

**Explaining Inter-State Variation in Aid for Children at Private Religious Schools  
in the United States, up to 2012**

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## **Abstract**

This American Political Development research explains cross-state variation in aid for children at private religious schools in the United States up to the end of 2012. Using a mixed-methods approach I examine how the institutional orderings of Federalism, Constitution, Church and Party affect policymaker decisions to instigate and sustain programmes of aid. By ‘aid’ I mean education vouchers and tax credits, transportation, textbook loans, equipment, nursing and food services, and tax exemptions for private religious school property. I conduct Fuzzy-Set Qualitative Comparative Analysis across all fifty states, supported by interview and archival research in six case-study states – California, Florida, Illinois, Louisiana, New York and Utah – and by statistical treatment of the constitutional amendments known as ‘No-Aid Provisions’. All of the aid policies examined here are ‘submerged’ in Mettler’s terms, in that they help private organizations to take on state functions, re-frame such functions in terms of the marketplace, and are poorly understood by the public. In this thesis I extend Mettler’s conception of submergedness to explain when institutions matter, which institutions matter, and why they matter for religious school student aid. State decentralization is necessary for high levels of aid and a high proportion of Catholics is sufficient for high levels of aid. Republican control of the state offices is a necessary condition for the passage of tax credit or voucher scholarships but not for other types of aid. No-Aid Provisions are unrelated to aid. Of the four institutional explanatory conditions, Federalism and Church have the most important effects on aid for children at private religious schools. Party explains some types of aid but not all, and Constitution is surprisingly lacking in explanatory power.

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### **Abbreviations**

ADA	Americans for Democratic Action
APD	American Political Development
B3AND	Application of the Boolean AND to state’s three highest aid fuzzy set scores (see Chapter 3)
CBT	Child Benefit Theory
COPE	Committee on Political Education
CVORTC	Application of Boolean OR to voucher and tax credit fuzzy sets (see Chapter 10)
ESEA	Elementary and Secondary Education Act of 1965
ESHS	Massachusetts Essential School Health Services
FPL	Federal Poverty Line
FRL	Free or Reduced Price Lunch
FSQCA	Fuzzy Set Qualitative Comparative Analysis
ICRT	Inter-coder reliability test
IEP	Individual Education Plan
IKB2AND	Application of Boolean OR to states’ highest two in-kind aid programme set scores (see Chapter 10)
ITLP	Illinois Textbook Loan Program
LDS	Church of Jesus Christ of Latter-day Saints (Mormon Church)
MASC	Minimum Acceptable Set Consistency
NAP	No-Aid Provision
NCLB	No Child Left Behind Law of 2001
PSS	Private School Universe Survey, 2006
QCA	Qualitative Comparative Analysis
RLS	US Religious Landscape Survey, 2008
SES	Supplemental Educational Services under NCLB
SFO	Scholarship Funding Organization
SNAP	Strong No-Aid Provision
STO	School Tuition Organization
TBORTR	Application of Boolean OR to transportation and textbook loan fuzzy sets (see Chapter 10)
tQCA	Temporal Qualitative Comparative Analysis
WAP	Weak No-Aid Provision

## Chapter 1: Introduction

This research explains cross-state variation in aid for children at private religious schools in the United States from its origins to 2012. Such support includes publicly funded transport, text books and auxiliary services for children at religious schools, tax credits to cover the expenses involved in sending a child to a religious school, and voucher schemes that allow religious organisations to participate. Amongst the states, levels of support for religious schools vary from generous to slight and their forms from the complex to the simple. At the time of writing, eleven states have run voucher programmes in which religious schools may take part. Twenty-eight offer transportation, fourteen offer tax credits and seventeen offer text book loans, with wide cross-state variance in the regulation of these programmes and the generosity of the financial aid available. The fact that religious school aid is highly variable across US states has broad implications for federalism, constitutionalism and church-state law, and the interaction between education, religion and politics in America and elsewhere. This study sits at the intersection of many areas of scholarly investigation: political science, history, sociology and law.

Given the multi-disciplinary appeal of this inquiry it is perhaps surprising that in seeking to explain why indirect state expenditures on religious schools vary widely in type, target and extent, this research addresses a question previously unasked. Although it has been clear to several scholars that the traditional understanding of what the Establishment Clause proscribes is often belied by reality,<sup>1</sup> and a study by the Thomas B. Fordham Institute showed that some states were far more generous in terms of

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<sup>1</sup> J M O'Neil, *Religion and Education under the Constitution* (New York: Harper, 1949); D Beschle, "Does the Establishment Clause Matter? Non-Establishment Principles in the United States and Canada," *University of Pennsylvania Journal of Constitutional Law* 4, no. 3 (February 2001); E A Edmondson, "Without Comment or Controversy: The G.I. Bill and Catholic Colleges," *Church History: Studies in Christianity and Culture* 71 (2002): 820–847.

indirect aid to religious schools than others,<sup>2</sup> there has been no attempt by scholars to uncover the reasons behind this variation. Nor has there been a systematic overview of the facts as to which states provide many different kinds of support and which states provide little or none. This is the first research to survey religious school aid comprehensively across fifty states, track changes in such aid over time and evaluate competing explanations for this variable expenditure.

In a federal system sub-national variation is expected. This investigation is motivated by puzzling features of cross-state variation in religious school expenditures and tax reliefs. The most intuitive explanations do not seem to account for the observed variation. One might expect, for instance, that the presence of a ‘Blaine Amendment’ or ‘No-Aid Provision’ in the state constitution prohibiting public aid to religious institutions, of which there are thirty-nine, would be a good indicator of the generosity of the state’s support system for religious schools, but amongst states with No-Aid Provisions there are many examples of state support for students at religious schools. The legal-constitutional, jurisprudential explanation is lacking. Wisconsin, Ohio and Indiana, for instance, operate voucher programmes in which religious schools can take part. In Minnesota tax payers are entitled to deductions from the state government for the expenses involved in sending their child to a religious school. Private religious school students in such diverse states as New Mexico, West Virginia, Mississippi and New York benefit from publicly-funded text book loans. Arizona operates a tax credit system for donations from non-profit organizations that provide grants to private and parochial schools, as do Florida, Indiana, Georgia, Iowa, Pennsylvania and Oklahoma. All of these states have No-Aid Provisions. Meanwhile many of the states that do not

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<sup>2</sup> C Connell, “Parochial Schools and Public Aid: Today’s Catholic Schools” (Thomas B Fordham Institute, 2000).

have such provisions, including Tennessee, Vermont and North Carolina, are amongst the least generous in terms of aid for children at religious schools.

If the generosity of a state's support for religious school students were simply a matter of the number of private schools in a state then we would expect high levels of aid in states with large numbers of private schools and low levels of aid in states with few such schools. We would not expect to find low levels of aid in Texas, Wisconsin and Georgia, which have 1650, 990 and 910 private schools respectively, or high levels of aid in Rhode Island, Kansas or Iowa, which have 226, 246 and 242 private schools respectively. We would not expect to find low levels of aid in Delaware, Maryland or Hawaii where more than a third of all schools are private or high aid in Nebraska, Arizona and Michigan where less than a fifth of schools are private.<sup>3</sup>

If aid levels were dependent only on demographic demands, as some historians of American religious history and migration suggest, then states with similar proportions of Catholics and Protestants in the population, such as Maine and Vermont, or Minnesota and Montana, would not have sharply differing levels of observed support. In these paired cases the first state is generous; the second much less so. States with greater levels of aid are not obviously clustered geographically or in areas of Republican or Democratic strength, a consideration which vitiates pure partisan or interest group explanations couched solely in terms of advocacy, ideology or the supposedly exceptional nature of some region of the US. For instance, both parties are split on the issue of religious school vouchers: Republican voters are typically more religious and supportive of markets in education policy but the party is strong in

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<sup>3</sup> Private School Universe Survey, "Number of Private Schools, Students, Full-Time Equivalent (FTE) Teachers, and 2006-07 High School Graduates, by State: United States, 2007-08" (National Center for Education Statistics, 2008), [http://nces.ed.gov/surveys/pss/tables/table\\_2008\\_15.asp](http://nces.ed.gov/surveys/pss/tables/table_2008_15.asp); Common Core of Data: School Year 2010-11, "Number of Operating Public Elementary and Secondary Schools, by School Type, Charter, Magnet, Title 1, and Title 1 Schoolwide Status, and State or Jurisdiction: School Year 2010-11" (National Center for Education Statistics, 2011), [http://nces.ed.gov/pubs2012/pesschools10/tables/table\\_02.asp](http://nces.ed.gov/pubs2012/pesschools10/tables/table_02.asp).

suburban and rural constituencies which have limited interest in such parochial school schemes. Indeed, one might think that if there is a divide that is causally salient with regard to indirect religious school expenditures it is more likely to be between urban and rural inhabitants than between the two main political parties. Democrats are strongly connected to teachers' unions, the key opponents of religious school vouchers, but also traditionally the party of urban, African American and Catholic voters who are most strongly supportive. The number of cross-cutting pressures militates against explanations couched simply in terms of geography, demographics or partisan affiliation.

These plausible considerations do not seem to account for observed variation. Therefore, investigation is required to assess such theories in a rigorous fashion and, in so doing, evaluate certain persistent assumptions about the relationships between private religious schools, communities and federal, state and local politicians; for instance, the lingering effects of early Protestant public schools, the confidence with which some educational voucher advocates hail the elimination of state No-Aid Provisions as the solution to their problems, the connections between school choice advocates and the major political parties, and the relationships between state politicians and local school board members and superintendents. By explaining variation amongst states in aid for children at private religious schools, this investigation has implications for debates about the appropriate role of religion in public life and the degree to which religious organizations should benefit from tax-payer funds.

This thesis raises three pressing moral questions: where should we draw the line between Church and State? How far should religious schools benefit from taxpayer funds? To what extent should private organizations be funded publicly? Battles between spiritual and temporal authorities were central to the development of the modern state

and its most visible arm: the public school. Using the metaphor of ‘a Wall of Separation’, Roger Williams condemned the encroachment of the ‘Wilderness of the World’ upon the ‘Garden of the Church’.<sup>4</sup> Jefferson, by contrast, emphasized the protection of state against church in his use of the same phrase.<sup>5</sup> Funding for students who attend religious schools raises issues of religious freedom and religious privilege. It places fundamental human rights and civil rights in tension: to religious worship, freedom of conscience, parental rights to raise children within a particular faith tradition, and equality before the law. Since American religious schools are private, this investigation also has implications for the relationship between government and private organizations. Aid for children at private religious schools supports an educational marketplace in which private institutions compete with public ones. It presents questions about democratic accountability, capture by special interests, teacher union power, and racial, religious and gender discrimination in the marketplace.

This thesis takes an historical institutionalist approach to the study of aid for children at private religious schools, examining how the institutional orderings of federalism, constitution, church and party shape the preferences of political actors. According to the institutionalist school of American Political Development (APD), political outcomes can only be understood by paying close attention to history and its ‘critical junctures’: periods during which major decisions are made that are subsequently difficult to alter. This thesis investigates the modern distribution of aid through close consideration of continuity, change, and the operation of path dependency in American education, and religious and political life more broadly. Its use of the Qualitative Comparative Analysis (QCA) method is well-suited to this theoretical

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<sup>4</sup> Founder of the Rhode Island colony

<sup>5</sup> R Williams, *The Bloody Tenent, of Persecution, for Cause of Conscience, Discussed, in a Conference Betweene Truth and Peace* (Lond: Lond, 1644); T Jefferson, “Jefferson’s Letter to the Danbury Baptists” (Library of Congress, 1802), <http://www.loc.gov/loc/lcib/9806/danpre.html>; E.S. Gaustad, *Roger Williams* (New York: Oxford University Press, 2005).

approach because of its holistic approach to cases and acceptance of equifinality, complexity and multiple, conjunctural causation.

There are four important directions this thesis does *not* take. It is not a normative piece of the kind common in legal studies, because it makes no explicit claims about the value or appropriateness of aid for children at private religious schools. This thesis simply seeks to explain inter-state aid distribution, although its findings are relevant to such debates. It is not methodologically individualist, as many behaviourist and rational choice approaches are, because it focuses on the effects of institutions as complex autonomous systems of rules and organized interests, and not simply as arenas for contestation between individuals. It does not merely provide an historical narrative because it is a work of political science, the aim of which is to explain modern public policy variation, measure and operationalize the concept of ‘aid’, and produce a theory with predictive capacity that is generalizable across the United States. And it does not focus on the level of the public but on elites – policymakers, advocates and judges – because for the posited mechanisms to work it is not necessary to make any assumptions about the preferences of policymakers’ constituents, but only about policymakers’ *perception* of those constituent preferences. This thesis examines how the institutional orderings of Federalism, Constitution, Church and Party affect policymaker decisions to instigate and sustain programmes of aid for children at private religious schools.

## American Political Development Contextual Schema

In this section an APD schema summarizes the most important constants, relevant background changes, and ‘critical junctures’ with respect to the development of aid for children at private religious schools across the US states. By ‘critical juncture’ I mean a short period in which ‘structural...influences on political action are significantly relaxed’ so that ‘the range of plausible choices open to powerful political actors expands substantially’, with momentous consequences for subsequent political development.<sup>6</sup> The unit of analysis for which the junctures listed in the following schema are ‘critical’ is the level of aid for children at private religious schools. These junctures are ‘critical’ in that they are short, relatively rare periods of time during which opportunities arise for powerful political actors to make important decisions with respect to aid, for example, at the creation of new federal or state constitutions, important Supreme Court aid cases, and periods during which policymakers have opportunities to pass significant legislation. As Capoccia and Keleman point out, ‘critical junctures’ need not involve change, but merely opportunities for powerful actors to make important decisions. In *Mitchell v Helms* and *Zelman v Simmons-Harris*, for example, the Supreme Court affirmed the aid programmes at issue, but this affirmation of existing programmes has been consequential for subsequent aid development in the states. These affirmations offer alternative ground for defence of the constitutionality of educational loans and voucher programmes, altering the relative influence of opponents and proponents of state aid.

The case studies in Chapter 4 include detailed state-by-state time-lines, but it is helpful to juxtapose these with an account of broader educational, religious and legal

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<sup>6</sup> G Capoccia and D R Keleman, “The Study of Critical Junctures: Theory, Narrative and Counterfactuals in Historical Institutionalism,” *World Politics* 59, no. 3 (April 2007): 341–369.

changes that form the national context in which state decisions are made. Each of the four explanatory conditions can be described in terms of constants, cycles and critical junctures. Federalism, for example, is an enduring feature of American political life but it also involves cycles of centralization and decentralization. In education the balance between local, state and federal governments has continued to move toward the federal level since the passage of the Elementary and Secondary Education Act (ESEA) in 1965, but especially since the passage of No Child Left Behind (NCLB) in 2001. These moments can be described as ‘critical junctures’ in the development of the American federalism because they involved important changes to the balance of responsibility and power between governments.

The Constitution is also an enduring, and defining, feature of the United States. But to acknowledge its extraordinary stability is not to deny the path dependent application of legal precedent, cycles of judicial decision-making that attend partisan changes in judges’ appointment committees or judges’ own electoral fortunes, and occasional Supreme Court decisions that make fundamental changes to educational or religious life. Examples of the latter include the 1930 *Cochran* case, in which judges first used ‘Child Benefit Theory’ to justify the constitutionality of textbook funding for private religious school students, and the 1947 *Everson* case on New Jersey transportation, in which the Supreme Court applied the First Amendment to the states for the first time. *Everson* was a watershed moment in disestablishment law. This category of important court decisions also includes the 1954 *Brown* school desegregation case, which had particularly important effects in the South where resistance to public school desegregation was widespread and many whites moved their children to private religious academies. More recently, the Supreme Court in *Mitchell* and *Zelman* found equipment and educational vouchers for private religious school

students constitutional. Such decisions have important implications for aid in the modern era of the ‘school choice’ movement.

America’s system of two-party competition is another institutionalized feature of American political life. Its resiliency is in part based upon the cyclical nature of transfers of power between Republicans and Democrats but it is also possible to discern breakpoints and watershed periods in the development of the modern party system. For example, Presidents now operate in an institutional context transformed by the ‘plebiscitary politics’ of candidate-centred campaigns and direct appeals to the public that bypass party elites. Partisan polarization, at least amongst policymakers, has also grown greatly since the last quarter of the twentieth century. Under Bush and Obama, this polarization has been evident in the highest ever gaps between Republican and Democrat approval of the President. Such changes have ramifications for aid for children at private schools because aid has constituencies that cut across these increasingly rigid party lines: both black urban poor and highly religious supporters of privatization have some reasons to support aid for children at private religious schools.

‘Church’, the fourth explanatory condition, is also a constant in the sense that America has always been a religious nation in comparison to similar western developed countries. However, within this picture of stability lies an individualized, heterogeneous and competitive religious marketplace in which churches compete for adherents. Religious identity is fluid across the average American’s lifetime. Religious revivals represent cycles of heightened religious feeling, two of the most famous of which occurred during the mid-eighteenth century and the early nineteenth. The Catholic Church, whose parochial schools represent a plurality of all private schools in America, is a ‘constant’ in the sense that the institution is one of the oldest in the world, with venerable rituals and organizing principles. But the institutional history of the Catholic

Church also contains critical junctures such as the First and Second Vatican Councils. The First Vatican Council occurred during a period of intense anti-Catholic feeling in the United States and the failed federal Blaine Amendment (discussed in Chapter 5). The Second Vatican Council occurred just as the federal government first began to step into the field of K-12 education and the Warren Court found public school prayer unconstitutional (discussed in Chapter 7). Moreover, the Catholic Church is a centralized institution in comparison to many Protestant Churches, a fact with implications for the churches' approaches and institutional capabilities in the field of education as discussed in Chapter 7. The institutionalization of Protestant practices in public schools during the mid- and late-nineteenth century has also had path-dependent effects on modern levels of aid for children at private religious schools.

The schema on the following page gives a brief overview of the contextual constants, relevant background changes and critical junctures at the national level that affect and are affected by the state-level developments examined in Chapter 4. The schema is a summary and does not purport to be comprehensive. Its aim is to highlight relevant national trends and critical junctures connected to the state-level developments examined in Chapters 5 to 9. Although scholars would not necessarily agree as to which junctures are most critical or which background developments most relevant to an investigation of aid, these were chosen because they are directly relevant to this thesis material and are, accordingly, referenced and discussed throughout the text. These moments of institutional change and stasis in Federalism, Constitution, Church and Party are examined in the thesis insofar as they affect inter-state variations in aid for children at private religious schools.

## American Political Development Contextual Schema

### *Constants*

The Constitution, federalism, two-party competition

### *Relevant Background Changes*

1730-1760: First Religious Awakening

1800-1850: Second Religious Awakening

1840-1900: creation and institutionalization of public education systems.

1840-1900: high levels of Catholic immigration

1850-1890: peak enthusiasm for No-Aid Provisions

Late 1950s-1970: first major increase in federal role in education; peak struggle for school desegregation

1960-1980: enthusiasm for No-Aid Provision repeal

1970-1990: local property tax revolts, equity lawsuits and state centralization of education funding

1990-2012: rising educational choice movement; standards and accountability measures

2000-2012: further attempts to repeal No-Aid Provisions

2000-2012: Tea Party revolts, reaction against NCLB and toward state decentralization of education funding

### *Critical Junctures*

1791: adoption of the First Amendment

1875: failure of the federal Blaine Amendment

1889, 1906 and 1910: Federal Enabling Acts admit new Western States; mandate No-Aid Provision adoption

1930: first use of Child Benefit Theory in *Cochran*

1947: first application of Establishment Clause to the states in *Everson*

1962, 1963: Warren Court school prayer decisions *Engel* and *Schempp*

1965: passage of ESEA

1979: creation of the Department of Education

2000: religious school loans constitutional in *Mitchell*

2001: passage of NCLB

2002: vouchers found constitutional in *Zelman*

## **Thesis Outline**

The thesis proceeds as follows. Chapter 2 gives an overview of the literatures from which this thesis draws and explains how Mettler's theory of the 'submerged state' is used to examine the nature, origins and challenges to aid for children at private religious schools. Chapter 3 explains the three methods used in this investigation: fuzzy set Qualitative Comparative Analysis (fsQCA), case studies, and regression analysis – and shows how the fifty states were coded according to their set membership in eight different aid programmes for children at private religious schools: tax credits, voucher scholarships, textbook loans, transportation, food services, equipment, health services and tax breaks for private religious school property. In this chapter I use Ragin's indirect method to create six qualitative break-points for each of the eight aid types, and explain why I use configurational rather than correlational analysis as the primary method in this thesis. Chapter 4 introduces the six case study states: California, Florida, Illinois, Louisiana, New York and Utah. In Chapter 4 I lay out the demographic and historical context of the six case studies and their membership of the four explanatory conditions. I justify my case selection. This chapter also includes a detailed description of the aid programmes in each of the six case study states, to show what the aid scores outlined in Chapter 3 mean in practice.

Chapter 5 examines the origins of state No-Aid Provisions. I use content analysis to create the first quantitative scale of No-Aid Provision strength and demonstrate through statistical analysis that the scale can be used to conduct meaningful investigation of No-Aid Provisions. This chapter demonstrates the importance of Republican control of the state offices, a large number of Catholics as a proportion of the state population, and Federal Enabling Act requirements, for the creation of

strongly-worded state No-Aid Provisions. I also examine attempts to remove or weaken No-Aid Provisions, particularly the recent failure of a Floridian ballot initiative that would have replaced the Florida No-Aid Provision with anti-discrimination language. Chapter 6 submits the No-Aid Provision strength scale of Chapter 5 to fuzzy-set Qualitative Comparative Analysis, in order to investigate whether No-Aid Provisions are true barriers to the creation of aid programmes for children at private religious schools. I find that No-Aid Provisions are ineffective barriers to aid because they are poorly understood by most elites, interpretable in multitudinous ways by judges, and surmountable by ‘Child Benefit Theory’.

Chapter 7 examines the relationship between religiosity and aid for children at private religious schools. I find that membership of the set of ‘highly religious’ states is almost a perfect sufficiency condition for low levels of aid, an intriguing and counterintuitive result that can be explained by the differential responses of Catholics and Evangelical Protestants to perceived ‘godlessness’ in public schools. Catholics tend to opt out of the public schools for the private parochial sector whereas Evangelical Protestants tend to push for devotional exercises, ‘released time’, or control of textbook content within the public system. The historical tendency of Catholics to exit for the parochial sector has resulted in the overrepresentation of Catholic schools amongst private religious schools and the underrepresentation of Evangelical Protestant schools compared to the percentage of state populations that identify with the Catholic and Evangelical Protestant labels respectively. These differences can be rooted in Catholics’ alienation from the mainstream Protestant American culture throughout much of the nation’s history, especially in education. Hence the religiosity relationship between high religiosity and low aid is really a religious group gap.

In Chapter 8 I investigate the relationship between partisan control and aid through analysis of the origins of each individual aid programme. Across the 132 aid programmes studied – the full universe of aid programmes currently in operation – I find that partisan control of the state offices is related to some types of aid but not others. Unified Republican control is almost a perfect necessary condition for the passage of education voucher or tax credit programmes. Partisan control of the state government is not related to in-kind aid such as textbook or transportation programmes.

Chapter 9 examines the relationship between the level of state decentralization and aid for children at private religious schools. In areas where there is a high proportion of religious schools, local government – which tends to have smaller, more homogenous constituencies and closer bureaucratic ties with private religious schools – tends to be more supportive of aid than state government. In states with powerful local government, therefore, high levels of aid are possible. In states with a powerful state government, low levels of aid are guaranteed. I create a new indicator of state decentralization and use it to examine how the institution of federalism affects aid for children at private religious schools. I find that local decentralization enables high levels of aid while state centralization precludes it.

Chapter 10 brings together the analysis of Chapters 6 to 9 using truth tables that display all four explanatory conditions: constitutional language, religiosity, partisanship and state decentralization. I use Boolean algebra to express and simplify formulae describing the necessary and sufficient conditions for aid for children at private religious schools. State decentralization and a high proportion of Catholics are sufficient for high levels of aid. Republican control of the state offices is a necessary condition for the passage of tax credit or voucher scholarships but not for other types of aid. No-Aid Provisions are unrelated to aid. Of the four institutional explanatory conditions,

Federalism and Church have the most important effects on aid for children at private religious schools. Party explains some types of aid but not all, and Constitution is surprisingly lacking in explanatory power. This final chapter describes the relationship between the four explanatory conditions, and concludes.

## Chapter 2: Literature Review

If historical institutionalists are right to argue that ‘politics is structured by persistent incongruities and frictions among institutional orderings’ so that ‘different rules of order...are likely to grate against one another’, then one task of political scientists is to examine how these institutional orderings interact and what the outcomes of these interactions are.<sup>1</sup> This thesis fits within a body of scholarship that links institutional power arrangements in federal polities with public policy outcomes.<sup>2</sup> In so doing it affirms the importance of institutions not only as constrainers or conduits of the actions of self-interested individuals but also as structures that ‘prescribe actions, construct motives, and assert legitimacy’.<sup>3</sup> My research examines how the institutional orderings of Constitution, Church, Party and Federalism affect aid for children at private religious schools in America. It asks three interrelated questions. When do institutions matter? Which institutions matter? Why do they matter?

The definition of an ‘institution’ is contested, partly because it rests upon the concept of a ‘rule’ that is itself contested. Every object of social scientific study is ‘institutional’ in the broadest sense of the word because social science is concerned with acts of collective intentionality that imbue certain actions or objects with status functions; for example: money, citizenship, elections, legislation, leadership.<sup>4</sup> According to Searle the regularization of such collective procedures transforms them into ‘rules’. An institution can be defined as a collection of rules and organized interests

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<sup>1</sup> S Skowronek, “Order and Change,” *Polity* 28, no. 1 (Autumn 1995): 94–95.

<sup>2</sup> J.D. Nugent, *Safeguarding Federalism: How States Protect Their Interests in National Policymaking* (Norman: University of Oklahoma Press, 2009); J Dinan, “Shaping Health Reform: State Government Influence in the Patient Protection and Affordable Care Act,” *Publius* 41, no. 3 (2011): 395–420; M.B. Berkman and E Plutzer, “Local Autonomy versus State Constraints: Balancing Evolution and Creationism in U.S. High Schools,” *Publius* 41, no. 4 (2011): 610–635.

<sup>3</sup> Skowronek, “Order and Change,” 94.

<sup>4</sup> J Searle, “What Is an Institution?,” *Journal of Institutional Economics* 1, no. 1 (June 2005): 1–22.

that is stable in the face of individual turnover and changing external circumstances. Institutions are ‘instruments of stability’.<sup>5</sup> In this thesis I examine how four political institutions and their rules of order systematically affect the distribution of aid by state. What explains inter-state variation in the distribution of aid for children at private religious schools in America?

The theory that underpins this research is historical institutionalist in that it focuses on the effects of institutions on a public policy outcome through close examination of historical context and path dependency. It takes an American Political Development (APD) perspective, concentrating on the dynamics of system change, path dependence and the ‘critical juncture’ framework. In common with other institutionalist APD works, I argue that institutions exert a powerful effect upon public policy outcomes by both formal and informal means: through laws and constitutional provisions, but also through norms of good practice and cultural inheritance. The APD perspective considers the way systems change over time and suggests that modern policies and institutions can be understood in terms of the path-dependent way in which they evolved and their patterns of subsequent development. It emphasises ‘critical junctures’, that is, periods where the issue of public aid to religious schools has a heightened salience, the range of choices available to powerful policy actors expands, and decisions are made that are subsequently difficult to alter. My APD schema in Chapter 1 highlights the main federal critical junctures with respect to the development of aid.

Within the institutionalist framework I take Mettler’s ‘Submerged State’ as a starting point.<sup>6</sup> Aid for children at private religious schools shares characteristics of

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<sup>5</sup> A.D. Sheingate, “Political Entrepreneurship, Institutional Change, and American Political Development,” *Studies in American Political Development* 17, no. 2 (October 2003): 185–203.

<sup>6</sup> S Mettler, *The Submerged State: How Invisible Government Policies Undermine American Democracy* (Chicago: University of Chicago Press, 2009).

Mettler's 'Submerged State' and can illuminate new policy areas for discussion in this context. By 'Submerged State' Mettler refers to the set of indirect government subsidies and benefits such as tax expenditures whose size and beneficiaries – indeed whose very existence – is largely invisible to the public. Her work fits within a body of scholarship on tax expenditures and quasi-autonomous non-governmental organizations that stretches back forty years.<sup>7</sup> The 'submerged state' is 'a conglomeration of federal policies that function by providing incentives, subsidies or payments to private organizations or households or encourage or reimburse them for conducting activities deemed to serve a public purpose'.<sup>8</sup> Hence such policies are typically misunderstood or ignored by the public but defended tenaciously by the private lobbying groups whose interests they serve.

Aid for children at private religious schools exemplifies Mettler's 'submerged state' because it helps private organizations to take on the state's education function, re-frames this function in terms of the marketplace, and is poorly understood by the public. Although all aid policies are submerged in these ways, some are more submerged – that is, hidden, subject to fewer court challenges, and with greater private organization involvement – than others. I extend Mettler's concept of the submerged state by creating a typology of 'submergedness'. The case of aid for children at private religious schools shows that 'submergedness' is more usefully conceived as a continuum than as a dichotomy. In the first part of this literature review chapter I discuss the institutionalist literatures from which this thesis draws. In the second part of the chapter I provide a

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<sup>7</sup> S.S. Surrey, "Federal Income Tax Reform: The Varied Approaches Necessary to Replace Tax Expenditures with Direct Governmental Assistance," *Harvard Law Review* 84, no. 2 (December 1970): 352–408; V Thuronyi, "Tax Expenditures: A Reassessment," *Duke Law Journal* 1988, no. 6 (December 1988): 1155–1206; E.A. Zelinsky, "James Madison and Public Choice at Gucci Gulch: A Procedural Defense of Tax Expenditures and Tax Institutions," *The Yale Law Journal* 102, no. 5 (March 1993): 1165–1207; C Greve, M Flinders, and S Van Thiel, "Quangos - What's in a Name? Defining Quangos from a Comparative Perspective," *Governance* 12, no. 2 (1999): 129–146.

<sup>8</sup> Mettler, *The Submerged State: How Invisible Government Policies Undermine American Democracy*, 4.

fuller account of the ‘submerged state’ and show how Mettler’s theory can be utilized to scrutinize aid for children at private religious schools and the institutions that retard or advance it.

### **Scholarly Literature**

Three literatures inform this work: federalism, education policy, and religion and politics. My research follows in a tradition of APD works on state building, courts, parties and bureaucracies in that it examines the present consequences of critical junctures or ‘formative acts’ in the past, takes timing and sequence seriously, and examines how political actors operate within and across the porous boundaries of government and society.<sup>9</sup> I challenge simplistic models of ‘dual federalism’ and reject metaphors that obscure the horizontal and vertical relationships between local, state and federal levels of government. My work draws upon legal and historical perspectives on religion, politics and education, but transcends their limitations using the tools of APD and mixed-method political science techniques laid out in Chapter 3.

### **Federalism.**

Riker was wrong in every respect when he said at the beginning of his famous *Federalism: Origins, Operation, Significance* that ‘federalism is a precisely definable and easily recognizable constitutional artefact’.<sup>10</sup> No scholar who has attempted to

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<sup>9</sup> S Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920* (Cambridge and New York: Cambridge University Press, 1982); K Thelen, “Historical Institutionalism in Comparative Politics,” *Annual Review of Political Science* 2 (June 1999): 369–404; P Pierson, “Not Just What, but When: Timing and Sequence in Political Processes,” *Studies in American Political Development* 14, no. 1 (April 2000): 72–92; P Pierson, “Increasing Returns, Path Dependence, and the Study of Politics,” *American Political Science Review* 94, no. 2 (June 2000): 251–267; S Skowronek and M Glassman, eds., *Formative Acts: American Politics in the Making* (Philadelphia: University of Pennsylvania Press, 2007).

<sup>10</sup> W Riker, *Federalism: Origin, Operation, Significance* (Boston: Little, Brown and Company, 1964).

survey this complex and dynamic institution whose boundaries, contents and definition are contested could agree with him. Important though Riker's contribution was to the study of federalism, this research also rejects the Rikerian view that institutions are mere intervening variables between individuals' tastes and policy outcomes. It supports studies that trace the effects of a government's positioning within the federal system in relation to public policies,<sup>11</sup> and suggests that Gibson and Riker's concerns about federalism as an independent variable should be laid to rest, at least in connection with this public policy arena.<sup>12</sup> Reagan and Sanzone were right: 'We have been accustomed to thinking of federalism as an abstract feature of governmental structure. We need to begin thinking of it as a policy determinant'.<sup>13</sup> This research explains how the institutions of Federalism, Church, Party and Constitution affect a public policy outcome; it thereby vindicates the claims of the new institutionalist literature that federalism can be utilized as an explanatory condition.

The project fits within the historical or sociological institutionalist school of scholarship in its recognition of the ways in which institutions can structure broader, embedded cultural beliefs amongst politicians and influence the rules of the game under which political actors work. It also rejects simpler legalistic and principal-agent approaches.<sup>14</sup> To claim that the process of educational policymaking in a federal system fits the top-down principal-agent model is to ignore the many occasions in which the states have initiated the conversation and provided much of the subsequent direction. Indeed, the accountability reforms of NCLB were based on models first developed by

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<sup>11</sup> Beschle, "Does the Establishment Clause Matter? Non-Establishment Principles in the United States and Canada"; J Dwyer, *Vouchers Within Reason: A Child-Centred Approach to Education Reform* (Ithaca and London: Cornell University Press, 2002).

<sup>12</sup> E Gibson, *Federalism and Democracy in Latin America* (Baltimore: The John Hopkins University Press, 2004); Riker, *Federalism: Origin, Operation, Significance*.

<sup>13</sup> M.D. Reagan and J.G. Sanzone, *The New Federalism* (New York and Oxford: Oxford University Press, 1981).

<sup>14</sup> P Manna, *Schools In: Federalism and the National Education Agenda* (Washington DC: Georgetown University Press, 2006); A M Sbragia, "American Federalism and Intergovernmental Relations," in *The Oxford Handbook of Political Institutions* (Oxford University Press, 2006).

the states.<sup>15</sup> Education in the United States is legally the responsibility of the states notwithstanding the ‘nationalization’ or ‘federalization’ of education policy since ESEA.<sup>16</sup> This research dovetails with such works as Bulman-Pozen and Gerken’s ‘uncooperative federalism’<sup>17</sup> by building the simple federal dynamics of earlier scholarship into a more complex theory.

Derthick observed that federalism ‘...is a highly protean form, subject to constant reinterpretation. It is long on change and confusion and very low on fixed, generally accepted principles’.<sup>18</sup> Most modern federalism scholars reject the ideal of ‘dual federalism’ in which federal and state governments have clearly separate responsibilities.<sup>19</sup> This thesis helps fill the gap left by dual federalism’s departure by allowing a more realistic understanding of overlapping policymaking responsibilities and cross-state variation in local level strength. My approach is more realistic than these early theories of federalism because, unlike theories of ‘dual federalism’, I pay close attention to the role of local level officials and the complex relationships between local school boards, state governments, and the integrated umbrella organizations and services through which local interests organize at state level.<sup>20</sup> In Chapter 9 I examine relative local and state power in terms of legal, financial and regulatory authority. My work represents a significant advance compared to ‘dual federalism’ approaches because these older theories rely only upon formal legalistic characteristics.

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<sup>15</sup> K A McDermott and E H DeBray-Pelot, “The Incremental Revolution: Nationalizing Education Accountability Policy,” in *The Rising State: How State Power Is Transforming Our Nation’s Schools* (New York: State University of New York Press, 2009).

<sup>16</sup> Sbragia, “American Federalism and Intergovernmental Relations.”

<sup>17</sup> Bulman-Pozen and Gerken, “Uncooperative Federalism,” *The Yale Law Journal* 118 (2009).

<sup>18</sup> M Derthick, *Keeping the Compound Republic: Essays on American Federalism* (Washington DC: Brookings Institution Press, 2001).

<sup>19</sup> E H DeBray, K A McDermott, and Wohlstetter, “Introduction to the Special Issue on Federalism Reconsidered: The Case of the No Child Left Behind Act,” *Peabody Journal of Education* 80, no. 2 (2005).

<sup>20</sup> P Fafard, F Rocher, and C Cote, “Clients, Citizens and Federalism: A Critical Appraisal of Integrated Service Delivery in Canada,” *Canadian Public Administration* 52, no. 4 (December 2009): 549–568.

Several subsequent theories, while evocative in their imagery – for example ‘marble cake federalism’, ‘layer cake federalism’, ‘bamboo fence federalism’ and ‘fend-for-yourself federalism’ – are more metaphorical than measurable because they do not specify mechanisms by which the described effects come about. Similarly, there are evocative yet ambiguous metaphors in the literatures on religion and politics, education policy and constitutionalism from which this thesis also draws; for example: ‘a Wall of Separation between church and state’, ‘bloated government’ or ‘The Blob’, ‘pervasively sectarian’ and ‘original intent’.<sup>21</sup> At best, these metaphors are simple and effective images but ones which fail to capture a more complicated reality. At worst they contain little substantive information whilst oversimplifying, obstructing theory-building and obscuring causal mechanisms. In this thesis I eschew such word-play.

In Chapter 9 I make use of the Madisonian argument elucidated in Federalist 10 that it is easier to control factions in a larger territory than a smaller one because it is easier for a single faction to capture a smaller territory than a larger one. By ‘faction’ Madison meant a smaller group of citizens whose interest may oppose those of the wider community. Unlike Madison, I make no normative assumptions about how positively factions should be viewed but my empirical point parallels his: policymakers representing larger constituencies are subject to greater pressures to act neutrally with respect to competing groups. Those representing smaller constituencies have fewer different pressures acting upon them and are more easily ‘captured’ by a single group. In this way the institution of federalism exerts an effect on policymaker priorities.

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<sup>21</sup> J Stossel, “John Stossel: The Blob That Ate Children,” *New Hampshire Union Leader*, March 22, 2013, sec. Opinion, <http://www.unionleader.com/article/20130321/OPINION02/130329710>; G.R. La Noue, “Child Benefit Theory Revisited: Textbooks, Transportation and Medical Care,” *Journal of Public Law* 13 (1964): 76; H.J. Powell, “The Original Understanding of Original Intent,” *Harvard Law Review* (1985): 885–948.

## Education Policy

Education policy has traditionally been seen by the American public as a local matter and several scholars have sought to theorize the degree to which sub-national commitment is required for the success of national education policy<sup>22</sup>. Fuhrman and Elmore suggest that a new model of ‘mutual influence’ is appropriate in which there is enhanced room for local activism in education policy.<sup>23</sup> In his 2006 work Manna presents an analysis of educational agenda setting using a new model of federal-state relations – that of ‘borrowing strength’ – which contains the key observation that bargaining in a federal system is not always a zero-sum conflict.<sup>24</sup> According to Manna it is possible for the actors who set the policy agendas of government, ‘policy entrepreneurs’, to ‘borrow strength’ from other levels of government – that is, to utilize their ‘license’ and ‘capacity’ – in order to achieve their own goals. Manna’s understanding is that the federal-state relationship is more fluid than many have thought.

Although borrowing strength fits education policy more generally it is unsuitable for understanding the federalism dynamic when it comes to support for private religious schools. This is because while education has risen frequently (if not monotonically) on the nation’s agenda over the past half century, the question of state support for children at private religious schools rarely rises on the nation’s agenda, in common with Mettler’s ‘submerged’ policies. It is not typically made into a point of contention in elections. The issue of public aid to religious schools is highly contentious, zero-sum and difficult to handle. Such issues are difficult to frame in a way that offers political leverage. Therefore, the likelihood that a politician will be able to

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<sup>22</sup> S Vergari, “Safeguarding Federalism in Education Policy in Canada and the United States,” *Publius* 40, no. 3 (2010): 534–557.

<sup>23</sup> S.H. Fuhrman and R.F. Elmore, “Understanding Local Control in the Wake of State Education Reform,” *Education Evaluation and Policy Analysis* 12, no. 1 (March 1990): 82–96.

<sup>24</sup> Manna, *Schools In: Federalism and the National Education Agenda*.

borrow the legitimating rhetoric of another level of government for the public support of religious schools is limited. The research undertaken in this thesis enables better scholarly assessments of Manna's and other education policy scholars' work, by examining the way policymakers view the relationship between private and public schools and the complicated indirect ways in which public funding is provided for children at private religious schools.

## **Religion and Politics**

The *indirectness* of this aid is central to the effect of the institutions of Church and Constitution on aid and the relationship between Church and State, because policymakers usually emphasize a separation between the two spheres. This characteristic of religious school aid is discussed fully in the second part of this chapter. Scholarly literature on the creation, implementation and significance of state No-Aid Provisions and the Establishment Clause has been almost exclusively written by legal historians.<sup>25</sup> Some political scientists have rightly challenged the causal role ascribed to legal provisions in policy outcomes because evidence suggests the constitutionalist understanding of judicial behaviour is flawed.<sup>26</sup> Although I acknowledge the importance of legal decisions for indirect religious school expenditures, my research examines the largely narrative-based legal-historical accounts of No-Aid Provisions and the Establishment Clause using the techniques of political science. Legal perspectives are

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<sup>25</sup> M.D. Stern, "Blaine Amendments, Anti-Catholicism, and Catholic Dogma," *First Amendment Law Review* 2 (2004): 153–178; A.W Meyer, "The Blaine Amendment and the Bill of Rights," *Harvard Law Review* 64 (1951): 939–945; S.K Green, "The Blaine Amendment Reconsidered," *The American Journal of Legal History* 36, no. 1 (1992): 38–69; W.M. McAfee, "The Historical Context of the Failed Federal Blaine Amendment of 1876," *First Amendment Law Review* 2 (2004): 1–21; S.K. Green, "The Insignificance of the Blaine Amendment," *Brigham Young University Law Review* (2008): 295–333; M.E. DeForrest, "An Overview and Evaluation of State Blaine Amendments: Origins, Scope, and First Amendment Concerns," *Harvard Journal of Law and Public Policy* 26 (2003): 551–626.

<sup>26</sup> Beschle, "Does the Establishment Clause Matter? Non-Establishment Principles in the United States and Canada"; M.J. Perry, "What Does the Establishment Clause Forbid? Reflections on the Constitutionality of School Vouchers," in *School Choice: The Moral Debate*, ed. A Wolfe (New Jersey: Princeton University Press, 2003).

invaluable to political scientists when it comes to school prayer, ‘released time’, and instructional material choice, for example, because such areas experience high levels of judicial activity. Drawing upon historical and legal perspectives, I use comparative political science to explain modern public policy distribution through a mixed-methods approach described in Chapter 3. I argue that there is *no* single ‘originalist’ position on state No-Aid Provisions because of their diverse origins elucidated in Chapter 5. I also argue that certain judicial norms can become powerful and exert independent influence through processes of path dependency embodied in judicial precedent, for example, the use of ‘Child Benefit Theory’ examined in Chapter 6.

This thesis draws upon historical and historical-institutionalist works on church-state separationism since colonial times. If historians are right to argue that the early establishment of Episcopalians in southern states and Congregationalists in New England allowed religions to develop cartels benefitting from many forms of support at the local level, then it is possible that their varying legacies may be traceable to the present day.<sup>27</sup> Similar processes of entrenchment and path dependency are utilized in Noll’s treatment of American Protestant tradition and Hennessey’s history of American Catholicism.<sup>28</sup> In my research I use the work of historians to understand the context of historical ‘critical junctures’, such as the creation of the Bill of Rights or the failure of the federal Blaine Amendment. Drakeman’s view is that the authors of the Constitution and its Bill of Rights did not intend to create a broad ‘wall of separation between church and state’ but merely to prohibit the establishment of a national church.<sup>29</sup> In examining the effect of the institutions of Church and Constitution on aid for children at private

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<sup>27</sup> R Finke and R Stark, *The Churching of America, 1776-1990: Winners and Losers in Our Religious Economy* (New Brunswick, N.J: Rutgers University Press, 1992).

<sup>28</sup> M.A. Noll, *America’s God: From Jonathan Edwards to Abraham Lincoln* (New York: Oxford University Press, 2002); J Hennesey, *American Catholics: A History of the Roman Catholic Community in the United States* (New York and Oxford: Oxford University Press, 1981).

<sup>29</sup> D.L. Drakeman, *Church, State, and Original Intent* (Cambridge and New York: Cambridge University Press, 2010).

religious schools in Chapters 6 and 7, I draw upon historical literature on religious institutions from colonial times to the present, their institutional forms and constitutional language describing the relationship between church and state.

Wide variation in the generosity of aid for children at private religious schools occurs in a polity for which Jeffersonian language of ‘a Wall of Separation between Church and State’ has assumed considerable legal, political and cultural importance over the past one hundred years.<sup>30</sup> This principle implies that there is a clear, impregnable line between church and state activity. In practice the principle is unclear and contested. In his 1948 McCollum opinion Justice Reed said of ‘the wall of separation’ that ‘a rule of law should not be drawn from a figure of speech’, and Beaver’s historical investigation of an ‘inconsistency behind the wall of separation of church and state’ with public grants and subsidies for mission schools abroad suggests that this principle also contains areas of ambiguity or ‘blind spots’.<sup>31</sup> O’Neil may have been right only in a narrow sense when he said of the ‘wall of separation’ that ‘there is no such great American principle and there never has been’,<sup>32</sup> but this dichotomous principle has become a cultural touchstone in a country where there is variation across eight types of expenditure, fifty states, local, state and federal levels of government, and indicators of support, both financial and in-kind. Where the ‘wall of separation’ metaphor anticipates uniformity, clarity and simplicity, the researcher observes heterogeneity, confusion and complexity. A gap between principle and practice remains to be explained.

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<sup>30</sup> S.M Feldman, *Please Don't Wish Me a Merry Christmas: A Critical History of the Separation of Church and State* (New York: NYU Press, 1998); J.T.S Madeley, “Unequally Yoked: The Antinomies of Church-State Separation in Europe and the USA,” *European Political Science* 8 (September 2009): 273–288.

<sup>31</sup> R.P. Beaver, *Church, State, and the American Indians* (St Louis: Concordia Publishing House, 1966).

<sup>32</sup> O’Neil, *Religion and Education under the Constitution*.

This work is not exceptionalist, that is, it ascribes no special causal significance to America beyond that which is captured by measurable and generalizable elements. Hence this investigation draws in part upon theories applicable to other church-state regimes, education policies, and federal countries. Several studies have taken up the challenge Lipset set in his *Continental Divide*: that of illuminating the workings of the United States by comparison with its neighbour, Canada.<sup>33</sup> Study of aid for children at private religious schools enables testing of theories of federal structure and process, such as Simeon's model of the interplay between institutional context and participant resources in federal Canada, and Cuttance *et al.*'s ascription of causal significance to the Australian federal structure in education accountability reforms.<sup>34</sup> It provides a valuable single-country test of Ansell and Lindvall's study of the development of primary education world-wide, with the associated processes of centralization, secularization and subsidization.<sup>35</sup> It also speaks to the international scholarly literature on 'culture wars' between the religiously orthodox and progressives that is advanced by Hunter, Wuthnow and Putnam, amongst others.<sup>36</sup> Although the findings reported here do not permit me to generalize beyond the American case explicitly, my research conclusions shed valuable light upon the international scholarly literatures on federalism, education, and religion and politics.

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<sup>33</sup> R Simeon, *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada* (Toronto and Buffalo: University of Toronto Press, 1972); E J Heubel, "Michigan and Ontario Legislators: Perspectives on the Federal System," *Canadian Journal of Economics and Political Science* 32, no. 4 (November 1966): 443–454; S M Lipset, *Continental Divide: The Values and Institutions of the United States and Canada* (New York: Routledge, Chapman and Hall, Inc, 1990).

<sup>34</sup> Simeon, *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada*; Cuttance et al., "The Politics of Accountability in Australian Education," *Educational Policy* 12, no. 138 (1998).

<sup>35</sup> B Ansell and J Lindvall, "The Political Origins of Primary Education Systems: Ideology, Institutions, and Interdenominational Conflict in an Era of Nation-Building," *American Political Science Review* First View Article (August 2013): 1–18.

<sup>36</sup> R Wuthnow, *The Restructuring of American Religion: Society and Faith since World War II* (Princeton, NJ: Princeton University Press, 1988); R.D. Putnam and D.E. Campbell, *American Grace: How Religion Divides and Unites Us* (New York: Simon and Schuster, 2011); J.D. Hunter, *Culture Wars: The Struggle to Define America. Making Sense of the Battles over the Family, Art, Education, Law and Politics* (Basic Books, 1991).

## The Submerged State

Like much of the foregoing literature, Mettler's examination of the 'submerged state' is an institutionalist work focusing on path dependent patterns of growth and critical junctures, such as the banking crisis, which create opportunities for change. The submerged state is 'a conglomeration of federal policies that function by providing incentives, subsidies or payments to private organizations or households or encourage or reimburse them for conducting activities deemed to serve a public purpose'.<sup>37</sup> Such policies obscure the government's role in public policy from the general public and exaggerate that of the market. This leaves 'citizens unaware of how power operates, unable to form meaningful opinions, and incapable, therefore, of voicing their views accordingly.' Mettler's criticism echoes that of several tax expenditure scholars. For example, in his seminal work on 'special provisions or tax incentives intended to achieve certain non-tax governmental policies', Stanley Surrey condemned the unfairness and confusion of using the tax system to deliver benefits, rather than direct governmental spending.<sup>38</sup> According to Mettler the submerged state reduces citizens' trust in government and fosters inequality. It reduces citizens' ability to form meaningful opinions about acts of governance and thereby damages the vibrancy of American democracy.

Mettler examines the 'submerged' policies in higher education student loans, tax policy and healthcare. I propose not only that aid for children at private religious schools can be added to this list, but also that such aid extends our understanding of the 'submerged state' because it displays different levels of 'submergedness': the degree to

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<sup>37</sup> Mettler, *The Submerged State: How Invisible Government Policies Undermine American Democracy*, 4.

<sup>38</sup> Surrey, "Federal Income Tax Reform: The Varied Approaches Necessary to Replace Tax Expenditures with Direct Governmental Assistance."

which a policy is ‘hidden’ by market mechanisms and elite framing, the balance between public and private actors in policy delivery, and the degree to which it is entrenched or vulnerable to challenge by politicians or the courts. The case of aid for children at private religious schools shows that ‘submergedness’ is a continuum, rather than a dichotomy.

Voucher schemes seem to exemplify the ‘visible’ state in the way they are administered and advertised because a simple lump-sum payment is typically publicised. Other means of religious school support are more ‘submerged’. In states such as Florida, corporations are entitled to redirect up to 100% of their corporate income or insurance premium tax liability annually by contributing to a ‘Scholarship Funding Organization’ or ‘SFO’ which awards scholarships to low-income children. Such scholarships can be used at private schools including religious ones and in 2010-11, 79% of participating private schools in the Florida Tax Credit Scholarship Program were religious.<sup>39</sup> At the time of writing, in Nebraska, California, Idaho, Maine, Texas, North Carolina and Nevada school lunches at private schools are exempt from state sales taxes, and in twenty-five states private school infrastructure is constitutionally exempt from property taxes. For many of these programmes religious school aid is not only indirect, by which is meant offering benefits to students at religious schools and their parents rather than the school itself, but is also low in visibility because it is administered through tax rebates rather than direct payments. This research offers a new test of the applicability of Mettler’s arguments about the causes and consequences of the submerged state.

All eight policies examined in this thesis and laid out in Chapter 3 – education vouchers, tax credits, textbook loans, transportation, equipment, health and food

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<sup>39</sup> Florida School Choice, “Florida Tax Credit Scholarship Program” (Florida Department of Education, August 2011), [http://www.floridaschoolchoice.org/Information/CTC/files/ctc\\_fast\\_facts.pdf](http://www.floridaschoolchoice.org/Information/CTC/files/ctc_fast_facts.pdf).

services, and tax exemptions for private religious school property – are ‘submerged’ in the sense that they encourage private actors to undertake actions deemed to have an important public purpose. Schools are one of the most visible arms of the state and education is one of the most important state functions. All of these aid policies in various ways help private schools to take on this function instead. Mettler argues that ‘even when people stare directly at [submerged state] policies, many perceive only a freely functioning market system at work’.<sup>40</sup> All of these policies intervene in the educational ‘marketplace’ by providing aid for student ‘consumers’ to attend private alternatives to the public school system. In the case of educational vouchers and tax credits, such policies are *explicitly* aimed at creating a competitive market in education.

As with other submerged policies, opinion polling shows that aid for children at private religious schools is poorly understood by the public – particularly education vouchers and tax credits.<sup>41</sup> As Chapter 6 explains in detail, constitutional provisions aimed at such policies known as ‘Blaine Amendments’ or ‘No-Aid Provisions’, are also poorly understood by policymaking elites. Indeed, some types of aid should be described as ‘doubly-submerged’ because of the difficulty – detailed in Chapter 3 – of finding precise information about the financial scale of such benefits and tax allowances. Transportation aid, for example, can be offered in the form of separate buses for children at private religious schools, regular public school buses looping back to collect private school students after dropping off public school students, regular public school buses filling spare seats with private school students, or simply reduced-fare passes for children at private religious schools. Particularly in the last three cases, it

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<sup>40</sup> Mettler, *The Submerged State: How Invisible Government Policies Undermine American Democracy*, 5.

<sup>41</sup> J Ray, “Public Opinion Still ‘Soft’ on Voucher Issue” (Gallup, September 28, 2004), <http://www.gallup.com/poll/13210/public-opinion-still-soft-voucher-issue.aspx>; D.A. Bositis, “2002 National Opinion Poll on Education” (Joint Center for Political and Economic Studies, January 2002), <http://www.jointcenter.org/research/2002-national-opinion-poll-on-education>.

is immensely difficult to find information on and systematically calculate the scale of public financial commitment to such schemes. In many cases the financial data are not disaggregated according to private or public school funding; in most cases they *cannot* be disaggregated in this way.

All of the aid policies examined in this thesis are ‘submerged’ in that they help private organizations to take on state functions, re-frame such functions in terms of the marketplace, and are poorly understood by the public. But there are also differences amongst the eight aid types that can be understood in terms of Mettler’s theory. Because the ‘Wall of Separation’ metaphor has currency in American political discourse it is in the interests of many politicians to emphasize the indirectness of the aid programmes so as to maintain an official separation between Church and State, whatever that is taken to mean. In some cases – for example, STO tax credits and vouchers, and some food services – the policy is delivered by a private organization. In others it is delivered through a tax exemption, deduction or credit – such as school property and food sales tax exemptions, and individual tax deductions for parents to pay for equipment or tuition. In still others the policy is delivered by the government but is couched in language designed to invoke the private sector or the indirectness of the links between government and beneficiaries; for example, text-books can be ‘loaned’ rather than bought, health services provided ‘on request’, and equipment provided as a result of ‘contracts’ or ‘agreements’ through regional ‘educational media centers’.

The eight aid types also vary in their vulnerability to legal challenge, a variable connected to submergedness in two ways: if a policy is delivered by private organizations then it is less vulnerable (though by no means invulnerable) to separationist challenge in the courts, and it may also be more likely to win such challenges if they are brought. Chapter 6 investigates this proposition in more detail

using both the six case study states introduced in Chapter 4, and data for all fifty states (see Table 6.1). Although all aid types are defended by loyal constituencies, the path-dependent commitment to in-kind aid for urban parochial schools makes Catholic constituencies particularly supportive of high aid, as detailed in Chapters 7 and 9. All of the aid policies are ‘submerged’ in some sense, but some are more submerged than others. Table 2.1 on the following page shows a typology of ‘submergedness’ and places the aid types along it.

**Table 2.1: Typology of submergedness with eight aid types**

<b>Submergedness</b>	<b>Highly submerged</b>	<b>Mostly submerged</b>	<b>Weakly submerged</b>
<b>Criteria</b>	Delivered entirely through private channels or tax exemption with low public knowledge. Limited court challenge; upheld where challenged.	Delivered mostly through private channels or tax exemption with medium public knowledge. Some court challenge with some challenge success.	Delivered through public channels but deliberately shrouded. Higher public knowledge. Court challenges easier; often struck down when challenged.
<b>Aid types</b>	<p>Tax exemptions for school meals served at private religious schools.</p> <p>Some food services</p> <p>Tax exemptions for private religious school property</p>	<p>Tax credits</p> <p>Some transportation</p> <p>Privately-funded vouchers</p> <p>Auxiliary services</p> <p>Some food services</p>	<p>Textbook loans</p> <p>Publicly-funded vouchers</p> <p>Equipment</p> <p>Some transportation</p>

There is a sense in which the concept of ‘submergedness’ as displayed in Table 2.1 is an ‘objective’ category that is defined in terms of formal institutional characteristics – the private mechanisms involved in the delivery of aid and their vulnerability to legal challenge. But ‘submergedness’ is also a product of perception in two senses. First, judgements about the level of public knowledge and balance of public and private delivery mechanisms are a matter for subjective (though informed) decision-making by researchers. Similar judgements are required by scholars of tax expenditures, for example, because the identification of such expenditures relies upon Surrey’s and Thuronyi’s categories of ‘normative’ and ‘subsidizing’ provisions in the Internal Revenue Code.<sup>1</sup> It is possible for scholars to disagree as to where specific aid programmes should be placed on the scale of ‘submergedness’. In Chapters 3, 4 and 6, I discuss the aid programmes’ scope, expense, regulation and vulnerability to court challenge: characteristics which inform my judgement as to where they should be placed in Table 2.1. Secondly, the categorization of aid policies in terms of their level of submergedness depends in part upon public information levels about the programmes, and framing of the programmes by policy elites. In this sense the general public’s perception, or lack thereof, determines whether an aid programme should be categorized as ‘weakly’, ‘mostly’ or ‘highly’ submerged. This perceptual feature is intertwined with the formal institutional characteristics outlined in the ‘Criteria’ row because, as Mettler, Surrey and others demonstrate, the hidden nature of the submerged state is partly responsible for high levels of public misinformation about its nature, scope and purpose.

Mettler uses the theory of the submerged state to explain why certain policies are enacted, entrenched and challenged. In this thesis I extend her theory to another

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<sup>1</sup> Surrey defines a tax provision as special if it departs from a *normative* tax, i.e. a tax structure that is ‘generally accepted’ by professional tax analysts. Thuronyi defines ‘substitutable tax provisions’ as ‘a tax law provision whose purposes a non-tax-based federal program could achieve at least as effectively’.

‘submerged’ policy type: aid for children at private religious schools. The concept of ‘submergedness’ illuminates the question of why some states provide more, and different types of, aid for children at private religious schools, because it encompasses several important aid characteristics: its indirectness, market principles, entrenched constituency and low information-levels amongst the public. An aid programme’s placement along the scale of ‘submergedness’ helps explain why some states provide certain types of aid for children at private religious schools and others do not, in two ways. First, ‘highly’ and ‘mostly’ submerged policies are more numerous than ‘weakly’ submerged policies. The most submerged policies are more ‘hidden’ and are therefore resilient. This fact helps explain why food services, tax exemptions and transportation programmes are the most common aid programmes amongst the US states, while vouchers, textbooks and equipment loans are the least common. Secondly, separationist challenges to ‘highly’ submerged policies are less numerous than those to ‘weakly’ submerged policies, and the challenges are less likely to succeed if brought. For example, as I show in Table 6.1, the success rate for court challenges to ‘highly submerged’ tax exemptions is just one in nine whereas the success rate for challenges to ‘weakly submerged’ vouchers is more than half. I deal with these judicial challenges to aid programmes fully in Chapters 5 and 6.

Each chapter examines the ‘submergedness’ theme as part of its institutionalist investigation of the origins of aid for children at private religious schools. Chapter 6 – which suggests that some aid programmes are more vulnerable to legal challenge than others – unpacks the concept of ‘Child Benefit Theory’ and shows how the indirect aid delivery mechanisms strengthen aid programmes in the judicial arena. The paradox of the submerged state is that government is integrally involved in everyday life but in ways that elude our vision. It is mirrored by the Protestant paradox elucidated in

Chapter 7: sectarian religious practices were common in public schools prior to the Warren Court but were not recognized as such by the Protestant majority. This phenomenon fits the category of ‘weak submergence’ in that it was delivered through public mechanisms and subject to several court challenges. By investigating the relationship of party control of the state offices to aid, Chapter 8 extends our understanding of the market-mechanisms of submerged policies and Republican support for the ‘limited government’ ethos of tax credit and voucher scholarships. And in Chapter 9 the path dependent way aid policies become entrenched and defended by certain constituencies is examined, through consideration of the effect of federalism on aid. The thesis uses the concept of ‘submergedness’ and the theoretical tools of APD to explain when institutions matter, which institutions matter, and why they matter for religious school student aid.

### **Chapters, Hypotheses and Associated Literatures**

Table 2.2 on the following two pages summarizes the hypotheses, drawn from the literature, which are investigated in this thesis. In the following chapter the eight aid types laid out in Table 2.1 are described in detail, including eligibility, cost and delivery mechanisms. I explain why I chose a mixed-methods research design – with QCA at its centre – to explain modern patterns of aid for children at private religious schools.

**Table 2.2: Chapters, Hypotheses and Associated Literatures**

<b>Chapter</b>	<b>Hypotheses</b>
<b>Chapter 5: Origins of No-Aid Provisions</b> Literatures: constitutionalism, jurisprudence, religious market structure, party control	H5.1: Republican control of state offices at the time of No-Aid Provision passage increases No-Aid Provision strength
	H5.2: A large Catholic presence as a proportion of the state population increases No-Aid Provision strength
	H5.3: The requirements of the Federal Enabling Acts increase No-Aid Provision strength
<b>Chapter 6: No-Aid Provisions and Aid</b> Literatures: constitutionalism, jurisprudence, judicial decision-making	H6.1a: Strong No-Aid Provisions act as a barrier to aid for children at private religious schools
	H6.1b: Weak No-Aid Provisions encourage greater levels of aid for children at private religious schools.
	H6.0: There is no connection between No-Aid Provision strength and the level of state support for children at private religious schools
<b>Chapter 7: Religiosity and Aid</b> Literatures: history, religious market structure, education policy, culture wars	H7: States with high levels of religiosity will provide more aid to children at private religious schools.

**Table 2.2: Chapters, Hypotheses and Associated Literatures – Part Two**

<b>Chapter 8: Partisanship and Aid</b>	H8.1a: Republican control of the state offices increases aid for children at private religious schools
Literatures: partisanship and policy outcomes, ideology	H8.1b: Democratic control of the state offices increases aid for children at private religious schools
	H8.0: Party control of the state offices has no effect on the passage of aid programmes for children at private religious schools.
	H8.2: Republican control of the state offices increases tax credit and voucher aid for children at private religious schools
	H8.3: Democratic control of the state offices increases in-kind aid for children at private religious schools
<b>Chapter 9: Federalism and Aid</b>	H9.1: Highly centralized states will have low levels of aid for children at private religious schools
Literatures: federalism and intergovernmental relations, public policy, bureaucracy	H9.0: There is no relationship between local power within a state and aid for children at private religious schools

### **Chapter 3: Methodology and Measurement**

This chapter describes the main method used in this thesis: Fuzzy Set Qualitative Comparative Analysis (fsQCA). Two supplementary methods are also used in this thesis to complement QCA: multivariate regression analysis is used in Chapters 5 and 7, to test the utility of the No-Aid Provision strength scale and to demonstrate the value and relevance of the QCA method for this investigation, respectively. Six US state case studies are laid out in the following chapter and integrated throughout the QCA analysis to provide additional detail, explain what QCA set values mean in real terms, and remedy QCA's lack of attention to the dynamics of aid changes over time. Chapter 4 describes the selection of the case studies and gives a detailed account of their aid programmes. It also explains how interview and archival evidence was collected in these six states and the purposes to which it is put. In this chapter I lay out the landscape of aid programmes across all fifty states, and show how each programme was categorized using eight fuzzy sets before being conglomerated into a composite indicator. This is a multi-method piece of research of which QCA is the foundation.

Standard multivariate regression analyses, such as the test of the No-Aid Provision strength scale in Chapter 5, have several features that are useful for political scientists. These analyses engage in systematic, replicable comparison across large samples to make generalizable inferences about populations. They enable adjudication between competing explanations by demonstrating the average treatment effect on the dependent variable. By contrast single case studies offer a level of detail and attention to the mechanisms of causation that is not possible in large-*n* statistical analysis, and provide rich information about a particular case. To explain why some states are more generous than others in the amount of aid they provide to children at private religious

schools, this thesis uses neither correlational analysis nor a single case study but rather, intermediate-*n* fsQCA. FsQCA is a configurational comparative method, that is, it treats cases as configurations of causal factors or ‘conditions’ that produce the outcome of interest. Using set-theoretic language of necessity and sufficiency, fsQCA examines the subset and superset relations that may indicate causal relationships between the explanatory conditions and the outcomes of interest.

There are three motivations for choosing a set-theoretic, as opposed to a correlational, analysis of the origins of contemporary patterns of indirect religious school aid: first, it is conceptually easy to grasp the idea of a set of high-aid states and a set of low-aid states with gradations of membership between the two. This type of approach was used by Connell to compile a Thomas B. Fordham report table, although the now-outdated Connell report used crisp- (Yes/No dichotomies) rather than fuzzy-sets.<sup>1</sup> Secondly, a dataset with an *n* of 51 is a poor candidate for multivariate statistical analysis and a good candidate for the qualitative-quantitative ‘middle-way’ of fuzzy set analysis. The historical institutionalist focus of this thesis with its emphasis on American political development, path dependency and the close analysis of institutional, demographic and policy changes in selected states makes external calibration of fuzzy set scores possible and desirable. The investigation focuses on explicit connections between ‘independent’ and dependent variables and hence is less suited to symmetric, regression-based statistical analysis. Thirdly, judgements about the degree to which states offer aid to children at private religious schools requires a level of qualitative understanding that is not captured by a simple interval-level variable.

For example, even if a state scholarship for disabled children is of higher face-value than a scheme that is targeted at poor children but confined to a particular city, it

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<sup>1</sup> Connell, “Parochial Schools and Public Aid: Today’s Catholic Schools.”

would be wrong to assume that the disabled scholarship state ought to be classified as having more membership of the set of ‘states that provide voucher aid’ than the poverty scholarship state. There are two reasons for this: contextual variations that account for high or low scholarship value, and federal laws that affect state motivation. Scholarships for children with disabilities are likely to run at a much higher average cost because many recipients require expensive specialist equipment. By contrast, scholarships aimed at low-income urban children are typically used at urban parochial schools that charge lower fees than their non-sectarian and rural counterparts. In 2007-8 the average private school fee was \$8,549 but for Catholic schools it was just \$6,018.<sup>2</sup> Catholic schools form almost half the total number of urban private schools, twice as numerous as non-sectarian urban private schools and more than four times as numerous as urban private schools of any other faith.<sup>3</sup> Moreover in the thirty-nine states that authorize charter schools at the time of writing, inner-city private religious schools must compete against public charter options that do not charge fees at all. Hence the value of scholarships for inner-city poor children tends to be concomitantly lower, but this low voucher value is based on factors other than the state’s desire to aid non-public school children or the strength of proponents of such aid. It is based on mere technical, economic or demographic necessity.

The second reason to avoid using a simple interval-level value variable in the case of scholarships aimed at disabled and poor children is that federal legislation and judicial decisions have been, on the whole, more favourable to reimbursement for disabled children’s private school costs than for children in low-income households.

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<sup>2</sup> National Center for Education Statistics, Schools and Staffing Survey (SASS), “Private Elementary and Secondary Enrollment, Number of Schools, and Average Tuition, by School Level, Orientation, and Tuition: 1999-2000, 2003-04, and 2007-08” (U.S. Department of Education, 2009), [http://nces.ed.gov/programs/digest/d10/tables/dt10\\_063.asp](http://nces.ed.gov/programs/digest/d10/tables/dt10_063.asp).

<sup>3</sup> Private School Universe Survey, “Number and Percentage Distribution of Private School Students, by Urbanicity Type and Selected Characteristics: United States, 2009-10” (National Center for Education Statistics, 2010), [http://nces.ed.gov/surveys/pss/tables/table\\_2009\\_05.asp](http://nces.ed.gov/surveys/pss/tables/table_2009_05.asp).

Under the federal Individuals with Disabilities Education Act (IDEA 1994, reauthorized 2004) states are required to provide a ‘free and appropriate education’ for all disabled children, and where public schools cannot offer it the parent is entitled to seek reimbursement for a private alternative, according to the Supreme Court.<sup>4</sup> By contrast the latest iteration of the ESEA’s Title I programme for low-income children, NCLB, makes no mention of voucher scholarships or private school tuition reimbursement. It merely provides for private supplemental education services under certain circumstances. Since federal legislators and courts have given more encouragement to private school choice for disabled children than poor children, the political costs associated with state disabled voucher programmes may be lower than those associated with state low-income voucher programmes. There is a qualitative difference between disabled and poverty scholarships: the enabling context of the federal government and judiciary. (Similarly, the federal government has issued regulations concerning the national school lunch programme, which affects how states issue funds for food services at public and private schools). These differences are not captured by a simple voucher-cost assessment but should be taken into account when assessing a state’s membership of the set.

A third way that simple interval-level cost scales fail to capture variation in set-membership is the qualitative distinction between ‘May’ states and ‘Must’ states for textbooks, transportation, food services, equipment and auxiliary services. Some state legislation provides that the school district, state board, department, superintendent or other public body *must* provide a certain service. In other states the relevant legislation says only that these bodies *may* provide such services. Even if the value of the services provided under the ‘may’ provision is more substantial than under the ‘must’ provision,

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<sup>4</sup> Forest Grove School District v T.A., 523 F. 3d 1078 (2009).

it rests on a much shakier foundation because it merely allows rather than compels the bodies to provide the service. Similarly if the legislation mandates that parents must request particular services then participation is likely to be lower but, more importantly, the state is providing a higher barrier to distribution of such services, signalling its enthusiasm to a much lesser degree than states which actively compel school districts and others to provide the services for children at non-public schools. Such differences cannot be captured by a quantitative scale but must be discovered through detailed qualitative analysis of the relevant statutes.

In response to these points the statistical analyst might criticize fsQCA on three main grounds: the possibility of threshold manipulation, its inability to hold variables constant and the difficulty of incorporating time. *Prima facie*, the fsQCA process involves a high degree of discretion on the part of the researcher in determining the fuzzy set thresholds and there is a danger that the thresholds could, consciously or sub-consciously, be manipulated to make the data fit the model rather than the other way around. This criticism stems from the fact that fsQCA discourages the use of sample-based thresholds – for example, the mean and the points one or two standard deviations from the mean – in favour of external calibration of set boundaries. Since, as the previous paragraph explained, the external calibration of in-kind aid sets requires detailed examination of the relevant statutes the researcher must make a personal decision as to where to place set boundaries. But this decision is based on measurable external criteria that provide meaning to the set boundaries and, once the external criteria are set, is applied in a consistent fashion across all cases. The fsQCA method is both replicable and transparent because it requires researchers to specify precisely how they have coded the relevant material and assessed set membership. This minimizes the

chances that the researcher can manipulate data to fit the model. If they did, they would be discovered.

Unlike multivariate regression analysis – the essence of which is to hold other variables constant in order to assess the effect of a particular explanatory variable on the outcome – fsQCA cannot hold certain variables constant because it treats each case as a whole. Each individual case is ‘considered as a complex combination of properties, a specific “whole” that should not be lost or obscured in the course of the analysis – that is a *holistic* perspective’.<sup>5</sup> The statistical researcher may deplore this inability to hold certain variables constant on the grounds that it prevents the fsQCA researcher from assessing the effects of each variable individually on the outcome of interest. This is not strictly true because the Boolean truth table minimization does enable the isolation of some variables’ effects on the outcome. Generally though, fsQCA is not concerned with the isolation of certain variables because it is not concerned with the average treatment effect of each explanatory variable on the outcome. It has a different logic: set theory. The focus is on the necessary and sufficient configuration of conditions that produces case membership of a target set.

The critical correlationist’s third argument is that fsQCA cannot adequately account for time. If it cannot, then the analysis is limited only to comparative statics and fails to fully capture the importance of sequence, process and context. Since truth tables lay out all possible configurations of conditions – that is, they describe the boundaries of the vector space within which all cases fit – the introduction of time presents a problem by adding greatly to the complexity of this task. There have been attempts to introduce an element of diachronicity into the analysis by conducting temporal QCA (tQCA), for example, which involves the elaboration of all logically possible sequences

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<sup>5</sup> B Rihoux and C.C. Ragin, eds., *Configurational Comparative Methods: Qualitative Comparative Analysis (QCA) and Related Techniques*, vol. 51, Applied Social Research Methods Series (Los Angeles: Sage Publishing, 2009), 6.

of events but the truth tables in tQCA can become far too large and unwieldy. This thesis deals with the issue of time by conducting explicit case study investigation to complement the fsQCA procedure. It uses archival evidence to construct a historical institutionalist narrative that explains changes in aid for children at private religious schools over time.

### **Set theoretic procedure**

This thesis examines eight types of aid to children at private religious schools: tax credits, voucher scholarships, textbook loans, transportation, food services, equipment, health services and tax exemptions for private religious school property. The boundaries of all these sets are fuzzy and contestable: fuzzy, because aid comes in degrees rather than dichotomies; contestable, because there are other candidates for inclusion within the boundaries of this ‘aid’ study and potential objections to the inclusion of others. These properties of contestability and fuzziness are separable. This section deals with the former; the next section deals with the latter.

Several aspects of the relationship between schools and the state have been purposely left off the list of outcome conditions, for example, the regulation of private schools, homeschooling, charter laws and the accreditation procedures for the opening and operation of non-public schools. This thesis does not focus on charter schools because such schools are technically *public* and not private (although the distinction itself is a fuzzy one). Although some charter schools are run by religious organizations, converted from former parochial schools, or have close links with local churches, they do not have the freedom to teach religion during regular school hours in the same way as a private religious school. This study is on the financial relationship between the state

and private religious schools, that is, the use of taxpayer money to fund services for children at such schools, whether they are via the parent (tax credits, vouchers), indirectly via the school (property tax exemptions) or directly to the child (most transport, equipment, textbooks, health and food services). Hence it does not include state regulation of private religious schools as part of the outcome. Regulation is not aid, although it can affect the distribution and take-up of aid within a state. These intra-state dynamics are beyond the scope of this thesis, with its focus on inter-state variation, except insofar as the regulation affects the level of aid take-up across an entire state; for example, cost-caps for textbook loans or parental request requirements for transportation. Similarly, this thesis does not concern itself with other issues at the boundary between church and state, such as the teaching of creationism, ‘released time’ and the display of religious symbols in public institutions, *except* insofar as they bear upon inter-state variation in the distribution of aid for children at private religious schools.

It is not possible to collect data on the exact dollar value of the money some states offer to private schools to assist them in complying with statutory requirements, so this expenditure is left out of the eight-fold dependent variable. For many states the data are simply not available or there are too many different sources of deductions, credits and payments and the classificatory problems are insurmountable. Similar data problems adversely affect investigation of privately-provided supplemental education services under the terms of the No Child Left Behind law. The dependent variable does not include homeschooling because the number of children who are home-schooled is very low and data on homeschooling practices are also limited. However, Chapter 7 examines homeschooling insofar as it relates to levels of private religious school aid, by

offering religious families a chance to exit the public school system and provide religious instruction without their child attending a private religious school.

Three potential criticisms of the eight-fold aid measurement should be dealt with here. First, critics might argue that the in-kind aid programmes have a lower financial value to students and schools than tax-credit or voucher programmes, so the programmes are not easily comparable and should not be grouped together. Such criticism defines ‘generosity’ narrowly as a lump-sum payment. The composite indicator is designed to capture variation in the number of *different types* of aid as well as the size of the financial commitment. Partly, this is because data on the financial cost of individual services are not available; for example, some buses transport both public and private school students on the same trip or a round trip. But the indicator is also designed to capture other types of financial aid for children at private religious schools where there is no lump-sum payment and the financial benefits are more ‘submerged’.<sup>6</sup> Moreover, many voucher scholarships are restricted to a small proportion of the state’s private school students according to eligibility criteria, whereas in-kind aid programmes such as textbook programmes often have broader scope. Whilst such programmes may cost less per student, they can cost more overall. For example, the total amount claimed under Arizona’s ‘Lexie’s Law’ tax credit programme cannot exceed \$5 million state-wide, and a similar programme in North Carolina cost merely \$1.6 million in 2011. By comparison Missouri spent nearly \$22 million on food services for non-public schools in the school year 2010-11 and Illinois spent \$48 million on its private school textbook loan program in that year. Indeed, the proponents of voucher and tax credit programmes often emphasize these programmes’ *low* average costs and ability to save state money. Since the financial benefits of aid, especially in-kind aid, are often more diffuse and

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<sup>6</sup> Mettler, *The Submerged State: How Invisible Government Policies Undermine American Democracy*.

submerged than vouchers but not necessarily less useful to their recipients – and in any case it is not true that all voucher programmes are more valuable than all in-kind programmes – the inclusion of in-kind programmes in the composite indicator of aid is justified.

Even if no elements of the composite indicator should be excluded, a second critic might argue, some voucher and tax credit programmes can be used for educational expenses other than tuition, such as textbooks and equipment. This might indicate that the aid categories are not mutually exclusive. If they are not exclusive then the voucher and tax credit programmes should be weighted more highly than the in-kind programmes in the composite indicator because they could be used for both tuition and equipment. Three factors militate against this conclusion. Vouchers and tax credits are a distinctive aid type because they are delivered in a distinctive fashion and, as Chapter 8 makes clear, understood by policymakers and practitioners differently to in-kind aid. Most are aimed at tuition explicitly, not equipment, and many are worth only partial school fees. Although it is not always possible to make sharp distinctions between the aims of each aid programme or the uses to which the money is put, it is reasonably easy to classify programmes into these eight distinct categories. This classificatory scheme was also used by Connell and the Thomas B Fordham Foundation. As the interviews for this thesis showed, this eight-fold indicator is easy for policymakers and practitioners to understand. Its intuitiveness and ease of classification reduces the strength of this second criticism.

A third critic might point out that the definition of ‘aid’ for children at private religious schools is too fuzzy. The provision of nursing (auxiliary) services for religious school students, for example, seems no more ‘aid’ for children at private religious schools than the provision of fire services to douse fires, pest control to remove vermin,

or road repairs to allow access. These are services to which every organization, whether religious or not, are entitled at public expense. That it is difficult to make judgements about what constitutes ‘aid’ is evinced by the vast, complicated and often contradictory body of case law on church-state issues in K-12 education in the United States. I acknowledge the fuzziness of the boundary between ‘aid’ and mere ‘universal services’. Calling the outcome ‘aid for children at private religious schools’ rather than ‘aid for private religious schools’, signals that the careful distinctions made by church-state scholars and lawyers are taken seriously. Since there is no consensus about where to draw the boundaries between ‘aid’ and ‘not-aid’ it is reasonable to use the pre-existing schemes from the Connell report and the federal Department of Education.<sup>7</sup>

Although, as Table 2.1 shows, educational voucher scholarships are the most ‘weakly’ submerged form of aid – a large lump-sum payment – aid in the form of property or food sales tax breaks, sports equipment or computing hardware can be equally important for the running of a non-public school with limited resources, as many interviewees attested. These are ‘necessary funds’ said a Catholic Conference leader.<sup>8</sup> His Illinoisan counterpart said that the textbook loan programme is ‘a matter of necessity for us’<sup>9</sup> and that the Illinoisan educational tax credit has wide take-up amongst both Catholic and non-Catholic parents: ‘Absolutely. It’s saving our parents about seventy-five million dollars a year’.<sup>10</sup> According to a Catholic school administrator in New York, a payroll tax exemption won by businesses initially excluded non-public schools and ‘that was a significant unexpected budget implication so...we came back to

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<sup>7</sup> Connell, “Parochial Schools and Public Aid: Today’s Catholic Schools”; Department of Education, Office of Innovation and Improvement, Office of Non-Public Education, “State Regulation of Private Schools” (Department of Education, July 2009), <http://www2.ed.gov/admins/comm/choice/regprivschl/index.html>.

<sup>8</sup> Ned Dolesji, Executive Director of the California Catholic Conference, March 13, 2012, 7.

<sup>9</sup> Zach Wichmann, Director of Government Relations for the Illinois Catholic Conference, March 27, 2012, 9.

<sup>10</sup> *Ibid.*, 4.

the legislature and said “schools are going to have to close. Faculties are going to have to be laid off”.<sup>11</sup> Her organization eventually won the tax exemption for non-public schools. Although Catholic school leaders may have reason to inflate the importance of such payments in order to advocate for more funding, there are several reasons to think that these comments are accurate. Catholic schools tend to have lower-income constituencies and lower average school fees than non-religious private schools. They have suffered particularly from the decline in the number of nuns and priests in teaching orders and increasingly must employ lay teachers at higher average costs.<sup>12</sup> The fact that private religious schools need in-kind aid and tax exemptions, and not just voucher scholarships, to help keep them open, is good reason to use the eight-fold indicator of aid and not simply school choice tax credits and vouchers.

Table 3.1 shows the division of the eight types of aid along six qualitative breakpoints, using Ragin’s indirect method:<sup>13</sup> Full set membership (membership = 1.0), Mostly but not completely in the set (0.8), More in than out of the set (0.6), More out than in the set (0.4), Mostly but not completely out of the set (0.2), and Fully out of the set (membership = 0.0). In Table 3.1, ‘FPL’ refers to the Federal Poverty Level, which depends on household size and is used to calculate children’s access to free or reduced price lunch nutrition programmes and other aid for low-income households. Most poverty-targeted voucher and tax credit programmes are offered to families at the federal poverty level, but there is a cluster of states offering such aid much more generously to those at double FPL or more. Hence the voucher and tax credit schemes are categorized according to the qualifying income level (whether above or below 200%

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<sup>11</sup> Carol Geddis, Director, New York State Association of Catholic Schools Administrators, March 5, 2012, 5.

<sup>12</sup> Kenneth C Jones, *Index of Leading Catholic Indicators: The Church since Vatican II* (Oriens Publishing, 2003).

<sup>13</sup> C.C. Ragin, *Redesigning Social Inquiry: Fuzzy Sets and Beyond* (Chicago and London: University of Chicago Press, 2008).

FPL) in rows 1 and 2 of Table 3.1. In Row 2, ‘high’ and ‘low’ tax credit value is calculated according to another natural breakpoint in the data – whether the credit claimed is, on average, of greater or lesser value than \$1000 per child. Given the cost of private schooling described in the previous section, tax credits above \$1000 make much more impact on the cost of tuition than those below (although by no means do the ‘high value’ scholarships necessarily cover the entire tuition payment).

The in-kind aid programmes are divided with the six qualitative breakpoints according to whether they are mandated or merely ‘allowed’, and the degree of difficulty involved in parents or schools taking up the aid. For example, where benefits must be explicitly requested by parents in the previous school year by filling in forms, aid take-up is typically far lower than where the in-kind aid is provided without prior parental decision-making. Where the relevant state constitutional, legal or regulatory documents say that the state or local governing body *must* provide the service, even if that aid is qualified by cost caps or other caveats, the state is signalling greater willingness to provide aid for children at private religious schools than states in which the relevant documents say only that the bodies *may* provide the service. The qualitative break-points in Table 3.1 for transportation, textbook loans and other in-kind aid are based upon these substantive differences. Table 3.1 is on the following two pages.

**Table 3.1: Indirect qualitative calibration of fuzzy set membership scores**

<b>Aid type</b>	<b>Full membership (1.0)</b>	<b>Mostly but not completely in the set (0.8)</b>	<b>More in than out of the set (0.6)</b>	<b>More out than in the set (0.4)</b>	<b>Mostly but not completely out of the set (0.2)</b>	<b>Fully out of the set (0.0)</b>
<b>Vouchers</b>	Universal voucher available to all: not subset of population	State-wide poverty voucher with high income requirement (>200% FPL)	Poverty voucher programme with low income requirement (<200% FPL)	Disabled voucher programme that covers all disabilities	Disabled voucher programme for specific disabilities only	No voucher
<b>Tax credits</b>	Universal tax credit	Poverty tax credit with high value (>\$1000) and high income requirement (>200% FPL)	Poverty tax credit with low value (<\$1000) and/or low income requirement (<200% FPL)	Disabled tax credit that covers all disabilities	Disabled tax credit for specific disabilities only	No tax credit
<b>Textbooks</b>	Must provide books: no caveats, caps or requests required	Books must be provided but there is an explicit cost cap	Books must be provided but only upon request from parents	Books may be provided (no caveats)	Books may be provided on request from parents and/ or subject to financial cap	No books provided
<b>Transport</b>	Must provide transport on the same basis as for public schools. No cost/distance caps	Transport must be provided but with either distance or cost cap	Transport must be provided but with a series of caveats, caps or requirements	Transport may be provided, with few caveats	Reduced cost fares only, rather than free transport	No transport provided

**Table 3.1: Indirect qualitative calibration of fuzzy set membership scores – Part Two**

<b>Aid type</b>	<b>Full membership (1.0)</b>	<b>Mostly but not completely in the set (0.8)</b>	<b>More in than out of the set (0.6)</b>	<b>More out than in the set (0.4)</b>	<b>Mostly but not completely out of the set (0.2)</b>	<b>Fully out of the set (0.0)</b>
<b>Food services</b>	Must provide all food services	Food services must be provided, with some caveats	State may provide food services	State may provide food subject to strict appropriations limits	School meals served on private school premises are exempt from sales tax	No food services provided
<b>Health services</b>	Must provide all health services	One or several types of health service must be provided	All types of health service may be provided	Some types of health service may be provided	Private schools eligible for small grants to introduce minor health awareness programmes	No health services provided
<b>Equipment</b>	Must provide equipment with no caveats or payment	Equipment must be provided, with some caveats	Equipment may be provided	Tax exemption for equipment bought by non-public schools	Minor subsidy, or partial payment required for equipment	No equipment provided
<b>Tax Exemption</b>	Must exempt all religious schools from property tax	Must exempt schools from property tax with some caveats	May exempt religious schools from property tax	May exempt religious schools from property tax with some caveats	May partially exempt religious schools from property tax	No tax exemption

The boxes in Table 3.1 show all possible aid programme statuses for each of the eight aid types. Each row shows how states should be categorized along a continuum of generosity for that aid type. All states can be categorized in all rows, because each row represents the full generosity range. The regulations, laws and constitutional provisions governing private religious schools in the fifty states and Washington DC were coded according to these fuzzy set criteria. Tables 3.2 to 3.9 on the following pages give an abbreviation of the characteristics of each of the eight types of aid, by state, to which the indirect fuzzy set calibration break-points were applied. Where ‘NA’ appears the information is not available at the time of writing. These tables are accurate at the end of 2012.

In Table 3.10 the results of the fuzzy set calibration are expressed for all fifty states and DC, where CV = voucher scholarship, TC = tax credit, TB = textbooks, TR = transportation, AX = auxiliary (health) services, FS = food services, EQ = equipment and TE = tax exemption for school property. The final three columns of 3.10 represent the application of Boolean logic to the previous eight columns. The ninth ‘WOR’ column displays the membership of each state in the logical disjunction of the whole set of eight types of aid, that is, the maximum value in each row derived from the application of the Boolean OR (‘+’). ‘WOR’ represents the degree of membership of each case in the set of CV+TC+TB+TR+AX+FS+EQ+TE. The tenth ‘WAND’ column displays the membership of each state in the logical conjunction of the whole set of eight types of aid, that is, the minimum value in each row derived from the application of the Boolean AND (‘·’). ‘WAND’ represents the degree of membership of each case in the set of CV·TC·TB·TR·AX·FS·EQ·TE. As is evident from columns nine and ten, only three states – Wyoming, Hawaii and Tennessee – have no membership in any of the eight types of aid, and no state has membership in the set of all eight types of aid.

**Table 3.2: Tax credit schemes by state, value and qualifying criteria**

	<b>Name</b>	<b>Value</b>	<b>Specific/General</b>
<b>Disabled</b>	AZ Empowerment Scholarship	NA	General
	NC Tax Credit for Children with Disabilities	\$3000 max	General
	AZ Lexie's Law Corporate tax credit	\$4310	General
	<b>Name</b>	<b>Value</b>	<b>Poverty level</b>
<b>Poverty</b>	FL Tax credit scholarship	\$3747	100% x FRL <sup>1</sup>
	IN School Scholarship Tax Credit	\$754	200% x FRL
	IA School tuition organization Tax Credit	\$1061	300% x FPL
	LA School tuition organization Tax Credit	NA	250% x FPL
	NH Corporate Education tax credit	\$2500/\$4375 max	300% x FPL
	OK Equal Opportunity Scholarships	\$5000 max	300% x FRL
	PA Educational Opportunity tax credit	\$8000/\$15000	\$60,000
	PA Educational Improvement tax credit	\$1165	\$84,000
	RI Credits for Scholarship organizations	\$2264	250% x FPL
VA Education Improvement tax credit	NA	300% x FPL	

<sup>1</sup> 'FPL' refers to the federal poverty level while 'FRL' refers to the income level at which children become eligible for free or reduced price lunch: 185% of the federal poverty level. Qualifying poverty levels are listed in the form they appear on state documents and legislation.

**Table 3.2: Tax credit schemes by state, value and qualifying criteria – Part Two**

	<b>Name</b>	<b>Value</b>
<b>Universal</b>	AZ Corporate tax credit	\$2212
	AZ Personal tax credit	\$1791
	GA Private School Tax Credit	\$1000-\$2500
	IL Tax Credits for Educational Expenses	\$290
	IN Tuition Tax Deduction	Up to \$1000
	IA Education Expense Credit	\$78
	LA Tuition Deduction	\$2381
	MN Education Tax Credit	\$260
	MN Education Tax Deduction	\$1194

**Table 3.3: Voucher scholarship schemes by state, value and qualifying criteria**

<b>VOUCHERS</b>			
	<b>Name</b>	<b>Value</b>	<b>Specific/General</b>
<b>Disabled</b>	FL John McKay scholarship	\$6693	General
	GA Special Needs Scholarship	\$6860	General (IEP)
	LA School Choice Pilot Program	\$2155	General (IEP)
	MS Dyslexia Therapy Scholarship	NA	Specific
	OH Jon Peterson Special Needs Scholarship	<\$20,000	General (IEP)
	OH Autism Scholarship	\$16148	Specific
	OK Lindsey Nicole Henry Scholarships	\$7436	General
	UT Carson Smith Special Needs Scholarship	\$5374	General
	<b>Name</b>	<b>Value</b>	<b>Poverty level</b>
<b>Poverty</b>	DC Opportunity Scholarship	\$8-12000	100% x FRL
	IN Choice Scholarship	\$4500 max	150% x FRL
	LA Student Scholarships for Educational Excellence	\$4595	250% x FPL
	OH Cleveland Scholarship and Tutoring Program	\$2943	200% x FPL
	WI Racine Parental Choice	\$6442	300% x FPL
	WI Milwaukee Parental Choice	\$6442	300% x FPL

**Table 3.3: Voucher scholarship schemes by state, value and qualifying criteria – Part Two**

	<b>Name</b>	<b>Value</b>
<b>Universal</b>	CO Choice Scholarship Pilot	\$4575
	OH Educational Choice	\$3855

An IEP is an Individual Education Program, a document detailing the disabled child's educational needs that was mandated under IDEA

**Table 3.4: Textbook loan programmes by state, whether the state must or merely may provide the books, and any qualifications or exemptions**

<b>TEXTBOOKS</b>	<b>May/Must</b>	<b>Caveats</b>
Connecticut	May	None
Indiana	May	Financial eligibility standards
Iowa	May	Upon request of parents or schools
Louisiana	Must	None
Maine	May	None
Michigan	Tax exemption	None
Minnesota	Must	Upon request of parents or schools
Mississippi	Must	None
Nebraska	Must*	None
New Hampshire	May	None
New Jersey	Must*	Upon request of parents or schools
New Mexico	Must	None
New York	Must	Upon request of parents or schools
Ohio	May	Upon request of parents or schools
Pennsylvania	Must	Cost cap on amount per loan
Rhode Island	Must	None
West Virginia	May*	Financial eligibility standards

**Table 3.5.1: Transportation programmes by state, whether the state must or merely may provide the transport, and any qualifications or exemptions (Caveat key below in Table 3.5.2)**

<b>TRANSPORT</b>	<b>May/Must</b>	<b>Caveats (if any)</b>
Alaska	Must	PS, D
California	May	PS
Connecticut	Must	PS, ODO, R
Delaware	May	ODN
District of Columbia	May	RF
Illinois	Must	D
Indiana	Must	R
Iowa	Must	CC
Kansas	Must*	PS
Louisiana	Must	D, CC
Maine	May	None
Massachusetts	Must	PS
Michigan	Must*	PS
Minnesota	Must	PS
Montana	May	SC, P, RF
Nebraska	Must	PS
Nevada	May	PS
New Hampshire	Must	PS
New Jersey	Must*	D
New York	Must*	D, PS

<b>TRANSPORT</b>	<b>May/Must</b>	<b>Caveats (if any)</b>
North Dakota	May	PS, P, SC, CC
Ohio	May*	D, PS
Oregon	Must	PS
Pennsylvania	Must	PS
Rhode Island	Must	PS, ODN
Washington	May*	RF, CC
West Virginia	May	PS, D
Wisconsin	Must*	D

<b>Abbrev.</b>	<b>Table 3.5.2: Caveats key for Transportation Table 3.5.1</b>
<b>PS</b>	If public school students do not get transport, private school students do not get it either
<b>ODO</b>	Transport outside of school district is optional
<b>ODN</b>	Transport outside of school district is not provided at all
<b>R</b>	Private school students transported must be residents of state/district/live along the bus route
<b>RF</b>	Reduced fares only or student has to pay at least part of costs in some way; not free transport
<b>D</b>	Distance limitations on transport
<b>CC</b>	Cost cap on amount parents can claim back for transport of their children to non-public schools
<b>SC</b>	Private school students may ride only if there is seating capacity available
<b>P</b>	Permit is required for private school students to ride on the publicly funded bus

**Table 3.6: Food services by state including whether the state must or may provide the services**

<b>FOOD SERVICES</b>	<b>May/Must/Tax exempt</b>
Arizona	May
California	Must* Tax exempt
Connecticut	May
Idaho	Must
Illinois	Must
Iowa	May*
Kansas	Must*
Maine	Must* Tax exempt
Minnesota	Must
Nebraska	Tax exempt
Nevada	Tax exempt
New Hampshire	May
New Jersey	May
North Carolina	Tax exempt
Ohio	May Tax exempt
Rhode Island	May*
Texas	Tax exempt
Vermont	May*

**Table 3.7.1: Auxiliary (health) services by state and by type, including whether the state must or merely may provide the services (Type key below in Table 3.7.2)**

<b>AUXILIARY SERVICES</b>	<b>May/Must</b>	<b>Type</b>
Connecticut	Must	ALL
Florida	May	ALL
Iowa	Must	ALL
Kansas	Must	HE
Maine	May	NU, DE, VI
Maryland	Must	HE, VI
Massachusetts	Must*	HE, VI, PH
Michigan	Must	ALL
Minnesota	Must	ALL
Missouri	Must	ALL
Nebraska	Must*	VA
New Hampshire	May	ALL
New Jersey	Must	NU
New York	Must	ALL
Ohio	May	ALL
Pennsylvania	Must	ALL
Texas	May	HE, VI, PH
Washington	May	AA
West Virginia	May	HE, VI, LA

**Table 3.7.2: Type key for Auxiliary Services Table 3.7.1**

<b>Abbrev.</b>	<b>Type Key:</b>
ALL	All health services/general health services
HE	Hearing services
VI	Vision services
PS	Psychological services
PH	Physical defect services ie spinal screening
VA	Vaccination
LA	Speech/language therapy
NU	Nursing services
DE	Dental services
AA	Alcohol abuse prevention services

**Table 3.8: Equipment services by state, including whether the state may or must provide the services, and whether the services are in-kind or tax exemption**

<b>EQUIPMENT</b>	<b>May/Must</b>
California	May
Colorado	May*
Illinois	Must/May/Tax exempt (three different services respectively)
Iowa	May
Michigan	May
Nevada	Tax exemption
New Hampshire	May
New Jersey	May*
New York	Must
Ohio	May
Pennsylvania	Must
Washington	May*

**Table 3.9: Tax exemptions by state, including whether a state may or must provide the tax exemption**

<b>TAX EXEMPTIONS</b>	<b>May/Must</b>
Alabama	Must
Alaska	Must
Arizona	May
Arkansas	Must
California	Must*
Colorado	Must
Florida	Must
Illinois	May
Kansas	Must
Kentucky	Must
Louisiana	Must
Maryland	Must*
Massachusetts	Must
Michigan	Must
Montana	May
Nevada	Must
New Jersey	Must*
New Mexico	Must
New York	Must
North Carolina	May
Oklahoma	Must
South Carolina	Must
South Dakota	Must*
Virginia	Must
Washington	Must

**Table 3.10: States by fuzzy set membership of the eight aid categories**

	CV	TC	TB	TR	AX	FS	EQ	TE	WOR	WAND	B3AND
<b>AL</b>	0	0	0	0	0	0	0	1	1	0	0
<b>AK</b>	0	0	0	1	0	0	0	1	1	0	0
<b>AZ</b>	0	1	0	0	0	0.6	0	0.6	1	0	0.6
<b>AR</b>	0	0	0	0	0	0	0	1	1	0	0
<b>CA</b>	0	0	0	0.4	1	0.6	0.6	0.8	1	0	0.6
<b>CO</b>	1	0	0	0	0	0	0.2	1	1	0	0.2
<b>CT</b>	0	0	0.4	1	0	0.6	0	0	0.8	0	0.4
<b>DE</b>	0	0	0	0.4	0	0	0	0	0.4	0	0
<b>DC</b>	0.6	0	0	0.2	0	0	0	0	0.6	0	0
<b>FL</b>	0.4	0.8	0	0	0.6	0	0	1	1	0	0.6
<b>GA</b>	0.4	1	0	0	0	0	0	0	1	0	0
<b>HI</b>	0	0	0	0	0	0	0	0	0	0	0
<b>ID</b>	0	0	0	0	0	1	0	0	1	0	0
<b>IL</b>	0	1	0	1	0	1	1	0.6	1	0	1
<b>IN</b>	0.8	1	0.4	1	0	0	0	0	1	0	0.8
<b>IA</b>	0	1	0.2	1	1	0.8	0.6	0	1	0	1
<b>KS</b>	0	0	0	0.6	0.8	0.8	0	1	1	0	0.8
<b>KY</b>	0	0	0	0	0	0	0	1	1	0	0
<b>LA</b>	0.8	1	1	1	0	0	0	1	1	0	1
<b>ME</b>	0	0	0.4	0.4	0.4	0.4	0	0	0.4	0	0.4
<b>MD</b>	0	0	0	0	0.8	0	0	0.8	0.8	0	0
<b>MA</b>	0	0	0	1	0.8	0	0	1	1	0	0.8
<b>MI</b>	0	0	0.2	0.6	1	0	0.6	1	1	0	0.6
<b>MN</b>	0	1	0.6	1	1	1	0	0	1	0	1
<b>MS</b>	0.2	0	1	0	0	0	0	0	1	0	0

**Table 3.10: States by fuzzy set membership of the eight aid categories – Part Two**

	CV	TC	TB	TR	AX	FS	EQ	TE	WOR	WAND	B3AND
<b>MO</b>	0	0	0	0	1	0	0	0	1	0	0
<b>MT</b>	0	0	0	0.2	0	0	0	0.6	0.6	0	0
<b>NE</b>	0	0	0.8	1	0.8	0.2	0	0	1	0	0.8
<b>NV</b>	0	0	0	0.4	0	0.2	0.4	1	1	0	0.4
<b>NH</b>	0	0.8	0.4	1	0.6	0.6	0.6	0	1	0	0.6
<b>NJ</b>	0	0	0.6	0.6	0.8	0.6	0.2	1	1	0	0.6
<b>NM</b>	0	0	1	0	0	0	0	1	1	0	0
<b>NY</b>	0	0	0.6	0.6	1	0	1	1	1	0	1
<b>NC</b>	0	0.4	0	0	0	0.2	0	0.6	0.6	0	0.4
<b>ND</b>	0	0	0	0.4	0	0	0	0	0.4	0	0
<b>OH</b>	1	0	0.2	0.4	0.6	0.6	0.6	0	1	0	0.6
<b>OK</b>	0.4	0.8	0	0	0	0	0	1	1	0	0.4
<b>OR</b>	0	0	0	1	0	0	0	0	1	0	0
<b>PA</b>	0	0.8	0.8	1	1	0	1	0	1	0	1
<b>RI</b>	0	0.6	1	1	0	0.6	0	0	1	0	0.6
<b>SC</b>	0	0	0	0	0	0	0	1	1	0	0
<b>SD</b>	0	0	0	0	0	0	0	0.8	0.8	0	0
<b>TN</b>	0	0	0	0	0	0	0	0	0	0	0
<b>TX</b>	0	0	0	0	0.4	0.2	0	0	0.4	0	0
<b>UT</b>	0.4	0	0	0	0	0	0	0	0.4	0	0
<b>VT</b>	0	0	0	0	0	0.6	0	0	0.6	0	0
<b>VA</b>	0	0.8	0	0	0	0	0	1	1	0	0
<b>WA</b>	0	0	0	0.2	0.2	0	0.2	1	1	0	0.2
<b>WV</b>	0	0	0.2	0.4	0.4	0	0	0	0.4	0	0.2
<b>WI</b>	0.6	0	0	0.6	0	0	0	0	0.6	0	0
<b>WY</b>	0	0	0	0	0	0	0	0	0	0	0

In Table 3.10, to measure the overall degree of fuzzy set membership in the set of 'high aid states' the Boolean AND was applied to each state's three highest ('best') fuzzy membership scores and displayed in the eleventh column 'B3AND'. This is a sufficiently stringent measure because to claim full membership of this column a state must have full membership of at least three of the eight categories of aid. If a state has at least partial membership of at least three of the eight categories of aid then the B3AND score represents the minimum value of those three highest scores. For instance, Colorado has full membership of the voucher and tax exemption categories but just 0.2 membership in the equipment category so its B3AND score is 0.2. A consequence of the use of the Boolean AND is that states with full or partial membership of just two or fewer of the eight categories of aid register automatically as 0.0 membership of B3AND. Scores of above 0.5 in the B3AND column indicate membership in the set of 'high aid states' while scores below 0.5 but above 0.0 indicate that the case is more out than in the set if 'high aid states' but is not fully out of the set. Scores of 0.0 indicate that the case is fully out of the set of 'high aid states'.

Although the composite score is used as the dependent variable, the aid programmes can be grouped together in several different ways; for example, market-oriented tax credits and in-kind aid such as textbook loans, or direct payments (including vouchers) and subsidies (such as tax exemptions). Three scores were used for this B3AND measure so that a state must provide aid from at least two different groups to claim membership of the set of 'high aid states'. Each of the eight aid programmes is given equal weight in the calculation because, although scholarship payments are typically more valuable than in-kind aid programmes, many are highly restricted in the number of recipients. The high value of scholarships aimed at sub-sets of disabled children, for example, may simply reflect the expense of specialist equipment and does

not necessarily signal greater vulnerability to legal challenge or greater enthusiasm for aid on the part of its legislative creators.

One potential criticism of this dichotomizing ‘high aid/low aid’ measure is that it simplifies the very complex, rich dataset displayed in Table 3.10: eight different aid types, each a fuzzy set with six qualitative breakpoints indicating varying degrees of membership. Such criticisms should not be ignored because a key strength of qualitative analysis lies in its embrace of fine-grained data, but two contrary points bear upon this argument. First, this thesis is engaged in the process of social scientific comparison that requires at least some simplification in order to identify social scientific laws and generalize across cases. Secondly, as Rihoux and Ragin argue, ‘dichotomization allows us, through simplification (the operationalization of the conditions), to conduct rigorous comparison of a limited number of cases that present combinations of internally complex characteristics’.<sup>1</sup> The full dataset shown in Table 3.10 is helpful when describing combinations of characteristics, displaying internal complexity and examining aid programmes and states individually, but it is difficult to operationalize. There is no single interval-level scale to aid calibration using, for example, Ragin’s direct method. Instead there are eight different fuzzy sets. Some simplification makes both analysis and interpretation easier, while preserving the descriptive fine-grained data in table form to complement the case studies and help resolve contradictory configurations (see Chapter 10).

Six states are fully in the set of ‘high aid states’ according to the B3AND score in Table 3.10: Illinois, Iowa, Louisiana, Minnesota, New York and Pennsylvania. A further twelve states are more in than out of the set. Eight states have at least partial membership of the set but are more out than in the set. The remaining twenty-four states

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<sup>1</sup> Rihoux and Ragin, *Configurational Comparative Methods: Qualitative Comparative Analysis (QCA) and Related Techniques*, 51:149.

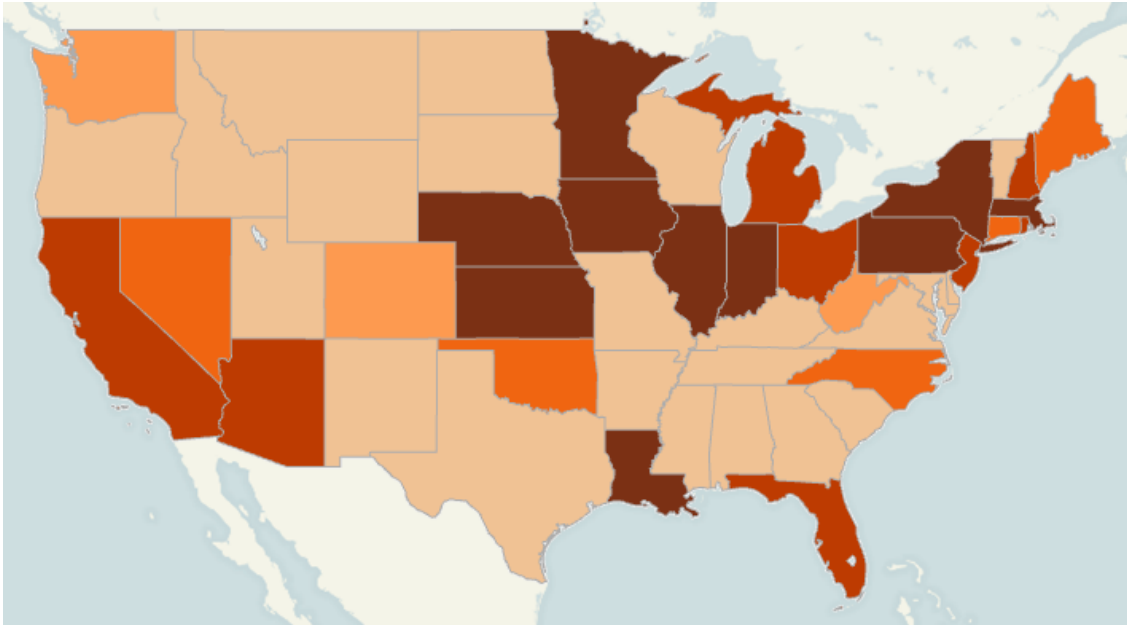
have no membership in the set of ‘high aid states’. The B3AND score is used as the outcome condition or ‘dependent variable’ in this thesis. Table 3.11 below summarizes B3AND aid scores by state.

**Table 3.11: Summary of states according to their degree of membership in the set of ‘high-aid states’, as measured by the B3AND score**

<b>State</b>	<b>B3AND</b>	<b>State</b>	<b>B3AND</b>	<b>State</b>	<b>B3AND</b>
<b>AL</b>	0	<b>KY</b>	0	<b>ND</b>	0
<b>AK</b>	0	<b>LA</b>	1	<b>OH</b>	0.6
<b>AZ</b>	0.6	<b>ME</b>	0.4	<b>OK</b>	0.4
<b>AR</b>	0	<b>MD</b>	0	<b>OR</b>	0
<b>CA</b>	0.6	<b>MA</b>	0.8	<b>PA</b>	1
<b>CO</b>	0.2	<b>MI</b>	0.6	<b>RI</b>	0.6
<b>CT</b>	0.4	<b>MN</b>	1	<b>SC</b>	0
<b>DE</b>	0	<b>MS</b>	0	<b>SD</b>	0
<b>DC</b>	0	<b>MO</b>	0	<b>TN</b>	0
<b>FL</b>	0.6	<b>MT</b>	0	<b>TX</b>	0
<b>GA</b>	0	<b>NE</b>	0.8	<b>UT</b>	0
<b>HI</b>	0	<b>NV</b>	0.4	<b>VT</b>	0
<b>ID</b>	0	<b>NH</b>	0.6	<b>VA</b>	0
<b>IL</b>	1	<b>NJ</b>	0.6	<b>WA</b>	0.2
<b>IN</b>	0.8	<b>NM</b>	0	<b>WV</b>	0.2
<b>IA</b>	1	<b>NY</b>	1	<b>WI</b>	0
<b>KS</b>	0.8	<b>NC</b>	0.4	<b>WY</b>	0

Figure 3.1 displays the B3AND scores graphically by state.

**Figure 3.1: Membership of the set of ‘high aid states’, by state (B3AND)**



States with full non-membership of the set of high aid states are clustered in parts of the South and North-West, with a concentrated band of high aid states across the Mid-West and into the North-East. There are many exceptions to this general pattern however: Florida, Louisiana and North Carolina in the South, and Washington, California, Nevada and Arizona in the West, all have at least partial membership of the set of high aid states. Conversely in the Mid-West and North-East, Wisconsin and Vermont are fully out of the set of high aid states. This thesis is devoted to explaining why this pattern of aid occurs, or in other words, why some states are more generous than others in terms of the amount of aid they provide to children at private religious schools.

## Chapter 4: Case Selection

My analysis is supplemented by comparative small-*n* investigation of six key case studies: California, Florida, Illinois, Louisiana, New York and Utah. This chapter describes the six case studies in detail, explains why they were chosen, and provides information about their aid programmes. It also shows how the interview and archival evidence collected in these six states is used. The cases are selected on the basis of four criteria: first, the level of local control in the state as measured by the percentage of overall education funds that come from local property taxation as opposed to state or federal sources, and whether decisions about textbooks are made at local or state level so as to maximize variation and include states with high, medium and low levels of local control; secondly, representation of many geographical areas of the US; thirdly, representation of the largest and most important states within the US; fourthly, representation of states where there have been striking or important junctures with respect to the development of religious school aid policies.

The inclusion of Florida, Illinois, Louisiana, New York, California and Utah strengthens the claims of this thesis to generalizability across the US because of these states' geographic, cultural and demographic diversity. The case studies are selected from all geographic regions of the United States: North-East (New York), Mid-West (Illinois), West (California and Utah), and South (Florida and Louisiana). Utah has the highest youth-dependency ratio in the whole of the US; Florida has the highest old-age dependency ratio. The six case study states had diverse experiences entering the Union. No two cases were acquired in the same way or entered under the same Presidential administration, and the states' entrance to the union spanned a period of more than one hundred years. New York, one of the original thirteen colonies, entered the Union in

1788 whereas Utah had its first statehood attempt rebuffed in 1848 and was admitted only in 1896 by a reluctant federal Congress. Part of the original territories of the United States, Illinois was admitted as a state in 1818. Louisiana was purchased from the French in 1803 and admitted to the Union in 1812. Florida was acquired from Spain and joined the US in 1845, and California was admitted in 1850 after US victory in the Mexican-American War.

Anglicanism was the Established Church in New York during the colonial period and was not officially disestablished until 1846. French and then Spanish Louisiana, and Spanish Florida, which was ceded to Great Britain in 1763, had large Catholic populations and retained official toleration of the Catholic Church. In 1839 the Mormon leader Joseph Smith settled his followers in Illinois but Smith's murder in 1844 caused most church members to flee to Utah under the leadership of Brigham Young, a sect which became known as the Church of Jesus Christ of Latter-day Saints (LDS). The key characteristics of the case study states are summarized in Table 4.1 on the following page.

The case studies also represent a range of values on the main explanatory conditions: Illinois, New York and Florida are decentralized while California, Utah and Louisiana are centralized (see Chapter 9). Two of the states – Utah and Louisiana – are 'highly religious' but the others are not, and the proportion of self-identified Catholics in the state populations varies from one-in-ten in Utah to approximately one-in-three in California, Illinois and New York (see Chapter 7). If state partisan alignment is defined in terms of the last four presidential election results, Louisiana and Utah are solid 'red' states, California, Illinois and New York are solid 'blue' states and Florida is a swing state. At the time of writing the state legislatures are also evenly divided between Republican control (Florida, Louisiana and Utah) and Democrat control (California,

Illinois and New York). Amongst the case study states there are five that have No-Aid Provisions, including two – California and Illinois – that score highly on the No-Aid Provision strength scale and one – Utah – that has a very low score (see Chapter 5). New York weakened its No-Aid Provision with the passage of a transportation exemption in 1938 and Louisiana eliminated its No-Aid Provision altogether in 1975. This range of characteristics is designed to maximize variation on the explanatory conditions. Key explanatory conditions by case study state are summarized in Table 4.2 on the following page.

**Table 4.1: Characteristics of the Six Case Study States: Summary Table**

<b>State</b>	<b>Population (millions)</b>	<b>Region</b>	<b>Year of union entrance</b>	<b>Circumstances of entrance</b>	<b>Youth dependency ratio</b>
<b>California</b>	38	Pacific West	1850	Victory in war against Mexico	40.3 (Moderately high)
<b>Florida</b>	19	Atlantic South	1845	By treaty from Spanish	36.0 (Moderately low). Highest old-age dependency ratio
<b>Illinois</b>	13	Midwest	1818	Original territory	39.0 (Average)
<b>Louisiana</b>	5	Deep South	1812	Purchased from French	39.9 (Moderately high)
<b>New York</b>	20	Northeast	1788	Original colony	35.4 (Moderately low).
<b>Utah</b>	3	Mountain West	1896	Repeated application	52.3 (Very high). Highest youth dependency ratio

**Table 4.2: Case Study States by Explanatory Condition, Summary Table**

<b>State</b>	<b>Religiosity</b>	<b>Partisanship</b>	<b>No-Aid Provision</b>	<b>Centralization</b>	<b>Significant Religious Groups</b>
<b>California</b>	Moderately low	Blue	Strong	Centralized	Catholics, Unaffiliated
<b>Florida</b>	Moderate	Swing	Moderately strong	Decentralized	Evangelicals, Catholics
<b>Illinois</b>	Moderate	Blue	Strong	Decentralized	Catholics
<b>Louisiana</b>	Very high	Red	None	Moderately centralized	Evangelicals, Catholics, Historically Black Churches
<b>New York</b>	Moderately low	Blue	Moderately weak	Moderately decentralized	Catholics, Jews
<b>Utah</b>	High	Red	Weak	Moderately centralized	LDS (Mormons)

This research features four of the five most populous states in the US (CA, NY, FL and IL) so although it does not include the second-most populous state, Texas, it can be said to cover a significant portion of the population: around a third of all Americans. It also features two further cases – Utah and Louisiana – with smaller populations but distinctive trajectories in the development of religious school aid expenditures and particularly notable recent changes in these expenditures. In Utah, the strength of the Church of Jesus Christ of Latter-day Saints and its longstanding connection with ‘released time’ make issues of public aid to religious school students particularly pertinent. It is also a state that has seen recent legislative efforts to introduce a state-wide voucher scheme stymied by voter referendum. Louisiana is included as a case study for two main reasons: first, since it has a higher proportion of Catholics in the population than most other states and most of the religious schools in the United States are Catholic, greater knowledge of the political dynamics in education policy in

Louisiana yields a better understanding of the origins of support for religious schooling. Secondly, parts of Louisiana's education system were severely disrupted in 2005 by Hurricane Katrina, with religious institutions swiftly returning to the disaster zone to provide educational services and the rapid growth of voucher and charter schemes in the space left by the destruction of the educational infrastructure. The inclusion of this case, then, provides an opportunity to explore the relationship between charter and voucher schemes in which religious schools can take part and the more traditional forms of indirect, in-kind public aid to religious schools. This case selection is designed to capture the most important developments in religious school aid across the nation whilst selecting as far as possible on the explanatory conditions.

The cases selected are not fully representative of all US states because only one of them – Utah – has a very low level of aid for children at private religious schools. Exactly half of all US states have full non-membership of the B3AND aid score, like Utah, yet the case selection is skewed toward states with at least some membership of B3AND. Cases were not selected directly 'on the dependent variable' but this skew toward aid-states is not problematic for causal inference, for three reasons. First, this thesis takes a 'Causes of Effects' approach that focuses on tracing the origins of various aid programmes. The inclusion of five high-aid states offers the opportunity to do this in detail through case studies. Secondly, several sections in the thesis, particularly Chapter 10, involve counterfactual analysis about expected conditions in states without high levels of aid for children at private religious schools. Thirdly, the case studies form part of a QCA analysis that incorporates all fifty states, including those with very little aid. Although the selected cases do not represent a typical sample in terms of the outcome condition, they provide an opportunity to engage in close analysis of the conditions under which the aid programmes came about.

## **Case Study Data Collection**

Between February and September 2012 I conducted interviews with fifty educational policymakers, advocates and practitioners in six state capitals: Albany NY, Springfield IL, Sacramento CA, Salt Lake City UT, Tallahassee FL and Baton Rouge LA. Three interviews were conducted in New Orleans LA and eight by telephone or Skype. The interviewees comprised sixteen legislators (of which almost all sit on education committees), fifteen advocates (including leaders of Catholic, Jewish and Evangelical groups, school board group advocates and researchers for lobbying organizations), thirteen administrators (including state and city superintendents, bureaucrats in the state departments of education and parochial school administrators), five legislative aides with responsibility for education, a church organizer and school leader, and an attorney. The interviewees' names are listed in the thesis appendix, except for the two that did not offer their consent to this listing.

Due to the short time-frame for interview and archival data collection – two months from February to April 2012 and one month in August-September 2012 – and the fact that some aid programme questions required responders with specialist knowledge, it was not possible to use a formal stratified sampling method for interviewee selection. Instead interviewees were selected so as to achieve, as far as possible, a balance between advocates and opponents of aid for children at private religious schools, inclusion of the relevant state education departments and representation of the senior education leadership in the state legislatures. The distribution of interviewees was NY: 9, CA: 11, IL: 6, UT: 6, FL: 7, LA: 8, other: 3. All members of the state lower and upper-house education committees were contacted for

each case study state. Since certain groups – Republicans and school choice advocates, for example - tended to respond to the initial mailing in greater numbers, repeat messages were targeted at groups underrepresented in the first wave of responses.

Interviews had an open semi-structured format and were all recorded using a dictaphone, except for the few where permission was refused or recording was not possible because of background noise. They were designed to illuminate the nature and recent history of the support offered to students at private religious schools in each state, according to the policymakers, advocates and administrative elites whose job it is to create, sustain, oppose or litigate such programmes, and to examine the elites' attitudes toward this aid. Rather than asking precisely the same questions of each interviewee followed by content analysis of the results, the interviews focused on the specific programmes offered in each interviewee's state. Two questions, about the level of government most likely to be supportive of expenditure on religious school students and about the reason for cross-state variation in aid, were asked of every interviewee but all other questions were context-specific. In Florida, for example, they focused on tax credits, vouchers, recent litigation and the proposed elimination of the state's No-Aid Provision. In New York they focused on bus transportation, textbook loans and reimbursement for Common Assessment Program costs. The two questions asked of every interviewee were included to highlight elites' perceptions of the reasons for aid programmes and to test the hypotheses examined in Chapter 9, on local power and aid.

Interview data are supported by archival research which focused on two main areas: No-Aid Provision adoption at state constitutional conventions in the nineteenth century, and twentieth century legislation that initiated religious school expenditures. The aim of the archival research was to find out why all of the case-study states adopted No-Aid Provisions and in some cases subsequently weakened or strengthened them.

The archival materials examined were historical versions of state constitutions, proceedings at state constitutional conventions and the minutes of constitutional amendment committees, bill jackets for state legislation establishing aid programmes, court decisions, referenda results, and correspondence between local and state policymakers and their constituents in relation to aid for children at private religious schools. Archival research also examined the way in which religious school aid legislation has been passed, whether by large or small majorities, the legislators who introduced the bills and the way in which debates on these issues were conducted in the legislature. The aim was to discover why such measures were introduced. An index of archival material is available in the appendix. This primary data collection through interviews and archival work is complemented by secondary data from US state departments of education, US state constitutions (in both modern and historical forms), and statistical data from the National Center for Education Statistics, all of which are available online. All data sources are referenced in the text, with URLs if appropriate.

### **The Case Study States and their B3AND Scores**

Of the six case study states, half – Illinois, Louisiana and New York – have full membership of the set of ‘high aid states’ and the other half do not: California and Florida (0.6) are ‘more in than out of the set’ and Utah (0.0) is fully out of the set. Of the six states, three have voucher scholarships, three have tax credit scholarships, four authorize transportation for children at private religious schools and two offer textbooks. Table 4.3 on the following page shows the B3AND measure broken down by aid type for each of the six case study states, with the fuzzy set score of each aid programme in brackets.

**Table 4.3: Aid Programmes in each of the six case study states**

<b>State</b>	<b>Programmes</b>				
<b>CA</b>	Transportation (0.4)	Auxiliary services (1.0)	Food services (0.6)	Equipment (0.6)	Tax exemption (0.6)
<b>FL</b>	John McKay Scholarship (0.4)	Tax credit scholarship (0.8)	Auxiliary services (0.6)	Tax exemption (1.0)	
<b>IL</b>	Tax Credit for Educational Expenses (1.0)	Transportation (1.0)	Food services (1.0)	Equipment (1.0)	Tax exemption (0.6)
<b>LA</b>	School tuition organization tax credit and tuition deduction (1.0)	Student Scholarships for Educational Excellence (0.8)	Textbooks (1.0)	Transportation (1.0)	Tax exemption (1.0)
<b>NY</b>	Textbooks (0.6)	Transportation (0.6)	Auxiliary services (1.0)	Equipment (1.0)	Tax exemption (1.0)
<b>UT</b>	Carson Smith Special Needs Scholarship (0.4)				

Examination of the case studies helps demonstrate what these fuzzy set membership scores actually mean in practice. What is the difference between full and partial membership of these aid categories, between a ‘0.4’ and a ‘0.8’ or ‘1.0’, for example? Why were these programmes created and how have they been modified since? Before proceeding with the fuzzy set analysis it is necessary to give meaning to the outcome condition scores using detailed qualitative research. In the next six sections primary and secondary archival sources are deployed to examine the origins and characteristics of the aid programmes available in each of the case study states.<sup>1</sup>

### **Aid for Children at Private Religious Schools in Louisiana**

Huey P Long became Governor in 1928 with a pledge to distribute free textbooks to all school children in the state. He levied a severance tax on Louisianan oil producers to provide funding for the books and his legislative supporters passed HB90, the textbook law. At the Governor’s instigation HB90 included an explicit provision to provide non-sectarian books for both public and non-public school children, whether their schools were religious or not, a move that provoked a lawsuit.<sup>2</sup> His opponents charged that the state was aiding religious schools unconstitutionally. In response Long elucidated what has since become known as the ‘Child Benefit Theory’: the funds were being provided for the child, not the school, and the child should have access to the state funded textbooks wherever he or she went to school. The 1928 statute providing free textbooks for both public and non-public school children still stands today. By Act 650 of 1993 the legislature provided that the administration costs incurred by school districts for the disbursement of such books would also be paid for by the state. Hence Louisiana

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<sup>1</sup> All data are calculated as of the end of 2012, which is the cut-off point for this thesis. Any programmes instigated from the beginning of 2013 onwards are not included.

<sup>2</sup> T.H. Williams, *Huey Long* (New York: Random House, 1969).

is classified in Table 4.3 as having full membership of the set of ‘textbook loan states’ (set membership 1.0).

Transportation for children attending non-public schools in Louisiana is similarly long-standing and robust in the face of challenge. The first school transport law ever passed was proposed by Senator Johnson in 1922 and provided that: ‘The parish school boards shall have authority to provide transportation for children living more than two miles from a school of suitable grade’. It was followed in 1928, the same year that Governor Long’s free textbook law was passed, with a law that provided for the transportation of children to non-public as well as public schools. HB447 of 1928 stated: ‘that the Parish School Boards shall have authority to provide transportation for school children attending *any school* [author’s italics] approved by the State Board of Education for children living more than two miles from a school of suitable grade’. Minor revisions and extensions followed, to reduce the threshold distance for transportation to one mile (1936) and to allow for Parish school board contracts with school bus operators (1940, 1942 and 1944). These minor revisions helped augment the generosity of Louisiana’s transportation programme for children at private religious schools: the state is classified as having full membership (1.0) of the set of ‘transportation aid states’ in Table 4.3.

After a 1975 court challenge to aid for students at all-white academies, Act 18 of 1977 provided for a section of the school transport laws on racial discrimination for the first time. Section F stated: ‘The provisions of this Section shall apply to eligible public and nonpublic school students. However, these provisions shall not apply to any student or the parent or tutor of any student who attends a school which discriminates on the basis of race, creed, color, or national origin’. Not only was the provision the first to outlaw racial discrimination explicitly, it was also the first Louisianan transport

provision to mention ‘non-public schools’ explicitly. Previous transportation laws and their many amendments merely stated that the provision applied to ‘any school approved by the State Board of Education’. This left implicit the application of the aid provisions to non-public school students. Thus although judicial and legislative moves against racial discrimination in Louisiana education during the 1970s restricted the application of religious school student aid somewhat, they also made it explicit that aid would be provided to non-public school students.

Any account of the development of Louisiana’s aid programmes for children at private religious schools must include a major ‘exogenous shock’: Hurricane Katrina in 2005. Independent of the four institutional explanatory conditions of federalism, constitution, church and party of this thesis, the hurricane disaster destroyed a large portion of the educational infrastructure of New Orleans. And in the immediate aftermath of the disaster, religious organizations were amongst the swiftest to return to the area and take in additional students who had lost their school. As my interviewees attested, the importance of the hurricane was not merely providing the demand and physical space for the expansion of private religious schools and public charter schools, but also a change of mind-set. ‘Alright’, said a Louisiana respondent describing the changes wrought by the hurricane, ‘half the city gone. Let’s just start from a clean sheet of paper and let’s try everything’. According to an interviewee the Louisiana voucher and tax credit programmes stemmed from this period of disruption: ‘I don’t think it would have happened without Katrina, I really don’t’.<sup>3</sup> Although the number of Catholic schools in New Orleans has dropped slightly since Katrina and charter schools have expanded most, the hurricane encouraged policymakers to consider radical

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<sup>3</sup> Danny Loar, Executive Director of the Louisiana Conference of Catholic Bishops, September 12, 2012, 12.

solutions to the City's educational problems, including scholarship programmes for private religious schools.

Louisiana was a very early entrant into the set of states that provide textbooks and transportation (1928) to children at private religious schools but quite a late entrant, relative to others, into the set of states that provide tax credits (2009) or voucher scholarships (2008). In Louisiana, just as the inauguration of Governor Long presaged the introduction of textbook and transportation aid to children at private religious schools, the inauguration of Governor Bobby Jindal was followed by the introduction of tax credit and voucher aid to the parents of such children. The 2008 Student Scholarships for Educational Excellence (vouchers) were limited in scope to New Orleans but the 2008 Elementary and Secondary Tuition Deduction (tax credit) was state-wide. In 2009 three more tax credit bills were passed, providing individual and corporate tax deductions for contributions to School Tuition Organizations that offer scholarships for non-public schools. Legislative activity on tax credits and vouchers in Louisiana has been swift and substantial. A further expansion occurred in June 2012, when the Louisianan voucher programme was extended state-wide. In November 2012 a state judge ruled that the use of the Louisianan Minimum Foundation Program funding for state-wide voucher scholarships was unconstitutional on the grounds that it involved the diversion of funds from public education. The judge did not issue an injunction to stop the scholarship programme, however. As of the end of 2012 Louisiana had high set-membership in both the set of 'voucher states' and the set of 'tax credit states' – and is classified as such here.

## **Aid for Children at Private Religious Schools in New York**

The Common School Fund and the Public School Society were founded in New York State in 1805. In 1812 the General School Act provided schools with an entitlement to a share of the Common School Fund, and several religious bodies established schools and participated in the fund. By 1824 the Free School Society, as the Public School Society became known, had begun to petition the New York state government to enjoin religious schools from participating in the Common School Fund. In 1825 an ordinance was passed that recognized the peculiar claims of orphan asylums as the only justifiable exemption to the general principle of providing public school moneys only for secular instruction. The battles of the first half of the nineteenth century against the funding of Catholic schools reached their apogee in 1840, when Governor William Seward argued that the system of Catholic schools in New York State should be given public aid on the same basis as the public schools. In response, the New York Legislature passed Chapter 150 of 1842, which provided that ‘No school...in which any religious sectarian doctrine or tenet shall be taught, inculcated or practiced, shall receive any portion of the school moneys to be distributed by this act’.

In 1867 there was a debate on compulsory education at the State Constitutional Convention, at which evidence was provided that Catholics would not send their children to the public schools because of the schools’ Protestant character. It had no effect on the Convention’s position on public and parochial schools. In 1873 another law was passed that provided money to be distributed from the education fund ‘but no money shall be paid to any school under the control of any religious or denominational sect or society’. The New York No-Aid Provision was adopted in 1894. In the early

years of the twentieth century, however, the laws governing parochial schools shifted again.

In 1935 Democratic Governor Herbert Lehman had vetoed a measure providing publicly-funded transportation to children at private religious schools but a year later he committed a *volte-face* by approving and signing an almost identical transportation measure known as the Kelly School Bus Transportation Bill, following lobbying from religious school interests. The New York Supreme Court ruled against the Kelly bill but since the 1938 Constitutional Convention was at that time in session, the Convention delegates quickly passed an exemption to the constitutional provision for transportation aid.<sup>4</sup> The Convention also established real estate tax exemptions for ‘real or personal property used exclusively for religious, educational or charitable purposes’. Both of these provisions stand today. Hence New York is classified in Table 4.3 as having high set membership of both the transportation and tax-exemption sets (with memberships of 0.6 and 1.0 respectively).

The development of New York aid continued in this lively vein during the 1940s. When Eleanor Roosevelt made the case against the public funding of religious schools in her New York World Telegram column, Cardinal Spellman publicly excoriated her and a vigorous argument about church-state separation continued in the newspapers for several months. By the late 1960s New York had established itself as a relatively generous state in terms of the provision of aid for children at private religious schools. Textbook loans and transportation for private religious school students were found constitutional in 1968.<sup>5</sup> Funding for deaf-translators for students at private religious schools is offered, and local school boards must also provide nursing services

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<sup>4</sup> Judd et al. v Board of Education, 15 15 N.E. (2d) 576 (1938).

<sup>5</sup> Board of Education v Allen, 392 U.S. 236 (Supreme Court 1968).

to children at private religious schools.<sup>6</sup> In 2012 a bill was introduced to the New York State Assembly to reimburse religious schools for the costs of complying with the Common Assessment Program. Hence the state is categorized as a member of the textbook (0.6), auxiliary services (1.0) and equipment (1.0) sets in Table 4.3. New York, however, has never gone down the voucher or tax credit tuition scholarship route.

Although it does not involve expenditures, a relevant further piece of contextual information is that New York City also allows ‘released time’ under Section 3210 of the New York Education Law.<sup>7</sup> This programme allows public school students to be ‘released’ from lessons during regular school hours in order to take part in religious education, provided that such instruction does not take place on public school premises or with public funds. In New York, this programme is long-standing. New York City students, particularly Jewish students, have taken part in such programmes since the early twentieth-century. Such ‘released time’ programmes do not constitute aid according to the US Supreme Court but, as Chapter 7 shows, they may help reduce the pressure to exit for the private school sector on the part of public school parents dissatisfied with public schools.<sup>8</sup> In this way, released time programmes could reduce the pressures on policymakers to provide aid for children at private religious schools because they reduce some of the pressures to set up such private schools. Such pressures are discussed fully in Chapter 7.

### **Aid for Children at Private Religious Schools in Utah**

Unlike the other case studies, Utah has full non-membership of the set of ‘high aid states’ (membership score 0.0). An overwhelmingly Church of Jesus Christ of Latter

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<sup>6</sup> Matter of Richard K v Petrone, 31 AD3d 181 (2006).

<sup>7</sup> JewishHour, “Released Time Program of Greater New York,” 2012, [www.jewishhour.org](http://www.jewishhour.org).

<sup>8</sup> Zorach v Clausen, 343 U.S. 306 (Supreme Court 1952).

Day Saints (LDS) state, Utah scores highly on religiosity and is religiously homogenous, although the demographic make-up of the state is changing with immigration, particularly in the Salt Lake region. In 1896, when Utah finally became a US state after several failed attempts, it was required to pass a No-Aid Provision in the first state constitution as one of the many conditions for its entrance to the Union. No legislation was ever passed in Utah to provide aid for children at private religious schools, perhaps because the state was mindful of the strict conditions laid down by a federal Congress that was openly suspicious of the LDS church. In 1986 the Utah Constitutional Revision Commission inserted the word ‘direct’ into its No-Aid Provision but this move was surprisingly inconsequential. No record exists of the debate that occurred before this insertion, and the changing of the wording was not widely noted. Nor was the change consequential for children at private religious schools because the state did not provide any aid to such students until the legislature passed the Carson Smith Special Needs Voucher in 2005. Since the Carson Smith Program covers only a small section of the student population – those with disabilities – Utah has just 0.4 membership of the set of ‘voucher states’ and no membership of the overall B3AND measure. The state provides no other voucher or tax credit programmes, equipment and materials, transportation or tax exemptions.

In 2007 the legislature passed HB 148 and HB 174, ‘Education vouchers’ and ‘Education Voucher Amendments’ respectively, to establish a generous state-wide educational voucher programme<sup>9</sup>. The former bill was passed by a single vote in the Utah House of Representatives but both passed the State Senate by wide margins and were signed into law by Governor Jon Huntsman. If the voucher scholarship programmes still stood then Utah would have full rather than partial membership of the

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<sup>9</sup> P.T. Mero, *Vouchers, Vows, and Vexations* (Salt Lake City, Utah: The Sutherland Institute, 2007), 5.

set of ‘voucher states’ in Table 4.3. However a 2007 referendum on the issue – initiated by the teachers’ union, the Utah Education Association, and its parent National Education Association – found voters overwhelmingly opposed and the program was revoked before it could take effect. Although Utah has embraced charter schools with enthusiasm, the 2007 referendum eliminated the voucher option for the foreseeable future. Like New York City, public schools in Utah also routinely take part in released time programmes, known as ‘Seminary’. Such programmes allow public school students to leave public school premises during the regular school day to attend religious lessons off public school premises. In Utah these programmes are overwhelmingly run by the LDS Church. The Utah released time programme, which is governed by sections 277 to 610 of the Utah Administrative Code, was found constitutional in the 1981 case *Lanner v Wimmer*.<sup>10</sup> Just as in New York, released time programmes are not ‘aid’ and do not involve expenditure on children at private religious schools, but they may reduce pressure for dissatisfied parents to exit the public school system. This dynamic is discussed fully in Chapter 7.

### **Aid for Children at Private Religious Schools in Illinois**

In Illinois no major aid programmes for children at private religious schools were adopted until the early 1960s, when there was a major re-organization of The School Code: the set of laws governing education in Illinois. The 1961 authorization of The School Code included transportation for children at private religious schools in Section 29-4, and in 1978 the transportation section was amended to allow school districts to offer separate bus routes for children at private religious schools ‘where the

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<sup>10</sup> *Lanner v Wimmer*, 662 F. 2d. 1349 (1981).

operation of such routes is safer, more economical and more efficient than if such school district were precluded from operating separate regular bus routes'. Although Republican Governor James R. Thompson vetoed the 1978 bill, the Democratic state legislature overrode his veto and the expansion of the transportation section became law. Hence Illinois has full membership in the transportation set (set membership 1.0).

In 1972 the General Assembly passed legislation creating the Illinois Textbook Loan Program (ITLP), which provided religious school children with state-funded textbooks. This programme, which was authorized by the 1975 law HB1732 and Article 18-17 of the Illinois School Code, provided that 'The Illinois Office of Education shall provide the following free of charge to any [K-12] student in this State...the loan of secular textbooks listed for use by the Office of Education'. The appropriation for the ITLP was first provided to the Illinois State Board of Education in 1976, and totalled \$10,000. Funding increased throughout the 1980s and early 1990s until the legislature almost tripled the appropriation to \$24 million in 1998 and again doubled the appropriation in 2000. The expansion of aid continued with the 1999 authorization of educational tax credits, the Illinois Educational Expenses Tax Credit. This credit was authorized by the Illinois Income Tax Act, which amended the state Revenue Code. It provides a tax deduction of up to \$500 per family for school-related expenses, including sports and computing equipment – and both public and private school children are eligible to receive it. The credit's universal application ensures that Illinois has full membership of the set of 'tax credit states' (membership score 1.0). In 2008 an estimated \$72 million was spent on the educational tax credit.

More recently there was some backlash against this largesse despite continually favourable court decisions. Although Illinois continues to have full membership in the transportation, food services and equipment sets (all set membership 1.0), lawsuits were

brought alleging the unconstitutionality of the tax credit programme and the text book loan programme funding was discontinued as part of major educational budget cuts in 2010. In 2011 Senator James Meeks – a Democratic State Senator and pastor of a mega-church that operates a private Christian Academy – proposed a voucher bill for Chicago’s low-income students. The bill passed in the State Senate with the unanimous support of the chamber’s thirty-three Republicans but failed in the House. It was followed by a second 2011 voucher proposal sponsored by Republican Senator Matt Murphy, but this bill also split the Democratic Party representatives and failed to pass. If these voucher proposals had passed Illinois would have had partial membership of the set of ‘voucher states’, but they did not. Despite the General Assembly’s intention to fund grant programmes at fifty-percent, the Illinois State Board of Education decided not to fund ITLP in FY2010 or 2011 due to state fiscal conditions. Hence, as of the end of 2012 Illinois has no membership of the set of ‘textbook aid states’. Legislation authorizing a new textbook loan programme was authorized in 2011 and bills to restore funding were introduced in the House and Senate in 2012, but funding for the programme has not been reinstated. It is unlikely that such funding will materialize in the immediate future because of the state’s financial difficulties.

### **Aid for Children at Private Religious Schools in California**

In 1941 the Republican Senate and Democratic House of the Californian state legislature enacted SB568, a transportation law sponsored by Senator Hays for children at private religious schools. It created Section 39808 of the Californian Education Code, which provided that ‘The governing board of any school district *may* allow a pupil who...attends a school other than a public school to be transported upon the same terms,

in the same manner, and over the same routes of travel as is permitted pupils attending the district school' [my italics]. The same section explicitly prohibits the provision of transportation cash payment to parents in lieu. At the beginning of Governor Earl Warren's tenure in 1943 the legislature enacted AB687, a bill providing tax exemptions for school meals at both public and private institutions. These programmes stand today, so California is classified in Table 4.3 as a partial member of the transportation (0.4) and food services (0.6) sets. The school meals tax exemption was followed in 1945 by AB502, which provided tax exemption for all 'school purposes', including private religious schools. This legislation provided California with 0.6 membership of the set of 'tax exemption states'.

In 1972 the Democratic Californian state legislature passed Chapter 929, to provide textbook loans for children at private religious schools. The law, which modified Sections 9505 and 9445 of the Education Code, stated that 'the Superintendent of Public Instruction shall lend to [non-public school] pupils...instructional materials adopted by the state board for use in the public elementary schools. No charge shall be made to any pupil for the use of such adopted materials'. But as with the 1941 transportation law, the textbook legislation also stated that no cash payment would be authorized in lieu and that 'materials shall be loaned pursuant to this section only after, and to the same extent that, materials are made available to students in attendance in public elementary schools'.

After many years of mild expansion for the aid programmes, a double challenge came at the beginning of the 1980s. In the 1981 Californian Supreme Court decision *California Teachers Association v Riles* the textbook lending programme of 1972 was found unconstitutional.<sup>11</sup> The state legislature attempted to have the textbook loans

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<sup>11</sup> *California Teachers Association v Riles*, 29 Cal. 3d 794 (Supreme Court of California 1981).

reinstated by authorizing the placement of an initiative on the November 1982 ballot that proposed to add the textbook loans to the Californian state constitution. The proposal, Proposition 9, was defeated by sixty-one to thirty-nine per-cent. So as of the end of 2012 California has no membership of the set of ‘textbook aid states’ but it does have partial membership of the sets of auxiliary service and equipment states (set memberships 1.0 and 0.6 respectively). Unlike New York, the Californian legislators were not able to respond to an unfavourable court judgement by enshrining the aid programme in the state constitution. Like New York, California has never created a voucher or tax credit programme and it is highly unlikely to do so, as evinced by the quantity of negative voucher-related correspondence in the files of the State Superintendent for Education.<sup>12</sup> Hence, it has no membership of the ‘tax credit states’ or ‘voucher states’.

### **Aid for Children at Private Religious Schools in Florida**

Until the creation of voucher and tax credit programmes beginning at the turn of the millennium, Florida passed only one minor programme of aid for children at private religious schools: HB 984, a bill created by the Democratic state legislature in 1975 to establish that school districts can pay for the private education of physically-handicapped children. However, the same legislation also established caps on the amounts districts could pay. It stated ‘The district school board shall establish a maximum amount which can be paid by a district school board for an individual exceptional student contract with a non-public school based on the maximum full-time equivalent earned by the student’. This provision of some aid, but with caveats, is

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<sup>12</sup> Various, “General Correspondence of the Chief Deputy Superintendent of Public Instruction, 1970-1971” (California Department of Education, 1971 1970), F3752: 1125-1159, California State Archive.

reflected in Florida's partial membership (0.6) of the set of 'auxiliary services states' in Table 4.3.

In 1999 Florida started to provide much more aid for children at private religious schools with the enactment of major tax-credit and voucher programmes: the Florida Opportunity Scholarship Program and the John McKay Scholarships for Students with Disabilities, under the Florida A+ Education Plan. The Opportunity Scholarship was open to students in public schools rated in the two lowest performance categories under the state's school standards: 'D' or 'F', while the John McKay Scholarship was provided for students with an 'Individual Education Plan' or 'IEP', a statement of special educational needs. These two programmes were passed by a Republican state legislature under Republican Governor Jeb Bush, a vocal proponent of school choice measures. They were followed in 2001 by the enactment of a tax credit programme, again by Governor Bush through a Republican legislature, to 'provide an income tax credit for corporations that contribute money to nonprofit Scholarship-Funding Organizations (SFOs) that award scholarships to students from families with limited financial resources'.<sup>13</sup> One of these pieces of legislation, the Opportunity Scholarship Program, was found unconstitutional by the 1<sup>st</sup> District Court of Appeals in 2004 and subsequently the Florida Supreme Court in 2006 on the grounds of, respectively, the church-state separation and educational adequacy.<sup>14</sup> But these court cases, *Bush v Holmes*, proved to be merely a brief hiatus in the rise of Floridian school choice programmes.

Until 2009, tax credits under the scholarship program were only available against the state's corporate income tax. In that year the legislature expanded the revenue sources against which tax credits may be claimed to include the insurance

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<sup>13</sup> Florida School Choice, "Florida Tax Credit Scholarship Program: Definition and Eligibility" (Florida Department of Education, 2013), <http://www.floridaschoolchoice.org/information/ctc/faqs.asp>.

<sup>14</sup> *Bush v Holmes*, 886 So. 2d. 340 (2006).

premium tax, and renamed the Corporate Income Tax Credit Scholarship Programme the 'Florida Tax Credit Scholarship Program'. In 2011 the legislature amended the Florida Tax Credits Scholarship Program to increase the value of contributions allowed. The programme is large: in FY2010-11 the cap on the total tax credits was \$140 million. Florida's 0.4 membership in the set of 'voucher states' reflects the fact that the McKay Scholarship, like Utah's Carson Smith Program, is open only to disabled children, but its high membership in the set of 'tax credit states' (0.8) indicates the broader reach of the state's 2001 tax credit programme.

Many of the aid programmes detailed in the preceding sections have been subject to judicial challenge, on First Amendment grounds and on the grounds of state 'Blaine Amendments' or 'No-Aid Provisions'. The following two chapters confront scholarly assumptions about such provisions with hard evidence. In Chapter 5 I examine the origins of No-Aid Provisions and find that Catholic populations, Federal Enabling Act requirements and Republican control of the state offices produce strongly-worded No-Aid Provisions. In Chapter 6 I find that, contrary to some scholarly claims, No-Aid Provisions are surprisingly poor barriers to aid for children at private religious schools.

## Chapter 5: The Origins of No-Aid Provisions

Remarkable disagreement exists amongst scholars on the subject of ‘Blaine Amendments’ or ‘No-Aid Provisions’, the passages in US state constitutions prohibiting public aid to religious schools. The No-Aid Provisions were created in the nineteenth- and early twentieth-centuries when many American public schools used the King James Bible and mandated the singing of Protestant hymns, practices that Catholics and other religious groups could not accept.<sup>1</sup> They set up private schools to educate their children in their own religious traditions and requested public funds to support them. A ban on such appropriations for private religious schools was formulated by Senator James Blaine, whose proposed federal constitutional amendment failed in 1876, and by state policymakers who passed the state No-Aid Provisions between 1835 and 1959.

There is no scholarly consensus as to the number of such amendments. Kinzer lists ‘at least 24,’ Kemerer finds 33 and Gedicks, 37.<sup>2</sup> Although many scholars acknowledge that state ‘Blaine Amendments’ are couched in different language and come in varying strengths, there is also a tendency to treat such provisions as similar products of the 1870-1890 period and the personal intervention of James Blaine, a dangerously narrowing tendency given that these amendments have been passed throughout much of American history.<sup>3</sup> This chapter uses the generic term ‘No-Aid

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<sup>1</sup> By ‘Protestant hymns’ I mean hymns that were composed by Protestants and expressive of Protestant ideas about the nature of the church, and the sacraments of baptism and communion.

<sup>2</sup> F.M. Gedicks, “Reconstructing the Blaine Amendments,” *First Amendment Law Review* 2 (2004): 85; D.L. Kinzer, *An Episode in Anti-Catholicism: The American Protective Association* (Seattle: University of Washington Press, 1964), 12; F.R. Kemerer, “The Constitutional Dimension of School Vouchers,” *Texas Forum on Civil Liberties and Civil Rights* 3 (1997): 154.

<sup>3</sup> T.J. Heytens, “School Choice and State Constitutions,” *Virginia Law Review* 86 (2000): 117–162; DeForrest, “An Overview and Evaluation of State Blaine Amendments: Origins, Scope, and First Amendment Concerns”; R.W. Garnett, “The Theology of the Blaine Amendments,” *First Amendment Law Review* 2 (2004): 45–84; D.F. Johnson, “State Blaine Amendments: Origins, History, and Education Policy Implications Following Mitchell, Zelman, and Locke” (University of Florida, 2008).

Provisions’ rather than ‘Blaine Amendments’ in order to acknowledge this wide historical spread.

Scholars’ judgements about the relative strength of No-Aid Provisions have been made on an *ad hoc* basis with no clear classificatory criteria and consequential imprecision and uncertainty. Moreover, No-Aid Provisions have enjoyed considerable attention from legal scholars and historians but political scientists have mostly ignored them. Historians have argued that state No-Aid Provisions resulted from Republican dominance of state offices and Federal Enabling Act requirements for newer Western states, anti-Catholic bias,<sup>4</sup> or alternatively, a commitment to church-state separation.<sup>5</sup> This chapter investigates these historical accounts, here termed ‘Republicans, Catholics and the West’, by constructing the first quantitative scale of No-Aid Provision strength and subjecting it to statistical treatment to explain why some prohibitions are much stronger than others.

The construction of a scale for No-Aid Provisions strength offers a more nuanced understanding of a widespread but frequently misunderstood constitutional phenomenon. It enables testing of the causes of No-Aid Provision adoption and their consequences for modern patterns of aid for children at religious schools. There are three advantages of providing a quantitative scale of No-Aid Provision strength, rather than the narrative-based investigations prevalent in the literature. First, the quantitative tools of political science can help resolve conflicting interpretations of No-Aid Provisions based on normative histories. The scale enables scholars to understand the provisions in context and to answer such questions as the following four:

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<sup>4</sup> Stern, “Blaine Amendments, Anti-Catholicism, and Catholic Dogma.”

<sup>5</sup> S.K. Green, “‘Blaming Blaine’: Understanding the Blaine Amendment and the ‘No Funding’ Principle,” *First Amendment Law Review* 2 (2004): 107–152.

- 1) Were the No-Aid Provisions simply the result of what Green calls ‘a...contemplative discussion over the meaning of church-state relations in America’,<sup>6</sup> or were they, in Justice Thomas’s words, ‘born of bigotry’ against Roman Catholics?<sup>7</sup>
- 2) Did anti-Catholicism and Republican dominance affect the stridency and scope of the religious school aid ban?
- 3) How much stronger are, for example, California’s, Michigan’s or Oklahoma’s bans on religious school aid than Wisconsin’s, Alabama’s or Florida’s, and why?
- 4) Are strong No-Aid Provisions a bigger barrier to voucher scholarships, textbook loans and transportation for children at religious schools than weak ones?

Such questions are impossible to answer without a comprehensive survey of No-Aid Provisions and the creation of a quantitative scale of No-Aid Provision strength.

Secondly, constructing a scale of No-Aid Provision strength enables examination of the extent to which the slogan ‘A Wall of Separation between Church and State’ has ever been valid in the US states.<sup>8</sup> The creation of a strength scale, which has a normal distribution, undermines the absolutist language of Church/State separation prevalent in American public discourse. It prompts commentators to move beyond these rhetorical flourishes towards a more complex understanding of the relationship between religion and government.

Thirdly, a scale of No-Aid Provision strength is invaluable to the burgeoning literature on school choice, educational policymaking and No Child Left Behind

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<sup>6</sup> S.K. Green, *The Bible, the School, and the Constitution* (New York: Oxford University Press, 2012), 199.

<sup>7</sup> C Thomas, *Mitchell v Helms*, 530 U.S. 793, 6 (2000).

<sup>8</sup> Jefferson, “Jefferson’s Letter to the Danbury Baptists.”

reauthorization. There is widespread scholarly agreement about the capacity of legal provisions in state constitutions to affect public policy.<sup>9</sup> Fusarelli, for example, documents the way anti-voucher coalitions use No-Aid Provisions to block voucher plans.<sup>10</sup> Chapter 6 examines the ways judges assess the strength and coverage of state No-Aid Provisions to strike down or uphold transportation, text book loans, tax credit and voucher schemes for children at private religious schools. Before one can understand the causal significance of No-Aid Provisions, it is necessary to know how many there are, where they are, why they are there and what they are like. None of these points has been systematically dealt with by the existing legal-historical accounts. This research is the first to address them using the techniques of modern political science.

While all state No-Aid Provisions serve fundamentally the same purpose – to prohibit public funding to denominational educational institutions – the diversity of No-Aid Provisions in stringency and scope can be measured and analysed statistically. Court decisions have recognized these differences and have turned upon close distinctions in language. For instance in *Matthews v Quinton* the Alaskan Supreme Court found that since the transportation was a ‘direct benefit’ to the non-public school it violated the state’s prohibition of aid for the ‘direct benefit’ of religious institutions.<sup>11</sup> But in *Honohan v Holt* an Ohioan Common Pleas Court concluded ‘that the *indirect* benefits resulting to such school from bus transportation of students to and from school is not “support” of such “place of worship” within the purview of [the Ohioan No-Aid Provision] constitutional provision’.<sup>12</sup> Demonstrably, such distinctions between No-Aid Provisions prohibiting ‘indirect and direct’ aid and merely ‘direct aid’ are consequential.

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<sup>9</sup> L D Fusarelli, *The Political Dynamics of School Choice: Negotiating Contested Terrain* (New York and London: Palgrave Macmillan, 2003); P E. Peterson and D E Campbell, *Charters, Vouchers, and Public Education* (Washington DC: The Brookings Institution, 2001).

<sup>10</sup> Fusarelli, *The Political Dynamics of School Choice: Negotiating Contested Terrain*.

<sup>11</sup> J.J. Arend, *Matthews v Quinton*, 362 P.2d 932, 5 (Alaska Supreme Court 1961).

<sup>12</sup> J Leach, *Honohan v Holt*, 17 Ohio 57, 6 (Common Pleas Court of Franklin County 1968).

No-Aid Provisions ‘take several forms, employ diverse terms, and are integrated and applied in different ways, with varying effects’.<sup>13</sup> For example, Iowa’s No-Aid Provision refers to the prohibition of funds to ‘an establishment of religion’, Alabama’s to ‘sectarian or denominational schools’, Alaska’s to a ‘religious or other private educational institution’ and Michigan’s to ‘nonpublic schools’. ‘Sectarian’ could refer to religious sects or to religious denominations more generally; ‘Nonpublic’ includes all non-religious private schools as well as religious ones. ‘An establishment of religion’ is a phrase loose enough to include both schools and other institutions run by religious organizations. Slight differences in legal language have great import where provisions are ambiguous and accordingly, highly contested.

Challenges to No-Aid Provisions are increasingly recurrent, through litigation, ballot initiative or legislative action. The charged nature of No-Aid Provision disputes resembles judicial action on prayer in schools, sex education and intelligent design in the degree of emotion it inspires and its public policy significance. In November 2012 for example, Florida’s citizens rejected a ballot initiative that would have eliminated the state’s No-Aid Provision and replaced it with anti-discrimination language. If the ballot initiative had passed it would have affected many areas of faith-based provision and not just schools: health-care, child-care, social services and correctional programmes in prisons. The breadth of public policy for which No-Aid Provisions have become significant lends urgency to this quest for systematic treatment. Given the rapid expansion of education tax credit and voucher laws in the states, all of which cover private religious schools, a thorough investigation of No-Aid Provisions is clearly required.<sup>14</sup>

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<sup>13</sup> Garnett, “The Theology of the Blaine Amendments,” 49.

<sup>14</sup> Thirteen new state tax credit and voucher programmes were created in 2011 and 2012, six of them in 2012

## **The Landscape of Religious School Aid Prohibitions**

This chapter uses an expansive definition of what constitutes a prohibition of aid to religious schools: all provisions in a state constitution that prohibit the use of public funds for religious schools, whether or not the provision was proposed by Senator James G. Blaine or during the time Blaine was active in political life (1863-1892). Hence the definition includes provisions such as Article 1, Section 5 of Michigan's 1835 Constitution: 'No money shall be drawn from the treasury for the benefit of religious societies, or theological or religious seminaries', which was passed forty years before Senator Blaine proposed a federal religious school aid amendment. It also includes Article 7, Section 1 of Alaska's 1959 Constitution: 'Schools and institutions...shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution', which was passed more than sixty years afterwards. There are three main advantages of this expansive definition: first, it includes all prohibitions of aid to religious schools rather than the far narrower subsection typically surveyed by scholars; only around half of all No-Aid Provisions were passed between 1870 and 1900. Secondly, it helps to avoid the relegation of this topic to history and encourages comparative investigation that does not simply centre on the specific conditions and political personalities of the late nineteenth century. Thirdly, it focuses scholarly attention on the substantive meaning of the amendments.

Several legal scholars have classified religious school aid provisions in terms of strength using relevant jurisprudence. The resulting classifications are limited in explanatory power. Kemerer classified No-Aid Provisions as 'Restrictive', 'Permissive' or 'Uncertain' according to both the constitutional language and the legal context or

case law.<sup>15</sup> Of the 33 ‘Blaine Amendments’ he identifies, 21 are classified as “Uncertain,” which limits the appeal of the typology as a basis for comparison. Moreover, Kemerer mistakenly identifies Maine, Rhode Island and Maryland, none of which has ever had such an amendment, as having No-Aid Provisions.

Although DeForrest rightly acknowledges the ‘considerable diversity in language and scope’ among No-Aid Provisions, his classification of the provisions into ‘Weak’, ‘Moderate’ and ‘Strong’ identifies only 21 cases.<sup>16</sup> DeForrest delineates a broad ‘Moderate’ class that includes constitutions with weak language and exemptions alongside states prohibiting both direct and indirect aid in strident terms. For example, he includes Delaware’s weak Article 10, Sections 3 and 5, which allows both ‘transportation of students of nonpublic, nonprofit Elementary and High Schools’ and ‘that all real or personal property used for [public and private] school purposes, where the tuition is free, shall be exempt from taxation and assessment for public purposes’, alongside Texas’s much stronger Article 1, Section 7 ‘No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes’. DeForrest also mistakenly classifies New Jersey as a ‘Blaine Amendment’ state.

In order to improve upon Kemerer and DeForrest’s measures of No-Aid Provision strength, it is necessary to examine not only current state constitutions but also constitutions adopted in the past that have been superseded by new versions. Kemerer and DeForrest commit Type 1 errors by overzealously classifying No-Aid Provision states. Their confusion may result from the fact that in some states earlier versions of the constitution contained such an amendment but the provision is no longer

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<sup>15</sup> Kemerer, “The Constitutional Dimension of School Vouchers.”

<sup>16</sup> DeForrest, “An Overview and Evaluation of State Blaine Amendments: Origins, Scope, and First Amendment Concerns,” 555.

included. By checking the text of every state constitution, including superseded historical constitutions, this chapter draws upon a comprehensive list of No-Aid Provisions.<sup>17</sup> Thirty-nine states and the District of Columbia have religious school aid bans. Of the eleven state constitutions that do not currently contain No-Aid Provisions, three – Arkansas, Louisiana and New Jersey – had them in earlier iterations. The amendments vary in length from a single sentence to several paragraphs. They also vary both in strength and the jurisprudential and political activity that has subsequently resulted in their clarification, fortification, weakening or overturning.

### **Existing Explanations for No-Aid Provisions Adoption**

Legal scholars and historians have written extensively about the origins of the failed federal Blaine Amendment of 1876, but less about the origins of the state No-Aid Provisions. These are sometimes misleadingly referred to as ‘Little Blaine Amendments’,<sup>18</sup> or ‘Baby Blaines’.<sup>19</sup> The federal Blaine Amendment was introduced by the Republican former Speaker of the House James G. Blaine of Maine in late 1875. Intended to be the 16<sup>th</sup> Amendment of the Federal Constitution, it read:

‘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 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’.

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<sup>17</sup> See Appendix for the full text of all No-Aid Provisions

<sup>18</sup> J.S. Bybee and D.W. Newton, “Of Orphans and Vouchers: Nevada’s ‘Little Blaine Amendment’ and the Future of Religious Participation in Public Programs,” *Nevada Law Journal* 2 (2002): 551–589.

<sup>19</sup> Green, “‘Blaming Blaine’: Understanding the Blaine Amendment and the ‘No Funding’ Principle”; Green, “The Insignificance of the Blaine Amendment.”

Blaine's Amendment passed after amendment in the House by a comfortable 180-7 but failed in the Senate. Blaine himself was absent from the final vote. Historians have indicated two main explanatory factors for the proposal and defeat of this federal Blaine Amendment at this critical juncture. First, Senator Blaine intended to derive personal political mileage from the Blaine Amendment during the 1876 Presidential nomination contest. Doubt has been cast upon Blaine's personal commitment to the substance of his own amendment, a suggestion substantiated by Blaine's absence from the vote once it became clear that Rutherford Hayes, rather than Blaine, would gain the Republican presidential nomination.<sup>20</sup>

Secondly, the Republican Party was nervous about the upcoming elections with a greatly consolidated Democratic South and increased immigration of Catholic voters to the US, a group which had traditionally voted for the Democratic Party. Hence both Republican President Grant and Congressional members of the Republican Party supported the federal Blaine Amendment in an attempt to attract Southern Protestant Democrats and to portray Democratic Congressmen who voted against the Blaine Amendment as pro-Catholic, potentially a damaging attack at a time of widespread anti-Catholicism.<sup>21</sup> The attempt failed because House Democrats altered the federal Blaine Amendment and then voted for the amended version. Although there was an almost perfect party line vote on the federal Blaine Amendment in the Senate, the Republicans could not use the federal Blaine Amendment against the Democrats in 1876.<sup>22</sup>

The motives for the introduction of No-Aid Provisions in state constitutions are mixed. Several were introduced in state legislatures immediately following the failure of the federal Blaine Amendment and nine states had No-Aid Provisions incorporated into

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<sup>20</sup> Gedicks, "Reconstructing the Blaine Amendments"; Stern, "Blaine Amendments, Anti-Catholicism, and Catholic Dogma."

<sup>21</sup> Stern, "Blaine Amendments, Anti-Catholicism, and Catholic Dogma"; Green, "Blaming Blaine": Understanding the Blaine Amendment and the 'No Funding' Principle."

<sup>22</sup> Heytens, "School Choice and State Constitutions," 133.

their state constitutions as part of a mandate imposed by Congress under the Enabling Acts of 1889, 1890, 1894, 1906 and 1910. These nine states – Montana, Washington and the Dakotas, Idaho, Utah, Oklahoma, New Mexico and Arizona – were required to pass such prohibitions as a condition for their entrance to the Union. Historians have suggested that in a context of increased industrialization, migration, and the difficulties of Reconstruction, religious school aid prohibitions were seen as vote-winners. These scholars emphasize the connection between No-Aid Provision passage and the ‘Common Schools Question’, by which is meant the institutionalization of a system of non-sectarian public education that would educate all American children in democratic and republican ideals.<sup>23</sup>

Commentators are divided as to the role of anti-Catholic sentiment in the passage of state No-Aid Provisions. Several have suggested that a ‘wave of anti-Catholic hysteria’ was responsible,<sup>24</sup> or at least ‘it cannot be denied that some of the rhetoric used in urging adoption of the Blaine Amendments in the nineteenth century was tainted by raw anti-Catholicism’.<sup>25</sup> ‘It was brought in to institutionalize prejudice, and it does’ said a Catholic Conference interviewee.<sup>26</sup> Others argue that, on the contrary, ‘the impulse toward non-sectarian public education was based on noble, republican ideals’ and was ‘hijacked by Nativist groups for their bigoted aims’.<sup>27</sup> Green argues that No-Aid Provision passage ‘had as much to do with the partisan climate of the post-Reconstruction era and related concerns about federal power over education as it did with Catholic animus’.<sup>28</sup> The rise of the ‘Know-Nothings’ in many states during the 1850s coincided with a series of school funding controversies and a spike in No-Aid

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<sup>23</sup> Green, “‘Blaming Blaine’: Understanding the Blaine Amendment and the ‘No Funding’ Principle.”

<sup>24</sup> Heytens, “School Choice and State Constitutions,” 134.

<sup>25</sup> Stern, “Blaine Amendments, Anti-Catholicism, and Catholic Dogma,” 167.

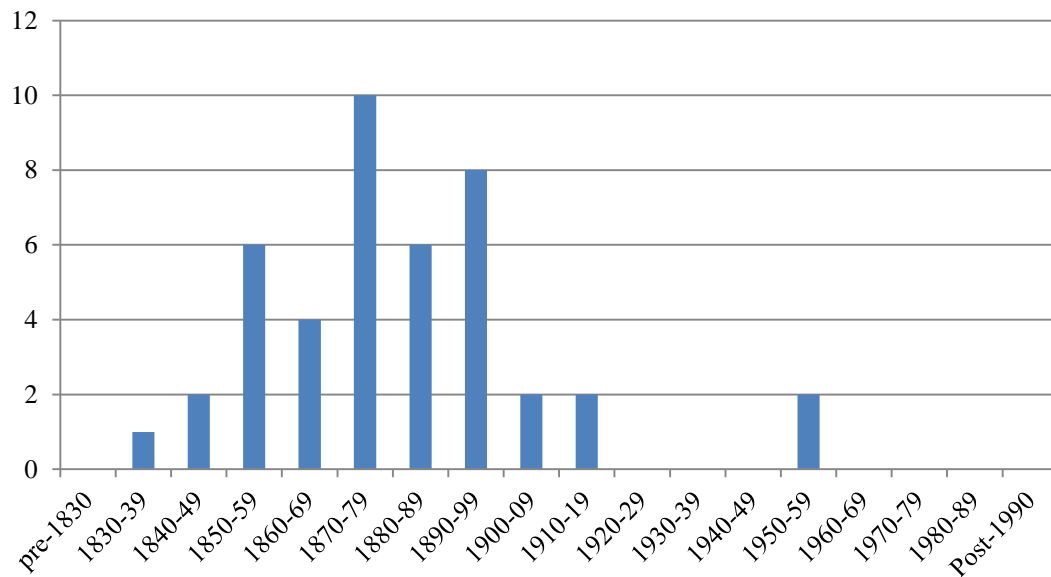
<sup>26</sup> Dolesji, Executive Director of the California Catholic Conference, 6.

<sup>27</sup> Green, “‘Blaming Blaine’: Understanding the Blaine Amendment and the ‘No Funding’ Principle,” 113.

<sup>28</sup> *Ibid.*, 114.

Provision passage,<sup>29</sup> but historians are divided on the degree to which the Know-Nothing and their American Party were hostile to Catholics.<sup>30</sup> Figure 5.1 shows the temporal distribution of No-Aid Provisions by decade of passage.

**Figure 5.1: Number of New No-Aid Provisions by Decade**



Adams argues that ‘the first Blaine-like constitutional amendment was passed by the Know-Nothing Party in the cradle of the common school movement in Massachusetts’.<sup>31</sup> Actually, four states had already passed such amendments by the time Massachusetts adopted its first No-Aid Provision, as Figure 5.1 shows. Michigan had even passed two. Adams’s contention is that anti-Catholic Know-Nothings were responsible for No-Aid Provisions but this argument has been challenged by Green and others.

<sup>29</sup> The “Know-Nothings” were a nativist, anti-immigrant, anti-Catholic movement that arose in the 1850s and were led by former-President Millard Fillmore and the congressman and former-congressman Nathaniel P Banks and Lewis C Levin.

<sup>30</sup> T Annbinder, *Nativism and Slavery: The Northern Know-Nothings and the Politics of the 1850s* (New York and Oxford: Oxford University Press, 1992); W.D. Overdyke, *The Know-Nothing Party in the South* (Louisiana: Louisiana State University Press, 1950).

<sup>31</sup> N.A. Adams, “Pedigree of an Unusual Blaine Amendment: Article 1, Section 3 Interpreted and Implemented in Florida Education,” *Nova Law Review* 30, no. 1 (2005): 12.

Although scholars disagree about the explanatory role of anti-Catholic sentiment in relation to late nineteenth-century amendments, the role of partisanship is more widely accepted. Republican President Grant had urged the adoption of the federal Blaine Amendment, Republican Senator Blaine had sponsored it, Republicans in the Senate and House had overwhelmingly voted for the federal Blaine Amendment, and new Western states with Republican Governors were adopting No-Aid Provisions in their state constitutions. *The New York Times* observed of President Grant's 1875 speech that an 'appeal to religious passions was worth twenty-five thousand votes to the Republicans'.<sup>32</sup> The Democratic *Los Angeles Daily Herald* said 'this is unmistakably an effort to drag religion into the political arena, and inflame the rancor of bigotry and sectarian zeal, that purely political parties may be disrupted and the GRANT party profit by the dissensions'.<sup>33</sup>

These historical claims are well substantiated but limited in two ways. They consider only the causes of state No-Aid Provision adoption rather than the strength of the No-Aid Provisions adopted and they ignore the state No-Aid Provisions adopted in the twentieth century or the mid-nineteenth. Green rightly points out that the 'no-funding principle and its corollary, non-sectarian education, predate the nineteenth century influx of Catholic immigration, the advent of parochial schooling, and the rise of organized nativism'.<sup>34</sup> Hence investigation of the causes of No-Aid Provisions should not be confined to the particular pressures and personalities of the Gilded Era.

Existing scholarly debates about the origins of state No-Aid Provisions raise a number of untested questions: were and are Republican states more likely to adopt No-Aid Provisions, and stronger ones? Do racial, religious or geographical factors make a

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<sup>32</sup> Green, "Blaming Blaine": Understanding the Blaine Amendment and the 'No Funding' Principle," 188.

<sup>33</sup> J.M. Bassett, "Grant's Religious Plank," *Los Angeles Daily Herald*, October 13, 1875.

<sup>34</sup> Green, "Blaming Blaine": Understanding the Blaine Amendment and the 'No Funding' Principle," 113.

difference? What are the most important determinants of the stringency of a state's prohibition of religious school aid? This chapter tests these explanations statistically against a numerical scale of No-Aid Provisions strength.

### **Constructing a No-Aid Provisions Scale**

State No-Aid Provisions were subjected to content analysis with five scoring criteria: indirect or direct aid, the tone of the provision, the extent of the bans, and any exclusions or qualifications. Johnson attempted to classify 'Blaine Amendments' using the term 'sectarian' but this test was used only to indicate the presence of a 'Blaine Amendment' rather than to rank them by strength.<sup>35</sup> There are several reasons the term 'sectarian' was not used as a scoring criterion in this content analysis: first, it encourages Type 2 Errors by ignoring many states with functioning, consequential religious school aid provisions: Johnson excluded sixteen states from his analysis including Massachusetts and Michigan, which have some of the strongest prohibitions of religious school aid.<sup>36</sup> Secondly, the use of the term 'sectarian' as a scoring criterion prejudices any investigation of the origins of No-Aid Provisions by assuming the language of late nineteenth-century anti-Catholicism.

Each No-Aid Provision was coded using five criteria.<sup>37</sup> The first (A) is whether the amendment prohibits direct and/or indirect aid. 'Direct aid' refers to the inclusion of religious schools within the publicly funded school system, or in other words, state funding of religious schools through direct appropriation of tax-payer money. 'Indirect aid' is a more contested concept. It refers to the provision of education-related services

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<sup>35</sup> Johnson, "State Blaine Amendments: Origins, History, and Education Policy Implications Following Mitchell, Zelman, and Locke."

<sup>36</sup> K Duncan, "Secularism's Laws: State Blaine Amendments and Religious Persecution," *Bepress Legal Series* 26 (2006).

<sup>37</sup> See the appendix Table 5.1a for full scoring by criterion.

by the government for children at private religious schools, or to voucher schemes in which families are offered a publicly-funded sum to be spent on public or private school tuition. The aid is indirect because it is offered to the parent or child and not directly to the school. Some No-Aid Provisions explicitly state only that direct aid is prohibited. These amendments are coded as weaker than amendments that simply do not mention the language of directness or indirectness, because of the explicit inclusion of the weaker prohibition.

No-Aid Provisions were also grouped according to the tone of the language (B), whether ‘Strident’, ‘Not Strident’ or ‘Placatory’. These assessments consider the use of absolutist language such as ‘whatever’, ‘anything’, ‘never’, ‘all’ or ‘none’, and mollifying language such as ‘except’, ‘not only’, ‘not wholly’, ‘no exclusive right’ that focuses on support for public schools rather than the withdrawal of support for private ones. For instance, the stridency of Wyoming’s Article 7, Section 12 ‘Sectarianism prohibited: No sectarian instruction, qualifications or tests shall be imparted, exacted, applied or in any manner tolerated in the schools of any grade or character controlled by the state, nor shall attendance be required at any religious service therein, nor shall any sectarian tenets or doctrines be taught or favored in any public school or institution that may be established under this constitution’, can be contrasted with the relative mildness of Ohio’s Article 6, Section 2 ‘The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state’.

The third criterion (C) indicates how many types of aid to religious institutions are banned. The weakest No-Aid Provisions, such as Delaware’s, ban only public

appropriations; stronger ones, such as Minnesota's, ban both appropriations and property or land transfers; and the strongest amendments, such as Michigan's, have a long list of explicit bans, including tax exemptions as well as appropriations, credit, subsidies or vouchers. The fourth criterion (D) includes two ways in which No-Aid Provisions can be weakened: through the inclusion of a general qualifying statement or official exemption to the religious school aid ban. In the former category are Colorado's Article 2, Section 4 'The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed' or Wisconsin's Article 1, Section 18 'The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed'. In the latter category are New York's Article 11, Section 3 '...but the legislature may provide for the transportation of children to and from any school or institution of learning', or Hawaii's Article 10, Section 1: '...except that proceeds of special purpose revenue bonds...may be appropriated to finance or assist...not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities'. The fifth group (E) contains the states that do not currently have a No-Aid Provisions.

All states were given 10 points and lost or retained points depending on their performance on each of the five criteria. The lack of a No-Aid Provision lost the state 10 points and gave it an automatic score of 0 on the 0-10 scale. All points on the scale were possible, although no states were given a score of 1 or 10, the lowest and highest scores available to states with No-Aid Provisions. An amendment that uses strident language, explicitly bans both direct and indirect aid and includes a long list of prohibitions would score 10. An amendment that explicitly targets only direct public

appropriations, uses placatory language, and includes both a qualifying statement supportive of religion and explicit exemptions would score 1.<sup>38</sup>

The 0-10 scaling is designed to capture relevant relative distances between stronger and weaker No-Aid Provision language. Each of the five dimensions captures one element of overall provision strength. The aim is to improve the validity of the measure by capturing several different elements that are used to assess the strength of written communications, both substantive and tonal. Inevitably individual interpretations will differ, but by utilizing ordinary understandings of tone and meaning the measure is more likely to capture differences of substantive interest than if it had used a technical criterion or one element alone. It is comprehensive. It is also less likely to commit Type 2 errors of classification. The five elements are not additive in the sense that they are all of one type; indeed, the content analysis was designed to capture several *different* elements of provision strength; but they are additive in the sense that everyday assessment of the strength of written communications is based upon an overall assessment that incorporates several diverse indicators.<sup>39</sup> Like all meaningful written documents No-Aid Provisions are multidimensional constructs, necessitating a multidimensional approach.

The fact that one cannot guarantee that the distance between 0 (No No-Aid Provision) and 1 (very weak No-Aid Provision) is the same as that between the other numbers makes it necessary to proceed with caution when using these scores as interval-level variables, but given that many state constitutions make reference to religion and a No-Aid Provision scoring 1 would include at least one exemption and qualification it is not unreasonable to treat them along a unidimensional scale.<sup>40</sup> An

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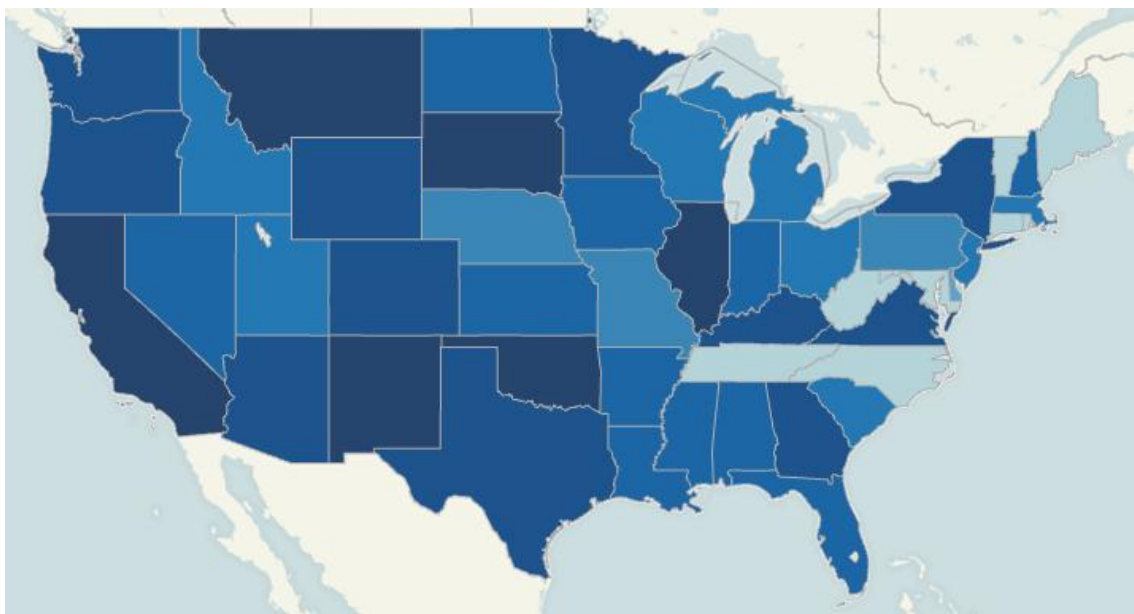
<sup>38</sup> The scoring tables for the No-Aid Provisions are available in the appendix in Table 5.1a.

<sup>39</sup> S Kiouisis, "Explicating Media Salience: A Factor Analysis of New York Times Issues Coverage During the 2000 U.S. Presidential Election," *Journal of Communication* 54, no. 1 (2004): 71-87.

<sup>40</sup> The appendix Table 5.2a lists state No-Aid Provisions with full scoring.

inter-code reliability test (ICRT) was conducted in order to test the validity of these scoring procedures, whereby four coders examined the same provisions independently. The average ICRT score was 83.5%, although the proportion of states coded in the same way as the original coding for Groups A, C and D was over 90% while the proportion coded similarly for Group B was between 60 and 70%. This outcome is expected since Group B involves more normative judgements about tone than merely defining or counting words. Figure 5.2 shows the distribution of No-Aid Provision strength for the first No-Aid Provision each state passed.

**Figure 5.2: No-Aid Provision Strength By State**



The weakest No-Aid Provisions, with scores of 2 and 3, are Nebraska, Delaware and Wisconsin. Montana and South Dakota are the strongest, scoring 9. The No-Aid Provision scoring in Table 5.1 reveals how some state amendments have changed over time.

**Table 5.1: States listed with No-Aid Provision scores**

AL	6	ME	0	NY (1938)	5
AK	5	MD	0	NC	0
AZ	7	MA (1855)	5	ND	6
AR (1868)	6	MA (1917)	7	OH	5
AR (1874)	0	MA (1974)	7	OK	8
CA	8	MI (1835)	5	OR	7
CO	7	MI (1850)	7	PA	4
CT	0	MI (1970)	8	RI	0
DE (1897)	3	MN	7	SC	5
DE (1967)	2	MS (1868)	6	SD	9
DC	8	MS (1890)	7	TN	0
FL	6	MO	4	TX	7
GA	7	MT	9	UT (1896)	5
HI	4	NE (1875)	4	UT (1986)	4
ID	5	NE (1976)	2	VT	0
IL	8	NV (1864)	6	VA	7
IN	6	NV (1880)	7	WA	7
IA	6	NH	6	WV	0
KS	6	NJ (1844)	5	WI (1848)	5
KY	7	NJ (1948)	0	WI (1967)	3
LA (1879)	6	NM	8	WI (1972)	3
LA (1975)	0	NY (1894)	7	WY	7

No-Aid Provisions in Michigan, Mississippi, Massachusetts and Nevada strengthened as new state constitutions or amendments to previous constitutions were passed. In Michigan the strengthening is particularly obvious as each subsequent state constitution builds upon the language of previous ones, from a score of 5 in 1835 to 7 in 1850 to 8 with the passage of an especially strong constitutional amendment in 1970.

Massachusetts rose from 6 to 8 between 1855 and 1917. Nevada and Mississippi rose from 6 to 7 between the 1860s and the 1890s.

In New York, Wisconsin and Delaware, by contrast, the No-Aid Provisions weakened with the passage of transportation exemptions, from a New York score of 7 in 1894 to 5 in 1938, a Wisconsin score of 5 in 1848 to 3 in 1967, and a Delaware score of 3 in 1897 to 2 in 1967. Nebraska passed an exemption for schools for the handicapped in 1976 and Utah added the word 'direct' to its prohibition of aid in 1986, reducing their No-Aid Provision strength scores to 2 and 4 respectively. Three of the states that currently do not have No-Aid Provisions: Arkansas, New Jersey and Louisiana, once had mid-ranking No-Aid Provisions with scores of 6 for Arkansas and Louisiana and 5 for New Jersey.

Most No-Aid Provisions strengthening occurred during the nineteenth century and the weakening and elimination of No-Aid Provisions has become more common over the twentieth century, as Table 5.2 on the following page shows.

**Table 5.2: No-Aid Provision introduction, change and elimination by decade**

<b>Decade</b>	<b>NEW</b>	<b>ACT</b>	<b>AVS</b>	<b>STR</b>	<b>WEA</b>	<b>ELIM</b>	<b>CTA</b>	<b>TOT</b>
Pre-1830	0	0	-	0	0	0	0	0
1830-39	1	1	5	0	0	0	1	1
1840-49	2	2	5	0	0	0	3	3
1850-59	6	7	6.1	1	0	0	10	9
1860-69	4	4	6	0	0	0	14	13
1870-79	10	11	5.9	0	0	1	24	22
1880-89	6	7	7.4	1	0	0	31	28
1890-99	8	9	6	1	0	0	40	36
1900-09	2	2	7.5	0	0	0	42	38
1910-19	2	3	7.7	1	0	0	45	40
1920-29	0	0	-	0	0	0	45	40
1930-39	0	1	5	0	1	0	46	40
1940-49	0	1	-	0	0	1	45	39
1950-59	2	2	4.5	0	0	0	47	41
1960-69	0	2	2.5	0	2	0	49	41
1970-79	0	4	5	1	1	1	49	40
1980-89	0	1	4	0	1	0	49	40
Post-1990	0	0	-	0	0	0	49	40

**Table Key**

NEW	New No-Aid Provision passed in decade
ACT	All No-Aid activity by decade
AVS	Average strength score of No-Aid Provisions passed in decade
STR	Number of No-Aid Provisions strengthened in decade
WEA	Number of No-Aid Provisions weakened in decade
ELIM	Number of No-Aid Provisions eliminated in new constitution passed in decade
CTA	Cumulative total of all new No-Aid Provisions passed and changes to No-Aid Provisions, both weakening and strengthening
TOT	Cumulative total of No-Aid Provisions excluding old No-Aid Provisions when superseded or eliminated. Does not include revisions to existing No-Aid Provisions

A failed Floridian ballot initiative in November 2012 was the latest of a series of challenges to No-Aid Provisions, the most famous of which was Justice Clarence Thomas's opinion in *Mitchell v Helms*. Justice Thomas argued that the exclusion of pervasively sectarian schools from aid programmes was a doctrine 'born of bigotry' that 'should be buried now'.<sup>41</sup> Many criticisms of No-Aid Provisions rest on a particular understanding of their birth. If No-Aid Provisions were created for bad reasons, claim the critics, their elimination should be welcomed. '...There has been a movement in certain states to go back to the origin of the Blaine Amendment and trying to work on state constitutions' said an interviewee from the National Catholic Education Association, 'they have not been successful yet but they're working on it in some of the states'.<sup>42</sup> Thus modern attempts to eliminate No-Aid Provisions cannot be comprehended without an understanding of their origins.

### **Explaining No-Aid Provision Strength**

To re-cap, historians have told three main stories about the origins of No-Aid Provisions: Republicans, Catholics and the West. The first is that Republican dominance of state offices encouraged the passage of No-Aid Provisions. The second is that anti-Catholic sentiment drove No-Aid Provision adoption. The third is that after the failure of the federal Blaine Amendment, Federal Enabling Acts mandated 'Baby Blaine' adoption for Western states. The third story must be true because these states could not be admitted to the Union without a No-Aid Provision in the new state constitution, but it is a far more contestable proposition that the bald requirement to adopt a state No-Aid Provision *also* encouraged the adoption of stronger No-Aid

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<sup>41</sup> Thomas, *Mitchell v Helms*, 530 U.S. 793, 6 (2000), 530:6.

<sup>42</sup> Dale McDonald, Director of Public Policy and Education Research for the National Catholic Education Association, March 14, 2012, 6.

Provisions. It is possible that there was resentment from new Western states (particularly those such as Utah whose statehood efforts had previously been rebuffed) at lengthy Enabling Act requirements created by the federal Congress, an attitude conducive to the weakening of the subsequent state No-Aid Provision. The three hypotheses are as follows:

*H1: Republican control of state offices at the time of No-Aid Provision passage increases No-Aid Provision strength*

Using Dubin's year-by-year summary of historical partisan affiliations in state legislatures, data on the proportions of Republican seats in each house of the state legislature were combined with data on Republican control of state governorships to yield a full picture of partisan control in each state at the time of No-Aid Provision passage.<sup>43</sup> For states whose first constitution contained a No-Aid Provision, the party that first took control of the state offices after the creation of the state was used. Where No-Aid Provision passage occurred in an election year, this variable refers to the party in control at the time of provision passage.

*H2: A large Catholic presence as a proportion of the state population increases No-Aid Provision strength.*

Since individual religious identification questions were not asked by census-takers until 1890, historians have found gathering data about early religious

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<sup>43</sup> M.J. Dubin, *Party Affiliations in the State Legislatures: A Year By Year Summary, 1796-2006* (Jefferson, North Carolina and London: McFarland and Company, Inc, 2007).

populations challenging.<sup>44</sup> Between 1850 and 1946 census-gatherers counted church edifices and organizations, their total seating capacity or “aggregate accommodations” and the total value of the church-owned assets for each denomination.<sup>45</sup> From 1890 these church-census questions were asked alongside individual religious identification questions, so a Cronbach Alpha test was conducted for 1890 data to find the church-level measure that was most consistent with the measure of the Catholic population. Table 5.3 shows the results for the internal consistency of scales consisting in the proportion of the population that was Catholic and the proportion of total edifices, organizations, seating capacity and property value belonging to the Catholic Church in each state.

**Table 5.3: Cronbach’s Alpha results for 1890: Level of consistency between church-level measures and the proportion of Catholics in the state population**

<b>Indicator of Catholic population for 1890</b>	<b>Cronbach’s Alpha</b>
Catholic church organizations	0.77
Catholic church edifices	0.77
Total seating capacity of Catholic churches	0.84
Total value of Catholic church property	0.69

The best Cronbach’s Alpha result, 0.84, of the four church census categories prior to 1890 was for Catholic Church seating capacity. This high level of consistency offers reasonable confidence in the estimation of Catholic population. For each state, the

<sup>44</sup> Finke and Stark, *The Churching of America, 1776-1990: Winners and Losers in Our Religious Economy*.

<sup>45</sup> The Association of Religion Data Archives, “The Data Were Downloaded from the Association of Religion Data Archives, www.TheARDA.com, and Were Collected by the Department of the Interior, Census Office,” n.d., accessed February 15, 2012.

closest census data to the date on which the No-Aid Provision was passed was used. For the majority of states, where No-Aid Provisions were passed prior to 1890, total Catholic seating capacity was calculated as a proportion of the total seating capacity of the churches of all religious denominations in the state. This measure was used as a proxy for the proportion of Catholics in the state.

One possible difficulty is that endogeneity might be expected between the proportion of Catholics in a state's population and the strength of its No-Aid Provision. A weaker No-Aid Provision might be proposed because Catholics arrive in the state or Catholics might arrive in the state because the state has a weaker No-Aid Provision. This investigation copes with possible endogeneity by using the census datum for the closest year to No-Aid Provision passage and where there is a choice, the date immediately before rather than after the Provision passage. Since the cause must occur before the effect, such procedures help mitigate endogeneity concerns.

### *H3: The requirements of the Federal Enabling Acts increase No-Aid Provision strength*

A dummy variable for states subject to Federal Enabling Acts is also tested against the No-Aid Provision strength score. Although it is possible that Federal Enabling Act requirements might either increase No-Aid Provision strength by encouraging states to adopt strongly worded statements, or increase resentment and thereby decrease No-Aid Provision strength, one might think states controlled by Democrats would react differently to states controlled by Republicans. If historians are right to suggest that partisanship matters and the No-Aid Provisions were overwhelmingly Republican, then it is possible that where Enabling Acts mandated No-Aid Provisions, Republican states enacted stronger ones while Democratic states

enacted weaker ones. Of the four Federal Congresses who passed these nine Enabling Acts, the 51<sup>st</sup>, 59<sup>th</sup> and 61<sup>st</sup> all had unified Republican control and only one, the 53<sup>rd</sup> Congress, 1893-5, was controlled by Democrats. An interaction term is included in the regression between the partisanship and Federal Enabling Act variables.

### **Some Caveats**

Since there are only fifty-one cases in the dataset, efforts were made to avoid degrees of freedom problems but all results should be treated with caution nevertheless. The N must remain low because it contains the full universe of cases, that is, the first No-Aid Provision each state adopted. The unit of analysis is state-year, which means that all data relate to the year of original No-Aid Provision passage in each state. Changes to No-Aid Provisions are so infrequent and few in number that the time series analysis option was rejected. Clarke's trenchant criticisms of the inclusion of excessive controls to forestall omitted variable bias are relevant here because the broad historical spread necessitates selection of only a limited number of all potential control variables for inclusion in the model.<sup>46</sup> Coupled with potential degrees of freedom problems, the danger of introducing further inefficiency and bias required that the models be fairly narrowly specified.<sup>47</sup> Region, for instance, was not included as a control variable because its inclusion would signify a causal significance, a kind of mystical exceptionalism, which obscures rather than illuminates.

For the eight states that have never adopted a No-Aid Provision and are coded 0: Tennessee, Connecticut, North Carolina, Maine, Maryland, Rhode Island, West Virginia

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<sup>46</sup> K.A. Clarke, "The Phantom Menace: Omitted Variable Bias in Econometric Research," *Conflict Management and Peace Science* 22, no. 4 (2005).

<sup>47</sup> L.F. Lee, "Specification Error in Multinomial Logit Models: Analysis of the Omitted Variable Bias," *Journal of Econometrics* 20, no. 2 (November 1982): 197-209.

and Vermont, all relevant data that is tied to No-Aid Provision passage were approximated to the closest possible date for these states. For those states that adopted a new constitution during the time that new No-Aid Provisions were being passed in other states (1835-1959), the year of this constitution was taken as the relevant date for partisan and religious information: Maryland (1867), Rhode Island (1843), Tennessee (1870), North Carolina (1868) and West Virginia (1872). For 0 states whose constitutions were passed either before 1835 or after 1959: Connecticut (whose two constitutions were passed in 1638 and 1965), Maine (1820) and Vermont (1793), the year 1875 was taken as the relevant year since it is the middle of the decade in which the federal Blaine Amendment failed and the largest number of No-Aid Provisions were passed. This measure is imperfect, both as a result of such data problems and the difficulty of treating states without a No-Aid Provision similarly to those with one. However, by running models under multiple specifications, with and without the cases coded 0, the analysis differentiates between factors affecting No-Aid Provision *adoption* and factors affecting their *strength*, as shown in Tables 5.4 and 5.5 in the next section.

## **Results**

The evidence suggests that credence should be given to at least two of these hypotheses but the relationship between Republicans, Catholics and the West and the strength of No-Aid Provisions is more complex than has been suggested by some scholars. The following tables report ordinary least-squares linear regression results with robust standard errors.

**Table 5.4: Multivariate linear regression for No-Aid Provision strength, with robust standard errors and unstandardized coefficients**

Variable	Model					
	1.1	1.2	1.3	1.4	1.5	1.6
Proportion of Catholics in state	0.058***	0.054***	0.052***	0.054***	0.055***	0.058***
Federal Enabling Act		2.198***	1.997***	2.113***	2.110***	1.038
Republican Governorship			0.504	0.560	-0.569	-1.154
Republican control of legislature				-0.348	-1.903	-1.806
Governor*Legislature					2.651	3.532**
Federal Enabling Act*Democratic control of an office						3.091
Constant	4.439***	4.096***	3.901***	3.933***	4.189***	4.051***
	N: 50	N: 50	N: 50	N: 50	N: 50	N: 50
	R <sup>2</sup> : 0.09	R <sup>2</sup> : 0.20	R <sup>2</sup> : 0.21	R <sup>2</sup> : 0.22	R <sup>2</sup> : 0.26	R <sup>2</sup> : 0.30

\* p<0.1, \*\* p<0.05, \*\*\* p< 0.01

**Table 5.5: Multivariate linear regression for No-Aid Provision strength with robust standard errors and unstandardized coefficients, excluding states without a No-Aid Provision**

Variable	Model					
	2.1	2.2	2.3	2.4	2.5	2.6
Proportion of Catholics in state	0.022**	0.022**	0.020**	0.021**	0.021**	0.025***
Federal Enabling Act		1.163**	1.043*	1.174**	1.175**	0.278
Republican Governorship			0.310	-0.035	-0.112	-0.731
Republican control of legislature				0.320	0.159	0.240
Governor*Legislature					0.234	1.139
Federal Enabling Act*Democratic control of an office						2.648**
Constant	5.861***	5.622***	5.500***	5.441***	5.456***	5.309***
	N: 43	N: 43	N: 43	N: 42	N: 42	N:42
	R <sup>2</sup> : 0.05	R <sup>2</sup> : 0.17	R <sup>2</sup> : 0.18	R <sup>2</sup> : 0.21	R <sup>2</sup> : 0.21	R <sup>2</sup> : 0.34

\* p<0.1, \*\* p<0.05, \*\*\* p< 0.01

Table 5.4 shows the model building (1.1-1.6) from univariate to multivariate analysis using all cases, including states which have never passed a No-Aid Provision. Table 5.5 shows the same process (2.1-2.6) excluding such states. In both cases the proportion of Catholics in the population and the presence of Federal Enabling Act requirements increase No-Aid Provision strength, but the results for partisan control of the state offices are not significant. Including cases with no No-Aid Provisions, the proportion of Catholics in a state's population at the time of No-Aid Provision passage increases the strength of the No-Aid Provision adopted by 0.05 on the 0-10 scale for every percentage increase in Catholics. To illustrate: for states subject to Federal Enabling Act requirements, those with a population that is 20% Catholic are expected to have an NAP strength score of 7. States that are 40% Catholic are expected to have an NAP strength score of 8. For states without Federal Enabling Act requirements, the respective scores are 5 for states that are 20% Catholic and 6 for states that are 40% Catholic.

Contrary to the suggestion that the demands of the Federal Enabling Acts engendered resentment and laxer compliance with the No-Aid Provision requirements, the obligation for territories entering the Union to adopt a No-Aid Provision as part of their first constitution not only caused all aspirant states to adopt such provisions, but to adopt stronger ones by a factor of more than two points on the 0-10 scale, according to Models 1.5 and 2.5. Where states without No-Aid Provisions are excluded the coefficient is slightly smaller but the effect is the same: Catholics and Federal Enabling Act requirements increase No-Aid Provision strength.

When further interaction effects are considered in Models 1.6 and 2.6 some interesting partisan effects emerge. To make interpretation easier, the dummy for Republican control of all state offices was reversed in the last line of Models 1.6 and 2.6

to show the effect of Democratic control of at least one state office. This coefficient is simply the reverse of the coefficient for the Republican control of all state offices dummy; the sign is inverted. Controlling for the interaction between the Federal Enabling Act dummy and the reverse of the dummy for Republican control of all state offices, Model 1.6 in Table 5.4 shows an increase of 3.5 points on the No-Aid Provision strength scale associated with Republican control of all state offices. Moreover, Model 2.6 in Table 5.5 displays a three-point increase in No-Aid Provision strength (excluding states without a No-Aid Provision) where a Federal Enabling Act requirement is combined with at least one of the state offices (Governor, Upper and Lower House) under Democratic control. This puzzling result suggests that, contrary to the resentment-theory, Democratic states were prompted by Federal Enabling Act requirements to increase the strength of their No-Aid Provision. The explanation might be that since Republican control already increases No-Aid Provision strength, it is for Democratic states that the Federal Enabling Act strictures were most effective in raising No-Aid Provision strength.

## **Conclusion**

Apart from the creation of the first quantitative No-Aid Provision strength scale, this chapter has several further advantages over the existing accounts of No-Aid Provisions: effect magnitude and adjudication. The study does not merely confirm the findings of the historical literature: it demonstrates for the first time the magnitude of the effects of commonly cited factors (partisanship, Catholic population and Enabling Act requirements) on No-Aid Provision strength. It also adjudicates between competing explanations for No-Aid Provision strength and adoption: Enabling Act strictures and

Catholic populations increase No-Aid Provision strength. The presence of an Enabling Act has roughly the effect of a forty-percentage increase in Catholic population as a proportion of the total population, since each adds an average treatment effect of two points on the 0-10 No-Aid Provision strength scale.

There is insufficient evidence to reject the null hypothesis for the Republican partisanship variable when controlling merely for Catholic population and Enabling Acts. But when interaction terms are added, a move not made explicitly by the existing historical accounts, Republican control of state offices increases No-Aid Provision strength. States under Democratic control also increase No-Aid Provision strength when forced to adopt a No-Aid Provision by a Federal Enabling Act. This chapter establishes the importance of Republicans, Catholics and the West in the creation of No-Aid Provisions. The new scale of No-Aid Provision strength can be used to conduct meaningful investigation about the causes and consequences of No-Aid Provision adoption. Such investigations have ramifications for all citizens, whether they are members of religious groups, educators, parents or simply tax-payers, because they affect our understanding of the appropriate role of religion in public life and the degree to which religious organizations should benefit from tax-payer funds.

The construction of a No-Aid Provision strength scale not only facilitates investigation of the creation of No-Aid Provisions but also their amendment and repeal. In November 2012 Florida's citizens rejected Ballot Initiative 8, a proposal to eliminate the Floridian No-Aid language and replace it with 'No individual or entity may be discriminated against or barred from receiving funding on the basis of religious identity or belief'.<sup>1</sup> Just as this analysis shows for the origins of No-Aid Provisions, Catholics

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<sup>1</sup> Florida Department of State, Division of Elections, "Religious Freedom Ballot Initiative," n.d., <http://election.dos.state.fl.us/initiatives/initdetail.asp?account=10&seqnum=86>; Plakon and Precourt, *CS/HJR 1471 Religious Freedom*, CS/HJR, 2011.

were prominent amongst those petitioning for No-Aid Provision elimination.<sup>2</sup> However Republicans were also amongst those calling for repeal of the No-Aid Provision which, as this chapter reveals, is an historical *volte-face*.

With the failure of the Florida initiative, the number of states that have weakened or eliminated their No-Aid Provisions stands currently at seven but the Florida initiative will not be the last such attempt. Garnett argues ‘these provisions should be confronted not only as historical artefacts, as evidence of long-dead biases, or as the latest hurdles in voucher related litigation. Instead, they should be engaged as moves in important and on-going arguments about faith, authority, and democracy’.<sup>3</sup> In the current polarized political climate, interest groups use state legal provisions to lobby for major educational reforms and there is heightened pressure on constitutional provisions on religious freedom and aid for religious organizations. This timely investigation of No-Aid Provision strength is vital for scholarly engagement with the turbulent politics of the church-state boundary. In the following chapter, Chapter 6, this No-Aid Provision strength scale is used to test whether No-Aid Provisions are effective barriers to the creation of aid programmes for children at private religious schools.

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<sup>2</sup> L Alvarez, “Voters in Florida Are Set to Weigh In on Two Contentious Ballot Questions,” *The New York Times*, October 6, 2012, sec. U.S., <http://www.nytimes.com/2012/10/07/us/floridians-face-initiatives-on-abortion-and-church-and-state.html>.

<sup>3</sup> Garnett, “The Theology of the Blaine Amendments,” 71.

## **Chapter 6: No-Aid Provisions and aid for children at private religious schools**

In Chapter 5 state No-Aid Provisions were subjected to content analysis, categorized according to the stridency of the language, and used as a dependent variable to determine the conditions under which stronger and weaker No-Aid Provisions are adopted. In this chapter the No-Aid Provision strength index is used as an explanatory condition in investigation of modern-day patterns of aid for children at private religious schools. The hypotheses, drawn from the religion and politics literature in Chapter 2, are:

*H1a: Strong No-Aid Provisions act as a barrier to aid for children at private religious schools*

*H1b: Weak No-Aid Provisions encourage greater levels of aid for children at private religious schools.*

Such hypotheses have some support from scholarly literature. There is widespread scholarly agreement about the ability of legal provisions in state constitutions to affect public policy; for example, Fusarelli documents the way anti-voucher coalitions use state constitutional references to the separation of church and state in order to block voucher plans.<sup>1</sup> Cauthen argues that, although the effect has been reduced after the *Everson* decision, the presence of a No-Aid Provision increases the likelihood that

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<sup>1</sup> Fusarelli, *The Political Dynamics of School Choice: Negotiating Contested Terrain*; Peterson and Campbell, *Charters, Vouchers, and Public Education*; Bybee and Newton, "Of Orphans and Vouchers: Nevada's 'Little Blaine Amendment' and the Future of Religious Participation in Public Programs."

private school transportation will be struck down.<sup>2</sup> Choice advocates such as the Milton Friedman Foundation list state No-Aid Provisions in their legislative information booklets as possible barriers to the dissemination of educational vouchers and tax credits. For instance, in their guide for legislators the Institute for Justice and the American Legislative Exchange Council assert:<sup>3</sup> ‘After the U.S. Supreme Court eliminated the federal Establishment Clause as a potential barrier to school choice in 2002, opponents were left with state constitutions as their only avenue for attacking school choice programs’.<sup>4</sup>

Given that the issue of state aid to children at private religious schools is contentious and difficult for politicians to handle, it is reasonable to suggest that the generosity of state support for children at private religious schools is decided in the judicial and constitutional, rather than legislative or executive, arena. Strident language, explicit prohibition of direct and indirect aid and lengthy lists of bans offer judges constitutional ground to strike down programmes of aid for religious school students. Weak and placatory language, prohibition only of direct aid and official exemptions provide judges with constitutional ground to uphold such programmes.

The Institute for Justice guide goes on to say, however, that ‘Neither voucher nor tax credit programs involve the kinds of special grants to private religious schools that Blaine Amendments sought to prohibit’.<sup>5</sup> Since the 1930 Supreme Court *Cochran* case involving textbooks for religious school students, judges at both state and federal level have used ‘child benefit’ theory (CBT) to uphold aid to children at private

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<sup>2</sup> J.N.G. Cauthen, “State Constitutions and Challenges to Nonpublic School Transportation Programs,” *Journal of Church and State* (March 2012).

<sup>3</sup> The Institute for Justice is a non-profit libertarian public interest law firm, and the American Legislative Exchange Council is an organization campaigning for limited government and free markets. Both organizations support school choice.

<sup>4</sup> The Institute for Justice and The American Legislative Exchange Council, “School Choice and State Constitutions: A Guide to Designing School Choice Programs,” April 2007, <http://www.alec.org/docs/IJ-ALEC-school-choice.pdf>.

<sup>5</sup> *Ibid.*

religious schools, No-Aid Provisions notwithstanding. According to CBT, funding that is provided for the child and not directly for the school does not constitute a violation of the separation of church and state because the religious institution benefits only indirectly. On this view direct taxpayer funding of religious school tuition is unconstitutional but providing vouchers, tax credits, transportation, equipment or food services to children at those schools is not. These considerations suggest that H1a and H1b should be rejected. If CBT is believed and supported by policymakers and judges then there is unlikely to be a connection between No-Aid Provision strength and the levels of state support for religious school students:

*H0: There is no connection between No-Aid Provision strength and the level of state support for children at private religious schools*

The first part of this chapter tests these two competing understandings of the effectiveness of No-Aid Provisions in prohibiting aid to children at private religious schools. Using fsQCA it finds no connection between the stringency of a state No-Aid Provision and the state's generosity to children at private religious schools. The second part of the chapter explains why No-Aid Provisions are not effective barriers to aid for religious school students, using archival material and interviews with state policymakers and faith groups across the six case-study states. No-Aid Provisions are ineffective because they are poorly understood by most elites, interpretable in multitudinous ways by judges, and surmountable by Child Benefit Theory. Today they have mere symbolic significance, so the null hypothesis cannot be rejected. Constitutional language cannot be held responsible for retarding or advancing state support of religious school students. Blaine cannot be blamed, for these policies at least.

## **Constitutional...But No Political Support?**

In his 2007 paper Forman ascribed what he took to be the slow political adoption of school vouchers to a lack of political support despite the favourable US Supreme Court decision *Zelman v Simmons-Harris*. His view is that the switching of voucher advocacy – from ‘value’ to ‘racial justice’ claims – and the rise of the accountability movement hurt the vouchers cause. ‘This combination of circumstances’ he writes, ‘has led to a modern voucher movement that has received constitutional approval, but may lack the necessary political support to thrive’.<sup>6</sup> As of the end of 2012, Forman’s early pessimism about the voucher movement has been superseded by a burst of new programmes, but his point about constitutions and policy remains. There are many factors that muddy the relationship between constitutional language and policy outcomes. The connection between them is neither necessary nor straightforward. Even if a policy is allowable under the terms of a constitutional document, political will is required to pass the relevant legislation and implement it. Funds must be appropriated and regulations approved. Moreover, constitutional language, which is often complex and antiquated, is interpreted by modern state and federal judges who may have very different ideological leanings in different contexts and according to the partisan affiliation of the electorate or governor who selected them.

This view of judicial behaviour, which may loosely be termed ‘behaviouralism’, is at odds with the ‘constitutionalist’ understanding of judicial decision-making that posits a relatively straightforward, predictable path between constitutional language and judicial decisions. Wolf *et al* argued recently that since No-Aid Provisions do not seem to be related to the passage of private school choice programmes (tax credit or voucher

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<sup>6</sup> J Forman, “The Rise and Fall of School Vouchers: A Story of Religion, Race, and Politics,” *UCLA L. Rev.* 54, Yale Law School Faculty Scholarship Series (2007): 553.

schemes) the constitutionalist understanding of judicial behaviour must be flawed. They suggest that ‘whether or not a private school choice program enacted by a state legislature is judged to be constitutional appears to depend more upon the political ideology of the justices doing the judging than on the restrictiveness of the state constitution in question’.<sup>7</sup> This finding suggests that the null hypothesis cannot be rejected here. Chapter 8 investigates the relationship between partisanship and aid for children at private religious schools.

Cauthen points to further judicial factors that complicate the relationship between constitutional language and policy outcomes in matters of church and state. In the 1947 *Everson* decision the US Supreme Court applied the First Amendment to the states for the first time, via the Fourteenth Amendment.<sup>8</sup> This critical juncture ‘locked in’ a judicial precedent for subsequent state and federal courts. ‘After this incorporation’, Cauthen writes, ‘a state court addressing a constitutional challenge to a state program supporting religious institutions can use the federal Establishment Clause or the state constitution to resolve the claim before it’.<sup>9</sup> Thus even in states with a strong No-Aid Provision, courts can choose to ignore it and decide its cases using the relatively mild language of the Establishment and Free Exercise clauses. This has occurred several times in response to transportation aid challenges. Indeed, Cauthen argues that:

‘After a federal constitutional protection is applied against the states, state courts tend to decide civil liberties cases using the federal constitution instead of their own state constitution, explained in part by the availability of federal precedent to resolve constitutional disputes’.<sup>10</sup>

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<sup>7</sup> P.J. Wolf, R.D. Komer, and M.Q. McShane, “Blaine It on Politics: The (Non-) Effect of Anti-Aid Amendments on Private School Choice Programs in the U.S. States,” in *Religion and School Choice* (presented at the 2nd Annual School Choice and Reform Conference, Fort Lauderdale, FL, 2013).

<sup>8</sup> *Everson v Board of Education of the Township of Ewing*, 330 U.S. 1 (Supreme Court 1947).

<sup>9</sup> Cauthen, “State Constitutions and Challenges to Nonpublic School Transportation Programs,” 14.

<sup>10</sup> *Ibid.*

The connection between No-Aid Provision language and aid outcomes is further complicated by alternative bases for legal challenges in many state constitutions: compelled support clauses, which prevent the levying of taxes to support an established church, and no-preference clauses, which ensure the state does not favour or hinder any particular religion. Even if a state has a weak No-Aid Provision, challenges to aid programmes can be made on the basis of other constitutional language. Much of the scholarly literature seems to support the null hypothesis.

### **No-Aid Provisions and Legal Context**

Five of the six case study states currently have a No-Aid Provision in their state constitution and the sixth, Louisiana, once had such a provision but repealed it in 1973. The provisions range widely in strength. No-Aid Provisions in California and Illinois score 8 on the scale of No-Aid Provision stringency, Florida 6, New York 5 and Utah 4. Louisiana's 1879 No-Aid Provision had a strength score of 6. Aside from Louisiana's elimination of its No-Aid Provision, two states have weakened theirs: New York, which went from a score of 7 when first enacted in the state's 1894 fourth constitution, to 5 in 1938 with the passage of an explicit transportation exemption; and Utah, which went from a score of 5 in 1896 under the state's first and only constitution, to 4 in 1986 with the insertion of the word 'direct' by the Utah Constitutional Revision Commission to its prohibition of aid to private religious schools. In 1968 the New York Constitutional Convention voted to repeal the state's No-Aid Provision in what was described as 'the most emotionally charged issue of the convention'.<sup>11</sup> But the repeal failed the voters' ratification process and the No-Aid Provision survived. A ballot initiative in November

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<sup>11</sup> Cauthen, "State Constitutions and Challenges to Nonpublic School Transportation Programs."

2012 proposed to eliminate the Florida No-Aid Provision and replace it with an explicit anti-discrimination provision, but was also defeated by voters by a margin of fifty-six to forty-four percent. In some states, the No-Aid Provision was adopted in the most recent form of the state constitution and retains the same wording today, as in Florida (1885, fourth state constitution), California (1880, second constitution) and Illinois (1870, third constitution).

All cases have a mixed legal history on the subject of aid to children at private K-12 and higher education religious schools. The subject of this thesis is K-12. Opportunities for transformative change at critical junctures are relatively infrequent, but can have lasting consequences when they are ‘locked in’. By ‘locked in’, scholars of critical junctures mean decisions that are relatively difficult to alter subsequently, in this case through the application of judicial precedent. In California, transportation for students at private religious schools was found constitutional in 1946 but in 1981 the Court found that textbook loans to such children violate the California No-Aid Provision.<sup>12</sup> At the time of writing an appeal is pending on a 2004 decision, which held that the provision of tax exempt bonds for religious schools violates the state No-Aid Provision.<sup>13</sup>

Legal cases in Florida have focused more on the use of public school facilities by religious groups and for religious exercises than on financial aid to private religious schools, but there have been two Florida Supreme Court cases on the subject.<sup>14</sup> In *Scavella v School Board*, a law capping state reimbursements for special needs

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<sup>12</sup> *Bowker v Baker*, 73 Cal. App. 2d 653 (1946); *California Teachers Association v Riles*, 29 Cal. 3d 794 (Supreme Court of California 1981).

<sup>13</sup> *California Statewide Communities Development Authority v All Persons Interested*, 14 Cal. Rptr. 3d 811 (2004).

<sup>14</sup> *Fenske v Coddington*, 57 So. 2d. 452 (1952); *Southside Estates Baptist Church v Board of Trustees*, 115 So. 2d. 697 (1959).

equipment to disabled children at private religious schools was found constitutional.<sup>15</sup> More recently the *Bush v Holmes* decision of the 1<sup>st</sup> District Court of Appeal found that the Florida Opportunity Scholarship launched in 1999 violated the state No-Aid Provision but on appeal the Florida Supreme Court struck down the Scholarship on the grounds that it violate the state's obligation to provide a uniform education rather than that it violated the No-Aid Provision.<sup>16</sup> The Floridian Supreme Court never reached the religion question on this occasion but treated it only under the education section of the constitution.

The Illinois Supreme Court has found several types of aid constitutional: public funding for child-care at religious institutions in 1918, tax exempt bonds for religious institutions in 1972, transportation in 1973, and the educational expenses tax credit in 2001.<sup>17</sup> However in the 1973 case *Klinger v Howlett* the Court found tuition grants to students at private elementary schools violates the Illinois No-Aid Provision.<sup>18</sup>

In 1930 the US Supreme Court affirmed the Louisiana free textbook law on child-benefit grounds.<sup>19</sup> A critical juncture, this was the first use of such a justification in providing aid to children at private religious schools. Chief Justice Hughes, delivering the majority opinion, stated that '[The law's] interest is education, broadly; its method, comprehensive. Individual interests are aided only as the common interest is safeguarded'. Hence textbook loans for children at private religious schools is a well-established principle in Louisiana and unlikely to be overturned. It has been robust in the face of constitutional changes. The principle of free textbook loans to non-public

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<sup>15</sup> Scavella v School Board of Dade County, 363 So. 2d 1095 (1978).

<sup>16</sup> Bush v Holmes, 886 So. 2d. 340 (2006).

<sup>17</sup> Board of Education v Bakalis, 299 N.E.2d. 737 (Ill. 1973); Cercle v Illinois Educational Facilities Authority, 288 N.E.2d 399 (Ill. 1972); Trost v Ketteler Manual Training School, 118 N.E. 743 (Ill. 1918); Toney v Bower, 744 N.E.2d 351 (Ill. App. 4th Dist. 2001); Griffith v Bower, 747 N.E.2d 423 (Ill. App. 5th Dist. 2001).

<sup>18</sup> People ex rel. Klinger v Howlett, 305 N.E.2d 129 (Ill. 1973).

<sup>19</sup> Cochran v Louisiana State Board of Education, 281 U.S. 370 (Supreme Court 1930).

school children in Louisiana predated by nearly fifty years the removal of the Louisiana state No-Aid Provision.

During the 1970s there were several court cases in Louisiana that ruled on the constitutionality of aid to *de jure* segregated private schools, some religious.<sup>20</sup> In 1975 a United States District Court found that the Louisiana State Department of Education should not provide books, school material, and funds for student transportation to students attending all-white, segregated private schools that officially refused to admit black children.<sup>21</sup> The suit also requested that state statutes providing for such assistance to private schools be declared unconstitutional as violative of the Equal Protection Clause of the Fourteenth Amendment. A 1970 judgement struck down a law allowing the Superintendent of Public Education to purchase secular educational services from non-public school teachers (including those at religious schools) to be performed at non-public schools with public funds. In *Seegers v Parker* the Louisiana Supreme Court found the law unconstitutional on the basis of Article I Section 4, Article IV Section 8, and Article XII Section 13, of the Louisiana Constitution of 1921.<sup>22</sup> Article XII, Section 13 was the latest iteration of the Louisianan No-Aid Provision. It is possible that the *Seegers* case gave impetus to the decision to remove the No-Aid Provision from the constitution entirely at the state constitutional convention in 1973.

In New York State the No-Aid Provision was tested early, in the 1904 case *Sargent v Board of Education*.<sup>23</sup> The New York Supreme Court ruled that the provision of public funds for Catholic nuns to educate orphan children did not violate the New York No-Aid Provision. During the 1920s and 30s the Court took a different approach, holding in *Smith v Donahue* and *Judd v Board of Education* that the provision of

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<sup>20</sup> *Goldsboro Christian Schools, Inc. v United States*, 436 F. Supp. 1314 (E.D.N.C. 1977); *Bob Jones University v United States*, 468 F. Supp. 890 (D.S.C. 1979).

<sup>21</sup> *Brumfield v Dodd*, 405 F. Supp. 338 (1975).

<sup>22</sup> *Seegers v Parker*, 241 So.2d 213 (Supreme Court of Louisiana 1970).

<sup>23</sup> *Sargent v Board of Education of Rochester*, 177 N.Y. 317 (1904).

textbooks and transportation respectively to private religious school children did violate the New York No-Aid Provision.<sup>24</sup> The latter decision precipitated a move by the state legislature to amend the No-Aid Provision explicitly so as to allow transportation to children at religious schools. The amendment was passed by the Constitutional Convention of 1938, weakening the No-Aid Provision from a score of 7 to 5 and rendering the Supreme Court judgement redundant. The legislative action presaged a period during which the No-Aid Provision was interpreted more sympathetically to religious schools. In *Board of Education v Allen* the US Supreme Court found that textbook loans for children at private religious schools was constitutional under the 1<sup>st</sup> Amendment of the federal constitution, thereby overruling the *Smith v Donahue* decision of the New York court.<sup>25</sup> The New York Supreme Court found in 1974 that the state-funded provision of a translator for a deaf child at a private religious school was permissible under the New York No-Aid Provision.<sup>26</sup> In 2006 that court found that local school boards must provide nursing services to children at private schools.<sup>27</sup>

In contrast to the other five states, Utah has no body of case law related to aid for children at private religious schools. Indeed, the Utah Supreme Court has rarely touched upon separation of church and state issues, a fact which makes still less explicable the decision of the 1986 Constitutional Revision Commission to insert the word ‘direct’ before the word ‘aid’ in its prohibition of aid to religious schools. The following pages display a time-line that summarizes the most important legal and constitutional changes in each of the six case study states. It is divided into two columns: the left displays potential or actual barriers to aid; the right displays the removal of such barriers and the affirmation of aid programmes. It is clear from this

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<sup>24</sup> *Smith v Donahue*, 195 N.Y.S 715 (1922); *Judd et al. v Board of Education*, 15 N.E. (2d) 576 (1938).

<sup>25</sup> *Board of Education v Allen*, 392 U.S. 236 (Supreme Court 1968).

<sup>26</sup> *Greve v Board of Education*, 351 N.Y.S.2d 715 (1974).

<sup>27</sup> *Matter of Richard K v Petrone*, 31 AD3d 181 (2006).

time-line that the case law, legal and constitutional context in each of the six case study states is extensive, complex and approximately evenly distributed between the creation and removal of barriers to aid. The line between church and state is not clear in the case of aid for children at private religious schools.

## Legal and Constitutional Case Study Timeline

### Creation of potential/actual aid barriers

1870: Illinois adopts a No-Aid Provision (score 8) in its third state constitution

1879: Louisiana adopts a No-Aid Provision (score 6) in its seventh state constitution

1880: California adopts a No-Aid Provision (score 8) in its second state constitution

1885: Florida adopts a No-Aid Provision (score 6) in its fourth state constitution

1894: New York adopts a No-Aid Provision (score 7) in its fourth state constitution

1896: Utah adopts a No-Aid Provision (score 5) in its first state constitution

1922: New York Supreme Court finds financial support for textbooks for private school students unconstitutional in *Smith v Donahue*

1938: New York Supreme Court finds financial support for transportation for private school students unconstitutional in *Judd v Board of Education*

1968: New York Constitutional Convention votes to remove the No-Aid Provision but the decision is not approved by voters

1970: Louisiana Supreme Court finds law allowing Superintendent of Public Education to purchase secular education services from non-public school teachers unconstitutional in *Seegers v Parker*

### Removal of barriers/affirmation of aid

1904: New York Supreme Court finds public funding for Catholic nuns to educate orphan children does not violate the No-Aid Provision in *Sargent v Board of Education*

1918: Illinois Supreme Court finds public funding for child-care at religious institutions constitutional in *Trost v Ketteler Manual Training School*

1930: US Supreme Court finds Louisiana free textbook law constitutional on child-benefit grounds in *Cochran v Louisiana State Board of Education*

1938: New York Constitutional Convention adds a transportation exemption to the No-Aid Provision (score 5)

1946: Californian Supreme Court finds publicly-funded private school student transportation constitutional in *Bowker v Baker*

1968: US Supreme Court finds New York textbook loans constitutional under First Amendment in *Board of Education v Allen*, thereby overruling *Smith v Donahue*

1972: Illinois Supreme Court finds tax exempt bonds for religious institutions constitutional in *Cercle v Illinois Educational Facilities Authority*

1973: Illinois Supreme Court finds tuition grants to students at private elementary schools violates the No-Aid Provision in *Klinger v Howlett*

1975: US District Court finds equipment, textbooks and transportation aid to all-white segregated private schools in Louisiana is unconstitutional in *Brumfield v Dodd*

1978: Florida Supreme Court finds law capping state reimbursements for special needs equipment for disabled children at private religious schools constitutional in *Scavella v School Board*

1981: Californian Supreme Court finds publicly-funded textbook loans for private school students unconstitutional in *California Teachers Association v Riles*

2004: First District Court of Appeal finds Florida's Opportunity Scholarship unconstitutional on No-Aid Provision grounds in *Bush v Holmes*. Decision is appealed

2006: Florida Supreme Court finds Florida's Opportunity Scholarship unconstitutional on educational uniformity grounds in *Bush v Holmes* appeal. Does not reach the religion question.

2012: Ballot Initiative 8 in Florida proposes to remove the No-Aid Provision and replace it with anti-discrimination language. Requires a supermajority (60%) to pass. Defeated by voters 56-44%

1973: Louisianan Constitutional Convention removes the No-Aid Provision

1973: Illinois Supreme Court finds publicly-funded private school student transportation constitutional in *Board of Education v Bakalis*

1974: New York Supreme Court finds state-funded provision of translator for deaf child at a private religious school constitutional in *Greve v Board of Education*

1986: Utah Constitutional Revision Commission inserts the word 'direct' into the No-Aid Provision (score 4)

2001: Illinois Supreme Court finds educational expenses tax credit constitutional in *Toney v Bower* and *Griffith v Bower*

2006: New York Supreme Court finds local school board must provide nursing services to children at private religious schools in *Matter of Richard K v Petrone*

To place these case study states in context, it is helpful to examine them alongside data on the number of successful challenges to aid programmes across all states. No comprehensive overview of court challenges to the eight aid types is available across the fifty states, but one indicator of legal vulnerability is available: in a guide to designing school choice programmes by the Institute for Justice, libertarian advocate of private school vouchers and tax credits. This guide, written in 2007, listed relevant case law in state and federal courts related to aid for children at private religious schools across all fifty states. Using these data I found a total of 97 challenges to aid programmes of the eight types examined here. Of these, forty programmes were found unconstitutional and fifty-seven were upheld.

The most litigated aid type was transportation, with thirty-three challenges, but more of these programmes were upheld than struck down. By contrast, textbook loans, the second most litigated aid type with eighteen challenges, were struck down more times than they were upheld. The aid types with the best ratio of being upheld to being struck down were tax exemptions for private religious school property and auxiliary services (including services provided to children under IDEA). Both had nine challenges of which only one succeeded. Table 6.1 on the following page displays the number of challenges for each aid type with the ratio of success to defeat.

**Table 6.1: Court challenges to aid programmes across fifty states, as of 2007**

<b>Aid type</b>	<b>Struck down</b>	<b>Upheld</b>	<b>Challenge success (%)</b>
Education vouchers	7	5	58
Education tax credits	3	4	42
Textbook loans	10	8	56
Transportation	14	19	42
Tax exemptions for private school property	1	8	11
Auxiliary services	1	8	11
Equipment	1	2	33
Other (challenges that do not fit clearly into a single category or cover several aid types)	3	3	50
<b>Total</b>	<b>40</b>	<b>57</b>	<b>41</b>

The six case study states are representative of the national picture on aid programme litigation. Transportation is the most litigated amongst the case study states, followed by textbook loans, and of these about half were struck down and half upheld. A voucher scholarship was struck down in Florida, a tax credit upheld in Illinois, and auxiliary services upheld in New York. The typology of ‘submergedness’ discussed in Chapter 2 explains why there are disparities in the number and success of challenges to different aid programmes. The ‘highly submerged’ tax exemptions are subject to fewer court challenges because they are hidden tax expenditures of which there is limited public knowledge. ‘Church’ and ‘State’ are connected only very tenuously. By contrast, the ‘weakly submerged’ voucher scholarships and textbook loans are subject to more challenges and are more likely to be struck down because they are more ‘visible’, with greater public knowledge and hence, greater vulnerability to separationist challenge.

The type of aid programme affects the success of legal challenges because of varying levels of ‘submergedness’ as laid out in Table 2.1 of Chapter 2. The next section determines whether the presence and strength of a state No-Aid Provision also affects the success of legal challenges to aid programmes.

### **Strong No-Aid Provisions**

I calibrated the scale of No-Aid Provision strength created in Chapter 5 to produce a fuzzy membership score of the set of ‘Strong No-Aid Provision’ (SNAP) states. Two sets of No-Aid Provision strength scores were calibrated: (i) No-Aid Provision scores used in Chapter 5, which are the scores for the first No-Aid Provision each state enacted, if any, and (ii) No-Aid Provision scores for the current state constitutions. These two sets of scores differ for the twelve states where No-Aid Provisions have been strengthened, weakened or eliminated by amendment or through enactment of a new state constitution. Neither (i) nor (ii) have a set theoretic relationship to the generosity of aid to children at private religious schools, and the following chapter displays the calibration procedure for (ii) only.

I applied Ragin’s direct method, with the threshold for full membership of SNAP (fuzzy set score 1) set at No-Aid Provision scores of 8 or above on the 0-10 scale. No-Aid Provisions at 8 or above have lost no more than two points on the content analysis scoring, which indicates that they have at least one of the following characteristics: explicit elimination of both direct and indirect aid, strident language and either explicit elimination of the provision of money and land to religious schools or a long list of bans. None of these cases have an exemption or qualification unless they also have all three of the strongest characteristics listed above. Hence the score of 8

unequivocally demonstrates SNAP membership. The threshold for full non-membership of SNAP (fuzzy set score 0) is states without a No-Aid Provision, that is, those with a score of 0 on the 0-10 stridency scale. Since Table 6.1a in the appendix shows the scores for current state constitutions, not the first No-Aid Provision adopted as in Chapter 5, some of the states which score 0 (LA, NJ and AR) once had No-Aid Provisions while the other eight have never had one. All other states have at least partial membership of SNAP. The point of maximum ambiguity as to whether a state is SNAP or not (fuzzy set score 0.5) is set at scores of 5 on the No-Aid Provision strength scale, the mid-point. Table 6.1a in the appendix shows the calibration of the fuzzy membership scores for SNAP states.

Eight states have full membership of SNAP because they reach the mathematical threshold associated with full membership (0.953): MT, SD, CA, DC, IL, MI, NM and OK. Eleven states have full non-membership because they reach the threshold associated with full-non membership (0.047). The remaining states have at least partial membership of SNAP, with five states (AK, ID, NY, OH and SC) straddling the point of maximum ambiguity as to whether the state is more in or out of the set of SNAP.

Cross-tabulation of the results of SNAP calibration with the sets of high and low aid states in Table 6.2 show no set theoretic relation between the strength of a state's No-Aid Provision and the generosity of its public provision for children at non-public religious schools. Of the eight states that are fully SNAP, five are low but three are high aid states. The consistency of this relation is 0.625, lower than the 0.8 Minimum Acceptable Set Consistency (MASC) recommended as a threshold for true set theoretic relationships. Given this low consistency there is no need to calculate a coverage score. If there is no set theoretic relationship then it is nonsensical to calculate a measure of the relationship's substantive importance.

**Table 6.2: Cross-tabulation of SNAP membership and aid**

	Fully out of SNAP	Partial membership of SNAP	Fully in SNAP
High aid	3	12	3
Low aid	8	20	5

H1a predicts that SNAP states will have low levels of aid because the strongly worded constitutional provision will be used by lobbyists to challenge state aid to private religious school students and strictly applied by judges. If H1a were true then the top right hand box should be empty, but it is not. Hence we cannot reject H0 in favour of H1a.

### **Weak No-Aid Provisions**

Investigation of H1b involves calibration of the No-Aid Provision scores according to their fuzzy set membership of the set of Weak No-Aid Provisions (WAP). Again, I applied Ragin's direct method with the threshold for full membership of WAP (fuzzy set score 1) set at 3 on the 0-10 scale. States scoring 3 or below either have no No-Aid Provision at all or have a provision with at least one exemption and qualification and one or more of the following characteristics: explicit prohibition of direct aid only, placatory language and prohibition of appropriations only rather than land transfers or other types of financial assistance. The threshold for full non-membership of WAP (fuzzy set score 0) was set at 8 on the 0-10 scale, states which fit unambiguously into the SNAP category. As with SNAP calibration, 5 was the point of maximum ambiguity as to whether a state was more in or out of WAP (fuzzy set score

0.5). Table 6.2a in the appendix shows the calibration of fuzzy set membership scores for WAP.

Fourteen states are fully in WAP because they reach the threshold for full membership (0.953), and eleven of these reach the score of full membership that lies above that threshold value (0.993) in Ragin’s table. Eight are fully out of WAP, with membership scores at or below 0.047. The remaining thirty-nine states have at least partial membership of WAP. Cross-tabulation of the WAP scores with aid for children at private religious schools in Table 6.3 shows no set-theoretic relation between having a weak No-Aid Provision and having high levels of aid.

**Table 6.3: Cross-tabulation of WAP membership and aid**

	<b>Full out of WAP</b>	<b>Partial membership of WAP</b>	<b>Fully in WAP</b>
<b>High aid</b>	3	11	4
<b>Low aid</b>	5	18	10

H1b predicts that states which are fully WAP will have high levels of aid because the weak language or lack of language prohibiting aid to religious schools will allow advocates to lobby for greater aid for children at private schools without fear that the programmes will be struck down as unconstitutional. However Table 6.3 shows that of the fourteen states with full membership of WAP, just four are high-aid states, and ten are low-aid states. The consistency of this relationship is just 0.2857, far below the MASC threshold for a true set theoretic relationship. There are ten states in the lower right hand box, which if H1b is true should be empty. Hence it is not possible to reject H0 in favour of H1b.

Table 6.4 shows that there is no relationship between No-Aid Provision strength score and the level of aid provided by the state, across the entire range of No-Aid Provision scores.

**Table 6.4: High and low aid states disaggregated by No-Aid Provision Strength Score**

	No NAP	1	2	3	4	5	6	7	8	9	10
<b>High aid</b>	3	0	1	0	1	2	5	3	3	0	0
<b>Low aid</b>	8	0	1	1	3	3	2	10	3	2	0

Nor is there a relationship between possession of a No-Aid Provision and aid to children at private religious schools. Table 6.5 cross-tabulates No-Aid Provision possession and high- and low-aid states.

**Table 6.5: High and low aid states by possession of a No-Aid Provision**

	No NAP	NAP
<b>High aid</b>	3	15
<b>Low aid</b>	8	25

The consistency of the relationship in Table 6.5 is just 0.375, far lower than the level at which a set theoretic relationship may be said to exist. If NAPs were effective barriers to aid then the top right and bottom left cells would be empty, but there are twenty-three cases in them. The next section uses interview and archival evidence to explain *why* SNAP or WAP membership is such a poor predictor of aid.

## **SNAPs and state elites: ‘Practice is often different’**

My fifty interviewees were asked whether they had ever heard of a No-Aid Provision or ‘Blaine Amendment’, and if so, whether they thought the provision presented a barrier to the introduction or expansion of aid to children at private religious schools. Of the twenty-five that had heard of the ‘Blaine Amendment’ and ventured an opinion, eleven thought No-Aid Provisions are efficacious in reducing aid to children at private religious schools, three that they certainly are not, and the others presented a mixed view. Leaders in State Catholic Conferences and Floridian respondents tended to show the greatest knowledge of No-Aid Provisions. This distribution of responses is explicable by the fact that Catholic schools were historically the object of No-Aid Provisions and at the time of interview (April 2012) Florida was preparing for a ballot initiative proposing the elimination of the state No-Aid Provision.

As the lack of responses to No-Aid Provision questions indicates, knowledge of No-Aid Provisions even amongst policymakers is limited and this may in part explain why No-Aid Provision strength is a poor predictor of modern patterns of aid for children at private religious schools. One Catholic Conference leader summed up this point, when asked whether the state No-Aid Provision presents a barrier to religious school student aid: ‘I don’t think so because I don’t think most people know about it’.<sup>1</sup> Most respondents were unsure or unaware of the existence of a ‘Blaine Amendment’ or state No-Aid Provision. If knowledge of constitutional provision is limited amongst policymakers then they are unlikely to avoid proposing measures that aid religious school students on No-Aid Provision grounds. A state legislator argued that ‘they

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<sup>1</sup> Wichmann, Director of Government Relations for the Illinois Catholic Conference, 18.

[colleagues in the state legislature] don't even realise that we're violating our own constitution with some of the things that we do in education'.

Others argued on the contrary that the kinds of aid explored in this thesis are not prohibited by state No-Aid Provisions, an argument that includes CBT, the theory mentioned earlier in the chapter. On this view, the reason for No-Aid Provisions' lack of efficacy as a barrier to aid is not that policymakers are unaware of the constitutional violation but simply that no constitutional violation exists for these types of aid. 'Any money that we get' said the leader of a Catholic Schools Administrators Association 'does not come directly to the schools. Everything goes through the public schools because of that [No-Aid Provision]. We cannot receive anything directly...And it's the parents requesting it. It's not the schools'.<sup>2</sup> An Illinoisan Catholic Conference leader said that 'one of the things we discussed [a few years ago] is should we push for [another Constitutional Convention] in order to try to strike [the No-Aid Provision] down? Ultimately we didn't do that because as I've said, it's not a real obstacle for us'.<sup>3</sup>

According to interviewees, while direct aid and some types of indirect aid are covered by state No-Aid Provisions other types of aid are not, because the aid goes to the family rather than the school itself. But they disagreed about which aid is allowed. A Catholic Conference leader argued that his state's No-Aid Provision makes it difficult for the state to provide textbooks, transportation and health services, 'but this [No-Aid Provision] doesn't apply to educational tax relief'. 'It's sectarian; that's the key', said a legislator in another state, and 'transportation is not sectarian'.<sup>4</sup> Although the policymakers and faith leaders differed in their assessment of the extent of aid covered by the No-Aid Provisions, many of them thought that at least some types of aid under

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<sup>2</sup> Geddis, Director, New York State Association of Catholic Schools Administrators, 10.

<sup>3</sup> Wichmann, Director of Government Relations for the Illinois Catholic Conference, 19.

<sup>4</sup> Roger Eddy, Executive Director of the Illinois Association of School Boards and former Representative and Schools Superintendent, March 28, 2012, 15.

discussion were not covered by the No-Aid Provisions. If policymakers do not think that No-Aid Provisions cover all types of aid, then membership of SNAP should not reduce the financial support offered by the state to religious school students as predicted by H1a.

Since No-Aid Provisions may be interpreted in various ways No-Aid Provisions do not correlate directly with aid to children at private religious schools. According to a National Catholic Education Association leader, in some states 'they [policymakers and judges] are able to interpret it [the No-Aid Provision] very loosely, and it's a tradition of doing that'.<sup>5</sup> A legislator presented with the text of his state's No-Aid Provision said simply 'So this is what the constitution says...Practice is often different'.<sup>6</sup> Is the No-Aid Provision a barrier to the introduction and expansion of aid in his state? 'It's a picket-fence'.<sup>7</sup> According to these policymakers and advocates, No-Aid Provisions may present a barrier to aid for private religious school students but only a weak one, subject to interpretation and surmountable in several ways.

This interpretation of No-Aid Provisions as weak barriers to the expansion of aid is borne out by archival analysis of legislative bill jackets and constitutional debates. For instance, according to the New York Times, members of the Constitutional Convention that discussed the language of the New York NAP when it was proposed in 1894 were concerned that certain formulations were 'vague, and could easily be evaded'. The President of the Convention, Mr Choate, who was in favour of a strong NAP, described one proposed NAP formulation as 'drawn in a most artful manner, well calculated to deceive the unwary'.<sup>8</sup> The Convention approved a relatively strong NAP

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<sup>5</sup> McDonald, Director of Public Policy and Education Research for the National Catholic Education Association, 5.

<sup>6</sup> Robert W Pritchard, Member, Illinois General Assembly Education Committee, March 30, 2012, 7.

<sup>7</sup> Ibid., 8.

<sup>8</sup> "Account of the Proceedings of the New York State Constitutional Convention," *The New York Times*, September 1, 1894, New York State Archive, Albany.

but forty years later Governor Herbert Lehman, who vetoed a bill providing for the transportation of children to private religious schools in May 1935, stated in his veto message: *‘Irrespective of whether or not this bill violates the strict language of section 4 of Article IX of the Constitution, the act clearly contravenes a definite policy which the State has always followed and which it should follow in the future’* [my italics].<sup>9</sup> The following year, following further advocacy from supporters of transportation aid, Governor Lehman signed an almost identical transportation bill in spite of and without reference to the New York NAP, which had at this time a strength score of 7 and a relatively high SNAP membership value of 0.881.<sup>10</sup> The anxiety of the NAP framers in 1894 about the possibility of ‘evasion’ seems to have been well-founded.

This evidence of the weakness of NAPs as barriers to aid is not contradicted by the fact that state judges have used No-Aid Provisions as a basis from which to strike down aid programmes. For example, two years after Lehman signed the New York transportation bill the New York Court of Appeals held the statute unconstitutional under Article IX of the state constitution.<sup>11</sup> State courts in Alaska (1961), Delaware (1981), Hawaii (1969), Idaho (1971), Missouri (1953), Oklahoma (1941), Washington (1943) and Wisconsin (1962) also found transportation statutes unconstitutional on the grounds of their respective NAPs. Although judges can and do use state NAPs to strike down aid programmes, there are several reasons why NAPs are merely ‘picket fences’ rather than the high and impregnable walls envisaged by Roger Williams:<sup>12</sup> first, differential judicial interpretation and secondly, policymaker responses. Figure 6.1 illustrates some of these reasons in a simplified fashion:

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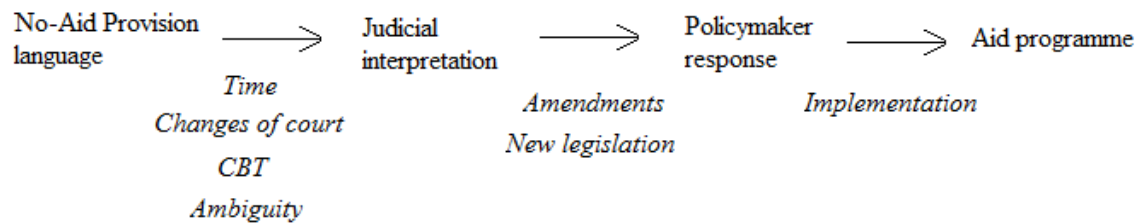
<sup>9</sup> H.H. Lehman, “Public Papers of Governor Lehman: Memoranda on Legislative Bills Vetoed, p232-233,” May 6, 1935, New York State Archives.

<sup>10</sup> H.H. Lehman, “Public Papers of Governor Lehman: Memoranda on Legislative Bills Vetoed, p470-471,” May 13, 1936, New York State Archives.

<sup>11</sup> Judd et al. v Board of Education, 15 15 N.E. (2d) 576 (1938).

<sup>12</sup> Williams, *The Bloody Tenent, of Persecution, for Cause of Conscience, Discussed, in a Conference Betweene Truth and Peace.*

**Figure 6.1: The obstacle-strewn path from No-Aid Provision language to programmes of aid**



The first stage at which the connection between No-Aid Provision strength and aid programmes may be broken is in judicial interpretation of the provision. Although eight state courts followed New York’s Court of Appeals in striking down a transportation law on the basis of the state NAP, ten state courts decided on the contrary that transportation statutes were constitutional under their respective NAPs: California (1946), Illinois (1973), Maryland (1938), Massachusetts (1982), Michigan (1968), Minnesota (1970), Nebraska (1982), New Jersey (1947), Ohio (1968) and Pennsylvania (1967). Variation in judicial interpretation of NAPs is exacerbated by changes of court. In three states – Kentucky, New York and Missouri – earlier state courts overturned transportation programmes on the grounds that they violated the state NAPs but later courts reversed the decisions.<sup>13</sup> The line between church and state is an ambiguous one with a highly fluid legal interpretation and substantial bodies of case law on either side. Many courts use CBT to justify the dissemination of aid even when the state has a SNAP.

A second stage at which the connection between NAP strength and aid can be broken is in the policymaker response to judicial decisions. The New York State Court of Appeals decision in *Judd* occurred while the 1938 Constitutional Convention was in

<sup>13</sup> *Sherrard v Jefferson County Bd. of Education*, 171 S.W.2d 963 (Ky. App. 1942); *Neal v Fiscal Court, Jefferson County*, 986 S.W.2d 907 (Ky. 1999); *Board of Education v Allen*, 20 20 N.Y. 2d 109 (Ct. of Appeals of NY 1967); *McVey v Hawkins*, 258 S.W.2d 927 (Supreme Court of Missouri 1953); *Felter v Cape Girardeau School District*, 810 F. Supp. 1062 (E.D. Mo. 1993).

session so the Convention promptly proposed a transportation exemption that was approved by the electorate,<sup>14</sup> negating the judges' decision and institutionalizing transportation for children at private schools. Such policymaker overrides of judicial decisions are not always successful: after the *Californian Teachers' Association v Riles* decision that found textbook loans unconstitutional in 1981 the state legislature attempted to override it by ballot initiative,<sup>15</sup> but the initiative was rejected in 1982.<sup>16</sup> In other cases the policymaker response is more drastic: after the Louisianan *Seegers v Parker* case struck down a law allowing the Superintendent of Public Education to purchase secular educational services from non-public school teachers including those at religious schools, the 1973 Constitutional Convention removed the Louisianan NAP from the constitution entirely.<sup>17</sup> One of the attorneys who addressed the Convention quoted the *Seegers* decision at length before arguing 'it is, therefore, incumbent upon this Convention and the Subcommittee on Education in particular, to critically and objectively [*sic*] evaluate the provisions of Article XII in this particular area... the Convention should seriously ask itself whether, as a matter of public policy of this State, its Constitution should contain such all-embracing restrictions on the freedom of the legislature...' <sup>18</sup> The Convention thought not, and abolished the restriction.

More recently policymakers may have designed certain tax credit and voucher programmes to avoid judicial challenge; for instance, by deducting tax from donations to school tuition organizations (STOs) that grant scholarships, rather than awarding scholarships directly. These programmes are part of Mettler's 'submerged state'

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<sup>14</sup> B.S. Meyer, B.C. Agata, and S.H. Agata, *The History of the New York Court of Appeals, 1932-2003* (New York: Columbia University Press, 2006).

<sup>15</sup> J.R. Ruiz, Deputy Legislative Counsel to A. Robbins, "Textbooks: Nonpublic Schools (S.C.A. 40) - #20462," November 17, 1981, California State Archive.

<sup>16</sup> *California Teachers Association v Riles*, 29 Cal. 3d 794 (Supreme Court of California 1981).

<sup>17</sup> *Seegers v Parker*, 241 So.2d 213 (Supreme Court of Louisiana 1970).

<sup>18</sup> T.A. Rayner, "Commentary on Certain Aspects of the Provisions of the Louisiana Constitution of 1921 Pertaining to Education, pp96-98 of Subcommittee Minutes, Subcommittee for Elementary and Secondary Education of the Constitutional Convention 1973," April 24, 1973, Tulane Law Library.

because they involve private delivery channels for public funds.<sup>19</sup> The delivery of aid programmes by indirect rather than direct methods certainly makes them politically stronger and more difficult to abolish, as Mettler describes in the case of health and tax policy, but this delivery mode may also make them *legally* stronger. They are politically stronger because they are defended by entrenched interests and the obscure delivery mechanisms are poorly understood by the general public. They are legally stronger because they are easier to defend on the basis of CBT. The money does not go to the school directly but through an STO which provides scholarships for the children or through tax deductions for parents who spend the money on their child's education. Even in Illinois, which has full membership of SNAP (membership value 0.953) six Illinoisan state courts found the Illinois Education Expenses Tax Credit constitutional in two lawsuits, *Toney v Bower* and *Griffith v Bower* (2001).<sup>20</sup> The grounds for the decision were that the credit allows parents to keep more of their own money to spend on the education of their children as they see fit and does not involve the [direct] expenditure of government money.

The creation of aid programmes that involve indirect financing mechanisms makes such programmes easier to defend using CBT and may contribute to the lack of knowledge of NAPs noted amongst interviewees. Coupled with the fact that judges vary widely in their interpretation of No-Aid Provisions and policymakers may override judicial decisions, it is unsurprising that there is no connection between SNAP membership and low aid, or WAP membership and high aid.

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<sup>19</sup> Mettler, *The Submerged State: How Invisible Government Policies Undermine American Democracy*.

<sup>20</sup> *Toney v Bower*, 744 N.E.2d 351 (Ill. App. 4th Dist. 2001); *Griffith v Bower*, 747 N.E.2d 423 (Ill. App. 5th Dist. 2001).

## **‘A Fiction that Works’?**

The foregoing considerations help to explain why no set theoretic relation exists between the strength of a state’s No-Aid Provision and the generosity of its provision for children at private religious schools, but they do not explain why several interviewees thought that No-Aid Provisions *are* an effective barrier to aid. There are three reasons for this: lack of knowledge of No-Aid Provisions, the fact that No-Aid Provisions may affect publicly-funded religious programmes other than schooling, and an understanding of No-Aid Provisions as the embodiment of anti-Catholic bigotry. Some of the interview responses showed a lack of knowledge of No-Aid Provisions when arguing for the efficaciousness of their state’s provision; for instance, in stating that their No-Aid Provision is an exceptional requirement that is ‘not normal for most states’. Others described the effect of the absence rather than the presence of a No-Aid Provision and their broader societal significance. In Louisiana, where the state No-Aid Provision was eliminated by the State Constitutional Convention in 1973, unsurprisingly few interviewees had heard of a state ‘Blaine Amendment’. Of those that had, one described the removal of the No-Aid Provision as ‘open[ing] the door’ to educational vouchers and tax credits,<sup>21</sup> but did not claim that the No-Aid Provision was central to religious school student aid.<sup>22</sup>

In Florida, where the 2012 ballot contained a provision (‘Initiative 8’) to eliminate the state No-Aid Provision, a School Boards Association leader was asked what would happen if the initiative passed: ‘I think there will be less caution about funding’.<sup>23</sup> Since the Florida ballot initiative failed in November the effect of No-Aid

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<sup>21</sup> Loar, Executive Director of the Louisiana Conference of Catholic Bishops, 7.

<sup>22</sup> *Ibid.*, 12.

<sup>23</sup> Ruth Melton, Director of Legislative Affairs for the Florida School Boards Association, April 11, 2012, 9.

Provision removal in Florida cannot be known but ‘caution about funding’ covers a much wider category of spending than student aid. It covers ‘faith-based half-way houses, faith based substance abuse prevention programmes and the use of chaplains at faith-based prisons’ as well as faith-based hospitals, children facilities and other governmental programmes in which religious groups are allowed to participate.<sup>24</sup> Indeed, one interviewee argued that the ballot initiative to remove the No-Aid Provision was concerned more with religious group participation in health and other social services than with religious schools:

‘I will tell you that even if Amendment 8 passes you will not see more school choice in Florida because...the Florida Supreme Court’s decision in ruling vouchers unconstitutional was not because of the Blaine provision, it was because of the uniformity provision... pursuing Amendment 8 does not fix the voucher issue’.<sup>25</sup>

Although the 1<sup>st</sup> District Court of Appeal ruled that the Florida Opportunity Scholarship was unconstitutional under the state No-Aid Provision, the Florida Supreme Court in *Bush v Holmes* did not reach the separation of church and state issue. Accordingly voucher and tax credit aid in Florida is affected more by considerations of educational uniformity, equity and adequacy than by separation of church and state issues.

Several interviewees thought that No-Aid Provisions affect some denominations more than others. According to a Catholic Conference Director the Californian No-Aid Provision ‘was brought in to institutionalize prejudice and it does’. ‘Currently it becomes a bludgeon to beat anybody who would like to do anything creative in terms of private

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<sup>24</sup> Patricia Levesque, Executive Director for the Foundation for Florida’s Future and Member of the Taxation and Budgetary Reform Committee, May 4, 2012, 4.

<sup>25</sup> Ibid.

schools in the state of California'.<sup>26</sup> A New York legislator also argued that the Catholics were affected more than other denominations by the No-Aid Provision:

‘...it [state subsidy of religious schools] would certainly reverse the decline in the Catholic parochial schools. Jewish Orthodox schools, they don’t have a choice. An Orthodox person will send their kids to a Yeshiva. So they don’t have a choice, but Catholic parents have a choice. They can either send them to public school or a Catholic school. And where money is the issue, if they’re not particularly religious, the public school’s fine...’<sup>27</sup>

fsQCA shows that No-Aid Provisions are not correlated with modern patterns of aid for children at private religious schools but the perception that they unfairly penalize Catholics is shared by state Catholic Conferences and some legislators. This may in part explain why some state elites believe No-Aid Provisions to be more efficacious as a barrier to the expansion of aid than the facts warrant.

## Conclusion

The findings of this chapter bring out the limits of the formal institutionalist argument that constitutional rules have systematic effects on public policy by defining the scope for political action.<sup>28</sup> NAPs are strikingly poor barriers to the creation of aid programmes for children at private religious schools. Since aid – particularly programmes that are ‘highly’ or ‘mostly’ submerged – is delivered through private

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<sup>26</sup> Dolejši, Executive Director of the California Catholic Conference, 6.

<sup>27</sup> Alan Maisel, Member, New York State Assembly Education Committee, March 19, 2012, 6.

<sup>28</sup> G.W. Cox and M.D. McCubbins, “Political Structure and Economic Policy: The Institutional Determinants of Policy Outcomes,” in *Presidents, Parliaments, and Policy*, Political Economy of Institutions and Decisions (Cambridge and New York: Cambridge University Press, 2001); B.A. Abrams and W.R. Dougan, “The Effects of Constitutional Restraints on Governmental Spending,” *Public Choice* 49 (1986): 101–116; E.M. Immergut, “The Rules of the Game: The Logic of Health Policy-Making in France, Switzerland, and Sweden,” in *Structuring Politics: Historical Institutionalism in Comparative Analysis*, ed. S Steinmo, K Thelen, and F Longstreth (Cambridge: Cambridge University Press, 1992).

mechanisms and tax expenditures or indirectly via the parent, such barriers are surmountable by CBT. Designing policies to be delivered through private STOs makes them politically and legally stronger because they are easier to defend on the basis of CBT. Moreover, as with other submerged policies, many people are misinformed as to the nature and scope of aid programmes and NAPs. Although NAPs are not effective barriers to aid, many interviewees thought that they were.

As the QCA shows, there is no connection between the stridency of a state No-Aid Provision and the level of aid to children at private religious schools but the provisions can still evoke a strong emotional reaction. Clarence Thomas referred to No-Aid Provisions in his *Mitchell v Helms* opinion: ‘Hostility to aid to pervasively sectarian schools has a shameful pedigree that we do not hesitate to disavow’.<sup>29</sup> His argument mentions the No-Aid Provision’s origins and early history, ‘pedigree’ and ‘birth’, but refers to its modern application only so that he could override it. Thomas argues that ‘this doctrine, born of bigotry, should be buried now’. There is no need. No-Aid Provisions may have symbolic significance as a rallying point for the advocates of school choice but they do not represent a barrier to the expansion of aid.

The next chapter turns to the second of the four explanatory conditions: Church. Whereas state constitutions are surprisingly poor predictors of aid for children at private religious schools, high levels of religiosity are very good predictors, but not in the direction that might be expected. Chapter 7, which follows, explains how this religiosity relationship is really driven by a religious group gap between Catholics and Evangelical Protestants.

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<sup>29</sup> Thomas, *Mitchell v Helms*, 530 U.S. 793 (2000).

## Chapter 7: Religiosity and aid for children at private religious schools

If the most religious states have a high proportion of religious families and schools, voters with supportive attitudes toward religious education, and legislators with religious backgrounds, then the following hypothesis is compelling:

‘States with high levels of religiosity will provide more aid to children at private religious schools’.

This claim is reinforced by scholarly and popular coverage of the relationship between religious people and public schools: many Christian evangelicals are concerned that public schools teach children beliefs hostile to their faith.<sup>1</sup> It would be reasonable to expect high levels of religiosity to lead to high levels of aid, but *the opposite is true*. Membership of the set of ‘highly religious’ states is a near-perfect sufficient condition for *low* levels of aid to private religious schools. This chapter uses set theoretic and historical analysis to explain this connection between state religiosity and aid to children at private religious schools in America.

The explanation lies in the religious group make-up of the highly-religious states, because the effect of high religiosity on aid is really driven by a gap between religious groups. Highly religious states are those with the highest proportions of evangelical Protestants and lowest proportions of Catholics as a percentage of the population. This chapter shows that Evangelical Protestants tend to lobby for reform of the public school system while Catholics opt for the private parochial sector, because of differing conceptions of identity, belonging and theological understanding that stretch

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<sup>1</sup> G.W. Dent, “Religious Children, Secular Schools,” *Southern California Law Review* 61 (1988): 863–942; R Warren and D Schneider, *Mom, They Won’t Let Us Pray* (Chosen Books, 1975); J Delfattore, *The Fourth R* (New Haven and London: Yale University Press, 2004).

back at least to the beginning of the American republic. Hence almost all highly religious states provide low levels of aid to children at private religious schools. The chapter creates indices of religiosity and Catholic population and uses fsQCA to demonstrate these variables' effect on state aid to children at private religious schools. The set theoretic connection is explained by comparative historical analysis.

According to the 'culture wars' theory that is advanced by Hunter, Wuthnow, and others, divisions between religious groups has been supplanted by a 'culture war' over 'family values' between orthodox and progressives.<sup>2</sup> 'Differences across denominational lines' writes Hunter, 'are now less important than differences within denominations'.<sup>3</sup> Putnam and Campbell agree that 'something has changed' in the American religious landscape over the past fifty years. They argue that 'in the past, there were religious tensions, but they were largely between religions (Catholic vs. Protestant most notably), rather than between the religious and irreligious'.<sup>4</sup> Catholic presidential candidate John F. Kennedy struggled to convince Protestant Americans in 1960 and triumphed amongst his co-religionists, but fellow Catholic John F. Kerry split the Catholic vote in 2004. Compared to the 'tribal loyalty' of the 1960s, when 'Catholics and Protestants each supported their own', today 'the old divisions are largely forgotten'.<sup>5</sup> This chapter demonstrates that the old religious group divisions are alive and well, in education policy at least.

As America has become more religiously polarized, many scholars argue, the divide between the highly-religious and the not-religious has become more important

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<sup>2</sup> Wuthnow, *The Restructuring of American Religion: Society and Faith since World War II*; Hunter, *Culture Wars: The Struggle to Define America. Making Sense of the Battles over the Family, Art, Education, Law and Politics*; J.D. Hunter and A Wolfe, eds., *Is There A Culture War? A Dialogue on Values and American Public Life*, The Pew Forum Dialogues on Religion and Public Life (Washington DC: Pew Research Center, Brookings Institution Press, 2006).

<sup>3</sup> Hunter, *Culture Wars: The Struggle to Define America. Making Sense of the Battles over the Family, Art, Education, Law and Politics*.

<sup>4</sup> Putnam and Campbell, *American Grace: How Religion Divides and Unites Us*, 3.

<sup>5</sup> *Ibid.*, 5.

than distinctions between different kinds of religion.<sup>6</sup> Although denominational preference expresses ‘differences in belief, practice and commitment even for individuals with nominal religiosity’,<sup>7</sup> interdenominational clashes are thought to have been supplanted by conflict between conservative and liberal branches of the same denomination.<sup>8</sup> Across the fields of interest representation, policy preferences and policy outcomes, scholars have argued that religiosity now has greater explanatory power than religious affiliation.<sup>9</sup> While these claims may be true in elections and across a range of political, social and cultural indicators, they are false in the educational arena. When it comes to aid for children at private religious schools, a religious group gap remains.

The chapter proceeds as follows. Section one examines the relationship between religiosity and aid for children at private religious schools using fsQCA; it finds that membership of the set of ‘highly religious states’ is a near-perfect sufficient condition for low levels of aid. Section two disaggregates the religiosity relationship by religious group and shows that almost all highly religious states are overwhelmingly Evangelical Protestant with low proportions of Catholics in the population and low levels of aid. Section three explains why there is less demand for private religious school aid in highly religious, Evangelical Protestant states: there are fewer Evangelical schools and many more Catholic schools compared to these groups’ proportions of the state

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<sup>6</sup> Putnam and Campbell, *American Grace: How Religion Divides and Unites Us*.

<sup>7</sup> L Kellstedt and J Green, “Knowing God’s Many People: Denominational Preference and Political Behaviour,” in *Rediscovering the Religious Factor in American Politics*, ed. D Legee and L Kellstedt (Armonk, NY: M.E. Sharpe, Inc, 1993), 55.

<sup>8</sup> W Blake, “God Save This Honorable Court: Religion as a Source of Judicial Policy Preferences,” *Political Research Quarterly* 65, no. 4 (December 2012): 814–826; Wuthnow, *The Restructuring of American Religion: Society and Faith since World War II*.

<sup>9</sup> L Edwards Smith, L.R. Olson, and J.A. Fine, “Substantive Religious Representation in the U.S. Senate: Voting Alignment with the Family Research Council,” *Political Research Quarterly* 63, no. 1 (March 2010): 68–82; G.C. Layman, “‘Culture Wars’ in the American Party System: Religious and Cultural Change Among Partisan Activists Since 1972,” *American Politics Research* 27, no. 1 (January 1999): 89–121; D Yamane and E.A. Oldmixon, “Religion in the Legislative Arena: Affiliation, Salience, Advocacy, and Public Policymaking,” *Legislative Studies Quarterly* 31, no. 3 (August 2006): 433–460.

populations. Section four roots the overrepresentation of Catholic schools in Catholics' historical tendency to 'exit' the Protestant public school system while Evangelicals, after the school prayer decisions of the 1960s, were more inclined to 'voice' their criticisms of the public schools than to leave for the private sector. Section five explains why Catholics tend to 'Exit' while Protestants 'Voice': their differing responses reflect the fact that Protestantism and 'Americanness' were historically intertwined. Section six concludes.

### **Fuzzy Set Analysis of Religiosity and Aid**

#### **Defining 'religiosity'.**

As Putnam and Campbell point out, 'the nature of what it means to be religious is inevitably fraught with ambiguity and controversy'.<sup>10</sup> By 'religiosity' I refer to the 'depth of individual belief, practice and commitment to religious ideas'.<sup>11</sup> In this thesis I use the percentage of participants in the 2008 US Religious Landscape Survey (RLS) who say that religion is 'very important' in their life to operationalize the concept.<sup>12</sup> The US Religious Landscape Survey 2008 asked four questions whose answers provide indications of the level of religiosity in a state.

1. How important is religion in your life... very important, somewhat important, not too important, or not at all important?

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<sup>10</sup> Putnam and Campbell, *American Grace: How Religion Divides and Unites Us*.

<sup>11</sup> K Collins and E Owen, "Islamic Religiosity and Regime Preferences: Explaining Support for Democracy and Political Islam in Central Asia and the Caucasus," *Political Research Quarterly* 65, no. 3 (September 2012): 499.

<sup>12</sup> U.S. Religious Landscape Survey, *Religious Affiliation: Diverse and Dynamic* (Pew Forum on Religion & Public Life, February 2008), <http://religions.pewforum.org/pdf/report-religious-landscape-study-full.pdf>.

2. 'Outside of attending religious services, do you pray several times a day, once a day, a few times a week, once a week, a few times a month, seldom, or never?'
3. 'Do you believe in God or a universal spirit? How certain are you about this belief? Are you absolutely certain, fairly certain, not too certain, or not at all certain?'
4. 'How often do you participate in prayer groups, Scripture study groups or religious education programs? Would you say at least once a week, once or twice a month, several times a year, seldom, or never?'

Each of these questions measures an element of religiosity, that is, the intensity with which religious feelings or beliefs are held. The results were collated by telephone-interview for each state and the measures of religiosity expressed as the percentage of respondents who answered, respectively: religion is 'very important' in my life (Relimp), attend 'at least once per week' (Relatt), believe in God 'with absolute certainty' (Belgod), and pray 'at least once per day' (Frqpray). As expected, the Cronbach Alpha results in Table 7.1 on the following page show these measures are highly inter-correlated.

**Table 7.1: Cronbach's Alpha results for religiosity measures**

<b>Measures</b>	<b>Cronbach's Alpha</b>
Relimp-Relatt-Belgod-Frqpray	0.9803
Relimp-Frqpray	0.9715
Relimp-Relatt	0.9697
Relimp-Belgod	0.9608
Frqpray-Belgod	0.9589
Relatt-Belgod	0.9552
Relatt-Frqpray	0.9482

Source: US Religious Landscape Survey 2008 (Total no. of respondents = 54,461)  
Cronbach's Alpha analysis: author's own

All results are above the 0.9 threshold, indicating a high level of agreement amongst the responses, although 'Religion is "very important" in my life' (Relimp) is better correlated with the other measures than they are amongst each other. One reason for this lower, but still high, level of agreement amongst 'Relatt', 'Belgod' and 'Frqpray' may be that belief in God 'or a universal spirit' (a private activity) is more widespread than attendance at religious services (a public activity) or even frequency of prayer. In all states more than half of the respondents said that they believed in God 'with absolute certainty' but in only six states did the proportion attending religious services 'at least once per week' exceed fifty per cent. There are many people who believe in God but do not attend formal religious services and there are also some people who attend religious services without believing in God. Jews, for instance, whose faith focuses more on religious practice than religious belief, are much more likely than other religious groups to doubt the existence of God even if they often attend synagogue.<sup>13</sup>

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<sup>13</sup> Putnam and Campbell, *American Grace: How Religion Divides and Unites Us*; A.B. Cohen, J.I. Sigel, and P. Rozin, "Faith versus Practice: Different Bases for Religiosity Judgements by Jews and Protestants," *European Journal of Social Psychology* 33, no. 2 (April 2003): 287–295.

A critic might argue that the ‘religion is very important in my life’ measure fails to capture notions of ‘belonging’ as well as ‘believing’, that it is too individualized and does not capture the communal nature of religious commitment and practice, or that it is based on self-report and may be inflated. Three considerations help mitigate these criticisms. First, the Cronbach’s Alpha results show this measure is highly consistent with other measures of religious practice so use of another measure would not significantly affect the results of the analysis. Secondly, many Americanists have documented the trend toward the privatization and individualization of religion which, although accompanied by an increase in certain *public* religious observances,<sup>14</sup> makes a measure of religiosity based on individual self-report particularly apt in the modern US context.<sup>15</sup> Thirdly, the RLS data have been used by many other scholars and analysts to make judgements about American religious life.<sup>16</sup>

In the following, the term ‘Evangelical’ is used to denote devout Protestants whose beliefs are characterized by biblicism, conversionism, activism and crucicentrism.<sup>17</sup> Defining Evangelicalism in this way does *not* imply that all devout Protestants are Evangelical, but merely that all Evangelicals are devout Protestants. In other words, ‘highly religious Protestants’ are a superset of ‘Evangelicals’. The use of the term ‘Evangelical’ encompasses a broad array of denominations, including Baptists, Methodists, Lutherans, Pentecostals and other sects. This chapter does not disaggregate its measure by church affiliation but focuses instead on the qualities that unite most self-

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<sup>14</sup> D Corstange, “Religion, Pluralism, and Iconography in the Public Sphere: Theory and Evidence from Lebanon,” *World Politics* 64, no. 1 (2012): 116–160.

<sup>15</sup> Wuthnow, *The Restructuring of American Religion: Society and Faith since World War II*.

<sup>16</sup> N.A. Mian, “‘Prophets-for-Profits’: Redevelopment and the Altering Urban Religious Landscape,” *Urban Studies* 45, no. 10 (2008): 2143–2161; N Banerjee, “Poll Finds a Fluid Religious Life in U.S.,” *The New York Times*, February 26, 2008, <http://www.jonathantan.org/handouts/Xtianity/Christianity-H011ar-USA.pdf>; K.M. Schultz and P Harvey, “Everywhere and Nowhere: Recent Trends in American Religious History and Historiography,” *Journal of the American Academy of Religion* 78, no. 1 (2010): 129–162.

<sup>17</sup> D.W. Bebbington, *Evangelicalism in Modern Britain: A History from the 1730s to the 1980s* (New York: Unwin Hyman Ltd, 1989).

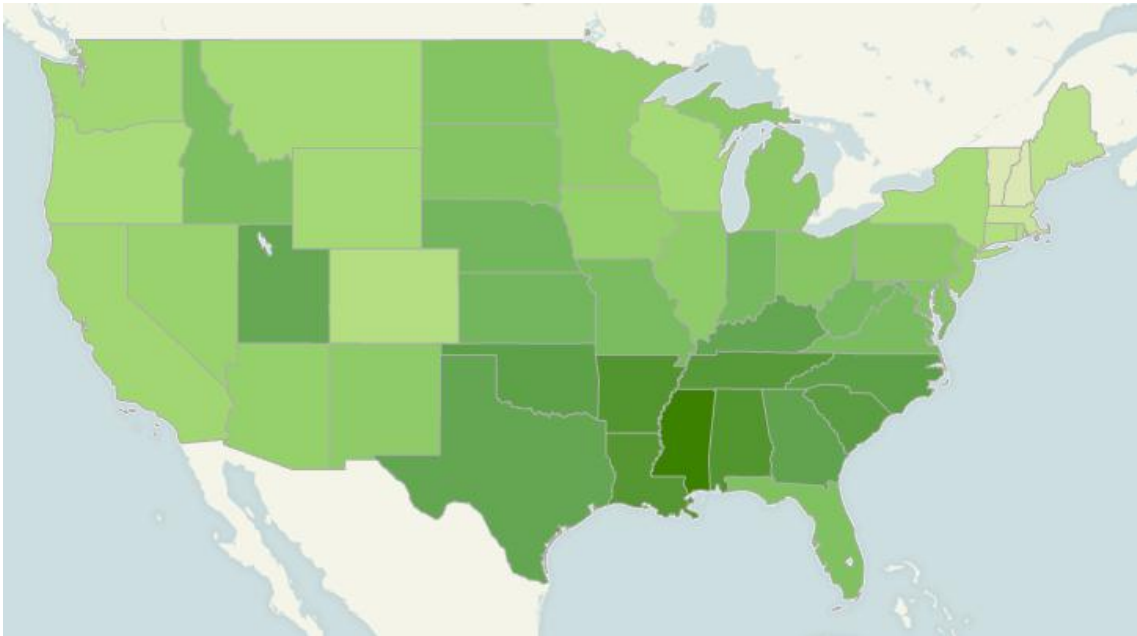
identified Evangelical Protestants: their basic convictions, emphasis in religious worship, and attitudes toward government, church and society.<sup>18</sup> The focus in this chapter is upon Catholics and Evangelicals rather than members of other religious groups: the former, because they represent the largest plurality of religious schools, and the latter because of their political importance in the periods and regions that are the focus of this chapter: the nineteenth-century Common School Movement, the reaction to the Supreme Court school prayer and desegregation decisions of the mid-twentieth century, and across the South.

In no state did fewer than thirty-six per-cent of the 2008 survey respondents say that religion was ‘very important’ to them but the proportion varied from thirty-six per-cent in New Hampshire and Vermont to eighty-two per-cent in Mississippi. Figure 7.1 on the following page displays the religiosity of the states as measured by the proportion of respondents who stated that religion is ‘very important’ in their lives.

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<sup>18</sup> R Baird, *Religion in the United States of America* (Glasgow, 1844); Noll, *America’s God: From Jonathan Edwards to Abraham Lincoln*.

**Figure 7.1: Religiosity by State (% agreeing ‘religion is “very important” in my life’)**



The most religious states are mostly Southern, with some Western and mid-Western states also ranked highly on the religiosity scale.

Ragin’s direct method was used to construct a set-theoretic measure of membership in the fuzzy set of ‘highly religious’ states.<sup>19</sup> The direct method of fuzzy set calibration requires that three benchmarks be qualitatively specified so that the interval-level variables can be transformed into fuzzy-set scores. For this fuzzy set analysis the threshold for full membership of the set of ‘highly religious states’ (membership score 1.0) is defined as states in which two thirds or more of the population said that religion is ‘very important’ in their life, that is, a substantial majority of the population. The threshold for cross-over between ‘in’ and ‘out’ of the set (membership 0.5) is fifty per-cent, where exactly half of the population says that religion is ‘very important’ to them. This is the point of maximum ambiguity as to

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<sup>19</sup> Ragin, *Redesigning Social Inquiry: Fuzzy Sets and Beyond*.

whether the state is part of the set of ‘highly religious states’. The threshold for non-membership of the set (membership 0.0) is forty per-cent. In such states, those who answered ‘somewhat important’, ‘not too important’ or ‘not at all important’ in response to the question about the importance of religion in their life form a strong majority, with those stating that religion is ‘very important’ in the minority.

This calibration uses the mathematical translation of these verbal labels and their associated log odds to transform the religiosity scores into set-membership scores of between 0 and 1. Table 7.2a in the Appendix, reproduced from Ragin (2008), expresses these translations. Using these mathematical translations of the verbal labels, and the log odds as an intermediate step to ensure fidelity to the 0 to 1 boundaries of the fuzzy set, the religiosity index was calibrated as shown in Table 7.3a in the Appendix. Twelve states meet the 0.95 threshold for full membership in the set of ‘highly religious states’, all of them Southern except for Utah. Only four states are fully out of the set: Massachusetts, Alaska, New Hampshire and Vermont. Nevada straddles the crossover point of maximum ambiguity as to its membership of the set. Fifteen states in total are more out of the set than in it while the other thirty-five are more ‘in’ the set than ‘out’. The outcome variable is the B3AND scoring that was introduced in Chapter 3.

## **Results**

These fuzzy-set membership scores are used in set-theoretic analysis to examine the relationship between state religiosity and the amount of aid states offer to children at private religious schools. Table 7.2 cross-tabulates the results.

**Table 7.2: Low and high religious school aid by membership of the set of highly religious states**

	<b>Fully out of the set of highly religious states</b>	<b>Mostly out of the set of highly religious states</b>	<b>Mostly in the set of highly religious states</b>	<b>Fully in the set of highly religious states</b>
<b>High aid states</b>	2	3	12	1
<b>Low aid states</b>	2	9	11	11

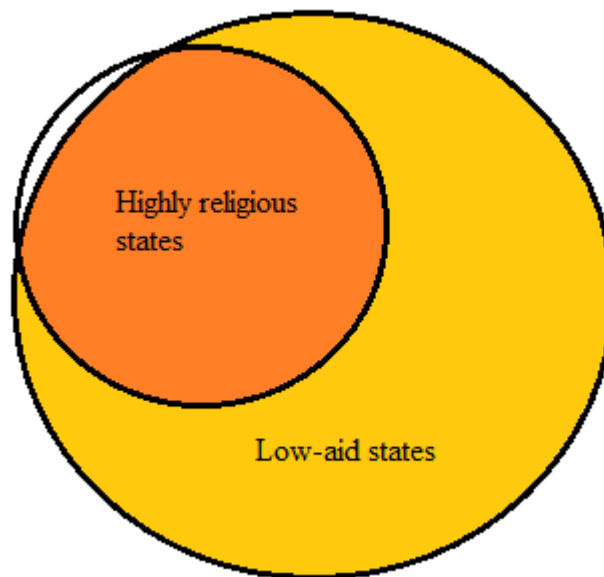
There is no obvious relationship between religiosity and the provision of aid to children at private religious schools on the left-hand side of the table. The number of cases is low: few cases are fully out of the set of highly religious states. It is the right-hand side of the tabulation that shows a promising result. Of the twelve highly religious states only one – Louisiana – has a high level of aid to children at private religious schools. This relationship is brought into sharper relief when the tabulation is condensed into a 2x2 table with the set of highly religious states on the right hand side and other states on the left, as shown in Table 7.3 below.

**Table 7.3: 2x2 Cross-tabulation of low and high religious school aid by membership of the set of highly religious states**

	<b>Not full members of the set of highly religious states</b>	<b>Full members of the set of highly religious states</b>
<b>High aid states</b>	17	1
<b>Low aid states</b>	22	11

The consistency of this set-theoretic relation is 0.917; its coverage is 0.333. This evidence shows a highly consistent set theoretic relation between high religiosity and low aid, and the proportion of low-aid cases overlapped by the set of states with high levels of religiosity is a third. This gauge of coverage provides a measure of the empirical weight or importance of the set-theoretic argument. Just as an  $R^2$  of 0.33 would suggest to a statistical researcher that their model ‘fits’ the evidence reasonably well (but by no means perfectly), a coverage score of 0.33 suggests that religiosity is at least part of the ‘causal recipe’ for low levels of aid to children at private religious schools. Figure 7.2 illustrates the sub-set relationship.

**Figure 7.2: Venn Diagram showing the sub-set relation between religiosity and aid**



This set-theoretic analysis demonstrates that, contrary to expectation, membership of the set of highly religious states is almost a *sufficient* condition for *low* levels of aid. (The corollary is that *not* being a member of the set of highly religious states is a *necessary* condition for *high* levels of aid, although this is a complicated way to express the same relationship). The set of highly religious states is almost a sub-set of the set of

low-aid states and, as Figure 7.2 shows, it is quite a large circle within the circle of low-aid states. Note that this relationship is asymmetric. It does not suggest that less religious states have high levels of aid (Columns 1, 2 and 3 of Table 7.2 showed that this is false) but merely that membership of the set of highly religious states almost guarantees low levels of aid. If the data were analysed statistically the result would not be statistically significant because there is a near-perfect set relationship between high religiosity and low aid. I conducted a regression using the same data to demonstrate the value of a set theoretic analysis in this instance. This statistical analysis is available in the Appendix to Chapter 7 (see Table 7.1a).

### **The Religiosity Relationship is really a Group Gap**

The first key to understanding this set relationship is that the set of ‘highly religious states’ is overwhelmingly Protestant, constituting the nine states with the highest proportions of Evangelicals in the population (in order: Arkansas, Oklahoma, Tennessee, Alabama, Kentucky, Mississippi, South Carolina, North Carolina and Georgia); Utah, which has the highest proportion of Mormons of any state; and the states with the thirteenth and fourteenth most populous Evangelical Protestant population as a proportion of the total population, Texas and Louisiana.<sup>20</sup> Moreover all but two of them (again, Texas and Louisiana) also have very low proportions of Catholics in the population. Other surveys of religiosity support this result. The 2006 Faith Matters Survey showed that Mormons, Black Protestants and Evangelical Protestants have the highest levels of religiosity, Catholics and those of other faiths

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<sup>20</sup> The Pew Forum on Religion & Public Life, “U.S. Religious Landscape Survey” (Pew Research Center, 2008), <http://religions.pewforum.org/>.

about average religiosity, and Jews lower levels of religiosity.<sup>21</sup> There is no evidence that such measures of religiosity are ‘biased’ in favour of Evangelicals. The effect of high religiosity is really the effect of high levels of Evangelical Protestantism and low levels of Catholicism. To make this relationship clear, the RLS data were disaggregated by religious group.

I applied Ragin’s direct method of calibration to the proportion of each state population that self-identifies as Catholic, which varies from five per-cent in Arkansas to forty-three per-cent in Massachusetts, Connecticut and Rhode Island.<sup>22</sup> Again, I applied three qualitative breakpoints. States with more than thirty per-cent of the population Catholic are judged full members of the set of ‘high Catholic’ states (membership 1.0); those with fewer than twenty per-cent of the population Catholic, which is approximately the national proportion of Catholics reached by the beginning of the twentieth century, are judged fully out of the set of ‘high Catholic’ states (membership 0.0).<sup>23</sup> States where precisely a quarter of the population are Catholic are at the point of maximum ambiguity as to whether it is a member of the set (membership 0.5) because the national Catholic population has been stable at approximately twenty-five per-cent for much of the twentieth century.<sup>24</sup> The results are displayed in Table 7.4a in the Appendix.

As expected the states with lowest membership scores are all Southern. Hence the proportion of self-identified Catholics in the population maps reasonably, but by no means perfectly, onto the religiosity scores as Figure 7.3 shows.

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<sup>21</sup> Putnam and Campbell, *American Grace: How Religion Divides and Unites Us*.

<sup>22</sup> B A Kosmin and A Keysar, “American Religious Identification Survey 2008: Summary Report” (Trinity College, March 2009).

<sup>23</sup> U.S. Census Bureau, *Selected Historical Decennial Census Population and Housing Counts, 1900*, <http://www.census.gov/population/www/censusdata/hiscendata.html>.

<sup>24</sup> U.S. Religious Landscape Survey, *Religious Affiliation: Diverse and Dynamic*.



Where Catholic population is taken into account there is a relationship at both ends of the scale but no relationship for mid-level values (fuzzy membership scores of more than 0.0 but less than 1.0, representing states in which between twenty and thirty per-cent of the population is Catholic). This relationship is brought into relief in Tables 7.5 and 7.6, which show each end of the scale.

**Table 7.5: 2x2 showing low and high aid in relation to high fuzzy membership of the set of ‘highly Catholic states’**

	<b>Lower Catholic (&lt;30%)</b>	<b>High Catholic (&gt;30%)</b>
<b>Low aid</b>	30	1
<b>High aid</b>	11	7

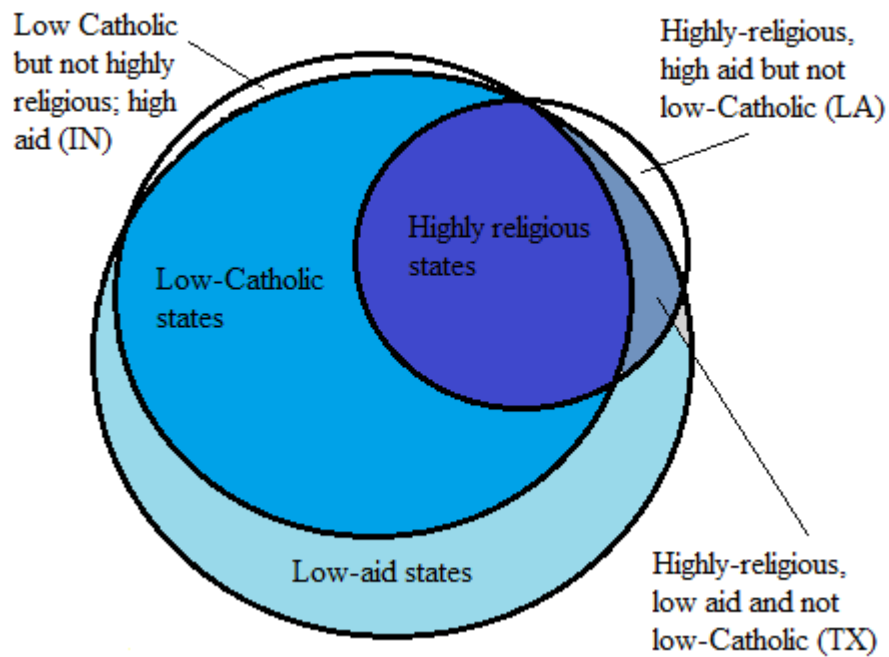
**Table 7.6: 2x2 showing low and high aid in relation to low fuzzy membership of the set of ‘highly Catholic states’**

	<b>Low Catholic (20% or less)</b>	<b>Higher Catholic (&gt;20%)</b>
<b>Low aid</b>	19	12
<b>High aid</b>	1	17

The relationship at the top end of the scale, displayed in Table 7.5, has 0.875 consistency and 0.389 coverage. Texas is the single case in the upper-right hand box. A high proportion of Catholics in the state population is a sufficient condition for high levels of aid, but the relationship at the lower end of the Catholics scale displayed in Table 7.6 is even starker. Of the *twenty* states where less than twenty per-cent of the state population is Catholic, only one (Indiana) has high levels of aid. The consistency of this relationship is 0.950 and the coverage 0.613. These results suggest that the

proportion of Catholics in the state population is a more important indicator of low levels of aid for private religious schools than religiosity. Figure 7.4 shows the relationship between high levels of religiosity, low levels of Catholics and low levels of aid, with the three anomalous cases highlighted with arrows.

**Figure 7.4: Venn Diagram showing the sub-set relations between highly religious states, states with a low proportion of Catholics and states with low levels of aid to children at private religious schools**



Due to its shape this Venn diagram shows slightly more space in the highly-religious, low-aid and not low-Catholic section and highly-religious, high-aid and not low-Catholic section than the numbers warrant. There are just three cases (IN, LA and TX) which do not conform to the following subset relation:

‘All highly religious states are low-Catholic states, which are in turn low-aid states’.

In other words, being a highly-religious state is almost sufficient for being a low-Catholic state, which is in turn almost sufficient for being a low-aid state. This is an asymmetric relationship that focuses on the set of ‘highly religious states’. No claims are made here about the proportion of Catholics or Evangelicals in states that are not ‘highly religious’.

### **An Alternative Explanation: Resistance to Government Spending**

Given the regional distribution of religiosity scores and aid, one alternative explanation is that Southern resistance to education spending in general accounts for its low levels of aid. The South is the area of the nation with the weakest school results,<sup>25</sup> a legacy of slavery and racial division, high levels of distrust in government,<sup>26</sup> and the lowest per-student spending in the public school system so it might spend less on students at private religious schools simply because it spends less on all students.<sup>27</sup> The set of highly religious states overlaps with Elazar’s ‘traditionalistic’ states, which have a hierarchical state culture and a tradition of fiscal conservatism.<sup>28</sup> However, although there is a relationship between low levels of public education spending and low levels of private student aid, low public education spending cannot fully account for the private aid distribution, for three reasons.

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<sup>25</sup> National Center for Education Statistics, “Average Mathematics Scale Score of 8th-Grade Public School Students and Percentage Attaining Mathematics Achievement Levels, by State: Selected Years, 1990 through 2011,” 2012, [http://nces.ed.gov/programs/digest/d11/tables/dt11\\_147.asp](http://nces.ed.gov/programs/digest/d11/tables/dt11_147.asp).

<sup>26</sup> Perspective, “Southerners’ Distrust of Government Leads to Lower Social Spending,” *Savannah Morning News*, September 4, 2007, <http://savannahnow.com/coastal-empire/2007-09-04/southerners-distrust-government-leads-lower-social-spending#.UYOS0MpAFdl>.

<sup>27</sup> National Center for Education Statistics, “Current Expenditures for Public Elementary and Secondary Education: School Year 2003-04,” 2004, [http://nces.ed.gov/pubs2006/expenditures/tables/table\\_4.asp](http://nces.ed.gov/pubs2006/expenditures/tables/table_4.asp).

<sup>28</sup> D.J. Elazar, *Cities of the Prairie: The Metropolitan Frontier and American Politics* (Lanham, MD: University Press of America, 1970).

First, the public spending relationship with private education aid has lower set-theoretic coverage than the religiosity relationship with such aid. Unsurprisingly most states with low spending per student in the public system today are also low-private school aid states but this set theoretic relation is weaker than for any of the religiosity variables examined in this paper. Table 7.7 displays the relation.

**Table 7.7: Low- and high-aid states by public school spending**

	<b>&lt;\$7000 per public school student</b>	<b>&gt;\$7000 per public school student</b>
<b>Low aid states</b>	10	23
<b>High aid states</b>	1	17

The consistency of this relation is 0.91 but its coverage is 0.30, indicating that public school spending is not as important as the religiosity variables in explaining contemporary patterns of aid to children at private religious schools. Secondly, although the South resisted the creation of common tax-supported schooling in the nineteenth century it had more academies than any other region, many with religious affiliations and state or local assistance for pauper children.<sup>29</sup> The early spread of such schools in the South belies the idea that resistance to public spending and resistance to aid for private school students always rise and fall together.

Thirdly, the low public spending variable overlaps only partially with religiosity and geography. Of the eleven states with the lowest public school spending per-head students (below \$7000), eight are Southern but one is Mid-Western (Missouri) and two are Western (Idaho and Utah). Examples such as Huey Long’s education programme in

<sup>29</sup> C.F. Kaestle, *Pillars of the Republic: Common Schools and American Society, 1780-1860* (New York: Hill and Wang, 1983).

Louisiana, North Carolina's early embrace of the state school system and the pre-Civil War installation of state superintendents in Alabama and Kentucky demonstrate the heterogeneous nature of Southern education, which has never been uniformly resistant to spending on public schools.<sup>30</sup> Moreover of the twelve highly religious states, four (South Carolina, Louisiana, Georgia and Texas) provide more than \$7000 per student and of the eleven states which provide less than \$7000, two (Missouri and Idaho) do not belong to the set of highly religious states. Such heterogeneity in public school funding regimes amongst highly religious states militates against the formation of consistent sub-set relations that are central to this *asymmetrical* set-theoretic analysis. For the purposes of this chapter it is of no account that states other than highly-religious Southern states are included amongst the low-public spending or low-private aid states, because the claim being made here is that there is a sufficiency relation between high religiosity and low aid.

Forman, writing in 2006, attributed the (then) slow spread of education vouchers to Evangelicals' distaste for governmental regulation and spending:

'Although No Child Left Behind does not govern private schools receiving vouchers, there is growing pressure for increased government oversight of those schools. This threat of governmental regulation is anathema to conservative Christian educators, driving them further away from a school voucher movement about which they were already increasingly ambivalent'.<sup>31</sup>

But Forman's argument that distaste for governmental spending and regulation helps account for anti-voucher aid sentiment amongst Evangelicals is flawed in three respects: first, as his statement acknowledges, NCLB does not cover private schools and no evidence is provided for the claim that fear of the law actually helped reduce

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<sup>30</sup> Ibid.

<sup>31</sup> Forman, "The Rise and Fall of School Vouchers: A Story of Religion, Race, and Politics," 551.

Evangelical support for the aid. Secondly, in the seven years since Forman's paper was published, twelve further tax credit and nine further voucher programmes have been passed (evenly split between Southern and non-Southern states, although the adoption of vouchers alone is not enough to push the former into the 'high aid' category), so the empirical claims about voucher take-up are no longer true. Thirdly, as the author points out, Evangelicals were 'already increasingly ambivalent' about the voucher programmes, so further explanatory considerations are needed to explain high-Evangelical-low-aid states - other than fear of governmental spending and the regulation that might come with it. Forman roots part of this ambivalence in racial-justice claims for vouchers (the claims that vouchers are a civil rights struggle to obtain academically rigorous education for minorities). The interaction between race and religion with respect to aid for children at private religious schools is discussed in section four of this chapter.

Hence although low public education spending does help account for low private aid spending, the spending variable cannot be substituted for this chapter's religiosity analysis. It cannot explain the fact that membership of the set of highly religious (High Evangelical, low Catholic) states is almost a sufficient condition for low levels of aid for children at private religious schools.

### **Explaining the Set Theoretic Relationship**

The religious group gap revealed in sections one and two of this chapter can be explained by the fact that Catholic schools are overrepresented as a proportion of all religious schools compared to their proportion of the population. My comparison of American Religious Identification Survey data with information from the Private

School Universe Survey found that this relationship holds true across almost all states. For instance, in Arkansas, where just five per-cent of the population identify as Catholic more than a fifth of religious schools are Catholic in orientation; in West Virginia the respective proportions are seven per-cent and a quarter.<sup>32</sup> Only four states (Georgia, Florida, Maine and Nevada) have a lower proportion of Catholic schools as a percentage of all religious schools than the proportion of the population that self-identifies as Catholic and in each of these states the difference is small. Table 7.5a in the appendix shows the proportion of each state's population that identifies as Catholic, Evangelical and Mainline Protestant alongside the proportion of religious schools belonging to these religious groups.

Before the critical juncture of the Warren Court decisions on church-state separation,<sup>33</sup> public schools in the US routinely mandated Protestant forms of worship as part of the regular school day.<sup>34</sup> These included Protestant prayers, hymns and readings from the King James Bible. Until the mid-twentieth century many Protestant parents who wanted their children to be educated in a Protestant environment could send their child to a traditional public school. A Protestant-flavoured public education system, along with the emphasis in traditional Catholic doctrine on education as a means to pass on the faith and perform the Church's social justice function, led Catholics to set up private parochial schools. These historical roots are still evident today in the high proportion of private religious schools that are Catholic in orientation, more than any other religious group as Table 7.8 shows.

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<sup>32</sup> Kosmin and Keysar, "American Religious Identification Survey 2008: Summary Report"; Private School Universe Survey, "Number of Private Schools, by Religious Orientation and Community Type: 1989-90 through 2005-06" (National Center for Education Statistics, 2006), [http://nces.ed.gov/surveys/pss/tables/table\\_whs\\_01.asp](http://nces.ed.gov/surveys/pss/tables/table_whs_01.asp).

<sup>33</sup> Engel v Vitale, 370 U.S. 421 (1962); Abington School District v Schempp and Murray v Curlett, 410 U.S. 203 (1963).

<sup>34</sup> Green, *The Bible, the School, and the Constitution*; Hennesey, *American Catholics: A History of the Roman Catholic Community in the United States*.

**Table 7.8: Number of private schools by religious or non-sectarian orientation,  
2005-6**

<b>Orientation</b>	<b>Total number (2005-6)</b>	<b>Proportion of total</b>
Catholic	7,634	26.3
Assembly of God	379	1.3
Baptist	3,511	12.1
Christian (no specific denomination)	4,338	15.0
Episcopal	334	1.2
Islamic	202	0.7
Jewish	853	2.9
Lutheran	1,632	5.6
Pentecostal	472	1.6
Seventh-Day Adventist	951	3.3
All other religious	2,732	9.4
Nonsectarian	5,890	20.3
<b>Total</b>	<b>28,996</b>	<b>100 (rounded)</b>

Source: Private School Universe Survey (PSS) 2006  
[http://nces.ed.gov/surveys/pss/tables/table\\_whs\\_03.asp](http://nces.ed.gov/surveys/pss/tables/table_whs_03.asp)

Episcopalian schools, which embody the ‘main-line Protestant’ values that were dominant at the nation’s founding and amongst many political elites thereafter, represent only a tiny proportion of all private religious schools.<sup>35</sup> They are excluded from this analysis because of their exclusivity, high fees and tiny remit in the context of America’s private school ecosystem. Catholic schools outnumber them by a factor of more than twenty to one. Since Catholic schools represent a large plurality of private

<sup>35</sup> M.E. Marty, *Righteous Empire: The Protestant Experience in America*, Two Centuries of American Life (New York: The Dial Press, 1970).

religious schools, states with a high proportion of Catholics are expected to be more supportive of aid for private religious schools than states with low proportions of Catholics. Almost all of the highly religious states fall into this latter category. Their highly Evangelical, low Catholic populations are less supportive of aid for private religious schools because relatively few of the private schools are Evangelical and a relatively large number are Catholic.

However the explanation cannot end here because the overrepresentation of Catholic schools (and the underrepresentation of Evangelical Protestant schools) is under-motivated. The Warren Court decisions were made more than fifty years ago; since then there has been a major expansion in Evangelical activity and ample opportunity for Protestants to set up their own private religious schools.<sup>36</sup> Many Evangelical Protestants have been vociferous in their criticism of the public schools in the intervening years, particularly the lack of prayer or other devotional exercises in schools, and their voices gained strength throughout the 1980s with the election of Ronald Reagan, the political expansion of the Religious Right and the founding of The Moral Majority in 1979.<sup>37</sup> Moreover, as Wolf and Trivitt observe, Catholic schools attract families of other faiths, including Evangelicals, because of their positive ‘branding’ in the educational marketplace.<sup>38</sup>

All of these considerations suggest that Evangelical Protestants as well as Catholics desire private religious schooling for their children and that both groups should support aid for private religious schools as a consequence. Why are Evangelical schools underrepresented and Catholic schools overrepresented, today, compared to their respective portions of the population? Why do Evangelical Protestants not follow

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<sup>36</sup> Putnam and Campbell, *American Grace: How Religion Divides and Unites Us*.

<sup>37</sup> Delfattore, *The Fourth R*.

<sup>38</sup> P.J. Wolf and J.R. Trivitt, “School Choice and the Branding of Catholic Schools,” *Education Finance and Policy* 6, no. 2 (Spring 2011): 202–245.

Catholics in setting up private religious schools and requesting aid for children who attend them? In order to explain the set relationship between high religiosity and low aid, it is necessary to answer these questions. There are three candidate answers: Protestant prayer, separationist sentiment and exit/voice. The next section outlines these three candidate answers and explains why the third is best able to answer the puzzle.

### **Three theories – Protestant Prayer, Separationist Sentiment and Exit/Voice**

Two theories, drawn from the literature, deserve attention: Protestant prayer and separationist sentiment. One possible explanation for low-aid highly-religious states is that the historical pattern of Protestant worship within the public schools continues in some form today, so that highly religious Evangelicals see no reason to opt out of the public sector and request aid for their private schools. Two facts bolster this suggestion: loud Southern resistance to the Warren Court decisions from several quarters and recent Supreme Court decisions narrowing the scope of the Warren Court jurisprudence. Many religious commentators and politicians were predictably outraged by the school prayer decisions of the 1960s: North Carolina Governor Terry Sanford said that he would direct his schools to continue with ‘voluntary’ school prayer and Alabama Governor George Wallace issued a challenge to the justices to prevent him from reading the Bible to students in the public schools.<sup>39</sup> In the past twenty years the federal Supreme Court has also narrowed somewhat the holdings of the Warren Court on religious exercises in schools.<sup>40</sup> The combination of immediate resistance to the removal of certain religious exercises and more recent judicial support for student-led Bible groups and prayer

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<sup>39</sup> S.K. Green, “Evangelicals and the Becker Amendment,” *Journal of Church and State* 33, no. 3 (1991): 541–567.

<sup>40</sup> *Westside Community Board of Education v Mergens*, 496 U.S. 226 (1990); *Lamb’s Chapel v Center Moriches Union Free School District*, 508 U.S. 384 (1993).

indicates that there may be fewer reasons for Evangelicals to withdraw from the public school system than consideration of Warren Court decisions alone suggests. But it cannot account for continuing battles on sex education, school prayer and the teaching of creationism and intelligent design in public schools.

A second possible explanation is in tension with the first. Green emphasises the diversity of Evangelicalism and argues that many Evangelicals supported the Warren Court's decisions because of their 'strong separationist heritage'.<sup>41</sup> During the Becker Amendment fights of the 1960s, Green relates, several Evangelical leaders testified in favour of the Warren Court decisions, drawing upon a theological tradition that emphasizes individual religious revelation and suspicion of church-state intermixing. His argument has some merit: it was to the Danbury Baptists that Jefferson wrote when he invoked the 'Wall of Separation' between church and state,<sup>42</sup> and Baptist support for disestablishment has been well documented by historians.<sup>43</sup> One conclusion to be drawn from Green's work would be that membership of the set of highly religious states guarantees low levels of aid because Evangelicals believe more strongly than other religious groups in the separation of church and state.

Although Green makes a persuasive case against monolithic representation of Evangelical opinion he also points out that a large proportion of Evangelicals and their national associations *were* favourably disposed toward religious exercises in schools during the 1960s. Jeffries and Ryan have documented 'the defection of fundamentalist and evangelical opinion from the separationist coalition', particularly in the South.<sup>44</sup>

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<sup>41</sup> Green, "Evangelicals and the Becker Amendment."

<sup>42</sup> Williams, *The Bloody Tenent, of Persecution, for Cause of Conscience, Discussed, in a Conference Betweene Truth and Peace*; Jefferson, "Jefferson's Letter to the Danbury Baptists"; R.M. Healey, *Jefferson on Religion in Public Education* (New Haven and London: Yale University Press, 1962); E.S. Gaustad, *Sworn on the Altar of God: A Religious Biography of Thomas Jefferson* (Grand Rapids, Michigan/Cambridge, UK: William B Eerdmans Publishing Company, 1996).

<sup>43</sup> Drakeman, *Church, State, and Original Intent*.

<sup>44</sup> J.C. Jeffries and J.E. Ryan, "A Political History of the Establishment Clause," *Michigan Law Review* 100, no. 2 (November 2001): 279–370.

Moreover evidence on the period of dramatically increased religious polarization from the 1970s onward shows that separationism amongst Evangelicals is increasingly uncommon. In national polling data there is a wide, significant and growing gap between the attitudes of Evangelicals and non-Evangelicals on many church-state issues.

Since 1973, when the General Social Survey started asking the question, Evangelicals have been much more supportive of prayer in school than non-Evangelicals and the gap has widened somewhat since the 1980s. As Putnam and Campbell document, only around a quarter of non-Evangelicals currently support prayer in schools while almost half of Evangelicals support it.<sup>45</sup> Although Green is right to caution against the naïve assumption that all Evangelicals share the same religious and political beliefs, data from the last few decades suggest that many Evangelical Protestants are favourably disposed toward religious exercises in public schools. Therefore, this second explanation for low-aid high-religiosity states, that highly religious states contain a large proportion of separationists, fails to capture the nature of social reality.

### **Exit or Voice?**

The answer to this puzzle lies primarily in differing religious group responses to perceived ‘Godlessness’ in traditional public schools, whose origins in turn lie in differing conceptions of identity, community and belonging. Historically, Catholics who criticized the public schools opted to set up their own private religious schools whilst Protestants continued to send their children to Protestant-flavoured public schools.

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<sup>45</sup> Putnam and Campbell, *American Grace: How Religion Divides and Unites Us*.

When judicial challenges came to the Protestant character of the public schools in the 1960s and 70s – and Evangelical criticisms of the lack of creationist teaching, Bible reading and school prayer in public schools reached a fever pitch during the subsequent decades – Evangelicals responded to the ‘disturbance’ by launching law-suits and exerting pressures on legislators to provide for such practices in the public schools.<sup>46</sup> Evangelical criticisms of public schools are different to Catholic criticisms: the latter provoked departure from the public school system; the former provoked attempts to reform the public system itself.

Hirschman’s categorization of customer responses to declining business performance in terms of their use of ‘exit’ and ‘voice’ strategies is an appropriate metaphor for Evangelical and Catholic relationships to public schooling. Both religious groups have criticised public schools for failing to meet their needs but more Catholics chose ‘Exit’, that is, voting with their feet to escape the public school system entirely, and more Evangelical Protestants chose ‘Voice’. By ‘Voice’ Hirschman means ‘any attempt at all to change, rather than escape from, an objectionable state of affairs...’<sup>47</sup> This argument that Evangelicals use ‘Voice’ stands in opposition to the argument of Jeffries and Ryan, which is that the defection of Evangelicals from the separationist coalition means ‘the constitutional barrier against financial support of religious schools will not long stand’.<sup>48</sup> If Evangelical Protestants typically ‘Voice’ criticisms rather than ‘Exit’ then the accommodation of religious exercises within public schools will be their goal, not aid to private religious schools. The history of religious exercises in public schools since the 1970s provides support for this view.

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<sup>46</sup> Delfattore, *The Fourth R*; P.A. Djupe and K.H. Conger, “The Population Ecology of Grassroots Democracy: Christian Right Interest Populations and Citizen Participation in the American States,” *Political Research Quarterly* 65, no. 4 (December 2012): 924–937; D.B. Truman, *The Governmental Process: Political Interests and Public Opinion* (New York: Knopf, 1951), 59.

<sup>47</sup> A.O. Hirschman, *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States* (Cambridge, Mass: Harvard University Press, 1970).

<sup>48</sup> Jeffries and Ryan, “A Political History of the Establishment Clause.”

Using major media outlets and direct lobbying, Evangelical Protestants have been in the vanguard of efforts to introduce school prayer or ‘moments of silence’ through constitutional amendment and state legislation.<sup>49</sup> Such moves have provoked a series of lawsuits.<sup>50</sup> The Moral Majority, a group composed largely of Evangelical Protestants and headed by Baptist minister Jerry Falwell, was central to President Reagan’s efforts to restore state sponsored school prayer. Evangelical Protestants have brought a number of lawsuits alleging that public school textbooks contain themes hostile to the free exercise of their faith.<sup>51</sup> During the 1990s, efforts to introduce a ‘Religious Freedom Amendment’ that would permit school prayer explicitly was drafted by a set of highly religious Protestant interest groups including the American Center for Law and Justice, Christian Coalition, Concerned Women for America, Family Research Council, Focus on the Family, Southern Baptist Convention, and the Traditional Values Coalition.<sup>52</sup> Moreover the use of Evangelical ‘Voice’ is not just a post-1960s phenomenon, as evinced by the 1869 Ohio Superior Court decision in *Minor v Board of Education*, which sought to ground in Evangelical Christianity its elimination of a school district ban on Bible reading in public schools.<sup>53</sup> Wherever there have been efforts to reform the public schools to admit religious practices, they have been spearheaded by Evangelical Protestants. Mainline Protestants – whose congregations (despite a brief fillip in the early- to mid-twentieth-century) continue to shrink – have, like Jews and other religious denominations, played a far more limited role in such conflicts than Evangelicals.

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<sup>49</sup> Green, “Evangelicals and the Becker Amendment.”

<sup>50</sup> *Stein v Oshinsky*, 348 F. 2d. 999 (1965); *Gaines v Anderson*, 421 F. Supp. 337 (1976); *Wallace, Governor of Alabama, et al. v Jaffree et al.*, 472 U.S. 38 (1985); *Brown et al. v. Gilmore, Governor of Virginia, et al.*, 533 U.S. 1301 (2001).

<sup>51</sup> *Mozert v Hawkins County Board of Education*, 827 F. 2d 1058 (1987).

<sup>52</sup> Delfattore, *The Fourth R*.

<sup>53</sup> McCloskey, “The Bible in the Common Schools” (Robert Clarke & Co., 1870); Green, *The Bible, the School, and the Constitution*.

These claims are probabilistic and can admit some exceptions without being discredited. Certainly there have been attempts by Catholics and other religious groups to use ‘Voice’ and by Evangelical Protestants to use ‘Exit’. Particularly during the early-nineteenth century, Catholics were vocal in their opposition to Protestant practices in the public schools. In 1834 Cincinnati Bishop John Purcell referred to newly established public schools as ‘sectarian free-schools’ and there were numerous lawsuits from the 1850s regarding Catholic students’ refusal to participate in Protestant public school practices.<sup>54</sup> Although school officials in a few religiously diverse cities bowed to this sentiment in rejecting the use of Protestant prayers,<sup>55</sup> these attempts to use Catholic ‘Voice’ mostly failed, with several unfavourable judgements.<sup>56</sup> Protestant-flavoured school prayer was legally preserved federally until 1962. Hence as the Catholic population in the US grew during the mid- and later-nineteenth century members increasingly turned to private parochial schools instead. They exited the public school system.

On the Protestant side, the National Association of Evangelicals’ response to the 1963 *Schempp* decision included the recommendation ‘that Evangelicals consider Christian schools as an alternative to school districts that were hostile to religion’, a clear incitement to ‘Exit’.<sup>57</sup> Almost all of the plaintiffs in one high-profile challenge to the content of public school textbooks, *Mozert v Hawkins County Board of Education*, subsequently removed their children from the public school system when they lost the case.<sup>58</sup> There have been two main ways in which Evangelical Protestants exited the public school system during the twentieth century – ‘White flight’ to segregated academies and religious-flight to homeschooling – but because the focus of political

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<sup>54</sup> Green, *The Bible, the School, and the Constitution*.

<sup>55</sup> Green, “Evangelicals and the Becker Amendment.”

<sup>56</sup> *Donahoe v Richards*, 38 Me. 376 (1854); *Commonwealth v Cooke*, 7 Am. L. Reg. 417 (1859).

<sup>57</sup> Green, “Evangelicals and the Becker Amendment.”

<sup>58</sup> Forman, “The Rise and Fall of School Vouchers: A Story of Religion, Race, and Politics,” 560.

action by Evangelicals has been on reform of the public system, and because the numbers taking such options are modest today relative to the size of the total school population, neither represents an avenue of Evangelical ‘Exit’ large enough to threaten Exit/Voice theory.

After the critical juncture *Brown v Board of Education* a number of White Southerners resisted school integration including, in several states, shutting the public school system entirely for a period,<sup>59</sup> and by 1971 an estimated half a million White Southerners attended private segregated academies.<sup>60</sup> Unlike the judicial rebuff to Catholic exercise of ‘Voice’ during the 1850s, subsequent judicial decisions on segregated academies were mixed. Some challenges to the tax-exempt status of segregated academies failed,<sup>61</sup> but others, such as *Brumfield v Dodd*, struck down laws providing publicly-funded materials to segregated private schools.<sup>62</sup> In Louisiana, for instance, the transport law was amended in 1975 to prohibit transportation to racially discriminatory schools. In Virginia – where ‘massive resistance’ resulted in the closing of many white public schools – judicial challenge overthrew the policy in 1959, except in Prince Edward County.

Data on white segregated academies are extremely difficult to collect but there are indications that this type of ‘Exit’ to private segregated academies has been considerably reduced since the school bussing decisions of the 1970s, not least because stark residential segregation results in *de facto* racial segregation in many public school districts today.<sup>63</sup> White flight represents one way that some Evangelical Southerners

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<sup>59</sup> *Brown v Board of Education of Topeka et al.*, 347 U.S. 483 (1954).

<sup>60</sup> G. Ladson-Billings, “Landing on the Wrong Note: The Price We Paid for Brown,” *Educational Researcher* 33, no. 7 (October 2004): 3–13.

<sup>61</sup> *Allen v Wright*, 468 U.S. 737 (1984).

<sup>62</sup> *Bromfield v Dodd*, 405 F.Supp. 338 (1975).

<sup>63</sup> R.M. Adelman, “Neighbourhood Opportunities, Race, and Class: The Black Middle Class and Residential Segregation,” *City & Community* 3, no. 1 (March 2004): 43–63; J Iceland and R Wilkes, “Does Socioeconomic Status Matter? Race, Class, and Residential Segregation,” *Social Problems* 53, no. 2 (May 2006): 248–273; A.A. Simkus, “Residential Segregation by Occupation and Race in Ten

have used ‘Exit’ rather than ‘Voice’ but its significance here is limited because it stemmed from racial rather than religious criticisms of the public schools, has been blunted by some legislative and judicial rulings, and its use in relation to private religious schools rather than *de facto* segregated public schools is much smaller than it was during the 1954-1975 period. Moreover ‘white flight’ was not merely an Evangelical phenomenon but included many *Catholic* schools. Today, Catholic schools are the most racially segregated schools in the US, more racially segregated even than other private religious schools.<sup>64</sup> The Private School Universe Survey shows that fewer Evangelical Protestants compared to Catholics exit the public school system for a private religious school.<sup>65</sup> Hence the phenomenon of ‘white flight’ represents only a limited violation of the ‘Evangelical-Voice/Catholic-Exit’ theory and the same argument can be made with regard to a second avenue of Evangelical ‘Exit’: home-schooling.

Data on homeschooling are also difficult to collect because of the diversity in state regulation of the practice but the total homeschooling population in the US is estimated at 1.5 million.<sup>66</sup> The fact that an overwhelming 83.3% of homeschoolers in a National Center for Education Statistics survey in 2007 stated ‘a desire to provide religious and moral instruction’ as an ‘important’ reason for home-schooling and a plurality (35.8%) said that it was the ‘most important’ reason, indicates that religious

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Urbanized Areas, 1950-1970,” *American Sociological Review* 43 (February 1978): 81–93; C.L. Zubrinsky and L Bobo, “Prismatic Metropolis: Race and Residential Segregation in the City of the Angels,” *Social Science Research* 25 (1996): 335–374; N.A. Denton, “The Persistence of Segregation: Links Between Residential Segregation and School Segregation,” *Minnesota Law Review* 80 (1996 1995): 795; D.S. Massey and N.A. Denton, “Suburbanization and Segregation in U.S. Metropolitan Areas,” *American Journal of Sociology* 94, no. 3 (November 1988): 592–626.

<sup>64</sup> S.F. Reardon and J.T. Yun, “Private School Racial Enrollments and Segregation,” *The Civil Rights Project, Harvard University* (June 26, 2002).

<sup>65</sup> National Center for Education Statistics, Schools and Staffing Survey (SASS), “Private Elementary and Secondary Enrollment, Number of Schools, and Average Tuition, by School Level, Orientation, and Tuition: 1999-2000, 2003-04, and 2007-08.”

<sup>66</sup> National Center for Education Statistics, “Number and Percentage of School-Age Children Who Were Homeschooled, by Reasons Parents Gave as Important and Most Important for Homeschooling: 2007,” 2007, <http://nces.ed.gov/programs/coe/tables/table-hsc-2.asp>.

people make up a large proportion of homeschoolers.<sup>67</sup> Scholars observe that despite some increases in the religious diversity of the homeschooling population, the vast majority remain Conservative Protestants.<sup>68</sup> One Catholic Homeschooling website estimates that only around 80-100,000 or around 5% of the total homeschooling population are Catholic homeschoolers, suggesting that most homeschoolers are Protestant and at least a plurality is composed of Evangelicals.

The relative lack of Catholic homeschoolers seems to present a problem for the thesis that Catholics ‘Exit’ while Protestants ‘Voice’. But actually, its effect is marginal because homeschooling is marginal. Homeschooled children represent only a tiny proportion of the total school-age population and for most parents it is not a practical option. In the Faith Matters Survey in 2006, of those respondents who stated that they had both a religion and children, just four per-cent said that they homeschool their children.<sup>69</sup> Homeschooler respondents to the NCES 2007 survey numbered 1.5 million as compared to a total school-age population of 52.9 million.<sup>70</sup> If homeschooling is an Evangelical ‘Exit’, it is not an easy one. The vast majority of Evangelicals, who cannot or will not homeschool, use ‘Voice’ to change the public schools while Catholics ‘Exit’ to the parochial sector. This next section explains why this occurs and hence, why states with high levels of Catholics support higher levels of aid for children at private schools whilst highly Evangelical states do not.

### **Why do Catholics ‘Exit’ but Protestants ‘Voice’?**

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<sup>67</sup> Ibid.

<sup>68</sup> J.C. Carper, “Pluralism to Establishment to Dissent: The Religious and Educational Context of Home Schooling,” *Peabody Journal of Education* 75, no. 1–2 (2000): 8–19.

<sup>69</sup> “Faith Matters Survey” (Roper Center for Public Opinion Research Data Archive, 2006), [http://www.ropercenter.uconn.edu/data\\_access/data/datasets/faith\\_matters\\_2006.html#\\_UJEWbYb6mT1](http://www.ropercenter.uconn.edu/data_access/data/datasets/faith_matters_2006.html#_UJEWbYb6mT1).

<sup>70</sup> National Center for Education Statistics, “Estimated Total and School-Age Populations, by State: Selected Years, 1970 through 2008,” 2008, [http://nces.ed.gov/programs/digest/d09/tables/dt09\\_017.asp](http://nces.ed.gov/programs/digest/d09/tables/dt09_017.asp).

Detwiler's explanation for Evangelical attempts to reform the public schools rather than choose 'home schooling or Christian schools', that 'both of these alternatives place a financial burden on Christian parents', does not explain religious group differences because Catholics just as much as Protestants must bear a financial burden in choosing private or homeschooling options.<sup>71</sup> The explanation lies in the way that Evangelical Protestants understand their place within America. From the beginning of the American republic and particularly during the nineteenth century, the dominant cultural seam was Protestant.<sup>72</sup> This cultural dominance structured the perceptions of subsequent generations of Americans so that even in an exceptionally diverse country the concept of 'Americanism' remains to some degree intertwined with 'Protestantism'. Nowhere was this intertwinement more obvious than in the early American education system, where immigrant children were encouraged to assimilate 'into a system that reflected a Protestant vision of America.'<sup>73</sup> The early public school leaders were characteristically Anglo-American in background and Protestant in religion.<sup>74</sup> As Green argues, 'early public education relied on assumptions of an inherent relationship between Protestantism and republicanism that denied the legitimacy of alternative models.'<sup>75</sup> There was an assumption 'that Americanism and Protestantism were synonyms and that education and Protestantism were allies'.<sup>76</sup>

Although Baptists were harassed and persecuted alongside Quakers and many other sects during colonial times, by the beginning of the nineteenth century Evangelical Protestantism had emerged as one of the most powerful forces in the American

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<sup>71</sup> F Detwiler, *Standing on the Premises of God* (New York and London: New York University Press, 1999).

<sup>72</sup> Hennessee, *American Catholics: A History of the Roman Catholic Community in the United States*; Noll, *America's God: From Jonathan Edwards to Abraham Lincoln*.

<sup>73</sup> Green, *The Bible, the School, and the Constitution*.

<sup>74</sup> Kaestle, *Pillars of the Republic: Common Schools and American Society, 1780-1860*.

<sup>75</sup> Green, *The Bible, the School, and the Constitution*.

<sup>76</sup> T.L. Smith, "Protestant Schooling and American Nationality, 1800-1850," *Journal of American History* 53 (1967).

Republic. During the nineteenth centuries the Evangelical fervour of the Second Great Awakening (~1800-1840) and the building of the Whig party's Evangelical Protestant base,<sup>77</sup> was followed by a period during which Evangelical Protestantism and republican sentiment promoted the spread of public education as part of an American nation-building effort in the former Western territories.<sup>78</sup> The Anglican Church had been established in five colonies and enjoyed tax funding and other benefits, but by the time school systems were first created in the mid-nineteenth century Evangelical churches were resurgent. As Noll argues, evangelicalism and republicanism became 'not only the most powerful value system *in* the nation, but also the most powerful value system *defining* the nation'.<sup>79</sup>

By contrast Catholics have historically had a fraught relationship with the dominant Protestant American culture. As late as 1960 JFK's Presidential campaign was forced to confront worries that as a Catholic he would not act in America's best interests but those of the Roman Pope. Nativist 'Americanist' criticisms of Catholicism were rife throughout the nineteenth- and early twentieth-centuries.<sup>80</sup> Although the anti-Catholic sentiment which contributed to Know-Nothingism in the 1850s, Ku-Klux-Klanism until early twentieth century and criticism of Al Smith and JFK in 1928 and 1960 has largely disappeared, Catholics today live with its legacy. Lipset and Rokkan famously suggested that party systems were frozen along cleavages that existed since their formation, and a strikingly similar arrangement exists for the Catholic-Protestant divide in American education.<sup>81</sup> The current behaviour of highly-religious states in

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<sup>77</sup> Green, *The Bible, the School, and the Constitution*.

<sup>78</sup> J.W. Meyer et al., "Public Education as Nation-Building in America: Enrollments and Bureaucratization in the American States, 1870-1930," *American Journal of Sociology* 85, no. 3 (November 1979): 591-613.

<sup>79</sup> Noll, *America's God: From Jonathan Edwards to Abraham Lincoln*.

<sup>80</sup> Kinzer, *An Episode in Anti-Catholicism: The American Protective Association*; Stern, "Blaine Amendments, Anti-Catholicism, and Catholic Dogma."

<sup>81</sup> S.M. Lipset and S Rokkan, eds., *Party Systems and Voter Alignments: Cross-National Perspectives* (The Free Press, 1967).

failing to provide aid for children at private religious schools cannot be understood without knowledge of the sequence of events and combinations of forces that produced these ‘packages’ of options for Evangelicals and Catholics.

This cultural history provides the key to understanding differing Protestant and Catholic reactions to the problems they perceive in public schools: Evangelical Protestants perceive Protestantism to be central to American culture, to what it means to be an American. Given that the public school is by far the most common school type in the US and has historically been a means of advancing American culture, it is natural for Evangelicals to seek to change the public school system itself, through lobbying for school prayer and the teaching of ‘creation science’ rather than to opt out of the system entirely. According to Detwiler, Evangelicals typically believe that ‘public schools are an extension of the divinely ordained institution of the family...Christian parents have an obligation, given to them by God, to monitor the schools and make sure that they are run in a manner consistent with biblical principles’.<sup>82</sup> Forman writes:

‘In the Bible, Jesus tells his followers, “Ye are the salt of the earth” and “the light of the world.” For many evangelical parents, this is an injunction to remain a presence in public schools. As a Massachusetts mother explained, “We’re feeling led right now to send our kids to public schools to be a positive influence. If you just took all Christians out of public anything, how is the truth going to be spread and how are people going to become Christians?”’<sup>83</sup>

By contrast American Catholics have historically stood outside of mainstream American culture; Catholicism is not and never has been popularly identified as crucial to ‘Americanness’. Their reaction, to exit the mainstream schooling system and set up private parochial institutions, reflects this cultural dislocation. Moreover despite the

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<sup>82</sup> Detwiler, *Standing on the Premises of God*.

<sup>83</sup> Forman, “The Rise and Fall of School Vouchers: A Story of Religion, Race, and Politics,” 560.

enormous reduction in anti-Catholic sentiment since the time of JFK, the Latinoization of the American Catholic Church since then may have prevented the reduction of this sense of cultural dislocation on the part of the Catholic community.<sup>84</sup> As Putnam and Campbell note, ‘the American Catholic Church is on its way to becoming a majority-Latino institution’.<sup>85</sup> Racial and linguistic factors may exacerbate Catholics’ positioning outside of the white Protestant tradition in American education, as evinced by the fact that several state No-Aid Provisions require lessons in public schools to be conducted in English.<sup>86</sup>

The Exit/Voice pressure, which helps explain variation in support for aid for children at private religious schools between high-Catholic states and high-Evangelical states, is reinforced by three other factors: school functionality, church organization and path dependency. First, Catholics have a long history of parish support for parochial schools in America and government-funded schools elsewhere, a commitment to social justice that involves the provision of education to non-Catholics as well as parishioners, and a (dwindling) workforce of nuns and priests whose religious vocation includes commitments at parochial schools.<sup>87</sup> All of these features help explain the large numbers of Catholic parochial schools displayed in Table 7.8 and the acceptance of governmental aid for students who attend. Private Evangelical schools, by contrast, are typically less keen on governmental aid or interference with their mission, which tends

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<sup>84</sup> Putnam and Campbell, *American Grace: How Religion Divides and Unites Us*.

<sup>85</sup> *Ibid.*, 17.

<sup>86</sup> J.D. Leshy, *The Arizona State Constitution*, The Oxford Commentaries on the State Constitutions of the United States (New York: Oxford University Press, 2011); D.M. Adkinson and L.M Palmer, *The Oklahoma State Constitution*, The Oxford Commentaries on the State Constitutions of the United States (New York: Oxford University Press, 2011); C.E. Smith, *The New Mexico State Constitution*, The Oxford Commentaries on the State Constitutions of the United States (New York: Oxford University Press, 2011).

<sup>87</sup> National Catholic Educational Association, “A Brief Overview of Catholic Schools in America” (NCEA, 2010), <http://www.ncea.org/about/historicaloverviewofcatholicschoolsinamerica.asp>; M.R. West and L Woessmann, “‘Every Catholic Child in a Catholic School’: Historical Resistance to State Schooling, Contemporary Private Competition and Student Achievement across Countries,” *The Economic Journal* 120, no. 546 (August 2010): F229–F255.

to be more about providing Bible-based education than social uplift for non-church members.<sup>88</sup> These differential school functions are evidenced in Catholic and Evangelical schools' mission statements.<sup>89</sup>

Secondly, the organization of the Catholic Church in America facilitates the funding of parochial schools to a greater degree than Evangelical Protestant Churches. The former is much more centralized and 'more fully institutionalized',<sup>90</sup> at least since the late nineteenth-century,<sup>91</sup> partly, scholars have argued, because it is both hierarchical in organization and 'prophetic' in its approach to religious doctrine.<sup>92</sup> By contrast, most Evangelical churches operate in a decentralized and competitive manner because they are 'individualistic' or 'confessional' in doctrinal matters, emphasizing individual revelation rather than tradition or priestly interpretation of scripture. The tendency of Evangelical Protestant sects to split into separate organizations may make it harder for Evangelicals to create and sustain a system of private schools, reinforcing the reluctance of Evangelicals to 'exit' and their propensity to 'voice' concerns about the public school system instead. Thirdly, the historical dominance of Catholic schools as a proportion of private schools in the US contributes to their continued receipt of aid, because once the school has assets and a local constituency with a stake in its continued existence, it is difficult to alter the *status quo*. Across the sweep of US history, the norm for most Evangelical schools has been exclusion from (and active avoidance of) governmental aid of all kinds. These local path-dependent pressures are explored in much more depth in Chapter 9. As this chapter shows, religious group responses to current conditions are

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<sup>88</sup> Forman, "The Rise and Fall of School Vouchers: A Story of Religion, Race, and Politics."

<sup>89</sup> A.J. Boerema, "An Analysis of Private School Mission Statements," *Peabody Journal of Education* 81, no. 1 (2006): 180–202.

<sup>90</sup> Wuthnow, *The Restructuring of American Religion: Society and Faith since World War II*, 23.

<sup>91</sup> Hennessey, *American Catholics: A History of the Roman Catholic Community in the United States*, 176.

<sup>92</sup> W Mao and C Zech, "Choices of Organizational Structures in Religious Organizations: A Game Theoretic Approach," *Journal of Economic Behavior & Organization* 47, no. 1 (January 2002): 55–70; D.W. Allen, "Order in the Church: A Property Rights Approach," *Journal of Economic Behavior & Organization* 27 (1995): 97–117.

shaped by path dependent relationships between communities, schools and governmental units that were formed during periods of intense conflict, particularly the nineteenth-century Common School movement and twentieth-century battles over school prayer.

For Evangelical Protestants, who are more inclined to use ‘Voice’ than ‘Exit’ in response to perceived ‘Godlessness’ in public schools, the perception of the need for aid to children at private religious schools is correspondingly lower. By contrast amongst Catholics who have historically chosen ‘Exit’ rather than ‘Voice’, the need for aid for children at private religious schools is higher. This chapter does not claim that the decisions of states as to whether to provide aid for private religious schools are based solely on the wishes of the dominant religious group within its borders, but it does suggest that differential exit/voice responses to problems with public schools *creates a perceived need* for aid for private religious schools in highly-Catholic states that is not present in low-Catholic, high-Evangelical states. Therefore membership of the set of highly-Catholic states almost guarantees high levels of aid to children at private religious schools whilst membership of the set of highly-religious, Evangelical Protestant and low-Catholic states almost guarantees low levels of aid.

## **Conclusion**

This chapter has shown that membership of the set of highly religious states and the set of low-Catholic states almost guarantees membership of the set of low-aid states. In so doing it demonstrates that the ‘religiosity’ variable is not monolithic but charged with rich and significant gaps between groups. The ‘splitting’ rather than ‘lumping’ with which this chapter is concerned prompts us to re-evaluate the literature. It stands in

opposition to the blanket predictions of Jeffries and Ryan on the future role of religious adherents in relation to church-state separationism, because Evangelicals tend to lobby for changes to public schools rather than opt out for the private sector. And it helps explain Green's finding that 'the developing [mid-nineteenth century] no-funding rule applied not only to Catholic schools but also to the plethora of Protestant schools...and was responsible for a decline in the latter'<sup>93</sup> because Catholics' alienation from the dominant Protestant culture provides an inducement to 'Exit' rather than 'Voice'. This chronicle of America's parochial schools stands in pleasing contrast to the course of church history, where the Reformed Protestants – from whom modern American Evangelical Churches are descended – 'exited' the structures of the Catholic Church (and from the 'voicing' of concerns at the Council of Trent, the Catholic 'Counter-Reformation' primarily concerned *internal* reconfiguration and spiritual renewal).<sup>94</sup>

One way to extend the foregoing analysis would be to examine Evangelical behaviour with respect to aid for children at private religious schools in states where Evangelicals are a small minority of the state population, and not in the majority as in many of the 'highly religious states' with which this chapter is concerned. In such a situation, some 'exit' pressures operating upon Catholics from the nineteenth century onwards (political powerlessness and marginalisation), might coexist with some 'voice' pressures operating upon Evangelicals (commitment to evangelizing students in the public school system, a resistance to governmental aid, and an organizational structure that makes the maintenance of private school systems challenging). This chapter merely establishes an asymmetric sufficiency relationship between high-Evangelical-low-Catholic states and low levels of aid: it demonstrates that *in highly religious states* the exit/voice dynamic can help to explain low levels of aid. The chapter makes no claims

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<sup>93</sup> Green, *The Bible, the School, and the Constitution*.

<sup>94</sup> D MacCulloch, *Reformation: Europe's House Divided 1490-1700* (Penguin Books, 2004).

about the relationship between low-Evangelical states and levels of aid for children at private religious schools. This would be a fruitful test of the applicability of exit/voice theory beyond the bounds of the analysis presented here.

As the United States becomes more polarized between highly religious and non-religious populations and distinctions between Christians seem to matter less, the arguments of this chapter provide a salutary reminder of the continuing significance of differences between religious groups. Putnam and Campbell argued recently that ‘how religious a person is ha[s] become more important as a political dividing line than which denomination he or she belong[s] to. Church-attending evangelicals and Catholics (and other religious groups too) have found common political cause’.<sup>95</sup> Their assertion may be correct with regard to the electoral domain and many other areas of social and political life but in education, it is false. Religious groups matter.

Just as the ‘culture war’ theorists perceive growing polarization between ‘Orthodox’ and ‘Progressives’, partisan polarization between Republicans and Democrats has also increased significantly. The next chapter examines the third institutional ordering: Party. It finds that partisan control of state offices also matters when it comes to aid for children at private religious schools.

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<sup>95</sup> Putnam and Campbell, *American Grace: How Religion Divides and Unites Us*, 2.

## Chapter 8: Party control and aid for children at private religious schools

There is a large literature connecting party control and policy outcomes in U.S. states, and although the literature is dominated by discussion of social welfare spending,<sup>1</sup> including education expenditures, no attention has yet been paid to aid for children at private religious schools.<sup>2</sup> This chapter remedies that deficiency. The policies that party elites promote merit close scholarly examination because parties play a vital role translating citizens' preferences into electoral outcomes, facilitating representation and accountability, and organizing democratic political life.<sup>3</sup> The focus of this chapter is on the elites rather than the public, because elites craft policy and enforce it. Public preferences are relevant insofar as they affect politicians' judgement as to whether aid is supported by their constituents, and hence their re-election calculations, but the connection between public preferences and public policy outcomes is not always close, especially in domestic policy.<sup>4</sup> This is a feature of all non-direct democracies. As V.O. Key observes, 'political parties are basic institutions for the translation of mass preferences into public policy'.<sup>5</sup> This chapter cuts straight to the level of the political party. It requires no assumptions about the relationship between mass preferences and party programmes in order to investigate the relationship between party control of the state offices and the generosity of state aid for children at private religious schools.

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<sup>1</sup> C Barilleaux, "Party Strength, Party Change and Policy Making in the American States," *Party Politics* 6, no. 1 (January 2000): 61–73; M.A. Smith, "The Nature of Party Governance: Connecting Conceptualization and Measurement," *American Journal of Political Science* 41, no. 3 (July 1997): 1042–1056; W.D. Berry et al., "Measuring Citizen and Government Ideology in the U.S. States: A Re-Appraisal," *State Politics & Policy Quarterly* 10, no. 2 (June 2010): 117–135.

<sup>2</sup> E.T. Jones, "Political Change and Spending Shifts in the American States," *American Politics Research* 2, no. 2 (1974): 159–178.

<sup>3</sup> E.E. Schattschneider, *Party Government: American Government in Action* (New York: Rinehart & Company, Inc., 1942).

<sup>4</sup> A.D. Monroe, "Consistency between Public Preferences and National Policy Decisions," *American Politics Research* 7, no. 1 (January 1979): 3–19; A.D. Monroe, "Public Opinion and Public Policy, 1980–1993," *The Public Opinion Quarterly* 62, no. 1 (Spring 1998): 6–28.

<sup>5</sup> V.O. Key, *Public Opinion and American Democracy* (New York: Alfred A Knopf, 1961).

Weber wrote that ‘from within [the economic or social] spheres, classes and status groups influence the legal order and are in turn influenced by it. But “parties” live in a house of “power”’.<sup>6</sup> No assumptions are made here about the social or economic forces that undergird party positions on the policy at issue; investigation focuses on elites’ use of majority party power to pass favoured policies.

One element of the ‘culture wars’ thesis, which was introduced in Chapter 7, is that the two main parties have become more ideologically distinct, and politically polarized, because of the battle between ‘orthodox’ and ‘progressives’. Scholars argue that the Republican Party increasingly attracts the orthodox of all faith traditions whilst liberal progressives are attracted to the Democratic Party.<sup>7</sup> Even ‘culture war’ critics observe that there has been a substantial change in recent decades. Compared to the mid-twentieth century, when non-southern Protestants were overwhelmingly Republican and Catholics and Jews overwhelmingly Democrat, ‘the most orthodox elements of the major faith traditions have become increasingly Republican relative to their modernist counterparts’.<sup>8</sup> Jews remain more Democratic than Christians, and Catholics more Democratic than Protestants, but the assertion that there is also a ‘cultural divide’ between the parties along the orthodox-progressive axis is bolstered by voting patterns, party platforms and heightened party polarization between conservatives and liberals.<sup>9</sup>

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<sup>6</sup> M Weber, “Class, Status, Party,” in *Class, Status and Power: A Reader in Social Stratification*, ed. R Bendix and S.M. Lipset (New York: Free Press, 1966), 74.

<sup>7</sup> Hunter and Wolfe, *Is There A Culture War? A Dialogue on Values and American Public Life*; Hunter, *Culture Wars: The Struggle to Define America. Making Sense of the Battles over the Family, Art, Education, Law and Politics*.

<sup>8</sup> G Layman, *The Great Divide: Religious and Cultural Conflict in American Party Politics*, Power, Conflict, and Democracy: American Politics Into the Twenty-First Century (New York: Columbia University Press, 2001), 13.

<sup>9</sup> A Abramowitz, *The Disappearing Center: Engaged Citizens, Polarization, and American Democracy* (New Haven and London: Yale University Press, 2011); A Abramowitz and K.L. Saunders, “Is Polarization a Myth?,” *Journal of Politics* 70, no. 2 (April 2008): 542–555; G.C. Layman and T.M. Carsey, “Party Polarization and ‘Conflict Extension’ in the American Electorate,” *American Journal of Political Science* 46, no. 4 (October 2002): 786–802.

Such changes have stark implications for public policy. The ‘culture war’ has been defined as a series of ‘divisive and highly emotional battles over cultural issues such as abortion, women’s rights, homosexual rights, and *the role of religion in public education*’ [my italics].<sup>10</sup> But as Chapter 7 showed, the issue of religion in public education cannot be separated easily from the issue of aid for students at private religious schools, because public school prayer, ‘released time’ or lessons in ‘intelligent design’ reduce pressures for religious parents to exit for the private parochial sector. Hence if culture war theorists are right to argue that party polarization is driven at least in part by divisions over the role of religion in education, we would expect to see partisan variation on the issue of aid for children at private religious schools.

A fifth of my state-level interviewees suggested that partisanship explains the distribution of aid to children at private religious schools. They argued that Republican control of the state government leads to greater levels of aid for children at private religious schools and their argument is reinforced by enthusiastic Republican sponsorship of educational vouchers and tax credits. A party whose base is much more religious and supportive of market-led solutions to educational problems might be expected to champion these types of ‘submerged’ aid.<sup>11</sup> But this statement does not imply that membership of the set of Republican-controlled states is a *necessary* condition for such aid, nor does it cover the other five types of aid under consideration: property tax exemptions for schools, and transport, textbooks, equipment and food services for students. There are reasons for the Democratic Party to be supportive of tax credits and vouchers because the Party base has traditionally consisted in low-income groups, urban voters, African Americans and Catholics, all constituencies that are targeted by vouchers and tax credits.

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<sup>10</sup> Layman, *The Great Divide: Religious and Cultural Conflict in American Party Politics*, 3.

<sup>11</sup> “2012 Republican Party Platform: We Believe,” 2012, <http://whitehouse12.com/republican-party-platform/#Item13>; Putnam and Campbell, *American Grace: How Religion Divides and Unites Us*.

For neither party is the case for tax credits and vouchers clear-cut. The Democratic Party is closely connected with teachers' unions, groups which have always been opposed to vouchers, while the Republican Party is electorally strong in rural and suburban constituencies whose direct interest in urban poverty-targeted voucher programmes is limited. And if aid for children at private religious schools is in part a 'cultural' issue, then it may create a cross-cutting cleavage because some party appeals to cultural issues have a tendency to cut across existing voting coalitions. Layman argues that 'conservative cultural stances may lessen the GOP's appeal to its traditional supporters as better-educated, more affluent individuals tend to be less traditionally religious and more culturally liberal than lower-status citizens', and that for the Democrats, cultural liberalism has the potential to alienate some black Protestants and working-class Catholics who are the traditional core of the party.<sup>12</sup> Such issues constitute, in Pinner's words, 'attitudinal cross-pressures'.<sup>13</sup> Polling data are ambivalent about Layman's claims, but his argument highlights the need for closer examination of partisanship and private religious schools.<sup>14</sup> Does support for aid for children at private religious schools cut across, or reinforce, partisan divides amongst policymakers? The relationship between partisanship and aid to children at private religious schools is even more uncertain for in-kind aid and property tax exemptions than it is for vouchers or tax credits. Hence thorough investigation of the relationship between party control and aid is required.

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<sup>12</sup> Layman, *The Great Divide: Religious and Cultural Conflict in American Party Politics*, 13.

<sup>13</sup> F.A. Pinner, "Cross-Pressure," in *International Encyclopaedia of the Social Sciences*, ed. D.L. Sills, vol. III (New York: Macmillan and the Free Press, 1968); G.B. Powell, "Political Cleavage Structure, Cross-Pressure Processes, and Partisanship: An Empirical Test of the Theory," *American Journal of Political Science* 20, no. 1 (February 1976): 1–23.

<sup>14</sup> Pew Research Center for the People & the Press, "A Closer Look at the Parties in 2012," August 23, 2012, <http://www.people-press.org/2012/08/23/a-closer-look-at-the-parties-in-2012/>; Pew Research Center for the People & the Press, "Beyond Red vs. Blue: The Political Typology," May 4, 2011, <http://www.people-press.org/2011/05/04/beyond-red-vs-blue-the-political-typology/>; R.D.N., "Too Hot: Republicans, Democrats and Public Opinion," *The Economist*, March 5, 2013, <http://www.economist.com/blogs/democracyinamerica/2013/03/republicans-democrats-and-public-opinion>.

The following chapter uses elite interviews together with legislative and constitutional resources to describe and explain the connection between party control and aid across all fifty states. The facts outlined above give reason to support both Republican- and Democrat-control as a causally relevant factor in the creation of generous state aid programmes for children at private religious schools, so the hypotheses are double-sided. H1a must be false if H1b is true and *vice versa*.

*H1a: Republican control of the state offices increases aid for children at private religious schools*

*H1b: Democratic control of the state offices increases aid for children at private religious schools*

It may be that neither is true.

*H0: Party control of the state offices has no effect on the passage of aid programmes for children at private religious schools.*

I disaggregated the eight types of aid according to whether they are popularly represented as ‘small government’ or ‘big government’, that is, whether they are typically described as involving partial privatization of education or the provision of more taxpayer-funded educational resources. The Republican Party’s 2012 platform argues for consumer choice in education and states that vouchers and tax credits are ‘important for all children’.<sup>15</sup> The Democratic Party’s platform by contrast supports

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<sup>15</sup> “2012 Republican Party Platform: We Believe.”

‘public school choice for low-income youth’ such as charter or magnet schools while calling for greater investment in education.<sup>16</sup> The expectation is that Republican control leads to more tax credit and voucher programmes while Democratic control leads to more in-kind aid.

*H2: Republican control of the state offices increases tax credit and voucher aid for children at private religious schools*

*H3: Democratic control of the state offices increases in-kind aid for children at private religious schools*

Unlike previous chapters the unit of analysis is ‘state aid programme’ rather than ‘state’. For each programme the source legislation was identified and its year of passage gleaned through analysis of state constitutions and legislation. I then applied Dubin’s partisanship data to yield a full picture of partisan control of the state offices at the time of aid-programme passage.<sup>17</sup> The hypotheses relate to the time of aid-programme passage.

This chapter finds evidence for H2 but none for H3: partisanship is related to the passage of tax credit and voucher programmes but not to other types of aid. Republican control of at least one state office is a necessary condition for the passage of voucher programmes and a strong predictor of the passage of tax credits, while unified Democratic control is a sufficient condition for a state *not* to provide such aid. By contrast neither Republican nor Democrat control of the state offices is related to the

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<sup>16</sup> “2012 Democratic National Platform: Moving America Forward,” 2012, <http://www.democrats.org/democratic-national-platform>.

<sup>17</sup> Dubin, *Party Affiliations in the State Legislatures: A Year By Year Summary, 1796-2006*.

passage of transport, textbook, equipment, food and health services. H1b cannot be accepted and H1a has only qualified support.

### **Causes of Effects Approach**

In this chapter I take a ‘causes of effects’ approach in which the dependent variable is selected first and its origins examined second, rather than an ‘effects of causes’ approach in which an independent variable is posited and its effects, if any, measured afterward. The dependent variable here is the entire universe of state aid programmes currently in effect: twenty-two tax credit, sixteen voucher, seventeen textbook, twenty-eight transport, eighteen food service, nineteen health service and twelve equipment programmes. The twenty-five property tax exemptions are excluded here because the majority were created as part of the states’ original constitutions and before the advent of the modern party system. The total N is 132. This chapter examines the conditions under which these 132 programmes were created, focusing on the partisan make-up of the state legislature and governor that passed and signed the legislation. In so doing it tests for the presence of necessary and sufficient causes, ‘Republican control’ or ‘Democrat control’ rather than the ‘average treatment effect’ of the partisanship independent variable.

The advantages of the ‘effects of causes’ approach have been described by many scholars, for instance, its emphasis on a large N for greater statistical leverage and the avoidance of ‘selection on the dependent variable’ to guard against the charge that the outcome data are being fitted to suit the theory.<sup>18</sup> In this context however, a statistical, Independent Variable (IV)-driven ‘effects of causes’ approach would be inappropriate

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<sup>18</sup> G King, R.O. Keohane, and S Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research* (Princeton, New Jersey: Princeton University Press, 1994).

because most aid programmes to children at private religious schools are created extremely infrequently, across a hundred-year span and in highly diverse conditions that require contextual sensitivity. Moreover the programmes themselves are highly dissimilar so the separate consideration of aid programmes by type is desirable (H2 and H3). In all eight of the sub-categories of aid, the N of between 12 and 28 is too small for statistical analysis.

One aspect of the required contextual sensitivity concerns the variation in meaning of the terms ‘Republican’ and ‘Democrat’ over the period under consideration (1928-2012) and across the fifty states. Several of these programmes were passed more than eighty years ago, prior to party realignments of the 1930s and 1960s, whilst others have been passed in the past few months. Democrats in the conservative Southern states today are far to the right of Democrats in liberal North-Eastern states and perhaps also to the right of Republicans in North-Eastern states.<sup>19</sup> The political, economic and social context for Republican Governor Earl Warren for instance, who signed the 1943 Californian food services programme, differs in numerous respects from that of Republican Governor Bobby Jindal, who signed the 2008, 2010 and 2012 Louisianan tax credit and voucher programmes. The ‘Democrat’ label means something different in the South, West and North, and had different meanings in 1928, 1968 and 2008.

The high level of diversity in American state politics seems to imply that cross-state and cross-time comparison of partisan control cannot be done. Three considerations enable scholars to resist this conclusion. First, many scholars of state politics already use partisan control of state office variables with appropriate regional controls in investigating differential state policy outputs.<sup>20</sup> Secondly, attention to cross-

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<sup>19</sup> R.S. Erikson, G.C. Wright, and J.P. McIver, “Political Parties, Public Opinion, and State Policy in the United States,” *The American Political Science Review* 83, no. 3 (September 1989): 729–750.

<sup>20</sup> M.H. Medoff, C Dennis, and K Stephens, “The Impact of Party Control on the Diffusion of Parental Involvement Laws in the U.S. States,” *State Politics & Policy Quarterly* 11, no. 3 (September 2011):

time and cross-state variation conceals still greater variation at the level of individual caucus members, who are selected in primary election with high levels of local input. Such individual- and local-variation does not prevent scholars from grouping caucus members together under the party banners for the purposes of analysis. By analogy, neither should cross-state and cross-time variation prevent such grouping, provided there is appropriate attention to historical and geographical context. Thirdly, this chapter makes a causal claim about partisanship and only an indirect claim about ideology (that implied by the party labels) in relation to the instigation of programmes of aid for children at private religious schools. Hence it does not require strict fidelity of party labels to ideological positions. This third consideration is discussed in more detail in the next section.

### **Ideology and partisanship**

Several interviewees in the six case study states argued that Republican control is the most important factor behind the expansion of tax credit and voucher aid, but also drew attention to intra-party ideological variations that might complicate the relationship. A Catholic Conference leader in California said: ‘If you're in a strongly controlled, currently Democratic state, your public employee's unions will have an enormous amount of clout and they're not favourable to the public funds going to be used for anything other than public education’ but he also went on to say that certain moderate Democrats support the programmes: ‘Where you see more mixture in the legislature, more parity between Republicans and Democrats, or a little more moderate

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325–347; Erikson, Wright, and McIver, “Political Parties, Public Opinion, and State Policy in the United States.”

Democratic influence, you have that reality [more aid]’.<sup>21</sup> An Illinoisan Catholic Conference leader echoed this sentiment: ‘If you look at Arizona, Florida, Indiana, these places that have broad school choice programmes, they are also dominated politically when they pass those by conservative politicians, whether that be mostly Republicans but [also] Conservative Democrats or Independents, so I think political ideology is number one’.<sup>22</sup>

One legislative aide ascribed the better take-up of tax credits and vouchers in some states to ‘more conservative perspectives’ and some interviewees suggested that inter- and intra-state variation in the level of conservatism amongst Republicans affects aid take-up.<sup>23</sup> A Republican education committee member in Utah said of his red state’s lack of aid for children at private religious schools: ‘I think part of the reason that we don’t [provide aid]...is the success of the Republican Party and our caucus system. We certainly have an education establishment, that aren’t super conservatives or even real strong Republican in their philosophical perspective, join the Republican Party in our state’. ‘We’re seen as like the most conservative state in the Union and we’re really not’.<sup>24</sup> This interviewee was running as a conservative candidate in the Republican gubernatorial primary and his remarks must be taken in that context, but they raise several questions. Are party labels sufficiently comparable across states? If conservative Democrats join Republicans on these issues while moderate Republicans join Democrats, shouldn’t ideology scores be used here in preference to party labels? The first question was addressed briefly in the previous section; both are addressed here.

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<sup>21</sup> Dolesji, Executive Director of the California Catholic Conference, 11.

<sup>22</sup> Wichmann, Director of Government Relations for the Illinois Catholic Conference, 9.

<sup>23</sup> Paul Upton, Senior Legislative Aide to Assemblyman Carl Eastie, New York State Assembly, March 7, 2012, 5.

<sup>24</sup> Ken Sumsion, Representative, Gubernatorial Candidate and Member, Utah House of Representatives Education Committee, April 3, 2012, 9.

Some scholars have used party labels as a direct measure of government ideology but have been criticized for failing to account for geographical differences in ideology within the ‘same’ party.<sup>25</sup> Using ideology rather than partisanship as the IV would seem sufficiently fine-grained to capture the cross-cutting pressures on conservative Democrats and moderate Republicans. It avoids making an assumption that Democrats are always liberal and Republicans conservative. However there are three good reasons to avoid utilizing ideology as an IV here. First, scholars acknowledge that the concept of state government ideology is difficult to operationalize.<sup>26</sup> No survey data-sets are available for policymakers in the fifty states that are systematic, up-to-date, and cover more than a few years. The logistical challenge has so far prevented such an effort. Most measures of state government ideology use scores given by the Americans for Democratic Action (ADA) and AFL-CIO Committee on Political Education (COPE) for Senators and Representatives in the federal Congress as a proxy for the ideology of state lawmakers and governors but the assumption that state officials mirror their federal counterparts is questionable.<sup>27</sup> ADA and COPE scores are based on a relatively small amount roll-call data, on issues discussed by the federal Congress, and assume a two-dimensional liberal-conservative continuum along which all candidates may be rated using their mean score. All of these assumptions are open to criticism. The fine-grainedness of ideology scores may seem to be its advantage over partisanship data but that fine-grainedness is not available here because of the need to use Congressional proxies both for legislators and governors.

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<sup>25</sup> D.M. Hedge and M.J. Scicchitano, “Regulating in Space and Time: The Case of Regulatory Federalism,” *The Journal of Politics* 56, no. 1 (February 1994): 134–153; W.D. Berry et al., “Measuring Citizen and Government Ideology in the American States, 1960-93,” *American Journal of Political Science* 42, no. 1 (January 1998): 327–348.

<sup>26</sup> Berry et al., “Measuring Citizen and Government Ideology in the U.S. States: A Re-Appraisal”; Berry et al., “Measuring Citizen and Government Ideology in the American States, 1960-93”; Erikson, Wright, and McIver, “Political Parties, Public Opinion, and State Policy in the United States.”

<sup>27</sup> Berry et al., “Measuring Citizen and Government Ideology in the U.S. States: A Re-Appraisal”; Berry et al., “Measuring Citizen and Government Ideology in the American States, 1960-93.”

Secondly, aid programmes for children at private religious schools have been passed over a longer period than there have been comparable ideology scores for state legislatures. ADA scoring, for instance, has only existed since 1947, twenty years after the passage of the first textbook and transportation programmes. Thirdly, as mentioned in the previous section this chapter need not make any strict assumptions about the ideology of members of each party. The hypotheses relate to partisanship, which can be measured easily. This chapter makes no assumptions about the content of mass preferences and party members' ideological leanings, or the strength of the connection between mass preferences and party programmes. Instead, it simply tests the effect of party control on the policy outcomes at issue.

The use of the term 'party control' is disputed by some scholars. In criticising efforts to link policy outcomes to partisanship, Smith argues against the use of a 'party control' variable – indicating the majority party – on the basis that it assumes a responsible-parties model which is false. He advances instead a 'party composition' variable that 'avoids classifying chambers according to which party nominally controls them in favor of determining the parties' relative strengths in the legislature'.<sup>28</sup> Some of Smith's criticisms of the partisanship and policy outcomes literature are valid: governors and legislators are created as separate institutions so should not be lumped together in a single partisanship variable as some scholars do,<sup>29</sup> and the simplest model of responsible-party government, at least, is inaccurate.<sup>30</sup> But he fails to accord enough weight to the fact that not all variations in the relative proportions of Republicans and Democrats in the state legislature are of equal significance. Even if legislators often

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<sup>28</sup> Smith, "The Nature of Party Governance: Connecting Conceptualization and Measurement."

<sup>29</sup> T.R. Dye, "Party and Policy in the States," *The Journal of Politics* 46, no. 4 (November 1984): 1097–1116.

<sup>30</sup> K Krehbiel, "Where's the Party?," *British Journal of Political Science* 23, no. 2 (April 1993): 235–266; G.W. Cox and M.D. McCubbins, *Setting the Agenda: Responsible Party Government in the U.S. House of Representatives* (New York: Cambridge University Press, 2005); K Krehbiel, "Party Discipline and Measures of Partisanship," *American Journal of Political Science* 44, no. 2 (April 2000): 212–227.

rebel against other party members, gaining majority control in the legislature offers agenda control and committee leadership positions that are not available to the minority party. Party control is also perceived to be important: the state elites who thought partisanship affected aid attached significance to this threshold.<sup>31</sup> Hence this chapter uses a party control variable as IV that consists in three separate values: the majority party in each house and the governorship. It is a disaggregated discrete, rather than continuous, variable.

### **Tax credits, vouchers and partisanship**

In order to determine the predictive power of H1a and H1b the disaggregated hypotheses H2 and H3 are investigated first. None of the fifty interviewees advanced any direct opposition to H2 and when asked an open-ended question about the origins of state aid, eight said that Republican control increases tax credit and voucher programme passage. Unprompted, these elites thought that H2 is true. A New York Catholic schools administrator said ‘we have better luck when the Republicans are in control’.<sup>32</sup> Her Illinoisan Catholic Conference counterpart separately agreed, with some caveats: ‘This is not universally true. We have some very strong supporters in the Democratic Party but it has seemed more and more...that the Republican Party is more open to this idea of educational freedom’.<sup>33</sup> The head of a national school choice advocacy organization, and deputy chief of staff to former Florida Governor Jeb Bush, put the case more fully:

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<sup>31</sup> Geddis, Director, New York State Association of Catholic Schools Administrators, 14; Jerry Mitchell, Republican Spokesperson for the Elementary and Secondary Education Committee of the Illinois General Assembly, March 27, 2012, 12; J.P. Morrell, Louisianan State Senator and Member, Education Committee, September 6, 2012, 9.

<sup>32</sup> Geddis, Director, New York State Association of Catholic Schools Administrators, 14.

<sup>33</sup> Wichmann, Director of Government Relations for the Illinois Catholic Conference, 14.

'It's a Republican promoted issue so if you have a state that has a Republican legislature and a Republican governor, you're more likely to see voucher programme than in a state that has Democrat governor or Democrat legislature or even a mix. So for example in New Mexico, there's a Republican governor and a Republican education commissioner but a Democrat legislature so they'll never get a voucher through the legislature for the governor to sign. In North Carolina right now the North Carolina Republican legislature has advanced a school choice measure but the Democrat governor has said she's going to veto it. But I guarantee you when a Republican governor wins in North Carolina, they will pass their first voucher... The Republican Party tends to believe and support competition and choice and the Democrat Party tends to support more of the...teachers' union...philosophy of 'funds to public schools and vouchers hurt public schools' or they're not supportive. In Florida the reason why you have Democrat lawmakers who support it now, it's because they now have constituents, they now have moms and dads and voters that will vote for them or vote against them if they don't support school choice... But in most states it's a political party issue as to why some states have it and some states don't'.<sup>34</sup>

The reference to Florida Democrats in the preceding statement, taken together with Illinoisan statement above, suggest that the relationship between partisanship and increased voucher and tax credit provision is not clear-cut because of constituency pressures on some Democratic lawmakers to support private school choice, but if *sufficient* numbers of conservative Democrat lawmakers favour school choice then numerical analysis should display no relationship between Republican control of the state offices and tax credit or voucher aid. As the next section shows, there is a relationship between Republican control and tax credit and voucher aid that is not muddied or cancelled out by within-party variations in ideology and constituency pressures.

Tables 8.1a and 8.2a in the appendix show the tax credit and voucher programmes by year of passage alongside the party of the governor and the majority

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<sup>34</sup> Levesque, Executive Director for the Foundation for Florida's Future and Member of the Taxation and Budgetary Reform Committee, 8–9.

party of each house of the legislature. The Appendix tables provide some evidence in favour of H2. Most voucher and tax credit programmes have been passed by Republican-controlled legislatures and signed by Republican governors. Cross-tabulations of partisan control of the governorship and legislature make the relationship with aid clear. Table 8.1 summarizes the number of tax credit scholarships passed under Republican and Democrat governorships and by legislative control.

**Table 8.1: Tax credit programmes by partisan control of state offices at time of passage**

N=22	Democratic Governor	Republican Governor
<b>Democratic Legislature</b>	1	4
<b>Republican Legislature</b>	3	12
<b>Mixed Legislature</b>	1	1

More than half of the twenty-two educational tax credit programmes currently in effect were passed under unified Republican state government. Nine were passed under divided party control and just one, Iowa’s School Tuition Tax Credit, was passed by a Democratic legislature under a Democratic Governor. Note this information shows only that *of* the programmes passed, most were passed under Republican control, not that Republican control is sufficient for the passage of tax credit programmes. Neither is it possible to say that Republican control is strictly necessary for the passage of tax credits, because five programmes were passed by Democratic legislatures and four more were signed by Democratic governors. All that can be said is that there is a tendency for tax credits to be passed by Republicans.

The H2 relationship is much stronger in the case of educational voucher scholarship programmes shown in Table 8.2a in the appendix. Table 8.2 below

summarizes the number of voucher programmes passed by partisan control of governorship and legislature.

**Table 8.2: Voucher programmes by partisan control of state offices at time of passage**

<b>N=16, 1 county proposal</b>	<b>Democratic Governor</b>	<b>Republican Governor</b>
<b>Democratic Legislature</b>	0	3
<b>Republican Legislature</b>	1	11
<b>County School Board*</b>	1*on hold	0

Of sixteen voucher programmes (including the Colorado Choice Scholarship which is on hold as of the end of 2012) fourteen passed under Republican governors, of which eleven passed under unified Republican control of the state offices. Just two voucher programmes passed under Democratic Governors (Oklahoma’s Lindsey Nicole Henry Scholarships and Colorado’s Choice Scholarship pilot) but Oklahoma’s voucher was created by a Republican legislature and Colorado’s Choice Scholarship pilot was the creation of the Douglas County School Board, not the state legislature. No voucher programmes passed under unified Democratic control and only three were passed by Democratic legislatures. Democratic control of all state offices seems to guarantee that voucher programmes will not be passed, and Republican control of state offices is almost a necessary condition for voucher passage. Republican control of at least one legislative house or the governorship appears here as a necessary condition for a voucher programme. Table 8.3 summarizes the information in Tables 8.1 and 8.2. Overwhelmingly, tax credit and voucher programmes are passed under unified Republican control of the state offices.

**Table 8.3: Tax credits and vouchers by partisan control of state offices at time of passage**

N=38	Democratic Governor	Republican Governor
<b>Democratic Legislature</b>	1	7
<b>Republican Legislature</b>	4	23
<b>Mixed Legislature/County Board</b>	2	1

The tax credit and voucher programmes were split into three groups according to whether they are serve disabled children, low-income children or are available to all. The expectation might be that the schemes targeted at low-income children would be more likely to be passed by Democratic legislatures and signed by Democratic governors than either of the other two categories. There is limited evidence to support this claim. Although the only such programme passed under unified Democratic control, Iowa’s School Tuition Organization tax credit, is targeted at low income children, and 25% of the poverty-targeted tax credits and vouchers were passed by Democratic legislatures compared to 9% of disabled-targeted programmes, Democratic legislatures also passed a third of the universal programmes. The number of programmes in each category (sixteen, eleven and ten respectively) is too low to ascribe great significance to these variations.

The data presented here show some support for H2. Republican control of at least one state office appears as a necessary condition for the passage of voucher programmes and a strong predictor of the passage of tax credits. Of the voucher and tax credit programmes currently in effect, almost two-thirds were created under unified Republican control. The data support the argument made by the head of a national school choice advocacy organization in the previous section and by other interviewees, of the importance of Republican control for the passage of school choice measures.

Given that these private school choice measures are a prominent part of the Republican Party's national education platform, the fact that Republican control is almost a precondition for voucher and tax credit aid is not surprising. The partisan dimensions of in-kind aid, however, are less clear-cut. The next section examines the relationship of partisanship to in-kind aid expressed in H3.

### **In-kind aid and partisanship**

To investigate H3 the partisan control of state offices for the year of in-kind aid adoption was collated. Tables 8.3a, 8.4a, 8.5a, 8.6a and 8.7a in the appendix display the textbook, transportation, food services, health services and equipment statute adoption years alongside the partisan control of the state offices at that time. Tables 8.4, 8.5, 8.6 and 8.7 in this section summarize this information. The years of adoption were gleaned through legislative bill histories and state education department data, supplemented by attorney general opinions and state court decisions where the legislative history is ambiguous. Given wide disparities amongst states in collation, digitalization and availability of bill histories it was not possible to find the years of in-kind aid adoption for all states. In some cases the aid may have been provided informally before the legislature passed a law institutionalizing it; in others the legislation has been amended so many times that it is ambiguous when, precisely, the in-kind aid programme was first created. This problem is compounded by the fact that while almost all tax credit and voucher programmes have been passed in the last two decades, transportation, textbook, food, equipment and health services have been institutionalized by state policymakers throughout the twentieth- and twenty first- centuries. For recently-passed state

legislation, digital bill records are almost always available; for legislation passed before the 1990s, they often are not.

As Table 8.4 shows, there is no clear relationship between partisan control of the state offices and adoption of textbook programmes for children at private religious schools.

**Table 8.4: Textbook programmes by partisan control of state offices at time of passage**

<b>N=17 (1 missing)</b>	<b>Democratic Governor</b>	<b>Republican Governor</b>
<b>Democratic Legislature</b>	6	4
<b>Republican Legislature</b>	0	2
<b>Mixed Legislature</b>	1	2
<b>Nonpartisan Legislature</b>	0	1

Democratic legislatures passed ten of the sixteen programmes for which data are available (Iowa is the missing value –see Table 8.3a in the appendix) but Republican Governors signed slightly more of those programmes than Democratic Governors did, and two of the textbook programmes (Indiana and New Hampshire) were created by Republican legislatures.

There is a similarly mixed picture for transportation aid (Table 8.5 in this section and Table 8.4a in the Appendix): nine of the twenty-five transport programmes were passed by Democratic legislatures, seven by Republican ones and nine by legislatures with split control. Fourteen were signed by Democratic governors and twelve by Republican governors.

**Table 8.5: Transportation aid by partisan control of state offices at time of passage**

<b>N=28 (1 missing, 1 territory)</b>	<b>Democratic Governor</b>	<b>Republican Governor</b>
<b>Democratic Legislature</b>	4	5
<b>Republican Legislature</b>	3	4
<b>Mixed Legislature</b>	6	3
<b>Nonpartisan Legislature</b>	1	0

Indeed, the transportation aid data are notable for the evenness of their distribution amongst the various conditions of partisan control. The pattern of partisan control distribution for transportation and textbook loan passage provides no support for H3, which predicts that more in-kind aid programmes are created under Democratic state office control.

For none of the other three types of in-kind aid programmes – equipment, food services and health services – is partisan control at the time of passage skewed toward either party, as Tables 8.6, 8.7 and 8.8, and 8.5a, 8.6a and 8.7a in the Appendix, show. Of the twelve states that currently offer equipment aid (Table 8.6), seven programmes were created under Republican Governors and five under Democrats, but four were written by Democratic legislatures, five by Republican and three by mixed legislatures. There is no support here for H3.

**Table 8.6: Equipment aid by partisan control of state offices at time of passage**

<b>N=12</b>	<b>Democratic Governor</b>	<b>Republican Governor</b>
<b>Democratic Legislature</b>	1	3
<b>Republican Legislature</b>	3	2
<b>Mixed Legislature</b>	1	2

A similar distribution of partisan control is present for the creation of food service programmes (Table 8.7). Of the eighteen private school food service programmes, four were passed by Democratic legislatures, eight by Republican, five by divided houses and one by Nebraska’s unicameral non-partisan legislature. These programmes were signed into law by eight Democratic and nine Republican governors. Again, there is no skew toward Democratic lawmakers and executives as H3 predicts. If anything, there is a slight skew toward the Republicans.

**Table 8.7: Food services programmes by partisan control of state offices at time of passage**

<b>N=18, 1 missing (Gov only)</b>	<b>Democratic Governor</b>	<b>Republican Governor</b>
<b>Democratic Legislature</b>	2	1
<b>Republican Legislature</b>	3	5
<b>Mixed Legislature</b>	2	3
<b>Non-partisan Legislature</b>	1	0

With the provision of health services to children at private religious schools the picture is similar (Table 8.8 here and 8.7a in the Appendix). The skew is toward Democratic rather than Republican lawmakers but toward Republican rather than Democratic governors. Legislation associated with the provision of health services to children at non-public schools was particularly difficult to source as the two missing values attest (see Table 8.7a in the Appendix). Of the sixteen health services programmes for which data are available, twelve were passed by Democratic legislatures, three by Republican, one under mixed control and one by the Nebraskan non-partisan legislature. Of these programmes, seven were signed by Democratic and ten by Republican governors.

**Table 8.8: Health services programmes by partisan control of state offices at time of passage**

N=19, 2 missing	Democratic Governor	Republican Governor
<b>Democratic Legislature</b>	4	8
<b>Republican Legislature</b>	1	2
<b>Mixed Legislature</b>	1	0
<b>Non-partisan Legislature</b>	1	0

Again, there is no support in this data for H3. Democratic control of the state offices bears no relationship to in-kind aid for children at private religious schools, and neither does partisanship more generally. Table 8.9 summarizes the information in Tables 8.4 to 8.8 for all in-kind aid programmes.

**Table 8.9: All in-kind programmes by partisan control of state offices at time of passage**

N=93, 5 missing	Democratic Governor	Republican Governor
<b>Democratic Legislature</b>	17	21
<b>Republican Legislature</b>	10	15
<b>Mixed Legislature</b>	11	10
<b>Non-partisan Legislature</b>	3	1

Slightly more in-kind aid programmes were created by Democratic legislatures than Republican ones, but were signed by more Republican than Democratic Governors. The null hypothesis cannot be rejected.

## Conclusion

This chapter gives only qualified support to H1a and H1b: tax credit and voucher programmes are related to Republican control of the state offices but in-kind aid is not related to partisan control. The state interviewees were right to argue that the passage of tax credits and vouchers ‘depends upon whether it’s a red state or a blue state’ and ‘the makeup of their house and their senate’, in the sense that Republican control is almost a necessary condition for passage.<sup>35</sup> But these arguments do not claim to explain why in-kind aid programmes are passed, nor do they claim to explain fully the passage of voucher and tax credit programmes: Republican control may be almost an enabling condition, but it is neither a sufficient condition nor the only necessary one. It would be surprising if it were, given the diversity of states, their wide disparities in political opportunity structures, legal context, and cultural, demographic and financial circumstances.

The evidence shows a divide between the market-orientated and in-kind aid types, with the former aligning with the existing partisan divide between Republicans and Democrats, and the latter cutting across it. This feature of the aid policy landscape may help explain why voucher and tax credit policies are so fiercely contested whilst in-kind aid programmes are not, because as Nordlinger points out, ‘the hypothesis that politically relevant divisions which cross-cut each other contribute to the mitigation and regulation of conflict is probably the explanatory hypothesis most widely accepted among American political scientists’.<sup>36</sup> Sharper conflict is expected where divides over policy align along partisan lines, as over education vouchers.

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<sup>35</sup> Morrell, Louisiana State Senator and Member, Education Committee, 9.

<sup>36</sup> E Nordlinger, *Conflict Regulation in Divided Societies* (Cambridge: Harvard University Center for International Affairs, 1972), 93.

Although all of the aid policies examined in this thesis are ‘submerged’ in that they incentivize private actors to take on important public functions, tax credits and vouchers fit Republican preferences for ‘limited government’ better than in-kind aid because they are explicitly aimed at creating a competitive educational marketplace. ‘Mostly submerged’ tax credits are also more numerous than ‘weakly submerged’ vouchers. Their success relative to vouchers can be explained by the fact that tax credits are both market-orientated and delivered through tax expenditures rather than direct lump-sum payment to parents. They are easier to pass in state legislatures and more resilient in the face of challenge.

Although Democratic constituencies tend to be more affected by tax credit and voucher programmes because such constituencies are more urban, poor, racial minorities and/or Catholic, with few exceptions these programmes are passed only when Republicans have control of the state offices. The finding justifies this thesis’ attention to elites as opposed to the public, and to party platforms as opposed to mass preferences, because the elite-level partisan split contrasts with support for such policies amongst traditionally Democratic constituencies.<sup>37</sup> Despite the cross-cutting claims about vouchers that have been documented by scholars amongst the mass public, the passage of market-orientated aid is determined along partisan lines.<sup>38</sup>

If ‘limited government’ is central to the Republican platform, ‘local control’ is a cherished principle in American education for all parties, but for Republicans in particular. In the following chapter I examine my fourth and final institutional ordering: Federalism. I find that high levels of ‘local control’ in education are necessary for high

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<sup>37</sup> TN Press Release Center, “MTSU Poll: Tennesseans Split on School Vouchers,” March 5, 2013, <http://tnreport.com/2013/03/05/mtsu-poll-even-split-in-tn-on-vouchers-issue/>; D.L. Leal, “Latinos and School Vouchers: Testing the ‘Minority Support’ Hypothesis,” *Social Science Quarterly* 85, no. 5 (December 2004): 1227–1237.

<sup>38</sup> Forman, “The Rise and Fall of School Vouchers: A Story of Religion, Race, and Politics.”

levels of aid, because local policymakers tend to be more supportive of aid than state policymakers. The federal system creates systematically varying pressures on local and state policymakers with respect to aid for children at private religious schools.

## Chapter 9: Local Power and aid for children at private religious schools

This chapter explains how the institution of federalism affects the preferences and powers of local, state and federal policymakers, and in turn helps account for the sub-national pattern of aid for children at private religious schools in the United States. Local, state and federal policymakers differ in their mandates and constituencies, their collective size, governing regulations and as a result, their priorities. School district officials are concerned with school construction, school appointments and other local matters. State Departments and Offices of Education tend to operate a much wider range of programmes including nutrition, school options and transportation, and administer federal grants and legislation such as the NCLB. For the US Department of Education, Congressional committees and other federal education policymakers, the nation's 120,000 schools and 61 million children, are at stake.

The foregoing list erroneously implies that clear distinctions can always be drawn between the policy areas of the three levels of federal, state and local government, but as many scholars have pointed out, educational policymaking is increasingly intergovernmental.<sup>1</sup> Federal dollars are granted to states but localities must also manage programmes. For example, local safe and drug-free schools initiatives may fulfil part of the federal NCLB programmes the state government is mandated to administer. The Federal Department of Education has so far granted NCLB waivers only to states, but it is also considering allowing local districts to petition for relief individually,<sup>2</sup> and school district administrators often take a proactive policy-making

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<sup>1</sup> Bulman-Pozen and Gerken, "Uncooperative Federalism"; Manna, *Schools In: Federalism and the National Education Agenda*; DeBray, McDermott, and Wohlstetter, "Introduction to the Special Issue on Federalism Reconsidered: The Case of the No Child Left Behind Act."

<sup>2</sup> P Elliott, "Education Considering District-by-District Waivers," *The Huffington Post*, February 22, 2013, [http://www.huffingtonpost.com/huff-wires/20130221/us-no-child-left-behind/?utm\\_hp\\_ref=media&ir=media](http://www.huffingtonpost.com/huff-wires/20130221/us-no-child-left-behind/?utm_hp_ref=media&ir=media).

stance rather than simply implementing state policy directives.<sup>3</sup> Nevertheless, although in many cases the programmes the federal, state and local levels deal with cannot be divided into three mutually exclusive categories, some pressures that act upon policymakers differ systematically according to their level of government within the federal system.

This chapter introduces two sources of pressure – electoral and bureaucratic – that affect the various levels of government in a federal state differently. The combined effect of these pressures on the local level, *ceteris paribus*, is higher local support for public aid to children at private religious schools. The combined effect of these pressures on the state level is state resistance to such aid. Hence high levels of local power within a state facilitate high aid for children at private religious schools, while highly centralized state structures preclude it. Using case studies, interview evidence and fsQCA, this chapter demonstrates that there is a set relation between highly centralized states and low levels of aid. In other words, a high level of local control in a state is a *necessary* (but not sufficient) condition for high levels of aid.

### **State and Local Preferences**

This chapter argues, following March and Olsen, that ‘the values and preferences of political actors are not exogenous to political institutions, but develop within those institutions’.<sup>4</sup> The federal structure of the United States provides different institutional incentives for local, state and federal policymakers and shapes their policymaking inclinations in systematically differing ways. These institutions also

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<sup>3</sup> J.P. Spillane, “School Districts Matter: Local Educational Authorities and State Instructional Policy,” *Educational Policy* 10, no. 1 (March 1996): 63–87.

<sup>4</sup> J.G. March and J.P. Olsen, *Rediscovering Institutions: The Organizational Basis of Politics* (New York: The Free Press, 1989), 40.

influence the resources available to each level of government and hence, the governments' ability to put their preferred policy into practice. This chapter focuses on the institution of federalism and the way its rules of order systematically affect the distribution of aid for children at private religious schools. Such rules are *constitutive*, in Searle's terms, because they constitute the very behaviour they regulate.<sup>5</sup> The federal system is composed of a series of rules about the relationships between governmental units, and a policymaker's position within the federal system affects their policy preferences and the resources they command to achieve these preferred policy outcomes.

Many scholars of federalism have examined the ways different levels of government assert their will over others; fewer have studied how the institution of federalism affects policy priorities as well as power resources. One of the more influential works of the latter type is Nugent's classificatory scheme of state governments' interests vis-à-vis the federal government.<sup>6</sup> His nine-fold categorization typologizes state interests according to their 'legalistic', 'fiscal' or 'administrative' focus and their 'universal', 'categorical' or 'particularistic' scope. Nugent's study, helpful though it is in unpacking the concept of 'state interest', focuses exclusively on the state level; it does not attempt a similar classificatory project for local level policymakers or 'street-level bureaucrats'.<sup>7</sup> This chapter adds to this literature by identifying institutional, constituent and bureaucratic pressures that shape the preferences of local- as well as state-level governments in the federal system.

Although Kirst's argument that state government is reduced from the top by the growing influence of the federal government and from the bottom by the growth of

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<sup>5</sup> Searle, "What Is an Institution?"

<sup>6</sup> Nugent, *Safeguarding Federalism: How States Protect Their Interests in National Policymaking*.

<sup>7</sup> M Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (New York: Russell Sage Foundation, 1980).

collective bargaining contracts is insufficiently nuanced to accommodate the manifest cross-state variation in federal, state and local expenditures and responsibilities for education, his argument highlights the importance of local as well as state and federal levels of government.<sup>8</sup> Similarly, Fusarelli and Cooper's edited volume on local and state policymakers confirms Sbragia's assertion that "'national-state relations" should often be read "national-state-local relations".<sup>9</sup> Kirst argues that since the critical juncture of ESEA 'the shift of authority to higher levels of government has not in all instances resulted in a commensurate loss of local influence'.<sup>10</sup> This chapter investigates his proposition by unpacking the priorities of local and state policymakers, explaining where local power is greatest in state education policy, and examining the effect of state decentralization on aid for children at private religious schools.

### **The Effect of Constituency on Policymaker Preferences**

Local level politicians, including superintendents and school district board members, have a smaller constituency than those of state policymakers. This smaller constituency, combined with 'differential association' between neighbourhoods that results in residential segregation, means that the population is likely to be more homogenous than the state as a whole.<sup>11</sup> When politicians act they act according to their own preferences but also their perception of the preferences of their constituency, so when local politicians act they need to take account of a narrower band of preferences

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<sup>8</sup> National Center for Education Statistics, "Revenues and Percentage Distribution of Revenues for Public Elementary and Secondary Education, by Source and State or Jurisdiction: Fiscal Year 2009" (Department of Education, 2010), [http://nces.ed.gov/pubs2011/expenditures/tables/table\\_01.asp](http://nces.ed.gov/pubs2011/expenditures/tables/table_01.asp).

<sup>9</sup> Sbragia, "American Federalism and Intergovernmental Relations"; B C Fusarelli and B S Cooper, *The Rising State: How State Power Is Transforming Our Nation's Schools* (New York: State University of New York Press, 2009).

<sup>10</sup> M Kirst, *Who Controls Our Schools? American Values in Conflict* (Stanford Alumni Association, 1984).

<sup>11</sup> W Bottero, "Social Inequality and Interaction," *Sociology Compass* 1, no. 2 (2007): 814–831.

than the state or federal politicians.<sup>12</sup> They tend to have fewer compromises to make. For policymakers operating at state level, by contrast, there is a larger constituency and a wider range of preferences amongst the voters who hold them to account. Policymakers represent homogeneous constituencies where there are focused pressures, differently to heterogeneous ones with conflicting pressures.<sup>13</sup>

Given the size of their constituency, local level policymakers tend to have a more racially, economically and religiously homogeneous population than state politicians. One consequence of these differences is that the local levels of government tend to feel fewer pressures for ecumenicity in their dealings with private religious institutions. In a study that incorporated dozens of interviews with American state and Canadian provincial legislators, this suggestion was offered by a number of interviewees. One legislator was admiring of federal level policymakers on the grounds that ‘the larger the area you represent, the more ecumenical and enlightened the approach that you can have to public affairs’.<sup>14</sup> The breadth of state policymakers’ constituencies encourages neutrality; it discourages the creation of aid programmes that would necessarily favour some religious denominations over others, given the overrepresentation of some religious schools and the underrepresentation of others in comparison to their denomination’s share of the population (as shown in Table 7.8 and Table 7.5a, Chapter 7 and its appendix). By contrast, smaller local policymaking units can respond to the particular desires of their local community. For example, efforts to decentralize New York City’s School system by creating smaller locally-based school boards was intended to create ‘community-awareness’ by permitting the development of

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<sup>12</sup> Dennis, Bishin, and Nicolaou, “Constituent Diversity and Congress: The Case of NAFTA,” *Journal of Socio-Economics* 29 (2000): 349–360.

<sup>13</sup> Bailey and D W Brady, “Heterogeneity and Representation: The Senate and Free Trade,” *American Journal of Political Science* 42, no. 2 (April 1998): 524–544.

<sup>14</sup> Heubel, “Michigan and Ontario Legislators: Perspectives on the Federal System.”

an education policy ‘closely related to the diverse needs and aspirations of the community’.<sup>15</sup>

In Kremer and Sarychev’s model, ideologically homogenous societies encourage ideological homogeneity in education outcomes because parents wish their children to be educated in an ideological environment similar to their own, while in an ideologically diverse society the steady state is the maintenance of that ideological diversity.<sup>16</sup> Constituencies that have highly Catholic populations, for instance, tend to support aid for children at private religious schools, as demonstrated in Chapter 7. For the state policymaker, on the other hand, the larger constituency with a wide range of beliefs and practices increases pressures to conform to the principles of public neutrality and even-handedness amongst the highly religious and less religious.<sup>17</sup> This means that state policymakers, all other things being equal, should be less supportive of aid for children at private religious schools than local politicians.

In a recent worldwide study, Ansell and Lindvall argue that in countries with high levels of religious *heterogeneity*, the ‘Dutch Solution’ of state-subsidized private schools dominated in the development of primary education systems, and that:

‘By contrast, where the Catholic population was either very small or very large, we do not find a high likelihood of state subsidization of private schools, since the interdenominational cleavage was less pronounced. In other words, dominant religions meant that confessional schools would be taken under public control whereas a mixed religious population retained private status for such schools’.<sup>18</sup>

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<sup>15</sup> K.R. McGrail, “New York City School Decentralization: The Respective Powers of the City Board of Education and the Community School Boards,” *Fordham Urban Law Journal* 5, no. 2 (1976): Article 3.

<sup>16</sup> M Kremer and A Sarychev, “Why Do Governments Operate Schools?,” *Mimeo MIT* (October 2000).

<sup>17</sup> C A Lugg, “One Nation Under God? Religion and the Politics of Education in Post 9/11 America,” *Educational Policy* 18, no. 1 (January 2004): 169–187.

<sup>18</sup> Ansell and Lindvall, “The Political Origins of Primary Education Systems: Ideology, Institutions, and Interdenominational Conflict in an Era of Nation-Building,” 16.

Ansell and Lindvall's conclusion seems to stand in opposition to the homogenous/heterogeneous pressures advanced in this section. Three points militate against this conclusion. First, the United States is unlike most of the European nations at the centre of Ansell and Lindvall's study because at the time of the development of public education systems there were no established churches within its borders (see the APD schema in Chapter 1). Even in states with a high proportion of Catholics, public control of confessional schools was blocked by separationist sentiment. Secondly, Ansell and Lindvall's unit of analysis is countries, not sub-national units, and is not directly applicable to the local- and state-level pressures described in this chapter. In the United States as a whole – a religiously heterogeneous country – the retention of private status for denominational schools conforms to the authors' expectations. Thirdly, I argue that policymakers are subject to pressures to support aid for children at private parochial schools if their constituency is homogeneously Catholic. Since direct public funding for parochial schools is not allowed under the terms of the federal and state constitutions, aid for children at private religious schools is one of the options available to such policymakers.

These constituency effects on legislator priorities may be exacerbated by differences in turnout between local and state elections. As Bullock and Brady point out, following Fenno, each legislator has several different constituencies including a 're-election constituency' consisting in voters who generally vote for the legislator.<sup>19</sup> While some argue that lower turnout is not always constituted by a larger proportion of extreme ideological voters,<sup>20</sup> there is evidence that much non-voting stems from a lack

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<sup>19</sup> Bullock and D W Brady, "Party, Constituency and Roll-Call Voting in the US Senate," *Legislative Studies Quarterly* 8, no. 1 (February 1983): 29–43.

<sup>20</sup> G Lutz and M Marsh, "Introduction: Consequences of Low Turnout," *Electoral Studies* 26, no. 3 (September 2007): 539–547.

of interest in politics.<sup>21</sup> If those who vote in low-turnout elections are those who have greater engagement with the election and interest in the result, then those with more information about religious schools and a stake in their continuing to receive public funds will be more likely to vote, proportionately, in low-turnout school board elections. Turnout in local elections is much lower than for state level elections, which in turn have a lower turnout than federal elections. Evidence in the US suggests that politicians target those groups that are more likely to turn out in elections.<sup>22</sup> Therefore, *ceteris paribus*, local level politicians are expected to be more responsive to religious schooling interests than state level politicians because such voters make up a larger proportion of their electoral constituency.

The following sections use interview evidence to substantiate the argument that the size and heterogeneity of a politician's constituency affects his or her preferences with regard to aid for children at private religious schools.

### **'How do you think our atheists feel?' Constituency Pressures Case Study Evidence**

As the fuzzy set analysis in Chapter 7 demonstrated, having a large number of Catholics as a proportion of the population is almost a sufficient condition for high levels of aid for children at private religious schools. This chapter expands that analysis using case study evidence to explain why such set relationships exist. Catholic constituent demands have both a carrot and stick function. They are a resource on which politicians who support school choice can draw. As a state Catholic Conference

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<sup>21</sup> L Ragsdale and J G Rusk, "Who Are the Nonvoters? Profiles from the 1990 Senate Elections," *American Journal of Political Science* 37, no. 3 (August 1993): 721–746; D L Plane and J Gershtenson, "Candidates' Ideological Locations, Abstention, and Turnout in US Midterm Senate Elections," *Political Behaviour* 26, no. 1 (March 2004): 69–93.

<sup>22</sup> P W Wielhouwer, "Releasing the Fetters: Parties and the Mobilization of the African-American Electorate," *Journal of Politics* 62, no. 1 (February 2000): 206–222; P W Wielhouwer, "Strategic Canvassing by Political Parties, 1952-90," *American Review of Politics* 16 (Fall 1995): 213–238.

Director argued ‘if you have a large Catholic population, a large Catholic voter base, large Catholic school systems, you have more leverage to pass [aid for children at private religious schools]’.<sup>23</sup> They may also threaten to defect if aid is curtailed. The importance of Catholic constituencies was underlined by a State Senator’s education staffer when asked whether Democratic legislators would be damaged, politically, by a vote against an education tax credit plan: ‘It depends on their community. If they have a high, let’s say, Latino population that would like to go to a Catholic school, perhaps’.<sup>24</sup>

The promotion of aid for religious school students by homogenously Catholic constituencies can be explained in part by the historically close relationship in Catholic countries between churches and state institutions, including public schools.<sup>25</sup> The mechanisms identified in Chapter 7 (Catholic alienation from the dominant American Protestant culture) and Chapter 5 (the importance of education for Catholics as a means to pass on their faith), also help explain the Catholic propensity to set up private parochial schools. These three explanations – a history of close ties between church and state education, alienation from the Protestant American common school, and the importance of education to pass on the faith – together reinforce the motivation for high-Catholic constituencies to support private school student aid. One State Assemblyman with a religiously-mixed New York City constituency expressed the relationship as follows: ‘I think there are some places which are much less religiously diverse. So if you have a state where 70% of the population is one religion and they have a history and culture of using those religious schools, they are more likely to see

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<sup>23</sup> Wichmann, Director of Government Relations for the Illinois Catholic Conference, 19.

<sup>24</sup> Jennifer Louie, Education Staffer to California State Senator, Sharen Runner, March 13, 2012, 6.

<sup>25</sup> G.R. Grace and J. O’Keefe, eds., *International Handbook of Catholic Education: Challenges for School Systems in the 21st Century*, International Handbooks of Religion and Education 2 (Dordrecht, The Netherlands: Springer, 2007).

them as an offspring, offshoot of public schools, than people who don't have that same cultural background'.<sup>26</sup>

One caveat applies to this relationship between Catholic constituencies and support for aid: Catholic schools are not exclusively composed of Catholic children, and Catholic children do not exclusively attend Catholic schools. Several Catholic Conference leaders drew attention to the fact that most Catholic children within their remit attend public rather than parochial schools.<sup>27</sup> But this fact does not overturn the argument that the representatives of Catholic constituencies tend to support aid, for three reasons: first, Catholic constituencies tend to have high proportions of Catholic schools; secondly, Catholic schools tend to have strong links with local Catholic churches, whose congregations contribute to the support of such schools even if their children do not attend; thirdly, local policymaker priorities are based on the representatives' *perception* of the desires of their Catholic constituency (for more aid) even if this perception is not always entirely accurate. Interview evidence affirms that representing a Catholic constituency creates a policymaker preference for higher levels of aid.<sup>28</sup>

Representing religiously homogenous constituencies means that local politicians are freer to push for higher levels of aid than state politicians. The relative diversity of the state politicians' constituency encourages greater ecumenicity. A Republican on the Illinois Assembly Education Committee expressed this sentiment exactly, so his remarks are worth quoting in full.

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<sup>26</sup> Daniel O'Donnell, Member, New York State Assembly Education Committee, March 6, 2012, 9.

<sup>27</sup> Dolesji, Executive Director of the California Catholic Conference, 3; Wichmann, Director of Government Relations for the Illinois Catholic Conference, 16.

<sup>28</sup> William B Magnarelli, Member, New York State Assembly Education Committee, February 29, 2012, 3; O'Donnell, Member, New York State Assembly Education Committee, 10; Wichmann, Director of Government Relations for the Illinois Catholic Conference, 19.

‘I vote my district most of the time but it’s good because I’ve got a district that shares my belief in a lot of ways so I don’t have as much trouble as some people do. A lot of times, you know, you go against your district you better have a darn good reason why you did and you better be able to explain it when you go home or you won’t be back. And I’ve got a lot of these on my votes against giving money to parochial schools...Because we have some great Catholic schools in my district and Christian schools as well and they always want to know, why won’t you help us? I say, because you want your independence. If you want to follow up all the rules and regulations of a public school then you can have public funds but remember you cannot buy a statue of Mother Theresa with public funds, you just can’t do that and they always look at me like, but religion is part of our education and god bless you I understand that, but you can’t take public funds for that because not everybody shares your view. How do you think our atheists feel? I don’t say that to them...but you are a representative of all the people in your district, not just this portion or that portion’.

The local politicians who represent ‘this portion or that portion’ of this state policymaker’s district will have fewer trade-offs to make because they represent a more homogenous set of constituents. Constituency pressures from supporters of religious schools drive policymaker support for such aid. ‘When we have local people they have to answer to their neighbours. When we have state people they’re all the enemy’.<sup>29</sup> ‘In Florida’, said a school choice advocate, ‘the reason why...you have Democrat lawmakers who support [education vouchers] now, it’s because they now have constituents, they now have moms and dads and voters that will vote for them or vote against them if they don’t support school choice’.<sup>30</sup> A New York Assemblyman put it bluntly: ‘It’s the population. It’s the people, and...how much pressure they can bring to bear on their legislators to get that done’.<sup>31</sup>

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<sup>29</sup> Mitchell, Republican Spokesperson for the Elementary and Secondary Education Committee of the Illinois General Assembly, 6.

<sup>30</sup> Levesque, Executive Director for the Foundation for Florida’s Future and Member of the Taxation and Budgetary Reform Committee, 8.

<sup>31</sup> Magnarelli, Member, New York State Assembly Education Committee, 9.

At the state level, the New York Assemblyman argued, ‘I think we listen to religious schools but I think we basically take the same tack as the federal government. There is a separation of church and state, we can only do so much’.<sup>32</sup> His sentiment was echoed by the Director of the New York State Association of Catholic Schools Administrators. She pointed out that local politicians see the effect of non-public schools in their community but state officials do not have the same close constituency ties, despite the fact that many state legislators have been to non-public schools and send their children there. ‘Some of the very influential ones in Albany all attended Catholic schools...but then they will say “But I do not support this or I will not support this”’.<sup>33</sup>

### **The Effect of Local Bureaucracy on Policymaker Preferences**

Policymaker preferences are shaped by the constituency pressures, but also by bureaucratic pressures. This section examines the connection between local bureaucratic ties and policymaker preferences with regard to aid for children at private religious schools. Local school board members are part of a network of officials and ‘street-level’ bureaucrats with whom relationships are formed, educational services provided and equipment maintained.<sup>34</sup> Many of these networks are longstanding and durable. Local policymakers will be unwilling to disrupt them for two main reasons: proportional costs and personal contact. First, because of their limited areas of control, the proportional

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<sup>32</sup> *Ibid.*, 8.

<sup>33</sup> Geddis, Director, New York State Association of Catholic Schools Administrators, 11.

<sup>34</sup> I use Lipsky’s term here to refer to agencies whose workers interact with the public directly – teachers, principals and other school staff. But although such workers are included in my definition of ‘local bureaucrats’ I do not focus on the individuals Lipsky identifies at ‘street-level’. I refer primarily to those with the power to make financial decisions about schools and to lobby for local interests: principals in the public and private sector, school board members, superintendents, private school associations, churches, local religious advocacy organizations and networks, and parents’ groups.

cost to these bureaucrats and providers of a shift or reduction in resources in their area is likely to be high. The smaller one's turf, the more valuable each area of influence becomes as a proportion of the whole. For local politicians, the benefits of flexibility may not be worth the fight that is likely to be provoked by a decision to alter the existing arrangements, because 'threatened local school district officials and their supporters fight tooth and nail to retain their jobs and their power'.<sup>35</sup> In several places where local bureaucrats in education have been threatened by politicians or courts, there have been public marches, lawsuits and systematic protests directed at officials: an 'endless stream of opprobrium'.<sup>36</sup> Following James Q Wilson, the 'turf' these bureaucrats seek to protect need not simply mean agency size but also organizational maintenance.<sup>37</sup> State action to shift funds away from private religious schools threatens the local district's ability to ensure the flow of resources to allies and constituents.

A set of case studies by Agranoff and Lindsay found that in some municipalities the city sees itself as an advocate for its citizens vis-à-vis other jurisdictions.<sup>38</sup> Local politicians need to listen to local bureaucrats because, if they do not, local bureaucrats will create difficulties for them. That this assertion can also be true of state politicians was evinced by McDonnell's study of NCLB implementation. He concluded that differences in state standards were not due to states rebelling against the federal government, but more a case of political reluctance to upset current state-local relationships.<sup>39</sup> Secondly, local politicians are geographically closer to such providers than state policymakers because they are based within the communities they represent.

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<sup>35</sup> A Saiger, "Disestablishing Local School Districts as a Remedy for Educational Inadequacy," *Columbia Law Review* 99, no. 7 (November 1999): 1830–1870.

<sup>36</sup> *Ibid.*

<sup>37</sup> J.Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (Basic Books, 1989), 181.

<sup>38</sup> Agranoff and Lindsay, "Intergovernmental Management: Perspectives from Human Services Problem Solving at the Local Level," *Public Administration Review* 43, no. 3 (June 1983): 227–237.

<sup>39</sup> L M McDonnell, "No Child Left Behind and the Federal Role in Education: Evolution or Revolution?," *Peabody Journal of Education* 80, no. 2 (2005).

They are much more likely to have personal and casual contact with local officials. Local school districts are often the largest employer in poor communities and district officials are both dependent upon and physically located close to the local electorate.<sup>40</sup>

This reluctance on the part of local level politicians to disrupt existing ties with educational providers should result in a stronger commitment to the educational *status quo* which, *if it includes higher levels of support for religious schools*, will support greater levels of aid for children at private religious schools. For the state level policymakers, by contrast, the ties to education service providers on the ground are likely to be much more attenuated and the personal and casual contact limited. State policymakers may have contact with umbrella pressure groups working on behalf of private schools or religious interests in the state capital, but because they are sometimes away from home and have less regular contact with individual school districts and interests, they will not be under the same degree of pressure as local policymakers. The result will be weaker pressure on state governments from local religious school interests to promote aid for religious school students. The next section uses interview evidence to substantiate the posited relationship between local bureaucratic ties and policymaker preferences regarding aid for children at private religious schools.

### **‘Go Back and Live It’: Bureaucratic Pressures Case Study Evidence**

The interviewees overwhelmingly affirmed the importance of local level control in American education and the close institutional ties of local level politicians in comparison to the state or federal level. ‘[This is] where the rubber meets the road’ said a city schools superintendent, ‘where the tyres hits the pavement. This is where it really

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<sup>40</sup> Saiger, “Disestablishing Local School Districts as a Remedy for Educational Inadequacy.”

happens...this is really where it's about'. 'The local level' said a New York Catholic schools administrator, 'they see the benefits of the students who attend those non-public schools, they can see the benefits in their community, they can see how those students, how those schools improve communities, especially inner-city schools or inner-city communities'.<sup>41</sup> Similarly, a Californian Catholic Conference leader said that the Conference aims to 'build on their [the policymakers'] interest in having a pluralism of educational experience in their communities. And we do that by having our principals...be in dialogue with local officials, and so we want them to appreciate that we're part of their community, that we employ people in their community, we serve people in their community'.<sup>42</sup> A state school finance officer agreed: 'The local school board sees the effect of overcrowding, of lack of resources, of their neighbourhoods [on] their families and their friends. The federal government [by contrast] is so far removed that they don't know what's going on: they deal in theory only, not with people'.<sup>43</sup>

One of the interviewees had the unusual experience of holding simultaneous local and state office as both schools superintendent and Education committee member in the Illinois General Assembly. His experience gave him insight into the differing policy priorities of local and state level:

'Some of these public policy things that are oftentimes political and popular would come before us and I was asking questions about the practical implementations, day to day. How's this really going to work?...I had to go back and live it. Whatever it was I had to implement it in my schools...In fact I'm the only one that's ever been a sitting

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<sup>41</sup> Geddis, Director, New York State Association of Catholic Schools Administrators, 11.

<sup>42</sup> Dolesji, Executive Director of the California Catholic Conference, 7.

<sup>43</sup> Larry Newton and Cory Kanth, School Finance Director and Statewide Online Education Program Specialist, Utah State Office of Education, April 4, 2012, 15.

superintendent and a sitting [Assemblyman on the Education Committee]...we've had retired ones. So yeah, I'm unique in that way'.<sup>44</sup>

Local politicians, unlike state politicians, must 'go back and live it', which makes them more sensitive to local schools and their needs than state politicians. 'If I were to go out and try to change even one of those mandates, and I know this because I have' said a New York respondent, 'that political constituency would rally around that particular issue and one by one beat it back'.<sup>45</sup>

The fact that local school district officials represent *public* schools does not lessen local bureaucratic pressures to preserve private school aid because there are severe financial costs associated with its removal. If children leave private schools the public school district is required to find them a place, and each place costs the public school district money. Therefore, there are some good reasons for *public* school district officials to support aid for private religious school students. Another New York respondent described this public school district pressure:

'The church is running out of money, the neighbourhoods are changing, the support for the [Catholic] Church isn't what it used to be and so we have more and more parochial schools closing. That's a serious threat to the public school system because we cannot afford to take on the, I hate to use the word 'burden' but that's what it is, the financial burden and physical plant burden of that many additional kids coming in to the public school system and so I have very actively supported every bill that expands the state support for parochial schools. And I don't find anything wrong with that. It's a matter of survival. The fact that we bus, we bus for all religions, I don't have a problem with it. But we cannot afford to have those schools close'.<sup>46</sup>

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<sup>44</sup> Eddy, Executive Director of the Illinois Association of School Boards and former Representative and Schools Superintendent, 3.

<sup>45</sup> David Little, Director of Government Relations for the New York State School Boards Association, March 5, 2012, 11.

<sup>46</sup> Joel M Miller, Member, New York State Assembly Education Committee, March 7, 2012, 3.

Some of the interviewees disagreed that public school districts have an incentive to support aid for children at private religious schools. When asked an open-ended question, the President of the Louisiana Association of Independent Schools argued ‘Well it’s not the local level in Louisiana [that supports aid for children at private religious schools]...Because they are afraid they’re going to lose something for themselves. Selfishness, really, not being able to see the big picture’.<sup>47</sup> This chapter contends that local government’s inability to ‘see the big picture’, unlike higher levels of government, is one of the reasons local government can be more supportive of aid than state government. As the remainder of this chapter demonstrates, the *lack* of local level support for aid that this respondent identified in Louisiana is not part of the general pattern. Local levels of government in general have good reasons to support aid for private religious school students. A Californian Catholic Conference Director put the point pithily: ‘If we closed the Catholic schools or the private schools tomorrow, they [the public school districts] would go bankrupt’.<sup>48</sup>

### **The Effect of Electoral and Bureaucratic Pressures on Policymakers’ Preferences**

The electoral and bureaucratic pressures outlined above push lower level governments in one direction: a narrow constituency and a reluctance to alter existing arrangements, and higher level governments in another: a broader constituency and lower pressure from local providers. These pressures give reason to believe that the local governments will be more favourably disposed towards public aid for religious schools if their constituency contains many religious schools and state governments will be less favourably disposed towards such support. The posited relationship is

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<sup>47</sup> Melanie Ezell, President, Louisiana Association of Independent Schools and former Headmistress of Parkview Baptist School, September 11, 2012, 11.

<sup>48</sup> Dolesji, Executive Director of the California Catholic Conference, 8.

asymmetrical: local level governments will *not* be uniformly more supportive of aid for children at private religious schools *but state level governments will be uniformly more hostile to it*. Whereas the pressures that operate on state governments always encourage greater ecumenicity (and therefore lower aid) than local governments, the electoral and bureaucratic pressures acting upon local governments encourage support for aid only where there is a constituency in receipt of that aid and keen to preserve it, or where there is a community that aspires to gain aid for its private school students.

For example, the highly religious and homogenous local districts in Utah are overwhelmingly made up of members of the LDS Church but this homogeneity does not create pressures on local politicians to create aid programmes for children at private religious schools. The Speaker of the Utah House of Representatives was referring to the *public* schools when she said ‘we have a very homogenous society as well. And so sometimes I think it’s this attitude of, well, the principal’s LDS, all my kid’s teachers are LDS, they’re my neighbours. I go to church with them. Nothing can go bad in this school’.<sup>49</sup> There are LDS private schools in Utah but, like the Baptist schools described in Chapter 7, they are underrepresented compared to the Utahn LDS population.<sup>50</sup> Many LDS schools make use of ‘released time’, whereby students are ‘released’ from public school at certain times to attend religious classes held off school premises at neighbouring church-owned buildings. Such arrangements may absorb constituency pressures to set up private LDS schools and request public aid to support them. Those constituency pressures are much greater in Catholic constituencies with high numbers of Catholic parochial schools.

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<sup>49</sup> Rebecca Lockhart, Speaker of the Utah House of Representatives, April 5, 2012, 2.

<sup>50</sup> National Center for Education Statistics, Schools and Staffing Survey (SASS), “Private Elementary and Secondary Enrollment, Number of Schools, and Average Tuition, by School Level, Orientation, and Tuition: 1999-2000, 2003-04, and 2007-08.”

For state legislators with more diverse constituencies, as interviewees affirmed, aid for children at private religious schools is less attractive. The effect of larger and more diverse constituencies is evident within the state level of government as well as between local and state level. A Democratic Louisianan State Senator described variations between the Louisianan House and Senate in the size and diversity of their constituencies and hence, their propensity to support aid for children at private religious schools.

‘The House in general is much more hard right leaning than the Senate. That especially came out during reapportionment...Whereas historically we’ve tried to keep the districts somewhat diverse: even in a Republican district you’ll have a significant Democratic population or minority population. All that was redrawn so that Republican leaning districts became hard core Republican districts...So typically what you see is the House will do things and then the Senate...makes whatever they’re doing more palatable...A lot of that has been because during reapportionment the Senate districts were not drawn as tightly Republican or Democrat because of the way that our population is dispersed, it’s almost impossible. A Senate district is typically three House districts; it’s hard to find three extremely conservative House districts to cobble together a Senate district. Usually there’s a mixture, so...even the most conservative Senator is probably middle of the road in the House. So you saw a lot of these tax credits come out, fly out of the House. A lot of them barely passed the Senate and that’s...been the M.O. [*modus operandi*] this entire time during this process’.<sup>51</sup>

The mechanisms elucidated in this chapter are evident within the state level too, because the larger and more diverse constituency of State Senators encourages a more even-handed approach between competing religious and non-religious school interests than the smaller, more homogenous State House districts.

If these constituency and bureaucratic pressures operated in a vacuum there would be no intra-state variation in policy so a further explanatory consideration is

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<sup>51</sup> Morrell, Louisianan State Senator and Member, Education Committee, 6–7.

necessary in order to explain variation in policy outcomes in religious school aid, not just policy priorities: the ability of local government to make its policy predilections come about where there are differences in policy priorities, that is, its ‘power’ vis-à-vis state government.

## **Local Power**

This section shows how these systematic differences in priorities combine with a further explanatory factor – relative local strength – to help account for state-level variations in aid for children at private religious schools. Simply put: because of their different policy priorities, when the lower levels of government are allowed greater latitude vis-à-vis higher levels of government, higher levels of support for religious school students are possible. When the lower levels of government have limited autonomy, there are lower levels of support for religious school students.

Unlike some studies of vertical policy diffusion, in which attempts are made to determine whether local policy adaptations make state action more likely through the ‘snowball effect’ or less likely via the ‘pressure valve effect’, this theory focuses on a policy issue where systems of support almost always come from the state and not the local level.<sup>52</sup> Although there are several examples of local-level vouchers, in cities such as Milwaukee, Cleveland, Racine, Washington DC,<sup>53</sup> and New Orleans,<sup>54</sup> the necessary legislation is passed at the state level by state legislators. The voucher programme launched by Douglas County School Board, Colorado, in 2011 is one of the few locally-launched aid programmes. In general, the strength of the local level is not evinced by its

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<sup>52</sup> C R Shipan and C Volden, “Bottom-Up Federalism: The Diffusion of Antismoking Policies from US Cities to States,” *American Journal of Political Science* 50, no. 4 (October 2006): 825–843.

<sup>53</sup> Although the Washington DC Opportunity Scholarship programme was enacted by the federal Congress and is due to be phased out by 2016

<sup>54</sup> The New Orleans 2008 voucher programme was extended state-wide in 2012

implementation of a small-scale version of a particular policy (for example, a smoking ban in restaurants in a certain city or county) but in the state's capitulation to real or perceived pressures on the part of local politicians for a system of public aid to religious schools.

That most aid programmes are authorized at the state level does not make local level education policymakers irrelevant. On the contrary, education primarily is, continues to be, and is widely recognized as, a local-level responsibility in the United States.<sup>55</sup> The choice and supplemental educational services (SES) parts of NCLB, for example, were mainly organized and administered by local districts, with states in a supporting role. Although states were required to develop lists of SES providers, the local districts needed to enrol students in conjunction with the providers, monitor them and notify parents of their eligibility for SES and choice.<sup>56</sup> Even for policies that require state-level legislation, as with most aid programmes, there are mechanisms by which local level policymakers pressurize state policymakers to adopt their favoured position. Legal and financial power accrues to local policymakers where there are legislative or constitutional provisions for local school districts to have reserved policy areas, for example, or where schools are funded mainly through local property taxes and not state income or sales taxes. Local politicians may represent constituency grievances or even engage in 'bottom-up activism' in opposition to state level initiatives.<sup>57</sup> The legal subordination of local school districts is of little account since state-takeover is extremely infrequent. In these ways, some local units of government can successfully impose their preferences on state-wide programmes.

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<sup>55</sup> McDonald, Director of Public Policy and Education Research for the National Catholic Education Association, 7; Louie, Education Staffer to California State Senator, Sharen Runner, 5; Loar, Executive Director of the Louisiana Conference of Catholic Bishops, 12.

<sup>56</sup> P Manna, *Collision Course: Federal Education Policy Meets State and Local Realities* (Washington DC: CQ Press, 2011).

<sup>57</sup> L Riverstone-Newell, "Bottom-Up Activism: A Local Political Strategy for Higher Policy Change," *Publius* 42, no. 3 (Summer 2012): 401–421.

## Measuring ‘local power’

This chapter uses a multi-dimensional approach to operationalize ‘local power’ that reflects the complexity of this concept. It combines three indicators: one aspect of educational policy-making autonomy and two financial measures, of which one is in education specifically and the other is a legal measure of fiscal partnership that applies across all policy areas. The three indicators are: (1) the percentage of education funding in a state that comes from the local property taxes, as opposed to state or federal level income or sales taxes.<sup>58</sup> (2) Whether the textbook adoption decisions are made at the local school board or the state level.<sup>59</sup> (3) According to the relevant statutes and state constitutional provisions, the degree of state dominance of the fiscal partnership between local and state level.<sup>60</sup>

The aim of this composite index is to capture both sides of the ‘state decentralization’ concept with respect to education policymaking: financial and legal. Measure (1) is financial, Measure (2) is legal and Measure (3) is a mixture of the two. A measure of state decentralization that relied on only one of these elements would be inadequate because both funding and statutory language are resources that help local, state or federal policymakers to achieve their ends, that is, to exert power. A composite indicator enables analysis by summarizing several indicators, making it easier to interpret than a series of different indices. ‘Local power’ is a multidimensional concept,

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<sup>58</sup> The Condition of Education, Elementary and Secondary Education, Finance, “Table A-20-2. Total Revenues and Percentage Distribution for Public Elementary and Secondary Schools, by Revenue Source and State: School Year 2008-9” (National Center for Education Statistics, September 2008), <http://nces.ed.gov/programs/coe/tables/table-tot-2.asp>.

<sup>59</sup> Digest of Education Statistics, “Table 176. Minimum Amount of Instructional Time per Year and Policy on Textbook Selection, by State: 2000, 2006, 2008, and 2011” (National Center for Education Statistics, 2011), [http://nces.ed.gov/programs/digest/d11/tables/dt11\\_176.asp](http://nces.ed.gov/programs/digest/d11/tables/dt11_176.asp).

<sup>60</sup> Advisory Commission on Intergovernmental Relations, “Local Revenue Diversification: Income, Sales Taxes, and User Charges (A-47)” (U.S. Government Printing Office, October 1974).

requiring a multidimensional approach. A critic of composite indicators might charge that the decision as to which variables to include and how to weight them is an arbitrary one, or that the measure might be used instrumentally to support a desired finding.<sup>61</sup> The use of set theoretic analysis in this thesis helps mitigate such concerns because it has high standards of transparency. The scale of local power is available on pages 260 and 261.

Measures (1) and (2) come from 2008 data. Although Measure (3) is forty years old and covers policy areas other than education, its usefulness is rooted in the fact that, as the Government Accountability Office reports, education expenditure constitutes a large plurality of state and local expenditures when compared to other categories including health and public order. Hence the regulations governing the state-local fiscal relationship are most pressing in the case of education. Moreover, the proportion of state and local expenditure that goes to education has changed little over the past thirty years: the drop in that time is six percentage-points (as compared to a nine-point increase in the percentage of total state and local expenditure on health, for example).<sup>62</sup> This relatively limited change suggests that Measure (3) is sufficiently accurate and relevant for the purposes of this chapter.

There are several alternative ways to operationalize ‘local power’ but good reasons to avoid them here. For instance, one might determine whether a state is a ‘Dillon’s Rule’ state as Richardson et al. do.<sup>63</sup> ‘Dillon’s Rule’ is a judicial principle

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<sup>61</sup> M Nardo et al., “Tools for Composite Indicators Building” (European Commission Directorate-General, Joint Research Centre, 2005), <http://collection.europarchive.org/dnb/20070702132253/http://farmweb.jrc.ec.europa.eu/ci/Document/EUR%2021682%20EN.pdf>.

<sup>62</sup> Bureau of Economic Analysis’s National Income and Product accounts, “State and Local Expenditures, by Category, 1980 and 2010” (Government Accountability Office, 2011), <http://www.gao.gov/special.pubs/longterm/state/fiscalconditionsfaq.html>.

<sup>63</sup> J.J. Richardson, “Dillon’s Rule Is From Mars, Home Rule Is From Venus: Local Government Autonomy and the Rules of Statutory Construction,” *Publius* 41, no. 4 (2011): 662–685; J.J. Richardson, M.Z. Gough, and R Puentes, “Is Home Rule the Answer? Clarifying the Influence of Dillon’s Rule on

applied by certain US state courts that gives the state government pre-eminence over local governments. However, as Richardson points out, classifications based on the presence or absence of Dillon's Rule 'fail to measure local governmental autonomy' because even a 'strong Dillon's Rule state' may grant local governments broad autonomy. Indeed, all measures that use constitutional and legal delegations of power alone have been criticised by scholars on the basis that there is a gap between the formal and actual power of local governments.<sup>64</sup> Riverstone-Newell has catalogued the many ways in which local governments embrace 'bottom-up activism' despite their status as 'subordinate, constitutionally unprotected units'.<sup>65</sup>

Another measure of decentralization is the number of school districts in a state and students per school district. Amongst the six case study states there are wide disparities. For instance, there are just sixty-seven school districts in Florida each serving, on average, nearly forty-thousand students.<sup>66</sup> As Table 9.1 shows, this is four times the size of the next largest average school district size and ten times that of New York State, which has approximately the same total state population. Like Louisiana and several other states, the state of Florida requires school district boundaries to be the same as county boundaries. In Utah, special requirements must be fulfilled to establish a non-county school district.<sup>67</sup>

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Growth Management" (The Brookings Institution, January 2003), <http://www.brookings.edu/es/urban/publications/dillonsrule.pdf>.

<sup>64</sup> D.R. Berman, *Local Government and the States: Autonomy, Politics, and Policy* (New York: M.E. Sharpe, Inc, 2003); Riverstone-Newell, "Bottom-Up Activism: A Local Political Strategy for Higher Policy Change."

<sup>65</sup> Riverstone-Newell, "Bottom-Up Activism: A Local Political Strategy for Higher Policy Change."

<sup>66</sup> National Center for Education Statistics, "Number of Operating Public Elementary and Secondary Local Education Agencies and Number of Students in Membership, by Agency Type and State or Jurisdiction: School Year 2009-10" (Institute of Education Sciences, 2010), [http://nces.ed.gov/pubs2011/pesagencies09/tables/table\\_02.asp](http://nces.ed.gov/pubs2011/pesagencies09/tables/table_02.asp).

<sup>67</sup> L.W. Kenny and A.B. Schmidt, "The Decline in the Number of School Districts in the U.S.: 1950-1980," *Public Choice* 79, no. 1/2 (1994): 1-18.

**Table 9.1: Case study states with school districts and average school district size  
for the school year 2009-10**

<b>State</b>	<b>Number of school districts</b>	<b>Students per school district (average)</b>
<b>California</b>	958	6,368
<b>Florida</b>	67	39,215
<b>Illinois</b>	869	2,418
<b>Louisiana</b>	69	9,448
<b>New York</b>	696	3,910
<b>Utah</b>	41	13,376

Source: The National Center for Education Statistics: [www.nces.ed.gov](http://www.nces.ed.gov)

Scholars who chart the nationwide decline in the number of school districts argue that reduced jurisdictional competition increases governmental expenditure.<sup>68</sup> If this ‘Leviathan hypothesis’ is true then the number of school districts in a state will correlate with Indicator 1, but using school district size to determine the degree of ‘local power’ in a state is problematical for three reasons. First, the third column shows a simple average and conceals wide variation in school district size within each state. Secondly, as scholars of district consolidation point out, ‘consolidation preserves the formal authority of local school districts’ and does not necessarily imply a state-level centralization of power.<sup>69</sup> Thirdly, it is unclear which way the causality runs. Large school districts such as Florida’s may have high levels of local power because they have a wide remit and many resources, but large numbers of smaller districts, such as those in Illinois, may also indicate high levels of local power because the state must deal with

<sup>68</sup> Ibid.

<sup>69</sup> D Strang, “The Administrative Transformation of American Education: School District Consolidation, 1938-1980,” *Administrative Science Quarterly* 32, no. 3 (September 1987): 364.

many more districts and each district has closer ties with local community activists. Hence neither the number of school districts nor the number of students per district is used as a proxy for ‘local power’. Although I argue in this chapter that the size of a governmental unit *does* matter for governmental *preferences* (insofar as it affects the size and heterogeneity of its constituency) wide variation between local school board constituencies, which is concealed by the simple average, makes this measure highly problematic as an indicator of local governmental *power*.

The use of three measures of ‘local power’ as opposed to one – local funding, textbook decisions and legal dominance of the fiscal partnership – helps to improve the accuracy of the classification of states by capturing several relevant dimensions of difference. Unsurprisingly the measures are fairly well inter-correlated (but by no means perfectly) as shown by the blank boxes in Table 9.2 below. The lack of perfect inter-correlation between these measures demonstrates the utility of a *composite* measure, while the presence of some inter-correlation suggests that the indicator is valid.

Measure (1), which is a continuous variable (as opposed to the dichotomous (2) and trichotomous (3)) was split into three groups: ‘high’, ‘mid’ and ‘low’ local educational financial control, the thresholds for which correspond to a local funding percentage of  $>52$ ,  $52 < x < 32$ , and  $<32\%$  respectively. The mean percentage of local funding is 42% and the higher and lower bandings are 10% above and 10% below this marker, in the absence of external standards of what constitutes ‘high’ or ‘low’ financial control. The categories of Measure (2) represent, respectively, states in which the state level either recommends or selects textbooks (‘state’), and states in which textbook selection is a local decision (‘local’). For Measure (3) the labels ‘Junior’, ‘Strong’ and ‘Senior’ correspond to the three categories of state dominance of the state-local fiscal

relationship in ascending order of centralization: State junior fiscal partner ('Junior'), State strong fiscal partner ('Strong'), and State dominant fiscal partner ('Senior').

Column 1 in Table 9.2 below shows the fuzzy set scores that correspond to each category. Ragin's indirect method of calibration was used and six qualitative breakpoints applied: Full membership (1.0), Mostly but not completely in (0.8), More in than out (0.6), More out than in (0.4), Mostly but not completely out (0.2) and Fully out (0.0). Full members of the set are states that have high levels of local funding of education, local control of textbook selection and a state that is merely a junior partner in state-local fiscal relations according to the constitutional and legal regulations. Full non-members of the set are states with low levels of local funding of education, state control of textbook selection and a highly centralized state that is dominant in the state-local fiscal relationship. The mid-level qualitative breakpoints correspond to the gradations of local control highlighted by the use of three indicators. The point at which 'more out than in' switches to 'more in than out' of the set is the middle part of the mid-funding category, where state control of textbook selection switches to local control. Table 9.2 on the following two pages shows the distribution of states according to their membership of these three categories, with the fuzzy set score listed in Column 1.

**Table 9.2: States by membership of the three indicators of local control, with fuzzy set scores**

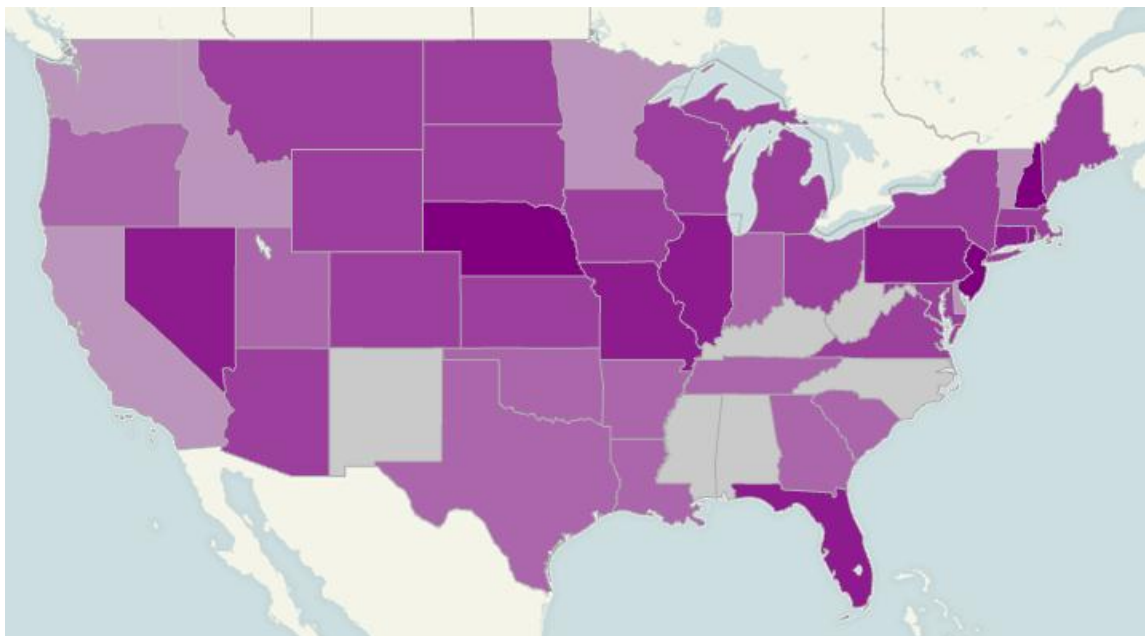
<b>Fuzzy set score</b>	<b>(Indicator 1) Local funding (%)</b>	<b>(Indicator 2) Textbooks (S/L)</b>	<b>(Indicator 3) Fiscal Partnership</b>	<b>States</b>
1	High	Local	Junior	NH, NE, NJ
0.8	High	Local	Strong	IL, NV, MO, CT, PA, RI
0.8	High	Local	Senior	
0.8	High	State	Junior	
0.8	High	State	Strong	FL
0.6	High	State	Senior	
0.6	Mid	Local	Junior	MA, SD, NY, OH, MT
0.6	Mid	Local	Strong	VA, MD, CO, ND, ME, IA, WI, AZ, WY, KS, MI
0.6	Mid	Local	Senior	
0.4	Mid	State	Junior	
0.4	Mid	State	Strong	IN, GA, TX, TN, OR, UT
0.4	Mid	State	Senior	SC, LA, OK, AR
0.2	Low	Local	Junior	
0.2	Low	Local	Strong	MN, WA

**Table 9.2: States by membership of the three indicators of local control, with fuzzy set scores – Part Two**

<b>Fuzzy set score</b>	<b>(Indicator 1) Local funding (%)</b>	<b>(Indicator 2) Textbooks (S/L)</b>	<b>(Indicator 3) Fiscal Partnership</b>	<b>States</b>
0.2	Low	Local	Senior	DE, AK
0.2	Low	State	Junior	CA
0.2	Low	State	Strong	ID, VT
0	Low	State	Senior	KY, AL, MS, WV, NC, NM, HI

Three states are fully in the set of ‘high local control states’: New Hampshire, Nebraska and New Jersey, while seven states are fully out of the set: Kentucky, Alabama, Mississippi, West Virginia, North Carolina, New Mexico and Hawaii. Figure 9.1 below illustrates the geographical dispersion of fuzzy set membership scores in the set of ‘high local control states’.

**Figure 9.1: US States by level of local control in education (as measured by fuzzy set membership of the set of ‘high local control’ states)**



The geographic dispersion of local control is not obviously clustered by region, as Figure 9.1 shows. The South is generally more centralized according to this measure, which is expected given the traditionalistic, hierarchical nature of Southern culture, but there are Southern states with much more local control, including Florida, Maryland and Virginia.<sup>1</sup> Hawaii’s centralization (not shown in Figure 9.1) is also unsurprising given its history as a royal kingdom, long domination by plantation-owning elites and single

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<sup>1</sup> Elazar, *Cities of the Prairie: The Metropolitan Frontier and American Politics*.

state school district, but the other regions are also split between categories, with North-East and West represented amongst the least centralized and a Western state, New Mexico, amongst the most centralized.

Local power is correlated *neither* with region *nor* with overall spending on education. The pattern described in this chapter is not merely a spurious relationship that is driven by poverty, a lack of Southern spending on education in general, and low levels of local property taxation. Average spending per student in the *public* school system varies between \$5,862 in Utah and \$14,667 in Alaska with most states spending between \$7500 and \$9000.<sup>2</sup> Four of the seven states that are fully out of the set of ‘high local control’ states have spending below \$7500 per head, but one of the highest spenders – New Mexico with \$9,204 – is also in that category. Moreover, of the seven highly centralized states that are ‘Mostly out’ of the set of ‘high local control’ states (fuzzy set membership 0.2), three are very high spending states: Vermont, Delaware and Alaska. Similarly, amongst the seven highly decentralized states that are ‘Mostly in’ the set of ‘high local control’ states (fuzzy set membership 0.8), two are low-spending states (Missouri and Florida, both of which spend under \$7000 per head on average) and just two are high-spending states (Rhode Island and Connecticut, which spend around \$10,000 per student). Table 9.1a in the Appendix displays the average funding per student in the public school system by state according to their fuzzy membership score of the set of ‘high local control’ states.

A body of scholarly literature contends that the level of decentralization between state and federal government is determined by the partisan composition of the governments. Scholars have argued that Democratic politicians have typically preferred to centralize authority whilst Republican politicians generally wish to decentralize

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<sup>2</sup> National Center for Education Statistics, “Current Expenditures for Public Elementary and Secondary Education: School Year 2003-04.”

policymaking authority.<sup>3</sup> Hence when Democrats are in power, centralization is likely (the top-down partisan hypothesis). If this hypothesis is true then any relationship between local control and aid for children at private religious schools could be a spurious one – driven by partisan control rather than the distribution of power between levels of government – because as Chapter 8 showed, partisan control is related to the passage of at least some types of aid programme. Two contrary points bear upon this argument. First, the relevant literature concerns the relationship between state and federal government, not between local and state government, and it is the latter relationship with which this chapter is concerned. Secondly, analysis of the relationship between partisan control of state government and the level of local control within a state shows no correlation. As Figure 9.1 showed, both Republican Nebraska and Democratic New Jersey, for example, are represented amongst the most decentralized states, while both Republican Mississippi and Democratic New Mexico are represented amongst the most centralized. The partisanship of the state legislature as of the end of 2012 is approximately evenly distributed between all of the various levels of state decentralization. This chapter does not merely document a spurious relationship driven by partisan control.

Table 9.3 on the following page summarizes the fuzzy membership score in the set of ‘high local control states’ by state.

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<sup>3</sup> G.A. Krause and A.O’M. Bowman, “Adverse Selection, Political Parties, and Policy Delegation in the American Federal System,” *The Journal of Law, Economics & Organization* 21, no. 2 (October 2005): 359–387; S.H. Baker, “Why Executive Power Centralizes Government,” *Public Finance Review* 33, no. 6 (2005): 747–766.

**Table 9.3: Fuzzy membership score in the set of ‘high local control states’ by state**

State	Local control	State	Local control	State	Local control
AL	0	LA	0.4	OH	0.6
AK	0.2	ME	0.6	OK	0.4
AZ	0.6	MD	0.6	OR	0.4
AR	0.4	MA	0.6	PA	0.8
CA	0.2	MI	0.6	RI	0.8
CO	0.6	MN	0.2	SC	0.4
CT	0.8	MS	0	SD	0.6
DE	0.2	MO	0.8	TN	0.4
FL	0.8	MT	0.6	TX	0.4
GA	0.4	NE	1	UT	0.4
HI	0	NV	0.8	VT	0.2
ID	0.2	NH	1	VA	0.6
IL	0.8	NJ	1	WA	0.2
IN	0.4	NM	0	WV	0
IA	0.6	NY	0.6	WI	0.6
KS	0.6	NC	0	WY	0.6
KY	0	ND	0.6		

The hypothesis and null hypothesis are:

*H1: Highly centralized states will have low levels of aid for children at private religious schools*

*H0: There is no relationship between local power within a state and aid for children at private religious schools*

## The Cases

Of the six case study states, three – Florida, Illinois and New York – are more in than out of the set of ‘high local control’ states and the other three – California, Louisiana and Utah – are more out than in. The relative levels of centralization of the case studies were affirmed by interviewees. Louisianan interviewees (state set membership 0.4) affirmed that the state is more powerful than it is in most states in the US, while Illinoisan respondents (state set membership 0.8) see their state as decentralized. For example, an Illinoisan Assemblyman stated that ‘Illinois has always kind of been a local control state, where local boards of education are elected and they...direct locally the education of the students in that community’.<sup>4</sup> California is the most centralized with just 0.2 membership of the ‘high local control’ set while Florida, like Illinois, has 0.8 membership of the set and is most decentralized. New York has 0.6 membership, and Utah, 0.4.

These local control scores match well with the expected B3AND aid scores for four of the states but not so well for a further two states. As expected, the more decentralized New York, Illinois and Florida have high membership of B3AND, with scores of 1, 1 and 0.6 respectively. Utah, with its higher level of centralization, has full non-membership of B3AND (0.0). For California and Louisiana, however, relative centralization would be expected to preclude their high B3AND scores of 0.6 and 1 respectively. The following section examines the connection between local power and aid using the six case study states. In the next section the six states are examined in detail through the lens of three main sources of policymaker power: constituency, legal and financial. The section illustrates the differences between the local control scores

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<sup>4</sup> Eddy, Executive Director of the Illinois Association of School Boards and former Representative and Schools Superintendent, 2.

listed in the previous paragraph (California's 0.2 as opposed to New York's 0.6, for example, or the difference between Utah's 0.4 and Illinois' 0.8) using interview and archival evidence from the case study states.

### **Dealing with 'the nitty-gritty': Constituency sources of power**

'I would argue', said a Louisianan respondent, 'that the person that has the most important sway in your life is not really the President of the United States. It's actually your local council members, your mayors and your school board members or board of supervisors, because they are the ones who have to deal with the nitty-gritty'.<sup>5</sup> By dealing with 'the nitty-gritty' on a regular basis the local politicians build up close links with local activists and a reserve of good will that can be used to bring pressure on state politicians. An Illinoisan Assemblyman argued that 'the local battles are probably more intense...[especially] if you get certain radical factions within your education group. We have home-schoolers who maybe decide to bring their kids into the public school and then they don't agree with any of the policies that are there and they come to board meetings and are very vocal and that makes it tough'. His remarks were echoed by a respondent from a national Catholic advocacy group when she said that 'on a local level...people are very protective of their right to elect their own school boards within a public arena, and to have the local control of curriculum and of funding and so on'.<sup>6</sup> This grassroots support for local control in education can be harnessed by local politicians to augment their power.

New York and Louisiana exemplify two ends of the scale in their respective levels of local power, and they also differ in the *types* of power available to local

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<sup>5</sup> Loar, Executive Director of the Louisiana Conference of Catholic Bishops, 5.

<sup>6</sup> McDonald, Director of Public Policy and Education Research for the National Catholic Education Association, 7.

politicians. One source of power used by some local politicians in New York is not available to Louisianans: the vast population conglomeration of New York City. According to the current Louisianan State Superintendent of Schools who has also worked under leaders of the New York City Department of Education:

‘In Louisiana...you have no individual city that itself is kind of as large as a state...For example, in New York, Mayor Bloomberg and Chancellor Kline advanced a much more profound educational agenda from a policy perspective than did the head of New York State, even though the head of New York State probably has much greater policy levers. Why? Because they have a huge, huge, just volume, there are massive resources – and they have a national platform off of which to do it. New York State trailed New York City even though New York State governs New York City. Here, it’s not immediately apparent that any one of the...local superintendents has a...bully pulpit state-wide as opposed to the others’.<sup>7</sup>

By contrast, a Louisianan State Senator located the source of local power in rural, rather than urban, districts in his state:

‘The most powerful school board districts are actually found in the rural parishes where you have school board districts that are so small they may have a couple of hundred people in them...the school board [leader] may not have a personal relationship with his constituency [in an urban area] as much as in a rural area, that’s where a lot of these reformers move forth’.<sup>8</sup>

The source of power for local leaders in large cities such as Los Angeles, Chicago or New York City is the national platform it offers. For local rural leaders the power sources are the tight constituency relationships and grass-roots mobilizing ability that stem from regular dealings with ‘the nitty-gritty’. Both of these sources fit Pratchett’s

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<sup>7</sup> John White, State Superintendent for Education in Louisiana, September 10, 2012, 3.

<sup>8</sup> Morrell, Louisianan State Senator and Member, Education Committee, 7.

‘freedom to’ category of ‘local power’, because they allow local politicians to ‘effect particular outcomes’.<sup>9</sup>

### **‘Codifying authority’: Legal sources of power**

Local power can also be defined in terms of Pratchett’s ‘freedom from’ category as the enshrinement of freedom from interference in legal or constitutional documents.<sup>10</sup> Constitutionally, as several interviewees emphasized, local governments are established by the state and exist only at the pleasure of the state. Sovereignty remains with the state and not the local level, according to the state constitution. The state government could abolish the local level units if it so chose. However there are substantial barriers, both legal and political, to the actual exercise of this state power over local units. Often, a supermajority of voters or legislators is required to amend a state constitution, and states face severe problems taking over local government functions because they lack the local information, resources and community trust that the local units can enjoy. The state takeover in 2002 of Roosevelt School District on Long Island, New York, for instance, had limited results despite high levels of financial investment.<sup>11</sup>

As the Director of Government Relations for the New York State School Boards Association pointed out, local school districts are created by the state and constitutionally subordinate to it, although their authority is also codified in the state constitution.

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<sup>9</sup> L Pratchett, “Local Autonomy, Local Democracy and the ‘New Localism,’” *Political Studies* 52, no. 2 (June 2004): 358–375.

<sup>10</sup> *Ibid.*

<sup>11</sup> Mitchell, Republican Spokesperson for the Elementary and Secondary Education Committee of the Illinois General Assembly, 6; B Lambert, “After 4 Years of a School Takeover, Debate on Its Effect Still Rages,” *The New York Times*, November 18, 2006, <http://www.nytimes.com/2006/11/18/nyregion/18roosevelt.html?pagewanted=all>; W Hu, “State Takeovers of Other Districts Have Had Mixed Results,” *The New York Times*, December 11, 2011, [http://www.nytimes.com/2011/12/12/education/state-takeovers-of-school-districts-have-had-mixed-results.html?\\_r=0](http://www.nytimes.com/2011/12/12/education/state-takeovers-of-school-districts-have-had-mixed-results.html?_r=0).

‘New York State has a constitutional provision that codifies the authority of local communities...with certain exceptions and those exceptions are called ‘larger state interest’ and those larger state interests are the police power, taxation, public safety and public education...Despite that [education] was all locally generated, in the state constitution it says ‘the state will provide for a system of public education’ and so from a legal standpoint the reason that all these school districts exist is because the state has decided that that system is the appropriate one for carrying out that duty’.<sup>12</sup>

New York State is more in than out of the set of ‘high local control’ states (fuzzy set score 0.6) in part because the powers of its local school districts are enshrined in the state constitution. The exception is New York City, where local school boards have been replaced by mayoral control. Within New York City, the power of the City Department of Education vis-à-vis the smaller neighbourhood and community school districts changes regularly. During the decentralization reforms of the 1960s and 70s, efforts were made to encourage the devolution of power from the City to community school boards, of which one of the most famous was Ocean-Hill-Brownsville.<sup>13</sup> This school board, among others, was involved in a series of demonstrations and lawsuits against the City Board of Education. The struggles concerned the question of who had the power and authority to make decisions about school appointments, food services, school day length and other issues. Both claimed the authority to make education decisions and although the judges mostly sided with the City board, community school boards retained substantial power to determine the application of broader guidelines in specific cases.

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<sup>12</sup> Little, Director of Government Relations for the New York State School Boards Association, 3.

<sup>13</sup> McGrail, “New York City School Decentralization: The Respective Powers of the City Board of Education and the Community School Boards.”

‘Well, outside of New York City [local school boards have a lot of power]’, said a New York State Assemblyman, ‘I mean they have to follow the regents’ requirements and mandates and state law but local school boards...do have this huge influence on the teaching in their districts’.<sup>14</sup> The latest move to mayoral control in 2002 involved some centralization (but not state-level centralization) which helps explain why New York State is merely ‘more in than out’ rather than ‘mostly in’ the set of ‘high local control’ states. ‘There are no public school boards in New York City, we eliminated them...now we have mayoral control, which means we have no local school boards...under the theory that centralization is better. The pendulum swings from centralization to decentralization to centralization again...I would say it swings every 15-20 years’.<sup>15</sup> This mayoral centralization represents the kind of local-level consolidation that ‘occurs not by the movement of authority to higher levels, but by the concentration of authority within the local level’.<sup>16</sup>

In Florida, the power of the local school districts is even greater, as reflected in Florida’s higher membership of the ‘high local control’ set (0.8) than New York (0.6). The Director of Legislative Affairs for the Florida School Boards Association described the greater legal status of Florida’s school boards in comparison to such units in other states.

‘Florida’s a little different from other states, with respect to how our school board members are and how they operate. In Florida, they are constitutional officers: the office of a school board member is established in our constitution...In most other states the office of a school board member is established in state statute, which means that it is subject to change in many ways. In most other states, the school board is a governing body that is subservient to, maybe, the city or the county’s

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<sup>14</sup> Maisel, Member, New York State Assembly Education Committee, 4.

<sup>15</sup> O’Donnell, Member, New York State Assembly Education Committee, 3–4.

<sup>16</sup> Strang, “The Administrative Transformation of American Education: School District Consolidation, 1938-1980.”

governing board. In Florida we are [on] a par with our county commissions and our municipal commissions and so forth. And so there's no level of local government above us. We answer to the state the same way any other governing body answers to the state'.<sup>17</sup>

The lack of subservience to intermediate units of government affords local school boards in Florida greater power because it gives them 'discretion in determining what they will do without undue constraint from higher levels of government'.<sup>18</sup> Local district power is bolstered by its enshrinement in Article IX, Section 4 of the constitution because it is harder to repeal constitutional language than ordinary legislation. Their powers are institutionalized.

#### **'No shekels without shackles': Financial sources of power**

In contrast to the high level of local control in Florida, California ranks lowest of the six case study states in the degree of decentralization (local control set membership 0.2). Its centralization stems from a series of judicial decisions and constitutional amendments in the second half of the twentieth century. Three cases collectively known as *Serrano v Priest* were decided by the Californian Supreme Court in 1971, 1976 and 1977.<sup>19</sup> The cases concerned the use of local property-taxation to fund schools. The plaintiff charged that the system failed to meet the equal protection clauses of the federal and Californian state constitutions. And the Court found in the plaintiff's favour, notwithstanding the US Supreme Court's decision, *San Antonio Independent School*

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<sup>17</sup> Melton, Director of Legislative Affairs for the Florida School Boards Association.

<sup>18</sup> H Wolman et al., "Comparing Local Government Autonomy across States," in *The Property Tax and Local Autonomy* (Cambridge, Mass: Lincoln Institute of Land Policy, 2010), 69–114.

<sup>19</sup> *Serrano v Priest*, 5 Cal. 3d. 584 (1971); *Serrano v Priest*, 18 Cal. 3d. 728 (1976); *Serrano v Priest*, 20 Cal. 3d. 25 (1977).

*District v Rodriguez*.<sup>20</sup> Although the Supreme Court found in the 1973 *Rodriguez* case that local property tax funding was not unconstitutional, the *Serrano* decision remained in force because it relied in part upon the Californian, and not just the federal, constitution.

At the same time as these judicial decisions on education funding, a broader property tax revolt was underway in California. The most famous and consequential change that resulted from this revolt was Proposition 13: a constitutional amendment that passed in 1978. Proposition 13 limited the tax rate for real estate and, since local governments in the US are typically reliant on property tax, limited the financial power of local governmental units. A second ballot initiative, Proposition 98, passed in 1988 and requires a minimum percentage of the Californian state budget to be spent on K-12 education. The 1988 amendment guaranteed an annual increase in education spending in the budget, an obligation met by 1992 legislation that transferred local property tax revenues from cities, counties and special districts to ‘educational revenue augmentation funds’ at the state level. Each of these changes reduced the power of local governments in California by transferring financial resources to the state level. As a Californian charter school leader pointed out, ‘the state is who gets the money...especially in California. It doesn’t trickle down to the locality until the state makes the decision so if you didn’t start at the top you will get lost. You have to start at the top I think’.<sup>21</sup>

Respondents in Louisiana were also aware of their state’s high degree of centralization and stressed the financial power of the state over the local level. Compared to the states with full membership of the set of ‘high local control’ shown in Table 9.2 – New Hampshire, Nebraska and New Jersey (1.0) – Louisiana is highly

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<sup>20</sup> San Antonio Independent School District v Rodriguez, 411 U.S. 1 (1973).

<sup>21</sup> Mary Obi, Church Volunteer and Leader, Our Lady of Guadalupe Parochial School, Sacramento, California, March 20, 2012, 12.

centralized. The distinction between Nebraska and Louisiana was drawn out by an expert on education in the central region in the United States:

‘Nebraska is a state where local control is the law of the land as opposed to Louisiana where your money comes from the state and so “we give you the money, we also give you the instructions”...In Nebraska if the state wants to have any say they have to be incredibly collaborative with the locals because the locals can basically do whatever they want. In Louisiana the state is the one that’s offering the chunk of the money and so it’s almost as though the locals would have to work hard to develop that relationship with the state and depending on what personalities have been involved in those roles you’ll see different situations’.

Unlike California, where state centralization resulted from property tax revolts of the 1970s and 1980s, the combination of powerful state leadership in the late 1920s and a hierarchical Southern culture to produce financial centralization in Louisiana. Governor Huey P Long, who came to power at a critical juncture, reigned from 1928 to 1932 and augmented the power of the Louisianan governorship to an extent discernible today. The Executive Director of the Louisiana Conference of Catholic Bishops stressed the governor’s financial, rather than constitutional powers:

‘We have a very strong Governor in our state constitution, and a lot of it is even cultural – it’s not even the Constitution, which is part of the legacy of Huey Long just being a strong Governor. Where does it say in the Constitution that the Governor picks the President of the Senate, the Speaker of the House, and therefore the Committee Chairmen? Imagine Obama picking...heads of Congress. What? That’s how it’s done here. It’s not the Constitution. But the Governor has tremendous power through the Bond Commission and money strings that he can use to influence things, so you don’t buck the Governor of Louisiana. That’s the key. You don’t buck the Governor or else you gonna get smacked and you’re gonna know it. And there’s not gonna be any secret about it. You are gonna get smacked [*sic*]’.<sup>22</sup>

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<sup>22</sup> Loar, Executive Director of the Louisiana Conference of Catholic Bishops, 4.

Like California and Louisiana, Utah is also ‘mostly out’ of the set of ‘high local control’ states. Two notable features of centralized states are stringent standards for local school districts and state educational finance equalization. The standards feature is captured by Indicator 2 of my composite measure of local control (textbook selection) while the finance feature is captured by Indicators 1 and 3 (local funding and fiscal partnership). Utah – which has the lowest per-student expenditure rates in the US – uses state standards to attempt to raise student achievement, as a Republican State Senator explained:

‘I think they [local school districts] have become dependent on the state board of education, on the legislature particularly because we’re the guys that decide the money, that appropriate the funds, and we create these line item education programmes...we kind of set the standards and we’ve been trying to set them higher which is another state battle, the Common CORE’.<sup>23</sup>

Like many states, Utah also engages in state-wide school district finance equalization, which limits the financial autonomy of the local districts. Wealthy districts with few children and many commercial properties have far greater property tax receipts than poorer districts with many children. The state steps in to reduce these wealth differentials using state education funds. The School Finance Director of the Utah State Office of Education described it as ‘our complete vertical equalization and partnership that we have with local school districts...complete vertical as opposed to horizontal equalization. And so that’s the partnership’.<sup>24</sup> In Utah it is mainly the state income tax that is used for the purposes of state equalization (some other states, such as Michigan,

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<sup>23</sup> Sumsion, Representative, Gubernatorial Candidate and Member, Utah House of Representatives Education Committee, 6.

<sup>24</sup> Newton and Kanth, School Finance Director and Statewide Online Education Program Specialist, Utah State Office of Education, 3–4.

use a state sales tax instead). For districts with lower property tax raising ability, the state adds additional funds from the state income tax. For districts that levy more local funds than the per-pupil amount to which they are entitled, the state ‘recaptures’ the excess from the school district and places it back in the uniform school fund for future equalization efforts. In the process, the financial autonomy of local districts is curtailed.

The case studies range from highly centralized (California) to highly decentralized (Illinois and Florida) as a result of variation in demographics, constitutions and systems of educational finance. Although four of the states conform to the expectations of H1, two states – California and Louisiana – do not. This is unsurprising given the probabilistic nature of social science hypotheses. Both states have a large Catholic population and a long Catholic history, factors that, as Chapter 7 demonstrated, have a strong relationship with aid for children at private religious schools. Since the case studies show some support (but by no means full support) for H1, a full-scale fuzzy set analysis is required to examine the relationship for all fifty states. Are the disconfirming cases of California and Louisiana ‘mere’ aberrations or do they indicate widespread departure from the expectations of H1? Is there a set theoretic relationship between centralization and low levels of aid for children at private religious schools? Does decentralization enable aid and centralization preclude it?

### **Fuzzy Set Qualitative Comparative Analysis**

The B3AND measure of aid is again used as dependent variable with scores above 0.5 constituting ‘high aid’ and scores below 0.5 ‘low aid’. Tables 9.4, 9.5 and 9.6

below cross-tabulate the membership of the set of ‘high local control’ and ‘low local control’ states by membership of B3AND.

**Table 9.4: Membership of ‘high local control’ set disaggregated by B3AND score**

Membership of ‘high local control’ set	Best3AND	
	Low aid	High aid
0	7	0
0.2	5	2
0.4	8	2
0.6	9	7
0.8	3	4
1	0	3

This table suggests there is some set-theoretic relationship between local control and aid for children at private religious schools because in the top-right and bottom-left boxes there are no cases. The three states with full membership of ‘high local control’ set have high aid while all seven states with full non-membership of ‘high local control’ have low aid. Moreover the direction of relationship is approximately consistent across the ‘high local control’ fuzzy membership scores. While 100% of full non-members are low-aid states, 71% of the 0.2 members and 80% of the 0.4 members are low-aid states. The 0.6 members (more in than out) are approximately evenly split between low and high aid, while the 0.8 members are 57% high-aid and the full members 100% high-aid. The information in Table 9.4 is displayed graphically in Figure 9.2 on the following page.

**Figure 9.2: States by B3AND score and membership of set of ‘high local control’**

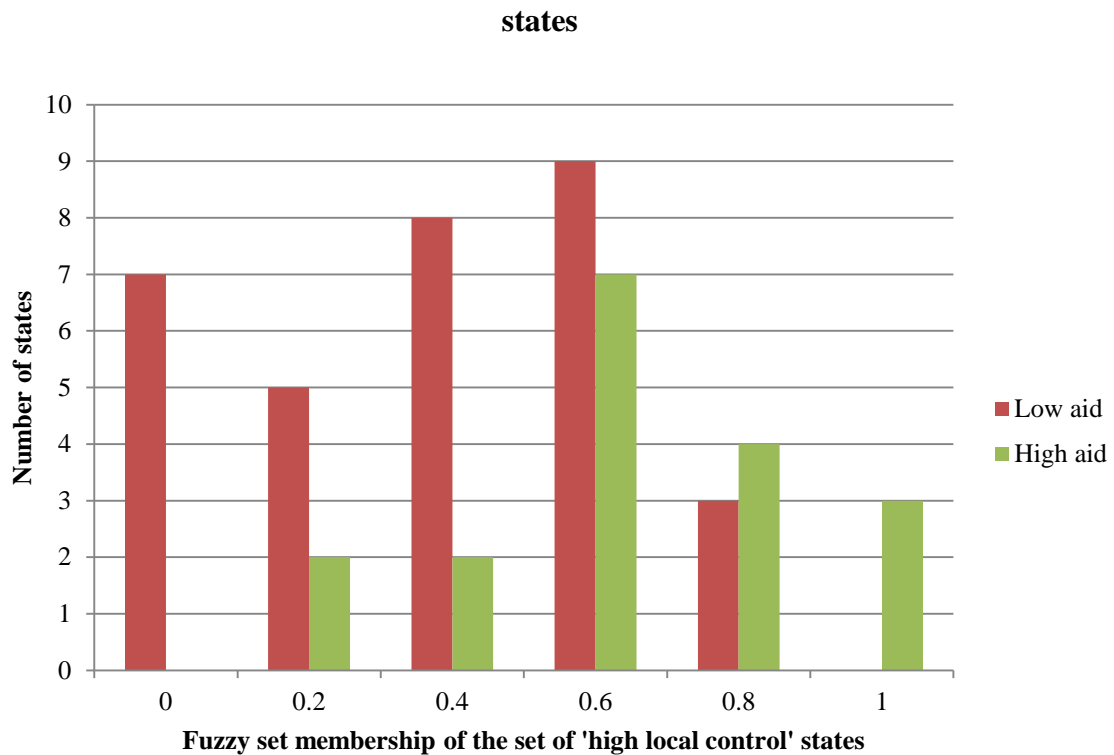


Table 9.4 was condensed into the 2x2 Table 9.5, which displays the relationship between centralization and lack of aid.

**Table 9.5: States above and below 0.5 membership of ‘high local control’ set by high or low aid**

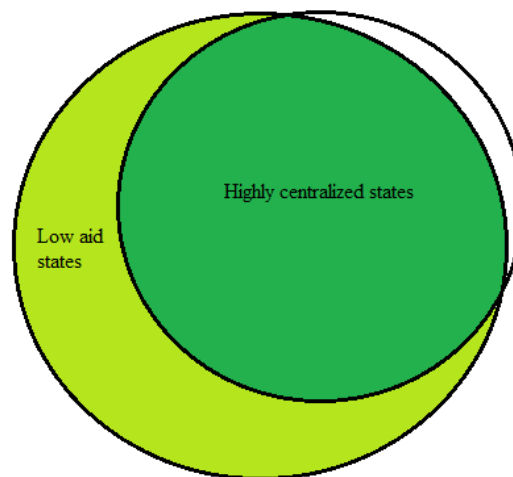
	Low aid	High aid
<b>More in than out of set of ‘high local control’ states</b>	12	14
<b>More out than in set of ‘high local control’ states</b>	20	4

Consistency = 0.833; Coverage = 0.625

Of the twenty-four states that are below 0.5 membership of the set of ‘high local control’ states, that is, the more centralized states which are at least ‘more out than in’ the set of ‘high local control’, just *four* are high-aid states (California, Louisiana,

Minnesota and Indiana). The consistency of this set-theoretic relationship is 0.833, above the bar Ragin set for minimum acceptable set consistency (MASC) of 0.8.<sup>25</sup> The coverage of the set-theoretic relationship is 0.625, which indicates a relationship of relatively high importance. Figure 9.3 illustrates the relationship as a Venn Diagram.

**Figure 9.3: Venn Diagram showing set-theoretic relationship between centralization and low aid**



Although the inner circle of Figure 9.3 is not entirely contained within the larger circle of low-aid states, the substantial size of the centralized-state circle compared to the low-aid circle indicates that state-level centralization helps to ‘account’ for a large portion of the low-aid cases. This relationship shows a close-to-sufficiency relationship between high centralization and low aid, or in other words, that *high* local control is nearly a *necessary* condition for *high* aid. There are just four cases of centralization coupled with high aid (of which two – California and Louisiana – are case study states).

Table 9.4 displayed something approaching a symmetrical relationship, which might suggest that local control is both a necessary *and a sufficient* condition for high

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<sup>25</sup> Ragin, *Redesigning Social Inquiry: Fuzzy Sets and Beyond*.

levels of aid. If this were a perfect relationship of that kind then the two circles in Figure 9.3 would overlap completely but that is not the case, mainly because states with 0.6 membership are split fairly evenly between high and low aid (as Table 9.4 showed). For the more limited domain of states with 0.8 or above membership of ‘high local control’, Table 9.6 summarizes the relationship.

**Table 9.6: States above and below 0.8 membership of ‘high local control’ set by high or low aid**

	Low aid	High aid
<b>Mostly in set of ‘high local control’ states</b>	3	7
<b>Not mostly in set of ‘high local control’ states</b>	29	11

Consistency = 0.70

Although there are suggestively few cases in the top left-hand box the consistency of the relation displayed in Table 9.6 is below the MASC set by Ragin. Given that the consistency is not high enough, it is not helpful to calculate the coverage,<sup>26</sup> nor possible to say that there is a sufficiency relationship between high local control and high aid. FsQCA shows that while there is a tendency for high local control to correlate with high aid and state centralization with low aid, as illustrated in Figure 9.2, the set-theoretic relationship is asymmetrical. High local control in a state facilitates (but does not guarantee) high levels of aid while state centralization precludes it.

<sup>26</sup> Ibid.

## Conclusion

This chapter has shown that state and local governments, as a result of their different positions within the institutional ordering of American federalism, are subject to pressures that pull apart their policy preferences regarding aid for children at private religious schools. Where states are decentralized in education, local preferences with respect to aid are influential. Such conclusions have implications for all scholars of federalism and public policy because they help explain why state-local relations are frequently characterized by tension. The focus on the local- as well as the state-level provides a valuable extension to literature that still underestimates the importance of local government, even though this has recently started to change.<sup>27</sup>

As with other ‘submerged’ policies, aid for children at private religious schools has powerful supporting constituencies. Any attempt to alter, reduce or eliminate these aid programmes is fraught with difficulty because of the path-dependent accumulation of local bureaucratic supporters and advocates. The removal of an aid programme for children at private religious schools has concentrated ‘costs’ for the financial viability of private schools and local public schools, and only diffuse ‘benefits’ for the broader class of taxpayers. Hence, like all submerged policies, aid programmes are subject to positive feedback dynamics that make change difficult. The relatively large number of ‘highly submerged’ policies such as tax exemptions for property – compared to ‘weakly submerged’ policies such as educational vouchers – suggests that these constituency and bureaucratic pressures can be reinforced by high levels of ‘submergedness’, which contributes to an aid programme’s resilience.

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<sup>27</sup> Fusarelli and Cooper, *The Rising State: How State Power Is Transforming Our Nation’s Schools*; Berkman and Plutzer, “Local Autonomy versus State Constraints: Balancing Evolution and Creationism in U.S. High Schools.”

In this chapter I have shown how the architecture of federalism can accentuate or attenuate policymaker responsiveness to local public opinion. Hence my work has significance beyond the study of federal institutions: the democratic responsiveness of policymakers to their diverse constituents, the balancing of strongly-held religious beliefs with church-state separationism, and the meaning of ‘representation’. In his pluralist defence of submerged tax expenditures, Zelinsky utilizes Madisonian arguments about factions and special interest ‘capture’.<sup>28</sup> I make use of the same Madisonian point for different ends: policymakers representing larger constituencies are subject to greater pressures to act neutrally with respect to competing groups. Those representing smaller constituencies have fewer different pressures acting upon them and are more easily ‘captured’ by a single group. In contrast to Zelinsky, I argue that submerged aid programmes for children at private religious schools are a product of such ‘capture’. Policymakers representing larger, heterogeneous constituencies tend not to provide aid for children at private religious schools. In this way the institution of federalism exerts an effect on policymaker priorities.

In the next and final chapter I bring together the four institutional orderings of Constitution, Church, Party and Federalism into truth tables and use Boolean minimization to construct solution terms with respect to levels of aid for children at private religious schools.

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<sup>28</sup> Zelinsky, “James Madison and Public Choice at Gucci Gulch: A Procedural Defense of Tax Expenditures and Tax Institutions.”

## Chapter 10: Truth Tables and Conclusion

Can the four institutional explanatory conditions be brought together into a QCA ‘causal recipe’ that explains inter-state variation in aid for children at private religious schools? How important are the four conditions in determining the pattern of aid? What effects do the institutional orderings of Federalism, Constitution, Church and Party exert upon aid for children at private religious schools? This chapter answers these questions. I organize and integrate the analyses in Chapters 5 to 9 by constructing truth tables that contain all four explanatory variables: religiosity, partisanship, local power, and No-Aid Provision strength. Using Boolean minimization I describe the combinations of conditions that lead to high or low levels of aid in the US states, formulate both complex and parsimonious solutions, and discuss the relative merits of each solution type. I find several equifinal paths to high- and low-aid outcomes. A high proportion of Catholics in a state population is sufficient for high aid, while state centralization is sufficient for low aid. When disaggregating aid by type, Republican control of the state offices is necessary for the passage of tax credit and voucher programmes. High levels of Catholics are sufficient for high in-kind aid, and high levels of Catholics coupled with state decentralization are sufficient for transport and textbook aid. The truth table analysis establishes the importance of Federalism, Church and Party – and the surprising lack of importance of Constitution – in the development of modern patterns of aid for children at private religious schools.

A truth table is a table of configurations: it displays all possible combinations of the explanatory conditions. There are several logical remainders, that is, configurations of conditions that have no empirical cases, and it is necessary to engage in counterfactual analysis to classify these remainders. The first part of this chapter

focuses on three of the above variables: local power, religiosity and No-Aid Provisions, and adds a fourth: the Catholicism variable from Chapter 7. Since the partisanship variable is tied to the year in which each aid programme was created, it cannot easily be related to the B3AND measure because the B3AND measure is a composite of eight separate aid types; there may be several relevant years with different partisanship scores for each programme. The other variables are also date-specific insofar as each changes over time: through migration of Catholics and other religious groups, changes to educational funding arrangements and the strengthening, weakening or elimination of No-Aid Provisions. However, such changes are much less frequent than switches in party control; changes to No-Aid Provision language are particularly infrequent, as shown in Chapter 5. Moreover unlike the party control variable, accurate information on the religiosity and local control variables is not always available for individual years across the range of aid programmes, because it is collected by census (religious denominations), occasional survey (religiosity), or based on figures that have only been collected in the past few decades (education funding figures at NCES).

As the partisanship variable is tied to a particular year, Tables 10.1 and 10.2 show only the local power, religiosity, No-Aid Provision and Catholicism variables in relation to the B3AND aid measure. The Catholicism variable is added in order to highlight the relationship between religiosity and denomination that was uncovered in Chapter 7, and show that the Catholicism variable has more explanatory power than the religiosity variable. In the second part of this chapter, Tables 10.3 and 10.4 disaggregate the aid programmes by type (as in Chapter 8) so that the addition of the partisanship variable is possible. These tables drop the religiosity variable in favour of the Catholicism variable because, as shown in Chapter 7, the religiosity relationship is really driven by denominational differences.

In Table 10.1 on the following page, the following abbreviations are used: L = local control ( $>0.5$ , more in ‘local control’ set than out), R = highly religious state (0.97+ membership of ‘highly religious states’ set), C(Top) = highly Catholic state (0.97+ membership of ‘highly Catholic states’ set, or ‘CATHTOP’) and N = No-Aid Provision (more in ‘SNAP’ set than out). The outcome variable (‘A’ for ‘aid’) is the B3AND measure of aid for children at private religious schools and the outcome is ‘Yes’ if all observed cases are ‘high aid’ states ( $0.5+$  on the B3AND measure), ‘No’ if all observed cases are ‘low aid’ states ( $<0.5$  on the B3AND measure), and ‘Mix’ if the observed cases are neither consistently ‘Yes’ nor consistently ‘No’. Column five of Table 10.1 displays the observed outcome of each configuration of conditions and Column six displays the number of cases that conform to each row’s configuration of conditions. The asterisk is used if all but one or two cases conform to the listed outcome. Use of the asterisk will be discussed in the next section.

**Table 10.1: Truth Table showing the configurations of conditions using the B3AND outcome variable and the CATHTOP explanatory variable**

L	R	C(Top)	N	Outcome	Count
Yes	Yes	Yes	Yes		0
Yes	Yes	Yes	No		0
Yes	Yes	No	Yes		0
Yes	Yes	No	No		0
Yes	No	Yes	Yes	Yes	3
Yes	No	Yes	No	Yes*	4
Yes	No	No	Yes	Mix	15
Yes	No	No	No	Mix	5
No	Yes	Yes	Yes		0
No	Yes	Yes	No		0
No	Yes	No	Yes	No	7
No	Yes	No	No	No*	5
No	No	Yes	Yes	Yes	1
No	No	Yes	No		0
No	No	No	Yes	Mix	8
No	No	No	No	No	4

There are three rows in Column 5 that consistently lead to high levels of aid. In Boolean form:

$$(a) LrCN + lrCN + LrCn \rightarrow A$$

Where capital letters refer to the presence of a condition, lower-case letters to its absence, ‘.’ is the Boolean AND, ‘+’ is the Boolean OR and ‘→’ represents a sufficiency relation. Statement (a) shows that there are three combinations of conditions that guarantee high levels of aid: (1) Decentralization, coupled with high proportions of

Catholics and a strong No-Aid Provision but *without* high levels of religiosity; (2) Centralization, high proportions of Catholics, a strong No-Aid Provision but again without high levels of religiosity, and (3) Decentralization, a weak No-Aid Provision, a high proportion of Catholics and without a high level of religiosity.

The third term in expression (a) refers to a row where *almost* all of the outcome variables are ‘Yes’. All four cases have at least some membership of the outcome aid variable and the single deviation has 0.4 membership of the set: just below the cut-off for ‘high aid’ at 0.5. Hence, this row is represented with the asterisk ‘Yes\*’. Rows marked ‘Mix’, or where the outcome is highlighted with an asterisk, are ‘contradictory configurations’. Such configurations, although expected in an intermediate-*n* study with four explanatory variables, present a problem for QCA because the theory as operationalized in this table does not account for the cases in these rows. This thesis uses three strategies to deal with such configurations. First, all rows with a genuine mix of outcomes are categorized as ‘Mix’ in the truth table, treated as ‘unclear’ configurations, and excluded from the solutions, as suggested by Ragin.<sup>1</sup> This strategy concedes a smaller number of minimized configurations ‘in exchange for more consistency in the cases/outcome relationship’.<sup>2</sup> Secondly, where there is an unclear configuration the complementary case study evidence can be used to re-examine the cases involved and explain why the configuration is contradictory, as it is currently operationalized. This strategy was utilized in Chapters 6 to 9 to deal with contradictions.

Thirdly, rows where the overwhelming majority of the cases belong to either the ‘Yes’ or the ‘No’ camp, with only one deviation, are labelled with an asterisk and treated as part of the relevant camp here. This third strategy has been criticised by set-

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<sup>1</sup> C.C. Ragin, *The Comparative Method: Moving Beyond Qualitative and Quantitative Strategies* (Berkeley, Los Angeles and London: University of California Press, 1987).

<sup>2</sup> Rihoux and Ragin, *Configurational Comparative Methods: Qualitative Comparative Analysis (QCA) and Related Techniques*, 51:49.

theorists on the grounds that it involves frequentist methods: the ‘most frequently travelled path’ wins, a strategy that is at odds with the set-theoretic analysis of uniform relations between sets. However, there are good reasons to use the asterisk procedure: distinguishing between genuine ‘mixes’ and ‘No\*’ or ‘Yes\*’ offers a greater fine-grainedness of analysis and does not merely lump all such outcomes together in one category. The asterisk signals that the outcome contains a contradictory case, and is transparent about the heightened need for interpretative caution.

The expression (a) can be simplified through examination of the logical remainders in Table 10.1. Rows 5, 6, 13 and 14 represent the four configurations where a high proportion of Catholics is combined with *lack of* membership of the set of ‘highly religious states’. All of these cases are ‘Yes’ or ‘Yes\*’ on the outcome variable, regardless of the status of the centralization or No-Aid Provision variables in columns 1 and 4. Therefore, both the centralization and SNAP variables are candidates for removal from expression (a) in order to create a more parsimonious solution to Table 10.1. Both involve ‘difficult’ counterfactuals in that they involve an ‘attempt to remove a causal condition from a configuration displaying the outcome on the assumption that the cause is redundant and the reduced configuration would still produce the outcome’.<sup>3</sup> There are good reasons for removing the No-Aid Provision variable because of the evidence for its inefficacy presented in Chapter 6. The case for the removal of the local control variable is harder because only one case in Table 10.1 combines centralization with high aid. Simplifying the Boolean expression (a) in the most parsimonious fashion yields:

$$(b) rC \rightarrow A$$

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<sup>3</sup> C.C. Ragin and J Sonnett, “Between Complexity and Parsimony: Limited Diversity, Counterfactual Cases, and Comparative Analysis,” in *Vergleichen in der Politikwissenschaft* (Wiesbaden: VS Verlag für Sozialwissenschaften, 2005), 180–197.

The parsimonious solution (b) states that wherever there is a *lack* of high levels of religiosity coupled with a high proportion of Catholics, there will be high levels of aid. The simplified solution (b) suggests that decentralization does not guarantee high levels of aid, a result that is consistent with the findings of Chapter 9: decentralization *enables* (but does not guarantee) high levels of aid.

There are also three columns in Table 10.1 that consistently lead to low levels of aid. In Boolean form:

$$(c) IRcN + IRCN + lrcn \rightarrow a$$

The three conditions leading to low levels of aid in Table 10.1 are: (1) centralization coupled with high levels of religiosity, a low proportion of Catholics and a strong No-Aid Provision; (2) centralization coupled with high levels of religiosity, a high proportion of Catholics and a strong No-Aid Provision; (3) centralization with high religiosity, a low proportion of Catholics and a weak No-Aid Provision. The solution (c) for low levels of aid can be simplified as follows:

$$(d) 1 \cdot (RcN + RCN + rcn) \rightarrow a$$

In solution (d) centralization is sufficient for low aid when coupled with any of the three configurations in the brackets. This finding is consistent with Chapter 9: state centralization helps to *preclude* high aid.

As Ragin notes, the solution that explains the *presence* of a particular outcome may be completely different to the solution that explains the same outcome's *absence*. 'The explanation for the presence of a phenomenon does not imply that the inverted

explanation automatically accounts for the absence of the same phenomenon'.<sup>4</sup> This is a feature of set theoretic analysis because, unlike correlational analysis, set theory is asymmetric: it focuses on uniformities rather than general patterns of association.<sup>5</sup> The fact that Y is a subset of X, so X is always present when Y is present, is in no way undermined if many X are not Y and so it makes no claim about the conditions that would guarantee not-Y. All not-Ys may be a subset of another variable, Z, bearing no relationship to X. Hence, solutions (a) and (b), and (c) and (d), are not simply different aspects of the same explanation but separate explanations entirely. (a) and (b) make generalizable statements about the conditions under which *high* levels of aid are guaranteed. (c) and (d) make generalizable statements about the conditions under which *low* levels of aid are guaranteed.

To examine further the conditions which reliably *preclude* high aid, Table 10.2 on the following page substitutes the 'CATHTOP' variable (states where more than 30% of the population self-identifies as Catholic) with the 'CATHBOT' variable (states where fewer than 20% identify as Catholic). The low-Catholic variable is labelled 'B' to distinguish it from the high-Catholic variable, 'C'.

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<sup>4</sup> C Wagemann and C.Q. Schneider, "Qualitative Comparative Analysis (QCA) and Fuzzy-Sets: Agenda for a Research Approach and Data Analysis Technique," *Comparative Sociology* 9, no. 3 (2010): 386.

<sup>5</sup> Ragin, *Redesigning Social Inquiry: Fuzzy Sets and Beyond*.

**Table 10.2: Truth Table showing the configurations of conditions using the B3AND outcome variable and the CATHBOT explanatory variable**

<b>L</b>	<b>R</b>	<b>B</b>	<b>N</b>	<b>Outcome</b>	<b>Count</b>
Yes	Yes	Yes	Yes		0
Yes	Yes	Yes	No		0
Yes	Yes	No	Yes		0
Yes	Yes	No	No		0
Yes	No	Yes	Yes	No	3
Yes	No	Yes	No	No	2
Yes	No	No	Yes	Mix	15
Yes	No	No	No	Mix	7
No	Yes	Yes	Yes	No	6
No	Yes	Yes	No	No	4
No	Yes	No	Yes	No	1
No	Yes	No	No	Yes	1
No	No	Yes	Yes	Mix	5
No	No	Yes	No	No	2
No	No	No	Yes	Mix	3
No	No	No	No	No	2

With the inclusion of the low-Catholic variable, Table 10.2 has seven rows that guarantee low levels of aid. In Boolean form:

$$(e) LrBN + LrBn + IRBN + IRBn + IRbN + lrBn + lrbn \rightarrow a$$

(e) shows the seven configurations in Table 10.2 that guarantee low levels of aid. This is a particularly striking example of multiple conjunctural causation, or equifinality, which is a defining feature of Qualitative Comparative Analysis. These configurations cannot be easily simplified because no factor is common to them all. However, some

observations can be made about the relative importance of each of these factors based on the findings of Chapters 5 to 9 and combinations in (e). First, a low proportion of Catholics in a state population is present in five of these seven combinations, covering seventeen of the twenty cases in these rows. Secondly, of the two combinations without a low proportion of Catholics, both combinations feature centralization. Thirdly, Table 10.2 gives weight to the finding of Chapter 6, which was that No-Aid Provisions are no barrier to the creation of aid programmes for children at private religious schools, because strong and weak No-Aid Provisions are present in the causal combinations of (e) in approximately equal numbers. Fourthly, the four logical remainders at the top of both Tables 10.1 and 10.2 display the set relation that was first revealed in Chapters 7 and 9: all highly religious states are centralized states (and almost all highly religious states are low-Catholic states).

Since highly religious states are a sub-set of centralized states and, as Chapter 7 showed, almost all highly religious states are low-Catholic states, there are good reasons to drop the high-religiosity variable: it is so closely related to these two other variables that it creates too many logical remainders in the truth tables. Eliminating the No-Aid Provision variable (not a barrier to aid) and the religiosity variable (too closely related to the other variables) yields two highly simplified truth tables: Tables 10.1b and 10.2b on the following page, which represent, respectively, the application of the ‘CATHTOP’ and ‘CATHBOT’ variables. In the following, L = decentralization or ‘local power’, C(B) = a low percentage of Catholics as a proportion of the state population (<20%) and C(T) = a high percentage of Catholics as a proportion of the state population (>30%).

**Table 10.1b: CATHTOP Summary Table**

<b>L</b>	<b>C(T)</b>	<b>Outcome</b>	<b>Count</b>
Yes	Yes	Yes*	7
Yes	No	Mix	20
No	Yes	Yes	1
No	No	No*	23

**Table 10.2b: CATHBOT Summary Table**

<b>L</b>	<b>C(B)</b>	<b>Outcome</b>	<b>Count</b>
Yes	Yes	No	5
Yes	No	Mix	22
No	Yes	No*	17
No	No	Mix	7

In Table 10.1b there are two routes that lead to high aid (LC + IC) and one that leads to low aid (lc). In Table 10.2b there are two routes to low aid (LB + IB). These results suggest that the Catholicism variable is the most important determinant of high or low aid because very high proportions of Catholics are common to all cases of high aid and very low proportions of Catholics are common to all cases of low aid. Some caution should be exercised in discounting the local power variable however, because in 10.1b the decision rests on a single case in the l·C row (Row 3 of Table 10.1b) and in 10.2b the l·B route to low aid (Row 3 of Table 10.2b) is not completely free of contradictions.

### **Disaggregating aid programmes by type and year of passage**

Having removed the religiosity variable from the analysis to avoid the problematically large number of logical remainders, the aid programmes are disaggregated by type as in Chapter 8 so that the partisanship variable can be deployed.

The partisanship variable is calculated for each state in two different ways, as follows. First, for the tax-credit and voucher programmes (which have almost all been passed more recently than in-kind programmes) the year of passage was recorded for each programme by state. If the state has more than one such programme, the modal year of passage was taken down. For states without a tax credit or voucher programme, the modal year of tax credit and voucher programme passage – 2011 – was taken as the relevant year for the partisanship variable. This year is slightly later than the mean year of passage (2004) and median year (2008), but the modal year is deemed more appropriate because it is not obvious what a ‘mean’ signifies in the case of years and the modal year represents overwhelmingly the most common year of tax credit and voucher programme passage.

Secondly, for the in-kind aid programmes, the year of passage was again recorded for each programme by state. If the state had more than one such programme, the modal year of programme passage was taken down. For states without an in-kind aid programme, the median year of in-kind aid programme passage – 1974 – was taken as the relevant year for the partisanship variable. Since there is no modal year of passage for one of the in-kind aid programmes, the median year of passage is the most appropriate measure. In the following tables E (for ‘Elephant’) and D (for ‘Donkey’) represent unified control of the state offices by the Republican or Democratic parties respectively. The partisan variable E relates to the year 2011 or to the time of voucher or tax credit programme passage. The partisan variable D relates to the year 1974 or to the time of in-kind programme passage. ‘CVORTC’ is the product of the application of the Boolean OR to the voucher or tax credit fuzzy sets. The result represents the higher of the two values: fuzzy set membership in the set of ‘voucher states’ and fuzzy set membership in the set of ‘tax credit states’. If the result of the application of the

Boolean OR is greater than 0.5 then the state is deemed ‘more in than out’ of the set of ‘voucher’ or ‘tax credit’ states and is given a ‘yes’ outcome. If the result is below 0.5 then the outcome is ‘no’. Similarly, the ‘TBORTR’ variable is the application of the Boolean OR to the transportation and textbook loan programmes.

The ‘IKB2AND’ variable is similar to the B3AND variable in that it represents the application of the Boolean AND to each state’s best two in-kind aid programme fuzzy set scores. All states that have fewer than two in-kind aid programmes register automatically as a 0 score. For states with two or more in-kind aid programmes (out of a possible five) the lower of the two highest scores is the IKB2AND score. Hence the score measures the degree of set membership of each state in the conglomeration of its two most generous in-kind aid programmes. Table 10.3 on the following page shows these results.

**Table 10.3: Truth Table showing the configurations of conditions using the disaggregated outcome variables and the CATHTOP explanatory variable**

L	C(T)	N	E	CVORTC	IKB2AND	TBORTR	Count
Yes	Yes	Yes	Yes	Yes	Yes	Yes	1
Yes	Yes	Yes	No	No	Yes	Yes	2
Yes	Yes	No	Yes				0
Yes	Yes	No	No	Mix	Yes	Yes	4
Yes	No	Yes	Yes	Mix	Mix	No*	10
Yes	No	Yes	No	Mix	Mix	Mix	5
Yes	No	No	Yes	Mix	Mix	Yes*	3
Yes	No	No	No	No	No	No	2
No	Yes	Yes	Yes				0
No	Yes	Yes	No	No	Yes	No	1
No	Yes	No	Yes				0
No	Yes	No	No				0
No	No	Yes	Yes	Mix	No	Mix	8
No	No	Yes	No	No*	No*	Mix	6
No	No	No	Yes	No	No	No	2
No	No	No	No	No*	No*	No*	7

As Table 10.3 shows, there is only one row that guarantees the voucher or tax credit programmes: the configuration where all of the causal conditions are present (L·C·N·E) decentralization coupled with a high proportion of Catholics, a strong No-Aid Provision and unified Republican control of the state offices in 2011 or when the programme was passed. This confirms the findings of Chapter 8: Republican control is related to the passage of tax credit and voucher programmes. There are several rows that guarantee the *absence* of a tax credit or voucher programme, in Boolean form (where V = voucher or tax credit scholarship):

$$(f) LCNe + Lcne + lCNe + lcNe + lcnE + lcne \rightarrow v$$

As with expression (e) in the previous section, expression (f) resists simplification because no variable is common to all six rows. However, there are several points to note regarding (f): eighteen of the twenty cases covered by the ‘No’ rows lack unified Republican control of the state office, sixteen of the twenty cases are centralized and seventeen of those cases lack a high proportion of Catholics. By contrast, almost equal numbers of these cases have strong No-Aid Provisions (9) as weak ones (11). Hence, although it is not possible to create a parsimonious solution that explains the *absence* of tax credit and voucher programmes based on Table 10.3, the finding of Chapter 6 that No-Aid Provisions are a mere ‘picket fence’ and not a true barrier to aid, is reinforced by these results.

Table 10.3 also shows several ways to guarantee in-kind aid in columns 6 and 7. According to the IKB2AND measure there are four rows that guarantee membership of the set of high in-kind aid states, which can be simplified as shown in expression (g), where I = in-kind aid:

$$(g) LCNE + LCNe + LCne + ICNe \rightarrow I$$

$$\text{Parsimonious solution (g) } C \rightarrow I$$

For the TBORTR measure of transportation and textbook aid, a similar but not identical set of solutions are also available (where T = transport OR textbook aid):

$$(h) LCNE + LCNe + LCne + LcnE \rightarrow T$$

$$\text{Parsimonious solution (h) } L \rightarrow T$$

In solution (g), the high-Catholic variable is common to all four rows while in solution (h) decentralization is the common variable. Of the remaining variables in (g), Republican control is absent from all but one of the cases covered by the ‘Yes’ outcome, while strong No-Aid Provisions are present in approximately half of the cases. In (h) Republican control and strong No-Aid Provisions are each present in two of the four configurations that produce the outcome. These results suggest that the decentralization and Catholicism variables are related to in-kind aid but Republican control and No-Aid Provision strength are not. It is not surprising that neither No-Aid Provision strength nor Republican control is related to high in-kind aid: the former because Chapter 6 established that No-Aid Provisions present no barrier to aid, the latter because the Republican control variable is calculated in relation to the modal year of tax credit and voucher programme passage.

In order to examine the relationship between partisanship, the other explanatory variables, and the set of ‘high in-kind aid’ states, the Democratic Party control variable was also tested against the IKB2AND (‘I’) and TBORTR (‘T’) outcome variables in Table 10.4 on the following page. The Democratic Party control variable is D.

**Table 10.4: Truth Table showing the configurations of conditions using the disaggregated outcome variables and the CATHTOP explanatory variable**

<b>L</b>	<b>C(T)</b>	<b>N</b>	<b>D</b>	<b>IKB2AND</b>	<b>TBORTR</b>	<b>Count</b>
Yes	Yes	Yes	Yes			0
Yes	Yes	Yes	No	Yes	Yes	3
Yes	Yes	No	Yes	Yes	Yes	3
Yes	Yes	No	No	Yes	Yes	1
Yes	No	Yes	Yes			0
Yes	No	Yes	No	Mix	Mix	14
Yes	No	No	Yes			0
Yes	No	No	No	No*	Mix	5
No	Yes	Yes	Yes			0
No	Yes	Yes	No	Yes	No	1
No	Yes	No	Yes			0
No	Yes	No	No			0
No	No	Yes	Yes	No*	Mix	8
No	No	Yes	No	No	Mix	6
No	No	No	Yes	No*	No*	5
No	No	No	No	No	No	4

Table 10.4 shows four routes to the IKB2AND outcome and three to TBORTR. For the general in-kind aid variable (I) and the specific transportation and textbook loans variable (T), the Boolean solutions are, respectively, (i) and (j):

$$(i) \text{LCNd} + \text{LCnD} + \text{LCnd} + \text{ICNd} \rightarrow I$$

Parsimonious solution (i)  $C \rightarrow I$

$$(j) \text{LCNd} + \text{LCnD} + \text{LCnd} \rightarrow T$$

Parsimonious solution (j)  $LC \rightarrow T$

Parsimonious solution (i) is a super-set of parsimonious solution (j). In the former, the Catholic variable is common to all rows while in the latter, the decentralization and Catholic variables are common to all rows. Only one case – California – separates them. As Chapter 8 showed, Democratic control of the state offices is not consistently related to the passage of in-kind aid programmes, but a high proportion of Catholics coupled with decentralized state structures, is.

Solutions (i) and (j) exhibit the multiple conjunctural causation that the Boolean algebra of QCA easily accommodates. These formulae show the conglomerations of conditions that reliably produce various types of aid programme. But although such formulae can provide valuable generalizable statements about the origins of aid programmes, they cannot unravel this causal complexity and reveal the precise relationships amongst the conditions alone. Such unravelling requires complementary comparative historical analysis such as that deployed in Chapters 5 to 9. For example, decentralization enables the expression of Catholic preferences for high levels of aid for private religious schools, as shown in Chapter 9. Religiosity, as displayed in solutions (a) and (b), seems to be related to levels of aid but the relationship is really driven by differences amongst religious groups, notably Catholics and Evangelical Protestants (as shown in Chapter 7).

This chapter extends the analysis of Chapters 5 to 9 in two ways. First, it includes all four of the main explanatory variables in the configuration of conditions – religiosity and denominations, local control, partisanship and constitutional provisions – rather than examining them separately. This enables formal investigation of how these variables interact to produce (or preclude) the outcome of interest. Since the local control analysis in Chapter 9 identifies decentralization as a necessary but *insufficient*

condition for high aid (because it must be combined with a high Catholic population to encourage policymakers to support aid), the truth table analysis provides a crucial test of this causal proposition. Secondly, the analysis provides a series of formulae that necessarily produce positive instances of the outcome, in an investigation that focused mainly on sufficiency conditions and the *absence* of the outcome. While Chapters 7 and 9 emphasized that high religiosity, low Catholicism and centralization all preclude high aid, this chapter demonstrates that high Catholicism and decentralization produce high aid and that when aid is broken down by type, Republican control helps to produce high tax credit and voucher aid.

## **Conclusion**

When do institutions matter, which institutions matter, and why do they matter? This thesis has established the importance of the institutions of Federalism, Church and Party, and the surprising *lack* of importance of Constitution, with respect to aid for children at private religious schools. I have demonstrated that state decentralization coupled with a high proportion of Catholics is crucial for the development of high levels of aid. State centralization guarantees low levels of aid. No-Aid Provisions do not present an institutional barrier to the expansion of aid programmes although they retain symbolic significance. When disaggregating aid policies by type, Republican control of the state offices is required for the passage of voucher and tax credit programmes and a high proportion of Catholics is sufficient for the passage of in-kind aid. Elite perceptions of Catholic constituency demands, mediated through the institutions of American democracy and federalism, affect levels of state aid for children at private religious schools. Private religious institutions flourish where Church institutional

structures can support them and where Catholics were historically alienated by the Anglo-Protestant practices of public schools.

Institutions matter as arenas within which political entrepreneurs such as Senator James Blaine, Governor Huey Long and President Lyndon Johnson engage in acts of leadership, agenda-setting and policymaking. But institutions also matter because they are structures that ‘prescribe actions, construct motives, and assert legitimacy’.<sup>6</sup> Institutional rules as varied as *stare decisis*, structures of party competition and Anglo-Protestant public school practices, for example, all affect modern levels of aid by legitimating certain modes of behaviour and regularizing certain norms of decision-making: respectively, the application of CBT precedent, the formation of school choice alliances along party lines, and the tendency of Catholics to exit the public schooling system. Critical junctures in American history, such as the Warren Court decisions on public school prayer, represent ‘formative acts’ in the development of modern levels of aid for children at private religious schools because they radically disrupt existing rules, procedures and norms of behaviour.

Aid for children at private religious schools is a revealing example of Mettler’s ‘submerged state’, the ‘policies that [lie] beneath the surface of U.S. market institutions and within the federal tax system’.<sup>7</sup> These ‘doubly submerged’ aid policies – so called because of the difficulty of gathering information about their size and organizational principles – help private institutions to take on the state’s education function and re-frame this function in terms of the marketplace. They are poorly understood by the public and defended tenaciously by beneficiary groups. Their submerged features suggest that, like submerged health-care or tax policies, aid for children at private religious schools will be difficult to change in the future. The level of ‘submergedness’,

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<sup>6</sup> Skowronek, “Order and Change,” 94.

<sup>7</sup> Mettler, *The Submerged State: How Invisible Government Policies Undermine American Democracy*, 4.

as elucidated in Chapter 2 (see Table 2.1) indicates which aid policies are more difficult to repeal or reform as President Obama did for subsidized student lending. ‘Highly submerged’ policies such as hidden tax exemptions buried within longer school codes, may be less likely to be overturned by voter referendum or legislative, executive or judicial action than ‘weakly submerged’ policies that have higher public salience and merely veil government intervention using the language of the market.

The submergedness of aid policies illuminates the porosity of the American state, which has historically been weak and easily penetrated by business and society. ‘The exceptional character of the early American state’, argues Skowronek, ‘is neatly summarized in the paradox that it failed to evoke any sense of a state’.<sup>8</sup> Similarly, submerged policies involve government intervention but do not appear to do so. Insofar as all eight aid programmes are submerged and encourage private institutions to take on the state’s education function, they involve the partial privatization of the American education system and the penetration of the state by churches and businesses. Such policies raise questions for New Institutionalists about the definition of ‘state interest’ and the extent to which the state can be said to be ‘autonomous’, as scholars such as Skocpol claim.

If the foregoing discussion illuminates the nature of the state, it also informs our understanding of the American nation through examination of the state’s most important instrument of nation-building: schools. A ‘nation’ requires a common identity, a sense of what it means to be American, and the distinctness of the *American* experience is central to the field of American Political Development. Through examination of the interaction of the institutions of Federalism, Constitution, Party and Church, this research sheds light upon America’s understanding of itself. This understanding is

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<sup>8</sup> Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920*.

manifest, for example, in the dominant Anglo-Protestant practices in public schools and the Catholic responses to them, in the calls for local education control and church-state separationism, and in the ‘limited government’ ethos of submerged policies. By promoting private schools, aid programmes uphold a vision of America in which religious group differences are preserved, in opposition to the assimilationist ‘melting pot’<sup>9</sup> logic of public schools. They represent the triumph of ‘democratic nationalism’ where strong group identities are tolerated within a single nation, as opposed to ‘assimilationist democracy’ in which absorption by the majority culture is a condition of membership.<sup>10</sup>

The tension between assimilation and the preservation of group differences is central to federalism and the Founding Fathers’ concern with factions and states’ rights. Derthick observed that federalism involves ‘a choice about how many communities to be’, with associated issues of representation, power, and religious groups’ rights as communities.<sup>11</sup> This research raises questions of federalism, liberty and democracy. Decentralization was the enemy of liberty for racial minorities under the white segregationist order of Jim Crow. National action brought relief from *de jure* segregation and disenfranchisement by racist local elites. As this thesis shows, homogenous local constituencies and high levels of decentralization result in the segregation of children along religious, and racial, lines. Centralization precludes such religious segregation. Madison’s insight that larger republics better guard against factions is embodied in the discovery that the centralized states tend not to support aid for children at private religious schools. The religious diversity of the larger

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<sup>9</sup> C Hirschman, “America’s Melting Pot Reconsidered,” *Annual Review of Sociology* 9 (1983): 397–423; I Zangwill, “The Melting Pot” (Project Gutenberg, 2007), <http://www.gutenberg.org/files/23893/23893-h/23893-h.htm>.

<sup>10</sup> D King, *The Liberty of Strangers: Making the American Nation* (Oxford: Oxford University Press, 2005).

<sup>11</sup> Derthick, *Keeping the Compound Republic: Essays on American Federalism*.

constituency discourages policy options that would necessarily favour one group over another, given the overrepresentation of Catholic schools as a proportion of all religious schools.

Since America is a religiously diverse nation, examination of the relationship between Church and State, and between the various religious groups and institutions, is vital for an understanding of America's politics, history and culture. Sociologists of religion have observed the rise of contestation between orthodox and progressive wings of all religions and the decline of denominational divisions – the 'culture wars' – but this thesis finds that divisions between Catholics and Evangelical Protestants still matter when it comes to their responses to perceived 'godlessness' in public schools. Such responses have deep roots in American history, culture, and the institutional manifestations of racial and religious prejudice in the American schooling system. Benefiting from many excellent studies by historians, my research also provides a fresh understanding of No-Aid Provision adoption. It overturns the idea that No-Aid Provisions represent a barrier to aid and uncovers several reasons to reject the constitutionalist understanding of judicial behaviour that posits a simple connection between constitutional language and judicial decisions.

These conclusions offer four lessons for policymakers. First, No-Aid Provisions are not effective barriers to aid so there is no need for aid proponents to dismantle them, or for aid opponents to reinforce them. Secondly, some of the explanatory conditions – such as the level of state centralization – are at least partly manipulable by policymakers. To help enable aid, decentralization is needed. To preclude aid, centralization is needed. Thirdly, other explanatory conditions are not easily manipulable but the presence or absence of these conditions helps determine how easy it is to create further aid programmes in a state and is therefore of great importance to

policymakers. According to these findings, decentralized and high-Catholic Connecticut and Nebraska are the most promising states for the further expansion of aid programmes, whilst centralized and low-Catholic West Virginia, Hawaii, Idaho, Alaska and Oregon are the least promising. Fourthly, where Republicans win at state level it is possible to pass tax credit and voucher programmes, but if Democrats control even one branch of government, passage of such programmes becomes much harder. In 2011 and 2012 alone, thirteen voucher and tax credit programmes were passed by US state legislatures, more than a third of all state voucher and tax credit programmes ever created. The recent surge of new education vouchers and tax credits makes this timely investigation of aid relevant for policymakers, as well as scholars.

Two main avenues of further research spring directly from my investigation: other American education policies for which questions of church-state separation are important, and the subsidization and secularization processes of school development across the world. In the former category are private religious school regulation and the regulation of homeschooling by US states, supplemental educational services authorized under NCLB, released time, the relationship between public charter schools and private religious schools, and reimbursement to private schools for the costs of providing mandated services. In the latter category are disputes about the respective role of churches and the state in providing publicly-funded education in Europe and elsewhere, academy or 'free' schools, the development of religious curricula, school prayer, and the display of religious symbols in classrooms. Moreover, since I applied QCA to interstate variation in aid successfully here, the methodology could also be applied to interstate variation in other public policies where the  $n$  is medium-to-low and the policies formulated in terms of sets. This research extends the use of this innovative set-theoretic methodology.

Examination of inter-state variation in aid for children at private religious schools raises pressing moral questions about how to separate Church and State, whether religious schools should benefit from taxpayer funds, and the extent to which private organizations should be funded publicly through ‘submerged’ channels. The first comprehensive examination of aid for children at private religious schools, my research provides an empirical basis for the exploration of such questions. It offers an institutionalist study of aid programmes, extending across the United States and throughout the nation’s history, in order to illuminate the interaction of politics, religion and education in America.

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## Appendix Materials

### Appendix to Chapter 5

**Table 5.1a: No-Aid Provision Strength**

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#### **A: Direct and Indirect Aid Forbidden?**

<b>Doesn't mention (-1)</b>	<b>Only Direct (-2)</b>	<b>Direct and Indirect (0)</b>
AL, AZ, AR 1868, CO, DE 1967, DE 1897, DC, ID, IL, IN, IA, KS, KY, LA 1879, MA 1855, MA 1917, MA 1974, MI 1835, MI 1850, MN, MS 1890, MS 1868, NE 1875, NE 1976, NV 1864, NV 1880, NH, NJ 1844, NM, ND, OH, OR, PA 1874, PA 1975, SD, TX, UT 1896, VA, WA, WI 1848, WI 1967, WI 1972, WY	AK, SC, UT 1986	CA, FL, GA, HI, MI 1970, MO, MT, NY 1894, NY 1938, OK

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#### **B: Tone of No-Aid Provision Language**

<b>Strident (0)</b>	<b>Not Strident (-1)</b>	<b>Placatory (-2)</b>
CA, CO, DC, IL, KY, MA 1917, MA 1974, MI 1970, MS 1890, MT, NV 1880, NM, OK, OR, SD, WY	AL, AK, AZ, AR 1868, FL, GA, ID, IN, IA, KS, LA 1879, MI 1850, MN, MS 1868, NV 1864, NH, ND, PA 1874, PA 1975, SC, TX, UT 1896, UT 1986, VA, WI 1848, WI 1967, WI 1972, WA	DE 1897, DE 1967, HI, MA 1855, MI 1835, MO, NE 1875, NE 1976, NJ 1844, NY 1894, NY 1938, OH

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#### **C: Extent of explicit No-Aid Provision bans**

<b>Only Public Appropriations (-2)</b>	<b>Money plus property/land (-1)</b>	<b>Long list of bans (0)</b>
AL, AK, AR 1868, DE 1897, DE 1967, FL, GA, IN, IA, KS, KY, LA 1879, MA 1855, MI 1835, MS 1890, MS 1868, NE 1976, NE 1875, NV 1864, NV 1880, NH, NJ 1844, ND, OH, OK, OR, PA 1874, PA	AZ, CO, DC, HI, ID, IL, MI 1850, MN, MO, MT, NM, NY 1938, NY 1894, TX, VA, WA	CA, MA 1917, MA 1974, MI 1970, SD

1975, SC, UT 1896, UT  
1986, WI, 1848, WI 1967,  
WI 1972, WY

**D: Qualifications and Exceptions**

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**Qualifying Statement supportive of  
religion (-1)**

CO, FL, HI, MO, NE 1875, UT 1896, UT  
1986, WI 1848, WI 1967, WI 1972

**Exceptions to No-Aid Bans (-2)**

CA, DE 1897, DE 1967, HI, ID, MA  
1917, MA 1974, MI 1970, MO, NE, NY  
1938, PA 1975, WI 1967, WI 1972

**E: No No-Aid Provision (-10)**

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AR 1874, CT, LA 1975, ME, MD, NJ 1948, NC, RI, TN, VT, WV

**Table 5.2a: No-Aid Provision Scoring Table**

<b>State</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>Score</b>
AL	-1	-1	-2	0		6
AK	-2	-1	-2	0		5
AZ	-1	-1	-1	0		7
AR (1868)	-1	-1	-2	0		6
AR (1874)					-10	0
CA	0	0	0	2		8
CO	-1	0	-1	-1		7
CT					-10	0
DE (1897)	-1	-2	-2	-2		3
DE (1967)	-1	-2	-2	-3		2
DC	-1	0	-1	0		8
FL	0	-1	-2	-1		6
GA	0	-1	-2	0		7
HI	0	-2	-1	-3		4
ID	-1	-1	-1	-2		5
IL	-1	0	-1	0		8
IN	-1	-1	-2	0		6
IA	-1	-1	-2	0		6
KS	-1	-1	-2	0		6
KY	-1	0	-2	0		7
LA (1879)	-1	-1	-2	0		6
LA (1975)					-10	0
ME					-10	0
MD					-10	0
MA (1855)	-1	-2	-2	0		5
MA (1917)	-1	0	0	-2		7
MA (1974)	-1	0	0	-2		7
MI (1835)	-1	-2	-2	0		5
MI (1850)	-1	-1	-1	0		7
MI (1970)	0	0	0	-2		8
MN	-1	-1	-1	0		7
MS (1868)	-1	-1	-2	0		6
MS (1890)	-1	0	-2	0		7
MO	0	-2	-1	-3		4
MT	0	0	-1	0		9
NE (1875)	-1	-2	-2	-1		4
NE (1976)	-1	-2	-2	-3		2

**Table 5.2a: No-Aid Provision Scoring Table – Part Two**

<b>State</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>Score</b>
NV (1864)	-1	-1	-2	0		6
NV (1880)	-1	0	-2	0		7
NH	-1	-1	-2	0		6
NJ (1844)	-1	-2	-2	0		5
NJ (1948)					-10	0
NM	-1	0	-1	0		8
NY (1894)	0	-2	-1	0		7
NY (1938)	0	-2	-1	-2		5
NC					-10	0
ND	-1	-1	-2	0		6
OH	-1	-2	-2	0		5
OK	0	0	-2	0		8
OR	-1	0	-2	0		7
PA	-1	-1	-2	-2		4
RI					-10	0
SC	-2	-1	-2	0		5
SD	-1	0	0	0		9
TN					-10	0
TX	-1	-1	-1	0		7
UT (1896)	-1	-1	-2	-1		5
UT (1986)	-2	-1	-2	-1		4
VT					-10	0
VA	-1	-1	-1	0		7
WA	-1	-1	-1	0		7
WV					-10	0
WI (1848)	-1	-1	-2	-1		5
WI (1967)	-1	-1	-2	-3		3
WI (1972)	-1	-1	-2	-3		3
WY	-1	0	-2	0		7

## Appendix to Chapter 6

**Table 6.1a: Calibration of fuzzy-membership scores for SNAP states**

State	No-Aid Provision Score	Deviation from crossover	Scalar	Product	Degree of membership
MT	9	4	1	4	0.982
SD	9	4	1	4	0.982
CA	8	3	1	3	0.953
DC	8	3	1	3	0.953
IL	8	3	1	3	0.953
MI	8	3	1	3	0.953
NM	8	3	1	3	0.953
OK	8	3	1	3	0.953
AZ	7	2	1	2	0.881
CO	7	2	1	2	0.881
GA	7	2	1	2	0.881
KY	7	2	1	2	0.881
MA	7	2	1	2	0.881
MN	7	2	1	2	0.881
MS	7	2	1	2	0.881
NV	7	2	1	2	0.881
OR	7	2	1	2	0.881
TX	7	2	1	2	0.881
VA	7	2	1	2	0.881
WA	7	2	1	2	0.881
WY	7	2	1	2	0.881
AL	6	1	1	1	0.731
FL	6	1	1	1	0.731
IN	6	1	1	1	0.731
IA	6	1	1	1	0.731
KS	6	1	1	1	0.731
NH	6	1	1	1	0.731
ND	6	1	1	1	0.731
AK	5	0	1	0	0.500
ID	5	0	1	0	0.500
NY	5	0	1	0	0.500
OH	5	0	1	0	0.500

<b>State</b>	<b>No-Aid Provision Score</b>	<b>Deviation from crossover</b>	<b>Scalar</b>	<b>Product</b>	<b>Degree of membership</b>
SC	5	0	1	0	0.500
HI	4	-1	0.6	-0.6	0.354
MO	4	-1	0.6	-0.6	0.354
PA	4	-1	0.6	-0.6	0.354
UT	4	-1	0.6	-0.6	0.354
WI	3	-2	0.6	-1.2	0.231
DE	2	-3	0.6	-1.8	0.142
NE	2	-3	0.6	-1.8	0.142
AR	0	-5	0.6	-3	0.047
CT	0	-5	0.6	-3	0.047
LA	0	-5	0.6	-3	0.047
ME	0	-5	0.6	-3	0.047
MD	0	-5	0.6	-3	0.047
NJ	0	-5	0.6	-3	0.047
NC	0	-5	0.6	-3	0.047
RI	0	-5	0.6	-3	0.047
TN	0	-5	0.6	-3	0.047
VT	0	-5	0.6	-3	0.047
WV	0	-5	0.6	-3	0.047

**Table 6.2a: Calibration of Fuzzy Set membership scores for WAP**

State	No-Aid Provision		Scalar	Product	Degree of membership
	Score	Deviation			
AR	0	5	1.5	7.5	0.999
CT	0	5	1.5	7.5	0.999
LA	0	5	1.5	7.5	0.999
ME	0	5	1.5	7.5	0.999
MD	0	5	1.5	7.5	0.999
NJ	0	5	1.5	7.5	0.999
NC	0	5	1.5	7.5	0.999
RI	0	5	1.5	7.5	0.999
TN	0	5	1.5	7.5	0.999
VT	0	5	1.5	7.5	0.999
WV	0	5	1.5	7.5	0.999
DE	2	3	1.5	4.5	0.989
NE	2	3	1.5	4.5	0.989
WI	3	2	1.5	3	0.953
HI	4	1	1.5	1.5	0.818
MO	4	1	1.5	1.5	0.818
PA	4	1	1.5	1.5	0.818
UT	4	1	1.5	1.5	0.818
AK	5	0	1.5	0	0.500
ID	5	0	1.5	0	0.500
NY	5	0	1.5	0	0.500
OH	5	0	1.5	0	0.500
SC	5	0	1.5	0	0.500
AL	6	-1	1	-1	0.269
FL	6	-1	1	-1	0.269
IN	6	-1	1	-1	0.269
IA	6	-1	1	-1	0.269
KS	6	-1	1	-1	0.269
NH	6	-1	1	-1	0.269
ND	6	-1	1	-1	0.269
AZ	7	-2	1	-2	0.119
CO	7	-2	1	-2	0.119
GA	7	-2	1	-2	0.119

State	No-Aid Provision		Scalar	Product	Degree of membership
	Score	Deviation			
KY	7	-2	1	-2	0.119
MA	7	-2	1	-2	0.119
MN	7	-2	1	-2	0.119
MS	7	-2	1	-2	0.119
NV	7	-2	1	-2	0.119
OR	7	-2	1	-2	0.119
TX	7	-2	1	-2	0.119
VA	7	-2	1	-2	0.119
WA	7	-2	1	-2	0.119
WY	7	-2	1	-2	0.119
CA	8	-3	1	-3	0.047
DC	8	-3	1	-3	0.047
IL	8	-3	1	-3	0.047
MI	8	-3	1	-3	0.047
NM	8	-3	1	-3	0.047
OK	8	-3	1	-3	0.047
MT	9	-4	1	-4	0.018
SD	9	-4	1	-4	0.018

## Appendix to Chapter 7

### Statistical investigation of the same data used in QCA

I subjected the same data used in QCA to statistical analysis in order to compare the relative explanatory power of the two approaches, demonstrate that the chapter's results are not simply an artefact of the methodology, and highlight the value of using a *set-theoretic* investigation in this instance. The following table reports multivariate ordinary least-squares regression with robust standard errors. Seven independent variables are used: the percentage of self-identified Catholics and Evangelicals in a state's population as measured by the 2008 Religious Landscape Survey, as well as the proportion that said religion is 'very important' in their lives; the percentage of all schools in a state that are private, according to the 2006 Private School Universe Survey; the percentage of all private schools in the state that are Catholic in orientation; the youth dependency ratio, which is the ratio of children to adults in each state; and the expenditure per pupil in the public school system in each state for the fiscal year 2009. The first five variables are the religious explanatory conditions and their institutional expression that were subjected to set theoretic analysis in this chapter. The youth dependency ratio and the expenditure per pupil in the public schools system are included to test two plausible alternatives to the argument that the generosity of a state's aid for children at private religious schools is driven by the proportion of Catholics and Evangelicals in the population. If aid levels were simply a function of the numbers of children or expenditures on children in public schools, then we would expect these variables to be positive and significant. Table 7.1a shows the results of linear regression using the B3AND dependent variable measure of aid generosity.

**Table 7.1a: OLS Regression for the B3AND measure of aid generosity, with robust standard errors and unstandardized regression coefficients**

<b>Catholics (%)</b>	0.019***	0.022***	0.022***	0.014*	0.015*	0.015**	0.018**
<b>Evangelicals (%)</b>		0.003	0.004	0.004	0.004	0.003	-0.001
<b>Private schools (%)</b>			0.004	0.005	0.008	0.009	0.008
<b>Catholic schools (%)</b>				0.006	0.007*	0.008*	0.007
<b>Youth dependency ratio</b>					0.015	0.007	-0.004
<b>Expenditure per pupil in 2009</b>						2.32·10 <sup>-5</sup>	3.23·10 <sup>-5</sup>
<b>Religiosity</b>							0.007
<b>Constant</b>	-0.081	-0.240	-0.365	-0.420*	-1.112*	-0.563	-0.348
	N: 49	N: 49	N: 49	N: 49	N: 49	N: 49	N: 49
	R <sup>2</sup> : 0.255	R <sup>2</sup> : 0.261	R <sup>2</sup> : 0.269	R <sup>2</sup> : 0.302	R <sup>2</sup> : 0.255	R <sup>2</sup> : 0.255	R <sup>2</sup> : 0.339

\* p<0.1, \*\* p<0.05, \*\*\* p< 0.01

Unlike QCA, which involves a search for subsets and supersets that might indicate necessary or sufficient relationships between explanatory conditions and outcomes, these regression results must be interpreted as the average treatment effect of an increase of one unit in the independent variable on the dependent variable. Just as in the QCA analysis, Table 7.1a indicates that the percentage of Catholics in a state population is strongly linked to the generosity of state aid to children at private religious schools. A one per-cent increase in the state Catholic population is associated with a 0.015 increase in a state's set membership of the 'highly religious states'. A twenty-percentage point increase, for example, would be associated with a 0.3 jump in a state's set membership of the 'highly religious states'. This is a substantial jump, enough to take a state from 'More in than out' (0.7) to full membership (1.0), for example, or from the point of maximum ambiguity as to set membership (0.5) to 'Mostly but not completely in' (0.8). The coefficient for the percentage of religious schools that are Catholic is also positive and statistically significant, which suggests that having a high proportion of Catholic schools is positively correlated with the level of aid.

Unsurprisingly, given the cross-cutting pressures highlighted in the main chapter, the coefficients for the youth dependency ratio and expenditure per pupil are not significant. Neither are the coefficients for private schools as a proportion of all schools or the proportion of Evangelicals in the state populations. When the regression was run with just the religiosity variable, the coefficient was negative but the result was not quite statistically significant ( $p=0.138$ ). Such poor p-value results prevent the rejection of the null hypothesis with respect to the effect of religiosity on aid for children at private religious schools. These limited results demonstrate the importance of using a configurational, rather than a correlational, analysis, because the relationship uncovered in Chapter 7 is asymmetrical, not symmetrical. It makes no claim about the

level of aid in states that are *not* highly religious. Therefore, regression-based techniques are not as appropriate as set-theoretic ones when investigating the relationship between religiosity and aid for children at private religious schools.

**Table 7.2a: Mathematical Translations of Verbal Labels (reproduced from Ragin, 2008)**

<b>Verbal label</b>	<b>Degree of membership</b>	<b>Associated odds</b>	<b>Log odds of full membership</b>
Full membership	0.993	148.41	5.0
Threshold of full membership	0.953	20.09	3.0
Mostly in	0.881	7.39	2.0
More in than out	0.622	1.65	0.5
Crossover point	0.500	1.00	0
More out than in	0.378	0.61	-0.5
Mostly out	0.119	0.14	-2.0
Threshold of full nonmembership	0.047	0.05	-3.0
Full nonmembership	0.007	0.01	-5.0

**Table 7.3a: Calibrating degree of membership in the set of ‘highly religious’ states**

<b>State</b>	<b>‘Religion is very important in my life’ (%)</b>	<b>Deviation from crossover</b>	<b>Scalar</b>	<b>Product</b>	<b>Degree of membership</b>
MS	82	32	0.1875	6	0.9975
AL	74	24	0.1875	4.5	0.989
AR	74	24	0.1875	4.5	0.989
LA	73	23	0.1875	4.3125	0.9867
TN	72	22	0.1875	4.125	0.984
SC	70	20	0.1875	3.75	0.977
NC	69	19	0.1875	3.5625	0.9724
OK	69	19	0.1875	3.5625	0.9724
GA	68	18	0.1875	3.375	0.9669
KY	67	17	0.1875	3.1875	0.9603
TX	67	17	0.1875	3.1875	0.9603
UT	66	16	0.1875	3	0.9525
KS	61	11	0.1875	2.0625	0.8872
NE	61	11	0.1875	2.0625	0.8872
IN	60	10	0.1875	1.875	0.867
WV	60	10	0.1875	1.875	0.867
MO	59	9	0.1875	1.6875	0.8438
VA	59	9	0.1875	1.6875	0.8438
ID	58	8	0.1875	1.5	0.8175
FL	57	7	0.1875	1.3125	0.7879
DC	56	6	0.1875	1.125	0.7549
MD	56	6	0.1875	1.125	0.7549
ND	56	6	0.1875	1.125	0.7549
SD	56	6	0.1875	1.125	0.7549
DE	55	5	0.1875	0.9375	0.7185
HI	55	5	0.1875	0.9375	0.7185
OH	55	5	0.1875	0.9375	0.7185
MI	54	4	0.1875	0.75	0.6791
PA	54	4	0.1875	0.75	0.6791
IL	53	3	0.1875	0.5625	0.637
NM	53	3	0.1875	0.5625	0.637
MN	52	2	0.1875	0.375	0.5926
NJ	52	2	0.1875	0.375	0.5926
AZ	51	1	0.1875	0.1875	0.5467
IA	51	1	0.1875	0.1875	0.5467

<b>State</b>	<b>'Religion is very important in my life' (%)</b>	<b>Deviation from crossover</b>	<b>Scalar</b>	<b>Product</b>	<b>Degree of membership</b>
NV	50	0	0.1875	0	0.5
CA	48	-2	0.3	-0.6	0.3543
WA	48	-2	0.3	-0.6	0.3543
MT	47	-3	0.3	-0.9	0.289
WI	47	-3	0.3	-0.9	0.289
WY	47	-3	0.3	-0.9	0.289
NY	46	-4	0.3	-1.2	0.2314
OR	46	-4	0.3	-1.2	0.2314
CO	44	-6	0.3	-1.8	0.1418
CT	44	-6	0.3	-1.8	0.1418
RI	44	-6	0.3	-1.8	0.1418
ME	42	-8	0.3	-2.4	0.0831
MA	40	-10	0.3	-3	0.0474
AK	37	-13	0.3	-3.9	0.0198
NH	36	-13	0.3	-3.9	0.0198
VT	36	-13	0.3	-3.9	0.0198

**Table 7.4a: Calibrating degree of membership in the set of ‘highly Catholic’ states**

<b>State</b>	<b>Catholic population (%)</b>	<b>Deviation from crossover</b>	<b>Scalar</b>	<b>Product</b>	<b>Degree of membership</b>
<b>CT</b>	43	18	0.6	10.8	1.0000
<b>RI</b>	43	18	0.6	10.8	1.0000
<b>MA</b>	43	18	0.6	10.8	1.0000
<b>NJ</b>	42	17	0.6	10.2	1.0000
<b>NY</b>	39	14	0.6	8.4	0.9998
<b>IL</b>	32	7	0.6	4.2	0.9852
<b>NE</b>	31	6	0.6	3.6	0.9734
<b>CA</b>	31	6	0.6	3.6	0.9734
<b>SD</b>	29	4	0.6	2.4	0.9168
<b>MT</b>	29	4	0.6	2.4	0.9168
<b>WI</b>	29	4	0.6	2.4	0.9168
<b>ME</b>	29	4	0.6	2.4	0.9168
<b>NH</b>	29	4	0.6	2.4	0.9168
<b>VT</b>	29	4	0.6	2.4	0.9168
<b>LA</b>	28	3	0.6	1.8	0.8581
<b>MN</b>	28	3	0.6	1.8	0.8581
<b>DE</b>	27	2	0.6	1.2	0.7685
<b>NV</b>	27	2	0.6	1.2	0.7685
<b>FL</b>	26	1	0.6	0.6	0.6457
<b>NM</b>	26	1	0.6	0.6	0.6457
<b>ND</b>	25	0	0.6	0	0.5000
<b>AZ</b>	25	0	0.6	0	0.5000
<b>IA</b>	25	0	0.6	0	0.5000
<b>TX</b>	24	-1	0.6	-0.6	0.3543
<b>KS</b>	23	-2	0.6	-1.2	0.2315
<b>MI</b>	23	-2	0.6	-1.2	0.2315
<b>WY</b>	23	-2	0.6	-1.2	0.2315
<b>OH</b>	21	-4	0.6	-2.4	0.0832
<b>PA</b>	21	-4	0.6	-2.4	0.0832
<b>CO</b>	19	-6	0.6	-3.6	0.0266
<b>IN</b>	18	-7	0.6	-4.2	0.0148
<b>MO</b>	18	-7	0.6	-4.2	0.0148
<b>ID</b>	18	-7	0.6	-4.2	0.0148
<b>DC</b>	18	-7	0.6	-4.2	0.0148
<b>MD</b>	18	-7	0.6	-4.2	0.0148
<b>WA</b>	16	-9	0.6	-5.4	0.0045
<b>KY</b>	14	-11	0.6	-6.6	0.0014
<b>VA</b>	14	-11	0.6	-6.6	0.0014

<b>State</b>	<b>Catholic population (%)</b>	<b>Deviation from crossover</b>	<b>Scalar</b>	<b>Product</b>	<b>Degree of membership</b>
<b>OR</b>	14	-11	0.6	-6.6	0.0014
<b>OK</b>	12	-13	0.6	-7.8	0.0004
<b>GA</b>	12	-13	0.6	-7.8	0.0004
<b>UT</b>	10	-15	0.6	-9	0.0001
<b>MS</b>	9	-16	0.6	-9.6	0.0001
<b>NC</b>	9	-16	0.6	-9.6	0.0001
<b>SC</b>	8	-17	0.6	-10.2	0.0000
<b>TN</b>	7	-18	0.6	-10.8	0.0000
<b>WV</b>	7	-18	0.6	-10.8	0.0000
<b>AL</b>	6	-19	0.6	-11.4	0.0000
<b>AR</b>	5	-20	0.6	-12	0.0000

**Table 7.5a: Proportion of state populations by religious group and proportion of state’s religious schools by religious group**

State	As a proportion of the state population				As a percentage of state’s religious schools			
	Evangelical	Mainline Protestant	Catholic	Other	Catholic	Baptist	Christian, no specific denomination	Other
AL	49	15	6	30	14	26	31	29
AZ	23	15	25	37	27	9	28	36
AR	53	16	5	26	21	23	19	37
CA	18	14	31	37	35	8	25	32
CO	23	19	19	39	28	9	23	40
CT	10	13	43	34	65	7	7	21
DE	15	18	27	40	30	7	23	40
DC	15	20	18	47	44	7	17	32
FL	25	15	26	34	18	18	31	33
GA	38	16	12	34	9	23	39	29
ID	22	16	18	44	21	5	33	41
IL	19	17	32	32	51	6	15	28
IN	34	22	18	26	30	6	13	51
IA	24	30	25	21	54	4	18	24
KS	29	27	23	21	55	3	20	22
KY	49	17	14	20	44	15	20	21
LA	31	9	28	32	58	8	17	17
ME	15	26	29	30	25	25	27	23
MD	15	20	18	47	33	11	15	41

**Table 7.5a: Proportion of state populations by religious group and proportion of state’s religious schools by religious group – Part Two**

State	As a proportion of the state population				As a percentage of state’s religious schools			
	Evangelical	Mainline Protestant	Catholic	Other	Catholic	Baptist	Christian, no specific denomination	Other
MA	11	15	43	31	63	4	13	20
MI	26	19	23	32	35	7	15	43
MN	21	32	28	19	46	3	15	36
MS	47	11	9	33	19	28	35	18
MO	37	18	18	27	49	7	14	30
MT	26	21	29	24	30	7	30	33
NE	21	27	31	21	56	1	9	34
NV	13	11	27	49	16	11	31	42
NH	11	23	29	37	42	10	26	22
NJ	12	13	42	33	49	4	12	35
NM	25	15	26	34	26	10	29	35
NY	11	16	39	34	46	4	7	43
NC	41	21	9	29	11	27	34	28
ND	24	35	25	16	62	3	11	24
OH	26	22	21	31	54	5	12	29
OK	53	16	12	19	22	10	38	30
OR	30	16	14	40	22	4	33	41

**Table 7.5a: Proportion of state populations by religious group and proportion of state’s religious schools by religious group – Part Three**

State	As a proportion of the state population				As a percentage of state’s religious schools			
	Evangelical	Mainline Protestant	Catholic	Other	Catholic	Baptist	Christian, no specific denomination	Other
PA	18	25	21	36	33	5	12	50
RI	10	13	43	34	73	3	9	15
SC	45	18	8	29	11	27	32	30
SD	24	35	29	12	44	5	20	31
TN	51	18	7	24	14	18	28	40
TX	34	15	24	27	25	12	30	33
UT	7	6	10	77	26	11	17	46
VT	11	23	29	37	42	9	21	28
VA	31	20	14	35	19	22	27	32
WA	25	23	16	36	28	5	29	38
WV	36	32	7	25	25	30	18	27
WI	24	23	29	24	41	4	8	47
WY	26	21	23	30	28	8	28	36

## Appendix to Chapter 8

**Table 8.1a: Tax Credit programmes by year of passage and partisan control of the state offices**

<b>Disabled</b>	<b>Name</b>	<b>Year</b>	<b>Gov</b>	<b>Sen</b>	<b>House</b>
	AZ Empowerment Scholarship	2011	R	R	R
	NC Tax Credit for Children with Disabilities	2011	D	R	R
	AZ Lexie's Law Corporate tax credit	2009	R	R	R
<b>Poverty</b>	<b>Name</b>	<b>Year</b>	<b>Gov</b>	<b>Sen</b>	<b>House</b>
	FL Tax credit scholarship	2001	R	R	R
	IN School Scholarship Tax Credit	2009	R	R	D
	IA School tuition organization Tax Credit	2006	D	D	D
	LA School tuition organization Tax Credit	2012	R	R	R
	NH Corporate Education tax credit	2012	D	R	R
	OK Equal Opportunity Scholarships	2011	R	R	R
	PA Educational Opportunity tax credit	2012	R	R	R
	PA Educational Improvement tax credit	2001	R	R	R
	RI Credits for contributions to scholarship organizations	2006	R	D	D
	VA Education Improvement tax credit	2012	R	R	R

**Table 8.1a: Tax Credit programmes by year of passage and partisan control of the state offices – Part Two**

<b>Universal</b>	<b>Name</b>	<b>Year</b>	<b>Gov</b>	<b>Sen</b>	<b>House</b>
	AZ Corporate tax credit	2006	D	R	R
	AZ Personal tax credit	1997	R	R	R
	GA Private School Tax Credit	2008	R	R	R
	IL Tax Credits for Educational Expenses	1999	R	R	R
	IN Tuition Tax Deduction	2011	R	R	R
	IA Education Expense Credit	1987	R	D	D
	LA Tuition Deduction	2008	R	D	D
	MN Education Tax Credit	1955	DFL <sup>1</sup>	R	D
	MN Education Tax Deduction	1997	IR/R	D	D

<sup>1</sup> For Minnesota, ‘DFL’ stands for the Democratic Farmer-Labor Party, an affiliate of the Democratic Party. ‘IR-R’ stands for the Independent Republican Party, an affiliate of the Republican Party.

**Table 8.2a: Voucher programmes by year of passage and partisan control of the state offices**

<b>Disabled</b>	<b>Name</b>	<b>Year</b>	<b>Gov</b>	<b>Sen</b>	<b>House</b>
	FL John McKay Scholarship	1999	R	R	R
	GA Special Needs Scholarship	2007	R	R	R
	LA School Choice Pilot Program	2010	R	D	D
	MS Dyslexia Therapy Scholarship	2012	R	R	R
	OH Jon Peterson Special Needs Scholarship	2011	R	R	R
	OH Autism Scholarship	2003	R	R	R
	OK Lindsey Nicole Henry Scholarships	2010	D	R	R
	UT Carson Smith Special Needs Scholarship	2005	R	R	R
<b>Poverty</b>	<b>Name</b>	<b>Year</b>	<b>Gov</b>	<b>Sen</b>	<b>House</b>
	DC Opportunity Scholarship	2004	R	R	R
	IN Choice Scholarship	2011	R	R	R
	LA Student Scholarships for Educational Excellence	2008	R	D	D
	OH Cleveland Scholarship and Tutoring Program	1995	R	R	R
	WI Racine Parental Choice	2011	R	R	R
	WI Milwaukee Parental Choice	1990	R	D	D

**Table 8.2a: Voucher programmes by year of passage and partisan control of the state offices – Part Two**

<b>Universal</b>	<b>Name</b>	<b>Year</b>	<b>Gov</b>	<b>Sen</b>	<b>House</b>
	CO Choice Scholarship Pilot	2011	D* <sup>2</sup>	D*	R*
	OH Educational Choice	2005	R	R	R

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<sup>2</sup> The Colorado Choice Scholarship pilot programme was created by the Douglas County School Board, not the state legislature, and is now on hold following an adverse judicial ruling.

**Table 8.3a: Textbook programmes by year of passage and partisan control of the state offices**

<b>State</b>	<b>Year</b>	<b>Gov</b>	<b>Sen</b>	<b>House</b>
Connecticut	1949	D	D	R
Indiana	2005	R	R	R
Iowa <sup>1</sup>				
Louisiana	1928	D	D	D
Maine	1987	R	D	D
Michigan	1974	R	D	D
Minnesota	1975	DFL	D	D
Mississippi	1942	D	D	D
Nebraska	1987	R	NP <sup>2</sup>	NP
New Hampshire	1970	R	R	R
New Jersey	1974	D	D	D
New Mexico	1978*	D	D	D
New York	1965	R	R	D
Ohio	1976	R	D	D
Pennsylvania	1976	D	D	D
Rhode Island	1963	R	D	D
West Virginia	1931	R	R	D

<sup>1</sup> Where no year of passage is available the row is blank. Where the year is almost but not completely certain the state is listed with an asterisk.

<sup>2</sup> NP = 'Non-partisan'. Since 1936 Nebraska has had a unicameral legislature elected on a nonpartisan basis

**Table 8.4a: Transportation aid by year of passage and partisan control of the state offices**

State	Year	Gov	Sen	House
Alaska	1955	T <sup>3</sup>	T	T
California	1941	D	R	D
Connecticut	1957	D	R	R
Delaware	1965*	D	D	D
DC	1979	D <sup>4</sup>	D	D
Illinois	1961	D	R	R
Indiana	2005	R	R	R
Iowa	1985*	R	D	D
Kansas	1968*	D	R	R
Louisiana	1928	D	D	D
Maine	1987	R	D	D
Massachusetts	1950	D	R	D
Michigan	1976	R	D	D
Minnesota	1969	R	R	R
Montana	1971	D	D	R
Nebraska	1976	D	NP	NP
Nevada	1979	R	D	D
New Hampshire	1937*	R	R	R
New Jersey	1947*	R	R	R
New York	1936	D	D	R
North Dakota				
Ohio	1965	R	D	R
Oregon	1991	D	D	R
Pennsylvania	1965	R	R	D
Rhode Island	1977*	D	D	D
Washington	1941	R	D	D
West Virginia	1931*	R	R	D
Wisconsin	1971	D	R	D

<sup>3</sup> Alaska passed its transportation law for non-public school children while it was still a territory (T), four years before it was admitted as a US state

<sup>4</sup> Since 1973 some policy-making areas in Washington, D.C. have been governed by the Mayor and a thirteen-member 'Council of the District of Columbia'. The 1979 provision in the D.C. Code that provided reduced-fares for non-public school students was codified by the Council and Mayor under unified Democratic control.

**Table 8.5a: Equipment aid by year of passage and partisan control of the state offices**

<b>State</b>	<b>Year</b>	<b>Gov</b>	<b>Sen</b>	<b>House</b>
California	1982*	D	D	D
Colorado	1990*	D	R	R
Illinois	1996*	R	R	D
Iowa	1984*	R	D	D
Michigan	1976*	R	D	D
Nevada	1953*	R	R	D
New Hampshire	1970*	R	R	R
New Jersey	1967*	D	R	R
New York	1994*	D	R	D
Ohio	1976	R	D	D
Pennsylvania	1998	R	R	R
Washington	1997*	D	R	R

**Table 8.6a: Food service programmes by year of passage and partisan control of the state offices**

<b>State</b>	<b>Year</b>	<b>Gov</b>	<b>Sen</b>	<b>House</b>
Arizona	2005	D	D	D
California	1943	R	R	R
Connecticut	1981	D	D	D
Idaho	1984	D	R	R
Illinois	1993	R	R	D
Iowa	1975*	R	D	D
Kansas	1973	D	R	R
Maine	1979	D	R	D
Minnesota	2003*	R	D	R
Nebraska	1992*	D	NP	NP
Nevada	1955*	R	R	D
New Hampshire	1970*	R	R	R
New Jersey	1968*	D	R	R
North Carolina	**	**	D	D
Ohio	1998*	R	R	R
Rhode Island	1947*	D	R	D
Texas	2003*	R	R	R
Vermont	1969	R	R	R

\*\*North Carolina's tax code has been amended thirty times since it was first promulgated in 1957. Hence it is unclear when the section related to sales tax exemptions for food provided at non-public schools was created. But across the entire period the Democrats held a majority in the state legislature, so North Carolina's food services programme is coded under unified Democratic control.

**Table 8.7a: Auxiliary (health) service programmes by year of passage and partisan control of the state offices**

<b>State</b>	<b>Year</b>	<b>Gov</b>	<b>Sen</b>	<b>House</b>
Connecticut	1967	D	D	D
Florida	1974	D	D	D
Iowa	1986*	R	D	D
Kansas	1969*	D	R	R
Maine	1987*	R	D	D
Maryland	1957*	R	D	D
Massachusetts	1999**	R	D	D
Michigan	1978	R	D	D
Minnesota	1975	D	D	D
Missouri	1990*	R	D	D
Nebraska	1973*	D	NP	NP
New Hampshire	1970*	R	R	R
New Jersey	1991	D	D	D
New York				
Ohio	1976	R	D	D
Pennsylvania	1949	R	R	R
Texas	1989*	R	D	D
Washington	1989*	D	R	D
West Virginia				

\*\*The Massachusetts Essential School Health Service (ESHS) programmes were originally created in 1993 but were expanded in 1999 to require the benefits to be extended to community private schools.

**Appendix to Chapter 9**

**Table 9.1a – States by membership of the ‘high local control set’ by average spending per student in the public school system**

<b>State</b>	<b>Average spend per student</b>	<b>Degree of membership of the 'high local control' set</b>
MS	6,370	0
AL	6,418	0
KY	6,685	0
NC	6,960	0
HI	8,369	0
WV	8,496	0
NM	9,204	0
ID	6,815	0.2
CA	7,118	0.2
WA	7,477	0.2
MN	7,773	0.2
VT	9,947	0.2
DE	9,952	0.2
AK	14,667	0.2
UT	5,862	0.4
TN	5,987	0.4
AR	6,540	0.4
OK	6,568	0.4
SC	7,137	0.4
LA	7,263	0.4
GA	7,423	0.4
IN	7,466	0.4
TX	7,476	0.4
OR	7,562	0.4
IA	7,067	0.6
AZ	7,179	0.6
SD	7,282	0.6
OH	7,463	0.6
VA	7,552	0.6
CO	7,768	0.6
MI	7,788	0.6
KS	8,243	0.6
ND	8,456	0.6
MT	8,708	0.6
MD	8,809	0.6

**Table 9.1a – States by membership of the ‘high local control set’ by average spending per student in the public school system – Part Two**

<b>State</b>	<b>Average spend per student</b>	<b>Degree of membership of the 'high local control' set</b>
WI	8,954	0.6
ME	9,771	0.6
MA	9,894	0.6
WY	10,446	0.6
NY	12,421	0.6
MO	6,717	0.8
FL	6,853	0.8
IL	7,511	0.8
NV	7,983	0.8
PA	8,439	0.8
RI	9,961	0.8
CT	10,483	0.8
NE	8,400	1
NH	9,449	1
NJ	11,881	1
DC	12,801	NA

## Interviewees

Interview transcripts are available for all interviews except for the five that were not recorded, mostly because the telephone line was not good enough to permit it. The interviews whose transcripts are not available are marked with 'NR' for 'Not Recorded'.

- Assemblyman William B Magnarelli, New York State Assembly Education Committee (29/02/12)
- Carol Geddis, Executive Director of the New York State Association of Catholic Schools Administrators (05/03/12)
- David Little, Director of Government Relations for the New York State School Boards Association (05/03/12)
- Assemblyman Daniel O'Donnell, New York State Assembly Education Committee (06/03/12)
- Assemblyman Joel M Miller, New York State Assembly Education Committee (07/03/12)
- Paul Upton, Senior Legislative Aide to Assemblyman Carl Heastie of the New York State Assembly (07/03/12)
- Assemblyman Joseph Saladino, New York State Assembly Education Committee (07/03/12)
- Dr Raymond Colucciello, Superintendent of Schools for Albany City School District
- Melissa Chapman, Executive Director of the Jewish Federation of the Sacramento Region, California (12/03/12)
- Ned Dolejsi, Executive Director of the California Catholic Conference (13/03/12)
- Raymond Burnell, Education Specialist at the California Catholic Conference (13/03/12)
- Jennifer Louie, Education Staffer to California State Senator Sharon Runner (13/03/12)
- Sister Dale McDonald, Director of Public Policy and Education Research for the National Catholic Education Association (14/03/12)
- Amy Rutschow, Staffer for the California State Republicans Fiscal Office (15/03/12)
- Assemblyman Alan Maisel, New York State Assembly Education Committee (19/03/12)
- Mary Obi, Church Volunteer and Leader, Our Lady of Guadalupe Parochial School, Sacramento California (20/03/12)
- Anna Borges, Transportation Supervisor for the California Department of Education (21/03/12)
- Senator Carol Liu, California State Senate Education Committee (21/03/12)
- Dr Vicki Alger, Research Fellow for the Independent Institute (23/03/12)
- Anonymous Legislative Aides (23/03/12) NR

- Zach Wichmann, Director of Government Relations for the Illinois Catholic Conference (27/03/12)
- Representative Jerry Mitchell, Republican Spokesperson for the Elementary and Secondary Education Committee of the Illinois General Assembly (27/03/12)
- Roger Eddy, former Representative and Schools Superintendent, now Executive Director of the Illinois Association of School Boards (28/03/12)
- Representative Tom Morrison, Illinois General Assembly Education Committee (29/03/12)
- Representative Robert W Pritchard, Illinois General Assembly Education Committee (30/03/12)
- Bill Lucia, President and CEO of EdVoice (30/03/12) NR
- Sister Catherine Kamphaus, Superintendent of Catholic Schools for Salt Lake City (02/04/12)
- Representative and Gubernatorial candidate Kenneth Sumsion, Utah House of Representatives Education Committee (03/04/12)
- State Senator Aaron Osmond, Utah State Senate Education Committee (03/04/12) NR
- Larry Newton, School Finance Director, and Cory Kanth, Statewide Online Education Program Specialist, for the Utah State Office of Education (04/04/12)
- Representative Rebecca Lockhart, Speaker of the Utah House of Representatives (05/04/12)
- Ruth Melton, Director of Legislative Affairs for the Florida School Boards Association (11/04/12)
- Dr Mike McCarron, President, and James Herzog, Associate Director for Education, for the Florida Catholic Conference (11/04/12)
- Lee Swift, President of the Florida School Boards Association (12/04/12) NR
- Senator Bill Montford, Chief Executive of the Florida Association of District School Superintendents and Minority Whip in the Florida Senate (12/04/12)
- Ronald Meyer, Attorney (13/04/12)
- Susan B Hilton, Illinois Department of Education (19/04/12)
- Patrick Haggarty, Superintendent of Catholic Schools for Montana (26/04/12) NR
- Patricia Levesque, Executive Director for the Foundation for Florida's Future and member of the Taxation and Budgetary Reform Commission (04/05/12)
- Senator Conrad Appel, Louisianan State Senator and Chairman, Education Committee (04/09/12)
- Senator J.P. Morrell, Louisianan State Senator and member, Education Committee (06/09/12)
- Dr Jan Lancaster, Superintendent of Catholic Schools for the Archdiocese of New Orleans (06/09/12)
- Holly Boffy, member of the Louisianan Board of Elementary and Secondary Education (10/09/12)
- Dr John White, State Superintendent for Education in Louisiana (10/09/12)

- Dr Melanie Ezell, President of the Louisianan Association of Independent Schools and former Headmistress of Parkview Baptist School (11/09/12)
- Danny Loar, Executive Director of the Louisiana Conference of Catholic Bishops (12/09/12)
- Erin Bendily, Deputy Superintendent of Policy and External Affairs at Louisiana Department of Education (27/09/12)

## **Archival and Library Materials**

The following archival materials and other library documents were used in this thesis research. Websites and documents accessed online are not listed here but are referenced in the text with URLs.

### New York State Archives, Albany

#### **Newspapers**

- *New York Times*, Sept 1<sup>st</sup> 1894: Debate on sectarian education funds
- *New York Times*, Sept 2<sup>nd</sup> 1894: ‘Developed Discussion of the Education Article’. Discussion of Mr Choate’s education article at the Constitutional Convention
- *New York Times* July 24<sup>th</sup> 1949: ‘Governor Lehman Condemns Spellman Attack on Mrs. Roosevelt’
- *New York Times* July 26<sup>th</sup> 1949: ‘Mrs. Roosevelt Denies Bias, Citing Her Support of Smith’
- Diocese of Albany Catholic Schools Newsletter 2012, ‘Higher-Powered Learning: Albany Catholic schools looking ahead, planning for future’
- *New York Times*, Aug 6<sup>th</sup> 1949: ‘Cardinal Gives School Ideas; ‘Fair,’ Says Mrs. Roosevelt
- *New York Times*, April 6<sup>th</sup> 1967: ‘Wisconsin votes Catholic bus aid’

#### **Constitutional Convention**

- Documents and Reports of the Constitutional Convention of the State of New York, 1894. George A Glynn (Compiler), Albany, Argus Company Printers, 1895. Chairman Frederick W Holls on sectarian appropriations. Albany, Aug 23rd 1894

#### **Legislation**

- Bill introduced March 5<sup>th</sup> 2012, to reimburse religious schools for the cost of complying with state requirements
- Public Papers of Governor Lehman: ‘To Amend the Education Law, in Relation to the Transportation of School Children’. Albany, May 6, 1935. Memorandum filed with Senate Bill, Int. No 1182, Pr. No. 1893.
- Public Papers of Governor Lehman: ‘To Amend the Education Law, in Relation to the Transportation of School Children’. Albany, May 13, 1936. Memorandum filed with Senate Bill, Int. No 1666, Pr. No. 2622.
- Minister Provincial letter to Governor Lehman, January 2, 1936, on the subject of the Kelly School Bus Transportation Bill

#### **Budget**

- Testimony given in 2012 by the New York State Coalition for Independent & Religious Schools regarding the 2012-2013 Elementary and Secondary Education Budget, presented by Rabbi David Zweibel and James Cultrara.

- Mac Taylor, Legislative Analyst, January 26, 2012 ‘Comparing Funding for Charter Schools and Their School District Peers’ Legislative Analyst’s Office
- Governor’s Budget Summary 2012-13, ‘K Thru 12 Education: Reinvesting in Education’

#### California State Archives, Sacramento

##### **Superintendent**

- General Correspondence of the Chief Deputy Superintendent of Public Instruction, 1970-1971. (F3752: 1125-1159)
- April 1<sup>st</sup> 1972. Letter from Milton Babitz, Chief Deputy Superintendent, in response to letter of March 15<sup>th</sup> from Mr James Havens, American Baptist Churches of the West. Concerns regarding the separation of church and state, and ‘an experimental program with the Voucher System in the Alum Rock Union Elementary School District in San Jose’. Response states Californian Schools Superintendent Dr Wilson Riles ‘opposes the voucher plan for the support of private education, except as a very limited experiment under controlled conditions.’
- March 5<sup>th</sup> 1971. Letter from Milton Babitz in response to Mr Ken Cortner on the voucher experiment
- Feb 24<sup>th</sup> 1971 Letter from Mr Ken Cortner, President Stockton Area Chapter of Americans United for the Separation of Church and State on the voucher experiment
- July 29<sup>th</sup> 1971. Letter from Wilson Riles to Mr Jack Charnow, Principal, Burlingame Intermediate School on the voucher experiment
- April 1<sup>st</sup> 1971. Letter from Milton Babitz in response to Mrs Yvonne Bronsel on separation of church and state
- March 11<sup>th</sup> 1971. Letter from Mrs Yvonne Bronsel on the ‘double payment’ of parents who send their children to non-public schools.
- March 26<sup>th</sup> 1971. Letter from Elsie L Boyd on the Catholic Church
- April 12<sup>th</sup> 1971. Letter from Milton Babitz to Colonel Clyde S Cherry on the voucher experiment
- Jan 27<sup>th</sup> 1971. Letter from Mitchell L Gilbert, Superintendent of Schools, Cajon Valley Union School District on the voucher.
- Jan 14<sup>th</sup> 1971. Letter from Milton Babitz in response to Mr Doerr, Managing Editor of ‘Church and State’ on aid for children at non-public schools
- July 2<sup>nd</sup>, 1971. Letter from Mr Onis V Elms on the separation of church and state
- July 19, 1971. Letter from Milton Babitz in response to Onis V Elms on aid for children at private religious schools
- February 22, 1982. Letter from Wayne K Miyamoto and Annette Y. Dahlman, California Association of Private Special Education Schools, to Dr Wilson Riles, Superintendent of Public Instruction, on the eligibility of individuals with exceptional needs for the California State Textbook Loan Program

- October 26, 1981. Letter from Wilson Riles, Superintendent of Public Instruction to Private School Administrators, County Superintendents of Schools. Subject: 'Private School Instructional Material Loan Program'

### **Newspapers**

- *Los Angeles Herald Examiner* Sunday March 7<sup>th</sup> 1971 'How would the voucher plan curb the rise in education cost?'
- United Americans for Public Schools Newsette, Fall 1981 'Text "Loans" Unconstitutional'
- *Los Angeles Times*, Sacramento, August 12, 1992. Bill Billiter: 'Backers Win Fight on Loan of Textbooks'
- Barbara Moon, Americans United for Separation of Church and State, 1981, 'Background on Proposition 9'

### **Constitutional Convention**

- Proceedings of the Californian Constitutional Convention, Convened in Sacramento, Saturday September 28, 1878.

### **Legislation**

- Californian Education Code, Section 16806. Stats. 1959 c2 p1127 sec 16806 'An Act to recodify the Education Code by repealing and re-enacting said code, related to the establishment, maintenance, government and operation of schools, libraries and institutions of learning, arts and sciences'.
- Assembly Committee on Education AB 531, May 26, 1972, as amended May 24, 1972. Author: Ryan. Subject: Textbooks
- November 17, 1981. Letter from Jerry J Ruiz on behalf of Bion M Gregory, Legislative Counsel of California, to Senator Alan Robbins: 'Textbooks: Nonpublic Schools (S.C.A. 40) - #20462'
- Statutes of 1982: Bill #SCA 40, Ch #66, Year 1982. Assembly Committees: C.A. MF Roll No. 10, Loc. MF1:1 (42); Senate Committees: Jud and C.A. Roll 33, Loc MF1:5(23) and Ed. MF Roll 21, Loc. MF1:3 (46)
- Revenue and Taxation Code: Bill #AB 687, Ch #699, Year 1943. Assembly Committees: Rev. and Tax.: Senate Committees: Rev. and Tax.
- Revenue and Taxation Code; Bill #AB502, Ch #241, Year 1945. Assembly Committees: Rev. and Tax.: Senate Committees: Rev. and Tax.
- Education Code Section 1.92; Bill #468, Ch #1249, Year 1941. Assembly Committees: Ed.: Senate Committees: Ed.
- Education Code Section 2: Bill #AB531, Ch #929, Year 1972. Assembly Committees: Joint Committee on Textbooks and Curriculum, Ed., Ways and Means; Senate Committees: Ed. Fin.
- January 2<sup>nd</sup> and 13<sup>th</sup>, 1971, California Legislature Senate Committee on Education, Hearing transcript: voucher systems and contractor proposals
- December 15, 1981. Letter from Ron Wilson, First Baptist Church, to Senator Alan Robbins on educational material loan programs

- January 13, 1982. Letter from Denise Fleig, Berkely Montessori School, to Senator Alan Robbins. RE: California Textbook Loan Program
- January 27, 1982. Letter from Joseph P. McElligott, California Catholic Conference, to the Parent Group Leaders in various State Senatorial Districts. RE: Senate Judiciary Committee Hearing, SCA 40, February 16, 1982

### Illinois State Archives, Springfield

#### **Legislation**

- Textbooks and auxiliary services. Bill Jacket: PA 77-1890. SB1489. Passed in General Assembly June 27, 1972, Approved July 1, 1972.
- Textbooks and auxiliary services. Bill Jacket: PA 77-1891. SB1492. Passed in General Assembly June 27, 1972, Approved July 1, 1972.
- Textbooks and auxiliary services. Bill Jacket: PA 77-1895. SB1499. Passed in General Assembly June 27, 1972, Approved July 1, 1972.
- Textbooks and auxiliary services. Bill Jacket: PA 77-1656. SB1195. Passed in General Assembly October 21, 1971, Approved October 28, 1971
- Textbooks and auxiliary services. Bill Jacket: PA 77-1657. SB1196. Passed in General Assembly, October 28, 1971, Approved October 28, 1971
- Textbooks and auxiliary services. Bill Jacket: PA 77-1658. SB1197. Passed in General Assembly, October 28, 1971, Approved October 28, 1971
- Illinois Text Book Loan Program authorization: Bill Jacket: PA79-961 (1975) HB1732
- 2011 Text Book Block Grant Program: Bill Jacket: PA 97-570 (2011) HB3115
- The School Code. Enacted March 18, 1961.
- Transportation laws. Bill Jacket: PA 91-407 (1999). Amendment to transportation law to include charter schools.
- Transportation laws. Bill Jacket: PA 81-1050 (1979). Minor amendment to transportation section of The School Code
- Transportation laws. Bill Jacket: PA 80-1475 (1978). HB2597. Amended several sections of The School Code.
- Illinois Income Tax Act. Bill Jacket: PA 91-9, SB1075. June 3, 1999
- May 23, 1972. Transcripts of discussion of SB1489, 1482 and 1499 in the Senate.
- Senate Journal 1971: Record of the proceedings related to SB1195, SB1196 and SB1197, pp 822-1684.
- Senate Journal 1972: Record of the proceedings related to SB1489, 1492 and 1499, pp 5357-7188

### Utah State Archives, Salt Lake City

#### **Legislation**

- Minutes of the Education Article Subcommittee, June 16, 1983
- Minutes of the Education Article Subcommittee, June 3, 1983
- Bill Jacket: Ch 159, Laws of Utah 1977. 42<sup>nd</sup> Legislature establishes the Constitutional Revision Commission as a permanent body.

### **Constitutional Commission**

- Report of the Utah Constitutional Revision Commission, 1982-1983

### **Newspapers**

- *Salt Lake Herald* March 22, 1896. American Protective Association Proposes Anti-Sectarian Schools
- Paul T. Mero, The Sutherland Institute (2007) Booklet: ‘Vouchers, Vows, and Vexations: The Historic Dilemma over Utah’s Education Identity’

### Florida State Archives, Tallahassee

#### **Legislation**

- Bill Jacket: Ch.1002.38 Florida Statutes (2005) Opportunity Scholarship Program
- Bill Jacket: Ch.1002.395 Florida Statutes (2001) Florida Tax Credits Scholarship Program
- Bill Jacket: Ch. 1002.39 Florida Statutes (1999) John McKay Scholarships for Students with Disabilities
- Bill Jacket: Ch. 75-284 Florida Statutes (1975). HB984 ‘The Basic Skills Development Act of 1975’. Approved July 1, 1975. Took effect July 1, 1975
- CS/HJR 1471 ‘Religious Freedom’ Joint Resolution to amend Florida Constitution Art. 1 Sec. 3. Plakon and Precourt: co-sponsors.

### Louisiana State Archives, Tulane University Law Library, and the Supreme Court of Louisiana Archives, Baton Rouge and New Orleans

#### **Newspapers**

- Louisiana Conference of Catholic Bishops, Public Policy Guide booklet
- The Bulletin Board, Newsletter of Citizens for Educational Choice, Volume 46, No. 1, September 2012
- Citizens for Educational Choice booklet ‘Representing K-12 Private and Parochial Schools in Louisiana’

#### **Legislation**

- Official Journal of the Proceedings of the Senate of the State of Louisiana at the First Regular Session of the Legislature, Under the Adoption of the Constitution of 1921; Begun and Held in the City of Baton Rouge, May 8, 1922, page 42
- Textbooks. Bill Jacket: State of Louisiana Acts of the Legislature Volume II, Regular Session 1993. Act No. 650, HB No. 1329
- Permission to engage in interstate and intrastate education agreements. Bill Jacket: State of Louisiana Acts of the Legislature, 1962 Session. Act No. 544, HB No. 1252
- Severance Tax Fund for free school textbooks. Bill Jacket: State of Louisiana Acts of the Legislature, 1928 Session. Act No. 100, HB No. 90. Approved by the Governor: July 11, 1928.

- Transportation. Bill Jacket: State of Louisiana Acts of the Legislature, Acts 1922, No. 100, Section 29 (SB20)
- Transportation. Bill Jacket: State of Louisiana Acts of the Legislature, Acts 1936, No. 192, Section 1 (HB204)
- Transportation. Bill Jacket: State of Louisiana Acts of the Legislature, Acts 1940, No. 254, Section 1 (HB2)
- Transportation. Bill Jacket: State of Louisiana Acts of the Legislature, Acts 1942, No. 61, Section 1 (HB101)
- Transportation. Bill Jacket: State of Louisiana Acts of the Legislature, Acts 1944, No. 185, Section 1 (HB849)
- Transportation law amendments: State of Louisiana Acts of the Legislature, Acts 1969 No.143 (HB183), 1975 No.392 (HB660), 1976 No.281 (SB290), 1977 No.18 (HB4), 1979 No.202 (SB386), 1980 No.206 (SB368), 1986 No.1001 (HB1196), 1986 No.6 (HB15), 1989 No.10 (SB5), 1992 No.24 (SB404)
- Secular Educational Services. Bill Jacket: State of Louisiana Acts of the Legislature, Acts 1970, No. 223, Section 3
- Proposal to add a caveat to the Louisiana State No-Aid Provision. Bill Jacket: State of Louisiana Acts of the Legislature, Acts 1948, No. 514, Section 13 (SB125)

### **Constitutional Convention**

- June 27, 1864, June 28, 1864, July 1, 1864 and July 8, 1864: Official Journal of the Proceedings of the Convention for the Revision and Amendment of the Constitution of the State of Louisiana, By Authority. New Orleans, W.R. Fish Printer to the Convention, 1864
- Official Journal of the Proceedings of the Convention of the State of Louisiana. Publisher J.O. Nixon, New Orleans, 1861
- ‘Debates in the Convention for the Revision and Amendment of the Constitution of the State of Louisiana, Assembled in Liberty Hall, New Orleans, April 6, 1864. By Albert P Bennett (Official Reporter), H.A. Gallup, S.W. Burnham and A.L. Bartlett (Shorthand Reporters). Publisher: W.R. Fish, Printer to the Convention, New Orleans, 1864
- Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts, Volume Thirteen. Day 87, Nov 16th 1973. pp 2435-7 inclusive.
- Mr AL. Landry, Bureau of School Finance and Statistics. Report to the 1973 Constitutional Convention: Funds Distributed by Louisiana State Department of Education for Non-Public schools and value of textbooks, library books and school supplies for non-public schools – 1972-1973
- Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts, Volume Nine, p442: Remarks of Hermann Moyse, Jr. President, City National Bank, Baton Rouge, in behalf of the Louisiana Bankers Association to the Subcommittee on the Public Welfare of the Committee on Education and Welfare, State of Louisiana Constitutional Convention of 1973, Wednesday, March 28, 1973.

- Records of the Louisiana Constitutional Convention of 1973: Convention Transcripts, B. Subcommittee Minutes: 1. Subcommittee on Elementary and Secondary Education, pp65-115
- Records of the Louisiana Constitutional Convention of 1972: Louisiana Constitution of 1974, Volume Three, pp44-47

**Historical Constitutions**

- Constitution of the State of Louisiana, Adopted in Convention July 31, 1852. Publisher: The Crescent Office, 93 St Charles St, New Orleans, 1852
- Ramires-Jones Printing Co. Baton Rouge, L.A. (1879 and 1921 constitution. Title: Constitution of the State of Louisiana, 1879, Adopted in Convention at the City of New Orleans, the twenty-third day of July, A.D.1879)
- Constitution of the State of Louisiana, Adopted in Convention at the City of New Orleans, May 12, 1898. Published: H.J. Hearsey, Convention Printer, New Orleans LA, 1898
- Constitution of the State of Louisiana, Adopted in Convention at the City of Baton Rouge, November 22, 1913. Published: Baton Rouge, Ramires-Jones Printing Company, 1913

## **Text of the State No-Aid Provisions**

AL

Article XIV, §263

‘No money raised for the support of the public schools shall be appropriated to or used for the support of any sectarian or denominational school.’

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AK

Article VII, § 1

‘The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.’

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AZ

Article II, § 12

‘No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment.’

Article IX, § 10

‘No tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation.’

Article XX, §7

‘Provisions shall be made by law for the establishment and maintenance of a system of public schools which shall be open to all the children of the state and be free from sectarian control, and said schools shall always be conducted in English...’

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AR 1868

Article IX, §1

‘No Religious or other sect or sects shall ever have any exclusive right to, or control of any part of the school funds of this state.’

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CA

Article IX, §8

‘No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or

instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.’

Article XVI, §5

‘Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 3 of XVI.’

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CO

Article 9, § 7

‘Neither the general assembly, nor any county, city, town, township, school district or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatsoever; nor shall any grant or donation of land, money or other personal property, ever be made by the state, or any such public corporation to any church, or for any sectarian purpose.’

Article 5, § 34

‘No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.’

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DE 1897

Article X, § 3

‘No portion of any fund now existing, or which may hereafter be appropriated, or raised by tax, for educational purposes, shall be appropriated to, or used by, or in aid of any sectarian, church or denominational school; provided, that all real or personal property used for school purposes, where the tuition is free, shall be exempt from taxation and assessment for public purposes.’

Article X, § 4

‘No part of the principal or income of the Public School Fund, now or hereafter existing, shall be used for any other purpose than the support of free public schools.’

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DE 1967

Article X, § 3

‘No portion of any fund now existing, or which may hereafter be appropriated, or raised by tax, for educational purposes, shall be appropriated to, or used by, or in aid of any sectarian, church or denominational school; provided, that all real or personal property used for school purposes, where the tuition is free, shall be exempt from taxation and assessment for public purposes.’

Article X, § 4

‘No part of the principal or income of the Public School Fund, now or hereafter existing, shall be used for any other purpose than the support of free public schools.’

Article X, § 5

The General Assembly, notwithstanding any other provision of this Constitution, may provide by an Act of the General Assembly, passed with the concurrence of a majority of all the members elected to each House, for the transportation of students of nonpublic, nonprofit Elementary and High Schools.’

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DC

D.C. Code 44-715

‘Congressional policy as to appropriations to churches or religious entities. It is hereby declared to be the policy of the government of the United States to make no appropriation of money or property for the purpose of founding, maintaining, or aiding by payment for services, expenses, or otherwise, any church or religious denomination, or any institution or society which is under sectarian or ecclesiastical control; and no money appropriated for charitable purposes in the District of Columbia shall be paid to any church or religious denomination, or to any institution or society which is under sectarian or ecclesiastical control.’

Section 4. Restrictions on Financing of Non-Public Education.

(A) *Prohibition of Financial Support to Schools* The State shall provide no financial support, either directly or indirectly, unless earmarked for a program of public service, to any sectarian, denominational, or religious school, or to any pre-elementary, elementary, secondary, or post-secondary school which is not owned and exclusively controlled by the State.

(B) *Prohibition of Support for Students or Employees* Except as otherwise provided in this Section, the State shall provide no payment; credit; tax benefit, exemption, or deduction; tuition voucher; or subsidy, grant, or loan of public monies or property, in any way, either directly or indirectly,

(1) to support the attendance of any student at any pre-elementary, elementary, or secondary school or other institution at those levels, which is not owned and exclusively operated by the State; or

(2) to pay the salary of any employee at any non-public school or institution where instruction is offered in whole or in part to non-public school students at any level.

(C) *Students with Disabilities* The State may pay the private school tuition of a student with a disability which renders the student unable to receive an education in the public schools.

(D) *Federal Funding* Nothing in this Section shall restrict the acceptance of funds from the government of the United States, nor the expenditure of those funds in accordance with the terms under which they are accepted.

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FL

Article I, § 3

‘There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.’

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GA

Article 1, Section II, Para. VII

‘No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, cult or any religious denomination, or of any sectarian institution.’

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HI

Article VII, §4

‘No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose. No grant shall be made in violation of Section 4 of I of this constitution. No grant of public money or property shall be made except pursuant to standards provided by law.’

Article X, §1

‘The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no discrimination in public educational institutions because of race, religion, sex or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or nonsectarian private educational institution, except

that proceeds of special purpose revenue bonds authorized or issued under section 12 of VII may be appropriated to finance or assist:

1. Not-for-profit corporations that provide early childhood education and care facilities serving the general public; and
  2. Not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities.’
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## ID

### Article 9, §5

‘SECTARIAN APPROPRIATIONS PROHIBITED. Neither the legislature nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church or for any sectarian or religious purpose; provided, however, that a health facilities authority, as specifically authorized and empowered by law, may finance or refinance any private, not for profit, health facilities owned or operated by any church or sectarian religious society, through loans, leases, or other transactions.’

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## IL

### Article X, §3

‘PUBLIC FUNDS FOR SECTARIAN PURPOSES FORBIDDEN. Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose.’

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## IN

### Article I, §6

‘No money shall be drawn from the treasury, for the benefit of any religious or theological institution.’

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## IA

Article I, § 3

‘The general assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister, or ministry.’

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KS

Article VI, §6 (c)

‘No religious sect or sects shall control any part of the public educational funds.’

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KY

Part 2, §189

‘No portion of any fund or tax now existing, or that may hereafter be raised or levied for educational purposes, shall be appropriated to, or used by, or in aid of, any church, sectarian or denominational school.’

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LA 1879

§228

‘No funds raised for the support of the public schools of the State shall be appropriated to or used for the support of any sectarian schools.’

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MA 1855

Article XVIII

‘All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the state for the support of common schools, shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect for the maintenance exclusively of its own schools.’

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MA 1917

Article XLVI, §2

‘All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the commonwealth for the support of common schools shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is expended; and no grant, appropriation or use of public money or property or loan of public credit shall be made

or authorized by the commonwealth or any political division thereof for the purpose of founding, maintaining or aiding any other school or institution of learning, whether under public control or otherwise, wherein any denominational doctrine is inculcated, or any other school, or any college, infirmary, hospital, institution, or educational, charitable or religious undertaking which is not publicly owned and under the exclusive control, order and superintendence of public officers or public agents authorized by the commonwealth or federal authority or both, except that appropriations may be made for the maintenance and support of the Soldiers' Home in Massachusetts and for free public libraries in any city or town, and to carry out legal obligations, if any, already entered into; and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society.'

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MA 1974

Article CIII

No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth or federal authority or both, except that appropriations may be made for the maintenance and support of the Soldiers' Home in Massachusetts and for free public libraries in any city or town and to carry out legal obligations, if any, already entered into; and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society. Nothing herein contained shall be construed to prevent the Commonwealth from making grants-in-aid to private higher educational institutions or to students or parents or guardians of students attending such institutions.

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MI 1835

Article I, §5

'No money shall be drawn from the treasury for the benefit of religious societies, or theological or religious seminaries.'

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MI 1850

§40

'No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary, nor shall property belonging to the state be appropriated for any such purposes.'

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MI 1970

Article VIII, §2

‘No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school. No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any such nonpublic school or at any location or institution where instruction is offered in whole or in part to such nonpublic school students. The legislature may provide for the transportation of students to and from any school.’

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MN

Article XIII, §2

‘PROHIBITION AS TO AIDING SECTARIAN SCHOOL. In no case shall any public money or property be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught.’

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MS 1868

Article VIII, §9

‘No religious sect or sects shall control any part of the school or university funds of this State.’

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MS 1890

Article VIII, §208

‘No religious or other sect or sects shall ever control any part of the school or other educational funds of this state; nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school.’

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MO

Article I, §6

‘That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect,

church, creed or denomination of religion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same.’

Article I, §7

‘That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship.’

Article IX, §8

‘Neither the general assembly, nor any county, city, town, township, school district or other municipal corporation, shall ever make an appropriation or pay from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose, or to help to support or sustain any private or public school, academy, seminary, college, university, or other institution of learning controlled by any religious creed, church or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state, or any county, city, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever.’

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MT

Article X, §6

‘The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.’

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NE

Article VII, §11

‘Notwithstanding any other provision in the Constitution, appropriation of public funds shall not be made to any school or institution of learning not owned or exclusively controlled by the state or a political subdivision thereof; PROVIDED, that the Legislature may provide that the state or any political subdivision thereof may contract with institutions not wholly owned or controlled by the state or any political subdivision to provide for educational or other services for the benefit of children under the age of twenty-one years who are handicapped, as that term is from time to time defined by the Legislature, if such services are nonsectarian in nature.

All public schools shall be free of sectarian instruction.

The state shall not accept money or property to be used for sectarian purposes;

PROVIDED, that the Legislature may provide that the state may receive money from

the federal government and distribute it in accordance with the terms of any such federal grants, but no public funds of the state, any political subdivision, or any public corporation may be added thereto.’

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NV 1864

Article XI, §2

‘...any school district which shall allow instruction of a sectarian character therein may be deprived of its proportion of the interest of the public school fund during such neglect or infraction’

Article XI, §9

‘No sectarian instruction shall be imparted or tolerated in any school or University that may be established under this Constitution.’

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NV 1880

Article XI, §2

‘...any school district which shall allow instruction of a sectarian character therein may be deprived of its proportion of the interest of the public school fund during such neglect or infraction’

Article XI, §9

‘No sectarian instruction shall be imparted or tolerated in any school or University that may be established under this Constitution.’

Article XI, §10

‘No public funds of any kind or character whatever, State, County or Municipal, shall be used for sectarian purpose.’

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NH 1876

Article LXXXIII

‘... no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination.’

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NJ 1844

Article VII, §6

‘The fund for the support of free schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law hertofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much

as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public schools, for the equal benefit of all the people of the state; and it shall not be competent for the legislature to borrow, appropriate or use the said fund or any part thereof, for any other purpose, under any pretense whatever.’

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NM

Article XII, §3

‘The schools, colleges, universities and other educational institutions provided for by this constitution shall forever remain under the exclusive control of the state, and no part of the proceeds arising from the sale or disposal of any lands granted to the state by congress, or any other funds appropriated, levied or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school, college or university.’

Article XXI, §4

‘Provision shall be made for the establishment and maintenance of a system of public schools which shall be open to all the children of the state and free from sectarian control, and said schools shall always be conducted in English.’

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NY 1894

Article IX, §4

‘Neither the State nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.’

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NY 1938

Article VIII, §1

‘ . . . [N]othing in this constitution contained shall prevent a county, city or town from making such provision for the aid, care and support of the needy as may be authorized by law, nor prevent any such county, city or town from providing for the care, support, maintenance and secular education of inmates of orphan asylums, homes for dependent children or correctional institutions and of children placed in family homes by authorized agencies, whether under public or private control . . . ’

Article XI, §3

"Neither the state nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of

learning wholly or in part under the control or direction of any religious denomination or in which any denominational tenet or doctrine is taught, but the legislature may provide for the transportation of children to and from any school or institution of learning.”

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ND

Article VIII, §1

‘A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.’

Article VIII, §5

‘All colleges, universities, and other educational institutions, for the support of which lands have been granted to this state, or which are supported by a public tax, shall remain under the absolute and exclusive control of the state. No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school.’

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OH

Article VI, §2

‘The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state.’

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OK

Article I, §5

Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the state and free from sectarian control; and said schools shall always be conducted in English...’

Article II, §5

‘No public money or property shall ever be appropriated, applied, donated, or used directly or indirectly, for the use, benefit, or support of any sect, church, denomination,

or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.’

Article XI, §5

‘...Such educational institutions shall remain under the exclusive control of the State and no part of the proceeds arising from the sale or disposal of any lands granted for educational purposes, or the income or rentals thereof, shall be used for the support of any religious or sectarian school, college, or university, and no portion of the funds arising from the sale of sections thirteen or any indemnity lands selected in lieu thereof, either principal or interest, shall ever be diverted, either temporarily or permanently, from the purpose for which said lands were granted to the State.’

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OR

Article I, §5

‘No money shall be drawn from the Treasury for the benefit of any religeous (sic), or theological institution, nor shall any money be appropriated for the payment of any religeous (sic) services in either house of the Legislative Assembly.’

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PA 1874

Article III, §15

‘No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school.’

Article III, §29

‘No appropriation shall be made for charitable, educational or benevolent purposes to any person or community nor to any denomination and sectarian institution, corporation or association: Provided, that appropriations may be made for pensions of gratuities for military service and to blind persons twenty-one years of age and upwards and for assistance to mothers having dependent children and to aged persons without adequate means of support and in the form of scholarship grants or loans for higher educational purposes to residents of the Commonwealth enrolled in institutions of higher learning except that no scholarship, grants or loans for higher educational purposes shall be given to persons enrolled in a theological seminary or school of theology.’

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PA 1975

Article III, §15

‘No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school.’

Article III, §29

‘No appropriation shall be made for charitable, educational or benevolent purposes to any person or community nor to any denomination and sectarian institution, corporation or association: Provided, that appropriations may be made for pensions of gratuities for military service and to blind persons twenty-one years of age and upwards and for assistance to mothers having dependent children and to aged persons without adequate means of support and in the form of scholarship grants or loans for higher educational purposes to residents of the Commonwealth enrolled in institutions of higher learning except that no scholarship, grants or loans for higher educational purposes shall be given to persons enrolled in a theological seminary or school of theology.’

Article VIII, §17

SPECIAL EMERGENCY LEGISLATION ‘(a) Notwithstanding any provisions of this Constitution to the contrary, the General Assembly shall have the authority to enact laws providing for tax rebates, credits exemptions, grants-in-aid, State supplementations, or otherwise provide special provisions for individuals, corporations, associations or nonprofit institutions, including nonpublic schools (whether sectarian or nonsectarian) in order to alleviate the danger, damage, suffering or hardship faced by such individuals, corporations, associations, institutions or nonpublic schools as a result of Great Storms or Floods of September 1971, of June 1972, or of 1974, or of 1975 or of 1976.

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SC

Article XI, §4

‘No money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution.’

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SD

Article VIII, §16

‘No appropriation of lands, money, or other property or credits to aid any sectarian school shall ever be made by the state, or any county or municipality within the state, nor shall the state or any county or municipality within the state accept any grant, conveyance, gift, or bequest of lands, money, or other property to be used for sectarian purposes, and no sectarian instruction shall be allowed in any school or institution aided or supported by the state.’

Article VI, §3

‘Freedom of religion--Support of religion prohibited. The right to worship God according to the dictates of conscience shall never be infringed. No person shall be denied any civil or political right, privilege or position on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to

excuse licentiousness, the invasion of the rights of others, or justify practices inconsistent with the peace or safety of the state.

No person shall be compelled to attend or support any ministry or place of worship against his consent nor shall any preference be given by law to any religious establishment or mode of worship. No money or property of the state shall be given or appropriated for the benefit of any sectarian or religious society or institution.’

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TX

Article I, §7

Appropriations for Sectarian Purposes ‘No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.’

Article VII, §5(a)

‘The available school fund shall be applied annually to the support of the public free schools. Except as provided by this section, the legislature may not enact a law appropriating any part of the permanent school fund or available school fund to any other purpose. The permanent school fund and the available school fund may not be appropriated to or used for the support of any sectarian school. The available school fund shall be distributed to the several counties according to their scholastic population and applied in the manner provided by law.’

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UT

Article X, §9

‘Neither the state of Utah nor its political subdivisions may make any appropriation for the support of any school or educational institution controlled by any religious organization.”

Article I, §4

‘The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment.’

Article III, §4

‘The Legislature shall make laws for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and be free from sectarian control.’

Article X, §1

‘The Legislature shall provide for the establishment and maintenance of the state's education systems including: (a) a public education system, which shall be open to all children of the state; and (b) a higher education system. Both systems shall be free from sectarian control.’

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UT 1986

Article X, §9

‘Neither the state of Utah nor its political subdivisions may make any appropriation for the direct support of any school or educational institution controlled by any religious organization.”

Article I, §4

‘The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment.’

Article III, §4

‘The Legislature shall make laws for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and be free from sectarian control.’

Article X, §1

‘The Legislature shall provide for the establishment and maintenance of the state's education systems including: (a) a public education system, which shall be open to all children of the state; and (b) a higher education system. Both systems shall be free from sectarian control.’

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VA

Article VIII, §10

‘No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof . . . the General Assembly may . . . appropriate funds for educational purposes which may

be expended in furtherance of elementary, secondary, collegiate, or graduate education of Virginia students in public and nonsectarian private schools and institutions of learning...'

Article IV, §16

'The General Assembly shall not make any appropriation of public funds, personal property, or real estate to any church or sectarian society, or any association or institution of any kind whatever which is entirely or partly, directly or indirectly, controlled by any church or sectarian society. Nor shall the General Assembly make any like appropriation to any charitable institution which is not owned or controlled by the Commonwealth: the General Assembly may, however, make appropriations to nonsectarian institutions for the reform of youthful criminals and may also authorize counties, cities, or towns to make such appropriations to any charitable institution or association.'

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WA

Article IX, §4

'All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control.'

Article XXVI, §4

'Provision shall be made for the establishment and maintenance of systems of public schools free from sectarian control, which shall be open to all the children of said state.'

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WI 1848

Article I, §18

'The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.'

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WI 1967

Article I, §23

'Nothing in his constitution shall prohibit the legislature from providing for the safety and welfare of children by providing for the transportation of children to and from any parochial or private school or institution of learning.'

Article I, §18

‘The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.’

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WI 1972

Article X, §3

‘The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years; and no sectarian instruction shall be allowed therein; but the legislature by law may, for the purpose of religious instruction outside the district schools, authorize the release of students during regular school hours.’

Article I, §23

‘Nothing in his constitution shall prohibit the legislature from providing for the safety and welfare of children by providing for the transportation of children to and from any parochial or private school or institution of learning.’

Article I, §18

‘The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.’

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WY

Article I, §19

‘Appropriations for sectarian or religious societies or institutions prohibited. No money of the state shall ever be given or appropriated to any sectarian or religious society or institution.’

Article VII, §8

‘Provision shall be made by general law for the equitable allocation of such income among all school districts in the state. But no appropriation shall be made from said

fund to any district for the year in which a school has not been maintained for at least three (3) months; nor shall any portion of any public school fund ever be used to support or assist any private school, or any school, academy, seminary, college or other institution of learning controlled by any church or sectarian organization or religious denomination whatsoever.’

Article VII, §12

Sectarianism prohibited: ‘No sectarian instruction, qualifications or tests shall be imparted, exacted, applied or in any manner tolerated in the schools of any grade or character controlled by the state, nor shall attendance be required at any religious service therein, nor shall any sectarian tenets or doctrines be taught or favored in any public school or institution that may be established under this constitution.’

Article XXI, §28

‘The legislature shall make laws for the establishment and maintenance of systems of public schools which shall be open to all the children of the state and free from sectarian control.’

Article III, §36

‘No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.’