God and the Christian Religion. In response, the Liberal League proposed a Religious Freedom Amendment that sought to apply the first amendment religion clauses to the states. Congress considered both measures in early 1874 when Blaine was House Speaker. Blaine also may have included the religion clauses to serve as a counterweight against the rest of the proposal, which he knew would be interpreted as being anti-Catholic. In this way Blaine could claim to be in favor of religious liberty and be anti-Catholic at the same time. See Green, “The National Reform Association and the Religious Amendments to the Constitution,” supra n. 19.

85. *Chicago Tribune*, December 8, 1875, p. 4.


87. *Catholic World* (Feb. 1876) at 702.

88. Id., Nov. 4, 1875, at 517. In spite of the ministers’ complaints, the Chicago Board of Education refused to rescind its prior decision to dispense with religious exercises in the public schools. *Chicago Tribune*, Nov. 14, 1875, at 4.
over the pulpit, ushers wore ribbons of red, white, and blue across their breasts, and the crowd sang patriotic songs such as the "Sword of Bunker Hill." 89

"The expulsion of the Bible is only the starting point," stated the rally's lead speaker, a Rev. Dr. Gregg. "(I)t means ultimately the elimination from public instruction of all that tends to the promulgation of the doctrines of true religion, or morality, and of the rights of free human worship . . . . It is time for the people of America to arouse, and, if there is no law or statute in the Constitution to specify what principle of religion or of faith shall be sustained, then it is necessary for the people to speak and amend the Constitution." 90

In the midst of this climate, President Grant submitted his annual message to Congress on December 7th. There was every expectation that the message would be important—what the Chicago Tribune anticipated as "the ablest Executive document of all that he has prepared during his two terms." 91 The message satisfied most expectations:

We are a republic whereof one man is as good as another before the law. Under such a form of government it is of the greatest importance that all should be possessed of education and intelligence enough to cast a vote with a right understanding of its meaning. . . . As the primary step, therefore, to our advancement in all that has marked our progress in the past century, I suggest for your earnest consideration, and most earnestly recommend it, that a constitutional amendment be submitted to the legislatures of the several States for ratification, making it the duty of each of the several States to establish and forever maintain free public schools adequate to the education of all the children in the rudimentary branches within their respective limits, irrespective of sex, color, birthplace, or religions; prohibiting the teaching in said schools of religious, atheistic, or pagan tenets; and prohibiting the granting of any school funds or taxes, or any part thereof, either by the legislative, municipal, or other authority, for the benefit or in aid, directly or indirectly, of any religious sect or denomination, or in aid or for the benefit of any other object of any nature or kind whatever." 90

Once again, Grant had struck a responsive cord. Both the New York Times and Tribune hailed Grant's call for a constitutional amendment, the former stating that the message "will be read by the country with general satisfaction." 93 Harper's Weekly observed that

89. New York Sun, Oct. 22, 1875, as reprinted in The Index, Nov. 4, 1875, at 517.

90. The cause of Bible reading was equated with "our national existence and religious liberty," stated The Index in response to the rally, "and the bitterness of some of the speakers showed how dangerous already is the excitement of Protestant fanaticism." Id.

91. Chicago Tribune, December 8, 1875, p. 4.

92. P. Moran, ed., Ulysses S. Grant, 1822-1885 at 92 (1968); Chicago Tribune, Dec. 8, 1875 at 4; The Index, Dec. 16, 1875, at 593.

the speech showed a "clear perception of what the people wish."94 And the Chicago Tribune stated "(t)here seems to be nothing lacking in this suggestion, and it will be a boon to the country if the Democratic Congress shall develop sufficient patriotism to act upon it in the same spirit in which it is offered."95

Attuned to the public reaction to Grant’s message, Blaine quickly submitted his long awaited amendment in the House of Representatives on December 14.96 The event did not go unnoticed. “Mr. Blaine has introduced his amendment, and the chances are that he will be able to carry it,” reported the Democratic New York Tribune. “Thinking men of all parties see much more to deplore than to rejoice over, in the virulent outbreak of discussions concerning the churches and the schools, and welcome any means of removing the dangerous question from politics as speedily as possible. . . . Reports from Washington indicate that the ex-Speaker is already sure of considerable Democratic support, and it would not be surprising if we should yet see his amendment passing almost by common consent.”97

Reaction from the Protestant press to both the message and the proposed amendment was generally favorable. Zion’s Herald, a Methodist publication, called Grant’s message “clear, manly, and able.” It also urged support for Blaine’s amendment as a means of curbing the Catholic influence on school boards.98 The Independent, the Christian Union, and the Christian Advocate all voiced similar support for the proposed amendment as a solution to the growing controversy.99 As expected, the Catholic Church took a different view of the message and the proposal. Without mentioning Blaine by name, The Catholic World criticized those “politicians who hope to ride into power by

94. Harper’s Weekly, January 1, 1876, as reprinted in The Index, January 13, 1876, p. 15.
95. Chicago Tribune, Dec. 8, 1875, at 4. Unnoticed by most commentators, or at least not mentioned, was Grant’s additional call for the taxation of church property. Moran, supra n. 90. Only The Catholic World criticized this point. The Catholic World, Feb. 1876, at 705.
96. No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect; nor shall any money so raised or lands so devoted be divided between religious sects or denominations.
98. Zion’s Herald, Dec. 16, 1875, at 4; Dec. 23, 1875 at 4.
99. The Independent, Jan. 20, 1876, at 17; Christian Union, Feb. 9, 1876, at 1; Christian Advocate, Feb. 3, 1876, at 36.
awakening the spirit of fanaticism and religious bigotry among us.”
The proposed amendment, continued the journal, was “only the
entrance of a wedge that, driven home, will disturb the foundations
of our government, will create religious strife, and blast the hopes
of freedom, not only in this country, but all the world over.”100

While the proposed amendment elicited a generally favorable
response, few people were fooled by Blaine’s motives. Blaine was
running for President, and the school amendment was recognized as
a means of garnering support.101 As The Nation observed later that
spring, “Mr. Blaine did, indeed, bring forward at the opening of
Congress a Constitutional amendment directed against the Catholics,
but the anti-Catholic excitement was, as every one knows now, a mere
flurry; and all that Mr. Blaine means to do or can do with his amendment
is, not to pass it but to use it in the campaign to catch anti-Catholic
votes.”102

Blaine maintained that he was not anti-Catholic and that the
amendment was intended to remove the school issue from the public
forum.103 His lack of concern for the religious aspects of his amendment
is evident in his total disregard for the proposal once he had lost
the nomination. Blaine did not take part in any of the debates
surrounding the amendment, even though he had ample opportunity
to influence the measure in both chambers.104

Apparently, Blaine was primarily concerned with the political
mileage the amendment could provide.105 In his autobiography, Twenty
Years of Congress, published in 1884, Blaine made no reference to
the amendment. Grant’s 1875 message received only a brief comment
in his book, and he failed to mention his own call for sectarian-free
schools.106 To Blaine, the substance of the amendment was insignificant.
After the amendment failed to secure him the nomination, it also lost
all importance as even an historical event.107

101. Klinkhamer, supra n. 26 at 23.
102. The Nation, Mar. 16, 1876 at 173.
103. Evidence exists to substantiate Blaine’s lack of personal animosity toward
Catholics. His mother was Catholic and his daughters were educated in Catholic boarding
schools. Blaine claimed to be Presbyterian, but his religious commitment was nominal
See also Klinkhamer, supra n. 26 at 29–32, on Blaine’s religious life.
104. 4 Cong. Rec., passim (1876).
105. Supra n. 102.
106. J. Blaine, Twenty Years of Congress, 1861–1881 at 570 (1884).
107. The total lack of significance Blaine attached to the amendment is shown
by the fact that his contemporary biographers made only passing references to the
measure. Boyd, supra n. 76; Northrop, supra n. 103; T. Crawford, James G. Blaine
(1893); G. Hamilton, Biography of James G. Blaine (1895); W. Houghton, Early Life
and Public Career of Hon. James G. Blaine (1884); W. Johnson, Life of James G.
The Democrats recognized the importance of Blaine's amendment and realized they could end up on the losing side of the issue. The Democrats did not want to be tied to Catholic fortunes nor lose their votes. On January 17, 1876, Congressman William J. O'Brien (D-Maryland) submitted an alternative to Blaine's amendment in the House of Representatives in an attempt to derail the amendment.108 O'Brien's substitution, which incorporated much of Blaine's language, also sought to forbid religious tests for public office while excluding ministers from holding the same offices.109 The Independent called the amendment "silly" and an unwarranted attack on ministers. The Democrats were embarrassed by Blaine's proposal and were simply attempting to defeat the measure without appearing opposed to its principles, declared the journal.110 The resolution was referred to the House Judiciary Committee, where it died.111

At least one state legislature attempted to follow the lead of Blaine's proposal. In February, the Rhode Island legislature considered a bill that would have prohibited any person from hindering, dissuading, or otherwise interfering with the right of a parent to send a child to a public school. Aimed at Catholic priests, under the bill's broad language the simple encouragement to attend parochial school could have been construed as a possible violation. According to The Independent, the "best thing to be done with this proposition is to lay it on the table and leave it there. As a law it would be an outrage to religious liberty and a disgrace to the state of Rhode Island."112 The legislature apparently agreed, and the bill died before a vote.

108. Section 1. No State shall make any law respecting an establishment of religion or prohibiting the free exercise thereof; and no minister or preacher of the gospel or of any religious creed or denomination shall hold any office of trust or emolument under the United States or under any State; nor shall any religious test be required as a qualification for any office or public trust in any State, or under the United States.

Section 2. No money received by taxation in any State for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto shall ever be under the control of any religious sect, nor shall any money so raised nor lands so devoted be divided between religious sects or denominations; nor shall any minister or preacher of the gospel or of any religious creed or denomination hold any office in connection with the public schools in any State, nor be eligible for any position of trust or emolument in connection with any institution, public or private, in any State or under the United States which shall be supported in whole or in part from any public fund.

4 Cong. Rec. 440-441 (1876).


110. The Independent, Jan. 20, 1876, at 17; see also The Christian Union, Feb. 9, 1876, at 1.

111. 4 Cong. Rec. 441 (1876).

112. The Independent, Feb. 10, 1876, at 16.
As the spring progressed interest in the amendment temporarily waned.\textsuperscript{113} Neither party was in a hurry to bring the amendment to a vote, with each party waiting to see who the other would nominate for President. In late March the Republican parties of Ohio, Pennsylvania and Vermont held their state conventions. All three conventions adopted resolutions supporting the Blaine Amendment; however, all three were non-committal on the question of Bible reading and religious exercises in the public schools, with each declining to take a stand on the issue.\textsuperscript{114}

The Republican Party held its national convention first, meeting in Cincinnati in mid-June. During the spring, Blaine had emerged as the clear favorite. Entering into the convention, he held a plurality of the delegates but not enough to win the nomination. Blaine was opposed by Roscoe Conkling, senator from New York. With neither man able to secure the necessary two-thirds majority for the nomination and the convention deadlocked, the party settled on Rutherford B. Hayes, the tee-totaling Ohio governor who had recently been reelected on an anti-Catholic platform.\textsuperscript{115}

Recognizing that the dye had been cast with the selection of Hayes, the Republicans approved a platform calling for the preservation of the nation's public school system and a prohibition against using public funds to benefit "any school or institution under sectarian control."\textsuperscript{116} According to the \textit{New York Times}, upon hearing the above provision the convention erupted into "great cheering (that) continued for several minutes." The response was so great that the delegates called on the moderator, General Hawley, to read the section a second time, the

\textsuperscript{113} The Nation, Dec. 16, 1875 at 383. The primary exception in the press was The Independent, which ran a series of weekly articles on the school question between January and August. Reprinted in S. Spear, \textit{Religion and the State of the Bible and the Public Schools} (1876).

\textsuperscript{114} The Index, April 6, 1876, p. 157.

\textsuperscript{115} Sundquist, \textit{supra} n. 72 at 119-120; Higman, \textit{supra} n. 23 at 28. Hayes, an evangelical, supported the Protestant view of the school question. In a speech during the 1875 Ohio gubernatorial election, Hayes announced his support for preserving the Bible in the public schools:

"The State must support or 'encourage schools,' and schools are manifestly a means to promote a more important end. That end is 'religion, morality, and knowledge,' the equivalent of 'good government,'" he said, quoting from the Ohio Constitution. "Now the proposition to banish the Bible from the schools is a blow at this end - really discards the end, so far as religion and morality are concerned, while the means - the schools - are maintained. It is idle to urge that there will be religion and morality without the Bible. . . As a citizen, I have a right to insist that basis and pledge be respected and preserved. All that is asked is that the Bible may be read in the schools."

Reprinted in \textit{The Index}, Sept. 7, 1876, at 426. See also \textit{supra} n. 73.

only part of the plank to be repeated. The audience again broke into cheering. As the Times editorial concluded, "(a)mong the most notable points in the platform is its declaration in favor of an amendment to the Federal Constitution forbidding appropriations for sectarian schools. This was naturally received with great satisfaction by the Convention. It expresses a conviction profoundly cherished by a very large part of the American people."117

The Democrats held their national convention in St. Louis from June 26th to the 29th. The Democratic nomination was less in doubt, with Samuel J. Tilden, the reform-minded governor of New York, easily capturing the party's banner on the first ballot.118 The selection of Tilden, with his connections to the New York Catholic hierarchy, provided a clear choice for many people. The Democrats, however, were still unwilling to be out-done by the Republicans and provided their own church and state provision in their platform. The provision was kept vague, out of concern for Catholic support, stating simply that the party was in favor of maintaining "the two-fold separation of church and state, for the sake alike of civil and religious freedom."119

The Amendment in Congress

With the political conventions over Congressional attention turned back to the Blaine Amendment. The Democratic position on the amendment was still vague, with party members attempting to walk a tight-rod between Catholic voters and public support for the issue. In early June the Democratic controlled House Judiciary Committee, to which the amendment had been referred for consideration, voted along strict party lines not to report the measure before the end of the session, thereby hoping to delay the vote until after the November elections.120 After the national conventions, however, the House

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118. "For 'sectarian' (quoting from the platform), read 'Catholic,' and you have the full meaning of that ambiguous seventh plank, which is so worded as to catch, if possible, the Evangelical and the Liberal votes at the same time," wrote The Index. "We do not propose to ride on any elephant whose trunk cannot be distinguished from its tail. We intend to know in which direction the animal will move, before we take our seat on its back." The Index, September 7, 1876, p. 426.
120. Johnson, supra n. 116, at 49. While the positions taken by the two major parties attracted the greatest attention, minor parties also participated in the political debate surrounding the school question. The Prohibition Reform Party adopted a platform calling for both federal and state laws requiring the observance of the Sabbath and the continued use of the Bible in the public schools. The Prohibition Reform Party also called for "[t]he separation of the Government in all its departments and institutions, including the public schools and all funds for their maintenance, from the control of every religious sect..." Id. 52 53.
121. The Index, June 29, 1876, at 301.
Democratic leadership apparently realized that public interest in the School Question made it impossible to remain silent indefinitely. According to the New York Times, Governor Tilden desired immediate action on the amendment so as to “take the Catholic question out of politics.” Thus the Democrats on the Judiciary Committee decided to weaken the measure and then pass it on to the Republican Senate for consideration. On August 4, the committee reported the resolution back to the full House with an addendum. Attached to the end of Blaine’s proposal was the added proviso:

“This article shall not vest, enlarge, or diminish legislative power in the Congress.”

House debate focused on the committee’s limiting clause. The fourteenth amendment was not discussed in the House debate; similarly, the merits of making the first amendment binding on the states also was not mentioned. Congressman George McCrady (R-Iowa) objected to the addendum as amounting to a nullifying clause. The resolution, McCrady declared, “amends the Constitution and denies to Congress the power to legislate for enforcing the amendment after you have made it. . . . (I) the people of the country, desire the Constitution of the United States to be amended in this particular, then it follows it ought to be so amended that the legislative body that makes laws for the National Government shall have power to enforce it by proper legislation.”

McCrady, of course, was stating the obvious. The Democrats freely

122. 4 Cong. Rec. 5189 (1876). According to the committee report, the amendment to the resolution was unanimously adopted. “While there may be a difference of opinion as to the necessity of such a constitutional amendment, all agree that the underlying principles are right and in accordance with the spirit of the age.” Id.
123. The only House reference to the fourteenth amendment was by Rep. Hoar during the debate over the absence of an empowering clause in the proposed amendment. If Blaine had intended his amendment to have any force, Hoar maintained, he would have included an empowering clause “as we put [ ] in the fourteenth and fifteenth amendments.” Id. at 5190.
124. The debates were not without an element of religious bigotry. Senator Henry Blair (R-N.H.), who in 1888 would propose his own constitutional amendment banning aid to parochial schools, later related his own experience during the House debates:

“Twelve years ago when I was a member of the House of Representatives, and when we were undertaking to enact a constitutional amendment, which was to prevent the appropriation of the public money to the support of sectarian schools in this country, a friend of mine pointed out to me upon that floor nine Jesuits who were log-rolling against that proposed amendment of the Constitution. . . . [Jesuits] have come to our borders and they are among us to-day, and they understand that they are to secure the control of this continent by destroying the public-school system. They are engaged in that nefarious and wicked work.”
125. 4 Cong. Rec. at 1218 (1888).
admitted that the new amendment gave Congress no power to enforce its provisions. But, replied Congressman Scott Lord (D-N.Y.), this is what Blaine intended. "(T)he gentleman who introduced the amendment - and I know his views upon the question, for he stated them to me more than once - never contended that such amendment to the Constitution, which was drawn by him, conferred any legislative power on Congress whatever, and he never intended that it should. . . (T)his additional clause does not in any manner change the preceding part of the proposed article. It is simply declaratory; more than this, if Congress had any power over the question before, it is thoroughly and absolutely reserved." 126

The Democrats' argument was immensely appealing. The resolution, as amended, would not empower Congress to ensure the amendment carried any weight. But, the Democrats argued, the amendment was never intended to be more than a declaration of principles in the first place. Since the addendum also provided that Congress' power was not diminished by the amendment, Congress still had the same authority to do whatever it could have done before the amendment. Or, as Congressman Lord put it, "if the Congress has any power now, under any possible view, over the subject-matter of the proposed amendment, such power remains in full force and vigor. The words of limitation only apply to the proposed article." Lord's confused logic was too tempting to pass up for it offered something for everyone. The amended resolution passed by an overwhelming vote of 180 to 7. 127 The Blaine Amendment had received its first level of approval.

On August 7, the President pro tem of the Senate announced the receipt of the House version of the amendment. 128 Before it could be referred to the Judiciary Committee three senators proposed substitutes for the new amendment. Senator Frederick Frelinghuysen (R-N.J.) objected to the House's limiting clause and the fact the resolution applied only to indirect appropriations from school funds to sectarian schools. Frelinghuysen proposed his own version that would prohibit direct grants from state treasuries or general appropriations to other religious institutions, such as to seminaries or reformatorys. 129

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126. Id. at 5191.
127. Id.
128. Id. at 5245.
129. Section 1. No State shall make any law respecting the establishment of religion or prohibiting the free exercise thereof; and no public property and no money raised by taxation in any State, Territory, or District, or derived from public lands or other public source, shall be appropriated to any school, educational or other institution, that is under the control of any religious sect or denomination, and no such appropriation shall be made to any religious sect or denomination or to promote its interests; nor shall any public money, land, or property be divided between religious sects or denominations.

Section 2. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

Id. at 5245.
Senator Isaac Christiany (R-Michigan) agreed with Frelinghuysen's substitution but proposed that it be expanded to include acts of the federal government and to specifically prohibit the teaching of any religion or religious belief as a course of study in a public or tax-supported school. "This substitute, as I have said, covers the entire ground. It takes up the poisonous tree by the root, while the resolution sent us by the House cuts off but a minor and unimportant branch."31

Before the resolution and substitutions could be referred to the committee, Senator Aaron Sargent (R-California) proposed a third substitution that was similar to Senator Stewart's 1872 amendment which died in committee.132 All three substitutions were then referred to the Judiciary Committee for consideration along with the House version.

On August 11, the Judiciary Committee issued its report on the school amendment. The committee report proposed the following wording for the amendment:

No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no religious test shall be required as a qualification to any office or public trust under any State. No public property and no public revenue, nor any loan of credit by or under the authority of the United States, or any State, Territory, District, or municipal corporation, shall be appropriated to or made or used for the support of any school, educational or other institution under the control of any religious or anti-religious sect, organization, or denomination, or wherein the particular creeds or tenets shall be taught. And no such particular creed or tenets shall be read or taught in any school or institution supported in whole or in part by such revenue or loan of credit, and no such appropriation or loan of credit shall be made to any religious or anti-religious sect, organization, or denomination or to promote its interests or tenets. This article shall not be construed to prohibit the reading of the Bible in any school or institution, and it shall not have the effect to impair the rights of property already vested.132

The committee version used parts of Frelinghuysen and Christiany's substitutions by applying the prohibitions against support of sectarian institutions to all sources of public revenue, whether from the federal or state governments. The version also prohibited support for sectarian institutions other than schools, a provision Frelinghuysen and other Republicans wanted included. Finally, the report went beyond any of the substitutions by including a prohibition against religious tests for state office holding.

130. "This resolution, then, prohibits the states from committing the wrong indirectly but leaves the States full power to commit the same wrong whenever they choose to do it directly." Id. at 5245-5246.

131. Id. at 5246.

132. There shall be maintained in each State and Territory a system of free common schools; but neither the United States nor any State, or Territory, country or municipal corporation shall aid in support of any school wherein the peculiar tenets of any religious denomination are taught.

Id at 5245.

133. Id. at 5453.
Attached to the end of the proposed resolution was a provision requiring that the amendment could not be "construed to prohibit the reading of the Bible in any (public) school or institution."134 Apparently, the sentence had been inserted as a direct result of the lobbying efforts of the National Reform Association, a conservative evangelical group.135 While the amendment was in committee, the Association had sent letters to all members of Congress suggesting the addendum as a compromise. "The clause proposed will introduce no new feature into our education," wrote T.P. Stevenson, the Association's recording secretary. "It will not require the reading of the Bible. It will not forbid or prevent the discontinuance of Bible-reading by the decision of the Legislatures, or of the school authorities. It simply provides that this amendment, which contemplates mainly another question, shall not be construed to declare illegal the existing usage of our schools."136 Apparently, members of the committee were impressed with the proposal because it allowed the Senators to have it both ways: to appear pro-religious while prohibiting support for sectarian schools. The clause was incorporated into the final report.

The Senate Debate

Modern-day commentators have referred to the Senate debate almost exclusively to support their arguments that the members of the 44th Congress, and by implication the members of the 39th Congress, did not believe the fourteenth amendment incorporated the protections of the Bill of Rights.137 A casual reader of such analyses could be left with the conclusion that the issue of incorporation was the sole focus of the Senate debate. Nothing could be further from the historical record. Floor debate in the Senate centered on the School Question and whether the proposed amendment compromised state authority over education. Debate also focused on the partisan nature of the amendment and how the measure tended to exasperate the current religious tension instead of alleviating the problem. The incorporation issue, however, received only minimal attention by the senators. Apparently, concerns over religious liberty, establishment, and the propriety of applying the religion clauses to the states were of minor importance. In those instances when the debate did focus on the

134. Id.
135. See Green, supra n. 19. The N.R.A. had also been instrumental in the Minor case and in organizing Protestant rallies such as the one at the Broadway Tabernacle. See text accompanying n. 88–90.
137. See Conkle, supra n. 8, at 1137–1139; O'Brien (1965), supra n. 8, at 186–194; Meyer, supra n. 8, at 942–944.
amendment’s incorporation provision, it was usually in conjunction with the issue of state authority over education. All in all, the senators perceived the overriding issue to be School Question, not the application of the first amendment to the states.\footnote{138}

Most modern-day commentators have focused on the statements of four or five senators who noted during debate that the first amendment did not then apply to state actions.\footnote{139} As Senator Frelinghuysen, the primary spokesman for the amendment, declared: “the article as amended by the Senate prohibits the States, for the first time, from the establishment of religion, from prohibiting its free exercise, and from making any religious test a qualification to office.”\footnote{140} But Frelinghuysen, who had served during the Thirty-Ninth Congress, did not state the basis for his opinion—of whether he had always believed the fourteenth amendment did not incorporate the protections of the Bill of Rights or whether his opinion had been formed since the \textit{Slaughterhouse Cases}.\footnote{141} Because Frelinghuysen failed to mention the fourteenth amendment in his remarks it is impossible to tell the extent to which he believed the issues were interrelated.\footnote{142} The statements of the other senators were equally vague.\footnote{143}

\footnote{138} 4 Cong. Rec. 5453–5456, 5580–5595 (1876).
\footnote{139}  \textit{Id.} at 5245 (Christianey); id. at 5561 (Frelinghuysen); id. at 5811 (Kernan); id. at 5583 (Whyte); id. at 5591 (Bogby). \textit{See supra} n. 8.
\footnote{140}  \textit{Id.} at 5561.
\footnote{141}  83 U.S. 36 (1873). In March and April 1876, between the time of the introduction of the Blaine Amendment and its consideration by Congress, the U.S. Supreme Court held that neither the first amendment right of assembly nor the seventh amendment right to trial by jury were protected under the privileges and immunities and due process clauses of the fourteenth amendment, thereby bolstering the ruling in \textit{Slaughterhouse}. \textit{United States v. Cruikshank}, 92 U.S. 542 (1876); \textit{Walker v. Sauveur}, 92 U.S. 90 (1876).
\footnote{142}  Senator Francis Kernan (D-N Y.), an opponent of the amendment, made a similar reference to the clause applying the first amendment to the states:

“The provision has my most hearty commendation; but for all that it is not necessary to put it in the Federal Constitution. That matter was discussed in the convention that made the Constitution, and it was not thought wise to put in any such provision, but to leave it to the States.”

\footnote{143}  4 Cong. Rec. at 5581. However, Kernan also did not mention the fourteenth amendment, and his further comments indicate that his opposition to the provision rested as much on his belief that such a clause was now superfluous—that all states had their own constitutional provisions protecting religious liberty and ensuring disestablishment:

“Therefore, I assume as to this provision which I have read, the first clause in the article, there is really no need for it. It would be an insult to the people of every State in the Union . . . to say that there was danger that they would now establish a State religion, or begin to prohibit its exercise, or make religious belief a test or qualification for holding office.”

\textit{Id.}
The only reference to the fourteenth amendment came from Senator Oliver Morton (R-Indiana), a holdover from the days of the Radical Republicans. Contrary to Frelinghuysen's declaration, Morton's statement, while also vague, suggests that the provisions of the fourteenth amendment were intended to encompass other rights. "The fourteenth and fifteenth amendments which we supposed broad, ample, and specific, have, I fear, been very much impaired by construction, and one of them in some respects almost destroyed by construction [a reference to the Supreme Court's decisions in Slaughterhouse, Cruikshank, and Saunier]." This statement can be read to contradict Frelinghuysen's declaration, or at least to show a different interpretation of the fourteenth amendment by other lawmakers. At least one commentator maintains Morton's statement indicates some senators had assumed the fourteenth amendment protected a broad class of rights, including those rights found in the Bill of Rights, until the Supreme Court's seminal decisions gutting the privileges and immunities and due process clauses. While there may be substance to this argument, it is easy to read too much into the brief statements of a few legislators. Frelinghuysen and Morton,

asserted. See O'Brien (1963), supra n. 8, at 181-194; Conkle, supra n. 8, at 1128-1139, n. 123. Representative Banks' oft quoted statement: "it prohibits the States from exercising the power they now exercise," 4 Cong. Rec. at 5191, must be read in the context of the congressional debate. His statement was not part of a discussion over whether states could establish a religion or inhibit religious exercise, but rather whether states could tax and spend for the benefit of parochial schools. Thus the statement has nothing to do with the first amendment. Similarly, Senator Randolph's declaration that the Blaine Amendment "is simply an additional inhibition upon the States; no more, no less," 4 Cong. Rec. at 5454, was also made within the context of a discussion over the authority of states to support religious schools, not over the wisdom of incorporating the religion clauses. The paragraph continues:

"The Amendment] founds no new principle, expresses no opinion as to the wisdom or policy of an existing practice. It recognizes the fact that a system known as the common-school system has obtained in almost every State, has the sanction directly or indirectly of most State governments, [and] has the generous support of most taxpayers."

Id. Finally, despite Professor Conkle's assertions to the contrary, several of those lawmakers who did discuss the application of the religion clauses to the states clearly thought such application unnecessary and superfluous to state protections. See text accompanying n. 153 infra.

144. Dobson, supra n. 72, at 30.

145. 4 Cong. Rec. at 5585. See supra n. 141.

146. Revisionist historians have argued that many Radical Republicans held an expansive view of the Civil War amendments including the belief that the amendments extended many basic civil rights found in the Bill of Rights. See E. Foner, Reconstruction—America's Unfinished Revolution 258 (1988); Curtis, supra n. 12, at 169-170.

147. Id.

148. In spite of his possibly broad reading of the fourteenth amendment, Morton also expressed concern that the states were now unrestrained by the federal constitution: "so far from the States being left free to establish a church if they see proper, or to establish denominational schools at public expense, I believe that the safety of this nation in the far future depends upon their being deprived of any such power." Id.
both supporters of the amendment, were speaking past one another, with the former failing to mention the fourteenth amendment with the latter ignoring the first. Neither lawmaker clearly explained his views.

Even if these statements can be accepted at face value there is no indication they represented the views of a majority of the lawmakers. Basically, there were too many other reasons for congressmen and senators to support or oppose the amendment, the least of which was party loyalty. \(^{149}\)

It should be borne in mind that the Blaine Amendment was not proposed in reaction to the Supreme Court’s ruling in *Slaughterhouse* or to correct some unanticipated flaw in the coverage of the fourteenth amendment. The statements of Frelinghuysen and Morton were polemical arguments offered in support of a measure designed to alleviate the School Question, not to settle an argument over the breadth and scope of the fourteenth amendment.

This last point only highlights the weakness in the underlying premise relied on by modern-day commentators. Analysis of the Blaine Amendment has preceded on the assumption that parallels can and should be drawn between the fourteenth amendment and the Blaine Amendment. However, this premise is flawed. Under general principles of statutory construction, the practice of deriving the legislative intent behind one enactment from a later legislative action or inaction is faulty at best. A constitutional provision or statute must be interpreted as of the date of its enactment, not as a result of what happened at some subsequent legislative session. As Professor Dickerson has aptly stated:

> At best, the legislature’s later actions or nonactions can in appropriate circumstances be a basis for inferring legislative intent that is likely to be that of a significantly different group of legislators, conditioned by different circumstances. No matter how reliable it is for determining current legislative intent, “it is a highly unreliable basis for making a secondary inference respecting the original legislative intent.” \(^{150}\)

Consequently, while many members of the 44th Congress were familiar with the goals and objectives of the fourteenth amendment, their consideration of the Blaine Amendment, coming some eight years hence and under very different circumstances,\(^{151}\) cannot be used as a substitute for the opinions and beliefs of their predecessors.\(^{152}\)

\(^{149}\) See text infra accompanying n. 158-168.

\(^{150}\) R. Dickerson, *The Interpretation and Application of Statutes* 179 (1975), emphasis supplied. See also Tribe, “Toward a Syntax of the Unsaid,” 57 *Ind. L.J.* 515 (1982): “Not all [legislative] silences may legitimately be read as part of statutory context, however. In particular, justifying an interpretation of a prior enactment by pointing to what a subsequent Congress did not enact seems incompatible with our constitutional structure.” Id. at 530.


\(^{152}\) “Assuming that a statute is to be read as of the date of its enactment, what happens at a later legislative session cannot be part of its proper context in the sense of conditioning either the relevant legislative intent or the statute’s meaning at the time of enactment.” Dickerson, *supra* n. 150, at 179.
While the record of the debate is vague as to the extent to which different senators believed or disbelieved the fourteenth amendment subsumed those rights found in the first, several senators on both sides of the issue clearly thought the Blaine Amendment's incorporation provision was superfluous. 153 Many speakers on the issue believed the incorporation of the federal religion clauses would accomplish little more than what the states already did under their own constitutions. 154 For many supporters of the Blaine Amendment the incorporation provision was basically perfunctory to the more important provision concerning school expenditures; for opponents, it was superfluous and an insult to existing state constitutional protections. 155 In fact, one senator openly questioned the sincerity of those proponents who insisted the amendment was necessary to protect religious liberty. 156

153. This impression of the limited effect of the first amendment is due partially to the fact that most people—Protestants and Catholics, Democrats and Republicans alike—took a narrow view of the free exercise and disestablishment clauses. Religious liberty meant freedom from religious taxation and the ability to choose one Christian denomination over another (or at best a toleration of Jews and Moslems). The prohibition against establishment, while considered broader than simply barring state churches, still did not exclude official endorsement and encouragement of Christianity or sumptuary legislation. Distinctions were made between the support of general religion, which was permitted, and the support of sectarianism, which was barred. As Senator Frelinghuysen stated during the floor debates:

“There is nothing in [the amendment] that prohibits religion as distinguished from the particular creed or tenets of religious and antireligious sects and denominations being taught anywhere.”

4 Cong. Rec. at 5562.

154. Senator Randolph: “That upon many of the States it is of no additional effect, because they have already, in spirit, adopted amendments to their own constitutions of similar effect.” Id. at 5455.

See also comments by Kernan, id. at 5581; Senator Whyte, id. at 5583; Senator Christiancy, id. at 5583; Senator Bogy, id. at 5589, 5591; and Senator Eaton, id. at 5592.

155. The primary exception was Senator Morton. However, Morton held to a broader view of the establishment clause than did his colleagues:

“I believe that the example of one State establishing a religion, or doing what amounts to the same thing in principle, establishing denominational schools to be supported at public expense, endangers the perpetuity of the nation. The support of a school by public taxation is the same thing in principle as an established church.”

Id. at 5585 (emphasis supplied). While Morton's possible belief in nonincorporation by the fourteenth amendment may please originalists and permissive-accommodationists, his rather strict position on nonpreferential aid may rangle the same admirers.

156. Senator George Edmunds (R-Vermont) quoted portions of the 1864 Encyclical Letter of Pope Pius IX that suggested the Catholic Church opposed separation of church from state and secular education. Id. at 5587–5588.
I think I know the motive and the animus which have prompted all this thing. I do not believe it is because of a great devotion to the principles of religious liberty. That great idea which is now moving in the modern world is used merely as a cloak for the most unworthy partisan motives. 157

Thus the overriding concern of the senators, and primary focus of debate, was on the clause prohibiting public expenditures for religious institutions. Theodore Randolph (D-N.J.) spoke first to the concern that the amendment infringed on state autonomy in local educational matters. The Senate version not only imposed on state authority over education, Randolph insisted, it also created new obligations upon the states by imposing the duty to educate, an area reserved to the states under the 10th Amendment. This went far beyond the original purpose of the amendment, which only inhibited the pre-existing power of the states to legislate for public education.

(There is not only no duty devolving upon the Federal Government, by reason of any provision in the Constitution, to directly care for the education of its citizens, but that the attempt upon the part of the Federal power to exercise authority in this direction would be without warrant, and as pernicious in precedent as it would finally become dangerous in practice. 158

Randolph's concern over the amendment's usurpation of state authority over educational matters was echoed by numerous senators. 159 As Senator Francis Kernan (D-N.Y.) stated: "I believe that the matter of educating our children may be wisely left to the people of each State. I believe that it is a home right." 160 Democratic objections to the

157. Id. at 5589 (Senator Boggs). Several senators were also concerned with the amendment's provision that inconsistently forbade religious instruction but provided that "the reading of the Bible shall not be prohibited in any school or institution." "Is this not a flat contradiction," Senator Randolph asked, "or is the Bible not a religious book?" Id. at 5456.

Senator Frelinghuysen attempted to answer Randolph's objections by arguing there was nothing in the amendment that prohibited religious instruction as distinguished from the teaching of particular creeds or tenets. The Bible "is a religious and not a sectarian book," Frelinghuysen maintained. "There are various translations, and the excellence of this article is that it prevents the exclusion of any. Nothing in this article shall be construed to exclude either the Douay or the King James version. I am for the broadest toleration, but I would never agree to a constitutional amendment that would exclude from the schools the Bible." Id. 5562.

158. Id. at 5455. Beyond his specific concern over usurpation of state authority over education, Randolph also believed the amendment threatened state control over general expenditures by imposing an obligation on the states to establish schools. Id.

159. Senator Kernan: "The founders of the Federal Government had the wisdom to perceive the advantage of leaving to the people of each State the control and management of their local State matters." Id. at 5580.

Senator Stevenson: "No, sir, this power is not in the Federal Government. Kentucky does not want New England and other states to dictate to her what her schools shall be or what her taxes shall be, and least of all what her religion shall be." Id. at 5589.

See also remarks by Senator Eaton, id. at 5592, and Representative Hoar during House debate: "Nobody wants Congress shall undertake to legislate in regard to the school system of the States." Id. at 5190.

160. Id. at 5580.
educational issue were so great that the Republicans spent the bulk of their time responding to this concern.\textsuperscript{161} Clearly, the issue of state autonomy over educational matters was the overriding concern on both sides of the aisle.

The second area of concern to the Senators was the partisan nature of the amendment. Both Grant and Blaine had proposed the amendment "to take the religious issue out of politics,"\textsuperscript{162} Even though the amendment proponents adhered to this line,\textsuperscript{163} few on the Senate floor actually believed the Blaine Amendment depoliticized the School Question. Senator Lewis Bogy (D-Missouri) called the amendment "a cloak for the most unworthy partisan motives" and charged the Republicans were replacing the "bloody shirt" with unfounded fears of an imperial papacy.\textsuperscript{164} The Republican goal, Senator Bogey continued, "is to arouse feeling against the democratic party, and make it appear that it is dependent upon the support of the Catholics for success."\textsuperscript{165} Senator William Eaton (D-Conn.) agreed, declaring that "this whole matter is brought up as an election dodge" by the Republicans to tie the Democrats to the fortunes of the Catholic Church.\textsuperscript{166} Even the Republicans, who continued to assert the amendment benefited Protestants and Catholics alike,\textsuperscript{167} were often unable to resist aligning their opponents with the Catholic Church, thereby substantiating the Democrats' claim.\textsuperscript{168}

Overall, Senate debate covered more than 23 pages in the \textit{Congressional Record}. In the end, the debate had little effect on the outcome of the amendment. The Senate voted 28 to 16 in favor of the amendment, with Republicans and Democrats voting along straight party lines. The final result was four votes shy of the two-thirds necessary for passage. The amendment had failed.\textsuperscript{169}

Twenty-seven Senators were absent from the vote, including several prominent Republicans. The most notable absence, however, was that of James G. Blaine, who had been appointed Senator a month earlier. Blaine, who was recovering from his unsuccessful campaign for President, failed to show up to vote on the amendment that bore his

\begin{itemize}
\item \textsuperscript{161} See comments by Senators Christianey and Morton. \textit{Id.} 5583-84 and 5594.
\item \textsuperscript{162} \textit{The Catholic World}, Jan. 1876, at 434-435; Boyd, \textit{supra} n. 76, at 352-353.
\item \textsuperscript{163} Senator Frelinghuyzen (the amendment was proposed "because this vexed question was to be removed from the arena of party politics"), 4 Cong. Rec. at 5561.
\item \textsuperscript{164} \textit{Id.} at 5589.
\item \textsuperscript{165} \textit{Id.} at 5590.
\item \textsuperscript{166} Senator Eaton: "This whole business originated with Hon. James G. Blaine. Did you ever hear of him? It was one of his dodges to get a nomination." \textit{Id.} at 5592.
\item \textsuperscript{167} Senator Morton: "(The amendment) simply places religious liberty in this country and education upon impregnable grounds. It is no blow upon the Catholic Church. . . . It protects catholicism as it protects protestantism." \textit{Id.} at 5594.
\item \textsuperscript{168} See comments by Senator Edmunds, \textit{id.} at 5587-5588.
\item \textsuperscript{169} \textit{Id.} at 5595.
\end{itemize}
name. His presence alone may have been sufficient to have influenced at least two reticent Democrats and carried the day. In the final analysis the amendment failed, not because of concerns over federalism or the imposition of federal protections on the states, but because of strict party loyalty.

Conclusion

The constitutional significance of the Blaine Amendment is not clear. To the casual historian, Congress' consideration of the Blaine Amendment so shortly after the passage of the fourteenth amendment may appear to confirm the argument that the framers of the fourteenth amendment did not intend to incorporate the rights found in the Bill of Rights. As is indicated by the Congressional debates some seven years after the passage of the fourteenth amendment, several lawmakers believed the Blaine Amendment would apply the protections and proscriptions of the religion clauses to the states "for the first time." Apparently, this was the general understanding during the debates; no one rose to refute these assertions, and no one suggested that the protections of the federal first amendment already applied to the states. However, evidence that the lawmakers generally shared this understanding merely begins the inquiry into the significance of the Blaine Amendment. It does not explain the origin of the amendment; neither does it settle the issue of legislative intent behind the fourteenth amendment. Absent the comments of one senator, the fourteenth amendment was not discussed during the debates in either house. The first amendment received similar short shrift. Thus, whether these statements were based on an understanding of the Supreme Court's earlier decisions in Barron and Permoli or on its more recent pronouncements in Slaughterhouse, Cruikshank, and Sauveur or on some other factor is not known. However, to derive legislative intent for the fourteenth amendment from such later statements is improper. The parallel between the two amendments is tangential at best.

Similarly, the significance of the Blaine Amendment for modern Church/State law is also unclear. Congress never debated the issue of what constitutes an establishment of religion or an infringement on the free exercise of religion. While some senators believed the Blaine Amendment—and by implication the first amendment—prohibited only the promotion of particular creeds and allowed for nonsectarian religious exercises in schools, others disagreed. Senator Morton, possibly ahead of his time, argued that even nonpreferential aid to religious institutions

170. Id.
172. 4 Cong. Rec. at 5561.
173. Id. at 5562.
constituted an establishment of religion.\textsuperscript{174} Aside from Senator Morton, most lawmakers expressed a nineteenth century restricted view of religious liberty. Reading from the Protestant Bible was considered nonsectarian—despite Catholic and Jewish assertions otherwise—and not seen as a violation of either the free exercise or establishment clauses. Consequently, many observers believed the incorporation of the federal provisions would provide little more protection than was already afforded under the respective state constitutions.\textsuperscript{175}

Thus the debate surrounding the Blaine Amendment was not an exercise in constitutional statecraft. Congress did not discuss the interrelationship of the first and fourteenth amendments; neither did the lawmakers consider any broader concepts of constitutional construction. If the Blaine Amendment had been proposed in reaction to a state’s granting of special privileges to a particular religious denomination or in response to an overt act of religious discrimination, then any debate concerning the incorporation of the religion clauses might be significant. However, the Blaine Amendment was not proposed for the purpose of nationalizing the first amendment; instead it was designed to address the growing controversy over public funding of religious schools and the continuation of religious exercises in the public schools. The Blaine Amendment must be viewed within this context.

What can be drawn from the events surrounding the Blaine Amendment is that Congress became caught up in the School Question controversy that was embroiling the nation. The Blaine Amendment was the direct result of Republican attempts to gain political mileage from a growing public concern over Catholic and immigrant inroads into American culture. The Democrats were no less culpable through their use of the amendment to garner Catholic support. The debate surrounding the Blaine Amendment centered on resolving the School Question—and on how each party could benefit from the controversy—and not on the meaning and scope of the fourteenth amendment. Thus the modern-day emphasis placed on the Blaine Amendment is misplaced. The Amendment may say less about nineteenth century conceptions of liberty protected under the fourteenth amendment and more about our nation’s continual willingness to use religious issues for political ends. This may be the most lasting significance of the Blaine Amendment.

\textsuperscript{174} \textit{See supra} n. 155.

\textsuperscript{175} \textit{See text accompanying} n. 153–155.