

THE MOST SACRED RIGHTS OF PARENTS: ENGLISH-SPEAKING CATHOLICS
AND PARENTAL RIGHTS IN THE SCHOOLS QUESTION

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by

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Abstract

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In the second half of the nineteenth century, nations scrambled to create systems of universal elementary education, prompting numerous policy debates. In the midst of this “schools question,” English-speaking Catholics appointed themselves the defenders of parental rights. Catholic parental rights arguments, drawn from the tradition of natural law, were meant to appeal to their Protestant neighbors by emphasizing rights and appealing to religious liberty. However, in cultures still permeated with traditional anti-Catholicism, Catholic claims to defend conscience and family struck many as implausible. Catholics did not think that the family should be autonomous, and they were not promoting independent consciences. They upheld duty and obedience rather than choice, championing the right of Catholic parents to follow the teachings of the Church. The success of this argument varied. It worked best in the United Kingdom, where Catholics eventually managed to ally themselves with the Church of England in defense of publicly supported denominational education. In the United States, Catholics failed to create a coalition in favor of funding religious education, but they did manage to

convince their neighbors that Catholic schools had a right to exist with minimal government interference. Catholics, however, disagreed among themselves on how much control the state ought to exert over the family. Because they grounded parental rights in duties rather than familial autonomy, they could support the state's attempt to ensure that parents fulfilled those duties. The history of parental rights arguments shows the challenges nineteenth-century English-speaking Catholics faced in attempting to preserve their faith, live in a pluralistic society, and contribute to forming their rapidly changing nations according to their understanding of justice and the common good.

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CHAPTER 1: INTRODUCTION

In the second half of the nineteenth century, nations scrambled to create systems of universal elementary education, prompting numerous policy debates. Most prominently: what should children learn, and who was going to pay for it? Together, these were labeled the “schools question.” In the midst of these policy debates, English-speaking Catholics appointed themselves the defenders of parental rights.¹ Their argument was simple: To parents belonged the primary duty of raising and educating their children. Parents, therefore, had the right to follow their consciences in doing so. Catholic parents, accordingly, had the right to send their children to Catholic schools. This argument was made in the public square and in the Catholic ghetto, in words and in brick and mortar, by prelates and the lay faithful, at the centers of power and on the frontiers. The argument was made with astonishing unity at the level of principle, and it was employed with occasionally fractious diversity at the level of application.

¹ I will use “Catholic” and not “Roman Catholic.” Catholics rarely used the latter term to describe themselves. Instead, it was the most polite iteration of epithets such as “Papist” or “Romanist.” On a related note, for this period, “Protestant” is, as John Wolffe has put it, “a virtual synonym for ‘anti-Catholic,’ and implying active support for movements against Catholicism.” During the nineteenth century, if something more like the current usage of “Protestant” was intended, writers usually either specified denomination or simply used “Christian.” John Wolffe, *The Protestant Crusade in Great Britain* (Oxford: Clarendon Press, 1991), vii.

This dissertation focuses on "English-speaking" Catholics and the Catholic Church in the "English-speaking world." I also use the term "the Church" the same way my subjects did. They defined "the Church" as a *society*, governed by the pope and the bishops. "Governing" included defining doctrine and exercising juridical power. While the bishops and popes were the uncontested official representatives of Catholic thought, not all Catholics agreed with them, and there were many topics on which there was no single "Catholic" argument. Thus, that parents ought to educate their children, and therefore had the right to do so, was a non-negotiable principle taught by "the Church." This point was uncontested in practice. Beyond this fundamental assertion, however, lay a multitude of other questions. How much education did parents need to provide? What kind of education? Were the clergy and the state bound to help parents? How much control could the state exercise over the family? On these and other questions, Catholic opinion varied. Sometimes bishops gave an official answer to these questions. For instance, some insisted that parents send their children to parochial schools. Such rulings, however, were understood to be judicial decisions rather than statements of Church teaching. I will show both the argument made by "the Church" (which I sometimes term "the Catholic argument" or "the official Catholic argument"), about the origin and nature of parental rights, as well as the multiplicity of arguments made by Catholics on these secondary questions.

The category of "English-speaking" Catholics was common usage in the nineteenth century. In practice, it usually referred to the Catholics of England, Scotland, Ireland, British North America (excluding the Francophone populations), Australia, New

Zealand, and the United States.² This is how I will use the term, though I focus on the United Kingdom, Canada, and the United States. However, in the minds of many who used the phrase, the community extended to wherever any Catholics spoke English.³

Before the American Revolution, the English-speaking world was a subset of the British Empire. That empire, David Armitage has argued, expressed an ideology that deemed it “Protestant, commercial, maritime, and free.”⁴ Linda Colley argues that the

² In this list, Ireland is the outlier because of its Catholic majority. The category of English-speaking Catholic, while not defined by the Irish diaspora, was heavily influenced by it. Moreover, Parliament decided Irish education policies in London. The English and Irish Catholic hierarchies worked closely together, and the Irish Members of Parliament were an invaluable asset for English and Scottish Catholics.

³ Catholic bishops throughout the British Empire had some success in convincing the Colonial Office to help support Catholic schools, and the “English-speaking” Catholics tended to count these victories as their own.

In Ceylon (now Sri Lanka), Catholics created a school system in the second half of the nineteenth-century. (The previous Portuguese Catholic system had been converted into a Dutch Calvinist system in the second half of the seventeenth century, so they were effectively starting from scratch.) The majority of the small Christian population was Catholic, and the schools were also open to non-Catholics and non-Christians. They were taught in English at the college level, and in the vernacular (Sinhala or Tamil) at the elementary level. The Colonial Office provided grant aid to these schools.

In India, the East India Company’s Educational Despatch [*sic*] of 1854 gave official backing to mission schools and made them eligible to receive grants-in-aid, the same funding mechanism that supported denominational schools in England until 1902. The British Government extended a similar policy to its African colonies in 1925. Catholics in these colonies made the same arguments against non-denominational education that they had made in places like Canada, Ireland, and the United States during the nineteenth century. By the 1940s, the British Empire supported denominational schools in colonies such as Uganda, The Gambia, Sierra Leone, Ghana, Fiji, Hong Kong, Gibraltar, the West Indies, British Honduras, Mauritius, the Seychelles, and Basutoland. Clive Whitehead, “The Contribution of the Christian Missions to British Colonial Education,” *Paedagogica Historica* 35 (1999): 321–337, 323, 331; Brenden Carmody, “The Politics of Catholic Education in Zambia: 1891–1964,” *Journal of Church and State* 44 (Autumn 2002), 775–804.

I have very rarely seen South Africa mentioned by nineteenth-century Catholics. Following Dutch precedent, the British government refused to allow a Catholic bishop to step foot in South Africa until 1837. The hierarchy of South Africa was, from then on, English-speaking. In the twentieth-century, the small Catholic population (a mere 6 percent of the population in 1957) was sufficiently “English-speaking,” including the language used in its missionary schools, to be considered a threat on those grounds (though not *only* on those grounds) by Afrikaner nationalists. Colin B. Collins and Roslyn R. Gillespie, “Catholic Education in South Africa: A History of Compromise and Coincidence,” *Journal for the Study of Religion*, Vol. 7, No. 1 (Mar. 1994), 21–47.

⁴ David Armitage, *The Ideological Origins of the British Empire* (Cambridge: Cambridge University Press, 2000), 8.

near-perpetual military threat of Catholic France during the eighteenth century united Great Britain against a common enemy and solidified a Protestant identity: British Protestantism was synonymous with freedom, French Catholicism with the misuse of monarchical and ecclesiastical power.⁵ The American Revolution, despite the alliance with the French, did not fundamentally change that perception of Catholicism, though it did somewhat temper anti-Catholicism.⁶

At the beginning of the nineteenth century, the Catholic populations of the United States and England were small. In England, almost all Catholics were politically impotent. In the United States, they were not politically distinctive. During the nineteenth century, and especially as a consequence of the Irish Famine, streams of immigrants dramatically increased the size of the Catholic populations of the United States and England (and Scotland and Australia). In the United States, other immigrant groups also added to the size of the Catholic population and, over time, they too became “English-speaking.” These expanding communities of English-speaking Catholics in formerly

⁵ Linda Colley, *Britons: Forging the Nation 1707–1837*, 2nd ed. (New Haven: Yale University Press, 2012).

⁶ Charles Hanson argues that during the Revolution, anti-Catholicism was “bartered away for the French Alliance, or at least put in escrow.” That is, he argues that the “virtue” of extending religious liberty to Catholics was a pragmatic move, but that it took some root nonetheless. It amounted to the “limited principle of tolerating the presence of Catholics and permitting their public worship.” Certain forms of anti-Catholicism became less acceptable in polite society, and the conviction that Catholicism was weak and that deism and atheism were rising threats contributed to toleration. The arrival of large numbers of Irish immigrants would reverse that trend by the 1830s. Charles P. Hanson, *Necessary Virtue: The Pragmatic Origins of Religious Liberty in New England* (Charlottesville, VA: University Press of Virginia, 1998), 1, 219. Francis Cogliano also comments on the moderating effect of the Revolution on what he argues was “one of the most prevalent characteristics of New England culture before the Revolution.” Francis D. Cogliano, *No King, No Popery: Anti-Catholicism in Revolutionary New England* (Westport, CT: Greenwood Press, 1995), 2.

overwhelmingly Protestant nations spawned anxiety. Protestants deployed traditional tropes of anti-Catholicism (or anti-Popery) against the newcomers.⁷

Protestants feared the Catholic Church from more than long habit. After suffering from the losses of the Reformation and experiencing sharply declining influence from eighteenth-century internal conflicts and then the depredations of Napoleon, the Church reemerged in the later nineteenth century as an important source of moral authority and social influence. Nowhere did this happen more dramatically than in the English-speaking world.⁸ Catholic leaders crowded. Paul Cullen, the Archbishop of Armagh and the Primate of Ireland, rejoiced in 1850 over the beginning of the “Catholic Revival.” He proclaimed that the “Holy Roman Catholic Church is breaking her chains in every country, asserting all her rights, and displaying all the vitality that was given to her by her

⁷ The distinction between anti-Catholicism and anti-Popery that some Protestants insisted on was lost on most Catholics. An 1840 petition, authored by Bishop John Hughes and submitted by a committee of New York Catholics, for instance, defined the word “Popery” as “known and employed as one of insult and contempt towards the Catholic religion.” Similarly, Archbishop Paul Cullen in 1852 decried “the fashion to call us *Romanists*, and to endeavour to deprive us of the name of *Catholic*.” John Hughes, “Petition to the Honorable the Board of Aldermen of the City of New York” and “The Petition of the Catholics of New York, September 21, 1840,” in *The Complete Works of the Most Rev. John Hughes*, ed. Laurence Kehoe (New York: The American News Company and London: Richardson and Son, 1864), 1:48, 50; Paul Cullen, “Discourse at the General Meeting of the Catholic Association in Dublin, 29th January 1852,” in *The Pastoral Letters and Other Writings of Cardinal Cullen, Archbishop of Dublin, Etc.*, ed. Patrick Francis Moran D. D. (Dublin: Browne & Nolan, 1882), 1:167. The editor, Moran, was Cullen's nephew. He was later the third Archbishop of Sydney and the first Australian Cardinal.

⁸ On the subject of the Catholic Revival, see, for instance, Austen Ivereigh, ed., *The Politics of Religion in an Age of Revival: Studies in Nineteenth-Century Europe and Latin America* (London: Institute of Latin American Studies, 2002). Ivereigh's analysis is that in “the hundred-odd years from the 1820s to the First World War” the “modernising, secularising, democratising liberal project” “collided with” a “Catholic revival, which was underway by the mid-nineteenth century and gathering pace in the 1860s to ‘70s.” Ivereigh includes in his picture of a “Church that was popular and in expansion,” the “centralising, reforming pull of ‘Romanisation,’ solidifying the obedience of priests to bishops and bishops to Rome,” the founding of new orders, unprecedented rises in vocations, and combat with the liberal state. Fights over education were part of this battle throughout Europe and Latin America. Austen Ivereigh, “Introduction,” in *The Politics of Religion in an Age of Revival*, 1, 6. My work examines the way in which Catholics in English-speaking, Protestant-majority nations understood the relationship between their own situations and these more global trends. Cullen, for instance, was trained in Rome, and always had an eye on the state of the Church in continental Europe and the British Empire.

Divine Founder.”⁹ That same year, Archbishop Hughes of New York stated bluntly, “The object we hope to accomplish in time is to convert all Pagan nations, and all Protestant nations, even England in her proud Parliament and imperial sovereign.”¹⁰

In 1851 William Walsh, the Irish archbishop of Halifax, Nova Scotia, wrote a fifty-page pastoral letter recommending prayer for “the conversion of the Kingdom of England to the orthodox faith.”¹¹ Angry about the English reaction to the restoration of the Catholic hierarchy in England in 1850, he summoned up the full force of the Catholic Church in the English-speaking world. He began with the British Empire: “You have now thrown down your gauntlet of defiance,” Walsh wrote, “in the face of the NINETY-TWO prelates of the Church, EIGHTY-TWO Bishops and TEN Archbishops throughout the British Dominions against countless thousands of Priests, and millions upon millions of faithful people.”¹² He then summoned up the images of all of “the Irish Bishops, Priests, and People in the colonial territories of England”:

the Archbishop of Bengal in the East, or the Archbishop of Trinidad in the West Indies. At Bombay, at Madras, at Hyderabad; amongst the classic islands of Greece, as well as at the Pillars of Hercules; on the southern extremity of Africa, no less than in the vast plains of Australia; amidst the swamps of British Guiana, and the rocky coasts of Newfoundland, at Kingston on Lake Ontario and St. John’s in the Bay of Fundy, at each, and all, you will encounter an IRISH BISHOP whose country you have

⁹ Paul Cullen, “Pastoral Letter to the Catholic Clergy of the Archdiocese of Armagh On Catholic Education, November 26th, 1850,” in *The Pastoral Letters*, 1:115.

¹⁰ John Hughes, *The Decline of Protestantism and Its Causes* (New York, 1850), 26.

¹¹ William Walsh, *A Pastoral Letter for The Lent of M.DCCC.LI Addressed to the Clergy and Laity of the Diocese of Halifax by the Right Reverend Dr. Walsh, Bishop of Halifax* (New York: Edward Dunigan and Brothers, 1851), 13.

¹² Walsh, *Pastoral Letter*, 37.

derided, and what is still more galling, whose venerable Religion you have traduced, together with its illustrious Head.¹³

Walsh, however, did not stop with the British Empire or its Irish bishops. He pointed to the United States as well, arguing that through “the length and breadth of the great American republic, as well as wherever the English tongue is spoken you have arrayed against you, all the noblest instincts of the human heart.” England, he argued, had brought the dangers of possible American enmity upon itself. British rule in Ireland had “filled the United States with millions of Catholic exiles, and their immediate descendants, who so largely swell that tide of prosperity so ominous to England, and whose hereditary instincts it was most impolitic to revive.”¹⁴ In conclusion, Walsh wrote that “every blow you strike, in your cowardice, at our unoffending Catholic Brethren in England, will re-echo through the world.”¹⁵

Unsurprisingly, given vehemence like Walsh’s, the bulk of the literature on interactions between nineteenth-century American and British Protestants and Catholics highlights conflict and aims to explain anti-Catholicism. Most focuses on the first half of the century.¹⁶ For the most part, this study does not deal with that variety of anti-

¹³ Walsh, *Pastoral Letter*, 38.

¹⁴ Walsh, *Pastoral Letter*, 38.

¹⁵ Walsh, *Pastoral Letter*, 38.

¹⁶ The classic text for American anti-Catholicism is Ray Allen Billington’s *The Protestant Crusade, 1800–1860: A Study of the Origins of American Nativism* (New York, Macmillan, 1938). See also Jenny Franchot, *Roads to Rome: The Antebellum Protestant Encounter With Catholicism* (Berkeley: University of California Press, 1994) and John T. McGreevy, *Catholicism and American Freedom: A History* (New York: W.W. Norton & Co., 2003). For a relatively recent historiographical overview of the literature on American anti-Catholicism, see Kyle E. Haden, “Anti-Catholicism in U.S. History: A Proposal for a New Methodology,” *American Catholic Studies* 124 (Winter 2013): 27–45. See John Wolffe, *The Protestant Crusade in Great Britain* (Oxford: Clarendon Press, 1991), for an overview of the twentieth-century historiography of nineteenth-century British anti-Catholicism. There have been several recent examinations of transatlantic anti-Catholicism. See, for instance, John Wolffe, “North Atlantic Anti-

Catholicism, though its presence certainly shaped what Catholics and their sympathizers could accomplish politically. While anti-Catholicism did not disappear and did periodically revive, the high point of anti-Catholic agitation in both the United States and in Great Britain during the nineteenth-century occurred around 1850.

In such a world, there was an element of the absurd in the decision of English-speaking Catholics to cast themselves as the great defenders of parental rights. Moreover, people took those rights for granted in the nineteenth century. The eighteenth-century English utilitarian William Paley defined parental rights essentially the same way that Pope Leo XIII did at the end of the nineteenth century.¹⁷ Parental rights were, and remain, part of the law of the land.

Catholicism in the Nineteenth Century: A Comparative Overview,” *European Studies* 31 (2013): 25–43; Timothy Verhoeven, *Transatlantic Anti-Catholicism: France and the United States in the Nineteenth Century* (New York: Palgrave Macmillan, 2010); Marjule Anne Drury, “Anti-Catholicism in Germany, Britain, and the United States: A Review and Critique of Recent Scholarship,” *Church History* 70 (Mar. 2001): 98–131; Donald M. MacRaid, “Transnationalising ‘Anti-Popery’: Militant Protestant Preachers in the Nineteenth-Century Anglo-World,” *Journal of Religious History* 39 (June 2015): 224–243. While I use a transatlantic frame, David Brion Davis’ 1960 argument that American anti-Catholicism was distinctive and tied to anti-Masonic and anti-Mormon fears is both right and a good balance to current trends. Davis argued that each of these “subversive groups” was imagined as “an inverted image of Jacksonian democracy and the cult of the common man.” David Brion Davis, “Some Themes of Counter-Subversion: An Analysis of Anti-Masonic, Anti-Catholic, and Anti-Mormon Literature,” *The Mississippi Valley Historical Review* 47 (Sept. 1960), 208.

¹⁷ In his 1785 *Principles of Moral and Political Philosophy*, Paley wrote:

The rights of parents result from their duties. If it be the duty of a parent to educate his children, to form them for a life of usefulness and virtue, to provide for them situations needful for their subsistence and suited to their circumstances, and to prepare them for these situations; he has a right to such authority, and in support of that authority to exercise such discipline as may be necessary for these purposes. The law of nature acknowledges no other foundation of a parent’s right over his children besides his duty towards them.

As regards Leo XIII, see, for instance, his 1880 encyclical *Arcanum* (“On Christian Marriage”) which stated: “As regards children, they ought to submit to the parents and obey them, and give them honor for conscience’ sake; while, on the other hand, parents are bound to give all care and watchful thought to the education of their offspring and their virtuous bringing up.” See also his 1887 *Officio Sanctissimo*: “In these duties, which devolve upon them with the procreation of their children, let the heads of families know that there are the same rights inherent both by nature and justice, and that they are of such a kind that no

Nevertheless, many advocates of public education, without directly challenging the *principle* of parental rights, intentionally undermined the influence of *poor* parents. Carl Kaestle argues that urban charity schools, and the common school systems that grew out of those schools, were “designed to intervene between parents and children, to introduce children to a culture and morality that reformers believed was different from that of their parents.”¹⁸ These schools were, he argues, symptomatic of a “new indictment of the urban poor” which “stigmatized the parents of poor children as vicious and indolent.”¹⁹ These attitudes appeared in many programs to assimilate immigrant Catholics, especially in the United States and England. The Catholic defense of parental rights in education, therefore, especially as articulated by the episcopacy, often included a defense of the moral dignity of poor families. In practice, the reality of poverty meant that the Catholic argument for parental rights included an argument that religious education must not be the preserve only of those who could pay for it. If the state needed to support Catholic schools to ensure this right, so be it.

Many Protestants nevertheless found the Catholic parental rights argument duplicitous. Advocating for public money for Catholic schools looked like a step toward

one can free himself from them, since it is impossible by any human power to be dispensed from those duties which man owes to God.” William Paley, “Principles of Moral and Political Philosophy,” in *The Works of William Paley, D.D. And an Account of the Life and Writings of the Author*, ed. Edmund Paley (London: Longman and Co., 1838), 3:168–169; Leo XIII, *Arcanum*, Vatican Website, accessed July 28, 2016, https://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_10021880_arcantum.html; Leo XIII, *Officio Sanctissimo*, Vatican Website, accessed July 28, 2016, http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_22121887_officio-sanctissimo.html.

¹⁸ Carl F. Kaestle, *Pillars of the Republic: Common Schools and American Society, 1780–1860* (New York: Hill and Wang, 1983), 39. Kaestle’s account focuses on American schools, but, as he points out, the charity school models (and their accompanying philosophies) were British imports.

¹⁹ Kaestle, *Pillars of the Republic*, 32, 50.

the establishment of the Catholic Church. Further, priests and bishops instructed parents how to raise their children. Many Protestants claimed that if parents complied with these ecclesiastical dictates, they had already abandoned their rights and their freedom of conscience.²⁰ Protestants were right to note that Catholic parents were not the primary audience for arguments about parental rights. Given the structure of the argument—that those rights derived from duties—it is perhaps to be expected that mothers and fathers were more often reminded of their obligations than assured of their status as rights-bearing women and men. Contemporary observers read such lectures as attempts by the Church to curtail parental freedom. Scholars have tended to read likewise. Accordingly, even historians of Catholic education have paid little attention to the argument for parental rights.²¹

²⁰ The literature on anti-Catholicism in the nineteenth century delves into the ways in which Catholics, and particularly the clergy, were seen to undermine the proper structure of the family. Susan Griffin takes a transatlantic approach, emphasizing the “important set of *shared* cultural assumptions and literary techniques” in the United States and the United Kingdom. She notes a preponderance of Know-Nothing novels that depict “bad Catholic fathers who fail to protect and provide for their female children.” She also argues that teleological Protestant history cast Catholicism as “a religion of holy fathers who demanded unquestioning obedience.” Susan M. Griffin, *Anti-Catholicism and Nineteenth-Century Fiction* (Cambridge: Cambridge University Press, 2004), 15, emphasis in the original, 93, 5. Timothy Verhoeven’s *Transatlantic Anti-Catholicism* highlights similar themes in both American and French opposition to the Catholic Church. He particularly emphasizes critiques of celibacy as unnatural and concerns that the Catholic Church was disrupting proper gender and familial roles. Timothy Verhoeven, *Transatlantic Anti-Catholicism: France and the United States in the Nineteenth Century* (New York: Palgrave Macmillan, 2010). While Verhoeven draws interesting parallels, E. R. Norman rightly insists on distinguishing British anti-Catholicism (extending to “the United States, Canada, Australia”) from “European” movements based more on anti-clericalism and in response to distinct political issues. In general, when American or British Catholics objected to Francophone Catholicism, they sounded far more like their eighteenth-century predecessors than like French anti-clericals. E. R. Norman, *Anti-Catholicism in Victorian England* (New York: Barnes & Noble, Inc., 1968). Nevertheless, anti-Catholic literature everywhere had several tropes of Catholics failing in their parental duties or abusing their parental rights.

²¹ Academic interest in parental rights as a philosophical principle has largely been confined to political theory. See, for instance, Melissa Moschella, *To Whom Do Children Belong? Parental Rights, Civic Education and Children’s Autonomy* (Cambridge: Cambridge University Press, 2016). Within the historical discipline, discussions of parental rights most commonly appear in legal history in the context of family law or perhaps education law. See, for instance, Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985);

Stephen Cretney, *Family Law in the Twentieth Century: A History* (Oxford: Oxford University Press, 2003); and P. H. Pettit, "Parental Control and Guardianship," in R.H. Graveson and F.R. Crane (eds.), *A Century of Family Law: 1857–1957* (London: Sweet and Maxwell, 1957). Important twentieth-century Supreme Court cases such as *Pierce v. Sisters* (1925) and *Yoder v. Wisconsin* (1972) figure largely in this literature. For instance, see Shawn Francis Peters, *The Yoder Case: Religious Freedom, Education, and Parental Rights* (Lawrence: University of Kansas Press, 2003); and Paula Abrams, *Cross Purposes: Pierce v. Society of Sisters and the Struggle Over Compulsory Public Education* (Ann Arbor: University of Michigan Press, 2009). Maureen Fitzgerald's 2006 *Habits of Compassion* carefully analyzes the tension between New York Catholics and Protestant "Child-Savers." She admirably describes the advocacy of Catholic sisters on behalf of the parental rights of poor (usually Irish) Catholic mothers. But while she notes antebellum arguments over the structure of the school system, post-Civil War arguments do not figure in her narrative. Maureen Fitzgerald, *Habits of Compassion: Irish Catholic Nuns and the Origins of New York's Welfare System, 1830–1920* (Urbana: University of Illinois Press, 2006). Overall, then, while accorded frequent passing reference, the importance of parental rights language in nineteenth-century Catholic education arguments has received little attention. Daniel Reilly's 1943 study, *The School Controversy: 1891–1893*, on the dispute Thomas Bouquillon created with the 1891 publication of *Education: To Whom Does It Belong?* is an exception, but it is quite limited in scope. Daniel F. Reilly, *The School Controversy: 1891–1893* (Washington D.C.: Catholic University of America Press, 1943). Similar examples are Philip Gleason et. al., "Baltimore III and Education," *U.S. Catholic Historian* 4, no. 3/4 (1985); and James Michael McDonnell, *Orestes A. Brownson and Nineteenth-Century Catholic Education* (New York: Garland Publishing, 1988).

Eric Tenbus' *English Catholics and the Education of the Poor, 1847–1902* does argue for the importance of parental rights arguments in the English Catholic context. His attention to this language is an important contribution, and he admirably points to the Thomistic character of the argument. However, it is a brief account and does not deal with the reception of that argument. Eric G. Tenbus, *English Catholics and the Education of the Poor, 1847–1902* (London: Pickering & Chatto, 2010). James Carper and Thomas Hunt note the prevalence of Catholic parental rights arguments in the American context, but they are fairly dismissive. James C. Carper and Thomas C. Hunt, *The Dissenting Tradition in American Education* (New York: Peter Lang, 2007), 44–46.

Scholars have spilled much more ink over the rise of the idea of children's rights. See George K. Behlmer, *Child Abuse and Moral Reform in England, 1870–1908* (Palo Alto: Stanford University Press, 1982); George K. Behlmer, *Friends of the Family: The English Home and Its Guardians, 1850–1940* (Palo Alto: Stanford University Press, 1998); Joseph M. Hawes, *The Children's Rights Movement: A History of Advocacy and Protection* (Boston: Twayne Publishers, 1991); Jean Schofield Heywood, *Children in Care: The Development of the Service for the Deprived Child* (London: Routledge and Kegan Paul, 1959); Deborah Dwork, *War is Good for Babies and Other Young Children: A History of the Infant and Child Welfare Movements in England, 1898–1918* (London: Tanstock Publications, 1987); and N. Ray Hiner, "Children's Rights, Corporal Punishment, and Child Abuse," *Bulletin of the Menninger Clinic* 43 (1979). While such histories at best allude to the question of parental rights, the structure of that historiography highlights some important points. One of these is that parental rights easily break down into the different and potentially competing rights of fathers and the rights of mothers. Particularly in the context of legal history, power structures embedded in gender come into play. See, for instance, Mary Frances Berry, *The Politics of Parenthood: Childcare, Women's Rights, and the Myth of the Good Mother* (New York: Viking, 1993), and Sonya Michel, *Children's Interests/Mothers' Rights: The Shaping of America's Childcare Policy* (New Haven: Yale University Press, 1999). Class structures also affected custody law. Anna Davin, *Growing Up Poor: Home, School and Street in London, 1870–1914* (London: Rivers Oram Press, 1996); Timothy A. Hasci, *Second Home: Orphan Asylums and Poor Families in America* (Cambridge, MA: Harvard University Press, 1997); Lydia Murdoch, *Imagined Orphans: Poor Families, Child Welfare, and Contested Citizenship in London* (Piscataway, NJ: Rutgers University Press, 2006). Mary Ann Mason argues that "a two-tiered system of dealing separately with poor children and with children whose parents can support them characterizes the history of child custody. The law and the courts have treated indigent children differently from middle-class children of divorce." Mary Ann Mason, *From Father's Property to*

It is, however, easy to read the sizeable corpus of literature reminding parents of their duty to provide religious education for their children as proof of the belief in parental rights. The argument was not the current case for "parental choice." It was, rather, a declaration that parents possessed the right to educate according to their consciences. Convenience and quality of education were at most second-tier concerns. "Choice" was not a Catholic principle. The Church taught that failing to fulfill the duty to educate was a grave sin and a matter of hellfire. It also taught that parents had the right to avoid hell. Therefore, parents had the right to ensure a religious education for their children. No one had the right to coerce another to sin. Some Protestants countered that it was spiritual coercion to tell parents that failing to send their children to a Catholic school could merit hell. Spiritual coercion from any source, they insisted, was opposed to religious liberty.²² Catholics disagreed. They argued that parents, like everybody else, needed to form their consciences according to the teachings of the Church.

Nineteenth-century English-speaking Catholics tried to create an argument to persuade nations with Protestant majorities and governments increasingly liberal and

Children's Rights: The History of Child Custody in the United States (New York: Columbia University Press, 1994), xii. Similarly, questions of children's rights commonly arise when clearly violated in some way, either through abuse or some external disaster such as war or famine. Especially in the case of abuse, scholars may oppose the rights of children to the rights of their parents. Examples include, Monica Flegel, *Conceptualizing Cruelty to Children in Nineteenth-Century England: Literature, Representation and the NSPCC* (Burlington, VT: Ashgate Publishing Company, 2009); Hiner, "Children's Rights, Corporal Punishment, and Child Abuse"; Elizabeth Pleck, *Domestic Tyranny: The Making of Social Policy against Family Violence from Colonial Times to the Present* (New York: Oxford University Press, 1987); Lionel Rose, *The Erosion of Childhood: Child Oppression in Britain, 1860–1918* (New York: Routledge, 1991); and Eric A. Shelma, *The Mary Ellen Wilson Child Abuse Case and the Beginning of Children's Rights in 19th-Century America* (Jefferson, NC: McFarland and Company, 2005).

²² This line of thought sometimes morphed into arguments that Catholic religious education was inherently opposed to the separation of church and state because it removed the intellectual independence of future voters. On the development of this sort of argument, see Philip Hamburger, *Separation of Church and State* (Cambridge, MA: Harvard University Press, 2002).

democratic. Articulations of Catholic duties, however, inevitably contained implied assertions about the relationship between conscience and authority. Henry Edward Manning, later to be the Catholic Cardinal Archbishop of Westminster, described the situation in 1863: “Public opinion is Protestant, and Protestantism is formally opposed to the idea of a Church divinely constituted and endowed.” Therefore, in public opinion, the “first principles and maxims of Catholic education—such as submission to a teaching authority, fear of error, mistrust of our own judgments—are extinct.”²³ Public opinion, perfectly well aware of what Catholics held on these matters, had no intention of allowing those principles and maxims to regain cultural ascendancy.²⁴ Catholics were making a concerted attempt to shape not only school policy but also the character of their nations writ large.

Though English-speaking Catholics were concerned about educational policy from at least the 1840s, and occasionally used parental rights arguments then, a major shift took place around 1870. Catholic appeals to parental rights before 1870 were, as I argue in Chapter 1, scattered and haphazard. In Chapters 2 and 3, I examine the dramatic shift in the Catholic *usage* of theories about parental rights from one focused on their limits to one that used them to oppose state power. Catholics transformed a subject most often found in legal treatises on marriage or inheritance law into a key aspect of modern

²³ Henry Edward Manning, “The Work and the Wants of the Catholic Church in England,” in *Miscellanies*, First American Edition (New York: The Catholic Publication Society, 1877), 27–71, 62.

²⁴ On the use of the term “public opinion” in late nineteenth-century Britain, see James Thompson, *British Political Culture and the Idea of ‘Public Opinion.’* Thompson argues that “‘public opinion’ was both an essential element of the political system and an expression of social forces.” “Public opinion” referred to the “political public,” and was a category larger than those who possessed the franchise. Instead, Thompson argues, its most important expressions “were generally considered to be the press, the platform, and the petition.” James Thompson, *British Political Culture and the Idea of ‘Public Opinion’, 1867–1914* (Cambridge: Cambridge University Press, 2013), 2, 61.

political struggles. In Chapter 4, I examine the success of this strategy. In the dissertation as a whole, but particularly in this chapter, I diagnose the importance of anti-Catholic bias in the success or failure of Catholics to convince their fellow-citizens to support denominational education. I return, in Chapter 5, to the question of the limits of parental rights as illustrated in varying Catholic responses to compulsory education laws.

By the later decades of the century, certainly by the 1880s, there were limits to what one could say against Catholics at the level of educated public opinion. More and more critics grounded their arguments in reasonably coherent philosophical and theological principles, even if they occasionally embellished them with appeals to hereditary nightmares.²⁵ While much anti-Catholic rhetoric originated in misreadings of Catholic theology, the average *educated* Protestant commenting on the Catholic Church in 1880 probably understood Catholic theology better than the average American Catholic does today. That, of course, is not to say that these Protestants necessarily understood Catholic theology well. Still, it is unreasonable to dismiss all opposition to the Catholic Church as the result of ignorance—even though that interpretation was the usual Catholic response at the time.²⁶ Moreover, English-speaking Catholics in the latter

²⁵ E.R. Norman also draws a distinction between the anti-Catholicism of the “laboring population” and that of the upper classes. He argues that the latter “were more articulate and much more purely ideological in origin.” This strain, he argues, mattered the most for British politics, and it was “of course the Irish question which brought the Protestant tradition most frequently into the centre of political life, and kept it there throughout the century.” The ideological problem at the heart of this political anti-Catholicism, he argues, was “was how to maintain a safe balance, between containment and concession, in the formulation of policy towards those whose religious principles inclined them unavoidably to intolerance.” E. R. Norman, *Anti-Catholicism in Victorian England* (New York: Barnes & Noble, Inc., 1968), 18, 19.

²⁶ Recent scholarship, especially John McGreevy’s *Catholicism and American Freedom* and Jon Gjerde’s *Catholicism and the Shaping of Nineteenth-Century America*, have moved the historiography away from this interpretation. Both point to the depth of the philosophical and theological divisions between mainstream American Protestant culture and that of American Catholics and the degree to which this division shaped American life. McGreevy traces the “interplay between Catholic and American ideas

decades of the nineteenth-century had a place in the public square. These public figures articulated the Catholic position clearly and consistently. Catholics frequently engaged in arguments about the public order, with schools being the most common and most critical of policy matters.

However, Catholics' arguments for parental rights were often openly linked to defenses of their ecclesiology. When they appealed to principles, like parental rights, that they believed should be persuasive to those with different theologies, they did not even pretend to leave the rest of their theology behind. Although they appealed to natural law, which they believed anyone could know through reason alone, they did not minimize their loyalty to the pope. English-speaking Catholics believed that religious freedom vis-à-vis the state could create a scenario in which the Catholic Church was not only free to manage its own affairs, but also free to influence society and to help to maintain the Christian character of the nation. In time, they hoped, these nations would be Catholic nations. Many saw no reason to stop wholesale evangelization while trying to secure funding for their schools.

For this program to bear fruit, however, Catholic ecclesiology needed to be deemed a legitimate participant in religious freedom or tolerance. One can reduce much of Catholic-Protestant argumentation to a single question: Is the structure of the Catholic Church a matter of theology that can be tolerated under the umbrella of religious liberty, or is it a gross usurpation that subverts all true theology and essentially undermines that

of freedom.” Gjerde framed his work around a “debate” between Catholics and Protestants. Like Norman, he highlights the “Protestant conundrum” of “how to integrate non-Protestants into a nation that was established on Protestant principles” without undermining principles such as religious liberty. McGreevy, *Catholicism and American Freedom*, 14; Jon Gjerde, *Catholicism and the Shaping of Nineteenth-Century America*, ed. S. Deborah Kang (Cambridge: Cambridge University Press, 2012), 7, 13.

religious liberty? The answer to this question determined the extent to which Catholic parental rights arguments were granted credence and thus influenced the measure of Catholic success in the fight for their schools. If Catholic ecclesiology was deemed tolerable, Catholic schools might become part of a national system. If it was not, tolerance was defined as narrowly as possible. Catholic schools might be permitted, but in no way encouraged. They were to remain alien to the state.

Although political outcomes varied, the insistence and persistence with which English-speaking Catholics repeated the argument for parental rights shaped the ways in which they themselves thought. It informed their understanding of the relationship of the family to the state and how to live in a pluralistic society. Through the arguments they made for parental rights, Catholics claimed the right to help shape their nations according to their own understanding of a good and just society.

CHAPTER 2: PIONEERS OF PARENTAL RIGHTS

2.1 Introduction

This chapter introduces a few Catholics in the United States and England who discussed parental rights during the 1850s and 1860s. And few they were. The development of elementary education systems in the first half of the nineteenth-century produced numerous debates, but parental rights were rarely their focus. When Catholics were not a minority, they tended to emphasize the rights of the Church and the importance of religion in education. In an 1850 pastoral letter, Paul Cullen, then the Archbishop of Armagh in Ireland, insisted that the “Divine commission” to “teach all nations” in the Gospel of Matthew formed the basis of the Church's right to educate. It gave bishops “the supervision and control of every system of education proposed or instituted for the children of the Catholic Church, lest in any particular department of knowledge they should be infected with errors or opinions at variance with their faith.”¹ Even in the majority-Protestant English-speaking world, where such assertions about the jurisdiction of the Church were certain to backfire politically, Catholics did not immediately argue for parental rights.

¹Paul Cullen, “Pastoral Letter to the Catholic Clergy of the Archdiocese of Armagh On Catholic Education, November 26th, 1850,” in *The Pastoral Letters and Other Writings of Cardinal Cullen*, ed. Francis Moran D.D. (Dublin: Browne & Nolan, 1882), 1:70–71.

Even when Catholics did mention parental rights, they buried such arguments under other concerns. In a public lecture during the 1840-41 battle over educational funding in New York City, for example, Bishop John Hughes did explicitly defend “the sacred right of every man to educate his own children.” He proclaimed that, among a man's duties to God, “the education of his child is one of the most sacred.”² Hughes’ listener, however, could be forgiven for missing those few lines amidst pages of controversy on anti-Catholic textbooks, the necessity of religion in education, and the use of the Bible in the schoolroom. Hughes did think that parental rights were important, but he seems to have thought them too obvious to need much elaboration.³

This chapter analyzes a handful of the Catholics in the United States and England who appealed to parental rights during the 1850s and 1860s. It illustrates some of the ways in which Catholic men and women looked to their traditions to articulate a response to changes in educational politics. It shows the importance of Catholic suspicion of the modern state but, while later arguments on the schools question would challenge the rights of the state in general, this chapter shows that earlier complaints were far more particularized. Accordingly, this chapter also illustrates the variety of ways in which

² John Hughes, “The School Question,” in *The Complete Works of the Most Rev. John Hughes*, ed. Laurence Kehoe (New York: The American News Company and London: Richardson and Son, 1864), 1:44, 45. For more on this debate see Vincent P. Lannie, *Public Money and Parochial Education: Bishop Hughes, Governor Seward and the New York School Controversy* (Cleveland: Case Western Reserve University Press, 1968).

³ For instance, Hughes once summed up the position of the Public School Society towards poor mothers as follows: “Give me the darling which you have nourished at your breast—give it to me, a stranger, and I will direct its mind. True, you are its parent; but you are not fit to guide its youthful progress, and to implant true principles in its mind; therefore give it to me, and give me also the means wherewith to instruct it.” Hughes assumed that it was self-evident that such an attitude was opposed to the rights of those poor mothers. John Hughes, “Bishop Hughes’ Great Speech on the Claim of the Catholics to a Portion of the Common School Fund, Before the Board of Aldermen of the City of New York, On Thursday and Friday, the 29th and 30th October, 1840,” in *The Complete Works of the Most Rev. John Hughes*, 1:69.

Catholics lived in and interacted with their Protestant-majority nations. An English bishop distrusted the British government because of its history of anti-Catholicism. However, he also saw urbanization, industrialization, poverty, and the challenges of immigration as the greatest threats to his flock's spiritual welfare. A California politician feared the state as much because of his Jeffersonian political thought as because of his Catholic faith. He accordingly consistently sought political alliances with non-Catholics. A novelist complained of British rule in Ireland in order to teach American Catholics how to live peacefully with Protestants. When parental rights later became a clarion call across the English-speaking world, a substantial shift had taken place. Nonetheless issues such as urbanization, industrialization, poverty, immigration, and the struggles of adjusting to religious pluralism would remain key parts of education debates. The Catholic parental rights argument was not merely a statement of principle or a piece of political rhetoric. Rather, it was the fruit of trying to envision what a just system of education should look like in a new, modern society.

2.2 The Prelate

In 1857 the Catholic bishop of Birmingham, William Bernard Ullathorne, published a pamphlet entitled *Notes on the Education Question* pondering the prudence of accepting state funding for Catholic elementary schools.⁴ Catholic schools in England began receiving money from Parliament in 1847, but the system worked on a very *ad hoc*

⁴ For extensive context for this text, see Mary Griset Holland, *The British Catholic Press and the Educational Controversy, 1847–1865* (New York: Garland Publishing, 1987).

basis, and the Catholics were far from organized to exploit it.⁵ Ullathorne put the “education question” in the context of history. He commented that after “ages of exclusion, as Catholics, from the funds at the command of the State, we are beginning to receive its aid towards educating the poor of our Church.”⁶ While “Catholic Emancipation” was a gradual process that had begun in the last quarter of the eighteenth century, at the time Ullathorne wrote, English Catholics had enjoyed (almost) full political rights for less than thirty years, following the Roman Catholic Relief Act of 1829.⁷

Ullathorne did not trust the British government and worried that “in return for that aid, we are giving up something of that absolute freedom and independence of action, which, whatever we have suffered, has been our greatest earthly blessing.”⁸ The British State was moving towards a role, in E. R. Norman’s words, as “neutral arbiter between the competing systems of a legally-recognized religious plurality,” but this trajectory was

⁵ See, for instance, Eric G. Tenbus, *English Catholics and the Education of the Poor, 1847–1902* (London: Pickering & Chatto), 2010. Tenbus is working within the historiographical tradition of John Bossy’s *English Catholic Community*, a social history that laid out the Irish/convert/gentry schema to describe the English Catholic community in the early nineteenth century. Tenbus states his relationship with Bossy’s work as follows: “Whereas Bossy concludes that between 1780 and 1850 English Catholicism experienced several ‘processes,’ all working towards the ‘creation of a complicated whole’, this book will build upon and extend his conclusion. It will be argued that education was *the* major change mechanism or agent in the evolution of that ‘complicated whole’—that new late nineteenth-century Catholic identity.” Tenbus, *English Catholics*, 4; John Bossy, *The English Catholic Community, 1570–1850* (London: Darton, Longman and Todd, 1975).

⁶ William Bernard Ullathorne, *Notes on the Education Question* (London: Richardson and Son, 1857), 7.

⁷ On the late eighteenth-century Relief Acts, and the degrees to which they provided relief, codified and reaffirmed the penal laws, see Thomas Bartlett, “The penal laws against Irish Catholics: were they too good for them?” in *Irish Catholic identities* (Manchester: Manchester University Press, 2013), 154–168.

⁸ Ullathorne, *Notes*, 7.

not apparent in the 1850s when “No-Popery” agitation was a living memory.⁹ The state’s relation to religion was visibly changing, but it was a contested change, and far from complete.

Ullathorne’s *Notes on the Education Question* urged “vigilance” as school aid drew the Catholic Church into closer dealings with the British government. “Aid implies control,” he reminded his readers, and the new Catholic hierarchy would “never permit either Catholic principles or liberty of instruction . . . to be interfered with.”¹⁰ He admitted that thus far Catholics had “been treated on a perfect equality with the other communities not being of the Establishment” and conceded that “the Government had [not] devised a plan to ensnare [Catholic] liberties in particular.”¹¹ The issue at hand was how much aid Catholics could prudently accept.

The financial need was substantial. Ullathorne wrote that it was “not even open to be questioned” that “the Catholic community had, relatively, by far the greatest number of poor—and of the poorest of the poor; whilst as a body, it had proportionately the fewest advantages, and the smallest pecuniary resources.”¹² This hardship arose because, “beyond [their] natural share of English poor,” they had “the whole immigration of Irish

⁹ E. R. Norman, *Anti-Catholicism in Victorian England* (New York: Barnes & Noble, Inc., 1968), 25. Major protests had attended the vote for continued Parliamentary funding for the Irish Catholic Maynooth Seminary in 1845 and the “Papal Aggression” of the restoration of the Catholic hierarchy in England in 1850. John Wolffe argues that the effect of Catholic Emancipation was to strengthen anti-Catholicism, and “the half-century succeeding 1829 saw much more antagonism to Catholics than that which had preceded Emancipation.” John Wolffe, *The Protestant Crusade in Great Britain* (Oxford: Clarendon Press, 1991), 2.

¹⁰ Ullathorne, *Notes*, 6, 7.

¹¹ Ullathorne, *Notes*, 8.

¹² Ullathorne, *Notes*, 8–9, 8.

poor thrown upon [their] unassisted hands.”¹³ If English Catholics were kept, by their “religion and their conscience,” from many “educational and other charitable institutions,” the Irish Catholics were also “too often regarded with the secret feeling of being aliens and intruders.”¹⁴ Moreover, Ullathorne noted, Irish laborers were willing “when well urged” to help pay for new churches, but were less generous when it came to the schools, though they would “not accept of education except from the Catholic Church.”¹⁵

Ullathorne insisted that Catholic children needed more than “mere rudimental education” lest the “Catholic poor [be left] behind in the race.” The bishop believed that “the great body of the Catholics in this country” should be put “on an equal footing with their neighbors.” He tried to persuade his brother bishops that it was a “sacred duty, as their spiritual fathers and their only friends” to “rescue them from those gloomy depths of poverty which expose them to so many sufferings and perils.”¹⁶ Ullathorne believed that urban poverty served as a breeding ground of spiritual ills.

In a chapter on school attendance, he roundly critiqued manufacturers and the social consequences of industrialization. He condemned the “sacrifice of childhood” to commerce and castigated the commercial class:

The non-labouring classes are full of philanthropy, but as to that Christian charity which looks to souls, it is a virtue almost unknown . . . The employers are often the greatest advocates of educating the poor . . . they

¹³ Ullathorne, *Notes*, 9.

¹⁴ Ullathorne, *Notes*, 9.

¹⁵ Ullathorne, *Notes*, 9, 10.

¹⁶ Ullathorne, *Notes*, 11.

give their so many pounds a year to forward the sacred cause: and then, with the other hand, they give their shillings to keep mere infants from school.¹⁷

Ullathorne attributed this hypocrisy to love of money, and asked: “What else can be expected when the first principles of a people is the hastening to be rich?” This obsession, he argued, blinded men to the souls of the poor and created a version of charity that focused exclusively on the body. The bishop warned of the consequences of such a policy: “[W]oe to coming times! . . . These poor children will grow up into wild and ungodly men, and will pull down your high position and break your wealth to pieces in their raging strength.”¹⁸ Despite his predictions of class warfare, Ullathorne did not believe that the callousness of the manufacturers was the heart of the problem.

The main reason that school attendance was low, Ullathorne argued, was that the poor had “no home, no household, and, consequently no management.”¹⁹ They had no home because they had come “through force of circumstances, to be a migratory race, and especially the poor Irish.” While these families did not seem to understand the importance of school, “not unfrequently [*sic*]” he noted, “the detention of the children from school is a sort of necessity. The mother has gone out to work, or is sick, and the child must stay to attend to the house, or nurse the baby. The father is at work a mile or two away, and his dinner must be carried.”²⁰ Ullathorne contrasted this situation with a past in which “if the children could not read, the mother trained them up as Christians,

¹⁷ Ullathorne, *Notes*, 52.

¹⁸ Ullathorne, *Notes*, 52.

¹⁹ Ullathorne, *Notes*, 48.

²⁰ Ullathorne, *Notes*, 50.

taught them their prayers, their creed and their duties, and the pastor completed what the parents began.” This familial education had been lost when working men had “ceased to have a home.”²¹ As evidence, he noted that in Birmingham “one in three . . . of the Catholic poor change their place of living within a few months.”²²

Thus, in the matter of the education of small Catholic children, Ullathorne insisted that the realities of urban poverty must frame the relationship between parents and their bishop. While it was “quite true” that “the providing of education is the duty of the family,” Ullathorne asked who could say “that; in these days, the families of the poor can perform that duty; or are even disposed to do it?” The Church, therefore, needed to step in “with her charity to enable the family to accomplish that obligation.”²³ In particular, he argued, the Church should materially aid parents in fulfilling their duty to educate their children and help them claim their right to have their children educated according to their consciences.

The case for caution, however, remained. Ullathorne insisted that the question of accepting aid, “[t]urn the subject as we will, . . . comes up as much an ecclesiastical as an educational question, and bears upon the Church as well as the school.”²⁴ Despite the fairness of the government thus far, he argued, “we cannot but recollect that the Protestant Government of this country is the sworn antagonist of the Catholic faith, and has hitherto been faithful to its oath.” Moreover, Ullathorne was skeptical of any

²¹ Ullathorne, *Notes*, 52.

²² Ullathorne, *Notes*, 53.

²³ Ullathorne, *Notes*, 11.

²⁴ Ullathorne, *Notes*, 7.

entanglement of Church and state. He argued that “all past relations of aid and influence between non-Catholic governments and Catholics [had] been attended in the long run with troubles and the diminution of Catholic liberty.”²⁵ Accordingly, he urged vigilance over the terms of accepting any state aid and argued that some schools should remain entirely independent of the state.

The fear Ullathorne expressed about state control of Catholic schools would remain a significant concern for at least some Catholics for decades, especially during waves of increased anti-Catholicism. Nonetheless, the social pressures that led to state funding and state control only increased in the following decades. Catholic attempts to balance these issues created internal controversy, most notably in debates over compulsory education laws in the early 1890s.

2.3 The Politician

Zachariah Montgomery, who would eventually become a well-known campaigner against public (“anti-parental”) education, was another Catholic deeply suspicious of the state.²⁶ Born in 1825 in a “log house” on a farm in Kentucky, a major hub of early

²⁵ Ullathorne, *Notes*, 6. Ullathorne was not only skeptical of dealings with officially Protestant governments. He followed the above statement with a note that, “a very wide application may be given to the term—non-Catholic state.”

²⁶ There is not much in the way of a historiography of Zachariah Montgomery. John Joseph Shanahan, F.S.C. wrote a master’s thesis on Montgomery in 1955 that primarily draws attention to the limited-government character of Montgomery’s thought and political action and barely touches on Montgomery’s religious background. John Joseph Shanahan, “Zachariah Montgomery: Agitator for State and Individual Rights” (master’s thesis, University of California, Berkeley, 1955). Montgomery also makes appearances in histories of his aeronautics-pioneer son, John Joseph Montgomery, who built and controlled a heavier-than-air machine twenty years before the Wright brothers. See Craig Harwood and Gary Fogel, *Quest for Flight: John J. Montgomery and the Dawn of Aviation in the West* (Norman: University of Oklahoma Press, 2012), and Arthur Spearman, *John Joseph Montgomery, 1858–1911: Father of Basic Aviation* (Santa Clara: University of Santa Clara Press, 1967). Some of Montgomery’s political work is

American Catholicism, he was the fifth of eleven children. His parents were Maryland Catholics who had moved west, and he claimed that both of his grandfathers had fought in the American Revolution.²⁷ His extended family formed an impressive Catholic clan: three of his father's first cousins were Dominican priests; one of his mother's stepbrothers was a priest; a great-aunt was a Sister of Loretto; and a great-uncle, Zachariah Riney, ended his life among the Trappist monks of Gethsemane Abbey. Montgomery began college at St. Mary's College in Lebanon, Kentucky, but Archbishop Hughes recruited several of his Jesuit professors to join St. John's College (later Fordham). Montgomery transferred to and graduated, in 1847, from St. Joseph's College in Bardstown. Unsurprisingly, Montgomery saw himself as embodying what it meant to be both Catholic and American.

After studying law for a year, he spent a year teaching school in southern Indiana. Unlike the urban charity school/public school model to which Hughes had objected in New York City, the rural school in which Montgomery taught would have been one in

recounted in Oscar Tully Shuck, ed., *History of the Bench and Bar in California* (Clark, NJ: The Lawbook Exchange, Ltd., 1901), 537-538. He is mentioned in R. A. Burchell, *The San Francisco Irish: 1848-1880* (Berkeley: University of California Press, 1980). His biography is a part of many late-nineteenth- and early twentieth-century histories of California or counties therein. Montgomery is also briefly noted in histories of education politics, such as Tracy Steffes, *School, Society, and State: A New Education to Govern Modern America* (Chicago: University of Chicago Press, 2012). Steffes cites his 1878 self-published *The Poison Fountain: or Anti-Parental Education* that went through at least four incarnations. Mark Hurley's *Church-State Relationships in Education in California* details Montgomery's 1861 bill in the California Assembly. Mark J. Hurley, *Church-State Relationships in Education in California* (Catholic University of America, 1949). In short, Montgomery was enough of a figure to pop up for obligatory mention in more than a few places, but there has only been one attempt to deal with him on any large scale, and that was never published. Montgomery's given name was Zachariah, but he was also known, and occasionally published as, either Zachary or Zach.

²⁷ Zach. Montgomery, "A few notes on the family name and history of Zach Montgomery, written down at the earnest request of a beloved daughter," (apparently transcribed by George Montgomery), Fruitland, CA, 1884, 4, George Montgomery papers, J.J. Montgomery Collection, Box 4, Folder 2, University of Santa Clara Special Collections.

which parents exercised considerable influence. In rural schools, parents provided the textbooks that their children used and had a substantial say in who was hired to teach, what subjects children were taught, and how long school was in session. If the teacher boarded with families, parents could also monitor the teacher's personal life.²⁸ While common-school reformers began to push for more centralized control as early as the 1840s, localism provided a strong counter-current at least through the 1860s, especially in frontier states. Montgomery's experience in such a system likely influenced his political positions.

In 1850 Montgomery moved to California, where, after a tumultuous few years, he entered politics. He initially set to work as a lawyer and defended the lead agitator in the "Squatter War" against John Sutter. He then proceeded to fail at gold mining twice, farming once.²⁹ In 1854 he wisely returned to lawyering. Between 1854 and 1857, Montgomery married, had a child, was widowed, and married again. With his second wife, Eleanor "Ellen" Evoy, he had eight more children, six of whom survived their parents. He changed party allegiance in 1854, leaving the disintegrating Whigs to join the Democrats in response to the rise of the Know-Nothings (the American Party), a nativist anti-Catholic party that flourished spectacularly between 1854 and 1856. In 1856, he became district attorney of Sutter County.

²⁸ Kaestle, *Pillars of the Republic*, 22, 158.

²⁹ Montgomery defended Charles Robinson, an advocate of "squatter sovereignty." Robinson was elected to the California legislature while still being held in jail. Later he was illegally elected governor of Kansas in 1856 under the Topeka Constitution and then re-elected and made the first governor under the Wyandotte Constitution in 1859.

Montgomery's political star was rising. In 1860 the Breckinridge Democrats sent him as a delegate to the state convention and nominated him for the state legislature. He was elected, served on the Assembly's Judiciary and Indian Affairs Committees, and quickly became a leading spokesman for the Democratic Party in California. Montgomery defended secession, arguing in January of 1861 that, "as Californians we are willing to stand by the whole Union, hazarding if necessary, our lives and our fortunes for defense; but we are not prepared to pledge our allegiance to either a Northern or a Southern fragment of a dismembered confederacy."³⁰ Montgomery also quickly immersed himself in education politics, and these two causes occupied him throughout the Civil War. In both, he fought against what he believed to be over-extended government power and saw himself as a defender of the tradition of Thomas Jefferson.

Two days before the Battle of Fort Sumter began, Montgomery urged the State Assembly to amend the School Law Act of 1855. The state was just over a decade old, and the school law had already changed several times.

During the early 1850s, the state tacked back and forth on providing funds to religious schools. Initially, most elementary education in the state was denominational, and most of the schools in Southern California were Catholic. In San Francisco, meanwhile, one of the best-known "non-sectarian" schools was called the "Public School in The Baptist Church."³¹ San Francisco elected the Rev. Thomas Nevins of the American Tract Society, a non-denominational evangelical organization based in New York City that disseminated religious tracts, as the first Superintendent of Schools in

³⁰ *Record Union*, January 21, 1861, cited in Shanahan, "Zachariah Montgomery," 63.

³¹ Hurley, *Church-State Relationships*, 1, xvii.

1851. The city also passed an ordinance permitting public money to support both public and denominational, including Catholic, schools.³² San Francisco was an unusual American city in that Protestants were a minority of its population. Catholics formed a large plurality and therefore suffered comparatively little ethnoreligious discrimination.³³ The city also housed a substantial non-Christian population, including Jews and Chinese immigrants.³⁴ In 1852, however, the state legislature prohibited the transfer of school funds to denominational schools. It then changed its mind in 1853 because Southern California still lacked public schools. Accordingly, through 1854, Catholics in San Francisco continued to operate publicly funded “ward schools” that together enrolled some 930 students.³⁵ The city’s public schools enrolled 1,272. There were also several

³² Hurley, *Church-State Relationships*, 1; and Burchell, *San Francisco Irish*, 162.

³³ Robert Cherney argues that while San Francisco fairly consistently hosted peaceful interactions among its various European ethnic groups, the limits of toleration were clearest in the race line drawn to exclude the Chinese from mainstream public life. From the 1850s until 1885 the city banned Chinese children from the public schools, and it restricted them to segregated schools in Chinatown between 1885 and World War I. In contrast to these dynamics surrounding “race,” Cherney points to a lack of significant ethnoreligious tension over issues such as temperance and vice-reducing measures. The city voted against them and, unlike anywhere else in the country, Catholics were more likely to support such restrictions than their wealthier Protestant neighbors. Indeed, as the early history of the city suggests, and unlike any major city on the east coast, Catholics and Jews faced few barriers to entry into mainstream public life. Robert Cherney, “Patterns of Toleration and Discrimination in San Francisco: The Civil War to World War I,” *California History* 73, no. 2 (1994): 139–40, 136–7.

³⁴ Joshua Paddison argues that “compared to the Northeast, anti-Catholicism remained relatively weak in California during the 1850s as chaotic social conditions encouraged Protestants to embrace Catholics as co-civilizers of an untamed land.” In contrast, Paddison argues, the “heathen” Chinese and Indian populations of California were excluded from “citizenship” until or unless they adopted Christianity. Joshua Paddison, *American Heathens: Religion, Race, and Reconstruction in California* (Berkeley and San Marino: University of California Press and the Huntington Library, 2012), 79, 7.

³⁵ Burchell, *San Francisco Irish*, 162.

Protestant schools.³⁶ In 1855 a Know-Nothing-influenced legislature repealed the repeal and again prohibited public funding of denominational schools.³⁷

In response, many of, though not all, the Protestant schools merged with the public schools. The Catholic Archbishop Joseph Sadoc Alemany, a Spanish Dominican who had spent the 1840s as a missionary in the upper South, wanted to follow suit. He recruited teaching sisters but urged them to accept a situation in which they could not teach religion but could continue to teach secular subjects and be paid by the city. The sisters refused and withdrew from the “ward schools” to establish schools independent of the state.³⁸ Catholics continued to build schools for their rapidly growing population, holding out hope that the law would change yet again.³⁹

Montgomery was one of those hopeful Catholics, but from his point of view, the issue was not Catholic schools *per se*, but the rights of parents. His proposed revision of the law, Assembly Bill 348, provided “that any school numbering thirty or more pupils established or adopted by the parents of such pupils, [should] have the right to apply . . . to the State Superintendent of Public Instruction, to be enrolled among the public schools, under the appellation of ‘free public schools’ and to receive a *pro rata* share of the public school funds.” These schools could teach religion if “such be the will of the said parents

³⁶ These included a Methodist school for African-Americans, a Presbyterian and Congregationalist school for Chinese students, and two Episcopalian parish schools. Hurley, *Church-State Relationships*, 5.

³⁷ Burchell, *San Francisco Irish*, 162–3; Hurley, *Church-State Relationships*, 4. Paddison argues that the California Know-Nothings, who won the governorship and both houses of the legislature in 1855, were “markedly less anti-Catholic than the national party.” Nonetheless, allowing money to Catholic schools was still out of the question. Paddison, *American Heathens*, 79.

³⁸ Hurley, *Church-State Relationships*, 16.

³⁹ Hurley, *Church-State Relationships*, 16.

or guardians” as long as it did not reduce the required five hours of “secular instruction.” Such schools would also be required to make allowances, on pain of losing the school’s funding for a year, for parents to withdraw their children from the religious instruction. The schools would be subject to state inspection. The parents who began the school would vote for a Board of Trustees to supervise hiring and other administrative tasks.⁴⁰ In short, Montgomery sought a school system based largely on the rural model of which he had been part.

A petition with 14,000 signatures supported Montgomery’s proposed amendment to the school law. Signatories included the Catholic Alemany, the Episcopalian Bishop of California, William Kip, Rabbis Vidaver and Messing of San Francisco, and thirty-four Protestant ministers.⁴¹ The Assembly Education Committee nonetheless refused to recommend the bill, declaring it “against the spirit of our institutions which recognizes no sect or religion but simply guarantees to all citizens the free exercise of their religious faiths We ought not to do anything to promote religious sectarianism of any kind, either directly or indirectly.”⁴² Not surprisingly, much of the press portrayed the proposed law as a scheme by Catholics, especially priests, to grab school funds.⁴³

Montgomery pointedly eschewed a Catholic/Protestant dichotomy. His April 1861 speech agreed that the state should stay out of religious questions and insisted that

⁴⁰ Zachariah Montgomery, *Common Schools. Speech of Hon. Z. Montgomery, of Sutter County, Touching the Necessity of Amending the School Law of this State, Delivered in the Assembly of California, at the Twelfth Session of the Legislature, Wednesday, April 10th, 1861* (Sacramento, 1861), 3.

⁴¹ Hurley, *Church-State Relationships*, 1; Burchell, *San Francisco Irish*, 29.

⁴² *Record Union*, March 28, 1861, cited in Shanahan, “Zachariah Montgomery,” 67.

⁴³ Shanahan, “Zachariah Montgomery,” 68.

the government “should not interfere with the religious sentiments of any child, whether he be the child of a Christian, Pagan, or Jew.”⁴⁴ Instead, he spoke of “Christians, Jews, and Pagans,” “Methodists North and Methodists South,” “Baptists and Presbyterians,” and “Protestants, Catholics, Jews, or Mohammedans.”⁴⁵ Seeing American religion as far broader than Protestant Christianity and keenly aware of the divisions within Protestantism, Montgomery did not think that non-denominational (that is, non-denominational Protestant defining itself as non-denominationally Christian) education could respect the rights of all parents.

Non-denominational education was insufficient for at least two other reasons. One was that religion was not the only topic on which schools could cross the line. Montgomery also strenuously objected to the teaching of “moral science” that condemned slavery and advocated abolitionism.⁴⁶ Montgomery additionally argued that the school system in itself tended to diminish the influence of parents. It did this partially

⁴⁴ Montgomery, *Common Schools*, 4.

⁴⁵ Montgomery, *Common Schools*, 7.

⁴⁶ He did not defend slavery in his speech before the Assembly, but he did argue that teaching abolitionism had “split asunder the greatest, the grandest, and the most powerful, republic that God has ever permitted to exist upon the face of the earth.” Montgomery, *Common Schools*, 6. Neither Montgomery nor his father ever owned slaves, but a descendant asserted that that was due to financial constraints rather than principle. Montgomery supported the Dred Scott decision. Letter from Mark Montgomery to Joe Mazzini, May 1985, Zachariah Montgomery Papers, J.J. Montgomery Collection, Box 4, Folder 11, University of Santa Clara Special Collections. The slavery issue and the religious one were intertwined. Montgomery pointed out that the Methodist Church had “split asunder,” and argued that it now “formed two churches of very respectable numbers, one holding that slavery is a crime, and the other that it is not.” He insisted that to force a Southern Methodist to send his child to a school promoting abolitionism would be to shake “the very corner stones of the temple of both civil, and religious, liberty.” Montgomery, *Common Schools*, 7, 7, 9. Mark Noll argues that “the religious strife of the Civil War occurred between proponents of alternative visions of the same ideology made up of evangelical religion, republican political principles, and commonsense moral reasoning.” Mark Noll, *America’s God: From Jonathan Edwards to Abraham Lincoln* (New York: Oxford University Press, 2002), 368. As a Catholic, Montgomery was not a full participant in this ideology. He was, to some degree, a spectator. However, unlike many Catholics, Montgomery did not take the further splintering of Protestant denominations as an opportunity to extol the superiority of his Church. Instead, he mostly made common cause with pro-slavery Southern Protestants.

by making parents feel less responsibility than they should, and partially because the teacher with “his little band of children around him, occupied the position of absolute monarch, so far as their minds were concerned.”⁴⁷ His scheme, he insisted, was better because it gave parents more control in hiring teachers. Montgomery's bill lost in the Assembly.

He had no intention of letting the issue go. In 1863, the California Legislature mandated an “attorneys’ test oath” which included promises to “support the constitution of the United States and the constitution of the State of California” and to “bear true faith and allegiance to the Government of the United States.”⁴⁸ Montgomery refused. He held that swearing support for the Constitution was incompatible with swearing support for the Government because he believed that the United States government was acting contrary to the Constitution. Prohibited from practicing law, he began printing a weekly newspaper, *The Occidental*, in 1864. The paper was published in San Francisco and distributed throughout the state. In its pages, Montgomery made two arguments over and over again: the war was unconstitutional, and education needed reform to ensure parental rights.

On the first page of the first issue of *The Occidental*, Montgomery appealed to “the voice of Nature and Revelation” to prove that “to the parent belongs the right and the

⁴⁷ Montgomery, *Common Schools*, 7.

⁴⁸ Shanahan, “Zachariah Montgomery,” 91. The California Act of April 25, 1863, required attorneys practicing in the state to support the Constitutions of the United States and California “and to bear true allegiance to the Government of the United States, any ordinance, resolution, or law of any other state to the contrary notwithstanding.” It also required that, since the passage of the act, the attorney not have “knowingly aided, encouraged, or abetted, and that he would not in future aid, encourage, or abet, the Confederate States, or any of them.” David S Garland and Lucius P. McGehee, eds., *The American and English Encyclopedia of Law*, 2nd ed. (Northport, NY: Edward Thompson Co., 1897), 3:290.

duty of educating his own children” and that the parent “alone can justly delegate them to another.” The right to educate one’s child, he insisted, was “an inalienable right” that a parent could “no more divest himself of” than he could “divest himself of his personal identity.”⁴⁹

Montgomery’s account quickly laid out most of the strands of the western tradition of natural law and parental rights. For instance, he wrote, “The Almighty has imposed upon every living creature the duty of protecting, nurturing, and training up its young.”⁵⁰ Here the lawyer invoked one strand of natural law theory, which emphasized laws common to all living things. Justinian’s *Institutes* defined natural law as “what nature has taught all animals . . . From it descends the joining of male and female, which we call marriage, and thence the procreation and education of children.”⁵¹ Medieval canonists distinguished between different types of natural law and argued that the natural law governing human marriage was above animal coupling. Montgomery drew on that distinction too, claiming that, “as far as man surpasses the mere brute in the scale of creation, just so far does the obligation which rests upon him of supporting and protecting his children surpass in degree the corresponding obligation which is imposed upon the beasts of the field.”⁵²

⁴⁹ Zachariah Montgomery, “Duty of Parents in the Matter of Education,” *The Occidental*, Saturday, October 29, 1864.

⁵⁰ Montgomery, “Duty of Parents.”

⁵¹ Justinian, *Institutes*, 1.2. pr. Cited in and translated by Charles J. Reid Jr., *Power over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law* (Grand Rapids: William B. Eerdmans Publishing Co., 2004), 244n66.

⁵² Montgomery, “Duty of Parents.”

After his rush through natural law, Montgomery turned to the Bible as the voice of Revelation. Despite an otherwise ecumenical approach, his citations were from the Catholic Douay-Rheims version:

“Children, hear the judgments of your father, and so do that you may be saved.”—Ecclesiasticus chap. III, verse 2.

The command does not read “Children, hear ye the Judgments of the President,” nor “the Judgments of the Legislature,” nor even “the Judgments of the San Francisco Board of Education,” but the injunction is *“Children, hear the Judgments of your father.”*⁵³

Regardless, Montgomery does seem to have been sincere in his protestations that his concern was not Catholic schools *per se* but parental rights.⁵⁴

Montgomery was unabashedly Catholic, and his newspaper reflected not only his Catholicism but also that of many of his readers. The advertisements, for instance, were heavily weighted towards Catholic schools and Catholic booksellers. However, when he responded to an article in the *Alta*, a San Francisco Republican newspaper, which argued that students should read the Bible in the public schools, his response was not the standard Catholic objection to the use of the King James Bible.⁵⁵ Instead, he objected that it was “a violation of the liberty of conscience to compel a citizen, against his will, to embrace Christianity.” Most of the article defended the rights of Jewish parents. He

⁵³ Montgomery, “Duty of Parents.”

⁵⁴ Oscar Tully wrote in 1900, “He [Montgomery] was an aggressive man, and made many enemies, but they, those who had knowledge of him, always credited him with sincerity.” He reported that “Mr. George K. Fitch, the veteran Republican journalist of San Francisco,” who had “known [Montgomery] since early days” and done battle with him over the schools, had said, “But Zach is honest.” Tully, “Zachary Montgomery” in *History of the Bench and Bar*, 537.

⁵⁵ His only allusion to that issue was to state that the San Francisco Board of Education was no better qualified to judge “translation from an ancient Hebrew manuscript” than “would be a similar number of newly imported babboons [*sic*] from the coast of Africa.” Zachariah Montgomery, “The Bible in the Common Schools,” *The Occidental*, November 26, 1864.

offered a hypothetical school board of “Jewish citizens” and insisted that those “calling themselves Christians” should “go and do unto Jews as you would have Jews do unto you.”⁵⁶ This rhetorical tactic perhaps anticipated possible accusations of sectarianism. Montgomery could not, for instance, have proposed a hypothetical Catholic school board enforcing the Douay-Rheims without undermining himself. He had, however, a few weeks earlier, published a resolution by a San Francisco Jewish association calling for the establishment of a “public school for Hebrew children, for both rich and poor, where they shall be taught Hebrew, English, and German.”⁵⁷

Montgomery linked his concern for education to his position on the Civil War. His constant attacks on Lincoln earned him a reputation for disloyalty in the other local newspapers. When Lincoln was assassinated in 1865, rioters sacked the offices of *The Occidental*, and Montgomery went into hiding for a month.⁵⁸ A Republican paper covered the event and sarcastically included the following: “Postponed on Account of

⁵⁶ Montgomery, “The Bible in the Common Schools,” *The Occidental*, November 26, 1864.

⁵⁷ Zachariah Montgomery, “Call for Hebrew Schools,” *The Occidental*, November 12, 1864.

⁵⁸ Shanahan, “Zachariah Montgomery,” 92. A Republican paper, *The Flag's Evening Dispatch*, published a notice on April 16, 1865, that “The Friends of Abraham Lincoln should compel the Copperhead editors, whose dens were broken up yesterday, to leave the city and State. Nothing but evil and disturbance can result from their presence hereafter. Let them find a new abode, at least until they shall have learned to respect the American Government and not to insult its citizens.” The paper went on to give a rather triumphant account of the riot. “Next to the office of Zach Montgomery's *Occidental*, which was speedily poured out at the window and ‘burned with fire inextinguishable.’ They met Montgomery on the stairs, who commenced gesticulating, and haranguing and threatening; but the ‘Grand lecturer on War and Education’ had the discretion to take himself off.” However, a handwritten note included on a print of this article in the archive at Santa Clara reads, “Also, Zach's rag was so obscure that at first the mini-mob—hardly up to 1850's Vigilance Committee standards—didn't know where it was! And when they got there the even more obscure editor/publisher was on the way downstairs. And when they inquired of this stranger where might the *Occidental* be found he pointed up, and continued down & out & away to Oakland & points unknown—for several months. *Flag's Evening Dispatch* tells a lively story, but no way can I accept that even a guy as nutty as Zach Montgomery would have dared confront that mob” J. J. Montgomery Collection, Box 4, Folder 2, University of Santa Clara Special Collections.

the Weather. —Wonder when old, wrinkled, Zack Montgomery will make another tour through the State, lecturing on Education, Democracy, State Rights, and the Bible?”⁵⁹ Montgomery re-launched the paper a year later under the title *The Occidental and Vanguard*. It carried the same message. On its first page, Montgomery framed parental rights in terms of types of government. He began with the right of the individual to govern himself. He then argued that the “*family* society” of which “the father and mother are the legitimate law givers” had the right to function “without interference on the part of city ordinance, State legislation or Federal enactments.” The next level, clearly, was that each state and local government should have autonomy “in making those rules and regulations designed solely for its domestic policy and government.” Thus, New England, in Montgomery’s opinion, had “virtually destroyed the family government” with its common schools. Moreover, breaking down “the barriers that divided State from State,” New England had “let loose the dogs of war and baptized a continent in blood.”⁶⁰

Montgomery presented a clear case for parental rights and proposed political means to secure those rights. The basic claim for parental rights later became common among English-speaking Catholics, but Montgomery remained a fringe, if rather well known, figure. However, many English-speaking Catholics would also attempt the sort of ecumenism Montgomery practiced on the school question. Although Catholic schools existed in part as a way of preserving Catholic communities and Catholic distinctiveness,

⁵⁹ *The Flag’s Evening Dispatch*, April 16, 1865.

⁶⁰ Zachariah Montgomery, “Thoughts on Government—An Introduction to the School Question,” *The Occidental and Vanguard*, April 15, 1866.

any sort of political progress required a broader appeal. Because Catholics believed that their appeal to parental rights transcended creedal differences, they attempted to build bridges to their Protestant neighbors. As with Montgomery, however, these efforts would have limited success.

Montgomery's story also illustrates something about the roles of the clergy and the laity in the history of parental education debates. Over his lifetime, Montgomery received a great deal of support from Catholic bishops. They appreciated his insistence in the cause of "parental education" and several appear to have agreed with his limited-government philosophy. Moreover, it was good to have a parent as spokesman for parental rights. For all of that, Montgomery was too embedded in partisan politics, and too fiery, to be entirely respectable. As the argument for parental rights became a more mainstream Catholic argument, it became more and more, though never exclusively, a clerical argument. On one hand, this shift allowed the parental rights argument to be far more widely disseminated than it otherwise would have been. In England, the hierarchy's leadership was crucial. On the other hand, the prominence of the clerical voice, and especially that of bishops, did little to help Catholics with their credibility to the broader public, especially in the United States.

2.4 The Novelist

Montgomery's was not the only lay voice calling for parental rights. In July 1865, in its fourth issue, Isaac Hecker's magazine the *Catholic World* reviewed Mary L. Meany's *The Confessors of Connaught: Or, The Tenants of a Lord Bishop: A Tale of Our Times*. The novel had been published in Philadelphia and New York the year before. In it,

Meany explicitly defended parental rights and the rights of conscience in relation to schools. While this particular aspect of her story was unusual for the time, Meany probably came closer to being a typical American Catholic than Montgomery did.

The Catholic World and Meany's novel shared in a massive effort to create an English-language Catholic literature. The *Catholic Encyclopedia* lamented in 1907 that it "would be fatuous to hope to call into immediate existence a Catholic English literature adequate to supply" the needs of the "English-speaking peoples" among whom "the Church [had] grown both extensively and intensively."⁶¹ The hope was to translate Church teaching into forms of reading that might reach the increasingly large and literate English-speaking Catholic population. This task took urgency from a fear that newly literate Catholics were assimilating Anglo-Protestant culture. In 1863 Henry Manning, soon to be archbishop of Westminster, wrote that an English-language "Catholic literature is yet to be formed; and its non-existence entails on our youth disadvantages, the extent and perilous character of which it is difficult to estimate."⁶² Translating existing European Catholic texts would not meet the need. Hecker did print translations from French, German, and Italian journals in *The Catholic World*. However, many of those were scholarly works. Hecker wrote in a glowing review of a German biography of Saint Elizabeth of Hungary that translating it made little sense because it was "thoroughly German, and exclusively adapted to the circumstances and difficulties of the Catholics of Germany. What our Catholic English reading public needs, is that some of our writers

⁶¹ "Original Preface," in *The Catholic Encyclopedia* (New York: Robert Appleton Company, 1907).

⁶² Henry Edward Manning, "The Work and the Wants of the Catholic Church in England," in *Miscellanies*, First American Edition (New York: The Catholic Publication Society, 1877), 27–71, 64.

should take a lesson from . . . this writer, and do for them what he is doing with so much zeal for the good of his countrymen.”⁶³ Meany’s novel, though about Ireland, fit into a distinctly American Catholic niche, and her attitude towards the school question illustrated an American acceptance of religious pluralism.

While Montgomery, Ullathorne, and Meany all defended parental rights, they did not agree on the threat to those rights. Like Ullathorne, Meany emphasized Catholic poverty and cast the clergy as the ally of Catholic parents. Ullathorne assumed conflict between the Protestant state and the Catholic Church, which happened to include parents. Montgomery identified a conflict between any over-reaching state and any parental belief. Meany, however, saw conflict between imperial Protestantism and a moderate Catholic nationalism that could defend parental rights. She did not argue that only this nationalism could defend parental rights, but she showed more comfort with the idea of established *national* religion than did either Montgomery or Ullathorne. Meany did not suggest that the United States would benefit from an established Church, but she did assume one in the independent Ireland she promoted.

The Confessors of Connaught was a transparently novelized account of “the evictions in 1860, in the parish of Partry, Ireland, of a number of tenants of the Protestant bishop of Tuam, who had refused to send their children to proselytizing schools.” The “well-known missionary, Father Lavelle, [was] a prominent figure in the book, slightly disguised under the name of Father Dillon.”⁶⁴ Meany’s novel argued that Catholics and

⁶³ Isaac Hecker, review of *Der Heilige Elizabeth. Ein Buch für Christen*, by Alben Stolz, *Catholic World* 1, no. 6 (1865): 859.

⁶⁴ Review of *The Confessors of Connaught; Or, The Tenants of a Lord Bishop. A Tale of Our Times*, by M. L. Meany, *Catholic World* 1, no. 4 (1865): 574–575.

Protestants could live together if overweening *imperial* Protestantism did not destroy that common life. Her novel illustrates many commonly held Catholic assumptions about and attitudes toward Protestantism. These assumptions and attitudes formed the basis of Catholic rhetoric in the public square.

Meany's idealized version of the events in Partry revealed more about the American Catholic experience than about that of their Irish co-religionists. Meany's Fr. Dillon was far from identical with Fr. Patrick Lavelle. Dillon was quite learned, like Lavelle, a professor of philosophy and Irish Language at the Irish College in Paris. The fictional priest, however, did not share Lavelle's temperament.⁶⁵ Fr. Dillon, while clearly an Irish nationalist, is extremely mild-mannered, a gentleman who stands by his flock and gently advocates for them. Near the end of the novel, he counsels that the evictions "are but part of a system, which must, ere long, be overthrown. Until that day comes, our duty is to endure; patience and forbearance must be our motto."⁶⁶ Meany used Dillon's forbearance to argue for the social utility of clerical authority. She mocked British Protestant "dread" of "the influence of 'the priest;'" [over whom] they grow terribly in earnest when depicting the enormous power thus wielded."⁶⁷ At the end of the day, she argued, "these champions of *freedom*" were "indebted to that bugbear" for shielding them from the natural consequences of their injustices.⁶⁸ Fr. Lavelle, however, was placed in

⁶⁵ Tomas Ó Flaich, "'The Patriot Priest of Partry' Patrick Lavelle: 1825–1886," *Journal of the Galway Archaeological and Historical Society* 35 (1976): 129-148, 130.

⁶⁶ Mary L. Meany, *The Confessors of Connaught Or, The Tenants of a Lord Bishop. A Tale of Our Times* (Philadelphia: Peter F. Cunningham, 1865), 274.

⁶⁷ Meany, *The Confessors of Connaught*, 276.

⁶⁸ Meany, *The Confessors of Connaught*, 276. Emphasis in original.

Partry precisely because of his “fighting qualities.” He was even fined for assault in 1863.⁶⁹ Archbishop John MacHale wanted a priest willing and able to take on the landlord: the (Protestant) Church of Ireland Bishop of Tuam, Killala, and Anchony, Thomas, 2nd Baron Plunket.⁷⁰

The fight was over schooling. Plunket and his sister Catherine had built a number of Irish Church mission schools on his estate, Tourmakeady, and in the surrounding area. There was a single Catholic school run by the Brothers of the Third Order of St. Francis. According to both Lavelle and his predecessor, Fr. Peter Ward, Plunket had spent the mid-1850s coercing Catholic parents to send their children to his schools, and resistance had resulted in evictions as early as 1854.⁷¹ Accordingly, when Lavelle arrived in 1858, he assumed that Catholics enrolled in Plunket’s schools only because coerced.⁷² He took action. He forbade Catholic children to attend Plunket’s schools, and he got many to enroll in the Franciscan school. Meanwhile, he wrote several letters to Plunket pleading with him not to retaliate against the parents.⁷³

The history of the evictions is complex. In 1859 the bishop threatened to evict all parents refusing to send their children to his schools. He issued sixty ejection notices. A former curate of Partry, Fr. Peter Conway, intervened and helped broker an agreement

⁶⁹ Ó Flaich, “The Patriot Priest,” 135.

⁷⁰ MacHale was to be Lavelle’s advocate and protector in the following years as Lavelle found himself in a long series of disputes with Archbishop Paul Cullen and Rome, most often for his ties to Fenianism. Pádraig G. Lane, “Lord Plunket and the Partry Mountains: A Case Study of 1850s Landlordism,” *Journal of the Galway Archaeological and Historical Society* 46 (1994): 156–172.

⁷¹ Pádraig Lane argues that the 1854 evictions “would appear to have been purely the legal clearance of Chancery Court tenants and squatters.” Lane, “Lord Plunket,” 166.

⁷² Lane, “Lord Plunket,” 159.

⁷³ Lane, “Lord Plunket,” 159; Flaich, “The Patriot Priest,” 136.

that allowed most of those families to stay.⁷⁴ The peace did not last. A few months later Plunket issued a series of directives to tenants on farming practices and other property management issues. Violence erupted in 1859 and early 1860. Angry Catholic tenants destroyed three Protestant houses, and someone murdered one of Plunket's employees.⁷⁵ Through 1860, the fights between Plunket and his tenants (and Fr. Lavelle) were described, on both sides, as primarily agrarian.⁷⁶ For Lavelle, the fight in 1860 was as much about tenant rights as about rights of conscience. Plunket argued that his property rights allowed him to enforce a more efficient use of the land.⁷⁷ Regardless, the religious element was hard to untangle from the rest.

In November 1860 the matter came to a head. Plunket finally forced out fourteen of the sixty families originally evicted, “and their houses were leveled with the aid of a body of troops and 150 police.”⁷⁸ Not all of these families had children, and they received a variety of reasons for their evictions. Plunket's agent insisted “it has never been, nor will it ever be, Lord Plunket's intention to compel any parents, who conscientiously disapprove of this school, to send their children thither upon pain of evictions.” Rather, the bishop would not retain any “tenant who may assail, threaten, or ridicule, either the children who attend this school or the parents who send their children thither; nor will he

⁷⁴ Ó Flaich, “The Patriot Priest,” 136. An illustration of how small the English-speaking Catholic world was: news of the same Fr. Peter Conway's dealings with his own landlord appeared in Montgomery's *Occidental* on November 26, 1864.

⁷⁵ Lane, “Lord Plunket,” 160, 163.

⁷⁶ Lane, “Lord Plunket,” 162.

⁷⁷ Lane, “Lord Plunket,” 161.

⁷⁸ Ó Flaich, “The Patriot Priest,” 136.

sanction any persecution on the part of his tenants towards any persons whatsoever on account of their religious convictions.”⁷⁹ Plunket thus attempted to frame himself as the protector of religious liberty. Comparatively few were persuaded—even the London *Times* denounced him, and the Bishop of Orléans, Felix Dupanloup, gave a very well publicized sermon on the evictions. The case in Partry that came closest to the simplicity of Meany's account was the 1862 eviction of Stephen Quinn by Catherine Plunket for having removed stones from an old wall on her property to build a Catholic schoolhouse. Meany included this episode but wrote it as occurring in the spring of 1861, as a close sequel to the November 1860 evictions.

Meany's portrayal of the period before the 1860 evictions was a meditation on the possibility of religious peace. The American author believed that liberal Protestantism and resurgent Catholicism could get along. Though Meany's early chapters depicted bitter *memories* of the Famine years, they overwhelmingly portrayed religious calm, with the menacing landlord at a distance. Her Catholic characters were only mildly nationalist and only *spoke* ill of their neighbors who became Protestant. They were deeply religious, having benefited from retreats given by English Jesuits. The first Protestant characters—highly sympathetic—became beloved by the Catholics. They were the first in a three-part taxonomy of Protestants: the good or decent Protestants, apostates, and imperial Protestants.

⁷⁹ Cited in Lane, “Lord Plunket,” 160. From “Lord Plunket's Rules for the Tenantry of his Partry Estate, Jan. 1859” in S.P.O.I. / C.S.O., Reg. papers 7272/1861.

Meany aimed her distinctions between types of Protestants at an American Catholic audience. The novel made no attempt to charm possible Protestant readers. Meany's Catholic characters, for instance, frequently use "Bible-readers" as an epithet.

Nonetheless, the Protestant parson in the novel, Walter Gillman, is the archetypal good Protestant. He arrives, from England, with his wife Emily and his sister-in-law Clara, and is "devotedly attached to the religion which he believed to be the true one."⁸⁰ Meany introduced Gillman as a respectful spectator of Catholic worship and a gracious recipient of Irish Catholic hospitality. He feels appropriately guilty about the Famine and has a consistently rocky relationship with his ecclesiastical superiors. Fr. Dillon describes him as "an upright, conscientious, and honorable gentleman."⁸¹ Gillman and his family epitomized what nineteenth-century English-speaking Catholics hoped for in their Protestant neighbors.

Meany's good Protestants illustrated the sentiment expressed by Thomas William Allies, an Oxford Movement convert, in 1853: "Protestants may be better than their system; they often are . . . but of no Catholic could it ever be said that he is better than his system."⁸² Thus, while Gillman is one of the most virtuous men in the book, more virtuous than several of the Catholic characters, Meany made clear that his "system" erred. She described the Protestant church with "its only modern appendage being a bright weather-cock, (meet emblem of the Reformers' changeable creed), which, having

⁸⁰ Meany, *The Confessors of Connaught*, 25.

⁸¹ Meany, *The Confessors of Connaught*, 23.

⁸² Thomas William Allies, *A Life's Decision*, 2nd ed. (London: Burns & Oates, 1894), 313.

supplanted the time-honored symbol of Christianity, now glittered from the graceful, tapering spire.”⁸³

Meany believed that Catholics could share a peaceful common life with such Protestants, despite their confused creed. The Gillmans' religious school, for instance, models liberality. There, the “Bible was read, of course, but those children whose parents were unfortunately blind to the superior merits of King James’ version were at liberty to use their own, or to dispense with scripture tasks altogether.”⁸⁴ Both priest and parson instruct the children. Clara, the sister-in-law, reads her students Longfellow’s *Evangeline*. Lest the reader miss the delightful irony, a young Catholic lady gently pokes fun at Clara for introducing “its touching pictures of what the ‘Papists’ of Nova Scotia once suffered from this same Protestantism” that Clara is supposed to be inculcating.⁸⁵ Clara is undeterred, more impressed that her students appreciated good poetry than concerned that they might be encouraged in their native faith.

A playfully sarcastic tone marks Meany’s report of Protestantism, common in nineteenth-century English-speaking Catholics’ accounts of Protestantism. When no real harm resulted, Catholics found traditional anti-Catholicism or anti-papery funny. For Meany, moreover, a sense of humor was an essential ingredient for peace.

She insisted on retaining humor even when “bigotry” had very tangible results. Her portrayal of Catholic resistance, for instance, employed humor as a means of subversion. A minor character responds to coercion to send his children to the Protestant

⁸³ Meany, *The Confessors of Connaught*, 24.

⁸⁴ Meany, *The Confessors of Connaught*, 70.

⁸⁵ Meany, *The Confessors of Connaught*, 68.

school by enrolling his adult son. The son feigns stupidity, claiming his “right of private judgment.”⁸⁶ Meany also found humor in worldly defeat. When the last of her noble Catholics, Michael O’Loughlin, the fictionalized Stephen Quinn, is evicted, he first responds with anger and anguish. When he learns that his offense was the removal of some old stones, however, “the Irishman’s quick sense of the ludicrous and absurd overcoming his indignation, he suddenly broke forth into a hearty burst of laughter.”⁸⁷ Indeed, a “sense of the ludicrous and absurd” was, in Meany’s interpretation, a sign of virtue. Humor implied a grasp of reality and one’s place within it. It implied humility in the face of the mysteries of Providence.

Meany insisted that persecution was providential. This Providence worked at both the political and the personal level. When Fr. Dillon counsels forbearance, he suggests that “these very acts of tyranny, under which we are so restive, may be intended, in the order of Providence, to bring about the end for which we wait so longingly.”⁸⁸ The great moral crisis of the novel comes when O’Loughlin demands that his wife “never say that God has had any part in this act of tyranny. This trial, as you call it, comes not from Him; it is the work of a heartless fiend.” He soon repents his denial of Providence and thanks God for the opportunity to give up “house and land for the sake of the old Faith.”⁸⁹ The acceptance of Providence bears fruit. The last pages of the novel declare that Walter Gillman, and Clara and her new husband, inspired by the “faithful people [and] their

⁸⁶ Meany, *The Confessors of Connaught*, 205.

⁸⁷ Meany, *The Confessors of Connaught*, 279.

⁸⁸ Meany, *The Confessors of Connaught*, 274.

⁸⁹ Meany, *The Confessors of Connaught*, 266.

courageous abandonment of everything at the call of duty,” have become Catholics.⁹⁰

Early in the novel, Meany made clear that Fr. Dillon never actively attempts to convert the Gillmans.

In fact, Emily Gillman, the parson’s wife, remains devoted to the Church of England, convinced that her relatives have been “bewitched,” but without malice or anger towards her old Catholic neighbors. Those neighbors express their conviction that she too will convert, because “she had a good heart and the open hand for the poor, without asking their country or creed, and isn’t it to such the blessing is promised?”⁹¹ The narrator, however, leaves it ambiguous. While one would *hope* for Emily's conversion, the certain thing is that persecution does not diminish the Catholics' love for their good Protestant.

The one type of Protestant beyond goodwill was the former Catholic. A Catholic character explains her affection for the Protestant doctor saying, “So, he is [a Protestant] ma’am, but he’s not a *runagade* Catholic, that makes all the difference in the world.”⁹² Walter Gillman reports that Fr. Dillon “does not deem those who are Protestants by birth and education responsible for their erroneous faith.” He does, however, blame a man who “turned Protestant, not through conviction, but because he thought it more respectable and more likely to advance his interests.”⁹³ A young apostate, Robert, supplies the prime example. The narrator argues that “ambition, and pride, and vanity had all been enlisted

⁹⁰ Meany, *The Confessors of Connaught*, 317.

⁹¹ Meany, *The Confessors of Connaught*, 316, 318.

⁹² Meany, *The Confessors of Connaught*, 97.

⁹³ Meany, *The Confessors of Connaught*, 65.

as powerful auxiliaries to keep him steadfast in ‘the reformed faith.’”⁹⁴ In consequence, Robert refuses to fulfill his grandfather’s dying wish—to fetch the priest. Apostasy had rendered him “unnatural” and “unfilial.”⁹⁵ Gillman and his appalled family deride the reporting of the story in England, where it had become a cause célèbre, repeated by “evangelical agents and scripture readers and listened to by crowds of admiring Protestants.”⁹⁶ Gillman’s response to the situation leads Bishop Woolcut to fire Gillman, “on account of his liberal sentiments.”⁹⁷

No character in the novel becomes Protestant out of conviction. Men and women do profess Protestantism to obtain relief during the Famine, and here Meany largely cast the blame on the landlord and his agents. Nonetheless, these apostates are assumed to be damned if they died without repenting that they had “bartered their souls.”⁹⁸ Meany’s reckoning accorded with that of Paul Cullen, the Primate of Ireland, that when “any one denies the true religion, he destroys the beginning, the root, and the foundation of all justification, and we may say that he is irreparably lost.”⁹⁹ Invincible ignorance could evoke humor. Imperial Protestantism could raise righteous anger and hope in Providence. Apostasy, no matter the circumstances, was the darkest of tragedies. This horror of apostasy was, of course, one of the primary reasons why Catholics believed that they

⁹⁴ Meany, *The Confessors of Connaught*, 130.

⁹⁵ Meany, *The Confessors of Connaught*, 134.

⁹⁶ Meany, *The Confessors of Connaught*, 138.

⁹⁷ Meany, *The Confessors of Connaught*, 315.

⁹⁸ Meany, *The Confessors of Connaught*, 82.

⁹⁹ Paul Cullen, “Discourse at the General Meeting of the Catholic Association in Dublin, 29th January 1852,” in *The Pastoral Letters*, 1:172. This account of apostasy was part of a discussion of the increased number of “proselytising schools” in Ireland.

needed separate schools. Apostasy presented a double threat: hell for the individual and the disintegration of the Catholic community. Catholics were very much aware that more people left their faith than joined it. Catholic education was supposed to help counteract threats to faith such Protestantism proselytism in the schools, marrying a non-Catholic, the desire for social advantage, and materialism.

Persecution and the assault against parental rights began with the dismissal of the good Protestant, Gillman, and his replacement with the imperial Protestant. The new curate is “the invader,” the servant of empire who harassed the Catholics “with the bible in one pocket, and a receipt for any trifling arrears of rent in the other,” proffering bribes and threats.¹⁰⁰ His school reads the Bible, “without note or comment; taking occasion, now and then, to inculcate the vast superiority of the Saxon race over all others; and dilating on the wonderful glory and prosperity of Protestant England as the greatest nation on the face of the globe.”¹⁰¹ As the children are “gradually withdrawn almost wholly from parental guardianship” they are regaled with “wondrous tales of persecutions, in which naughty Papists always figure as the persecutors, and saintly Protestants as the glorious martyrs.”¹⁰² Perhaps the most interesting condemnation hurled at the offending curate is that he is “no decent Protestant at all!”¹⁰³ Decent Protestants existed, but they were those who were not part of the structure of British imperialism—or at least found the air of empire uncongenial.

¹⁰⁰ Meany, *The Confessors of Connaught*, 158, 143.

¹⁰¹ Meany, *The Confessors of Connaught*, 144.

¹⁰² Meany, *The Confessors of Connaught*, 145.

¹⁰³ Meany, *The Confessors of Connaught*, 163-164.

The landlord-bishop, the personification of imperial Protestantism, has no redeeming qualities in Meany's telling. Lord Woolcut, the "Right Reverend oppressor," however, comes under fire mostly in the voice of Emily Gillman.¹⁰⁴ The Protestant wife of the first curate might be less enlightened than her husband and sister and inclined to casual anti-Catholicism and approval of British imperialism. Nonetheless, she voices what any decent person should know. When Woolcut first proposes coercing parents to send their children to his schools with the threat of eviction, she "turn[s] on the *Christian* bishop a look of incredulous horror."¹⁰⁵ Meany held that Christianity and common sense sufficed to condemn the character of British rule in Ireland and to understand the priority of parental rights.

The reviewer in the *Catholic World* described the book as a "religious story," but the characterization was only partly fair.¹⁰⁶ Above all, the novel celebrated "heroic fidelity."¹⁰⁷ Meany's taxonomy of Protestants, however, denied a simplistic reading of the events as matters of religious conflict. The problem with imperial Protestants was their imperialism. The problem with apostates was their appalling infidelity. Creedal differences hardly figure. In Meany's telling, two sets of consciences do not conflict; rather, consciences and tyranny conflict. Meany framed her entire narrative as a "story of Irish evictions for conscience' sake."¹⁰⁸ She titled her tenth chapter "Clerical Zeal Versus

¹⁰⁴ Meany, *The Confessors of Connaught*, 238.

¹⁰⁵ Meany, *The Confessors of Connaught*, 45. Emphasis in original.

¹⁰⁶ Review of *The Confessors of Connaught* in *Catholic World*, 574.

¹⁰⁷ Meany, *The Confessors of Connaught*, viii, 291.

¹⁰⁸ Meany, *The Confessors of Connaught*, iii.

Parental Rights.”¹⁰⁹ “Clerical Zeal” proves sarcastic—the “zeal” mixes ambition and bigotry. It was not pluralism but rather coercive proselytism and a disregard for the rights of parents that disrupted religious peace.

Meany appropriated and inverted the Protestant narrative of the contest between the conscience of the believer and the tyranny of the pope. In her telling, the Protestant Church of Ireland, operating as an instrument of British imperialism, unjustly attempted to coerce Catholic consciences. Her Irish setting allowed her to describe a fight over schools in which native-born Catholics formed a large majority. Here, the Protestants were the newcomers or invaders. Moreover, by portraying a pacifist Irish nationalism and by stripping away the agrarian aspect of the dispute in Partry, Meany conjured up a form of Catholic resistance that did not undermine the political order but instead provided the materials for a good (Catholic) *nation*. By embedding her defense of parental rights in a novelization of Irish events, Meany avoided difficult questions about the role of Catholics in pluralistic, but majority-Protestant, nations. Perhaps she shared John Hughes' optimism about the future and hoped these issues might disappear with the conversion of “all Protestant nations.”¹¹⁰

Nonetheless, Meany’s entangling of a sort of ethnic nationalism and schools reflected Catholic experience in the English-speaking world. While some Catholics, like Ullathorne and Montgomery, were simply English and Catholic or American and Catholic, most English-speaking Catholics outside of Ireland were members of an ethnic as well as a religious minority. In Ireland, though a majority, Catholics were still fighting

¹⁰⁹ Meany, *The Confessors of Connaught*, 166.

¹¹⁰ John Hughes, *The Decline of Protestantism and Its Causes* (New York, 1850), 26.

to preserve (and define) their Irishness and Catholicism. Religious and ethnic concerns intertwined, and especially in the United State and Canada, Catholic schools often served to preserve not only religious faith, but also other cultural traditions and languages. Though the Church would privilege religious concerns above all else, many Catholics believed that preserving their parental rights also meant being able to educate their children within their cultural tradition, and possibly also in a language other than English.

2.5 Conclusion

In the 1850s and 1860s, Catholics responded to educational change haphazardly. In the United States questions about slavery, the Civil War, and Reconstruction dominated American politics from the 1850s through the 1870s. In England, the Catholic community was disorganized, poor, and full of internal disagreements.¹¹¹ If nearly everyone held that true education required care for the soul and not just the three Rs, before the 1870s Catholics did not have a clear policy on either side of the Atlantic. Instead, most of their political efforts attempted to keep Catholic children away from Protestant proselytism. While parental rights occasionally came up in these contexts, writers who put those rights front and center, like Montgomery and Meany, were unusual and made little impression on the general public. When parental rights arguments became *the* Catholic argument, a change had taken place. Chapters 2 and 3 attempt to explain why and how this happened. Nonetheless, these early formulations of Catholic parental

¹¹¹ Tenbus argues that until mid-century, “the state of Catholic education, much like the Catholic community itself, existed in a decentralized, irregular and poverty-stricken condition.” He also points to disunity on education, not over the Catholic philosophy of education and parental rights, but at the level of policy. Tenbus, *English Catholics and the Education of the Poor, 1847–1902*, 13, 25.

rights arguments show that these arguments, despite later clerical dominance, did not originate “from the top.” Rather, these arguments came out of the experience of Catholics, including the laity, trying to secure their faith and what they understood as justice in the midst of a rapidly changing world.

CHAPTER 3: PIVOTING TOWARD RIGHTS

3.1 Introduction

This chapter gives an overview of the traditional place of parental rights in Catholic thought. I argue that while the parental rights argument deployed in the schools question was consistent with traditional Catholic principles, it nevertheless constituted a dramatic shift. For most of Christian history, the Church had focused on limiting the rights of parents. It had assumed parental vice was the biggest obstacle to fulfilling parental duties. Beginning in the late 1860s, Catholics in the United Kingdom began to defend parental rights loudly, both as a means of responding to what they saw as state overreach and in hopes of building alliances in defense of religious schools. As Chapter 3 will show, American Catholics followed the British example in the early 1870s. Rome complicated attempts to build alliances. The Vatican Council, held in 1870, served as a vivid reminder of why Protestants distrusted Catholics in politics. However, the Council also reinforced connections among the bishops of the English-speaking world.

In February 1858 Father Wardy, a diocesan priest in Toronto, wrote to the prominent American lay convert Orestes Brownson asking him to sound the cry for parental rights in education.¹ Wardy, apparently with the encouragement of the vicar

¹ Even before he became Catholic, Brownson was concerned that established *systems* of public education tended to lead the state to overreach. He held that control over education, that is, of the local

general of the diocese and several other priests, asked Brownson to write an article in his periodical, *The Quarterly Review*, to “prove that the education of the child belongs to the parent and not to the State.” Wardy was frustrated because, he said, “I know that this is the principle on which the two parties split. But . . . I have never seen it established *en professo* by any author.” Wardy dismissed arguments that the State had “a right to educate prior to the parent's right” as “bad fallacies” but bemoaned that they were made to “dazzle and deceive.” He complained that “as long as that false impression is lasting we cannot expect any justice on the school question from a protestant community.” He lamented that no Catholic publications, in Canada or the United States, had sufficiently addressed the “fundamental truth that to the parent and not to the State belongs the education of the child.” Brownson’s article, therefore, “should be circulated as much as possible by all the means in our power, in newspapers and pamphlets!” It would be “most appropriate for the circumstances of both the United States and Canada.”²

Canada, in 1858, was the Province of Canada, created by the Act of Union 1840, and divided into the majority-Catholic Canada East (formerly Lower Canada, later Quebec) and the majority-Protestant Canada West (formerly Upper Canada, later Ontario).³ In Canada East, by the end of the 1840s, there were essentially two school systems. One was primarily Francophone and under the control of the Catholic Church,

public school, should remain in the hands of the parents of the children it educated. Edward John Powers, “The Educational Views and Attitudes of Orestes A. Brownson” (PhD diss., University of Notre Dame, 1949), 230–231.

² Father C. Wardy to O. A. Brownson, 2 February 1858, Orestes Augustus Brownson Papers, University of Notre Dame Archives.

³ New Brunswick, Nova Scotia, St. John’s Island (later Prince Edward Island), and Newfoundland were separate colonies at this point.

the other Anglophone and Protestant. The government partially funded both. In Canada West, the Common School Act of 1846 created a provincial school system, which imitated some portions of the Irish National Schools model. It was theoretically non-sectarian, but in practice was divided into Catholic and Protestant schools. The 1850 Common School Act made public schooling free by introducing a property tax.⁴

Brownson, apparently, failed to respond to Wardy's February letter. So the priest wrote again in March. Wardy informed Brownson that "the Vicar General, and many others, priests and laymen," had asked him, "Did Brownson answer you? Is he going to write on that subject? Will you write to him again?" So, this time, Wardy included some pamphlets and reading recommendations to help Brownson with his research for the proposed article. He pleaded that "Members of Parliament have used the article on the school question in your last number and have been highly pleased with it. But that article does not go to the root. If you treat the question as I have stated in my last letter, you will enlighten the Parliament . . . and do an immensity of good to the church in Canada." Moreover, in case Brownson was unmoved by the needs of the Canadians, Wardy continued that the article "would be also a great boon to the Catholics in the States." He noted that the "Bishop of Buffalo [John Timon] going through our city some time ago explained to us how Catholics were undergoing trial in the States as in Canada for freedom of education."⁵ Brownson did not write such an article until over a decade later.⁶

⁴ Brenda MacKay and Michael W. Firmin, "The Historical Development of Private Education in Canada," *Education Research and Perspectives* 35, no. 2 (2008): 61–64.

⁵ Father C. Wardy to Brownson, 9 March 1858, Orestes Augustus Brownson Papers, University of Notre Dame Archives.

3.2 The Limits of Parental Rights

Over the previous millennium and a half or so, Christianity had imposed limits and conditions on parental rights as imagined by ancient Rome. Most nineteenth-century writers imagined a Roman father exercising tyrannical and absolute power over his family, the *patria potestas* reinforced by the value of *pietas*. In fact, the Romans, in Richard Saller's words, "drew a clear distinction between the father's relationship with his children, characterized by mutual obligation and concern, and the master's exploitative power over his slaves."⁷ *Pietas* was embodied in the image of Aeneas fleeing Troy with his father and household gods on his back, leading his small son by the hand. Here, Saller argues, *pietas* was a "virtue of duty" but "not solely a matter of obedience to higher powers," because "a father could display *pietas* to a son, as could a son to his father, and the virtue encompassed compassion as well as duty."⁸ *Pietas*, in Roman eyes,

⁶ If Brownson disappointed the Canadians, they could have looked to the colony of Newfoundland for fellowship. There an experiment with "non-sectarian" education, backed by immigrant Irish Catholics as well as Protestants during the 1820s and the early 1830s, had given way to a denominational system. Beginning in 1836, Newfoundland split school money among Anglicans, Methodists, and Catholics. The Irish-born Franciscan Bishop Mullock promoted Catholic schools and the division of educational money among denominations, and, like Wardy, he had an eye to the broader world. In 1859 he wrote that in "other countries of mixed population where the experiment had been tried of either forcing on the minority the religious education of the majority, or of excluding any definite religious teaching . . . under the name of 'Common Christianity,' it has resulted in absolute failure." These systems promoted not only "infidelity and indifferentism" but also corrupted "the fundamental principles of society itself by nullifying parental authority, the indissolubility of marriage, the rights of property, the dignity of man, and the honour of woman." Rt. Rev. T. J. Mullock, *Lectures on Education* (1859), cited in P. W. Browne, "Catholic Education in Newfoundland," *An Irish Quarterly Review* 20, no. 79 (1931): 386–387.

⁷ Richard P. Saller, *Patriarchy, Property and Death in the Roman Family* (Cambridge: Cambridge University Press, 1994), 102. Saller points particularly to Henry Maine's 1861 *Ancient Law* for highlighting "the element of arbitrariness or 'caprice' in patriarchy" and to Lewis Morgan's 1877 *Ancient Society* for arguing that *pietas* "enforced" the *patria potestas*. Saller, *Patriarchy, Property and Death*, 102n1, 73.

⁸ Saller, *Patriarchy, Property and Death*, 106. See also Gerald Malsbary, "Pietas and the Origins of Western Culture," *Logos: A Journal of Catholic Thought and Culture* 4, no. 2 (2001): 94–95 and P. Vergili Maronis *Aeneidis Liber Secundus with a commentary by R. G. Austin* (Oxford: Clarendon Press, 1964), 261–262.

sprang from natural law and was therefore higher than the *patria potestas*—a feature of the Roman law that only applied to the *paterfamilias*, not to all fathers, and which by the second century was limited in law.⁹ *Pietas*, moreover, did not only apply to fathers and country. Mothers were owed respect and obedience as well, and parents and children were considered mutually bound to support each other in need.¹⁰ Finally, *pietas* could be opposed to the power of the state.¹¹

Christianity intertwined the concepts of the *patria potestas* and the duty of piety to one's children, making the former conditioned on the latter and more inclusive—that is, including mothers as well as fathers. Early Christians denounced the practice of exposing infants, but, more importantly, the fifth-century Theodosian code decreed that a father lost parental rights over any child he exposed.¹² Pope Gregory IX declared that a father forfeited his paternal power by “impiously” denying a child food.¹³

In the Catholic tradition, though the father was understood to have the right of governing the family, education was a *common task* for the mother and the father.¹⁴ The

⁹ Saller, *Patriarchy, Property and Death*, 108, 114–127. Saller insists on the antiquity of defining *pietas* as part of the natural law. For instance, he points to “the early first-century rhetorical treatise *Ad Herennium*” which stated: “There is a natural law, observed *cognationis aut pietatis causa*, by which parents are esteemed by children and children by parents.” Saller, *Patriarchy, Property and Death*, 113.

¹⁰ Saller, *Patriarchy, Property and Death*, 111–114.

¹¹ Saller provides a translation of Valerius’ account of the legend of the founding of the Republican temple to *Pietas* in which the central figure is a daughter who saves her mother, a poor woman sentenced to death. Saller also provides examples from Pliny and Seneca in which *pietas* is shown to come “into contact with, and override the demands of the legal constructs of authority.” Moreover, the law even recognized that slave families, not otherwise recognized under the law, were bound by *pietas*. Saller, *Patriarchy, Property and Death*, 106–107, 110, 112.

¹² Charles J. Reid, Jr., *Power over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law* (Grand Rapids: William B. Eerdmans, 2004), 74.

¹³ Reid, *Power over the Body*, 85.

¹⁴ Reid, *Power over the Body*, 87–88.

importance of both parents in the education of the child became one of the standard reasons cited for the prohibition against marrying non-Catholics. By the fifteenth century, Spanish writer Juan Lopez argued that, by natural law, children were entitled to “proper training, food, and support, and to have the attention of two parents, who were male and female.”¹⁵ Moreover, the sixteenth-century Spanish Dominican Domingo de Soto defined the *patria potestas* as a right to fulfill the duty to “see to the proper care and substance of hearth and home” and a right over the child conditioned by the obligation “to love and to nurture, to educate and support.”¹⁶

The obligations of piety prevented a parent from interfering in a child’s vocation. Ecclesiastical law held that parents could only invalidate a child’s vow to enter a monastery if he was quite young—ten for instance, according to the Tenth Council of Toledo in 656.¹⁷ Fathers also had no right to prevent a child from ordination, nor did they have control over any ecclesiastical aspect of an ordained child’s life.¹⁸ Developments in medieval canon law also protected the right to marry freely (that is, despite one’s family, not despite the Church). While during the early Middle Ages, “marital consent belonged to parents and the family,” by the thirteenth century Gratian considered a father’s consent as necessary only for the liceity, not the validity, of a marriage. The efficient cause of the marriage was the consent of the spouses, and therefore even a clandestine marriage

¹⁵ Reid, *Power over the Body*, 90. His note is to Juan Lopez, *Tractatus vere catholicus de matrimonio et legitimatione*, in *Tractatus universi iuris*, 9:396–466, (Venice, 1584). The treatise Reid cites is dated 1478.

¹⁶ Reid, *Power over the Body*, 92.

¹⁷ Reid, *Power over the Body*, 95.

¹⁸ Reid, *Power over the Body*, 96.

without parental consent or witnesses could be valid (though it was illicit), but if anyone, including parents, coerced a marriage it was not.¹⁹

3.3 The Mortara Affair

Catholics seeking to establish themselves as the defenders of parental rights, therefore, faced an uphill battle. In addition to the history of limiting parental rights, there was the general Protestant conviction that the Church sought world domination and interfered in family matters. Finally, there was the practical matter of the Papal States under Pope Pius IX removing a small boy from his Jewish parents to educate him as a Catholic in 1858. More concerning still, the Catholics of the English-speaking world unanimously approved.

A teenage Catholic servant of the Bolognese Mortara family secretly baptized seven-year-old Edgardo Mortara when she believed he was in danger of death. The child recovered, and a year later Church authorities discovered that the baptism had taken place. The government then removed the child from his home and sent him to Rome to be brought up as a Catholic. An international uproar followed, but the pope did not return the boy to his parents. The American press was appalled by what it quickly termed the “Mortara Abduction,” and it rushed to defend the natural rights of parents against the

¹⁹ Reid, *Power over the Body*, 37, 38-46. This issue of consent became a major point of contention between the Catholic Church and Martin Luther. Luther saw the family as an institution with authority of the same order as either the church or the state, and so he required parental consent for the *validity* of a marriage. John Witte, Jr., “The Reformation of Marriage Law in Martin Luther’s Germany: Its Significance Then and Now,” *Journal of Law and Religion* 4, no. 2 (1986): 293–351.

Church's despotism.²⁰ An article in the *New York Herald* in November 1858 held that “a grosser infringement on the natural rights of the parent over the child, or a more despotic exercise of ecclesiastical authority, has never been committed.”²¹ That same month the *New York Times* insisted that a parent “who is not a criminal has the right to care and jurisdiction of his children. This is a natural law, with which no divine law whatever clashes.”²² In January 1859, the *Herald* insisted again that the “right of the parent to guardianship over the infant is a natural right, somewhat older than the Roman Church. Any attempt to infringe upon that right, while it is duly and properly exercised, is an outrage upon the civilization of the age, and no special pleading whatever can justify it.”²³ In sum, as Timothy Verhoeven has written, the episode was “depicted as a sensational attack on one of the basic principles of the age, the right of mothers and fathers to freely raise their own children.”²⁴

The American press took the opportunity to lecture Catholics on their theology. The *Herald*, for instance, insisted that it was a “mistake” to “charge to Roman Catholic doctrines this excess of fanatical zeal” because “there is nothing in the canons of that church which asserts, even inferentially, the propriety of such high-handed proceedings.”

²⁰ For an account of the response of the American (and the French) press, through the lens of anti-Catholicism, see Timothy Verhoeven, *Transatlantic Anti-Catholicism: France and the United States in the Nineteenth Century* (New York: Palgrave Macmillan, 2010). For a more general account that highlights the American Jewish reaction, see Bertram W. Korn, *The American Reaction to the Mortara Case, 1858–1859* (Cincinnati: American Jewish Archives, 1957).

²¹ *New York Herald*, November 21, 1858, 6.

²² *New York Times*, November 9, 1858, 4.

²³ *New York Herald*, January 12, 1859, 4. The term “infant” was a legal one and meant “minor.”

²⁴ Verhoeven, *Transatlantic Anti-Catholicism*, 62.

Rather, the “outrage” should be “set down amongst the many fatal errors resulting from the combination of a temporal with a spiritual jurisdiction in the government of the Romish church.”²⁵ The *Herald*’s criticisms aimed in part at the temporal power of the pope, a cause that had particular importance for those promoting the political unification of the Italian peninsula. However, the *Herald* was also wrong about Catholic doctrine, at least as Catholics at the time understood it.

American and English Catholics supported the actions of the Roman government.²⁶ Partly this was a matter of defensiveness—in England and the United States, the loudest critiques came from Protestants eager “to illustrate the errors of Rome.”²⁷ More essential, though, is that, as Joseph Altholz argued, “the doctrine that baptism is a sacrament of permanent validity made it theologically impossible for Catholics to support young Mortara’s return to his Jewish parents.”²⁸ That is, leaving aside the question of whether the baptism should have taken place, Catholic theology insisted that baptism had made Edgardo Mortara a Catholic, with all of the rights and duties of any other Catholic. Among those rights was the right to a Catholic education, which his parents could not, or would not, provide for him. Therefore, Catholics argued, the decision of the civil government of the Papal States to remove him from his parents to secure that education was just.

²⁵ *New York Herald*, November 21, 1858, 6.

²⁶ Josef Altholz argues that the “Catholic journals of the Continent—notably the *Armonia* of Turin and the *Univers* of Paris—set forth the authoritative Catholic interpretation of the affair, which was followed with relatively little variation by the American and English Catholics.” Josef L. Altholz, “A Note on the English Catholic Reaction to the Mortara Case,” *Jewish Social Studies* 23, no. 2 (1961): 114.

²⁷ *New York Herald*, January 12, 1859, 4. See also Altholz, “A Note,” 112.

²⁸ Altholz, “A Note,” 113.

Two distinctive English-language approaches to the Mortara affair appeared in the spring of 1859. Both focused on the relationship between parental rights and the state, and both defended legal reasoning that permitted a *Christian* state to abrogate parental rights and to interfere in the religious education of children.

The first, “The Mortara Case and the Murphy Case,” was a March 1859 article in the *Dublin Review*, a prominent Catholic periodical published in London. The author, William F. Finlason, a Catholic convert, lawyer, legal writer, and journalist, insisted that the fundamental legal principles governing guardianship and parental rights were the same in English common law and the law of the Papal States.²⁹ Both derived from “the civil law of Christian Rome” in which “the *patria potestas* was made to bend to the higher obligations of religion, and the state assumed the lofty function of the guardian of all its Christian children.”³⁰

Finlason argued that under Charles II “the law of guardianship became in substance assimilated to that of Rome.” There were two essential points of unity. The first was the declaration by the Court of Chancery that “guardianship [is] a trust.” The second was its claim “to enforce its due administration, and to supply the want of any constituted guardianship, by its own power of appointments, on the part of the Crown, as *parens patriae*, and guardian of all the unprotected infants in the realm.” This principle that “guardianship is a trust to be administered with a view to the welfare of the children,” and not “a mere arbitrary right, like that of property,” granted the State the

²⁹ Michael Lobban, “Finlason, William Francis (1818–1895),” in *Oxford Dictionary of National Biography*, accessed March 19, 2017, <http://www.oxforddnb.com/view/article/9462>.

³⁰ William F. Finlason, “The Mortara Case and the Murphy Case,” *Dublin Review* 46 (Mar. 1859): 21.

right to remove children from their parents and to disregard the expressed wishes of deceased parents.³¹

Finlason then detailed the English practice regarding parental rights and the religious education of children. Under English law, he argued, “capricious changes in the religious education of a child” were assumed to promote skepticism, which the state had a legitimate interest in preventing.³² The court would set aside the wishes of parents (the father or his widow) to keep a child's religious education consistent (and usually within the Church of England). Thus in the Murphy Case, the court overruled the wishes of a Catholic father who had permitted his Protestant wife to raise the children Protestant but, on his deathbed, had instructed that they should be raised Catholic.

While the English courts privileged the prevention of skepticism in their decisions, those of the Papal States privileged the claim that baptism determined that a child should receive a Christian education. Finlason insisted that this was “a difference subsequent to the assumption of the right of guardianship by the state.”³³ In both, “the jurisdiction of the court is paramount to any parental right, paternal or maternal.”³⁴

In April 1859 Orestes Brownson published an article in his *Brownson's Quarterly Review* entitled “The Mortara Case; Or, the Right of Parents to the Custody and Education of their Children.” Though an article on parental rights, it did not make the argument that Wardy had requested a year earlier.

³¹ Finlason, “The Mortara Case and the Murphy Case,” 25.

³² Finlason, “The Mortara Case and the Murphy Case,” 25.

³³ Finlason, “The Mortara Case and the Murphy Case,” 27.

³⁴ Finlason, “The Mortara Case and the Murphy Case,” 29.

Like Finlason, Brownson pointed to the similarity between the actions of the Roman government and that of the English. In the United States, he insisted, “public prejudice prevails to such a degree, that the children of Catholics are very frequently withdrawn from their parents, if poor and destitute, and placed under Protestant influences in public.”³⁵ In contrast, Brownson continued, when “by process of law” the Roman government removed Edgardo Mortara, it did so with “all possible lenity and mildness,” merely doing what was required by “what Catholics hold as the effects and obligations of baptism.”³⁶

Brownson wrote that the “baptized infant . . . [w]ithout his knowledge . . . receives heavenly gifts purchased for him at the price of the blood of his Redeemer; without his consent he is subjected to the law of Christ and of His Church, since the boon of regeneration is granted on this condition.” When it came to *which* children should be baptized, parental rights mattered. Brownson approvingly noted that the “Holy See . . . strictly forbids the baptism of the infants of Israelites, or infidels, without the free consent of their parents, and consequently their withdrawal with such a view from parental control.”³⁷ However, that question had already passed in the case of Edgardo Mortara. The baptism had occurred, and the government had simply “showed that respect for the

³⁵ Orestes Brownson, “The Mortara Case; Or, the Right of Parents to the Custody and Education of their Children,” *Brownson’s Quarterly Review* 4, no. 14 (1859): 230.

³⁶ Brownson, “Mortara Case,” 231.

³⁷ Brownson, “Mortara Case,” 232.

Sacrament, which a Christian Bishop, who is at the same time sovereign, must be expected to entertain.”³⁸

Mortara was “a Christian from the moment of his baptism,” he argued, and “the right of the child to Christian instruction and Christian citizenship” was at least “as high and sacred as the right of the father to the custody and education of his children.”³⁹ That is, “the child had received baptism, which makes him a Christian and entitles him to privileges of Christian citizenship, which the State guarantees and guards, by insisting on his Christian education.”⁴⁰ The state had not played any role in the child's baptism. If it had, that would have constituted “a serious invasion of the acknowledged rights of parents” and “a real invasion of religious liberty.” As it was, though, Protestants could not accuse the pope of invading parental rights. At most, they might blame the servant who baptized the child, but she “did so innocently.”⁴¹

In conclusion, Brownson argued that Edgardo Mortara was removed under a law “right in principle” and “designed to protect the child against the incompetency, the irreligion, or the vices of the parent.”⁴² He argued that the “natural right of parents to watch over and direct the education of their children is necessarily subordinate to the general interests of society, and the welfare of their children.”⁴³ “The law may be abused,

³⁸ Brownson, “Mortara Case,” 234.

³⁹ Brownson, “Mortara Case,” 243.

⁴⁰ Brownson, “Mortara Case,” 228.

⁴¹ Brownson, “Mortara Case,” 245.

⁴² Brownson, “Mortara Case,” 242.

⁴³ Brownson, “Mortara Case,” 238.

and [was] abused every day” particularly to the detriment of Catholics, but, Brownson argued, “so is everything good.” The right of the parent to “the custody and education of the child” was not “absolute, admitting of no exception.” At the end of the article, Brownson even explicitly denied “the doctrine sometimes put forth against state schools, that the education of the child in all cases belongs to the parent, between whom and the child the state must never be permitted to intervene.”⁴⁴

The Mortara case makes clear why Protestants would react skeptically to Catholics claiming to be the defenders of parental rights. Parental rights were universally acknowledged in the English-speaking world, and Protestants did not see themselves as violating those rights. Rather, Catholics appeared blatantly to disregard those rights if the pope so dictated. This episode proved the dangers of Catholic political power. Catholic claims to rights of conscience were clearly a cynical ploy since when Catholics held power they disregarded the rights of religious minorities. Though Catholics rejected such characterizations as unfair, the long-established tradition of the Church did support interference in family government.

3.4 The Catholic Family, the Church, and the State

Although Catholics emphasized the limits of parental rights when they talked about them at all, they spent more far more time insisting on the importance of the Catholic family and the duties of parents. Catholic bishops were concerned primarily with keeping their people Catholic. To the bishops, it seemed obvious that the best way to

⁴⁴ Brownson, “Mortara Case,” 242.

do this was to shore up Catholic marriages and families, especially those of the poor and immigrants. Catholic schools were the centerpiece of this program. Non-Catholic schools were believed to excel at turning small Catholics into small apostates.

Catholic schools also helped tie the family to the Church. Families were not supposed to be autonomous. Alexis de Tocqueville defined “individualism” as “a reflective and peaceable sentiment that disposes each citizen to isolate himself from the mass of those like him and to withdraw to one side *with his family and friends*, so that having created a little society for his own use, he willingly abandons society at large to itself.”⁴⁵ American Catholics, like Tocqueville, thought individualism was dangerous.

In 1853 Bishop Antoine Blanc of New Orleans argued that for religious education to succeed it needed “the combined action of three elements which ought to concur, each in its own sphere, to attain the same end.” It must “have been begun IN THE FAMILY BY PARENTS and perfected AT THE CHURCH BY THE PASTORS.” It ought also to “be continued and developped [*sic*] AT SCHOOL BY CHRISTIAN MASTERS, who acting as an intermedium and bond between the Parents and the Pastors, second both the one and the other and participate in this noble and holy mission.”⁴⁶

⁴⁵ Emphasis added. Alexis de Tocqueville, *Democracy in America*, trans. and ed. Harvey Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2002), 482.

⁴⁶ Antoine Blanc, *Pastoral Letter of the Most Reverend Antony Blanc, Archbishop of New-Orleans for the Lent of 1853* (New Orleans: Catholic Messenger’s Print, 1853), 4–5. The pastoral letter was also issued in French, which was most likely the language in which Blanc drafted it. (For instance, the French used the abbreviation “N.T.C.F. [*notre très chers frères*]” which in the English appeared as “B. B. [Beloved Brethren].” N.T.C.F. is a variation of the standard French M.T.C.F. [*mes très chers frères* with the American tendency for bishops to use the royal we.] This sort of abbreviation is highly unusual in English-language sources.) Archbishop Blanc was born in France in 1792. He arrived in the United States in 1817, after his ordination to the priesthood.

Parish, school, and family were to work together; schools existed to help parents to fulfill their duty to educate their children.

Catholic bishops taught that the rights of parents and the rights of the Church were mystically linked and mutually reinforcing. The rights of Catholic parents were grounded in marriage. At every Catholic nuptial Mass, the Epistle reading was Ephesians 5:22–33.⁴⁷ The Catholic Douay-Rheims translation of Paul's analogy between Christian marriage and the relationship between God and the Church read: “This is a great sacrament; but I speak in Christ and in the church.”⁴⁸ To the Catholic, the *sacrament of marriage* was “an earthly and natural type of the union of Christ with his Church,” and “a natural representation of the ineffable and supernatural union of Christ and his Church.”⁴⁹ The rights and duties of Christian parents were an aspect of the sacrament of marriage; they were something *holy*.

The sacrality of parents' roles was not a theory created for debates over schools but rather an everyday part of Catholic teaching. It was, for instance, everywhere in the abundant literature warning Catholics not to marry baptized non-Catholics (“mixed marriages”).⁵⁰ In 1869 Bishop Ullathorne cautioned that because marriage represented the

⁴⁷ There were two scripture readings at a nuptial Mass. The passage from Ephesians was the first one. The second, the Gospel reading, was Matthew 19:3–6.

⁴⁸ Ephesians 5:32. The King James Version of the Bible reads as “a great *mystery*: but I speak *concerning* Christ and in the church.” Emphases added.

⁴⁹ Louis Maria Fink, *Pastoral Instruction of the Vicar Apostolic of Kansas, to the Clergy, Secular and Regular, the Religious Communities, and the Faithful of his Vicariate* (1876), 138, 136.

⁵⁰ Under canon law, such a marriage was potentially valid, but illicit unless the local bishop granted permission. Marriage to a non-baptized person, in contrast, was invalid unless the bishop granted a dispensation. Because the disciplinary measures of the Council of Trent were not fully in force in most of the English-speaking world (and most of the rest of the Protestant world) until the twentieth century, the

union between Christ and his Church, it “ought not to be profaned by union with one who is rejected from the membership of Christ and His Church.”⁵¹ A marriage begun with such sacrilege might easily fail to fulfill “the sublime office of the married pair”—“to present their children to Christ.”⁵² The mixed marriage could not create the Catholic home, which ought to be “a little church, second only in sanctity to the consecrated Church.”⁵³ In such a household, the “children grow in faith as in stature, under the combined influence of their parents.” This was the context in which marriage “shows itself to be ‘in Christ and in the Church.’” For “the dignity of a sacrament is given to marriage for this end, that a people may be procreated and brought up to the religion and worship of God, and of our Lord Jesus Christ.”⁵⁴

In 1864 Pope Pius IX published the encyclical *Quanta Cura* and its accompanying *Syllabus of Errors*. It condemned some eighty “very serious errors” of the modern age. The proliferation of secular education was one of those errors. The *Syllabus* also famously condemned the proposition that “The Church ought to be separated from

enforcement of the canon law regulating marriage, particularly the tolerance for mixed marriages, varied somewhat from diocese to diocese. In general, they became stricter as the nineteenth century progressed.

⁵¹ William Ullathorne, “An Instruction on Mixed Marriages, Delivered on occasion of the Fourth Diocesan Synod of Birmingham, in 1869,” in *Ecclesiastical Discourses Delivered on Special Occasions By Bishop Ullathorne (William Bernard)* (London: Burns and Oates, 1876), 65.

⁵² Ullathorne, “Mixed Marriages,” 80.

⁵³ Ullathorne, “Mixed Marriages,” 86. The term “little church” is from St. John Chrysostom who called the Christian family a “*minusculae ecclesiae*.” Ullathorne explicitly cited Chrysostom, on the subject of picking a wife, later in the lecture. This term inspired the Second Vatican Council's term “the domestic church.” Whether the update was an improvement is highly debatable.

⁵⁴ Ullathorne, “Mixed Marriages,” 90.

the State, and the State from the Church.”⁵⁵ Protestants and secularists, accordingly, found it proof positive of the backwardness and tyranny of the Catholic Church and the papacy.

Many non-Catholics believed that the document told Catholics to destroy public school systems. The *Syllabus* condemned the proposition that

[t]he best theory of civil society requires that popular schools open to children of every class of the people, and, generally, all public institutes intended for instruction in letters and philosophical sciences and for carrying on the education of youth, should be freed from all ecclesiastical authority, control and interference, and should be fully subjected to the civil and political power at the pleasure of the rulers, and according to the standard of the prevalent opinions of the age.⁵⁶

In following years, the proposition was often repeated as evidence that Catholics opposed both public schools and freedom of education. However, as Catholic apologists pointed out, the *Syllabus* did not say that Catholics could not tolerate such a system of education, merely that it was not the ideal.

Ideally religious pluralism would vanish because everyone would be Catholic. In such a circumstance, Church and State would work harmoniously together while remaining distinct. In such a world, all schools would be Catholic, perhaps a joint venture of Church and State. In practice, religious pluralism existed. In practice, in most of the English-speaking world, Catholics were a minority. Therefore, the essential thing was to secure the freedom of the Church to fulfill its mission. *Libertas ecclesiae* was a medieval principle. Nineteenth-century Catholics easily spun it into a Catholic claim for religious

⁵⁵ Pius IX, “Syllabus of Errors,” in *The Popes Against Modern Errors*, ed. Anthony J. Mioni, Jr. (Rockford: Tan Books, 1999), Introduction, proposition 55.

⁵⁶ Pius IX, “Syllabus of Errors,” proposition 47. This particular piece of the *Syllabus* was taken from the “Epistle to the Archbishop of Freiburg, ‘Cum non sine,’ July 14, 1864.”

liberty.⁵⁷ To secure the liberty of the Church, Catholics could promote general religious equality vis-à-vis the state, and they could promote a denominational educational system that might, on its surface, suggest parity between Protestantism and Catholicism. They were also free to try to remove their schools as far as possible from the reach of a non-Catholic government, as Ullathorne would have liked to do if financially possible.

The *Syllabus* argued the schools question by appealing to the rights of the Church. The encyclical *Quanta Cura*, however, used the virtue of piety to tie the rights of the Church to the rights of the family and parents. The encyclical argued that it was *impious* to assert that the civil law constituted the family and that civil law could, therefore, define the rights and duties of domestic society; that is, those between husband and wife and between parents and children.⁵⁸ The *aim* of this impiety, Pius IX argued, was to remove the influence of the Church. The *essence* of the impiety, however, lay in the assertion that “domestic society or the family derives the whole principle of its existence from the civil

⁵⁷ On the antiquity of the claim in the West for the liberty of the Church, see Hugo Rahner, *Church and State in Early Christianity*, trans. Leo Donald Davis (San Francisco: Ignatius Press, 1992 [1943]).

⁵⁸ The encyclical condemned those who,

not content with removing religion from public society . . . wish to banish it also from private families. For, teaching and professing the most fatal errors of *Communism* and *Socialism*, they assert that ‘domestic society or the family derives the whole principle of its existence from the civil law alone; and, consequently, that on civil law alone depend all rights of parents over children, and especially that for education.’ By which impious opinions and machinations these most deceitful men chiefly aim at this result, *viz.*, that the salutary teaching and influence of the Catholic Church may be entirely banished from the instruction and education of youth, and that the tender and flexible minds of young men may be infected and depraved by every most pernicious error and vice.

Pius IX, “Quanta Cura,” in *The Popes Against Modern Errors*, paragraph 4.

law alone.” To assert that the family was a creature of the state, the pope argued, somehow removed religion itself from the family.

Thomas Aquinas’ definition of the virtue of piety gives a sense of Pius IX’s meaning. When *Quanta Cura* appeared in 1864, the philosophy and theology of Thomas Aquinas had begun to return to fashion. Aquinas’ thirteenth-century writings were the apex of the scholastic (“of the schools”) method of theology and philosophy.

Scholasticism dominated universities from their twelfth-century origins into the seventeenth century. It made a comeback among some Catholic intellectuals after 1800. The influential Jesuit journal *La Civiltà Cattolica*, founded in 1850 with close ties to the Vatican, promoted this neo-scholasticism or “Thomistic revival.” Neo-Thomism did not achieve dominance until Leo XIII’s 1879 encyclical *Aeterni Patris* mandated that seminaries teach Aquinas’s philosophy. But Thomism already influenced the *Syllabus*.⁵⁹

In his *Summa Theologica*, a comprehensive introduction to theology written in a few years around 1270, Aquinas followed Aristotle by categorizing piety as a virtue “connected” to the cardinal virtue of justice. Catholics made the language of justice and rights the centerpiece of their educational claims. While English provides these two very different words, the Latin *jus* or *ius* initially meant the rights of Roman citizens, but also came to mean the law and justice (*iustitiae*). The French *droit*, or the Spanish *derecho*,

⁵⁹ On the varieties of scholasticism in use in the middle decades of the nineteenth century, see Gerald McCool, *Nineteenth-Century Scholasticism: The Search for a Unitary Method* (New York: Fordham University Press, 1989); Scott Seay, “For the Defense and Beauty of the Catholic Faith: The Rise of Neo-scholasticism Among European Catholic Intellectuals: 1824–1879,” *Logos: A Journal of Catholic Thought and Culture* 5, no. 3 (2002): 131–156; and Jose Pereira, “Thomism and the Magisterium: From *Aeterni Patris* to *Veritatis Splendor*,” *Logos: A Journal of Catholic Thought and Culture* 5, no. 3 (2002): 147–183. Seay notes the scholastic (and indeed Thomistic) influence on the *Syllabus*. Seay, “For the Defense,” 138. Marvin O’Connell does likewise. Marvin O’Connell, “Ultramontanism and Dupanloup: The Compromise of 1865,” *Church History* 53 (June 1984): 207–210.

and their analogs in other European languages and Arabic also carry these multiple meanings.⁶⁰ Thus, the medieval theologians and canonists spoke of *ius naturale*, the natural law. However, they also talked about it as natural right, with the meanings sometimes treated as interchangeable. Because *ius naturale* bound parents to care for their children, it therefore gave them the right to do so. In the *Summa Theologica*, questions about parental (or “paternal”) right (*ius*) appear as a central concern in defining the cardinal virtue of justice (*iustitiae*).⁶¹

Aquinas defined right (*ius*) as the object of the virtue of justice (*iustitiae*).⁶²

Accordingly he asked “whether paternal right and right of dominion should be distinguished as special species?” The answer was yes, and he pointed to Aristotle for the explanation. Aristotle's *Politics*, repeating an argument he had made at multiple points in the *Nicomachean Ethics*, begins by differentiating political justice from the justice of the household. The rights and duties of these communities were different in kind. Moreover, Aristotle insisted that, within the management of the household, one must distinguish among three types of rule: that of the master over the slave, that of the father over his

⁶⁰ *Lex*, like the French *loi* or the Spanish *ley*, also corresponds to the English “law” but refers more to something commanded by a political authority, legislation (*leges* being the plural of *lex*).

⁶¹ Aristotle, *The Politics*, trans. and ed. Carnes Lord (Chicago, University of Chicago Press, 1984), 1252a17–18; 1259a136–41; 1259b110–17; and Aristotle, *The Nicomachean Ethics*, trans. and ed. Roger Crisp, revised edition (Cambridge: Cambridge University Press, 2014), 1134a24–35, 1134b1–18; 1161a 16–23; 1161b18–30, 1162a5–9. Aquinas cited all of these passages. In this instance, “paternal” is a more accurate rendering than “parental.” Nonetheless, as noted above, both parents were bound by duties to their children.

⁶² “*Et propter hoc specialiter iustitiae prae aliis virtutibus determinatur secundum se obiectum, quod vocatur iustum. Et hoc quidem est ius. Unde manifestum est quod ius est obiectum iustitiae.*” In the 1920 translation by the English Dominicans, this passage reads, “For this reason justice has its own special proper object over and above the other virtues, and this object is called the just, which is the same as ‘right.’ Hence it is evident that right is the object of justice.” Thomas Aquinas, *Summa Theologica*, 2nd rev. ed., trans. Fathers of the English Dominican Province (New York: Benziger Brothers, 1947), II–II. Q.57. A1. co.

children, and that of the husband over the wife. Again, these were different in kind, not just in degree. Each was based on a different kind of inequality, while civic justice was grounded in equality.⁶³

Just as the “paternal right” was a “special species” because it was grounded in inequality, so also did Aquinas argue that divine law was “not properly called ‘*ius*’” because “we cannot offer God an equal return,” though justice did tend “to make man repay God as much as he can.”⁶⁴ Thus, Aquinas dealt with a series of moral virtues “connected” to justice, including religion and piety. Both religion and piety were grounded in indebtedness; they ordered a person’s relationship with those to whom he owed his “being and government.”⁶⁵

There was a hierarchy of those to whom a person was indebted, Aquinas argued, according to “their various excellence and the various benefits received from them. On both counts God holds first place, for He is supremely excellent, and is for us the first principle of being and government.” Second place was more complicated as Aquinas awarded it jointly to “our parents and our country” because they “have given us birth and nourishment.”⁶⁶ He did not rank the two. Rather, he stated that “man is debtor chiefly to his parents and his country, after God.”

⁶³ This distinction between paternal, or parental, “power” and that of the civil government was a critical piece of John Locke’s argument against Filmer’s *Patriarcha* in both his *Two Treatises of Government*. In the First Treatise, much of the argument relies on the fact that almost every argument Filmer provides to prove the absolute power of the father (the purported basis for the absolute power of the sovereign) applies equally to mothers. John Locke, *Two Treatises of Government*, ed. Peter Laslett, student ed. (Cambridge: Cambridge University Press, 1988).

⁶⁴ Aquinas, *ST II-II*. Q. 57. A1. ad.

⁶⁵ Aquinas, *ST II-II*. Q. 101. A1.

⁶⁶ Aquinas, *ST II-II*. Q. 101. A1.

This two-part hierarchy supplied the basis of the distinction between religion and piety presupposed in *Quanta Cura*: “Wherefore just as it belongs to religion to give worship to God, so does it belong to piety, in the second place, to give worship to one's parents and one's country.”⁶⁷ It was this definition of piety as the virtue which ordered the relationships within the family, and which was distinct from the order of civil society, that Pius IX used when he called civil definitions of the rights and duties of parents and children *impious*. While piety was also the virtue that ordered a man to do his duty by and to love his country, it remained distinct from the realm of civil law and political justice.

But whence did Pius IX think that the family derived “the whole principle of its existence,” and what did that have to do with education and the role of the Church in it? Again, one can turn to the *Summa Theologica* where Aquinas, in keeping with the natural law tradition, described marriage and the education of children as inherently linked. In the Catholic tradition, marriage is both a natural institution and a Christian sacrament—

⁶⁷ Nevertheless, while piety chiefly referred to country and kin, and religion to worship, Aquinas argued that piety was also *a part of* religion because “the greater includes the lesser: wherefore the worship due to God includes the worship due to our parents as a particular . . . Consequently the term piety extends also to the divine worship.” That is, what is today the most common usage of “piety”—relating to the divine—was a secondary definition for Aquinas.

Another reason the language of religion and piety overlapped, however, was that piety was not only a moral virtue but was also one of the seven gifts of the Holy Spirit listed in the New Testament. Aquinas insisted on the distinction between the virtues and the gifts of the Holy Spirit.

As stated above (I–II, 68, 1; I–II, 69, 1, 3), the gifts of the Holy Ghost are habitual dispositions of the soul, rendering it amenable to the motion of the Holy Ghost. Now the Holy Ghost moves us to this effect among others, of having a filial affection towards God, according to Romans 8:15, “You have received the spirit of adoption of sons, whereby we cry: Abba (Father).” And since it belongs properly to piety to pay duty and worship to one's father, it follows that piety, whereby, at the Holy Ghost's instigation, we pay worship and duty to God as our Father, is a gift of the Holy Ghost . . . The piety that pays duty and worship to a father in the flesh is a virtue: but the piety that is a gift pays this to God as Father.

The moral virtues were a matter of natural law—understandable by human reason and something that any human being could practice. The gifts of the Holy Spirit were a matter of grace, the free gift of God to the members of his Church. Aquinas, *ST*, II–II, Q.121, A1.

and education is central to both. In explaining marriage as a natural institution, Aquinas cited Aristotle to explain the primary end of matrimony as “the good of the offspring.”⁶⁸ That “good” meant “not only the begetting of offspring, but also its education and development until it reach the perfect state of man as man, and that is the state of virtue.” Aquinas went so far as to insist that “offspring” in itself “signifies not only the begetting of children, but also their education, to which as its end is directed the entire communion of works that exists between man and wife as united in marriage, since parents naturally ‘lay up’ for their ‘children’ (2 Cor. 12:14); so that the offspring like a principal end includes another, as it were, secondary end.”⁶⁹ Forming the natural virtue of the child was part of the primary end of marriage according to the law of nature. When it came to marriage as a sacrament, Aquinas argued that the virtue of the offspring also included “the directing of the child to God.”⁷⁰ Christian parents were meant to people the Church. Both nature and grace, then, made the family the primary educator of children.

In Catholic thought, the dual nature of Christian marriage as ordered under both the natural law and the divine law meant that the Christian family was the building block of two distinct societies—the natural society of the city or the state, and the supernatural society of the Church. It should, therefore, not surprise that the family ended up in the middle of arguments between those societies. Influenced by documents like the *Syllabus* and *Quanta Cura*, which were responses to growing anti-clericalism in Europe, Catholics began to conclude that the modern state was likely to transgress its proper limits and to

⁶⁸ *ST* Suppl. Q49. A2.

⁶⁹ *ST* Suppl. Q49. A2.

⁷⁰ *ST* Suppl. Q49. A5.

interfere with the family. However, most Catholics also believed that the state, like the Church, had some duty to support families. The result was that Catholics were (and are) far from agreeing on the proper role of the government.

3.5 Parents and the Modern State

This shift from Catholics worrying primarily about parents' failure to fulfill their duties to concern about state interference responded to the growth of government-run and increasingly centralized school systems. These did not, according to Catholics, provide enough or the right kind of religious education. This movement occurred gradually over the course of the late 1860s and early 1870s, and in the United Kingdom before the United States.

During the 1860s, while parental rights were not yet in vogue among American Catholics, bishops' exhortations on parental duties increasingly appeared alongside defenses of the rights of the Church in an international order that many bishops saw falling prey to atheistic liberal nationalism. However, most American bishops did not connect these two concerns until the 1870s. For instance, in October 1865 Augustin Verot, the Bishop of Savannah and Administrator Apostolic of Florida, wrote a pastoral letter to explain the *Syllabus of Errors*. He argued that much of the *Syllabus* condemned "those errors and also theories" that supposed "a political and religious organization of the States of Europe, differing altogether from what exists on our side of the Atlantic."⁷¹ In Verot's telling, even the *Syllabus*' condemnation of "the unprincipled theorists, who

⁷¹ In the North, Verot was known as the "Rebel Bishop" because of his vocal support for the Confederacy. Augustin Verot, *Jubilee Pastoral of Right Rev. A. Verot, Bishop of Savannah and Administrator Apostolic of Florida for 1865* ([Savannah?], 1865), 4.

are not ashamed to wrest from families and parents, the sacred and inalienable right of teaching their children,” was relevant to his flock primarily as an occasion to “exhort parents.” He reminded them to send their children to schools where they would receive “the knowledge of those true principles of faith and religion, which the Catholic Church imparts to her children, under the patronage of the Clergy.”⁷² He said nothing against the state and was more worried about getting parents to fulfill their duties than he was about defending their rights. In the 1860s, American Catholic bishops still saw lazy or sinful Catholics as the biggest threat to Catholic education.

In contrast, elsewhere in the English-speaking world bishops began in the late 1860s to link the threat of the liberal state and anti-clericalism to Catholic schools. As they did so, they embraced arguments for parental rights. In Ireland in 1867, Paul Cullen, then the Cardinal Archbishop of Dublin, delivered a “Discourse on Christian Education” to the Catholic clergy of Dublin. He spent the first few pages discussing anti-clerical legislation in Europe, arguing that the “powers of the world” were trying “to confine the Church and her ministers to the sacristy, and to train up the rising generations with no knowledge, or a very imperfect knowledge, of religious practices and doctrines.”⁷³ He then argued that Ireland was “menaced with the same evils as other countries.” To prove this, he equated the reigns of Henry VIII and Elizabeth I (and therefore Protestant British rule in Ireland) with nineteenth-century European liberal anti-clericalism. He argued that

⁷² Verot, *Jubilee Pastoral*, 7.

⁷³ Paul Cullen, “Discourse on Catholic Education Delivered at a Meeting of the Secular and Regular Clergy of Dublin, Held on the 18th of December, 1867,” in *The Pastoral Letters and Other Writings of Cardinal Cullen, Archbishop of Dublin, Etc. Etc.*, ed. Patrick Francis Moran D.D. (Dublin: Browne & Nolan, 1882), 3:124–5.

those monarchs had “resolved to rob fathers and mothers of their parental rights over the education of their children, and to despoil the Church of the authority given to her by Christ, to instruct all nations, to teach the truths of revelation, and to prevent the spread of error.”⁷⁴ The National system of schools in Ireland was officially nonsectarian and prohibited religious teaching. In practice, however, the National schools often segregated Catholics and Protestants. Indeed, Cullen had already succeeded in expelling “heretical” books from, and exerting confessional control over, the National schools. This system, he nonetheless argued, failed to respect “the rights of parents and those of the Catholic Church over the instruction of Catholic children.” What was needed was a “Catholic system of Catholic education,” “free from State control,” because the State was run by “men of every religion . . . and generally imbued with hostility to the Catholic Church.”⁷⁵ Catholic schools, with explicitly Catholic teaching, should be publicly funded and controlled by the Church alone.⁷⁶

Henry Edward Manning, who had been named Archbishop of Westminster in 1865, agreed with Cullen. He argued that the Irish had “as good right to their own national education as England and Scotland.” He continued, “England treats its colonies,

⁷⁴ Cullen, “Discourse on Catholic Education,” 125.

⁷⁵ Cullen, “Discourse on Catholic Education,” 128, 9.

⁷⁶ Cullen invoked what would become one of the passages most cited in Catholic arguments over the schools question. The French historian and statesman François Guizot (who, as almost every Catholic who ever cited him pointed out, was a Protestant) wrote: “In order to make popular education truly good and socially useful, it must be fundamentally religious . . . it is necessary that national education should be given and received in the midst of a religious atmosphere, and that religious impressions and religious observations should penetrate into all its parts.” Cullen, “Discourse on Catholic Education,” 133–134. Cullen’s note was to “*Guizot Memoires*, t. 3, p. 69, 1860.” The original quote Cullen gave is slightly longer; the version above is the most commonly repeated part of it. Cullen’s use here is the earliest version I have encountered. It seems likely that, for instance, its appearance in the 1869 Pastoral Letter issued by the Tenth Provincial Council of Baltimore, was inspired by Cullen.

in education as well as in religious equality, better than it treats Ireland.”⁷⁷ Failure to do justice to Ireland, he argued, had “become a danger to the Empire” as Irish Catholicism “overspreads in its dispersion the colonies of Great Britain and the United States of America.”⁷⁸ “A policy of absolute equality in religion,” including denominational education, Manning insisted, was the only possible way to “hold together” the empire.⁷⁹ Manning, however, would soon be caught up with fighting for the continued existence of voluntary schools in England itself.

In 1867 the Second Reform Act roughly doubled the size of the electorate in England and Wales. It extended the franchise particularly to urban, working-class, male heads of households. Though the Reform Act hardly completed democracy, it did provoke much concern about the need to educate voters. This concern coincided with rising anxiety that British workers lacked enough education to compete with rapidly industrializing Germany. The Catholic bishops of England, Ireland, and Scotland attempted a united front as it became increasingly clear that Parliament was going to attempt some kind of large-scale educational reform.

The first united Catholic volley came in opposition to a bill meant to reform Scottish education. In Scotland, Catholic education had made a very slow reemergence during the eighteenth century. It began with a few Catholic schools in the Highlands, where the vast majority of Scottish Catholics lived. However, much of that population

⁷⁷ Henry Edward Manning, “Ireland: A Letter to Earl Grey,” in *Miscellanies* (London: Burns and Oates, 1877), 1:233.

⁷⁸ Manning, “Ireland: A Letter to Earl Grey,” 1:234–5. Manning primarily associated the Irish in the United States with Fenianism.

⁷⁹ Manning, “Ireland: A Letter to Earl Grey,” 1:254.

was displaced by the mid-nineteenth century, having moved either to the settler colonies of the British Empire (especially Nova Scotia, Cape Breton, and Prince Edward Island), or to the midland and lowland industrial towns and cities. The 1793 Catholic Relief Act technically prohibited Catholics from teaching, but it was unenforced, and the creation of Catholic schools continued in the cities, reaching a total of about twenty elementary schools by the time of Catholic Emancipation in 1829. As in England, the Catholic population was poor, and as important as schools were, their creation was haphazard, and the education they provided was feeble. However, in the middle of the century, the combination of Irish immigration and the return of religious orders that could run schools provided some impetus for growth. As in England, Catholic schools eventually could apply for grant aid from the Privy Council.⁸⁰

In February 1869 the Parochial Schools (Scotland) Bill was introduced in the House of Lords. It would effectively have converted the Presbyterian parish school system into the Scottish national system, cutting off grant money to other schools. In March 1869 Manning, speaking as the leader of the Catholic Church in England, wrote to Cullen, as the primate of Ireland, saying that he feared a “crisis on the subject of Education” and wished “open and decisive cooperation” with him on the issue.⁸¹ In early April, the Catholic bishops of England and Scotland met in London, and afterward Manning informed Prime Minister William Gladstone of the bishops’ united opposition

⁸⁰ Mary Bonaventure Dealy, O.S.B., *Catholic Schools in Scotland* (Washington, D.C.: Catholic University of America Press, 1945), 110–122, 123–146.

⁸¹ Manning to Cullen, March 27, 1869, in *The Correspondence of Henry Edward Manning and William Ewart Gladstone: The Complete Correspondence, 1833–1891*, ed. Peter C. Erb (Oxford: Oxford University Press, 2013), 3:146.

to the proposed bill.⁸² (Unsurprisingly, this bill also provoked Episcopalian protest.⁸³) Writing to Cullen a week later, Manning lamented that if “only the 6,000,000 Catholics of these countries could act together there is no just demand we should not obtain.” He called the proposed “Scotch Bill” “simply tyranny” but noted that, “unless the Irish Members [of Parliament] give notice to the Government of their intention to oppose it,” “it will come on.”⁸⁴ The Bill did, in fact, die in the House of Lords that summer.⁸⁵

While the Catholics of the United Kingdom were making common cause, the American Catholics spent more and more time envying the Canadians’ schools.⁸⁶ The fact that no single “Canadian” system existed did not quell their longing. In 1867 the British North America Act united the Province of Canada (then divided into Ontario and Quebec), Nova Scotia, and New Brunswick in a new Dominion of Canada. The Dominion also assumed control of the vast Northwest Territories—that is, most of the rest of today’s Canada to the west, excepting British Columbia, which joined the

⁸² Manning to Gladstone, April 10, 1869, in Erb, *Correspondence*, 3:146.

⁸³ See John Stevenson, *Fulfilling a Vision: The Contribution of the Church of Scotland to School Education, 1772–1872* (Eugene, OR: Pickwick Publications, 2012), 133.

⁸⁴ Manning to Cullen, April 18, 1869, in Erb, *Correspondence*, 3:148.

⁸⁵ Stevenson, *Fulfilling a Vision*, 134–139.

⁸⁶ English-speaking Catholic arguments, especially before 1870, also appealed to the practice of many of the nations of continental Europe. The frequently cited Joseph Kay’s 1850 *The Social Condition and Education of the People in England and Europe; Shewing the Results of the Primary Schools, And of the Division of Landed Property, In Foreign Countries*. Kay was the brother of James Kay-Shuttleworth who served as the first secretary of the Privy Council on Education between 1839 and 1849. The second volume was devoted to “The Education of the People.” In it, Kay argued for the maintenance and improvement of the denominational system in England. He also freely praised the practice of Catholic countries, writing, for instance, that “Romanist countries have far outstripped us in the eagerness with which they are promoting the education of their people. They understand the signs of the times, but we have yet to learn them.” Joseph Kay, *The Social Condition and Education of the People in England and Europe* (London: Longman, Brown, Green & Longmans, 1850), 2:511.

confederation in 1871.⁸⁷ The British North America Act established a federal system. In it the provinces governed schooling, but the act protected pre-existing denominational rights in education.⁸⁸

Provincial school systems varied. The systems in place in Ontario and Quebec were either de facto or officially denominational. In Nova Scotia, education moved from being exclusively under the control of the Church of England to a system of locally controlled and de facto Protestant common schools by the 1860s, though government grants gave some support to denominational schools. In New Brunswick, the 1858 Parish School Act in practice created a system under a provincial Board of Education wherein most schools were established and run by either the Church of England or the Catholic Church (here primarily Francophone) with government grants. The 1871 Common School Act replaced the 1858 law and established non-sectarian schools as the rule of the province. Catholics protested that law until an 1875 compromise permitted some tax money to denominational schools while the predominant school system was “public” and “unsectarian [*sic*].” In Manitoba, a Protestant/Catholic denominational system prevailed between 1870 and 1890. American Catholics frequently pointed to Quebec's system as a model, but most would have accepted any of the Canadian options as an improvement.

⁸⁷ The province of Manitoba was created out of the Northwest Territories in 1870 (and later significantly enlarged), and Prince Edward Island joined the Confederation in 1873. The Arctic Islands remained under direct British control until 1880. From the Northwest Territories were created Yukon Territory in 1898, and Saskatchewan and Alberta in 1905. Newfoundland was not united to Canada until 1949.

⁸⁸ The highest court remained the Judicial Committee of the Privy Council. Therefore, some educational politics was still tied to London.

Not everyone thought so well of the Canadian compromises. The English priest Herbert Vaughan, in an article in the *Dublin Review* entitled “National Tendencies and the Duties of Catholics,” held that Ontario's system, modeled on that of Ireland, was woefully insufficient. Vaughan did not acknowledge the de facto religious segregation in these schools and so lamented the “amalgamation of the sects,” which, he argued, tended to lead to religious indifference.⁸⁹ Vaughan urged English Catholics to be vigilant against any new school system that resembled those of Canada and Ireland and would make Protestant proselytism of Catholic children easier or would lead to indifference.

Vaughan, however, was even more insistent that the English should not imitate the United States. Many English-speaking Catholics agreed that the American “common schools,” many of which taught “non-sectarian” Christianity, constituted the worst system. Catholics believed that teaching this non-sectarian Christianity to Catholic children amounted to Protestant aggression. Catholics also argued that Catholic children who received such an education were more likely to become totally irreligious than devoutly Protestant.

⁸⁹ Herbert Vaughan, *National Tendencies and the Duties of Catholics* (London: Burns & Oates, 1868), 13. The copy of this pamphlet held in the special collections of the Catholic University of America has a handwritten note on the cover: “To his grace the Archbishop of Baltimore with the writer's compts.” The Archbishop of Baltimore at the time was Martin Spalding. Herbert Vaughan, like Ullathorne, was a descendant of a Catholic recusant family. He was the eldest of thirteen children. His brother, Roger, became Archbishop of Sydney and wrote the first English-language biography of Thomas Aquinas. Kenelm also became a priest. Joseph founded a Benedictine abbey in Scotland. Bernard became a famous Jesuit preacher. John, the youngest, was made the bishop of the titular see of Sebastopolis. Four of his sisters became nuns. The sixth son, Francis, married an American heiress, inherited, and one of his sons became Bishop of Menevia (in Wales). Vaughan cited James Fraser, *Report to the Commissioners Appointed By Her Majesty . . . On the Common School System of the United States and of the Provinces of Upper and Lower Canada* (London: Eyre and Spottiswoode, 1866).

Vaughan cited the Anglican bishop of Tennessee, Charles Quintard, who had spoken against the common school system in London in December of 1867.⁹⁰ Quintard, Vaughan reported, argued that the American system “took no notice of God, or of Christ, or of the Church of the living God; or, except in the most incidental way, of God’s Holy Word. The intellect was stimulated to the highest degree, but the heart and affections were left uncultivated. It was a system which trained for business, not for the duties of life.”⁹¹ The result, Vaughan concluded, was that “the youth of the country left the school . . . utterly ignorant of the principles of duty, truth, religion, and honour.”⁹² Vaughan also added his own interpretation of the American situation. He held that it attempted, with “good intentions” to “reconcile” two “incompatible principles” in pluralistic societies: to square local funding for (and therefore local control over) education with the need for religious education.⁹³ In the United States, he wrote, when “the question of religion arose,” “then came endless jealousies and dissensions; then various schemes of compromise. Everything failed; so, finally, religion was banished altogether from the

⁹⁰ Quintard’s predecessor, James Otey, was also a major proponent of religious education. His 1859 “Christian Education” made as strong a case for parental duties in education as any Catholic bishop. J. H. Otey, *Christian Education: Sermon Before the General Convention of the Protestant Episcopal Church in the United States of America, at St. Paul’s Church in the City of Richmond by the Right Rev. J. H. Otey, D.D. Bishop of the Diocese of Tennessee* (Richmond: Enquirer Book and Job Office, 1859), 19, 21.

⁹¹ Herbert Vaughan, *National Tendencies*, 17.

⁹² Herbert Vaughan, *National Tendencies*, 17.

⁹³ Herbert Vaughan, *National Tendencies*, 17.

school.”⁹⁴ Most Americans in 1868 would have disputed much of that analysis, but from Vaughan’s point of view, the United States was just an odd version of the secular state.⁹⁵

In 1869 Paul Cullen similarly held up the United States as an example of a failed system. There, he argued, the “mixed system” of education had “been tried for a long time and on a gigantic scale.”⁹⁶ Like Vaughan, he cited Quintard’s London lecture. He also read from two letters from American Catholic bishops. John McCloskey, the Archbishop of New York, argued that the public school system was “highly detrimental to faith and morals”; therefore, McCloskey claimed, “Catholic parents” made “great pecuniary sacrifices” “through conscientious motives.”⁹⁷ James Bayley, the Bishop of Newark, thought more like his British and European confreres than most American bishops did at this point. He insisted that “mixed merely secular education” performed the work of the “modern Radical school”—which, with its “hatred of the supernatural,” was “the greatest enemy of the Catholic Church, and of all dogmatic truth.”⁹⁸ In this narrative, the American common school system represented the triumph of liberal secularism, not Protestant republicanism.

⁹⁴ Herbert Vaughan, *National Tendencies*, 17.

⁹⁵ Vaughan may well have been thinking of the relatively secularized California system that he would have encountered in 1864. In 1863 he had traveled to Panama where he spent his time administering the sacraments, defying a government requirement that clergy not administer the sacraments unless they recognized the supremacy of the state in spiritual matters. He was arrested, posted bail, and fled to San Francisco where he spent five months before returning to Panama, and then traveling to Peru, Chile, and Brazil raising money for a college to train missionaries. In 1865, Manning, just appointed Archbishop of Westminster, recalled him to England, where Vaughan established his college.

⁹⁶ Paul Cullen, “Lecture Delivered at a Meeting of the Literary and Historical Society of the Catholic University on Protestant Ascendency and Catholic Education in Ireland,” in *The Pastoral Letter and Other Writings of Cardinal Cullen*, 3:223–249, 245.

⁹⁷ Cullen, “Protestant Ascendency,” 245.

⁹⁸ Cullen, “Protestant Ascendency,” 246.

This interpretation was rhetorically useful. The ideology of the American common school desired to mold children into participants in a “common moral and political culture” based on Protestantism.⁹⁹ But Catholics knew that political success required appealing to Anglo-American Christianity. Blaming secularism instead of Protestantism made political sense. And, since Catholics argued that Protestantism produced secularism, the argument that the problem with Protestant education was that it made society secular seemed perfectly logical. This interpretation became far more widespread among American Catholics during the 1870s.

3.6 The Education Act of 1870 (England and Wales)

Catholics were starting to frame the school question in terms of defending parents from the overreach of the state, yet the immediate practical need was still to convince Protestants to overcome their anti-Catholicism. That was political reality across the English-speaking world. This meant that in trying to turn the conversation towards the rights of parents, Catholics still had, again and again, to respond to objections that their Church, and the papacy in particular, were tyrannical.

In England, the Elementary Education Bill of 1870 was written and introduced by William Forster, Vice-President of the Committee of the Privy Council on Education in William Gladstone’s Liberal government. The goal was to supplement the voluntary system, to “fill in the gaps.” The Liberal Party assumed that denominational voluntary schools were an insufficient basis for a genuinely national educational system. The

⁹⁹ Carl F. Kaestle, *Pillars of the Republic: Common Schools and American Society, 1780–1860* (New York: Hill and Wang, 1983), 77.

Church of England had long acquiesced to Parliament providing funds to non-Anglican denominational schools. However, many Anglicans opposed funding schools not run by any church. They wanted a system of denominational schools funded by local rates (property taxes). Many Protestants who did not belong to the Established Church, however, believed such a system would be stacked against them. Much of this so-called Nonconformist population was rural, and in rural areas there was usually a single school. A comprehensive denominational voluntary system would likely mean that their only option would be to send their children to Church of England schools. Nonconformists, therefore, tended to ally with secularists who promoted either non-denominational religious instruction or no religious instruction at all, in locally controlled schools funded by local rates. Catholics, in turn, wanted denominational education, but they feared that systems based on local rates would mean that their interests would suffer under anti-Catholic local control.

In the lead-up to the 1870 Act, Archbishop Manning tried to build a coalition for denominational education. He appealed to the principles of the preservation of English Christianity, freedom of conscience, and parental rights. In 1869 he wrote a pastoral letter addressed to anyone who supported denominational education, not just Catholics. This letter offered a blueprint for the English-speaking Catholic argument for parental rights against the overreach of the state. Manning addressed “men who are Christians,” and he aimed for an ecumenical tone, referring to the “Christian Church.” Manning articulated his strategy to Cullen:

I have carefully avoided giving [the argument] a prominently Catholic character. Christian education is the *genus* and denominational as the *species* will cover all we want. And if we are to ally the Anglicans and

Nonconformists, we must, I fear, use a language intelligible to them rather than our own.¹⁰⁰

He urged his readers to “[h]old fast by the old traditions and axioms of your fathers” and to reject the “handful of *doctrinaires* and of social theorists, who have either lost their Christian faith, or have never had faith, are urging us to a national instruction without religion.” “The people of these kingdoms,” he insisted, were “a Christian people.”

Manning delved into the relative rights of parents, the state, and the Church. He used the term “Church” with enough ambiguity that some non-Catholics could plausibly have agreed. The Archbishop argued that while education was primarily the duty of parents, the state too had a moral obligation to support it. He also held that the “State has no rights, therefore no duties, higher than those of the parents.”¹⁰¹ The Church, in turn, claimed no rights “*against* the natural rights of parents.” But, Manning wrote, the Church did claim “the right and the commission to direct, and by all moral power to constrain, its members to educate their children as Christians; and, farther, to protect them in these rights and duties against all adversaries.” Of all adversaries, Manning continued, “the State, when it exceeds its rights, is the worst.”¹⁰² When the state tried to replace the church as the educator of the people, its “usurpation upon the office of the Church [was] a usurpation also upon the authority of every father and mother in the land.”¹⁰³ Thus, Manning warned, “the only security for the preservation of our Christianity, of our public

¹⁰⁰ Quoted in Shane Leslie, *Henry Edward Manning: His Life and Labours* (New York: P. J. Kenedy and Sons, 1921), 174. Emphasis in the original.

¹⁰¹ Henry Edward Manning, “National Education,” in *National Education and Parental Rights* (London: Burns, Oates, and Company, 1872), 17.

¹⁰² Henry Edward Manning, “National Education,” 18. Emphasis added.

¹⁰³ Henry Edward Manning, “National Education,” 19.

morality, and of the liberty of conscience, is the independent action of the Church interposing itself between the State and the people.” Denominational education, he claimed, presented a way in which “Christian pastors” to whom “the fathers and mothers of the people willingly confide the care of their children,” could fend off “State despotism.”¹⁰⁴

Unfortunately for the Catholic lobbying effort, while Parliament debated the Education Act, the bishops were all in Rome. In June 1868 Pius IX called the first ecumenical council since the Council of Trent over three hundred years earlier. The Vatican Council opened on December 8, 1869.

The first iteration of the Education Bill, introduced in February of 1870, was considered conservative. It proposed a year's grace period and the aid of building grants to help denominational schools to provide sufficient school-places for everyone in a given area. After the grace period, building grants would cease, but the state would provide maintenance grants equal to the sum that the voluntary schools could raise from other sources, including fees. It also allowed the possibility of denominational schools receiving local rate-aid. If, after the grace period, there were still deficiencies, school districts run by local school boards were to be established. Local tax-payers were to elect these boards, and the schools were to be supported almost entirely by public funds.

Even under this version of the Bill, however, the English Catholics would have needed to drastically increase their number of school places to avoid the possibility of being required to send Catholic children to the new board schools. Accordingly, the

¹⁰⁴ Henry Edward Manning, “National Education,” 22.

Catholic Poor School Committee began petitioning for an extension of the grace period. It did not succeed. Meanwhile, the secularist National League, led by Joseph Chamberlain, hoped for “painless extinction” of the voluntary system and petitioned to shorten the grace period.¹⁰⁵ It also requested that religious instruction in the board schools be limited to reading the Bible without comment *and* that religious instruction in voluntary schools receiving state aid be conducted either at the beginning or the end of the school day to facilitate parents' ability to withdraw their children.¹⁰⁶

3.7 English-speaking Catholics and the Vatican Council

The Vatican Council exacerbated English Catholics' political difficulties. On March 12, within a week of receiving a delegation from the National League, William Gladstone wrote to Archbishop Manning to say that the Catholic position on the Education Bill was “much damaged by the impression here of what is going on at Rome.”¹⁰⁷ Part of what was going on in Rome was Manning's vigorous promotion of a strong definition of papal infallibility. Manning replied that he “fully recognize[d] that the excitement raised by the Newspapers in England respecting what passes here, makes it less easy for the Government to do as it would towards us.” However, Manning also admonished the prime minister to stay out of the business of the Council.¹⁰⁸ Gladstone responded that his “feelings and convictions” were “decidedly with your ‘opposition [in

¹⁰⁵ Elsie E. Gully, *Joseph Chamberlain and English Social Politics* (New York: Columbia University Press, 1926), 117.

¹⁰⁶ Gully, *Joseph Chamberlain*, 115–116.

¹⁰⁷ Gladstone to Manning, March 12, 1870, in Erb, *Correspondence*, 3:196.

¹⁰⁸ Manning to Gladstone, April 7, 1870, in Erb, *Correspondence*, 3:201.

the Council—that is, those who did not want a definition of papal infallibility].” He believed them “to be contending for the religious and civil interests of mankind against influences highly disastrous and menacing to both.” He also insisted that he was not interfering but rather was worried about “the consequences of (what we consider) extreme proceedings upon the progress of just legislation here.” He insisted that he knew the effects of the Vatican Council on the Education Act “by actual and daily touch.”¹⁰⁹

While the Council worsened the English Catholics’ education problem, it drew the English-speaking bishops of the world closer together. Years later, James Cardinal Gibbons would write that the Council afforded “a most striking and gratifying evidence of the growth of our language among the nations of the earth during the last three centuries, and of the corresponding expansion of the Catholic religion throughout the English-speaking world.” He recounted the “prelates speaking our tongue” from “England, Ireland, and Scotland, from the United States and Canada, from Oceania, the East Indies, and Africa.” To Gibbons, the Council had illustrated that “wherever the English language is spoken, there also is raised aloft the banner of salvation.”¹¹⁰

At the beginning of the Council, the English-speakers as a whole attempted to collaborate. This effort did not last because they did not agree on the most pressing question—whether to define papal infallibility.¹¹¹ Nonetheless, spending months together

¹⁰⁹ Gladstone to Manning, April 16, 1870, in Erb, *Correspondence*, 3:204–5.

¹¹⁰ James Gibbons, “Personal Reminiscences of the Vatican Council,” *The North American Review* 158 (Apr. 1894): 387, 388, 388. Gibbons also described Manning as “unquestionably, the most attractive figure among the Episcopate of England” whose discourse was “a most logical and persuasive argument.” Gibbons, “Personal Reminiscences,” 395, 396.

¹¹¹ James Hennessey, *The First Council of the Vatican: The American Experience* (New York: Herder and Herder, 1963), 54–55. Reportedly, in early meetings, the Americans were rather pushy, the Irish a bit leery of the Americans, and the Australians enthusiastic. Ullathorne played the mediator.

in Rome reinforced pre-existing ties and fostered new ones. One hundred and fifty of the bishops at the Council—roughly a fifth—were either Irish-born or of Irish descent.¹¹² It was already common for American bishops coming to and going from Rome to make stops in either England or Ireland and visit bishops there.¹¹³ It is unsurprising, then, that the English-speakers, especially those somehow counted as Irish, socialized and celebrated feast days in common.¹¹⁴ Cullen, for his part, seems to have kept track of the doings of the American and English bishops far more than those of any of the other

¹¹² For instance, eight of the twelve Australian bishops were Irish-born. Daniel Murphy, Bishop of Hobart Town, had earlier served as the vicar-apostolic of Hyderabad. At least thirteen of the American bishops were Irish-born. So were the bishop of Madras, Stephen Fennelly, and Thomas Grimley, of the Cape of Good Hope. Cullen and the American bishops apparently debated what action the Church should take against the Fenians. Cullen arranged for Propaganda to issue a rescript preventing priests from publically promoting it. Cullen was targeting the same Father Lavelle whom Meany had fictionalized in *The Confessors of Connaught*. Several of the Americans, including Spalding, thought this was unhelpful interference in temporal matters. Peadar Mac Suibhne, *Paul Cullen and His Contemporaries with their letters from 1820 to 1902* (Kildare: Leinster Leader Ltd., 1977), 5:30–31, 34, 36, 47–51.

¹¹³ For instance, in September of 1867, Manning wrote to Gladstone that he had hosted the Archbishop of Baltimore and the Bishop of Newark on their way back from Rome. Manning to Gladstone, September 8, 1867, in Erb, *Correspondence*, 3:98. Manning later forwarded to Gladstone a letter from James Bayley, the Bishop of Newark that, among other things, condemned Fenianism. Manning to Gladstone, April 28, 1868, in Erb, *Correspondence*, 3:121.

¹¹⁴ For instance, Cullen hosted a dinner on the feast of St. Paul. He invited “all the orthodox Irish bishops,” as well as “Dr. Spalding, Dr. McCluskey [*sic*—McCloskey of New York], Dr. Manning, Dr. Eyre [the Apostolic Administrator of the Western District of Scotland, (and Archbishop of Glasgow after the reorganization of the Scottish hierarchy in 1872), who was from an English recusant family, and a major proponent of Catholic schools], Dr. Scandela [*sic*—Scandella; the vicar apostolic of Gibraltar, born in Gibraltar, of Genoese descent, fluent in English, and responsible for wresting increased grant money for Catholic schools out of the Colonial Office] . . . and Dr. O’Connell of Grassville, California [*sic*—Grass Valley—the diocese included much of the Sierra Nevada gold country, as well as most of Nevada, and, early on, Utah and part of Colorado]. O’Connell was Irish and had been ordained a bishop by Cullen in 1861. Cullen to Conroy, July 1, 1870, in Mac Suibhne, *Paul Cullen and His Contemporaries*, 5:132.

nationalities.¹¹⁵ He lamented that “American-Irish bishops both in the States and Canada nearly all seem wrong” on the question of infallibility.¹¹⁶

Meanwhile, as the summer passed, the Education Bill became, from the Catholic point of view, worse and worse. On June 16 a new version of the bill stated that no school board could provide aid to the voluntary schools and reduced the grace period to less than six months. A “time-table conscience clause” regulating the time at which religious instruction could be given was adopted and extended to include voluntary schools. Another provision allowed a voluntary school to be given over to the local school board if a denomination was no longer able to support it. On June 30 William Cowper-Temple’s clause banning board Schools from teaching “religious catechism or religious formulary distinctive of any particular denomination” was adopted.¹¹⁷ It effectively established the board Schools as non-denominational.

Of course, in Rome, the Council’s effect on British politics was of no import whatsoever. The First Vatican Council voted to define papal infallibility on July 18. It also reasserted the pope’s primacy of jurisdiction in the Church. It added that “none may re-open the judgment of the Apostolic See, than whose authority there is no greater, nor

¹¹⁵ For instance: “I think about a dozen of American bishops have gone home. They are restless, and it is well they should go where they shall have something to occupy them . . . I think some of them are not very profound on theological matters.” Cullen to Conroy, March 19, 1870, in Mac Suibhne, *Paul Cullen and His Contemporaries*, 5:88–89.

¹¹⁶ Cullen to Conroy, May 11, 1870, in Mac Suibhne, *Paul Cullen and His Contemporaries*, 5:102.

¹¹⁷ Cowper-Temple argued that the clause was meant as a compromise and did not entirely prevent the teaching of religious dogma, saying that “the exclusion of catechisms and formularies left the opinions and the faith of the teacher untouched, and dealt only with lesson-books which bore upon the title-page indications of their origin.” Indeed, the clause did not go as far as the National League had asked it to go. Quoted in A.C.F. Beales, “The Struggle for the Schools,” in *The English Catholics, 1850–1950*, ed. George Andrew Beck (London: Burns Oates, 1950), 375.

can any lawfully review its judgment.”¹¹⁸ That is, no state had the right to overrule the judgment of the Church. In sum, the Vatican Council was as bad as any self-respecting Protestant could have dreaded, or hoped for, if he sought to prove the despicableness of Rome. The Education Act of 1870 received Royal Assent on August 9.

The Franco-Prussian war broke out on July 19, the day after the vote on infallibility. Napoleon III recalled the French troops who had secured Rome under papal rule since the Italian government’s 1861 declaration that it was the capital of Italy. Napoleon III lost the Battle of Sedan in early September and surrendered to the Prussians. A new French republican government quickly formed, and it had no interest in defending Rome. The road was clear for an Italian invasion. Pius IX rejected Italian negotiations, and the Italian army arrived at the walls of Rome by September 19. The next day, a papal force composed of the Swiss Guards and volunteer “zoaves” resisted for a few hours, just long enough to make clear that Rome was being taken by force. The Italian army then entered the city, and the next day occupied everything except the Vatican. Following a plebiscite, Rome and Lazio (the territory of the Papal States between 1815 and 1870) were annexed to the Kingdom of Italy. The invasion of Rome appeared definitively to end the temporal power of the papacy. While the Protestant world condemned (if it was hardly surprised by) the decrees of the Council, it cheered the invasion.

¹¹⁸ “First Dogmatic Constitution of the Church of Christ, Chapter III—On the Power and Nature of the Primacy of the Roman Pontiff,” in *Decrees and Canons of the Vatican Council*, 26. There is no place of publication, publisher, date, or translator on the 1875? English-language pamphlet version.

3.8 Conclusion

In England, while anti-Catholicism remained powerful, the Education Act drew Catholics and Anglicans closer together as they tried to preserve denominational education. William Gladstone, even while writing furiously against “Vaticanism,” remained, as Manning had once written, “the spokesman of the christian tradition of education in England.”¹¹⁹ Jeffrey von Arx argues the Catholic Church and the Church of England began as mismatched rivals but became allies in a “common political agenda against secularism in the context of a pluralistic, and, of course, increasingly democratic political culture.”¹²⁰ For instance, the school boards could support voluntary schools by choosing to pay the fees for poor children to attend them. Rate-payers elected the members of those boards and had as many votes as there were vacancies on a school board. They could use all of them on a single candidate. Catholics, usually running a single candidate, managed to be fairly well represented. Once on the school boards, Catholics and Anglicans often cooperated. Joseph Chamberlain fumed that “everywhere the Roman Catholics and churchmen embrace; the lion lies down with the lamb in order to secure from school boards support to denominational education.”¹²¹

While British Catholics focused on forging an alliance with the Established Church, American Catholics attempted something analogous, trying to work with a “soft

¹¹⁹ Manning to Gladstone, March 12, 1873, in Erb, *Correspondence*, 3:353.

¹²⁰ Jeffrey von Arx, “Cardinal Henry Edward Manning,” in *Varieties of Ultramontanism*, ed. Jeffrey von Arx (Washington D.C.: Catholic University of America Press, 1998), 90.

¹²¹ Stephen G. Platten, “The Conflict Over the Control of Elementary Education 1870-1902 and its Effect Upon the Life and Influence of the Church,” *British Journal of Educational Studies* 23, no. 3 (Oct. 1975): 282.

establishment” of evangelical Protestantism. Across the English-speaking world, Catholics hoped their insistence on parents’ rights of conscience would resonate with traditions of respect for religious liberty. They knew that the existence of parental rights was almost universally agreed upon. Appealing to those rights should have been an excellent way of rallying a religiously diverse coalition.

The Church’s understanding of conscience, however, included the proposition that what the Church taught through the Pope and bishops, Catholics were “in conscience bound” to obey. Moreover, Catholics consistently held that the Church was, in a certain sense, higher than civil society or the state, and they reiterated the Pope’s right to temporal power over Rome. Their positions on these matters, clear matters of public record and constantly reiterated in the public square, the Vatican Council rendered impossible to ignore.

CHAPTER 4: STRUGGLING FOR ALLIANCES

4.1 Introduction

American Catholics embraced the language of parental rights in the early 1870s. They freely borrowed English Catholic rhetoric, but they also created their own critique of the state. This melded concerns about the secular state with Reconstruction-era politics. Schools politics were an essential part of the Republican Party's 1870s program of Reconstruction. Republicans believed that public schools would unite and “*morally* uplift the nation.” They would overcome mounting class alienation, remedy the ignorance of immigrants, freed slaves, and poor Southern whites, and provide social stability amidst the economic changes of industrialization.¹ With Republicans pinning so much on the success of the public schools, Catholic attempts to refashion the school system according to American religious diversity were unwelcome. Catholics, meanwhile, thought that using the state to unify the nation ideologically sounded rather despotic.

Meanwhile, an increasing number of Catholics believed that while anti-Catholicism was the largest *obstacle* to a denominational school system, the real

¹ Ward McAfee, *Religion, Race, and Reconstruction: The Public School in the Politics of the 1870s* (Albany: State University of New York Press, 1998), 3, 60. McAfee also proposes that the depression of 1873 “served to stiffen the long-standing Catholic resolve to destroy traditional American public education.” Increased economic difficulties no doubt contributed to Catholics' sense of the injustice of the “double tax,” but the shift to parental rights arguments predates the depression. McAfee, *Religion, Race, and Reconstruction*, 60.

opponent came from a different quarter. The true enemy was an atheistic liberalism (which many termed Masonic) that worshiped the state and sought to break down the family. American Catholics, for instance, began speaking more and more often against abortion, which they tied to public school education. In 1869 the pastoral letter issued by the Tenth Provincial Council of Baltimore first reaffirmed the necessity of Catholic schools. It then decried “the daily increasing practice of infanticide, especially before birth,” which, it continued, “is most prevalent in those localities where the system of education without religion has been longest established, and been most successfully carried out.”² Catholics attempted to convince their Protestant neighbors of the dangers of encroaching secularism and to urge their support of denominational education as a counter-measure.

Part of American Catholics’ new focus on the state came out of a transnational struggle between “ultramontanism” and the modern liberal state.³ Emmet Larkin, writing about Irish Catholicism, argues that ultramontanes saw the worst danger to the Church in the “modern liberal-secular state, infected as it was with the values of the Enlightenment and the Revolution gone mad.”⁴ Ultramontanes, looking to continental Europe and Latin America, saw liberalism as fundamentally revolutionary and both ideologically and tangibly opposed to the Catholic Church. Support for such anti-clericalism among many

² Martin John Spalding, *Pastoral Letter of the Tenth Provincial Council of Baltimore* (Baltimore: John Murphy & Co., 1869), 9, 10.

³ John T. McGreevy, “The Nation,” chap. 4 in *Catholicism and American Freedom: A History* (New York: Norton, 2004).

⁴ Emmet Larkin, “Cardinal Paul Cullen,” in *Varieties of Ultramontanism*, ed. Jeffrey von Arx (Washington D.C.: Catholic University of America Press, 1998), 62.

American and British elites alarmed English-speaking Catholics, and aspects of those debates inflected the conversations about education policy.

Nonetheless, this chapter shows that when American Catholics complained about atheistic states, they were primarily trying to persuade the Protestant majority to see a coming danger, not a present one. Catholics feared that Protestantism would not be able to hold off secularism. Even the most curmudgeonly American Catholic, however, knew perfectly well that the public school system was not *yet* remotely in the same league as the French Revolution, the Paris Commune, or even Bismarck's *Kulturkampf*. Catholics decried "godless" schools while appealing to the principle of parental rights and the importance of Christian morality for the survival of the state because they knew that their nation was still overwhelmingly Christian.

4.2 American Catholics Embrace Parental Rights

In April 1870 Orestes Brownson finally wrote the sort of article Fr. Wardy had begged for in 1858. "The School Question," published in Hecker's *Catholic World*, argued that the public school system "exclude[d] the children of Catholics, unless their parents [were] willing to violate their Catholic conscience, to neglect their duty as fathers and mothers."⁵ Reconstruction politics roused Brownson even further. Like many

⁵ Brownson was responding to a February 1870 article in *The Christian World*, the organ of The American and Foreign Christian Legion. It described itself as "a carefully digested Summary of the Views and Reasonings of all parties to the Controversy" over "The Bible in the Schools." It first presented the "Roman Catholic View," introduced with the note that "there is perfect agreement of Priesthood and Press in this country, Great Britain, and the world over." The Catholic view as presented included the arguments that the state was not competent to teach (but that the Church was), that the public schools inculcated immorality, and that Catholic children should not mix with non-Catholic children. The next section gave the "Views and Reasonings of Those (Protestants) Who Consent That the Bible Be Excluded From Our Schools." Here the arguments were *for* secular schools as the only solution to conscientious objection to Bible-reading. It cited the Scottish Congregationalist *The Advance* arguing that "if we omit the reading of

American Catholics in the 1870s, he was concerned by the dramatic centralization, at the state level, of the public school system over the previous forty years. In January 1871 *The Atlantic Monthly* published an article by the Radical Republican Senator Henry Wilson of Massachusetts (soon to be vice-president). In his “New Departure of the Republican Party,” Wilson proclaimed that the “two great necessities of the country” were “UNIFICATION and EDUCATION.”⁶ He wanted to produce intelligent (Republican) voters out of both (Catholic) immigrants and the “three quarters of a million of voters . . . who, like their fathers, had been born and educated under the paralyzing and brutalizing influences of slavery” and who had received voting rights under the Fifteenth Amendment.⁷ He accordingly urged his party to prioritize educational reforms, to push “the establishment of a system of national education, or something tantamount thereto,” and to introduce laws making elementary education compulsory.⁸

Writing in *The Catholic World*, Brownson denounced Wilson’s proposal as “revolutionary.” He argued that it failed to respect the “American system of federative government,” violated “the rights of parents and annihilate[d] the religious liberty

the Bible in the schools, out of regard to the scruples of parents” the school could still inculcate morality, which, unlike religion, “belongs alike to church and State.” The final and most lengthy section described those “Who Justify, and so Insist Upon, The Reading of the Bible in the Schools.” It gave the Protestant republican argument that the state needed to inculcate morality to survive and that the Bible was an “incomparable” “text-book in morals” and nonsectarian. A lengthy quote from “a Report of Mr. A. E. Rankin of the Vermont Board of Education (Sept. 1868)” included the assertion that the Douay-Rheims translation was “the only sectarian Bible.” “The Bible in the Schools,” *The Christian World* 21 (Feb. 1870): title page, 33, 33–35, 38, 39, 42.

⁶ Henry Wilson, “New Departure of the Republican Party,” *Atlantic Monthly* (Jan. 1871): 104–120, 109.

⁷ Wilson, “New Departure,” 108.

⁸ Wilson, “New Departure,” 120.

secured by the constitution and laws both of the several states and of the United States.”⁹ Brownson believed that Wilson and the Republican Party were attacking “precisely education by the Catholic Church.” Their end game was to “gradually extinguish Catholicity in the country, and to form one homogenous American people after the New England Evangelical type.”¹⁰ Brownson advised the Republicans that the “wisest course, since there are different religious denominations in the country, [was] to accept the situation, to recognize the fact, acquiesce in it, and make the best of it.”¹¹

American Catholics, like British Catholics, hoped that parental rights arguments would help them to rally the Protestant allies they desperately needed. Indeed, Catholics were not alone in their concerns about the increasing power of the government in education. Carl Kaestle argues that *before* the Civil War resistance to centralization coincided with class, “religious, racial, or ethnic conflict,” and “urban-rural” disputes. This resistance also often was rooted in an attachment to localism.¹² He argues that groups “argued variously on the basis of tradition, parents’ prerogatives, minority rights, religious freedom, and theories of limited government” and “did not think of themselves as a common force.”¹³ American Catholics, however, were late to the game. They found much of the former resistance gone and made few allies.

⁹ Orestes Brownson, “Unification and Education,” *The Catholic World* 13, no. 73 (1871): 1–14, 2. Brownson mentioned Wilson’s article in several of his later pieces as well.

¹⁰ Brownson, “Unification and Education,” 6, 7.

¹¹ Brownson, “Unification and Education,” 13–14.

¹² Carl Kaestle, *Pillars of the Republic: Common Schools and American Society, 1780–1860* (New York: Hill and Wang, 1983), 147–148.

¹³ Kaestle, *Pillars*, 148.

Some Catholics were too abrasive to cultivate allies successfully, even when they earnestly tried. In December 1871, the Catholic bishop of Rochester, New York, Bernard McQuaid, gave a two-hour lecture on “Christian Free Schools” with several local Protestant ministers in attendance.¹⁴ He immediately delved into parental rights. He began by pointing out that most people, even most opponents of the public school system, “conceded the right of the State to impart an intellectual education to all who choose to avail themselves of the boon.” He continued, however, that there were “two [other] points almost universally accepted.” These were: that “the primary and natural right of parents to procure for their children the best education they can”; and that the State had no right “to interfere in the religious teaching of parents or children.”¹⁵

McQuaid, however, could not keep his focus on common ground. Instead, he excoriated wealthy Protestant America for preaching the importance of religious education and establishing religious colleges for their sons, while speaking “differently to the poor.”¹⁶ He contrasted “the rich with all their advantages of books, many intellectual

¹⁴ McQuaid was born in New York City in 1823 or 1825, the son of Irish immigrants. His parents both died while he was a small child. After a few months of abuse at his stepmother's hands, family friends removed and placed him in the Catholic Orphan Asylum in Manhattan run by the Sisters of Charity. Having expressed interest in becoming a priest, McQuaid was sent to Montreal in 1839 to study at the Sulpician preparatory seminary because the diocese of New York did not have a seminary at the time. He returned to New York in 1841 where he studied under the Vincentians at the new St. Joseph Seminary, and he finished his education at Fordham, under the direction of the Jesuits whom John Hughes had recruited away from Zachariah Montgomery's St. Mary's College in Kentucky. As a young priest, McQuaid was responsible for establishing the first two parochial schools in New Jersey. When the Diocese of Newark was created out of that of New York in 1853, the new Bishop, James Bayley, made McQuaid the rector of the cathedral. Between 1856 and 1866 he founded and was president of Seton Hall College and Seminary. In 1866 he was named Vicar General of Newark, and in 1868 he was consecrated as the first bishop of the new diocese of Rochester. Norlene Mary Kunkel, C.S.F.N., “Bishop Bernard J. McQuaid and Catholic Education,” (PhD diss., University of Notre Dame, 1974), 48, 47–92.

¹⁵ Bernard McQuaid, “The Lecture,” in *Christian Free Schools: The Subject Discussed By Rt. Rev. B. J. McQuaid, D.D., at Rochester, N.Y.* ([Rochester?], 1871), 5.

¹⁶ McQuaid, “The Lecture,” 8.

and moral associations, pleasant friends and instructive conversation, the family's minister visiting their homes, listening to eloquent discourses in the church," with the "the laborer's child"

whose mother rises early in the morning and toils for her family while others are still in their beds . . . who, all day long labors on, busy in many ways to keep things together and eke out a bare subsistence; whose father, in summer's heat and winter's cold, the year in and the year out, for some paltry pittance of a few shillings, in health or failing strength, like a machine that must stop only when it is worn out, works from morning until night, and has, perhaps, neither time nor strength, nor patience to sit down with his children to supply the deficiencies and short-comings of the school and church.¹⁷

Like Ullathorne over a decade earlier, McQuaid asked how such children could find, "from such toil-worn and harassed parents, that amount of religious culture and instruction, which the State says shall not be given in the school" and Protestants admitted was "essential for the education of the young?"¹⁸ School taxes, by "taking a portion of [parents'] small resources, and by establishing with a lavish expenditure of the public funds, rival and competing schools . . . rendered well nigh impossible the fulfilment [*sic*] of a bounden parental duty."¹⁹ Angry over the financial burden of the public school tax, McQuaid believed that it kept Catholic parents from fulfilling their duty to send their children to Catholic schools and made religious education a luxury good.

After his tongue-lashing (and because he did want Protestant allies), McQuaid encouraged his "non-Catholic fellow-citizens" to promote religious education, urging

¹⁷ McQuaid, "The Lecture," 11.

¹⁸ McQuaid, "The Lecture," 11.

¹⁹ McQuaid, "The Lecture," 14.

them to: “bring into your schools whatever of religion you have—bring in prayer and religious singing and Bible reading.” He asked that they acknowledge that the public schools were, for all intents and purposes, their schools. He thought it better to acknowledge them for what they were and then create a denominational education system. McQuaid did not object to public money supporting evangelical religious education. For, he wrote, “we would much prefer good Protestants of any kind to infidels and deniers of all revelation; we thank God for any and all truth, wherever we find it.”²⁰

McQuaid was not alone; the argument for parental rights was gaining momentum among American Catholics. In January 1872, the *Catholic World* published an article entitled “Who is to Educate Our Children?”²¹ *The New York Times* described that article as “the clearest expression of Catholic opinion that we have yet to read.”²² The *Catholic World* article insisted that if “the state claim[ed] the right to educate our children, that right cannot be derived from the natural law.” Rather, “the natural law bestows the possession, care, and custody of the child on the parent, and a duty thus imposed cannot be relinquished without a manifest infraction of the first principles of that law.” Compulsory education, the article added, rested on shaky ground because poverty could force parents to send their children to schools they conscientiously objected to. Such a system was “more worthy of some half-crazed theorist or mad follower of Fourier and the Communists than of a citizen of this great republic.” The article concluded by saying that

²⁰ McQuaid, “The Lecture,” 15.

²¹ “Who Is to Educate Our Children?” *Catholic World* 14 (Jan. 1872): 433–447.

²² *New York Times*, December 25, 1871.

the “government that robs a parent of his rights and his children is neither free nor democratic.”²³

McQuaid, following up on his December lecture in March 1872, spoke on how to render “Common Schools in Harmony with Parental Prerogative.” Once again, he struggled between trying to create alliances and his intense frustration with American evangelicals. He warned against “the tyranny of no-religion, of open infidelity, which not content to have its own way, in the education of its own children, must compel every citizen, every parent, to accept the negative, defective, un-Christian, infidel education for his children.” The secular-minded were, he lamented, “helped by the Evangelical churches” even if they were not “intending to stab Christianity to the heart.”²⁴ He did not push a single policy solution, though he favored the state paying for education *per capita*, regardless of the school the child attended.²⁵ McQuaid did, however, demand “a system of schools that embraces all the people, while sacredly guarding the heaven-born right of parents to control the instruction and training of their offspring.”²⁶

McQuaid was the most prominent Catholic bishop to condemn the public school system in the early 1870s, but he was far from alone. For Lent of 1872, Napoléon-Joseph Perché, the French-born bishop of New Orleans, wrote a pastoral letter on parents’ duty

²³ “Who Is to Educate Our Children?” 441–442, 447.

²⁴ Bernard McQuaid, “Second Lecture: A Plan Outlined for State Control and Supervision of Common Schools in Harmony With Parental Prerogative,” in *Christian Free Schools*, 18.

²⁵ He also favorably mentioned a plan under which incorporated societies that ran schools could apply to receive the school tax money that their members had paid. McQuaid, “Second Lecture,” 28, 29.

²⁶ McQuaid, “Second Lecture,” 30.

to secure “a genuine Catholic education” for their children.²⁷ Repeating the language of his predecessor, Antoine Blanc, he insisted on the importance of “the priest, in the Church; the parents at home; the teacher at school.”²⁸ However, Perché’s tone was far harsher than Blanc’s had been. He condemned the public school system as “a social plague,” guilty of “the most bigoted illiberality” and of attacking “liberty in its most hallowed sanctuary, which is conscience itself.” The state school system forced “the poor either to leave their children uninstructed altogether, or compel[led] them in open violation of all conscience to send them to schools in which the moral and religious training which it is a parent’s duty to provide for his children [was] ignored.” This “radically iniquitous” system, Perché protested, assailed “the parent’s God-given rights to bring up the children he has begotten,” including the right “of bequeathing to them the priceless heritage of Faith.”²⁹ Unlike McQuaid, however, the bishop of New Orleans did not primarily blame Protestants. Rather, he excoriated the “fatal silence” of Catholics who “had permitted the State to lay its profane hand on the ark of their most precious liberties, to desecrate the sanctuary of their parental rights.”³⁰

Whether one blamed lazy Catholics or bigoted Protestants for the *rise* of the public school system, by the 1870s its apparent “irreligion” became a focal point of Catholic critiques. Catholics hoped to rally Protestant support by complaining about

²⁷ Napoléon-Joseph Perché, *Pastoral Letter of His Grace the Archbishop of New Orleans for the Lent of 1872* (New Orleans: Catholic Propagator Job Print, 1872), 2.

²⁸ Perché, *Pastoral Letter*, 4.

²⁹ Perché, *Pastoral Letter*, 6, 7.

³⁰ Perché, *Pastoral Letter*, 10.

secularization and the state rather about than proselytism and the dominant Protestant culture.

In 1872, Fr. Michael Müller, a German Redemptorist priest who had lived in the United States since 1851, published *Public School Education*. The book lamented that the United States was in “a most anti-Christian age.” America suffered from “confusion in religion, in government, [and] in the family circle.” He blamed all of these evils on the public schools.³¹ They had departed from their religious, albeit Protestant, origins and become “godless.”³² He praised Protestants (“our ‘dissenting brethren,’””) who “according to the measure of grace and light given to them,” provided Christian education to their children. He granted that any children schooled “in Christian practices, prayers, and religious duties” were “truly educated.”³³

Müller condemned the state’s attempt to educate as overreach. The priest argued that, at least in the United States, the state was secular because it was “a mere corporate agency.” It was therefore incapable of educating. He denounced the political theory that states were composed of individuals, equal and undifferentiated citizens, and rational adults, and he argued that by embracing this logic, the state made itself more of a business than a commonwealth. Using this faulty commercial logic, the state claimed “the children of the people” as “belonging to itself.” But, Müller insisted, the “[s]tate does not own them” and neither did “their fathers nor mothers, nor anybody else, thank God!” Children, he continued, “belong[ed] by the order of nature to their parents, and by the

³¹ Michael Müller, *Public School Education* (Boston: Patrick Donahue, 1872), 15.

³² Müller, *Public School Education*, 42.

³³ Müller, *Public School Education*, 180.

order of grace to Our Lord Jesus Christ.” Neither of these latter kinds of “belonging,” however, entailed ownership. The right to educate was “a right of conscience, and a right of the family,” rights not analogous to anything in commerce. They therefore stood totally beyond the purview of the modern secular state.³⁴

Müller’s arguments, however, made clear that he did not actually think that the United States was completely commercial and secularized yet. Rather, he believed that the public school system would make it such. Although Müller denied that American states could educate, he nonetheless argued that “the State in America is Christian.” It embraced a fundamentally Christian insight: “the dignity of freedom of the individual man,” that man did not ultimately belong to the state.³⁵ The Christian state was “a moral person, and *a fortiori*, a religious person” with religious duties. But, unlike a human being, for a *state* (perhaps for the modern pluralistic state in particular) the primary religious duty was to “respect the conscience of an individual.”³⁶ Müller counted the “direction and control of the education of our children” as a conscientious right, which belonged to “all denominations, whether few or many.”³⁷ Müller’s objection to the American school system came down to the fact that the state taxed “a religious and Christian people, for the education of our children” but failed to “give us a Christian education.”³⁸ The public school system, by circumventing the rights of Christian parents,

³⁴ Müller, *Public School Education*, 152–3.

³⁵ Müller, *Public School Education*, 152.

³⁶ Müller, *Public School Education*, 155.

³⁷ Müller, *Public School Education*, 165.

³⁸ Müller, *Public School Education*, 168.

“weakened, and will finally break up and destroy the Christian family.” It would turn the United States into “a nation of isolated individuals, without family ties or affections.”³⁹

The public schools threatened to transform the United States into a modern secular state.⁴⁰

For the sake of luring Protestant allies, Catholics focused on the dangers of the secular state. At times, however, blatantly Catholic argument proved alienating instead. Brownson lamented that the post-Christian world “held that the child belongs to the state, to the exclusion both of the rights of parents and the rights of God.” He also vigorously defended the right of the Church, as “the representative of the rights of God in human affairs,” to claim “the supreme authority in the bringing up and education of the child.”⁴¹ The Church rightly made “it obligatory on all parents, members of her body, to bring up and educate their children in the faith and practice which God through her enjoins.” Non-Catholic parents, however, were “free to bring up their children in their own belief or no-belief, religion or superstition.” The state, unlike the Church, had rights to the child only

³⁹ Müller, *Public School Education*, 182.

⁴⁰ Müller also talked at length about the interconnectedness of the rights of parents and the rights of children. Müller was not a great believer in citations, and substantial sections of his book were drawn, without note, from other sources, including Cardinal Manning's 1872 pastoral letter on education (see Chapter 2). Müller repeated Manning's argument that Christian children, as “children of God” had “four things belonging to them by right of inheritance, to which all other rights are secondary.” These were “a right to the knowledge of their faith; to the training of their conscience by the knowledge of God's commandments; to the Sacraments of grace; and to a moral formation, founded on the precepts and example of our Divine Saviour.” Manning had written that “every Christian child has a right in himself to a Christian education: every Christian parent is the guardian of that right in his child. And over the Christian parent is the authority of the Church, as the guardian of the rights and the guide of the liberty both of the parent and of the child.” The school, Müller added, “becomes the depository of the rights of parents, and of the inheritance of their children.” Henry Edward Manning, “National Education,” in *National Education and Parental Rights* (London: Burns, Oates, and Company, 1872), 38; Müller, *Public School Education*, 321-322.

⁴¹ Orestes Brownson, “Whose is the Child?” *Brownson's Quarterly Review, Last Series* 1 (July 1873): 289.

as “guardian and protector of the temporal interests of the family and society.”⁴² In a society traditionally suspicious of Catholic claims to power, such an argument was far from effective diplomacy.

4.3 Parental Rights and the Blaine Amendment

Most English-speaking Catholics, however, tried to avoid talking about the rights of the Church. They believed in those rights, but they knew that mentioning them would encourage the assertion that the parental rights arguments served covertly to expand the power of the clergy. Nonetheless, even when Catholics avoided theological arguments, they were accused of defending the *interests* of their Church rather than any principles of justice.

Edmund Francis Dunne discovered this as a judge in Arizona. Dunne, born in New York in 1835 to immigrant Irish parents, was raised in Ohio until moving with his family to California in 1852. In 1862 he served in the legislature as a member of the Union Party.⁴³ In 1863 he moved to Nevada. In 1864, he served in the Nevada

⁴² Brownson, “Whose is the Child?” 290. Edward Powers reads this to say that only non-Catholics had parental rights. This interpretation is understandable but not quite correct. Brownson’s point in this section was that the Catholic Church respected the parental rights of non-Catholics, not that the authority of the Church undermined the parental rights of Catholic parents. Powers read Brownson’s work over the course of the 1860s and 1870s as a coherent whole instead of tracking the dramatic shift in emphasis. Edward John Powers, “Brownson’s Views on Responsibility for Education,” in “The Educational Views and Attitudes of Orestes A. Brownson,” (PhD diss., University of Notre Dame, 1949), 234, 236.

⁴³ Two of Dunne’s sisters had been studying in an Ursuline school in Ohio. Sarah Theresa Dunne refused her parents’ eventual request that she join them in California, choosing instead to become an Ursuline sister. She took vows and the name Sister Mary Amadeus in 1864. Ten years later, she was elected Mother Superior. As Mother Amadeus, she led a handful of sisters to Montana in 1884 where they established and staffed mission schools and parochial schools. In her later years, she also sent sisters, who she temporarily joined, to open a mission in Alaska. Edmund Dunne’s eldest daughter also became an Ursuline sister and eventually joined her aunt in Montana. Gayle C. Shirley, “Mother Amadeus: Lady Black Robe,” in *Remarkable Montana Women*, 2nd ed. (Guilford: Globe Pequot Press, 2011), 24–33; Mary

constitutional convention and as a judge through 1866. He then moved to Washington, D.C., to practice law. In 1874 President Grant appointed him chief justice of the Arizona Territory.⁴⁴ He began his new job in November 1874 and quickly developed a reputation for impartiality. It lasted until February. In January, Catholics in Tucson had refused to attend a fundraiser for a public school, protesting the exclusion of Catholic schools from the school fund. The Arizona public school system was a recent creation—publicly funded only from 1871.⁴⁵ As in Montgomery’s California, the laws were new enough that Catholics believed they could change them. Unsurprisingly, the failure of Catholics to support the public schools prompted outrage. Dunne, lecturing shortly after the January protest before a large crowd that included most of the territorial legislature, attempted to make a case for the reasonableness of the Catholic position.

By then, national attention to the schools question had been steadily building. In 1871, two constitutional amendments intended to prevent any government aid to Catholic schools were introduced in the United States Senate, though neither made it out of the Judiciary Committee.⁴⁶ The “Cincinnati Bible Wars”—a widely-reported fracas over the compulsory reading of the King James Bible in public-school classrooms—came to an

E. Gill and John S. Goff, “Edmund Francis Dunne and the Public School Controversy, 1875,” *The Journal of Arizona History* 25 (1984): 369–385, 383n2.

⁴⁴ Gill and Goff, “Dunne,” 370–372.

⁴⁵ Gill and Goff, “Dunne,” 369–385, 370.

⁴⁶ Willard Warner of Alabama proposed the first amendment that would have prohibited governments from providing any public funds or property to religious groups. The second, submitted by William Stewart of Nevada, would have prevented any level of government from supporting “any school wherein the peculiar tenets of any religious denomination are taught.” Mark Edward DeForrest, “An Overview and Evaluation of State Blaine Amendments: Origins, Scope, and First Amendment Concerns,” *Harvard Journal of Law and Public Policy* 26 (2003): 558.

end in 1872. The controversy began when the Cincinnati Board of Education ended mandatory reading of the King James Version, probably in hope of attracting more Catholic students. The Supreme Court of Ohio upheld the Board's right to remove the Bible from the public school curriculum.⁴⁷ After that decision, other cities, including New York, Chicago, Buffalo, and Rochester, followed Cincinnati's lead.⁴⁸

Dunne first set out to establish “the paramount importance of religious instruction” as a universal principle—that is, as not a distinctively Catholic idea. He therefore referenced Confucius and Zoroaster and cited the so-called Ordinances of Menu (in William Jones' translation), the Quran, the Talmud, Plato, Cicero, Seneca, Tocqueville, Herbert Spencer, and George Washington.⁴⁹ To deny the importance of religious education, he demonstrated, was to “turn aside from the aggregated wisdom of the world.” Dunne argued, and assumed his auditors would agree, that this wisdom was more reasonable than the theory supposedly underlying the public school system, the “position that the true idea is divinity in majorities, communism in property, and freedom in love.”⁵⁰ Dunne argued that secular public education made a secular society and that secular societies must fail. A society that did not have “the Divine idea at the very centre

⁴⁷ See, for instance: Robert Michaelson, “Common School, Common Religion? A Case Study in Church-State Relations, Cincinnati, 1869–70,” *Church History* 38 (1969): 201–217; McAfee, *Religion, Race, and Reconstruction*; Tracy Fessenden, “The Nineteenth-Century Bible Wars and the Separation of Church and State,” *Church History* 74, no. 4 (2005): 784–811; Steven K. Green *The Bible, the School, and the Constitution: The Clash That Shaped Modern Church-State Doctrine* (Oxford: Oxford University Press, 2012).

⁴⁸ DeForrest, “State Blaine Amendments,” 558.

⁴⁹ Dunne, *Our Public Schools: Are They Free or Are They Not?* 2nd ed. (New York: T. D. Egan, 1875), 11–13. Rare was the American Catholic who could write anything on the schools question without citing George Washington on the importance of religion. Sometimes British Catholics cited him, too.

⁵⁰ Dunne, *Our Public Schools*, 14.

. . . about which all things revolve, toward which all things tend, and which directs and controls every part of the organism,” would “soon resolve itself into its individual elements, and the scattered fragments [would] fly asunder.”⁵¹ Religious education, therefore, was essential for the continued existence of any society.

While religious education was necessary for society, Dunne insisted, like Müller, that the state had “no inherent right to teach at all.” He argued that the state possessed a right to “assist” but “no right to control” education.⁵² When the government controlled education, “it interfere[d] with religion, and destroy[ed] both civil and religious liberty.”⁵³ It violated parental rights because the “parent has the right to say what religious instruction his child shall receive.”⁵⁴ Dunne also believed that a parent had the right to ensure that his child’s education was not subject to the will of the majority but, rather, to an authority he held to be divine, such as the Church. Accordingly, he concluded, Catholics had the right to demand substantial changes to the school system. The majority, in turn, had the duty to adopt reforms, or to give Catholics “the portion of the fund” they had “paid in” to manage for themselves, or to relieve them of “the obligation of making such a payment.”⁵⁵

Dunne also decried the trend towards compulsory education laws. Many Catholics would have disagreed with Dunne's critique, but it illustrates how fear of state power

⁵¹ Dunne, *Our Public Schools*, 15.

⁵² Dunne, *Our Public Schools*, 32.

⁵³ Dunne, *Our Public Schools*, 32.

⁵⁴ Dunne, *Our Public Schools*, 19.

⁵⁵ Dunne, *Our Public Schools*, 20.

undergirded Catholic opposition to the public school system. Dunne argued that “the State ha[d] no right to attempt compulsory education” because there might not be a “school in the vicinity to which a parent [could] conscientiously send his child.”⁵⁶ Compulsory education, he continued, constituted a claim by the state to “absolute control of our domestic affairs.”⁵⁷ It permitted the state to “enter the sacred precincts of the home and tear your child from your arms to train it and teach it as it likes because a majority desires to do so.” If voters admitted compulsory education, then the majority might, “against your will, dissolve all domestic ties, and call upon the members of your family to submit to whatever outrages any wild, insane majority may choose to order.” He asked his audience: “Are you ready for the laws of Lycurgus? Are you ready to say the State may indicate to you which particular child you shall strangle in its cradle because the official physician declares that its physical development is not satisfactory to the State?”⁵⁸ Such was the natural result of granting the state “absolute authority.” The “lingering effects of a recognition of the divine law” and “the fact that the doctrine has not yet been declared that there is no individual liberty” offered only temporary restraint.⁵⁹ Nonetheless, Dunne banked on the “lingering effects of a recognition of the divine law” to hope for reversing schools policy.

Dunne’s lecture provoked reactions. Within days, a bill was proposed in the Arizona Legislature for “corporate schools,” which could be formed by “any ten or more

⁵⁶ Dunne, *Our Public Schools*, 32.

⁵⁷ Dunne, *Our Public Schools*, 33.

⁵⁸ Dunne, *Our Public Schools*, 33–34.

⁵⁹ Dunne, *Our Public Schools*, 34.

persons” and to which individuals could choose to divert their school tax. It also would have repealed the law that forbade “the giving of public money to schools where religious instruction is given.”⁶⁰ The bill lost in the Council, the nine-member upper house of the territorial legislature, by one vote. Jesús Maria Elías, a rancher and leader of the Mexican American community in southern Arizona, introduced the bill in the House, where it was “indefinitely postponed.”⁶¹

If Dunne failed to change Arizona politics, he succeeded in helping to rouse American Catholics. The Catholic press quickly disseminated the lecture to audiences across the country. It appeared first in the San Francisco *Monitor* and then in the New York *Freeman's Journal*. When New York publisher T. D. Egan brought out a second pamphlet edition (following his own first and two in San Francisco) in November 1875, he estimated that “its circulation must have reached 50,000.”⁶² Orestes Brownson reviewed it in the last issue of his *Quarterly Review* and labeled it “really one of the ablest, most direct, and most conclusive of the various lectures, articles, essays, or pamphlets, that we have seen on the great question it discusses.”⁶³ Brownson went so far

⁶⁰ “Appendix,” in *Our Public Schools*, 37, 40. The proposed law would only have been in effect in Pima County, but it included Tucson, then the capital and the largest population center. Pima County was one of four original counties and encompassed most of the Arizona portion of the Gadsen Purchase until it was divided in 1881.

⁶¹ Dunne, *Our Public Schools*, 4. *Journals of the Eighth Legislative Assembly of the Territory of Arizona* (Tucson: Office of the Arizona Citizen, 1875), 228, 246; James E. Officer, *Hispanic Arizona, 1536–1856* (Tucson: The University of Arizona Press, 1987), 317–324.

⁶² T. D. Egan, “Introductory Remarks,” in Edmund F. Dunne, *Our Public Schools: Are They Free For All, Or Are They Not?* 2nd ed. (New York: T. D. Egan, 1875).

⁶³ Orestes Brownson, “The Public School System,” *Brownson's Quarterly Review, Last Series 3* (Oct. 1875): 516.

as to say that Dunne's lecture had persuaded him that, contrary to his previously stated position, it was time for "carrying the school question to the polls."⁶⁴

The Arizona press retaliated. The *Arizona Miner* attacked Dunne and his fellow "fanatical, radical and unreasonable Catholics."⁶⁵ The *Arizona Citizen*, which did not comment on the lecture until May 29, began pushing for Dunne's removal as chief justice that summer, and other papers, notably the *Yuma Sentinel*, soon followed. The *Citizen's* editor, Rollin C. Brown, insisted that the proposed "corporate schools" would "raise up religious fanatics to go into public life with the firm determination to place the Church in which they were raised above all others."⁶⁶ On September 29, 1875, President Ulysses S. Grant, in a speech to Union veterans in Des Moines, Iowa, demanded that no public money support "any sectarian school." On December 7, in his annual message to Congress, Grant called for a constitutional amendment ensuring that "no sectarian tenets . . . ever be taught in any school supported in whole or in part by the State, nation, or by the proceeds of any tax levied upon the community."⁶⁷ On December 11, Grant fired Dunne as chief justice as punishment for his views on the schools question.⁶⁸

⁶⁴ Brownson, "Public School System," 535.

⁶⁵ Gill and Goff, "Dunne," 380.

⁶⁶ *Arizona Citizen*, May 29, 1875.

⁶⁷ Ulysses S. Grant, "Annual Message," in *The Papers of Ulysses S. Grant*, ed. John Y. Simon (Carbondale, IL: Southern Illinois University Press, 2003), 26:417.

⁶⁸ Dunne kept busy, practicing law in Arizona, then New Mexico, then Utah, then Chicago, and finally Florida where he established a sort of Catholic colony between 1882 and 1889. He lectured in New Mexico (in Spanish), Chicago, New York, and Philadelphia; gave the 1880 commencement address at Notre Dame; and taught law for a semester at Georgetown in 1892. He died in 1904. Gill and Goff, "Dunne," 369–385, 381, 382–383.

On December 14, James Blaine, a Republican Congressman from Maine, introduced the amendment that Grant had called for—one that would prohibit the states from using public money or land to support any “religious sect.”⁶⁹ The national press and most Protestant denominational publications supported the proposed amendment. The House voted on it during the summer of 1876. After the addition of a limiting clause stating that the amendment would not “vest, enlarge, or diminish legislative power in the Congress” it passed, 180 to 7.⁷⁰

The Senate’s version of the amendment was even stronger. It roused resistance not only because it was blatantly anti-Catholic, but also because Southerners saw an attempt to expand the power of the federal government at the expense of local and state governments. The Senate vote fell short of the necessary two-thirds majority.

While the Blaine Amendment died at the federal level, it was reborn at the state level. Within a year, fourteen states had similar legislation. By the 1890s, thirty states included “Blaine Amendments” of varying stringency in their constitutions. Congress required such language in the constitutions of the Dakotas, Montana, Washington, and New Mexico when they became states. All other new states included such restrictions in their constitutions without such external pressure.⁷¹ Only Arkansas, Connecticut, Maine, Maryland, New Jersey, North Carolina, Rhode Island, Tennessee, Vermont, and West

⁶⁹ H.R.J. Res. 1, 44th Cong., 1st Sess., 4 Cong. Rec. 205 (1875). The original text reads: “No State shall make any law respecting an establishment of religion or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools, or derived from any public fund therefore, nor any public lands devoted thereto, shall ever be under the control of any religious sect, nor shall any money so raised or lands so devoted be divided between religious sects of denominations.”

⁷⁰ DeForrest, “State Blaine Amendments,” 551–614, 567–68.

⁷¹ DeForrest, “State Blaine Amendments,” 551–614, 560–563. Twenty-seven senators were absent.

Virginia never had such provisions, though Louisiana's 1974 constitution did away with the state's previous Blaine amendment.

4.4 Doubling Down on Parental Rights

American Catholics, however, continued their cry for parental rights and their attempt to gather Protestant allies. On a Sunday afternoon in February 1876, Bishop McQuaid, at the invitation of the post-Christian "scientific theist" Francis Ellingwood Abbot, gave a speech on "The Public School Question as Understood by a Catholic American Citizen" before the Free Religious Association in Horticulture Hall in Boston. Abbot was a leading founder of the Free Religious Association and editor of its voice, the weekly newspaper, *The Index*.⁷² Abbot gave Catholics the opportunity to have the argument that they wanted to have—the Catholic Church, as the representative of Christianity in general, versus liberalism. It was a much simpler conversation than that with the Protestant supporters of the public schools. More importantly, from the Catholic point of view, the debate with liberalism cut to the heart of the matter in a way that debates over Bible-reading never could.

McQuaid clearly did not imagine that he was going to find many allies among the Free Religionists, and his play was again for the Protestant. His thesis was simply that "[p]arental rights precede State rights," and he made a clear effort to avoid a too distinctively Catholic argument.⁷³ Instead, he began with an examination of the common

⁷² *The Dictionary of Modern American Philosophers*, s.v. "Francis Ellingwood Abbot," accessed August 22, 2017, www.oxfordreference.com/.

⁷³ Bernard McQuaid, *The Public School Question As Understood By a Catholic American Citizen* (Boston: Jas. L. Duffy & Co., 1876), 3.

law, citing Blackstone and the American jurist Chancellor James Kent. Under common law, he argued, parental rights “include[d] parental duties and responsibilities before God and society.”⁷⁴ McQuaid contrasted the common law tradition, which he defined, as was common, as essentially Christian, with the “doctrine coming into vogue, that the child belongs to the state.” This doctrine, he argued, was “the dressing-up of an old skeleton of Spartan Paganism, with its hideousness dimly disguised by a thin cloaking of Christian morality.” The same statist logic lay behind compulsory secular education.⁷⁵

However, if common law encapsulated the Christian view of parental rights and duties, it was not the *authority* by which those rights and duties were held—and McQuaid acknowledged that Catholics and Protestants located that authority differently. The “evangelical Christian’s” authority, he stated (approvingly), was “the teachings of his Master on the respective duties of parent and child.”⁷⁶ The Catholic, McQuaid admitted, looked to a different, even clearer authority. The Church directly taught a Catholic parent that “he cannot neglect the care and education of his children without grievous sin.”⁷⁷ The Catholic conscience, McQuaid insisted, was formed by “the natural law, and on the law divinely revealed and presented to him by God’s chosen agent the Church.”⁷⁸

Having begun by defending the reasonableness of the Catholic conscience, the bishop then argued that it deserved the same protection as every conscience. Over the

⁷⁴ McQuaid, *Public School Question*, 4.

⁷⁵ McQuaid, *Public School Question*, 5.

⁷⁶ McQuaid, *Public School Question*, 5.

⁷⁷ McQuaid, *Public School Question*, 6.

⁷⁸ McQuaid, *Public School Question*, 6.

past thirty years, he observed, progress had been made in protecting Catholic consciences and those of other minorities. Many now conceded “that to tax Catholics, Jews, and infidels, for schools in which the Bible is read and religious exercises are held, is a wrong, an act of injustice, a form of tyranny.”⁷⁹ McQuaid, like Dunne, was convinced that not only the teaching in a school, but also the structure of authority behind the school, could violate a parent’s conscience. The Catholic parent was “unwilling to transfer the responsibility of the education of his children to the State.”⁸⁰ The conscientious objection, he insisted, was reasonable. The State as an educator encouraged “the supposition that all the right is in the State, and none in the parent.” McQuaid also held that truly neutral education was impossible, and therefore the state would inevitably end up promoting some sort of faith.⁸¹ Keenly aware that his audience hardly believed that the Catholic conscience was free, McQuaid did his best to show that reason, as well as authority, informed it.

McQuaid rejected the “incorrect statement” that “to allow parental rights as demanded by the natural, the divine, and the common law, is to hand over the country to the pope and the Catholic Church.” Rather, it was “this bugbear of ‘popery’ which bewilders and frightens people” and kept them from dealing with “the parents of the children, as equity and justice require.”⁸² However, the secularist who reproved “the evangelical for wrong done to the poor Catholic sectarian” and “offer[ed] his gift of

⁷⁹ McQuaid, *Public School Question*, 7.

⁸⁰ McQuaid, *Public School Question*, 8.

⁸¹ McQuaid, *Public School Question*, 10.

⁸² McQuaid, *Public School Question*, 18.

secularism pure and simple” was just as misguided. For to the Catholic “secularism is as much sectarian as evangelicalism.”⁸³ Indeed, McQuaid saw secularism as much worse than evangelicalism, not merely in the depth of its error, but also in the threat it posed to society.

The public school system, McQuaid held, was a “monopoly on the part of the State,” tending towards “a huge conspiracy against religion, individual liberty and enterprise, and parental rights.” This monopoly was the heart of secularist ambitions, and “the Catholic parent” was the only “foe” standing “undismayed before them” as he refused to “permit his children to breathe an atmosphere of infidelity.”⁸⁴ In this telling, the Catholic parent, rather than the Catholic bishop, stands as the bulwark against the state. The hierarchy defended and supported the family, but the family itself led the resistance against the tyrannical state. Similarly, McQuaid’s ideal school system comprised “smaller family and neighborhood schools.”⁸⁵ The goal was a school system “more directly under parental control, more economically managed . . . and violating no conscientious duty of parents.”⁸⁶ Here again, McQuaid placed local and parental control, not the Church's, at the forefront.

Francis Abbot’s *Index* published McQuaid’s lecture in full, calling it “a very careful, considerate, and plausible pleading of the Catholic side of the school question.”⁸⁷

⁸³ McQuaid, *Public School Question*, 17.

⁸⁴ McQuaid, *Public School Question*, 25.

⁸⁵ McQuaid, *Public School Question*, 19–20.

⁸⁶ McQuaid, *Public School Question*, 33.

⁸⁷ Francis Ellingwood Abbot, “Glimpses,” *The Index* 7, no. 322 (1876): 85.

Yet Abbot answered McQuaid's lecture with one of his own: "The Public School Question, As Understood By a Liberal American Citizen." This lecture also appeared in full in the *Index*, before both were published together as a pamphlet. Abbot favored total secularization of the public school system. His *Index* reported on and condemned Protestant treatment of Catholics in the schools. Unsurprisingly, he took umbrage at McQuaid's equation of secular and evangelical sectarianism. In Abbot's eyes "any party" that "aims honestly at securing the interests of the whole people by rendering equal and exact justice to every individual . . . is a strictly non-partisan and non-sectarian party." Secularists formed such a party. (By the same logic he held that the Republican Party was non-partisan during the Civil War.) Abbot interpreted McQuaid's argument as striking "at the very foundation of State schools" and denying "the right of the State to educate at all." This much was fair. However, Abbot also asserted that McQuaid, like other Catholics, claimed "the whole field of education as part of the domain of the Church itself."⁸⁸

Yet Abbot also examined and answered the charges that the public school system was organized contrary to rights of conscience and parental rights. Abbot agreed that "no institution c[ould] be solidly built or stable which rests on disregard of one man's outraged conscience." He cautioned, however, that it did not "follow that every protest made in the name of conscience must be obeyed or yielded to, even if made in most absolute and unquestioned sincerity. Conscience itself is under law; it is bound to be

⁸⁸ Francis Ellingwood Abbot, "The Public School Question as Viewed by the Liberal American Citizen," *The Index* 7, no. 323 (1876): 110.

reasonable.”⁸⁹ Abbot spoke as though Catholics might disagree with him on that point. They did not. More importantly, Abbot set out to prove that the Catholic conscience as presented by McQuaid was fundamentally unreasonable.

The essential reason why Catholic consciences were unreasonable, according to Abbot, was that the state did not refuse the demand for “Catholic education for Catholic children.” Abbot maintained that as much as “the practice of Bible-reading in the public schools [was] a wrong and infringement upon the rights of Catholics, Jews, and all non-Protestant-Christian children,” it did not prevent Catholics from educating their children as they wished. The profusion of Catholic schools proved that Catholics could provide Catholic education to their children. Catholics, he argued, were actually arguing for the state to “*furnish*” Catholic education.⁹⁰ Abbot assumed that asking the state to furnish (or, as Catholics would have put it, “assist”) “sectarian education” was unreasonable. “Equal rights” for Catholics, he argued, would be secured when they had “as much right to have their religion taught in the schools as the Protestants, Jews, or radicals—that is, no right at all.” The “trouble with the Catholics,” he concluded, was that they demanded “unequal rights” and “*privilege*.”⁹¹

Abbot dug into the nature of that demand for “privilege.” In the school tax, he noted, “the State deal[t] exclusively with individuals . . . it deal[t] with them neither as Catholics nor even as parents, but simply and solely as *citizens*.” Catholics objecting to the school tax, according to Abbot, claimed an exemption “for *Catholic parents as such*.”

⁸⁹ Abbot, “Public School Question,” 110.

⁹⁰ Abbot, “Public School Question,” 110. Emphasis in original.

⁹¹ Abbot, “Public School Question,” 110. Emphasis in original.

They denied “the general obligations of *citizenship* in the name of *church membership and family ties*.” The “duties imposed by Catholic parentage,” according to Abbot, could have no relevance for taxation in the modern state. The Catholic parental rights argument constituted aggression against the liberal state.⁹²

After stressing that McQuaid was not alone in arguing for parental rights, Abbot explained why that argument was contrary to liberalism: it was archaically patriarchal. He cited Dunne’s lecture in Arizona and drew attention to an article from the *Catholic World* that was written in response to Grant’s Des Moines speech, riffing on the same speech:⁹³

But, whatever you do, keep your hands off the sacredness of the ‘family altar.’ Do not set foot into the hallowed precincts of the domestic sanctuary. The family, though subordinate, is not to be violated by the state. Parents have rights, which no government can usurp. You have no more right to force the education of their children out of their hands, than to define the number of offspring by law. You have no more right to establish a system, to which you will endeavor to secure their conformity by violent measures, than you have to establish public wet-nurseries, or, to require that voters shall be brought up on government pap and be fed out of a government spoon.

These citations accurately represented Catholic argument. Abbot also quoted Fr. Müller’s *Public School Education* and homed in on the line: “*The social unit is the family, not the individual.*” This declaration, Abbot warned, “condenses into a pregnant phrase the whole Catholic theory of ‘Parental Prerogative.’”⁹⁴ Thus far, McQuaid could hardly have contradicted him, nor would he likely have wanted to. The *real* Catholic argument, Abbot

⁹² Abbot, “Public School Question,” 111. All emphases in original.

⁹³ “The President’s Speech at Des Moines,” *Catholic World* 22 (Jan. 1876): 440.

⁹⁴ Abbot, “Public School Question,” 111. Emphasis in original.

continued, was not only that the social unit was the family, but also that the father was “the supreme authority” over the wife and children. The father, “representing the family,” had all “rights, powers, and responsibilities concerning the education of the children” and the State had none. This theory, Abbot declared, was “the stealthy and masked attack of an ambitious hierarchy on the bulwarks of popular liberty.”⁹⁵

“Catholic Social Theory,” Abbot wrote, was a “Relic of Barbarism.” The famous phrase had appeared in the first Republican platform in 1856, which denounced “those twin relics of barbarism, [Mormon] polygamy and slavery.” “Barbarism” was one of four stages of social development in Scottish stadial theory, which deeply influenced nineteenth-century social thought. Societies were believed to progress from savagery (hunter-gatherers), through barbarism (nomadic pastoralism) and agriculture, to commerce. The patriarchal family and polygamy were characteristic of the barbaric-pastoral stage, and Abbot identified the Catholic argument for parental rights with the patriarchal family. He therefore dismissed Catholic social theory as nothing more than “the primeval condition of the human race which is known as the Patriarchal Theory.”⁹⁶

Abbot used Henry Sumner Maine’s *Ancient Law* as his primary authority. He repeated Maine’s argument that “*the unit of an ancient society was the Family,—of a modern society the Individual.*” In modern society, Maine wrote, “forms of reciprocity in rights and duties which have their origin in the Family,” were replaced with “*contract.*”⁹⁷

⁹⁵ Abbot, “Public School Question,” 111.

⁹⁶ Abbot, “Public School Question,” 111.

⁹⁷ Abbot drew heavily from Chapter V of *Ancient Law*. See Henry Sumner Maine, *Ancient Law: Its Connection With the Early History of Society, and Its Relation to Modern Ideas*, 6th ed. (London: John Murray, 1876), 126, 168–169.

The Catholic argument for parental rights, Abbot therefore insisted, was “a modification of the ‘Patria Potestas’ . . . of the ancient Roman law . . . intruding itself into modern society with its claims of despotic authority for the father over his child, and ignoring both the personal rights of the child and the collective rights of society.” It was “the galvanized corpse” of a theory that had been “good enough for the days of Abraham [a nomadic pastoralist and polygamist], who in obedience to it undertook to murder his own son, but a disgusting anachronism in the nineteenth century and the Centennial Year.” Abbot argued that the “American Republic” recognized “the individual, and not the family, as the true social unit, the ultimate atom of human society; and it exists solely to guarantee and to protect the equal natural rights of all individuals.”⁹⁸

For all of that, Abbot did not question the existence of parental rights. He simply denied that children were “the absolute property of the father” and argued that it was “tyranny for a parent to forget or disregard the rights of his child; and it [was] usurpation for a parent to defy or despise the rights of society.” He claimed that the Catholic appeal to parental rights was “an endeavor to rouse the jealous independence of the American father in repulse of a purely illusory attack on his reserved parental rights.” The Catholic Church, he granted, made a “shrewd and sagacious appeal to the very democratic instinct to which it is really opposed.” Nonetheless, he maintained that the Church’s goal was to “sting ignorant parents into claiming a jurisdiction that does not belong to them, and to induce them to look on the Catholic Church as the bold champion of their rights against the assaults of a tyrannical majority.” These “unsuspicious dupes,” Abbot continued,

⁹⁸ Abbot was writing in 1876. Abbot, “Public School Question,” 112.

“ought to see that the Church does not recognize any ‘Parental Prerogative’ at all *as towards itself*.” In fact, Abbot declared, no sooner did “the Church succeeded in rescuing the Catholic parent from the imaginary jaws of the State, than it immediately proceeds to devour both parent and child with its own jaws.”

Abbot also tried to frighten Protestants into believing that the jaws of the Church might swallow them, too. Abbot pointed out that the Council of Trent had declared “all baptized persons” “bound to obey the Church.” If Catholics thought that a Protestant's baptism was valid (which, in the nineteenth century was by no means automatically assumed), then they held that that person was bound to obey the Church. This “obligation of universal obedience,” Abbot warned, left no space for any parental rights for either Catholics or Protestants.⁹⁹

Abbot's attempt to discredit the Catholic parental rights claim relied heavily on denying the validity of the lay Catholic conscience. He had already declared that people who bought into those arguments were being duped. He also sought to establish that Catholic conscientious objections were not the objections of individuals and that therefore the liberal state could legitimately ignore them. There was a single “conscience formed irresistibly in them by the clergy to whom they listen with fettered minds, massed like an obedient and well-disciplined army in defence [*sic*] of the Church.” It was the “coerced and yet honest conscience of spiritual slaves.”¹⁰⁰ The schools question came

⁹⁹ Abbot, “Public School Question,” 112.

¹⁰⁰ Abbot, “Public School Question,” 112. Oddly enough, Abbot termed this collective conscience the “organic conscience of the Church of Rome.” The use of “organic” is probably reflective of the degree to which Abbot followed Catholic theological developments. Such a term in contemporary Catholic writing would have translated to the orthodox and ultramontane argument that the conscience of the Catholic Church was the Holy Spirit.

down to a “battle” “between the corporate, consolidated, ecclesiastical conscience of the Roman Papacy, on the one hand, and on the other, the multitudinous, independent, and secular consciences of the American Republic.” The American deceived by the argument for parental rights into pulling apart the common school system, Abbot warned, “unbolts and unbars the cage of a tiger whose first leap will be at his own throat.”¹⁰¹

In Abbot’s account, the public schools were themselves integral to liberal individualism. They were, he argued, a result of “the State’s growing consciousness that children [were] also individuals, with all the rights of individuality.” Abbot then argued for the rights of children. He asserted a “right to existence” and condemned “foeticide” as “justly regarded as a crime of the blackest dye.” Then there was the “right to proper maintenance, including food, clothing, and shelter,”—a right that could and should be enforced by the state. Thirdly, Abbot argued for the “right to a fair education,” which, he lamented, was “imperfectly protected by the law.” Thus far, Abbot’s points were universally accepted. It was on the details of the right to education that Abbot developed a moderately distinctive case. He believed that this right created a claim on both parents and the state and that the “burden and the cost . . . ought in equity to be divided between” the two.¹⁰² Abbot’s only contentious argument about children’s rights came in his vaguely defined right “to be protected by the State against parental selfishness, cruelty, ignorance, indifference, superstition.” The primary abuse that he seems to have had in mind was child labor that interfered either with the health or the education of the child. However,

¹⁰¹ Abbot, “Public School Question,” 112.

¹⁰² Abbot, “Public School Question,” 113.

Abbot clearly targeted Catholics with his argument that the “child has a right *not* to be taught superstitions which shall unfit him to be either a good man or a good citizen.” Excepting this last anti-Catholic jab, Abbot's list of the rights of children would have gotten check marks from any Catholic moral theologian.¹⁰³

Most Catholics likewise would have approved Abbot's robust understanding of the extent of parental rights. He argued that the parent had “a right to exercise authority over the child so long as he does not violate the rights of the child or the rights of the State.” The state could only interfere “after a manifest and proved abuse of this authority.” The parent also had “the right to supervise and direct the education of the child to a very considerable extent,” including “the place where it is to be acquired, and the agencies by which it is to be imparted.” Further, he granted, “with regard to religion and religious influences, the parent has an undoubted right to teach his child what he believes to be the most important of all truths” presuming again that it did not corrupt the child's morality.¹⁰⁴

More radically, Abbot contended that the state had an absolute right to educate, and to tax for it, grounded in its right to self-preservation. That right of self-preservation created several additional rights: “to establish universal suffrage”; “to establish universal intelligence and social morality”; and “to establish universal education.” The right to establish intelligence and morality spawned more rights: “to establish a universal system of public schools”; to establish “universal means of education”; and “to establish public

¹⁰³ Abbot, “Public School Question,” 113. Most of the Catholic hierarchy, if not Catholic parents, supported legal restrictions on child labor.

¹⁰⁴ Abbot, “Public School Question,” 113.

examinations of all children, at proper times and places.” Clearly, therefore, the state also had the right to tax its citizens to fund public schools.¹⁰⁵ Ultimately, then, Abbot had little concern for the rights of children as individuals. Rather, he considered them principally as embryonic grown-ups: citizens of a state defined as an aggregation of rights-bearing adult individuals.

Abbot’s *Index* continued to cover Catholics and the schools question, abroad as well as at home. Shortly after the exchange between Abbot and McQuaid, the *Index* began publishing “English Sketches” by Annie Besant, a prominent member of the English National Secular Society and a promoter of socialism and women’s rights. In her first sketch, Besant warned against the dangers of Rome, insisting that the “crucial question is the question of the schools, and round the schools the Roman Church in England is rallying all its forces. The Establishment, of course, here aids its natural ally, and strengthens the cry for ‘denominational education,’ and for the avoidance of School Boards.”¹⁰⁶ She noted that it was “pleaded by some that it is against the principles of liberty to support compulsory education which is an interference with the liberty of the parent.” She rejected this argument, stating that “the parent who neglects the education of his child encroaches upon the rights of the child.”¹⁰⁷

The Index also published several readers’ reactions to the McQuaid-Abbot debate. The Quaker educationalist Benjamin Hallowell, for instance, wrote that he appreciated the “manifest sincerity” and “deep-seated convictions” in McQuaid’s lecture. Moreover,

¹⁰⁵ Abbot, “Public School Question,” 113.

¹⁰⁶ Annie Besant, “English Sketches,” *The Index* 7 no. 324 (1876): 128.

¹⁰⁷ Besant, “English Sketches,” 129.

he wrote, if “the Bishop would substitute *the Spirit of God* for *Pope* or *Church*, as the authority and aid of all instrumental good in the human family, one towards another, the Friends would unite with him in nearly all he says.”¹⁰⁸ However, Hallowell barely agreed with McQuaid at all, since in the end he held both that was “impossible to put God into the public schools by any book, exercise, or other means.” It was “even more impossible to keep God out of the public schools. His Spirit is in every child there, striving to keep the child good, true, and faithful.”¹⁰⁹ William Francis Allen, then a professor of ancient languages and history at the University of Wisconsin-Madison, wrote to Abbot that he thought it “impossible to improve upon the thoroughness with which you have exposed the fallacy of his advocacy of the ‘parental prerogative.’ That is an argument that no consistent Roman Catholic has a right to make.”¹¹⁰ Another reader wrote that “the Catholic conscience was a ‘pseudo-conscience,’” whose “unjust demands must give way to the reasonable and just demands of the State,” which he considered “*the collective enlightened Reason of the nation, and the guardian of public morals.*”¹¹¹

However, Abbot also published fans of McQuaid. In April, the *Index* ran a lengthy reply by Father Lambert, a Catholic priest from Waterloo, N.Y. Lambert tried to reframe the Catholic argument to work with the framework of the rights of citizens. Therefore, he insisted that the Catholic “being a citizen and a tax-payer, ha[d] the right to send his child to the State schools; in this right is the right that his child’s religion be not

¹⁰⁸ Benjamin Hallowell, “The Public School Question As Viewed By an American Citizen of the Society of Friends, Frequently Called Quakers,” *The Index* 7, no. 326 (1876): 135.

¹⁰⁹ Hallowell, “Public School Question,” 136.

¹¹⁰ William Francis Allen, “The Bishop’s Lecture,” *The Index* 7, no. 327 (1876): 153.

¹¹¹ Morris Einstein, “Conscience,” *The Index* 7, no. 331 (1876): 201. Emphasis in original.

tampered with.” He also accused Abbot of arguing that the “obligations of citizenship imply a denial of church membership and family ties, or the denial of our obligations to God.”¹¹² He pointed to inheritance law as proof that the state continued to acknowledge the family as the “unit of society” and argued that the individual was merely the “*political* unit” and even that imperfectly, since the state did “not permit all individuals to vote.”¹¹³

Abbot’s *Index* also somewhat habitually bickered with the *Catholic Review*, a weekly Catholic newspaper published in Brooklyn and edited by Patrick Vincent Hickey. The *Catholic Review* held standard Catholic positions on education politics. In December 1875, for instance, it defended Dunne and condemned President Grant for dismissing the judge. When the *Review* announced McQuaid’s lecture to the “Radical Bostonians,” Hickey described Abbot as “a man whose sincerity in holding erroneous principles is his best qualification for replying to an equally sincere holder of sound ones.” Hickey also cheered Fr. Lambert’s letter to the *Index*. Abbot, in turn, attacked an editorial in the *Catholic Review* that had insisted that the state had no more call to provide schools than it had to provide “bread and butter.” The state, Abbot argued, did sometimes provide bread and butter—for the poor. More importantly, he argued that education was qualitatively different because it was less an “immediate want” and more a “provision for future wants,” and therefore constituted a “joint claim on the parents and the State.”¹¹⁴

¹¹² L. A. Lambert, “A Catholic Priest’s Reply,” *The Index* 7, no. 328 (1876): 159.

¹¹³ Lambert, “Catholic Priest’s Reply,” 160.

¹¹⁴ *The Catholic Review*, December 11, 1875; *The Catholic Review*, November 30, 1875; “The Liberal Dilemma,” *The Catholic Review*, April 11, 1876; Abbot, “Glimpses” *The Index* 7, no. 329 (1876): 169.

In the winter of 1877, a Jesuit, P. Bayma, authored a lengthy response to Abbot in the *American Catholic Quarterly Review*.¹¹⁵ Bayma described Abbot as the “champion of what is usually styled the *liberal* theory, viz., of a theory which ignores parental rights, and tends to transform the state into a Moloch, to which the children of the people ought to be sacrificed.”¹¹⁶ Bayma defended the Catholic position by laying out an explanation of what Catholics understood their Church to be. The first point he made was that the Church had a mission to teach religion and that the state did not. Bayma then insisted that the state was “in continual need of the Church” because religion was necessary to inculcate the morality that the state needed.¹¹⁷ The state was, therefore, “especially bound to respect the rights, and second the efforts of the Church.”¹¹⁸

What were the “rights of the Church” that Bayma wanted to defend? The Church, he wrote, did *not* claim the “education of all the children of the country.” Protestant denominations, he suggested, should educate their own children. The Jesuit wrote that the

¹¹⁵ This P. Bayma was most likely Fr. Giuseppe Bayma, S. J. (1816–1892), who normally published as Joseph Bayma. Bayma, who entered the Jesuits in 1832, had fled his native Piedmont in 1848. He ran the episcopal seminary of Bertinoro (in Romagna) until 1860. Politics again forced him to move—and this time he went to England, where he taught philosophy at Stonyhurst for seven years. He was a devoted Thomist. He then moved to California, where he served as the Rector of (the Jesuit) Saint Ignatius’ College (later the University of San Francisco) for three years. He then moved to the (also Jesuit) College of Santa Clara (later Santa Clara University), where he remained until his death. He was a fairly well-known mathematician and scientist. See Joseph Rickaby, “Bayma, Joseph” in *The Catholic Encyclopedia*, ed. Charles G. Herbermann, et al. (New York: Robert Appleton Company, 1907), 2:360. Rickaby credited the above article to Bayma, as does Gerald McKevitt, *Brokers of Culture: Italian Jesuits in the American West, 1848–1919* (Stanford: Stanford University Press, 2007). Bayma taught and mentored John Montgomery, Zach Montgomery’s son, who eventually became an aviation pioneer and a professor at Santa Clara. Craig Harwood and Gary Fogel, *Quest for Flight: John J. Montgomery and the Dawn of Aviation in the West* (Norman: University of Oklahoma Press, 2012), 15–17.

¹¹⁶ P. Bayma, “The Liberalistic View of the Public School Question,” *The American Catholic Quarterly Review* 2, no. 5 (1877): 1.

¹¹⁷ Bayma, “Liberalistic View,” 16.

¹¹⁸ Bayma, “Liberalistic View,” 16–17.

Catholic Church “respects the honest convictions of those who have been taught to differ from her doctrine . . . she does not claim, as our free religionists do, the right of depriving them of that manner of education which they conscientiously consider as good.”¹¹⁹ Bayma added that if by “the state” one meant “the inhabitants themselves of the state” rather than the government (“a score or two of domineering politicians”), then certainly “the state” could educate.¹²⁰ The only right of the Church that Bayma claimed was its right to provide the education “of her own.”¹²¹

Indeed, Bayma argued, the schools question was not merely a matter of *Catholic* consciences. He pointed to Protestants who had conscientious objections to public schools, and he even defended those “whose conscience may be dead to all religious feelings” but who might “reasonably object to the State school system.”¹²² He insisted that because Catholics asked for nothing that they did “not concede to others,” their conscience was “perfectly reasonable.”¹²³ In short, the only “rights of the Church” that Bayma claimed were basic protections of conscience. He thought that protecting consciences meant funding religious schools but did not care what religion such schools taught.

Moreover, Bayma granted that one could ignore unreasonable consciences. Of course, the unreasonable conscience in his telling was the “secular conscience” that “feels

¹¹⁹ Bayma, “Liberalistic View,” 17.

¹²⁰ Bayma, “Liberalistic View,” 17, 18, 17.

¹²¹ Bayma, “Liberalistic View,” 16.

¹²² Bayma, “Liberalistic View,” 26.

¹²³ P. Bayma, “Have Christians No Rights in Regard to Public Education?” *The American Catholic Quarterly Review* 2, no. 6 (1877): 244.

it a duty to ignore the rights of religion in our public schools.” He claimed that the moral law bound reasonable consciences. The moral law, he continued, did not “order the maintenance, as it did not order the creation of schools in which God—the Author of the moral law—must be ignored.” While one might have non-religious conscientious objections, those objections could not be contrary to God's law. Therefore, those who did “not scruple to deny God's right on the public schools” could not “decently pretend” that they did so “for motives of conscience.”¹²⁴ Thus, Bayma exchanged the rights of the Church for the rights of religion, a much vaguer concept. The “rights of religion” dispensed with ecclesiology: regardless of what one thought the church was, surely protecting religion and the natural law was important.

Having thus re-oriented the conversation, Bayma came to the question of parental rights. He argued that when Catholics mentioned the rights of Catholic parents, they did not mean that Catholics “alone” were “dealt with unjustly.” Like Lambert, Bayma insisted that Catholics claimed the right to denominational education *as citizens*.¹²⁵ He applauded the passages from Dunne and Müller that Abbot had cited.¹²⁶ The theory of parental rights was no “special whim of Catholics . . . but a universal principle admitted and acted on in all times, by all civilized nations, under all forms of governments and religions.”¹²⁷ Bayma also pointed out that Catholics did *not* “say that all the educational

¹²⁴ Bayma, “Have Christians No Rights?” 244.

¹²⁵ Bayma, “Have Christians No Rights?” 251.

¹²⁶ Bayma, “Have Christians No Rights?” 252.

¹²⁷ Bayma, “Have Christians No Rights?” 253.

rights of the family ‘are concentrated in the father.’” Rather, the “children have their rights perfectly distinct from the rights of their father, whose duty it is to protect them.”¹²⁸

Bayma took Abbot to task for accusing Catholics of promoting the Roman *patria potestas*. He argued that Abbot abused Maine's work by failing to distinguish between the structure of political society (the form of government) and the character of society in general. Moreover, Bayma pointed out, Maine dated the decline of tyrannical paternal power in the Roman Empire to “late in the imperial period,” that is, Bayma noted, “when the influence of the Roman Church had begun to be felt at large.” Abbot, Bayma wrote, seemed “to be ignorant that the right of providing and controlling education is not a right of ‘absolute property.’”¹²⁹ The Church “absolutely” condemned “despotic authority” and did “not ignore the personal rights of the child,” though it assumed “as a rule, the rights of children [were] in no hands more secure than in those of their loving parents.”¹³⁰ In short, Bayma reminded his audience that the Catholic Church had a far longer history of limiting parental rights than it did of championing them.¹³¹

In the end, Bayma circled back to ecclesiology. He countered the charge that the Church failed to recognize parental rights vis-à-vis itself by pointing out that the laity

¹²⁸ Bayma, “Have Christians No Rights?” 255.

¹²⁹ Bayma, “Have Christians No Rights?” 262–263.

¹³⁰ Bayma, “Have Christians No Rights?” 261.

¹³¹ That said, Bayma also insisted that the Church was not responsible for modern individualism. It did not cause the “dissolution of the family and replacing it with contract” that Maine had defined as the hallmark of modernity. The Church, he maintained, only advocated the “‘rational limitation’ of family dependency.” While it was good for the state to “take account” of the individual and not merely the family, it should not “cease to recognize the family and the duties of parents to their children or of children to their parents.” Nor could anyone, including the state, replace the family’s “reciprocity of rights and duties” with contract. Bayma, “Have Christians No Rights?” 259, 260.

were integral to the Church. He asked whether Abbot insisted that parents must “exercise their parental prerogative in a manner contrary to their Catholic conscience?” After arguing that the “jaws of the State” (that McQuaid had mentioned and Abbot had dismissed) were not imaginary, given their success at “de-catholicizing” children, Bayma wrote that as “to the jaws of the Church [Abbot’s trope], Catholic parents [were] not afraid of them. Catholics are the body of the Church, and the Church does not devour her own body.”¹³² In his conclusion, Bayma countered Abbot’s comparison of the Church to a tiger. Abbot had warned Americans against un-caging that tiger, but Bayma insisted that the real tiger, “the godless schools,” was already at work. “We can show,” he wrote, “on the body of the Catholic Church the marks of its bloody ferocity, and we see every day how it mangles and devours the children of American citizens.”¹³³

Bayma did not, however, underplay the hierarchical structure of the Church. He termed the Church the “divinely deputed parent to all Catholics,” which both taught and punished.¹³⁴ Whenever the Church overruled parents, it did so to safeguard the “right of Catholic children to receive a Catholic education.” It could never prove “contrary to the natural rights of parents” because there was “no right against duty.”¹³⁵ Parents who forgot “their duties towards the members of their family” committed a sin. The Church had no power to pardon that sin “without repentance and atonement.”¹³⁶ The laity needed to

¹³² Bayma, “Have Christians No Rights?” 263.

¹³³ Bayma, “Have Christians No Rights?” 270.

¹³⁴ Bayma, “Have Christians No Rights?” 264.

¹³⁵ Bayma, “Have Christians No Rights?” 265, 267.

¹³⁶ Bayma, “Have Christians No Rights?” 266.

“form their conscience upon the same principles on which the priests, the bishops, and the Pope form[ed] theirs”—on reason and the Gospel.¹³⁷

4.5 Conclusion

American Catholics, like the vast majority of Americans, believed in parental rights in education. They also believed that secular, liberal states tended to undermine those rights and would, thereby, destroy the family and society in general. They were convinced that undermining the rights of Catholic parents undermined the Catholic family and ensured that Catholic children would grow into apostates. They held that undermining the parental rights of any Christian parent would secularize society writ large. Catholics believed that most Americans did not want a secularized society and that most Americans agreed that parents had the primary right and duty to educate their children. From the Catholic point of view, then, the fact that promoting the rights of Catholic parents would strengthen the Catholic Church in the United States was no reason for Protestants to fail to rally to the cause of defending the family and Christian civilization. They held this even though the traditional Anglo-American Protestant conviction that the Catholic Church itself was a threat to the family and the republic remained quite strong. American Catholics were optimists.

¹³⁷ Bayma, “Have Christians No Rights?” 268.

CHAPTER 5: PARENTAL RIGHTS AND THE PUBLIC SQUARE

5.1 Introduction

During the 1880s relations between Catholics and Protestants improved. Although popular anti-Catholicism persisted, more Catholics participated in the higher reaches of political, social, cultural, and intellectual life. By the mid-1880s, the Catholic argument for parental rights in education began to pay dividends. In England, Catholics and Anglicans cooperated to secure the voluntary denominational schools as an integral part of the nation's educational system. In the United States, Catholics had moderate, but real, successes; while most Protestants remained completely unconvinced that any public money should go to Catholic schools, they were increasingly willing to defend the right of those schools to exist and to exist without state interference. In both instances, however, Catholic rhetoric seems to have been most persuasive when it united the natural law parental rights argument with an appeal to national character.

5.2 American Catholics and the Public Square

The progress of Catholics into mainstream American life appears on the pages of *The North American Review (NAR)*. Through the 1870s, the periodical, founded in Boston in 1815 as the first highbrow general-interest magazine in the United States, often hosted urbane liberal anti-Catholicism. One 1870 article dismissed Catholicism as “senile

and formalized superstition.”¹ Rome, it argued, afforded “to harassed consciences the peace of intellectual death.”² On matters of education, the *NAR*’s authors’ sympathies were almost never with the Catholic Church. In 1876, for instance, Daniel Coit Gilman, about a year into serving as the first president of Johns Hopkins, wrote a short history of “Education in America.” He argued that the “chief danger which threaten[ed] the common-school system [was] unquestionably this difference of opinion in respect to religious instruction,” and argued for a total exclusion of “church influence.”³ Such was the standard view of the schools question in the publication.

Allen Thorndike Rice, the first non-Harvard graduate (he attended Oxford) to control the *NAR*, purchased it in 1876. Under his leadership, it focused increasingly on contemporary (often political) questions and aimed to present a broader spectrum of opinions than the review had previously offered.⁴ In December 1879 and January 1880 the *NAR* published James Anthony Froude’s virulently anti-Catholic and anti-Irish “Romanism and the Irish Race in the United States.” Froude, an English historian, novelist, polemicist, and editor, warned that Americans did not take the Catholic threat sufficiently seriously. He cautioned that in the meantime Catholics who insisted “on educating their own children” tried to “apply the education rate to a denominational

¹ Goldwin Smith, “The Ecclesiastical Crisis in England,” *The North American Review* 110 (Jan. 1870): 186.

² Smith, “Ecclesiastical Crisis,” 196.

³ D. C. Gilman, “Education in America, 1776–1876,” *The North American Review* 122 (Jan. 1876): 208, 206.

⁴ Henry Adams and Henry Cabot Lodge ran the *NAR* between 1870 and 1876. Rice was responsible for recruiting the first contributions from Manning and Gladstone. Julius H. Ward, “The North American Review,” *The North American Review* 201 (Jan. 1915): 123–134.

purpose,” and “as in England and Scotland,” were “making converts of the Protestant communions.”⁵

Under the new *NAR* regime, however, Catholics also had space to argue. The month after Froude’s article appeared, the *NAR* published Cardinal Manning on the topic of “The Catholic Church and Modern Civilization.” Manning set out to define “what can be, and what ought to be, the relations of the Church in the nineteenth century to the political society of the world in the nineteenth century.”⁶ He declared that the “social and political evils which are undermining the Christian society of the world culminate in one master evil . . . an evil which reproduces and perpetuates the whole tradition of apostasy of the Christian name.” This evil was that the state claimed “the education and formation of men” and provided education “without Christ and without God in the world.” “Man without God” the cardinal warned, would end in the “deification of the civil power.”⁷ The next month, the *NAR* published a response to Froude by the Catholic bishop of Peoria, John Lancaster Spalding. He accused Froude of advocating for the Irish to be “blotted out of existence altogether.”⁸ Spalding playfully argued that Americans wanted more Catholics than they already had, “for the very simple reason that there ought to be more

⁵ James Anthony Froude, “Romanism and the Irish Race in the United States, Part I,” *The North American Review* 129 (Dec. 1879): 526.

⁶ Henry Edward Manning, “The Catholic Church and Modern Society,” *The North American Review* 130 (Feb. 1880): 101.

⁷ Manning, “Catholic Church and Modern Society,” 112. “Without Christ and without God in the world” is a paraphrase of Ephesians 2:12.

⁸ John Lancaster Spalding, “Mr. Froude’s Historical Method,” *The North American Review* 130 (Mar. 1880): 285.

of everything here than anywhere else.”⁹ Spalding’s tone reflected the degree to which American Catholics now understood themselves as an integral part of their nation.

Although defenders of the public schools remained more common in the *NAR*, dissenting pieces now frequently appeared as well. A. Cleveland Coxe, the Episcopal bishop of the diocese of Western New York, argued in an 1881 article that children should read the King James Version of the Bible in public schools.¹⁰ Coxe granted that parents ought to be able to remove their children from Bible reading, but he rather ungenerously argued that those children ought to be forced to spend the time reading “the national and State constitutions, and sundry municipal laws.”¹¹ Bernard McQuaid retorted in the next month’s issue that leaving children “shivering on the cold side of the door” during Bible reading, or Coxe’s proposed law-reading, constituted “commendable nicety of persecution.”¹²

McQuaid also cheered a new trend—a series of critiques of the public schools from non-Catholic elites. One of the first volleys came from Richard Grant White in the *NAR*. In December 1880, the prominent Shakespeare scholar and social critic’s article, “The Public-School Failure,” described the New York school system and argued that it did nothing to solve rampant corruption and spreading immorality. White insisted that the school system did not effectively convey knowledge, but that even if it did, “mere knowledge” could “not raise the quality of men’s moral natures.” White brazenly stated

⁹ Spalding, “Froude’s Historical Method,” 294.

¹⁰ A. Cleveland Coxe, “Theology in the Public Schools,” *The North American Review* 132 (Mar. 1881): 211–222.

¹¹ Coxe, “Theology in the Public Schools,” 218.

¹² Bernard McQuaid, “Religion in Schools,” *The North American Review* 132 (Apr. 1881): 337.

that the “road to the best government of the people does not lie only through the door of the public schoolhouse.”¹³ He also cited Zach Montgomery.

Montgomery had resumed his law practice in 1868, but he continued to speak and write on education. His most famous work, a short book entitled *The Poison Fountain or Anti-Parental Education*, was published in 1878.¹⁴ He published a second edition and a shorter pamphlet version in 1879. While much of the *Poison Fountain's* contents were vintage Montgomery, it featured two new arguments. It asserted that census data showed that public schools were responsible for the supposedly higher crime, insanity, and suicide rates in New England than the South. Montgomery also now argued that *pro rata* funding was wrong because it paid for the education of children whose parents were capable of shouldering their duties without government assistance. Even though Montgomery was far more radical than most Catholics, *The Poison Fountain* received

¹³ Richard Grant White, “The Public-School Failure,” *The North American Review* 131 (Dec. 1880): 544.

¹⁴ An 1873 lecture to Catholic educators came back to trouble him during the confirmation proceedings for his appointment as Assistant Attorney General for the Department of the Interior in the U.S. Senate in 1885. Montgomery responded to that controversy by publishing a new version of the *Poison Fountain* specifically for the senators, *Drops from the “Poison Fountain” in the Federal Senate*. Montgomery's ideas were even less well received on the East Coast than they were in California, especially since his confirmation process was occurring at the same time as debate on a bill authored by Henry Blair for federal aid to common schools that would be administered by the Department of the Interior. Needless to say, Blair very much opposed to Montgomery's confirmation, though he later publically apologized for some of his accusations against Montgomery that had been based on an anonymously reprinted misrepresentation of the 1873 speech. Montgomery was confirmed after six months of debates and served until 1889. His work for the Department of the Interior mostly involved land grant cases. He was involved in two major cases—one in support of the Choctaw Indians and another in support of homesteaders, both against railroad companies. John Joseph Shanahan, “Zachariah Montgomery: Agitator for State and Individual Rights” (master's thesis, University of California, Berkeley, 1955), 127–145. John Whitney Evans argues that in general Catholics opposed the Blair Bill on the grounds of “constitutionality and paternalism.” However, he also pointed to the complexity of the American Catholic position on state funding for education and argued that the “fact that Catholics differed, often bitterly, among themselves regarding the right of the State to intervene in education and regarding the limits to be assigned to its activity, served only to intensify their often frantic anxiety” about the dangers of the public school system. John Whitney Evans, “Catholics and the Blair Education Bill,” *The Catholic Historical Review* 46 (Oct. 1960): 298, 297–298.

accolades from Catholic prelates including Bishop Eugene O'Connell of Grass Valley and Bishop Augustin Magloire Blanchet of "Vancouver."¹⁵ White stated that the census data in Montgomery's "trenchant pamphlet" "on the system of anti-parental education" was "essentially accurate and trustworthy."¹⁶

The *NAR* published rebuttals to White that defended the public schools. John D. Philbrick, who had served as the superintendent of public schools in Boston and president of the National Teacher's Association (the predecessor of the National Education Association), insisted that the public school system was "the most vitally important of all the institutions which contribute to the well-being of the people."¹⁷ He (quite reasonably) dismissed Montgomery and White's use of the census data as "utterly worthless."¹⁸

William T. Harris' "The Church, the State, and the School" drew heavily from Hegel's *Elements of the Philosophy of Right* (his major work of political philosophy) to rebut the argument that the public schools had failed because they had not checked political corruption.¹⁹ Harris posited that five institutions shared "the function of education." These included Hegel's four cardinal institutions: the Family, Civil Society,

¹⁵ Zach. Montgomery, *The Poison Fountain or Anti-Parental Education. Essays and Discussions on the School Question From a Parental and Non-Sectarian Standpoint*, 2nd ed. (San Francisco, 1879), 191–193. Blanchet, born in Quebec in 1797, was the bishop of Nesqually from 1850 to 1879. His cathedral was located just outside of Fort Vancouver, in Washington Territory.

¹⁶ White, "The Public School Failure," 549.

¹⁷ John D. Philbrick, "The Success of the Free-School System," *The North American Review* 132 (Mar. 1881): 249, 250.

¹⁸ Philbrick, "Free-School System," 258.

¹⁹ A prominent educational reformer, Harris was based in St. Louis where he introduced kindergartens and high schools into the public school system. He would later serve as the U.S. Commissioner of Education. He also founded and edited the *Journal of Speculative Philosophy*, the first journal dedicated to philosophy in the United States and the main conduit through which neo-Hegelianism entered American philosophy.

the State, and the Church. Harris added the school. He argued that it developed between “the family and the civil society” and formed “a transition from the family to the other three.” Though over time the other institutions, except the family, had developed some degree of independence from the church, it remained the “educative institution *par excellence*.”²⁰ The institution of the school, “very small, compared with the extent of the church,” could not, therefore, be held responsible for a societal failure to make men ethical.²¹ Rather, each of the five institutions was “necessary to the result.”²²

Harris’ defense of the public school system highlights the degree to which, during the 1880s, the critiques of that system presumed its exalted place in republican ideology. That ideology had promised that universal elementary education could preserve and build up civic virtue. The corruption and social problems of the 1870s and 1880s, therefore, led to two possible conclusions. The first was that schools needed more investment or a different pedagogy or curriculum than before. The second was that the ideology was a lie, and literacy rates had nothing to do with virtue. Harris’ solution was to try to shift the ideology such that one could still vigorously support the public schools without expecting them to do quite so much for society.

Most people remained convinced that the schools ought to be inculcating some ethics or morality. How that ought to look or be accomplished was much contested, though teaching some sort of doctrinal Christianity remained one of the obvious answers.

²⁰ William T. Harris, “The Church, the State, and the School,” *The North American Review* 133 (Sept. 1881): 225.

²¹ Harris, “Church, State, and School,” 225.

²² Harris, “Church, State, and School,” 227.

In August 1883 the *NAR* published the modernist Episcopalian R. Heber Newton and the conservative Presbyterian Francis L. Patton on the subject of “Moral Instruction in the Public Schools.” Both agreed on the critical importance of teaching ethics and morality in the schools. Newton argued that teachers should use the Bible to teach “character culture” along with “the other great Bibles of humanity.” He also argued that the “great ethical principles” could be traced “in terms of physics, in the life of the bird and beast.”²³ Patton, however, argued that without “a [Christian] religious basis morality [could] have no authoritative basis.”²⁴ Even the “advocates of a secular morality,” he insisted, contended for a “substantially Christian morality.”²⁵ The “religious aspect of morality” was, therefore, a non-negotiable part of “ethical instruction.”²⁶

Patton had no patience for the common objections to public schools teaching Christianity. He countered the claim that teaching religion would violate the separation of Church and State by insisting that the United States was a Christian nation and that recognizing Christianity was different from conferring “exclusive privileges on a particular form of religion.”²⁷ As for the objection that religious teaching in public schools would violate rights of conscience, Patton conspicuously avoided talking about Catholics. Instead, he dismissed the conscience plea of those “who do not believe in

²³ R. Heber Newton, “Moral Instruction in the Public Schools,” *The North American Review* 187 (Aug. 1883): 102.

²⁴ Francis L. Patton, “Moral Instruction in the Public Schools,” *The North American Review* 187 (Aug. 1883): 110.

²⁵ Patton, “Moral Instruction,” 112.

²⁶ Patton, “Moral Instruction,” 112–3.

²⁷ Patton, “Moral Instruction,” 114.

supernatural religion or, at all events, in Christianity.”²⁸ Catholics, he noted later in the article, agreed with Protestants that “Christian morality rests upon revelation” and “must be inculcated as the known expression of God’s will.” While they disagreed on “the mode in which moral instruction should be conveyed,” if “they retain[ed] their Christian conviction they [would] express their disapproval of every proposition that contemplates a non-religious system of ethical instruction.”²⁹

Patton’s position hardly evinced any great Catholic triumph, but its tone gave Catholics hope. He was not guilty of anti-Catholic bigotry. He agreed with Catholics on the importance of religious schooling, and he saw secularists as the threat. The overall position of Catholics in American public life was certainly better than it had been. None of this, however, meant that Catholics were any more likely to secure public funding for their schools than before.

Indeed, by the mid-1880s many American Catholics had settled into a two-part public argument: parental rights were derived from natural law, and religious liberty required respect for Catholics who exercised their parental rights according to the dictates of their hierarchical church, regardless of whether that seemed reasonable to anyone else. Catholics writing to other Catholics, however, vigorously defended the right of the teaching authority of the Church to tell Catholic parents how to be Catholic parents. Unsurprisingly, this combination at most convinced non-Catholic Americans to agree to leave Catholics and their schools alone, but failed to persuade them that Catholic schools should receive any sort of public aid.

²⁸ Patton, “Moral Instruction,” 114.

²⁹ Patton, “Moral Instruction,” 117.

In 1884 the *American Catholic Quarterly Review* published a pair of articles by James Conway, a Jesuit who taught ethics, metaphysics, psychology, and natural theology at Saint Louis University. The first, entitled “The Rights and Duties of Family in Regard to Education,” compared the rights of parents to those of the state in fairly typical fashion. Conway decried “the Spartan policy” of “modern public education in most European States,” which posited that the “child belongs to the State before belonging to his parents.”³⁰ Americans were foolishly imitating “revolutionary Europe.”³¹ “Godless” schools violated the “sacred and inalienable” rights of parents.³² The parent was “by divine institution the natural teacher of the child,” and the family was “a divinely-constituted school, with an inviolable charter, framed and written by the finger of the Almighty in the hearts of parents and children.”³³ The state, in Conway’s telling, ought to interfere with a child’s education only if the child was “notably neglected.” If it took “education into its own hands, and monopolize[d] schools,” the state violated “personal, parental, and divine rights.”³⁴ Nonetheless, Conway granted that the state had “the duty and the right to promote education,” could “erect and endow schools at the public expense,” and even “make regulations and appoint teachers” for those schools.³⁵

³⁰ James J. Conway, “The Rights and Duties of Family in Regard to Education,” *American Catholic Quarterly Review* 9 (Jan. 1884): 105.

³¹ Conway, “Rights and Duties of Family,” 106.

³² Conway, “Rights and Duties of Family,” 107.

³³ Conway, “Rights and Duties of Family,” 110.

³⁴ Conway, “Rights and Duties of Family,” 116.

³⁵ Conway, “Rights and Duties of Family,” 123–4.

Conway's second article, on the "Rights and Duties of the Church in Regard to Education," addressed those who already believed that the Church had "a constitution, a social organization, independent of all human power."³⁶ This "divine social organization," he argued, possessed "extensive rights," chief among which was the "right to *teach*, to educate."³⁷ This right to teach included "*the divinely constituted and inalienable right to provide for a complete religious education of all her children in all schools, of whatever kind or grade they may be.*"³⁸ From this right, Conway deduced a right to "free access to the schools" with "a perfect freedom in teaching the children, in assembling them to daily exercises of devotion and, at stated times, to the sacraments." He also concluded that the Church had a right to "the means of assuring herself of the moral and religious tone of the schools, of exercising the necessary supervision, to prevent anything being taught by word or example which might endanger the faith or morals of the children."³⁹ Conway did not, however, ignore parental rights in this article. Rather, he argued that to deny the rights of the Church would infringe "upon the natural rights of the individual, of the family, the parents and children" and trample "the inborn claims of conscience."⁴⁰ The Church, was, moreover, "bound to listen and conform to the *just* wishes of the State, and especially of

³⁶ James J. Conway, "The Rights and Duties of the Church in Regard to Education," *American Catholic Quarterly Review* 9 (Oct. 1884): 650.

³⁷ Conway, "Rights and Duties of the Church," 650. Emphasis in original.

³⁸ Conway, "Rights and Duties of the Church," 656. Emphasis in original.

³⁹ Conway, "Rights and Duties of the Church," 657.

⁴⁰ Conway, "Rights and Duties of the Church," 657.

the parents, in things pertaining to the secular training.”⁴¹ Nonetheless, the clear conclusion was that the Church had the final say in all aspects of education.

Conway’s articulation of the rights of the Church was not uncommon. It resembled that of Thomas Jefferson Jenkins, a Catholic priest from Louisville, Kentucky, whose 1882 pamphlet, *The Judges of the Faith*, Conway approvingly referenced.⁴² The pamphlet went through multiple editions, including a “re-written edition” put together after the 1884 Third Plenary Council of Baltimore.⁴³ Jenkins wanted to show the Catholic episcopate’s consistent condemnation of “godless” state schools.

He portrayed a Church with three primary duties and corresponding rights. The first duty of the Church was to teach. Teaching meant not only providing religious instruction in the schools but also reminding parents and priests of their duties to provide Catholic education. The second major duty of the Church in Jenkins’ account was to provide schools. The Church—a hierarchy that extended from the pope and bishops to the laity—had a duty to provide Catholic parents with the genuine possibility of giving their children a good Catholic education. The 1886 version of the pamphlet cited the American Catholic bishops at the Third Plenary Council of Baltimore who declared it their “bounden duty as Bishops, to labor with all our strength in providing Catholic parents with . . . good and

⁴¹ Conway, “Rights and Duties of the Church,” 661.

⁴² Thomas J. Jenkins, *The Judges of Faith: Christian vs. Godless Schools, Papal, Pastoral and Conciliar Rulings the World Over, Especially of the III. Plenary Council of Baltimore, With Retrospective Essays on the Struggle for Christian Education, Addressed to Catholic Parents*, re-written ed. (Baltimore: John Murphy & Co., 1886).

⁴³ On Baltimore III and the schools question, see Philip Gleason et. al., “Baltimore III and Education,” *U.S. Catholic Historian* 4 (1985): 273–313, and Francis P. Cassidy, “Catholic Education in the Third Plenary Council of Baltimore,” *Catholic Historical Review* 34 (Oct. 1948–Jan. 1949): 257–305, 415–436.

efficient schools.”⁴⁴ “[T]he school,” the bishops taught, was “a duty and burden imposed upon the priest by the Church, to be religiously borne by him—but not without the aid of his people.”⁴⁵ The “people,” the Council insisted, included all of the laity, not just the parents of the children in the parochial school, because the “profits and blessings accruing from the preservation of faith and morals in Parochial schools redound to the benefit of the whole community.”⁴⁶ The third duty of the entire Church was “to cry down the injustice” of the godless school “and never yield a jot or tittle of their inalienable right to educate their children according to the dictates of their conscience and the commands of the Church.”⁴⁷

Conway and the bishops’ arguments, however, assumed the validity of the Church’s claims. In such a context, the relationship between the rights of the Church and those of parents could seem unproblematic and straightforward. They were complementary. However, these arguments were unlikely to persuade anyone who did not assume that the Catholic Church was a “divine social organization.” Catholics usually asserted the compatibility of the rights of parents and the rights of the Church as an article of faith that non-Catholics should accept out of respect for consciences. Only rarely did they attempt to demonstrate the reasonableness of that article of faith. One needed to be a Catholic for the American Catholic argument to make sense as more than a call for religious liberty.

⁴⁴ *Acta et Decreta Concilii Plenarii Baltimorensis Tertii* (Baltimore, 1886), 105, quoted in and translated by Jenkins, *Judges of Faith*, 135.

⁴⁵ *Acta et Decreta Concilii Plenarii Baltimorensis Tertii* (Baltimore, 1886), 119, quoted in and translated by Jenkins, *Judges of Faith*, 137.

⁴⁶ *Acta et Decreta Concilii Plenarii Baltimorensis Tertii* (Baltimore, 1886), 119, quoted in and translated by Jenkins, *Judges of Faith*, 138.

⁴⁷ Jenkins, *Judges of the Faith*, 75.

Indeed, an 1886 article in the *American Catholic Quarterly Review* declared that Catholics had more or less given up trying to convince their Protestant neighbors to change the overall structure of the American school system. If religious education and Protestant Christianity had any future in the United States, securing that future was up to conservative Protestants.⁴⁸ The author believed that “Protestant sects could unite, without any serious difficulty, upon a plan or method of introducing religious instruction into the public school system, were they able to forego or subordinate their mutual jealousies of each other, and their common jealousy of the Catholic Church.”⁴⁹ The only “real obstacle” was the “unreasoning prejudice” of Protestants, contrary to “their own denominational interests.”⁵⁰ Many American Catholics, then, had come to position themselves as a religious minority hopeful for reasonable conscience protections, but not of transforming American education. While injustice in the matter of funding was likely to persist, Catholics figured that they would continue to make do.⁵¹ Saving American Christianity in general, however, they now left to Protestants.

5.3 English Catholic Alliances

In contrast, in England, by the mid-1880s the alliance between Catholics and the Church of England for denominational education began to have an effect. Catholics

⁴⁸ George Dering Wolff, “The Public School System and Protestantism,” *American Catholic Quarterly Review* 11 (Oct. 1886): 731.

⁴⁹ Wolff, “Public School System,” 732.

⁵⁰ Wolff, “Public School System,” 737.

⁵¹ The obvious weakness of this “make-do” argument was that a minority of Catholic children actually attended Catholic schools.

agitated for denominational schools more consistently and more loudly than did Anglicans, but even tepid support from the Established Church helped. The weight of the Church of England as the state Church and the majority religion mattered enormously. Catholics also derived a rhetorical benefit from the alliance. Catholic cries for religious liberty looked more reasonable than the demands of the established Church (which did include cries for “religious liberty”). Catholics therefore had a dual advantage. As a religious minority they claimed conscience protections, yet they maintained a practical alliance with the religious majority.

An 1880 law made education to age ten compulsory in England and Wales. This put additional financial strain on the voluntary school system, already struggling to compete with board schools fully funded by local taxes. Cardinal Manning called for a royal commission to address this financial inequality in a December 1882 article in *Nineteenth Century*. The debate that followed, and the commission itself, revealed the degree to which English Catholics had managed to tie their position on education to that of the Church of England. Manning, in particular, consistently framed the defense of denominational schools not only as a way of protecting parental rights and consciences, but also of preserving “Christian England.”

Manning argued that the State was “justified in providing for the education of its people. It [had] a right to protect itself from the dangers arising from ignorance and vice.” He insisted that the State had “a duty also to protect children from the neglect and sin of parents, and to guard their rights to receive an education which shall fit them for human

society and for civil life.”⁵² The State, therefore, possessed the “corresponding rights and powers to levy upon people such taxes or rates as are necessary for the due and full discharge of such duties.” However, the cardinal insisted that the corollary to such taxation was the right of “the whole people” to share in its fruits. In a pluralistic nation, this meant that “many and various forms of education ought to be equally admitted.”⁵³ In short, the denominational schools ought also to be supported by local taxation, or at least some of the difference between the funding of denominational and board schools should be made up through larger grants.

Robert William Dale, a Birmingham Congregationalist and a Liberal who had opposed the 1870 Education Act as providing insufficient conscience protection for Nonconformists, replied to Manning in the January 1883 issue of *Nineteenth Century*. He insisted that in rural England the only way to protect Nonconformists from Anglican proselytism was to establish entirely secular schools. Nonconformists could not build their own schools, he declared, because of their poverty and because in small towns or villages an additional school would “be a poor one, and . . . would impair the efficiency of the school already in existence.”⁵⁴ He denied that the denominational system secured parental rights for the poor. It instead safeguarded “the right of the rich to determine what kind of religious education shall be given to the poor in schools” because denominational

⁵² Henry Edward Manning, “Is the Education Act of 1870 a Just Law?” in *National Education* (London: Burns and Oates, 1889), 4–5.

⁵³ Manning, “Education Act,” 5.

⁵⁴ Robert William Dale, “Cardinal Manning’s Demand on the Rates,” *Nineteenth Century* 13 (Jan. 1883): 62.

schools were built by the denominations that could afford to build them.⁵⁵ In Dale's eyes, it was an "an act of oppression for the Government to compel the children of the Nonconformists to receive their education at a school managed by the minister of the Church from which the parents have revolted."⁵⁶

Manning answered in February, joined in a two-part article by an Anglican clergyman, Canon Robert Gregory.⁵⁷ Manning "most emphatically" agreed that "to compel Nonconformists of any kind to go to an Anglican school, or to any school where their conscience can be tampered with, is a flagrant injustice."⁵⁸ However, his solution was not secular schools, but several denominational schools, even in smaller towns. He described Dale's position as "secular efficiency against religion and conscience."⁵⁹ Granted, sometimes numbers did not justify an additional school. However to replace a denominational school with a secular one for the sake of a handful of families would "be like blowing up a town to clear the rooms of mosquitoes."⁶⁰ Legislation could not fix everything. "Free denominational schools," Manning insisted, were "the safeguards and depositories, the outworks and bulwarks, of liberty of conscience." To displace them with

⁵⁵ Dale, "Manning's Demand," 63.

⁵⁶ Dale, "Manning's Demand," 61.

⁵⁷ The response in the *Nineteenth Century* was titled "Religion and the Rates." When Manning republished his portion of that article in *National Education*, it was titled "The Working of the Education Act of 1870 Unequal: Therefore Unjust."

⁵⁸ Henry Edward Manning, "The Working of the Education Act of 1870 Unequal: Therefore Unjust," in *National Education* (London: Burns and Oates, 1889), 3.

⁵⁹ Manning, "Working of the Education Act," 17.

⁶⁰ Manning, "Working of the Education Act," 5.

secular schools, as Dale proposed, would constitute “a policy of tyranny and simulation: of tyranny in violating conscience, of simulation in prating of religious liberty.”⁶¹

Robert Gregory, then a canon (later the dean) of St. Paul’s Cathedral, had served as treasurer of the (Anglican) National Society for Promoting the Education of the Poor and on the London School Board.⁶² Gregory agreed with Manning’s analysis of the 1870 Education Act and declared that “many members of the Church of England” were “profoundly dissatisfied with the arrangement of which he complains.” He held that the inequality in funding for board schools and denominational schools amounted to “an infringement of the principle of religious liberty.”⁶³

In March Dale repeated that all state schools should be secular. “Denominational schools,” he insisted, were “founded and maintained for the purpose of propagating the denominational creeds of the Churches with which they are connected” and therefore had no claim on public money.⁶⁴ He questioned the cardinal’s use of the language of “liberty of conscience” but found the Anglican canon’s appeal to “religious liberty” even worse.⁶⁵

When Manning replied in April, he insisted that without denominational education Christianity would wither in England and cited the United States and France to show why. He argued that the government of the French Third Republic had been “an

⁶¹ Manning, “Working of the Education Act,” 16.

⁶² A. R. Buckland, “Gregory, Robert (1819–1911),” rev. H.C.G. Matthew, *Oxford Dictionary of National Biography*, accessed March 30, 2017, <http://www.oxforddnb.com/view/article/33557>.

⁶³ Robert Gregory, “Religion and the Rates,” *Nineteenth Century* 13 (Feb. 1883): 327.

⁶⁴ Robert William Dale, “The Cardinal and the Schools: A Rejoinder,” *Nineteenth Century* 13 (Mar. 1883): 488.

⁶⁵ Dale, “The Cardinal and the Schools,” 490.

incessant assault of the so-called Liberal party against what was called Clericalism and the Sacristy; that is to say, in plain English, Christianity in politics and in education.”⁶⁶ In France, he declared, “[p]arental rights [were] absorbed in the State; the rights of the State [were] supreme.”⁶⁷

In diagnosing the United States, Manning quoted at length from Richard Grant White's 1880 article and cited Zach Montgomery, who had launched a final literary effort on the schools question. *The Family's Defender Magazine and Educational Review* ran from 1881 to 1884. In late 1882, Montgomery addressed a “Plea for Union” to his “Roman Catholic contemporaries.”⁶⁸ Manning paraphrased it and declared the American public school system thrice unjust: “unjust to the taxpayer, who is forced to pay for the education of children whose parents can and ought to pay for the education of their offspring”; “unjust to parents” because they had the “right to control the education of their children”; and “unjust to the children” by withdrawing them from “the influences which the law of nature has provided” for their “moral training and formation.”⁶⁹ While Manning thought Americans had “too much of English and Puritan blood” to believe that “children belong[ed] to ‘the general public,’” he believed they had in fact “admitted the false principle which legitimately lead [sic] to this conclusion.” “[S]ecular, common, and compulsory” education logically presumed that “the children are the children of the State,

⁶⁶ Henry Edward Manning, “Is the Christianity of England Worth Preserving?” in *National Education* (London: Burns and Oates, 1889), 13.

⁶⁷ Manning, “Christianity of England,” 27.

⁶⁸ Zachary Montgomery, “A Plea for Union,” *The Family's Defender Magazine and Educational Review* 2, no. 4 (1882): 281–317.

⁶⁹ Manning, “Christianity of England,” 8–9.

and their formation is at the will of the State against all rights, parental or divine.”

Manning insisted that, unlike the Americans and the French, “the people of England” would not tolerate the state’s usurpation of parental rights in education.⁷⁰ Without in any way downplaying his position as a leading Catholic, Manning positioned himself as a spokesman for the majority of Christian England. His claim that parental rights necessitated denominational education was a claim for the parental rights of the majority, not, as in the United States, for a minority.

The Catholic and Anglican alliance for denominational schools was further cemented by calls to change the funding structure for schools yet again. In 1884 Herbert Vaughan, then Catholic bishop of Salford, formed the Voluntary Schools’ Association to agitate for better funding for denominational schools. “Catholic schools,” he declared, might be “the iron head to the spear, but the iron head [would] make but a poor weapon unless it [had] the weight of the wooden shaft behind it.”⁷¹ That wooden shaft was to be the Anglicans. On the other side of the political spectrum, Joseph Chamberlain’s National Education League had called, since the 1860s, for a national system of education supplied

⁷⁰ Manning, “Is the Christianity of England Worth Preserving?” 27–28. This April article elaborated on a very short piece Manning had written for the Catholic periodical *The Month* in January. That article contrasted “the system of secular education” whose principles were “fully developed in France” with those of “the traditional Christian education of the English people.” The French principles included that “education primarily and properly belongs to State”; that “the schools belong to the State”; that “the children belong to the State”; that the “State has no religion.” The list of English principles included that “the children of a Christian people have a right by Divine law to Christian education”; that “Christian parents have a twofold right and duty both natural and supernatural to guard this inheritance of their children”; that “Christian children are in no sense the children of a State that has no religion”; and that to “deprive the poor” of their parental rights in education was “a flagrant injustice.” Henry Edward Manning, “The Future of the Primary Schools,” *The Month* 47 (Jan. 1883): 3. This piece was also republished in *National Education*.

⁷¹ A.C.F. Beales, “The Struggle for the Schools,” in *The English Catholics, 1850–1950*, ed. George Andrew Beck (London: Burns Oates, 1950), 379.

through local authorities.⁷² By 1885 the National Liberal Federation and the Trades Union Congress had joined with Chamberlain and the League to push for free education. Chamberlain's proposal left many advocates of denominational schools concerned that only board schools would be made free. Unsurprisingly, the defenders of denominational schools saw Chamberlain's proposal as a threat to their schools' existence. The voluntary schools were helpless to compete with the already better-funded board schools. The financial disparity, they argued, coerced poor parents to abandon denominational education.

In response to this threat, the Catholic bishops of England met in October of 1885 to discuss education, and they produced a series of resolutions. They asserted that the “sacred rights and liberties of parents and children are invaded and destroyed by any kind of compulsory State Education which separates Religion from Education, or which dictates what shall be the amount and kind of religious instruction which children shall receive during the period of their education.”⁷³ They condemned Joseph Chamberlain's call for state-controlled education as “foreign and fatal to Christianity, and to the traditional Christian Education of the people of England.”⁷⁴ Because the compulsory education law targeted “the poorer classes” the bishops insisted that, at least for the poorest parents, the voluntary schools be free. They concluded by stating that they could

⁷² Elsie E. Gulley, *Joseph Chamberlain and English Social Politics* (New York: Columbia University Press, 1926), 113.

⁷³ Manning et al., “Resolutions of the Catholic Bishops of England on Education,” in *The Correspondence of Henry Edward Manning and William Ewart Gladstone*, ed. Peter C. Erb (Oxford: Oxford University Press, 2013), 4:29.

⁷⁴ Gulley, *Joseph Chamberlain and English Social Politics*, 138; David T. Roberts, “The Genesis of the Cross Commission,” *Journal of Educational Administration and History* 17, no. 2 (1985): 35.

not “confide in any Candidate for a Seat in Parliament, who [would] not engage himself to do his utmost to protect liberty of conscience and redress the present glaring inequalities by providing for the just maintenance and multiplication of Christian and Voluntary Schools.”⁷⁵ In the 1885 election, in many places, Catholic support swung towards the Conservative Party because its members more often supported voluntary schools.⁷⁶

In November 1885 Pope Leo XIII expressed his approval of the English bishops and their position on “the Christian education of your children, upon which you have lately taken counsel together.”⁷⁷ Leo XIII, who had become pope in 1878, made education a major theme of his papacy.⁷⁸ The encyclical *Spectata Fides* explicitly supported “the Voluntary schools, which, by the work and liberality of private individuals, have been established in France, in Belgium, in America, and in the colonies of the British Empire.” These schools best preserved “the Catholic faith, our greatest and best inheritance,” respected “the liberty of parents,” and “brought up” good citizens “for

⁷⁵ Manning et al, “Resolutions of the Catholic Bishops of England on Education,” in Erb, *Correspondence*, 4:30. This demand also appeared in the *London Times* on November 2, 1885.

⁷⁶ C.H.D. Howard argues that the Catholic vote in England was determined primarily by the “advice that Irish Catholics were receiving from their clergy, and the clergy were primarily concerned, not with the demand for home rule, but with the threat which the ‘unauthorized programme’ of Joseph Chamberlain constituted to the Church’s schools.” He also argues that the significance of the Catholic vote helped persuade the government to set up the Cross Commission in 1886. C.H.D. Howard, “The Parnell Manifesto of 21 November, 1885, and the Schools Question,” *The English Historical Review* 62 (Jan. 1947): 44; D. E. Selby, “Manning, Ullathorne, and the School Board Question, 1870–1876,” *Journal of Educational Administration and History* 5 (1973): 26.

⁷⁷ Leo XIII, *Spectata Fides*, Vatican Website, accessed March 26, 2015, http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_27111885_spectata-fides.html.

⁷⁸ See, for instance, the 1880 encyclical *Arcanum* (“On Christian Marriage”); the 1881 *Licet Multa* to Belgian Catholics; the 1884 *Nobilissima Gallorum Gens* to the French; the 1884 encyclical against Freemasonry, *Humanum Gens*; the 1885 encyclical *Immortale Dei* (“On the Christian Constitution of States”); and *Quad Multum*, the 1886 encyclical “On the Liberty of the Church,” written to the Bishops of Hungary.

the State.”⁷⁹ Leo XIII acknowledged that in England many non-Catholics were “not a little anxious about religious education.” He praised their understanding that “for the sake both of society and of men individually,” it was important to preserve “that Christian wisdom which your forefathers received.” “There are,” he continued, “many of an excellent disposition of mind, who are diligently striving to retain what they can of the ancient faith, and who bring forth many and great fruits of charity.” This “disposition of mind,” was, he wrote, “the greatest hope and, as it were, a pledge of the welfare and prosperity of the British people.”⁸⁰

Manning's long-advocated Royal Commission finally came about in 1886 and met until 1888, when it released its final reports.⁸¹ The Cross Commission, as it came to be called, comprised twenty-three members, including Manning, Dale, and Gregory. It dealt with diverse subjects, including curricula and the inspection of schools. Most notably, however, the Commission drew attention to the financial difficulties faced by the voluntary schools. Disagreements on the solution split the Commission, which produced majority and minority reports. The minority report, signed by Dale and seven others, represented Nonconformist and secularist opinion. The majority report, signed by

⁷⁹ Leo XIII, *Spectata Fides*. In this particular encyclical, Leo’s reference to parents was gender-neutral. In some of his other letters, the parental right is explicitly a (primarily) paternal right. He also frequently used a language rather more common among continental Catholics, referring more often to the rights of the family, or the rights of domestic society, than to the rights of parents.

⁸⁰ Leo XIII, *Spectata Fides*. Cardinal Manning translated the encyclical into English. He sent it and a copy of the bishops’ “Resolutions” to Gladstone. Gladstone thanked him, expressing sympathy with the Catholics, and writing that the “Pope’s reference to Christians not of his own communion is singularly genial and gracious.” Gladstone to Manning, December 27, 1885, in Erb, *Correspondence*, 4:31.

⁸¹ The first iteration of the Commission was set up under Salisbury's Conservative government in January 1886. Its second, and lasting, iteration, with the same membership and terms of reference, came from Gladstone's Liberal government in March.

Manning and Gregory, argued that “all the evidence is practically unanimous as to the desire of the parents for the religious and moral training of their children” and that “to secularise elementary education would be a violation of the wishes of parents, whose views in such a matter are, we think, entitled to the first consideration.” Therefore, it argued, “inasmuch as parents are compelled to send their children to school, it is just and desirable that, as far as possible, they should be enabled to send them to a school suitable to their religious convictions or preferences.”⁸² It concluded that the time had come “when, for the best interests of education, some more comprehensive system of administration should be found . . . to remove, as far as possible, the grave and inequitable inequalities of the two systems of voluntary and board schools now existing” and to eliminate the “friction and collision” between them.⁸³ In short, the majority report of the Royal Commission restated Cardinal Manning’s arguments on denominational schools. The split within the commission doomed the majority’s proposal for relief for these schools. Nonetheless, the commission left Catholics reasonably well positioned to pursue change over the next decade.

5.4 Private Schools, Parental Rights, and Child Labor Laws in Massachusetts

While American Catholics had no equivalent to the Cross Commission at the end of the 1880s, they could point to some success in fending off attempts to regulate their schools. Keeping the state out of Catholic schools was a far cry from receiving state

⁸² *Final Report of the Commissioners Appointed to Inquire Into the Elementary Education Acts, England and Wales* (London: Eyre and Spottiswoode, 1888), 213.

⁸³ *Final Report*, 222.

support. By this point, however, some American Catholics adapted something like Ullathorne's position in the 1850s: since Catholic schools had survived without state funding thus far, remaining financially independent might best guarantee the schools' integrity and parental rights. This did not render the lack of state funding just, but the injustice was tolerable. Moreover, defending the independence of private Catholic schools made it easier to gather non-Catholic allies. Leaving public money aside made conscience claims in education seem much more reasonable.

In the fall of 1887, the Massachusetts legislature appointed a joint special committee to consider curtailing child labor. Compulsory education laws increasingly served to enforce child labor restrictions—children in school could not simultaneously work in factories. For this mechanism to operate, however, the state needed to know which children were in schools. The committee proposed that private schools register with the public school committees and provide them with the names, ages, addresses, and attendance records of their students. It also proposed that those committees have the right to examine private schools, even to inspect them without warning. Private schools that failed to comply were to be fined between twenty and one hundred dollars for each missing return of pupil records.⁸⁴ The report, however, proposed much more than private school regulation. It recommended raising the prohibition on any employment from the

⁸⁴ Thomas Dwight, "The Attack on Freedom of Education in Massachusetts," *American Catholic Quarterly Review* 13 (July 1888): 547–548; "Commonwealth of Massachusetts, Report of the Joint Special Committee of the General Court of 1887 on the Employment and Schooling of Children," in *The Protest Against the Majority Report of the Joint Special Committee of the General Court of 1887, on the Employment and Schooling of Children, (House Document No. 19.) And Against Any Legislative Interference With Private Schools, Being a Digest of the Remarks of the Remonstrants, at the Hearings of the Legislative Committee on Education in March, 1888* ([Boston?]: privately printed, [1888?]), 34–47. (Dwight wrote that the pamphlet was printed for distribution to the Massachusetts legislature after the hearings ended.)

age of ten to twelve. It made proposals for ways to ensure that children were not lying about their ages. It tried to define literacy and suggested requiring children between twelve and fourteen who were found to be illiterate to attend twice as much school (forty weeks instead of twenty). It proposed safety regulations and limits on the hours when minors could work.⁸⁵ Eventually, the committee reported two bills to the legislature. One dealt with the labor regulations and passed. The other, with the education regulations, failed.

One member of the committee, Michael J. McEttrick, a Catholic from Boston, wrote both a dissent attached to the majority report and a separate minority report. The dissent argued for a total ban on employing children under fourteen, for more restricted hours for the employment of older minors, and for increasing compulsory schooling from 20 to 26 weeks.⁸⁶ The minority report focused exclusively on regulating private schools. McEttrick argued that “*the State has no right . . . to interfere with private schools in the education of their pupils.*”⁸⁷ The schools’ existence was “due to the wishes and consent of the parent, and the right of the parent to educate his child as he thinks best is a sacred one *vested in him by nature, or if you will, by divine appointment.*” The “common sense of mankind” he argued, “allows that the parent who brings the child into the world has the

⁸⁵ It also suggested that “in cases of genuine poverty relief be given by the school committee out of the school funds.” The law recognized “the right of the father to the earnings of his minor child as a compensation for his obligation to support them.” Therefore, “when the State steps in and demands the attendance of a child at school it may well be held that it thereby assumes an obligation, in cases of absolute necessity, to support the child during the required time of schooling.” “Report of the Joint Special Committee,” 39–40.

⁸⁶ “Report of the Joint Special Committee,” 47.

⁸⁷ “Mr. Michael J. McEttrick’s Minority Report of the Joint Special Committee of the General Court of 1887, On the Employment and Schooling of Children (House . . . No. 63.),” in *The Protest Against the Majority Report*, 49. Emphasis in original.

right and is in duty bound to educate him.”⁸⁸ He argued, therefore, that the state should “carefully abstain from interference in this natural right” even “when an apparent good is to be attained,” because “by abridging the rights of the individual, long experience shows that there is less good to be had.”⁸⁹ McEttrick also appealed to the Constitution as guaranteeing “to every American citizen *freedom of conscience, freedom of worship, and with equal right, freedom of education.*” He defined freedom of education as the “right of the parent to be free to choose for his child both the educator and the method of education, allowing the right of the State to exact the minimum in reading and writing.”⁹⁰

McEttrick also complained that the bill was “unnecessarily offensive to a large and respectable minority of the citizens of the Commonwealth.”⁹¹ Everyone knew that the bill targeted Catholic schools. While McEttrick believed that parents might permit some state supervision of their private schools, he saw no reason why they should unless they could be “reasonably sure” that it “would be made in a spirit of justice.” In Massachusetts a “spirit of bitter hostility” would likely make such supervision arbitrary and unjust.⁹² Accordingly, Catholics saw the proposed bill “as an attack on their *rights of conscience*” and their “unquestionable” parental rights. This was bad for Massachusetts. Challenging

⁸⁸ “McEttrick’s Minority Report,” 50. Emphasis in original.

⁸⁹ “McEttrick’s Minority Report,” 50–51.

⁹⁰ “McEttrick’s Minority Report,” 50.

⁹¹ “McEttrick’s Minority Report,” 51.

⁹² “McEttrick’s Minority Report,” 55.

such basic rights would rouse “the most bitter passions among the people of our cosmopolitan Commonwealth.”⁹³

A series of public hearings on the bill began in March 1888, and opponents of the bill dominated them. Some warned that regulating private schools would actually strengthen the position of Catholic schools. Charles Eliot, the president of Harvard, warned that the bill was “devised either for the suppression of *parochial* schools, or for their improvement.”⁹⁴ Inspection would probably “improve and strengthen the parochial schools.”⁹⁵ Augustus Small insisted that even paying for the inspectors to inspect Catholic schools would “identify the State with the patronage of private schools.”⁹⁶ J. W. McDonald agreed and warned that if the state supervised private schools, it gave them “a claim for the division of the school fund.”⁹⁷ Charles F. Donnelly, a Catholic lawyer, bluntly asserted that if the State assumed supervision and control of private schools, it would create a denominational school system.⁹⁸ Leaving the Catholic schools alone, in contrast, would save the state a lot of money. Eliot also warned that the legislation was likely to “enlist every conscientious Catholic in the support of parochial schools, and to enlist him with all his might, as in the defence [*sic*] of sacred rights.”⁹⁹

⁹³ “McEttrick’s Minority Report,” 57.

⁹⁴ “The First Hearing—March 13, 1888,” in *The Protest Against the Majority Report*, 7. (The title is in error. The first hearing was held on March 6.)

⁹⁵ “First Hearing,” 8

⁹⁶ “The Second Hearing—March 13, 1888,” in *The Protest Against the Majority Report*, 17.

⁹⁷ “Second Hearing,” 14.

⁹⁸ One could not “interfere with the management, control and discipline of the private schools without giving them the support of the State.” “First Hearing,” 9.

⁹⁹ “First Hearing,” 9.

Several opponents repeated McEttrick’s arguments, including his appeal to parental rights. Unsurprisingly, the Catholic Donnelley argued that a father’s right “as a parent sovereign” over his child was derived “from God Almighty Himself, and not from the State, for the State has no right to interfere.”¹⁰⁰ Similarly, Father Thomas Magennis, a Catholic pastor, argued that “[u]nder the Christian dispensation the State can never interfere with a parent in the education of his children, as long as he does not inflict an injury on the State by allowing them to grow up illiterate.”¹⁰¹ Charles Donnelly, however, pointed out that American Catholics went “farther than the Catholic Church would go in one respect, for *as American citizens we claim the State has no right to interfere with a parent in the education of his child*, unless the parent fails in the discharge of his natural duty towards his child.” Catholics were seeking to preserve the “constitutional right to educate and train [one’s] child in such schools or institutions of learning and with such teachers as he deems safe and fit to trust his child without dictation from any State, city, or town authority whatever.”¹⁰² The Church did not dictate this radical limitation of the state.

Some non-Catholics, especially Unitarians, also defended parental rights. Albert P. Marble, Superintendent of Schools at Worcester and a prominent member of the National Education Association, declared that parents who patronized private schools could be trusted to ensure the competence of the teachers.¹⁰³ Augustus Small argued that

¹⁰⁰ “First Hearing,” 10–11.

¹⁰¹ “Final Hearing—March 30th,” in *The Protest Against the Majority Report*, 23.

¹⁰² “Final Hearing,” 27. Emphasis added.

¹⁰³ “First Hearing,” 6.

the “unanimous consent of mankind” declared “the right of a parent to nurture and educate his own children” inalienable. He also argued that for the state to interfere with a parent’s right to educate “according to his own preferences, or the child’s aptitudes, or his own religious belief” violated the free exercise clause of the First Amendment.¹⁰⁴ Colonel Thomas Wentworth Higginson, a radical Unitarian and prominent member of the Free Religious Association, insisted that it was “*the right of the parent, within the limits which the state has fixed as a minimum of training, to choose his own school.*”¹⁰⁵ Eliot, also a Unitarian, believed that the bill tended “to enlist on behalf of parochial schools the sympathy of all persons who really believe in the rights of the individual conscience.”¹⁰⁶

Many opponents also decried the bill’s potential to amplify prejudice. Eliot believed that the bill, widening “the existing breach between the Catholic and Protestant population,” was “hostile to the interests of the entire community.”¹⁰⁷ Thomas Dwight, a Catholic professor of anatomy at the Harvard Medical School, predicted that the law would be enforced with “all bigoted sectarian prejudice.”¹⁰⁸ Edward Everett Hale, a Unitarian minister and prolific author, arguing that the bill should simply have prohibited children under fourteen from entering a factory, warned that there would be “*school committees who would make any amount of difficulty for Protestants and school*

¹⁰⁴ “Second Hearing,” 14.

¹⁰⁵ “The Third Hearing—March 21st,” in *The Protest Against the Majority Report*, 22. Emphasis in original, a report printed by a Catholic polemicist.

¹⁰⁶ “First Hearing,” 8.

¹⁰⁷ “First Hearing,” 7.

¹⁰⁸ “The Second Hearing—March 13, 1888,” in *The Protest Against the Majority Report*, 13.

committees who would make any amount of difficulty for Catholics.”¹⁰⁹ Higginson cautioned that the bill risked reviving the violent anti-Catholicism of the 1840s and 50s.¹¹⁰ Small declared that state control of private schools would be “an element of discord, a source of political evil, the beginning of paternalism and absolutism in the State, the decadence” of the American government.¹¹¹

The Committee on Education reported out a modified version of the bill that died in the state senate. Thomas Dwight, writing on the incident for the *American Catholic Quarterly Review* that July, argued that the episode revealed Catholic strength. Catholics had, he wrote, won “a decisive victory.” He concluded that the “second and most encouraging lesson” was that “justice [was] stronger than anti-Catholic bigotry in Massachusetts.”¹¹² While many American Catholics still believed that full justice would mean a denominational school system, they were satisfied at least to have the independence of their schools secured, and they were more than willing to praise their non-Catholic fellow citizens for ensuring that much.

5.5 Manning and the Americans

In March 1889 Manning intervened in the American school question with an article in the American magazine *The Forum*. A year earlier, *The Forum* had begun

¹⁰⁹ “Third Hearing,” 20. Emphasis in original.

¹¹⁰ He insisted that “*any attempt to invade what is equally the right of Protestant and Catholic by raising a hurrah and bringing together an audience to applaud every sentiment of religious narrowness will never prevail with the Massachusetts Legislature or with the Commonwealth of Massachusetts.*” “Third Hearing,” 22. Emphasis in original.

¹¹¹ “Second Hearing,” 17.

¹¹² Dwight, “Attack on Freedom of Education,” 554.

publishing a series of articles entitled “What Shall the Public Schools Teach?” Some of those articles limited themselves to questions of pedagogy. Several authors, however, asked how one ought to inculcate morality into students and commented on Catholic schools. So Manning was engaging an ongoing conversation. Moreover, in many ways his arguments reproduced those made by American Catholics since the early 1870s. Nonetheless, his article produced an outsized reaction.

As in the *North American Review*, non-Catholics skeptical of denominational schools formed the majority in *The Forum*. C. H. Parkhurst asserted in March that the state had “no interest in saintliness.” Its need was not “keeping the children out of hell” but “keeping hell out of the children.”¹¹³ He argued that “as a rule, the reading of the Bible in schools [was] more a fetich [*sic*] than a moral agency.” Nonetheless, he held that the schools should be “pronouncedly theistic” because morality was “not to be trusted without the support of a religious basis.” As to parochial schools, he lamented that “Protestants [were] beginning to weaken on the question” of public funding and to listen to the Catholics. Such a move, he argued, was “generous” but “un-American.”¹¹⁴ In May Robert C. Pitman wrote that to teach morality “with impressiveness” required religion. He suggested that if Catholics “reasonably or unreasonably” objected to “unsectarian religious instruction,” the religious segment of education of their children in the public schools could be handed over to “teachers of their own faith” as was “not uncommon in the continental countries of Europe.”¹¹⁵ He disliked parochial schools, but he nonetheless

¹¹³ C. H. Parkhurst, “What Shall the Public Schools Teach?” *The Forum* 5 (Mar. 1888): 54.

¹¹⁴ Parkhurst, “What Shall the Public Schools Teach?” 55.

¹¹⁵ Robert C. Pitman, “What Shall the Public Schools Teach?” *The Forum* 5 (May 1888): 297.

insisted that “though the state has both the right and the duty of seeing that the obligation of primary education is discharged by somebody, it has no right to determine by whom. The Catholic has the same right to his parochial school that the fastidious Protestant has to the ordinary private school or seminary.”¹¹⁶

In June Richard Gilmour, the Catholic bishop of Cleveland, weighed in. He insisted that the United States was a Christian nation in which “state and citizen, parent and child” were bound “to the duties that Christian law defines.” The parent’s duty was “to see that his child [was] educated in the law of God,” and the state’s duty was to ensure that the citizen knew the moral law well enough to perform “his duty to the state.”¹¹⁷ The child, Gilmour expounded, belonged “to the family, the state, and the church” and “to none independently of the other” and ought to be taught by “all three meeting in the schoolroom, where God and morality must hold the first place.”¹¹⁸

Finally, in October, Rabbi Abram S. Isaacs argued that the American public schools “should not be Christian, or Jewish, or Agnostic” but should produce “the perfect American citizen, helpful, sound, sober, honest, earnest, patriotic, intelligent.” “A godless school is not necessarily an ungodly school,” he wrote, if the school developed virtues and did not inculcate “positive irreligious teachings and the deification of the sneer.”¹¹⁹ Isaacs was confident that the state could instill “the spirit of humanity, of duty, of

¹¹⁶ Pitman, “What Shall the Public Schools Teach?” 298.

¹¹⁷ Richard Gilmour, “What Shall the Public Schools Teach?” *The Forum* 5 (June 1888): 454, 456.

¹¹⁸ Gilmour, “What Shall the Public Schools Teach?” 456–7.

¹¹⁹ Abram S. Isaacs, “What Shall the Public Schools Teach?” *The Forum* 6 (Oct. 1888): 208.

honesty, of patriotism, of courtesy, of forbearance, and of self-control” without making men “religious in the formal church sense.”¹²⁰

Manning’s “The Bible in the Public Schools” stayed within the range of opinions already represented in *The Forum*. His article gave a more diplomatic version of the analysis of the American school system offered in his April 1883 *Nineteenth Century* article. This time, instead of contrasting England and the United States, he framed a natural law argument for parental rights with an appeal to a common Anglo-American tradition. Manning again appealed to Richard Grant White’s article and used Montgomery’s *Family’s Defender*. He repeated Montgomery’s argument that the public school system was “essentially and intrinsically wrong” and a “palpable and perpetual violation of the moral law.” He also related much of Montgomery’s statistical evidence that public education tended to decrease public morality.¹²¹ Manning’s commentary on Montgomery, however, consistently pushed the conversation away from his statistical approach and toward principles. He proposed that the entire debate over the propriety of reading the Bible in public schools indicated a flawed educational system.¹²²

Manning also argued that the *pluralistic* state overstepped by assuming the authority to educate. In a pluralistic society, the state rightly stayed out of questions of religion. In such a society, a national education system would necessarily be non-Christian. Without a common religion, Manning insisted, state education could produce “no common life, or action, or interest, or commonweal among men. [Students] grow up

¹²⁰ Isaacs, “What Shall the Public Schools Teach?” 210.

¹²¹ Henry Edward Manning, “The Bible in the Public Schools,” *The Forum* 7 (Mar. 1889): 55.

¹²² Manning, “Bible in Public Schools,” 65.

not citizens, but units; selfish, isolated, and lawless.”¹²³ Therefore, Manning argued, the *pluralistic* state should not assume the authority to educate at all because it could not even educate for mere citizenship. He also appealed to “the Christian conscience of the descendants of the Pilgrim Fathers, and to those who forsook home, and all that the world counts dearest, for liberty of conscience, to defend themselves from secular meddling in faith and religion.”¹²⁴

In the April *The Forum*, George P. Fisher angrily termed Manning’s article “so many pages of misleading statement and fallacious—it would not be wrong to say sophistical—reasoning.”¹²⁵ Fisher was professor of ecclesiastical history at Yale and the author of several books. Noting that Manning’s ideas were “those which he has often expressed before,” Fisher argued that Manning’s position on the schools was fundamentally grounded in his ultramontanist. He defined ultramontanist as the desire to “revive the dead past, and to bring back a state of things in which the clergy of the Church of Rome may again dominate lay society.”¹²⁶ Fisher refused to take at face value Manning’s parental rights argument and rejected Manning’s attempt to reframe the schools question according to natural law, insisting that it was rather a question of the relative power of Church and state. He argued that Manning took the appeal to liberty to an extreme that undermined the state’s “right to guard its own existence.” Fisher insisted that “no parental claim” could nullify that right because the state, “as really as the family,

¹²³ Manning, “Bible in Public Schools,” 53.

¹²⁴ Manning, “Bible in Public Schools,” 58.

¹²⁵ George P. Fisher, “Cardinal Manning and Public Schools,” *The Forum* (Apr. 1889): 119.

¹²⁶ Fisher, “Manning and Public Schools,” 119.

is a divine institution.”¹²⁷ He assumed that Manning hated “the American system of government . . . —the idea of a free church in a free state.”¹²⁸ In fact, while Manning lamented the existence of pluralism, he did not particularly disapprove of the American response to its existence, outside of the schools question. Instead, Manning reproved Americans for failing to honor their characteristic devotion to “liberty of conscience” and their resolve to “confine the powers of state within the strict sphere of secular legislation.”¹²⁹ Fisher concluded that Manning believed that “the entire basis of our political fabric is . . . of the devil.” Fisher, therefore, declared the appeal to “English and American liberty” a “specious plea.”¹³⁰ Fisher also offered some of the more standard arguments in favor of the public school system: that it was “among the fundamental bases of the American type of political and social life” and the “indispensable groundwork of free, republican, institutions.” He suggested that increases in immorality were most likely the consequence of the Catholic immigration and therefore illustrated the need for Americanizing public schools.¹³¹

American Catholics came to Manning’s defense. In July, Brother Barbas (John Finigan, a Christian Brother) took on Fisher’s critique in an article in the *American Catholic Quarterly Review*. He agreed that the state was “a divine institution,” but insisted that “the family was before the State; and the State was instituted, not for the

¹²⁷ Fisher, “Manning and Public Schools,” 119.

¹²⁸ Fisher, “Manning and Public Schools,” 120.

¹²⁹ Manning, “Bible in Public Schools,” 66.

¹³⁰ Fisher, “Manning and Public Schools,” 121.

¹³¹ Fisher, “Manning and Public Schools,” 123.

injury of families, but for their good. . . . Therefore, the natural rights of families and individuals must determine the limits of civil power, of the rights of the State.”¹³² Barbas also objected to Fisher’s framing of the matter as a competition between the clergy of the Catholic Church and the state. Barbas answered that the right of the clergy, “in what appertains to faith and morals, is conceded wherever Christianity, as handed down from the Apostles, is admitted—wherever the Catholic Church extends.”¹³³ Granting this right of the Church, Barbas concluded, left “parents perfectly free to teach their children what and how they please, only guarding with great care the precious deposit of the faith once delivered to the Apostles.”¹³⁴ Again, the Catholic defense was merely to assert that the Catholic position on the rights of the Church was an article of faith—not to try to convince people of the validity or reasonableness of that article of faith.

Fisher had also asserted that religious instruction was best left out of school for the sake of both religious and secular education’s integrity.¹³⁵ This aspect of his response shifted the debate away from the place of the Bible in the public schools to the value of denominational education. As such, the debate resumed in a panel at the annual meeting of the National Educational Association in Nashville, also that July.¹³⁶

¹³² Brother Barbas, “Professor Fisher on ‘Unsectarianism’ in the Common Schools,” *The American Catholic Quarterly Review* 14 (July 1889): 511.

¹³³ Barbas, “Fisher on ‘Unsectarianism,’” 511–512.

¹³⁴ Barbas, “Fisher on ‘Unsectarianism,’” 512.

¹³⁵ Fisher, “Manning and Public Schools,” 130–131.

¹³⁶ Albert P. Marble, who had spoken against the Massachusetts bill, was the president of the NEA for 1889.

Edwin Doak Mead opened his address “Has the Parochial School Proper Place in America?” by appealing to an entry in the *English Catholic Dictionary* to which Manning had given his *imprimatur*, that is, official ecclesiastical permission for publication. Mead was a Boston Unitarian who had studied in England and Germany. Sharing Fisher’s conviction that Manning was disingenuous, Mead argued that the *Dictionary*’s article on “Education” proved that Manning’s appeal to the rights of conscience of parents was misleading. He neglected to mention that the article opened with a disparaging comment about American education. The article identified the Church, the state, and the family as three authorities in education in accord with three purposes of education—religious, civic, and domestic. It argued that the religious end is highest and the civic secondary. Mead claimed that the article, therefore, recognized “the fact that the authority of the state in education is superior to that of the family.”¹³⁷ Although this misreading is understandable, the entry said no such thing. Rather, it explicitly stated that the authority of the state was *secondary to that of the Church*, said nothing about the authority of the family vis-à-vis either, and noted only that the state transgressed its authority when it tried to pressure Catholic parents to “patronise schools without [ecclesiastical] sanction.”¹³⁸ In short, the *Dictionary*’s argument offered a typical Catholic stance.

Mead continued to “prove” Manning's bad faith by conflating his appeal to natural law with one to a primitive state of nature. Invoking something like a Hegelian

¹³⁷ Edwin D. Mead, “Has the Parochial School Proper Place in America?” in *Two Sides of the School Question: As Set Forth at the Annual Meeting of the National Educational Association, Held at Nashville, Tennessee, July 1889, By Cardinal Gibbons and Bishop Keane on the One Hand, and Edwin D. Mead and Hon. John Jay on the Other* (Boston: Arnold Publishing Company, 1890), 16.

¹³⁸ William Edward Addis and Thomas Arnold, “Education,” in *A Catholic Dictionary* (London: Kegan Paul, Trench & Co., 1884), 286–7.

philosophy of history, Mead deemed the appeal to nature totally irrelevant to the present. He argued that the future was “advancing to a higher and not a lower view of the state and of its functions and duties.”¹³⁹ Indeed, Mead made a point of asserting that he did not “believe in any institution more divine in its origin and authority, more moral in its true definition and office, than the state. I do not believe in any institutional authority superior in any respect to the authority of the state, and what the state creates and sanctions.”¹⁴⁰ Much like Fisher, Mead suggested that the presentation of the schools question as one of natural law was merely a cover for “the last poor exhibition of the hoary old claim of the priest to empire and the sword.”¹⁴¹ It was, he argued, not the state, but the Church that interfered “with liberty of conscience and family choice.”¹⁴² Mead’s lecture also showed that non-Catholics had noticed the closeness between English and American Catholics. He brought up Leo XIII’s 1885 encyclical letter on education in England and pointed out that Manning had mailed his translation of it to Catholic papers in the United States.¹⁴³

John Jay, president of the American Historical Association and a lawyer and diplomat, also lectured against denominational education and against Manning. In an address titled “Public and Parochial Schools,” Jay argued, first and foremost, that public schools were better than parochial ones. He also argued that aid to parochial schools

¹³⁹ Mead, “Parochial School,” 39.

¹⁴⁰ Mead, “Parochial School,” 17.

¹⁴¹ Mead, “Parochial School,” 32, 37.

¹⁴² Mead, “Parochial School,” 23.

¹⁴³ Mead, “Parochial School,” 31.

ought to be unconstitutional.¹⁴⁴ Jay accused Manning not of bad faith, but of foolishness. Manning's *Forum* article "erroneously assumed that because the entire separation of church and state is a fundamental principle of the Republic, therefore the state knows nothing of Christianity."¹⁴⁵ He then argued at length for the Christian character of common law, essentially repeating the argument Bernard McQuaid had made in the early 1870s, and writing as though the English Manning were ignorant of the nature of common law.¹⁴⁶ Jay took note of the push for Catholic schools at the Third Council of Baltimore and argued, as Francis Abbot had, that the state ought to intervene to prevent the Church from coercing parents with "threats temporal or spiritual" to send their children to parochial schools.¹⁴⁷

Archbishop John Keane, the rector of the new Catholic University of America in Washington, D.C., also took part in the National Education Association panel. In addition to giving his own lecture, he read a short piece from James Cardinal Gibbons of Baltimore. Both defended Manning's article and denominational education. Gibbon's piece primarily addressed the importance of religion in education and the necessity of religious schools. Keane's address answered Fisher's critique of Manning, though he did not mention Fisher's name. He asserted, once again, the centrality of the family. He then argued for the importance of a Christian education. While Keane spent less time on parental rights than Manning had, he framed his entire argument as an explanation of

¹⁴⁴ John Jay, "Public and Parochial Schools," in *Two Sides of the School Question*, 58.

¹⁴⁵ Jay, "Public and Parochial Schools," 50.

¹⁴⁶ Jay, "Public and Parochial Schools," 52, 56.

¹⁴⁷ Jay, "Public and Parochial Schools," 64.

why Catholic parents did, and any Christian parent should, choose denominational education.¹⁴⁸ The argument sought to contradict the notion that the clergy unfairly coerced parents to patronize the Catholic schools.

Cardinal Manning's status alone might explain the strength of the reaction he provoked. He was infamous among Protestants for his defense of papal infallibility and the temporal power of the papacy. While elite American Protestants might tolerate their own Catholics grumbling against the public schools, they could hardly endure a foreign Catholic prelate best known for shoring up the power of the papacy attacking the American school system. American Catholics had failed to secure public money for their schools. Their continued support of their own schools, and their insistence on the independence of those schools, could be seen as an expression, if not the ideal one, of American religious liberty. Their use of parental rights language was dismissed when it came to funding, but usually was granted when it came to Catholics' right to send their children to Catholic schools. Manning, however, even when speaking the same language of parental rights as Americans, represented the potential dangers of the Catholic Church to the American republic. The reaction against Manning's article flowed also from a different fear: an abhorrence of the international character of the Catholic Church, which the Englishman's intervention highlighted. When American Catholics presented themselves as a minority seeking protection, they sometimes garnered sympathy. When they displayed strength of any sort, they invited a fight.

¹⁴⁸ John J. Keane, "Should Americans Educate Their Children In Denominational Schools?" in *Two Sides of the School Question*, 10.

5.6 Conclusion

In arguing that parents had a right to educate their children according to the dictates of conscience, Catholics appealed to a universal natural law. They never underplayed the universalism of their argument. Nonetheless, Catholics fared better when they tied parental rights to national values. How they tied parental rights to the nation mattered greatly. In England, largely thanks to Manning's leadership, Catholics successfully identified themselves as participants in a national Christianity, and they therefore helped keep the denominational schools running. To defend parental rights and denominational schools was to defend Christian England. In the United States, however, Catholics only managed to situate themselves as a religious minority deserving of protection because of the importance of religious liberty and freedom of conscience. *Tolerating* Catholic schools and parents' right to patronize them was American. Supporting such schools was not. Because few Americans saw Catholicism as a plausible bastion of liberty, even this case was tenuous. Worse yet, some American Catholics habitually disrupted their confreres' diplomacy by loudly reminding the country that they intended to convert it.

CHAPTER 6:
THE STATE, COMPULSORY EDUCATION, AND THE RIGHTS OF CATHOLIC
PARENTS

6.1 Introduction

Between the late 1880s and the early 1890s, a massive internal Catholic debate exploded in the United States.¹ One major element of this “School Controversy” was a disagreement over how best to secure parental rights. The practical question was how Catholics should respond to compulsory education laws and increasing state regulation of all schools. This chapter delves into that controversy. It argues that while many Catholics contested compulsory education laws in the name of parental rights, Catholic principles did not dictate this conclusion. The history of Catholic responses to compulsory education laws and other increases in state power in schooling across the English-speaking world illustrates the limits and nature of parental rights in Catholic thought.

Compulsory education laws unquestionably restricted parental rights. While the vast majority of such laws left parents some latitude to determine the content of their children's education, they denied the right of parents to choose not to educate their children in secular subjects. Moreover, in practice, since the public schools were free, and

¹ The classic text on this debate is Daniel F. Reilly, *The School Controversy (1891–1893)* (Washington D. C.: The Catholic University of America Press, 1943). See also, Gerald P. Fogarty, *The Vatican and the Americanist crisis: Denis J. O’Connell, Americanist Agent in Rome, 1885–1903* (Rome: Università gregoriana, 1974).

most other schools were not, requiring parents to send their children to school could also amount to coercing poor parents to send their children to the public school. Also, if the state was going to enforce compulsory education laws, it needed to keep track of whether children were in school. Thus it also, arguably, needed to inspect and regulate even non-public schools and create bureaucracies to ensure children's presence in schools.²

Catholic arguments had, from the 1840s and 1850s, focused on securing funding for Catholic schools so that poor Catholic parents could give their children an education that accorded with their consciences. The rise of compulsory education laws in the United States and the consistent failure of American Catholics to secure funding for their schools led to a new position. Some American Catholics now held that state regulation was a far greater threat to parental rights than a lack of public money. Therefore, they shifted from demanding funding to denying the right of the state to make education compulsory or denying that the state had any right to regulate either private schools or homeschooling.

Nonetheless, that version of the Catholic parental rights argument never became the official Catholic argument. As much as Catholics insisted on parental rights, the Catholic understanding of those rights was never unlimited. The fact that the family was *prior* to the state did not always mean that the state could not regulate the family.

Parental duties bound parental rights, and so long as the state was not interfering with the ability of parents to perform their duties, it had a fair amount of leeway in legislation. The

² Stephen Provasnik highlights the difference between “compulsory attendance” laws and laws which regulated schooling and curriculum. The distinction is certainly relevant to the history of compulsory education, but the debates covered in this chapter at most distinguished between compelling schooling and compelling attendance at a particular school. Stephen Provasnik, “Judicial Activism and the Origins of Parental Choice: The Court’s Role in the Institutionalization of Compulsory Education in the United States, 1891–1925,” *History of Education Quarterly* 46 (Fall 2006): 314–316.

Catholic Church, for instance, did not champion the rights of parents to refuse to vaccinate their children. Limitless parental choice was not the point. The ability of parents to fulfill their sacred duty to educate their children in the human and supernatural virtues and to direct them towards heaven was. Thus, official Catholic parental rights arguments privileged the religious liberty of parents above any other parental liberties. The Catholic position on parental rights did not always oppose state power over families, but it forcefully opposed subordination of the religious mission of the family to the state.

Since the 1870s, Catholic arguments on the schools question set the rights of parents against state overreach. Most of those arguments had granted that the state had a role in supporting education and, at least sometimes, providing schools. Many Catholics wanted some kind of denominational school system in which parents, the Church, and the state all played a role. Others, especially in the United States, had embraced a very minimalist understanding of the rights of the state in education. Sometimes this position arose from a fear of continental-style liberalism in which the state actively sought to limit the influence of the Church. Sometimes, as with Zach Montgomery, the strictures Catholics placed on the state were grounded in a more general theory of limited government that had little or nothing to do with Catholicism. During the 1880s, for instance, American Catholics clamoring for conscience protections had begun more consistently to appeal to the First Amendment and similar parts of state constitutions.³

³ Similarly, by the early 1890s, Catholics cited John Stuart Mill with surprising frequency. See, for instance, R. I. Holaind, *The Parent First: An Answer to Dr. Bouquillon's Query, "Education: To Whom Does It Belong?"* 2nd ed. (New York: Benziger Brothers, [1892?]), 19; and James O'Connor, D.D., *Socialism* (Philadelphia: Catholic Truth Society, [1893?]).

Indeed, by the early 1890s, some American Catholic arguments for parental rights in education came close to contradicting the Catholic defenses of the Mortara case. The defense of the papal government's decision to remove Mortara from his parents had assumed the right (and duty) of a civil government to ensure a child's (moral, not legal) right to an education. While those arguments assumed the incapacity of the parents to protect their child's right to education, they nonetheless relied upon the principle that the state could guarantee children's right to education. Many American Catholics, however, denied that the state had any right, moral or legal, to compel parents to provide their children with even a secular education.⁴ They argued that the state could only intervene in a child's education in the most extreme cases of neglect or if he were orphaned.

The Catholic response to compulsory education laws varied across the English-speaking world. The 1872 Education (Scotland) Act required education for children between the ages of five and thirteen without drawing Catholic ire. In England, Cardinal Manning's response to the first compulsory education law (up to age ten) for England and Wales in 1880 was to insist that if education was mandatory, then the state must provide schools that respected the consciences of parents. That is, it merely added to the urgency of the argument he had been making for a decade. The response by Irish Catholics to the Irish Education Act 1892 (Compulsory Education) was similar.

Of course, in England and Scotland, compulsory education laws coexisted with state-supported denominational schools. Even if the denominational schools were at a

⁴ The distinction between the state requiring secular and religious education, especially when joined to distinctions between secular and Christian states, left room for technically coherent arguments that could defend the Mortara case and reject compulsory education laws. Nonetheless, such arguments tended to be, in more than one sense of term, jesuitical.

substantial financial disadvantage, they were receiving state funding and were subject to some state control. From the Catholic point of view, the school systems in England and Scotland, and arguably even the de facto religiously segregated National Schools in Ireland, did a better job respecting parental rights than the American public school system. In those nations, therefore, state involvement in education was less likely to appear as a threat to parental rights, even when the state's coercive power over parents expanded with compulsory education laws.

What, then, made American Catholics so much more likely to fight compulsory education? For one thing, a major shift in compulsory education laws in the United States coincided with revived anti-Catholicism.⁵ In the case of the 1888 Massachusetts bill, Catholics objected to state control over Catholic schools in part because they believed that such control would be hostile, driven by anti-Catholic prejudice. Such concerns grew during the 1890s with a new wave of anti-Catholicism. While twenty-seven states had some sort of compulsory education law in 1890, most were unenforced and unenforceable.⁶ From the 1890s through the 1930s, however, compulsory education laws became ubiquitous. The age at which children could leave school rose, and new laws

⁵ David Tyack points out that “[i]nterest in compulsory education” seems “to correlate well” with “periods of concern” about “a weakening of loyalties . . . or an infusion of strangers . . . or a spreading of subversive ideas (whether by Jesuits or Wobblies or Communists).” David Tyack, “Ways of Seeing: An Essay on the History of Compulsory Schooling,” *Harvard Educational Review* 46 (Aug. 1976): 367.

⁶ Oscar H. Cooper, “Compulsory Laws and Their Enforcement,” *Addresses and Proceedings of the National Education Association* (1890): 186-91, 191; and United States Commissioner of Education, “Compulsory Attendance Laws in the United States,” *Report for 1888-1889*, I (Washington, D.C.: GPO, 1889), 470-531. In the South, due largely to the white defense of segregation, states did not enact such laws until the twentieth century. Some Southerners based their arguments against compulsory education on parental rights. For instance, a Texas state superintendent of education argued that compulsory education was contrary to the assumption that “the family is the unit of our social fabric” and “antecedent to government.” Education was a “right inherent in the family and the parent.” Tyack, “Ways of Seeing,” 361.

created enforcement mechanisms ranging from attendance officers to attendance-based funding.⁷

Tensions between immigrant German Catholics and Americanizers also contributed to fears about compulsory education laws. In 1889 Republican-controlled legislatures in Wisconsin and Illinois passed laws requiring that all children be educated for at least part of the year in English and subjecting private schools to approval by boards of public education. (Democratic-controlled legislatures repealed both in 1892.) The laws targeted German-speaking Lutherans and Catholics who preferred to have their children taught in German as a way of preserving their culture and faith. The bishops of Wisconsin claimed that the act, by regulating Catholic schools, interfered “with the sacred, inalienable rights of parents.” While parents could delegate the right to teach to the state, the state had no inherent right to regulate the schooling of the children whose parents chose *not* to delegate to state.⁸ However, not all American Catholics agreed.

6.2 The School Controversy Revisited

The year after Bishop Keane had defended religious education before the National Education Association in Nashville, John Ireland, the archbishop of St. Paul, addressed the same body when it met in his city. In a lecture answering that of Edwin Doak Mead from the year before, he gave what was, in many ways, a traditional Catholic case for

⁷ Tyack, “Ways of Seeing,” 362. Tracy Steffes argues that “the shift from voluntary to compulsory school . . . redefined parents’ rights and authority.” Tracy L. Steffes, *School, Society, and State: A New Education to Govern Modern America, 1890–1940* (Chicago: University of Chicago Press, 2012), 121.

⁸ “Manifesto,” cited in James C. Carper and Thomas C. Hunt, *The Dissenting Tradition in American Education* (New York: Peter Lang, 2007), 89.

integrating religious schools into public systems of education.⁹ He claimed that he wished that parish schools were unnecessary. Catholics, he insisted, had no desire to destroy state schools, but rather hoped to reform them. In short, he gave the standard argument for a denominational school system.

Ireland's approach was most unusual in drawing attention to the difference between Catholic schools in a denominational system, as in England, and parochial schools. Catholics had more commonly lumped the systems together as providers of Catholic schools and pointed more to the differences between just and unjust government policy. Ireland's distinction indicates the relative hardening of school systems that had taken place by the early 1890s. In 1870 American Catholics believed that their state school systems might be corrected with fairly simple legislation. The triumph and consolidation of the public school system in the following decades, however, meant that creating a denominational system would be a radical shift.

Ireland, therefore, tried to be diplomatic about his revolutionary suggestions, granting the state as much as he could without denying the rights of parents. He asserted that the state had rights and duties in the realm of education. He declared that the "right of the state school to exist" was a "matter beyond the stage of discussion" and that, indeed, the state school was necessary.¹⁰ He insisted that instructing the child was "primarily the function of the parent," but acknowledged that parents often neglected

⁹ Timothy Hughes Morrissey, "Archbishop John Ireland and the Faribault-Stillwater School Plan of the 1890's: A Reappraisal," (PhD diss., University of Notre Dame, 1975), 128. See also, Donald L. Kinzer, *An Episode of Anti-Catholicism: The American Protective Association* (Seattle: University of Washington Press, 1964), 27–28. John Ireland, "State Schools and Parish Schools," in *The Church and Modern Society: Lectures and Addresses* (Chicago: D. H. McBride & Co., 1896), 199–214.

¹⁰ Ireland, "State Schools," 199–200.

their duty to educate their children, and therefore the state “must come forward as an agent of instruction.”¹¹ The state rightly could provide free schools through taxation and could make “instruction compulsory.” Instruction was necessary to the citizen “for his own sake and for that of society,” and “the parent who neglects to provide for the education of the child sins against the child and against society, and should be punished by the state.” The state had the right to coerce parents to fulfill their duties. Therefore, in drawing up compulsory education laws, the state needed to keep two principles in mind. First, that instruction was “primarily the function of the parent.” Second, its corollary, that “the parent possesses the right to educate his child in the manner agreeable to himself” so long as the education suffices to enable the child to fulfill his own duties.¹² On these grounds, Ireland concluded that the “compulsory laws recently enacted in certain states of the Union” were “objectionable in a few of their incidental clauses,” which could be “readily altered in future legislative sessions.”¹³ Thus, while he defended the theoretical right of the state to enact compulsory education laws, he left room to critique the actual laws on the books.

However, the archbishop cared most about making the school system religious. While he professedly admired “the work of the state school of America in imparting secular instruction,” he lamented its “defects.”¹⁴ The major defect was its tendency “to eliminate religion from the minds and hearts of the youth of the country” by failing to

¹¹ Ireland, “State Schools,” 200.

¹² Ireland, “State Schools,” 201.

¹³ Ireland, “State Schools,” 202.

¹⁴ Ireland, “State Schools,” 202.

teach it.¹⁵ Ireland urged his “Protestant fellow-citizens” to unite with Catholics in “warding off from the country irreligion, the destroyer of Christian life and of Christian civilization.”¹⁶ The state “should, for the sake of its people, and for its own sake, permit and facilitate the teaching of religion by the church” in the schools.¹⁷ As for “non-sectarian” Christianity, he noted that in “loyalty to their principles,” Catholics would “not accept a common Christianity.” Some other compromise among American Christians was necessary to stave off secularism.¹⁸

Financial disadvantage remained, for Ireland, the primary threat to parental rights. He lamented the burden placed on Catholics (“largely the poorer classes of the population”) by paying school taxes while having to fund their own schools to satisfy their consciences.¹⁹ He described the English denominational system as a model solution to this injustice.²⁰ Another possibility, he argued, lay in the arrangement reached in Poughkeepsie, New York, where the city school board rented the parish school buildings during the day, and Catholic teachers taught Catholic students at public expense and without religion during school hours, after which they taught catechism. He described this as “the so-called Irish plan,” presumably because it, too, was a de facto denominational system worked out in spite of the law. Ireland pointed out that similar

¹⁵ Ireland, “State Schools,” 203.

¹⁶ Ireland, “State Schools,” 203–4.

¹⁷ Ireland, “State Schools,” 206.

¹⁸ Ireland, “State Schools,” 208.

¹⁹ Ireland, “State Schools,” 210.

²⁰ Ireland, “State Schools,” 211.

systems operated “in the Catholic schools of Nova Scotia” and in various places in the United States including New Mexico and the Diocese of Savannah.²¹

When Ireland tried to put something like the Irish system into practice in his diocese, however, he provoked fury from all sides. Ireland’s speech to the NEA angered “conservative” Catholics.²² Despite this pushback, the archbishop encouraged two parochial schools in his diocese, both in dire financial straits, to make arrangements like that in Poughkeepsie with their local school boards. This experiment in the towns of Faribault and Stillwater prompted an intense debate. Meanwhile, many non-Catholics cried foul for the usual reason: the Catholics were trying to subvert the public school system. This chapter does not pretend to give a thorough account of the controversy, which has been done elsewhere, but rather reflects on how parental rights arguments fit into it.²³

²¹ Ireland, “State Schools,” 212n.

²² I use quotation marks around “conservative” and “liberal” in this section because, while these terms were in use at the time and have been repeated in the historiography, they obscure far more than they clarify. For much more detail on Ireland’s opponents, see Morrissey, “Archbishop John Ireland,” 217–262. Charles Curran notes the oddity of Thomas Bouquillon’s identification as a liberal in the American context. As Curran points out, “No one can doubt that Bouquillon is both a neoscholastic and an ultramontanist.” Of course, the rest of the American “liberals” were also certainly ultramontanist and in no way opposed to the Thomistic revival. Charles E. Curran, *The Origins of Moral Theology in the United States* (Washington, D.C.: Georgetown University Press, 1997), 199; Morrissey, “Archbishop John Ireland,” 23. See also Philip Gleason, *The Conservative Reformers: German-American Catholics and the Social Order* (Notre Dame: University of Notre Dame Press, 1968); and Vincent J. Fechter, S.V.D., *A Study of the Movement for German National Parishes in Philadelphia and Baltimore (1787–1802)* (Rome: Gregorian and Biblical Press, 1955).

²³ For a fairly thorough account of this project, see Morrissey, “Archbishop John Ireland.” Morrissey, working with a broader source base, corrected some aspects of Reilly’s narrative of the School Controversy. Morrissey highlights the distinction between a parochial school system and a denominational school system, and argues that the ultimate failure of Ireland’s project “was crucial to solidifying the prevailing Catholic opinion that there were no viable alternatives to a separate parochial school system in the United States.” Morrissey reads the argument for a denominational system as one that was less “defensive” and more open to “an accommodation with the rest of American society” than the argument for parochial schools kept separate from the state. Morrissey, “Archbishop John Ireland,” iv, v.

Ireland's "conservative" critics comprised a few overlapping groups. A large contingent of German-American Catholics concentrated in the Midwest already distrusted Ireland. A proponent of Americanization, he had supported Wisconsin's law requiring teaching in English.²⁴ Moreover, of all American-Catholic ethnic groups German-American Catholics had the best track record of building parochial schools. In an 1894 pamphlet, Father Hartmann, a German-American priest in Alton, Illinois, argued that the parochial school was the "ideal school."²⁵ Any compromise, Hartmann continued, "would be only a miserable makeshift. It might prove a Trojan horse, to destroy the citadel of Christian education, thereby doing infinite harm both to the State and its citizens."²⁶ Moreover, intensely aware of the church-state struggles in Germany in the 1870s, German-Americans were deeply suspicious of state coercion. In 1892, a New York Catholic press published a translation of an 1873 pastoral letter written by Wilhelm Emmanuel von Ketteler, the Bishop of Mainz. That letter described secular public schools as "in contradiction with all principles of religion and reason, with the nature of the child, [and] with the interests of the family." Von Ketteler had also described "North American" schools as the worst public schools.²⁷ This evaluation contradicted that of

²⁴ See Reilly, *School Controversy*, 5–66 for some background, albeit heavily biased towards Ireland.

²⁵ B. Hartmann, *Religion or No Religion in Education: The Most Important Question of the Hour* (Alton, IL: Melling and Gaskins, 1894), 12.

²⁶ Hartmann, *Religion or No Religion*, 27. Emphasis in original.

²⁷ Von Ketteler's letter condemned secular public school systems and supported a denominational system. He decried secular schools as an "injustice against the church," a "great injustice against Christian parents" and their children, an injustice to the teacher and "against civil society itself." However, the letter did not condemn compulsory education laws. Rather, von Ketteler had insisted that "justice would demand that where school attendance is compulsory the schools be arranged in such a manner that Christian parents can entrust their children to them without violating their consciences and their duties towards God."

English-speaking American Catholics who often distinguished between “continental and English-speaking systems of public schools . . . much, naturally, to the credit of the latter.”²⁸

The experience of the 1870s and 1880s convinced some “conservatives” that Catholics had no hope of persuading the American public to fund any version of Catholic schools. The most prominent members of this group were Bishop McQuaid of Rochester and his colleague and protégée, Michael Corrigan, the Archbishop of New York. They feared that any attempt to negotiate the curriculum in the public schools would promote further secularization and that any entanglement of Catholic schools with the state would compromise their mission. Father Hartmann argued that the American “people [*did*] acknowledge the natural rights of parents to educate their children according to the dictates of conscience. *Freedom of education*, and nothing more,” he argued, should be claimed, and claimed on “constitutional grounds.”²⁹ Hartmann condemned “short-sighted men” who “committed themselves to the foolish policy of asking State aid for their respective schools and of merging them into the public school system,” even if their claims were strictly just. It was imprudent because “impossible of accomplishment.” Worse, it would “destroy the hitherto independent status of our parochial schools and put

Wilhelm Emmanuel von Ketteler, *Public Schools or Denominational Schools? Pastoral Letter on “The Separation of the School from the Church” Issued in 1873 by Right Reverend W. E. von Ketteler, Bishop of Mainz*, trans. A Catholic Priest (New York: Benziger Brothers, 1892), 13, 22, 23, 24, 25, 27, 24–25.

²⁸ Thomas Jefferson Jenkins, *Foreign Societies and American Schools* (Buffalo: Catholic Union and Times, 1894), 61. John Ireland put it bluntly in a letter to Cardinal Gibbons: “our public schools, in many places, at least, are not *positively* bad . . . Our public-schools are better than those of France or Italy.” “Archbishop Ireland’s Letter to Cardinal Gibbons Explaining in Detail his Address on State Schools at St. Paul in July 1890,” in Reilly, *School Controversy*, Appendix B, 240.

²⁹ Hartmann, *Religion or No Religion*, 36. Emphasis in original.

them under State control,” and thereby “deprive them of their Christian character.” On top of all of that, he argued, state aid would not actually save Catholics any money.³⁰ This position, though a strategic retreat, represented a substantial move away from the rest of the English-speaking Catholics on policy matters.

John Ireland, unlike this second group of “conservatives,” had no intention of retreating. Retaining the buoyant optimism of English-speaking Catholics in the 1850s, he believed that American Catholics could convert their nation and that they should aim for nothing less. He saw no reason why Catholics could not lead their country into a religious public school system. While reputed a “liberal,” for this stance, Ireland was arguably more traditional than his “conservative” critics. His enthusiasm for the United States has led some historians to believe that there was something distinctively American about his position on the schools.³¹ Ireland, however, was safely within the norm for English-speaking Catholics. The position that favored near-exclusive reliance on parochial (and private) Catholic schools was much more distinctively American.³² Indeed, Manning probably influenced Ireland’s stance on the schools—as early as 1869 he cited

³⁰ Hartmann, *Religion or No Religion*, 38. Hartmann argued that Catholic schools ran much more economically than public schools, and that funding Catholic schools on par with the public schools would increase the tax burden so much that Catholics would be paying more than they had before.

³¹ Morrissey, for instance, locates Ireland within a “‘liberal’ strain in the American Catholic Church.” Morrissey, “Archbishop John Ireland,” 45n39.

³² During the School Controversy, Denis O’Connell, Ireland’s close ally working in Rome, wrote to Cardinal Gibbons about the debate. Toward the end of the letter, he not only noted Manning’s approval of a recent address given by Ireland, but also pointed to the similarity between Ireland’s project and the functioning of denominational school systems in England, Ireland, Austria, and Germany. “Monsignor Denis J. O’Connell’s Letter to Cardinal Gibbons on November 24, 1890, Regarding the Charges Made Against Archbishop John Ireland,” in Reilly, *School Controversy*, Appendix A, 236.

Manning in defense of a (failed) scheme to secure municipal money for a Catholic school.³³

The Vatican eventually deemed Ireland's project in Faribault and Stillwater allowable. While ideally bishops should follow the rules made by the Third Council of Baltimore in 1884, which dictated a policy of parochial schools, bishops were within their rights to make judgments about the best way to provide for the education of the children in their diocese. Indeed, the Vatican primarily wanted the American bishops to stop their very public and very bitter squabbling with one another. A letter from Leo XIII nonetheless urged the American bishops to “work hard to get” governments “rightly to acknowledge that nothing is better for the common weal than religion, and so to provide by wise legislation a teaching system supported by public expense, and so by the contributions also of Catholics, with nothing to hurt their conscience or to offend their

³³ Morrissey, “Archbishop John Ireland,” 102. Thomas Wangler also points out that as a seminarian, Ireland “was an avid reader of English newspapers and periodicals,” including the *London Quarterly*, the *Westminster Review*, the *Tablet*, the *Contemporary Review*, and the *Dublin Review*. He lists Ireland’s most-read authors as including Cardinal Manning and Frederick Faber. He states that Ireland had plans to work with Manning “in calling a Catholic Congress for English-speaking Catholics.” Ireland was also a great promoter of the Catholic Truth Society movement, which had been begun by Herbert Vaughan in London. Thomas E. Wangler, “The Ecclesiology of Archbishop John Ireland: Its Nature, Development, and Influence” (PhD diss., Marquette University, 1968), 9, 126-7. Morrissey also shows the importance to Ireland’s thought of the “new apologetic,” a trend in Catholic writing that emphasized the role of the Church in the development of western civilization. Morrissey, “Archbishop John Ireland,” 52. This position certainly was not distinctively American. Indeed, the most important English-language work to make that case was probably that of Thomas Allies, an English convert who also served as the head of the Catholic Poor School Society. See Thomas William Allies, *The Formation of Christendom*, 8 vols. (London: Burns & Oates 1865–1895). Moreover, Leo XIII held this understanding of the role of the Church in western civilization. See, for instance, Robert E. Sullivan, “Modernizing Tradition: Some Catholic Neo-Scholastics and the Genealogy of Natural Rights,” in *Religion and the Authority of the Past*, ed. Tobin Siebers (Ann Arbor: University of Michigan Press, 1993), 184–208.

religion.”³⁴ The pope, in any event, thought that American Catholics ought to keep fighting for funding.

6.3 Bouquillon Debates

Ireland and the “conservatives” agreed on the importance of parental rights, though the latter often failed to acknowledge this agreement. In a letter to Cardinal Gibbons, Ireland complained:

German[-American] papers raise a great clamor against me on this point [of compulsory education] as if I denied to parents that right to control the education of their children. Well, I am most plain & strong, in declaring that this right belongs primarily to the parents, and that the State has no right to give itself instruction except when parents neglect their duty. Nor do I allow the State to demand attendance in its own Schools—except when parents neglect absolutely their children. Abundant room is left for home schools, parish schools, etc.³⁵

The debated point was how to secure the rights of parents and of the Church. To answer this question, however, it helped to define how far the state could involve itself in education without infringing on parental rights.

A pamphlet war begun by Father Thomas J. Bouquillon, a renowned Belgian moral theologian who had recently begun teaching at the new Catholic University of America, brought this question to the forefront of American Catholic intellectual life.³⁶ Bouquillon, agreeing with Ireland, argued that the state had an innate right to educate. A

³⁴ Cited in Reilly, *School Controversy*, 182. The original letter may be found in *Acta Sanctae Sedis*, XXIV, 654–657.

³⁵ “Ireland’s Letter to Cardinal Gibbons,” 237.

³⁶ On Bouquillon’s philosophy, see Curran, *Origins of Moral Theology*.

third set of conservative critics disagreed.³⁷ It included Catholic laymen, such as Zach Montgomery and Edmund Dunne, who spent the early 1890s unsuccessfully fighting compulsory education laws in the courts.³⁸ Nonetheless, the group was reasonably termed “Jesuits” because Jesuits wrote much of the critique for their paper, *La Civiltà Cattolica*.

The debates begun by Thomas Bouquillon’s 1891 pamphlet *Education: To Whom Does it Belong?* ostensibly revolved around the relative rights of the State, the Church, and the Family (or Parents) in the education of children. At the heart of that argument, however, lay a disagreement over the nature of modern states. Catholics agreed that parents were the primary educators of their children. They agreed that parental authority should be respected. They disagreed over whether modern states ought have the same relation to parents as, say, medieval kingdoms had.

The “conservative” position held that the modern (“heretical, infidel, atheistic, agnostic”) state differed in *kind* from its predecessors such that the old thought was irrelevant.³⁹ Catholic political thought, they taught, had developed in response to

³⁷ Though Ireland’s NEA speech actually had limited the state’s right to “instruction,” he was widely, and correctly, understood to be tied to Bouquillon, who did assert the state’s right to educate. On Ireland’s role in the pamphlet’s publication, see Morrissey, “Archbishop John Ireland,” 274–276.

³⁸ Edmund Dunne helped defend Father Patrick F. Quigley, his cousin, who ran St. Francis de Sales School in Toledo, Ohio, and had been found guilty of breaking a compulsory education law for failing to provide the state with attendance sheets. Quigley lost appeals before the Circuit Court and the Ohio Supreme Court and was fined 25 dollars. For more on this case, see Provasnik, “Judicial Activism,” and Steffes, *School, Society, and State*. For this case as background to the School Controversy, see Reilly, *School Controversy*, chap. 3. Dunne’s arguments were published in *Compulsory Education: The State of Ohio vs. the Rev. Patrick Francis Quigley, D.D.* (New York: Robert Drummond, 1894).

³⁹ For instance, J. De Concilio, *The Apology for State Omnipotence in the Matter of Education, Proclaimed by Dr. Bouquillon in his Pamphlet, “To Whom Does Education Belong” . . . In a Series of Conversations Published in the New York “Freeman’s Journal,” in its Issues of February 13, 20, 27; March 6 and 12* (New York, 1892), 12.

“Christian states.”⁴⁰ Conservatives and German-Americans tended to deny that the United States was in any meaningful way a Christian state. In 1891, for instance, Otto Zardetti, the Swiss-born Bishop of St. Cloud, speaking at the fifth German-American Congress in Buffalo, said that it was “utterly impossible” for him “to see anything but an exaggeration in the boasts of those who call America a Christian country.”⁴¹ This argument often assumed that Christian states must be formally confessional. Only these Christian states, fast passing away, they argued, possessed the rights, borrowed from the Church, to educate and to coerce parents to educate their children.

“Liberals” defined the modern state as the same *kind* of entity as any other civil authority with which Catholic political thought had ever grappled. Wisconsin and Charlemagne’s empire possessed the same inherent rights. They taught that the rights of the state in education belonged to the state as such and were not borrowed from the Church. “Liberals” saw trying to define the rights of an atheistic state as a nonsense question since no state had any right to be atheistic. While “conservatives” tended to conflate states and governments, “liberals” emphasized the Catholic tradition, largely drawn from Aristotle, which insisted that any form of political regime (i.e. monarchy, aristocracy, democracy, or a mixture of those elements) could be legitimate. A bad government (e.g., an atheistic government) of a legitimate regime did not fundamentally alter the rights of the state. “Liberals” also tended to define Christian states differently

⁴⁰ For instance, see Holaind, *The Parent First*.

⁴¹ Otto Zardetti, *America and Her Citizens By Adoption: The Rights and Duties of an Adopted Citizen Sharply Defined and Eloquently Proclaimed. An Address by Rt. Rev. Otto Zardetti, Bishop of St. Cloud, Minn., Delivered in the Cathedral at Buffalo, New York, at the Opening of the Fifth German-American Congress, September 21, 1891*, trans. and ed. Charles Kuhlmann (St. Louis: Catholic Publishing Co. of St. Louis, 1891), 18.

than “conservatives” did. They saw no need for a confessional state in a democracy with strong protections for religious liberty, and they comfortably asserted that the United States was a Christian nation because most Americans were Christians and Christianity informed portions of American law.⁴²

6.4 Parental Rights and the Growth of the American State

“Conservative” Catholics’ alarm over the growing power of the state arose from their perception of compulsory education laws. They believed that those laws assumed many parents to be negligent or incompetent and denied that the family was the primary location for education. David Tyack described the motivation for many of the new compulsory education laws as a combination of “fear of social unrest with humanitarian zeal” that led reformers to use “the powers of the state to intervene in families and to create alternative institutions of socialization.” The result, Tyack suggests, was to make education “synonymous with schooling” instead of being understood primarily as a “function of the family.”⁴³ While similar logic had informed the common school movement in the first half of the nineteenth-century, compulsory education employed the coercive power of the state to enforce it.

Tracy Steffes argues that between roughly 1890 and 1940, reformers and newly professionalized educators “defined children’s education and welfare as a public interest

⁴² See, for instance, John J. Keane, *Christian Education in America* (Washington D.C.: The Church News Publishing Company, 1892). Similarly, Jeffrey Von Arx points to Cardinal Manning’s conviction that in an increasingly democratized world the free Church could best influence society through a direct appeal to the people and that this could produce more Christian laws than establishment ever did. Jeffrey von Arx, “Cardinal Henry Edward Manning,” in *Varieties of Ultramontanism*, ed. Jeffrey von Arx (Washington D.C.: Catholic University of America Press, 1998), 62.

⁴³ Tyack, “Ways of Seeing,” 363–364.

that transcended the family and community and justified new state interventions.”⁴⁴ The high school system grew, standards for everything from academics to building codes were developed and quickly propagated, and, Steffes argues, schooling became an important instrument of “governmentality.”⁴⁵ That is, schools helped government to control the household. Mandating that children attend school was only the beginning. The process also led to regulations requiring vaccinations, defining illness, and providing school meals and medical inspections. Reformers saw schools as the solution to myriad social problems springing from industrialization, including child labor, poverty, and economic instability.⁴⁶

The power of state governments in education in 1890, however, was feeble. Control of schools remained overwhelmingly local, and the median size of state departments of education was two persons.⁴⁷ The localism of the actual public school system in 1890 was one reason John Ireland was comfortable negotiating the management of Catholic schools. He knew members of the school boards. Similarly, Bouquillon’s defense of the rights of the state in education argued that “the state” ideally should be municipalities. He asserted that “primary public schools ought to be, not governmental as in some countries, but municipal as in this country, because the

⁴⁴ Steffes, *School, Society, and State*, 2.

⁴⁵ Steffes, *School, Society, and State*, 154.

⁴⁶ Steffes takes care to emphasize that power resided in the *states*, not the federal government, and that even within states, various agencies were frequently at cross-purposes with each other. Many reformers “favored national reforms but were not enthusiastic federal state-builders; they preferred to pursue national reform through local policies and state-level legislation, voluntary associations, and national non-state institutions such as philanthropic foundations.” Steffes, *School, Society, and State*, 197.

⁴⁷ Tyack, “Ways of Seeing,” 368.

municipality more nearly and completely represents the families, and is the immediate emanation of them.”⁴⁸ This localism declined in the years following 1890. In large cities, boards of education centralized the school system, moving control further away from neighborhoods. State departments of education grew, as did school bureaucracies at the local level.⁴⁹

Sometimes the growing reach of the state appeared to be intertwined with anti-Catholicism. In 1895, the rabidly anti-Catholic W.J.H. Traynor, head of the American Protective Association, advocated building up the power of the state to prevent Rome’s eventual triumph through parochial schools.⁵⁰ He argued that while the pope denied “the right of the state to cross the domestic threshold and includes within the pale of domesticity the education of the young, he arrogates to the Church the right not only to intrude into the most sacred relations of the family and the home . . . but dares to dictate to parents the course of instruction which the youth of America shall receive.” If the state failed to interfere, he argued, “the rising generation will be Americans only in name, but

⁴⁸ Thomas Bouquillon, “Rejoinder to Critics,” in *Education: To Whom Does It Belong? Second Edition, With a Rejoinder to Critics* (Baltimore: John Murphy & Co., 1892), 19.

⁴⁹ Tyack, “Ways of Seeing,” 373-4; Marvin Lazerson, *Origins of the Urban Public School: Public Education in Massachusetts, 1870-1915* (Cambridge, MA: Harvard University Press, 1971); Joseph M. Cronin, *The Control of Urban Schools: Perspectives on the Power of Educational Reformers* (New York: Free Press, 1973). Nonetheless, Steffes argues that local control was an essential ingredient of state building, not least of all because it was usually the only way to garner popular support. It not only decreased hostility to the growth of state power but also increased communities' willingness to pay for “their” schools. Moreover, she argues, the interactions between local government and state governments were neither simply centralizing or decentralizing. Rather, the power of the state increased at all levels through “cooperative federalism.” Steffes, *School, Society, and State*, 202.

⁵⁰ W.J.H. Traynor, “The Menace of Romanism,” *The North American Review* 161 (Aug. 1895): 132.

in reality the subjects of a foreign paparchy.”⁵¹ Unsurprisingly, such statements made Catholics leery.

However, the growth of state power, even when not tied to anti-Catholicism, could be alarming. In September 1890, Charles Martindale, an Indiana lawyer, wrote on “Child-Saving Legislation” for the *North American Review (NAR)*. Martindale was promoting new methods to combat child abuse and neglect, methods to which most Catholics had no objection. However, he also declared that the “right of custody and control of the children comes to the parents . . . not by the course of nature, not by birth or blood, but is derived from the State, and must be exercised under the authority and supervision of the State.”⁵² Martindale was fighting the “common belief that a child ‘belongs’ to a parent, who has a right to do as he please with it.”⁵³ Catholics, of course, did not define parental rights in terms of ownership, and they certainly did not think parents could do whatever they pleased with their children. Nonetheless, they could not agree with Martindale’s assertion that parental rights derived from the state.

Martindale’s position, however, was a minority opinion in the United States and in the *NAR*, where the Catholic point of view received more play than the statist one. In 1891, in the middle of the School Controversy, Maurice Egan, a professor of English at Notre Dame, wrote as “A Catholic on the School Question.” A layman, Egan asserted that Catholic fathers needed to “speak for themselves out of the fulness [*sic*] of faithful

⁵¹ Traynor, “Menace of Romanism,” 139.

⁵² Charles Martindale, “Child-Saving Legislation,” *The North American Review* 151 (Sept. 1890): 382.

⁵³ Martindale, “Child-Saving Legislation,” 382.

and pure hearts.” It was the responsibility of “natural fathers” rather than “spiritual fathers” to defend Catholic schools. The “Catholic religion,” after all, recognized that “[p]arental rights are paramount.”⁵⁴ Giving the standard defense of the importance of religious education, Egan concluded that even “if Rome had not spoken, no thoughtful Catholic could conscientiously accept entirely secular education for his children.”⁵⁵ Similarly, in November 1892, Bernard O’Reilly, an Irish-born and Canadian-educated American priest, wrote on “How to Solve the School Question.” O’Reilly believed that Americans had only “to be shown” that the school laws struck “at the dearest rights of the family, and confiscat[ed] to the State the most sacred and inalienable prerogatives of the parent, to conclude that such legislation can only be productive of evil, instead of promoting the public good.”⁵⁶ It was the “duty of the State to encourage and assist this labor of educating, respecting and protecting while so doing, the divinely given and indefeasible rights of the parent.” A denominational school system, he concluded, was “a practical necessity.”⁵⁷

Even the pieces in the *NAR* that opposed Catholics on the school question did not assume that the state had limitless rights in education. In 1893 the journal published James King, the head of the anti-Catholic National League for Protection of American Institutions, insisting not only that the state could make education compulsory, but also

⁵⁴ Maurice Francis Egan, “A Catholic on the School Question,” *The North American Review* 152 (May 1891): 638.

⁵⁵ Egan, “A Catholic,” 639.

⁵⁶ Bernard O’Reilly, “How to Solve the School Question,” *The North American Review* 155 (Nov. 1892): 569.

⁵⁷ O’Reilly, “School Question,” 573.

that the state should have “supervisory access” to non-public schools. Nonetheless, King wrote approvingly that “[r]eligious education belonging primarily to the family and the Church, the State, guaranteeing religious liberty, permits all denominations who desire to do so to establish church schools, colleges, and seminaries at their own expense.”⁵⁸

While such a position was far from the Catholic ideal, the indisputable right of “church schools” to exist was far more than Catholics had in some countries. Similarly, when the Episcopal Bishop Doane wrote in 1894 to lament that Catholics were still attempting to gain public funding for their schools in New York, he granted the social usefulness of the Church in controlling “the great masses of the workingmen of America.” Accordingly, he argued that the Church, as “a beneficent institution,” *should* have access to public funds for its “institutions of reform.”⁵⁹ As for the schools, he wrote that while “she founds parochial schools and maintains them herself, I have the most absolute respect for her consistency.”⁶⁰ Catholics were only objectionable when they asked for money, for then they were guilty of their inherited sin of “perpetual political interference.”⁶¹

Moreover, Catholics were not the only people worried that the expansion of the state in education would undermine the role of the family. English novelist Ouida [Maria Louise Ramé] inveighed against the “State as an Immoral Teacher.” She lamented that the state had “already passed its cold, hard, iron-plated arms between the parent and the

⁵⁸ James M. King, “The American Common Schools,” *The North American Review* 156 (Feb. 1893): 255.

⁵⁹ William Crosswell Doane, “The Roman Catholic Church and the School Fund,” *The North American Review* 158 (Jan. 1894): 34, 35.

⁶⁰ Doane, “Roman Catholic Church,” 35.

⁶¹ Doane, “Roman Catholic Church,” 39.

offspring, and is daily dragging and forcing them asunder.”⁶² Julian Hawthorne, the son of Nathaniel Hawthorne and a writer and journalist, lamented that American parents took it for granted that “because the State instruct[ed] their children in arithmetic and geography, and the other things, it must teach them all the Christian and social graces into the bargain.” Such parents were guilty of “neglect and abandonment.”⁶³ “Neither public nor private schools, nor anything else,” Hawthorne wrote, could “absolve parents from their responsibilities.”⁶⁴ The increased role of the state in education, he declared, made it more urgent for parents to remember their responsibilities and duties.⁶⁵ When Mariana Griswold Van Rensselaer, president of the Public Education Association of New York, wrote to defend the public school system, she appealed to religious liberty and the rights of church and family to argue against teaching religion in the schools. She argued that “full liberty in religious belief and practice” could not be “combined with any form of religious instruction controlled or authorized by the State.” If the school taught religion, the home, “now considered the foundation-stone of society” would “lose its value by abdicating its influence over the young, and thus losing its cohesion and stability; and the churches will deserve to be abolished as cucumbers of the ground.”⁶⁶ Because Americans were neither Spartans nor socialists, she concluded, the state should

⁶² Ouida, “The State as an Immoral Teacher,” *The North American Review* 153 (Aug. 1891): 195.

⁶³ Julian Hawthorne, “Public Schools and Parents’ Duties,” *The North American Review* 168 (Apr. 1899): 403.

⁶⁴ Hawthorne, “Public Schools,” 406.

⁶⁵ Hawthorne, “Public Schools,” 408.

⁶⁶ Mrs. Schuyler Van Rensselaer, “Our Public Schools. A Reply,” *The North American Review* 169 (July 1899): 80.

not, by teaching religion, “infringe, within its schools, upon the rights of the family and the church.”⁶⁷

Thus, while the “conservative” Catholic position probably tended to overstate the threat that Catholic schools faced from the American state or states, conservatives’ faith in the American public’s willingness to defend the existence of religious schools, and parents’ right to patronize them, was well placed. They rightly saw that Catholics became much more sympathetic to their fellow-citizens when money was off the table.

However, “conservatives” also embraced insularity. They focused on the role of Catholic schools in building up a Catholic community to withstand the dangers of a non-Catholic world. Here, Catholics stood primarily as a religious minority in need of protection. Not all American Catholics embraced this separateness. For much of the English-speaking hierarchy, keeping one’s people within the flock *and drawing in converts* was ordinary business. It is not surprising that an 1896 “List of the Most Important Catholic Works of the World” showed English-speakers represented in by far the greatest numbers in the list of works of apologetics.⁶⁸ While these Catholics also believed in the importance of building Catholic communities and often promoted various Catholic associations, they also saw Catholic communities, including schools, as a springboard for shaping the rest of the culture. They had no interest in settling questions based on their status as a religious minority. Rather, they wanted to make their societies just, according to their definition of justice.

⁶⁷ Van Rensselaer, “A Reply,” 81.

⁶⁸ George Franklin Bowerman and Joseph H. McMahon, *A Selected Bibliography of the Religious Denominations of the United States . . . With a List of the Most Important Catholic Works of the World as an Appendix* (New York: Cathedral Library Association, 1896).

6.5 Victory in England

On the other side of the Atlantic, the Cross Commission had shown that, despite their financial difficulties, the voluntary schools educated twice as many English children as the board schools. Although the Conservative government had been unwilling to put the Cross Commission's recommendations into effect, its reports nonetheless changed the terms of debate. Now conversations about free education assumed that the goal was to make both the board schools and denominational schools free. In 1891 the Elementary Free Education Bill was introduced to provide ten shillings per year for each child between the ages of three and fifteen in England and Wales. The funds were to go to both denominational and board schools *without* the provision for public control of the voluntary schools on which Liberals and Nonconformists had insisted.⁶⁹

Most of the Catholic press favored free education. Nonetheless, in June a deputation from the Catholic School Committee told the Privy Council that it could not “approve of the principle of Free Education under which all parents, without distinction, are relieved of the duty of paying for the education of their children.”⁷⁰ The *Tablet*'s response offered the hierarchy's position:

If we were still free to choose we should yield to none in opposing the principle of Free Education, but that is not the question; the choice is now narrowed, and is only this—whether Free Education shall come from

⁶⁹ Chamberlain himself answered these demands by arguing that although he thought popular representation would strengthen the schools themselves, he did not believe that it was “desirable, practicable or politic to ask for public control over these schools.” Elsie E. Gulley, *Joseph Chamberlain and English Social Politics* (New York: Columbia University Press, 1926), 144.

⁷⁰ Quoted in J. G. Snead-Cox, *The Life of Cardinal Vaughan* (London: Burns and Oates, 1912) 2:106.

friends or from those who will use it to realise their dream of universal Board schools.⁷¹

For English Catholic leaders, the Dual-System mattered more than who paid for the schools. While requiring parents to pay what they could afford towards their children's schooling reflected the primacy of parental duty better than free education, this was non-essential. Moreover, while free education eliminated school fees, denominations retained the responsibility for building and maintaining the schools themselves. Parents were not entirely off the hook when it came to paying for the schools.

The policy of free education did aid Catholic schools financially.⁷² Nonetheless, the stringency of Education Codes and the cost of running schools continued to increase, making the relief provided in 1891 woefully insufficient. Herbert Vaughan, who succeeded Cardinal Manning as Archbishop of Westminster after the cardinal's death in February 1892, continued his predecessor's policy and focus on natural law.⁷³ Vaughan argued that making education free had created a "right of each child to receive education at the cost of the State."⁷⁴ He, therefore, pushed for denominational schools to share the rates with the board schools.

⁷¹ Quoted in Snead-Cox, *Cardinal Vaughan*, 2:108–9.

⁷² Prior to the passage of the Bill, which added ten shillings per year for each child, fees had averaged 9s.5d. per student, such that the replacement by the grant represented a net increase for the schools in addition to providing relief for poor parents. Even in those places where the grant represented a decrease from the fees, the resulting increase in school attendance created a net increase. Snead-Cox, *Cardinal Vaughan*, 2:108.

⁷³ A.C.F. Beales, "The Struggle for the Schools," in *The English Catholics, 1850–1950*, ed. George Andrew Beck, A.A. (London: Burns Oates, 1950), 382.

⁷⁴ Quoted in Eric G. Tenbus, "'We Fight For the Cause of God': English Catholics, the Education of the Poor, and the Transformation of Catholic Identity in Victorian Britain," *Journal of British Studies* 46 (Oct. 2007): 879.

Many Anglicans, however, simply wanted increased grant-aid. In 1892 the Archbishop of Canterbury, Edward White Benson, denounced rate-aid as “a most dangerous possession.” The Anglican National Society, in contrast, had first called for rate-aid in 1876, and adopted a resolution in favor of accepting it in 1895.⁷⁵ Regardless, in November 1895, Benson and the other Anglican primate, the Archbishop of York, William Maclagan, announced that they opposed relieving “Churchmen of the sacrifices which they have always made.”⁷⁶ In a public statement, the Catholic bishops responded that only the Established Church’s “great wealth” made the Anglican position possible. “Catholics [were] wholly unable to act with like generosity; but in their poverty they must be content to stand upon the common ground of justice and equality.”⁷⁷ This disunity among the proponents of the voluntary schools sufficed to defeat Sir John Gorst’s 1896 bill, which would have ended the Cowper-Temple ban on rate-aided religious teaching in board schools, abolished the rates paid by schools and the grant limit per student, and increased grant-aid to the voluntary schools.⁷⁸ A very frustrated Vaughan publicly insisted that the “Church of England pull herself together.”⁷⁹

The new Archbishop of Canterbury, Frederick Temple, moderated the Church of England’s stance on rate-aid in 1896. By 1897, the Church of England and the Catholic

⁷⁵ Quoted in Snead-Cox, *Cardinal Vaughan*, 2:112.

⁷⁶ Snead-Cox, *Cardinal Vaughan*, 2:118.

⁷⁷ Snead-Cox, *Cardinal Vaughan*, 2:119.

⁷⁸ Beales, “Struggle for the Schools,” 382; Tenbus, “Cause of God,” 880; and Stephen G. Platten, “The Conflict Over the Control of Elementary Education 1870–1902 and its Effect Upon the Life and Influence of the Church,” *British Journal of Educational Studies* 23 (Oct. 1975): 295. Platten notes that the National Society was very much in favor of the Bill.

⁷⁹ Quoted in Platten, “Control of Elementary Education,” 295.

Church were on the same page.⁸⁰ The result was the Voluntary Schools Act of 1897, which increased grant-aid to voluntary schools by five shillings per student and abolished the grant-limit and the rating of the voluntary school buildings to pay for the board schools. The Act brought welcome relief but did not put the voluntary schools on equal footing with the board schools. Financial instability continued to plague both the Anglican and the Catholic voluntary schools, and the schools question festered. Cardinal Vaughan focused on building coalitions with the Anglican bishops and on rallying Irish Catholic politicians, who loathed the denominational-schools-friendly Unionist party.⁸¹

The 1902 Education Act passed Parliament after nine months of debate and amendment, the longest period then on record. It allowed the managers of the voluntary schools to retain the right to appoint teachers. This provision provoked David-Lloyd George's accusation, oft-repeated by Nonconformists, that the State was putting "Rome on the rates."⁸² The act created two types of school, provided and non-provided. The former, the old board schools (now council schools supplied through town councils), would be governed entirely by the Local Education Authorities subject to the Cowper-Temple restrictions on religious education. The latter, the former voluntary schools, were to be governed by boards of managers, with two-thirds of the members drawn from the sponsoring voluntary organization. The local authority would control the publicly funded secular education in these schools. Religious instruction, not publicly funded, belonged to

⁸⁰ Platten, "Control of Elementary Education," 294.

⁸¹ Quoted in Tenbus, "Cause of God," 880.

⁸² Beales, "Struggle for the Schools," 384.

the managers. Denominations remained responsible for providing the land, buildings, and structural repairs.

Catholics, though not perfectly pleased with the situation, nonetheless believed they had won because the act permanently committed the State to maintain voluntary schools as part of the national education system. Vaughan stated, “We are convinced that we are not likely ever to get a more satisfactory settlement of the education problem. [It is] as strong a guarantee as we can ever expect to get for liberty to educate Catholic children in the Catholic religion in our Elementary schools.”⁸³ The Act appeared a tremendous, if imperfect, victory. The debate continued, but a major attempt to repeal the 1902 Education Act failed in 1906.

Was the 1902 Education Act really a victory for parental rights? In January 1907, reflecting on the history of education law in the United Kingdom, James Oliphant, a Scot, lamented that the “almost universal course of events” had moved “in the direction of limiting parental control by legislative interference.”⁸⁴ The state’s “reprobation of neglect,” he asserted, “took the form of an injunction to rear the children in accordance with a certain standard, and thus the State began to constitute itself the arbiter not only of the *bona fides* of the parents’ intentions but of the soundness of their judgment.” The Education Act of 1870, he declared, had settled “the right of the community not only to insist that children shall be educated, but virtually to determine *how* they shall be

⁸³ Quoted in Snead-Cox, *Cardinal Vaughan*, 2:136.

⁸⁴ James Oliphant, “Parental Rights and Public Education,” *International Journal of Ethics* 17 (Jan. 1907): 206.

educated.”⁸⁵ Oliphant held that this position, confirmed in all later educational legislation, stood at odds with the opinion of “the vast majority of plain people in this country.” They would “like to leave as much responsibility [as possible] in the hands of the parents” because they believed that “social stability is primarily founded on family life.” This popular instinct, he argued, was “the highest wisdom.”⁸⁶

Oliphant denied that parents had inherent title to control over their children’s education. Rather, the question was “what freedom of choice and what responsibility can safely be left to them.” Practically, he added, this was an issue in the “teaching of morals and religion.”⁸⁷ In the end, he endorsed a sort of denominational system in which “the State should concede the right to every parent who belongs to a recognized religious group, to have the opportunity of having his children taught his own faith by an expert teacher, as long as he genuinely lays store by it.”⁸⁸ Oliphant predicted that the demand for such teaching would fade over time. Parents, he argued, would cease “to regard the traditions and creed of their own sect in a narrow and absolute sense.” Then teachers could freely treat “all the subjects of the school course, including morals and religion” in “a genuinely synthetic spirit, and with the tact and judgment that a sense of increased responsibility may be trusted to impose.”⁸⁹

⁸⁵ Oliphant, “Parental Rights,” 207.

⁸⁶ Oliphant, “Parental Rights,” 208.

⁸⁷ Oliphant, “Parental Rights,” 210.

⁸⁸ Oliphant, “Parental Rights,” 214.

⁸⁹ Oliphant, “Parental Rights,” 217.

Oliphant was right that state involvement in education had tended to decrease parental choice. Were English Catholics deluded in their celebrations of the 1902 Education Act as a victory for parental rights? No, because the Catholic definition of parental rights was grounded in duty rather than in “freedom of choice.” Accordingly, Catholics both demanded less from the state (religious liberty rather than more general choice) and demanded it more absolutely (as a matter of inherent right, not something permitted by the state). While the settlement reached in 1902 was not the fulfillment of any Catholic ideal, it did largely secure a school system that supported Catholic parents in fulfilling their duty to provide a Catholic education for their children. From the Catholic point of view, helping parents to fulfill their sacred duties mattered more in securing parental rights than maintaining the broadest possible range of parental choice.

6.6 Conclusion

The Catholic argument for parental rights defined those rights as sacred. Therefore, while the political order was bound to respect them, the state was not finally responsible for them. As much as Catholic argument had set the rights of parents against state overreach, state overreach could never excuse parents failing to fulfill their sacred duties. If the state would not assist parents in their duties, the duties must be met anyway. When political solutions seemed unlikely, the response was to focus on voluntary efforts. If the state would not protect the rights of Catholic parents to fulfill their duty to give their children a Catholic education, then the community should do what it could to fill the gap. Similarly, parents were not off the hook even if the state attempted to replace them in fulfilling duties towards children. Free schools did not relieve Catholic parents of their

educational responsibilities. No number of political losses or victories could release parents from their obligations.

Thus, while Catholics were often uneasy about the extension of state power into the household, the Church did not oppose the state's attempts to ensure that parents fulfilled basic duties towards their children. Child labor legislation or compulsory education laws were permissible or even good *unless* the particular legislation seemed likely to endanger the religious liberty of parents and their children. While a more libertarian strain of Catholicism that feared the extension of state power existed in English-speaking Catholicism, especially in the United States, official Catholic teaching still preferred cooperation among Church, state, and family.

The debates in the early 1890s arose from the difficulties of balancing this ideal of cooperation with the realities of modern secular or quasi-secular state-run education systems in pluralistic nations. Father P. R. McDevitt, the Superintendent of Parish Schools in Philadelphia, declared in 1900 that there was “at the present time a more than mere *tendency* towards state ‘paternalism’” in the education system. He insisted, however, that he “would not derogate one iota from the right of the state to look after the well-being of its citizens. But this right has its legitimate limits,” including the rights of parents and the Church.⁹⁰ English-speaking Catholics sought alliances with classical liberals and Protestants in order to curb “state ‘paternalism.’” However, the Catholic argument for parental rights upheld the coercive power of the Church, permitted the state

⁹⁰ P. R. McDevitt, “The ‘Grievous School Question’ Again Discussed,” in *The School Question from a Catholic Point of View* ([New York?], [1900?]), 6, 7.

some coercive power, and did not regard families, let alone individuals, as autonomous units. Balance was difficult, alliances uneasy, and success limited.

CHAPTER 7: CONCLUSION

For the Church, the rights of parents were not about autonomy, choice, or privacy. It did not object to all government actions that chipped away at parental rights. For instance, mandated vaccinations and restrictions on child labor usually did not raise Catholic ire. This is because official Catholic arguments were grounded in duties. The Church would only fight the state if a policy seemed likely to impede parental duties. The clergy insisted that the Church was the final arbiter of those duties. Accordingly, Catholics needed to persuade their neighbors not only that the state must respect parental rights, but also that the Church's rules for parents did not restrict true parental liberty, or that it was not their neighbors' business if it did.

In Protestant-majority countries, this task was difficult. Catholics did their best to make their message attractive. They appealed to religious liberty and freedom of conscience. They emphasized rights rather than duties when addressing non-Catholics. They hailed a common Christianity and tried to ally with Protestants. This strategy partly paid off, and, in many places, the school question was settled during the twentieth century. In England and Wales, the passage of the 1902 Education Act, and the failure to repeal it in 1906, secured the role of denominational education in, and integrated it more fully into, a system of national education. While not everything that Catholics desired, the 1902 Act was nonetheless hailed as a satisfactory victory. Reaffirmed in the 1944

Education Act, this settlement has remains intact. In Scotland, a system of board and voluntary schools, in which Catholics ran the vast majority of the latter, existed until 1918. As in England and Wales before 1902, the voluntary schools only received funding from Parliament and not from local taxes. The Education (Scotland) Act 1918 introduced county-based educational authorities and, like the 1902 English law, began funding voluntary schools through local taxes in exchange for some government control. As in England and Wales, publicly funded denominational schools continue to loom large in the educational system. In Canada, the mash of settlements remains. Some provinces fund religious schools, but others do not.

Ireland's de facto denominational system continued into the mid-twentieth century. Ireland officially recognized denominational schools in 1965, and the vast majority of its primary schools are Catholic but publicly funded. Ireland's 1937 Constitution recognizes "the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law."¹ Moreover, it acknowledges "that the primary natural educator of the child is the Family" and promises "to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children."² Parents are declared "free to provide" education at home "or in private schools or in schools

¹ Constitution of Ireland, 1937, Art. 41.1.

² Constitution of Ireland, 1937, Art. 42. 1.

recognised or established by the State.”³ In short, the Irish Constitution repeats most of the Catholic argument for parental rights in education.

The American settlement is more complicated. Beginning in the 1890s, parental rights increasingly became a problem for the courts. Through the Progressive Era, state supreme courts upheld a “steady erosion of the ground on which the common law parental authority stood.”⁴ They consistently upheld compulsory education laws and the authority of school officials versus parents. Parental rights, they argued, could not limit the police power of the state.⁵

The United States Supreme Court halted this trend. In the 1923 case *Meyer v. Nebraska*, the Supreme Court declared unconstitutional a Nebraska law that forbade “the teaching in any private, denominational, parochial or public school, of any modern language, other than English, to any child who has not attained and passed the eighth grade.”⁶ (“Any modern language” in fact meant German. During and immediately after World War I, a number of states passed laws discriminating against German-Americans.) Nebraska prosecuted Robert T. Meyer for teaching German to ten-year old Raymond Parpart in a parochial school maintained by the Zion Evangelical Lutheran Congregation.

³ Constitution of Ireland, 1937, Art. 42. 2.

⁴ Tracy Steffes, *School, Society, and State: A New Education to Govern Modern America* (Chicago: University of Chicago Press, 2012), 148.

⁵ Stephen Provasnik, “Judicial Activism and the Origins of Parental Choice: The Court’s Role in the Institutionalization of Compulsory Education in the United States, 1891–1925,” *History of Education Quarterly* 46 (Fall 2006): 311–347 and Steffes, *School, Society, and State*, 141–148. Steffes acknowledges Catholic parental rights arguments, but most of her examples of the extension of state power are not related to religion and do not seem to have angered Catholics. Catholics, however, *did* continue to fight attempts by the state to regulate private schools until the 1920s. She also points to an escalation in these trends during and after the First World War.

⁶ *Meyer v. Nebraska*, 262 U.S. 390, 397 (1923).

The Court declared that the law violated the Fourteenth Amendment: “No State shall . . . deprive any person of life, liberty, or property, without due process of law.” It held that “liberty” included:

the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.⁷

Justice McReynold’s majority opinion pointed out that “nearly all the States, including Nebraska,” recognized and enforced the “natural duty of the parent to give his children education suitable to their station in life.”⁸ Accordingly, he declared, Parpart’s parents were within their rights to have Meyer teach their son German. The Nebraska legislature, the opinion continued, had “attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own.”⁹ There was no evidence that “knowledge by a child of some language other than English [was] so clearly harmful as to justify its inhibition with the consequent infringement of rights long freely enjoyed.”¹⁰

Similarly, the Supreme Court struck down a 1922 amendment to Oregon’s Compulsory Education Act that required all children between eight and sixteen to attend a public school unless they were home-schooled or privately tutored. The Catholic

⁷ *Meyer*, 262 U.S. at 399.

⁸ *Meyer*, 262 U.S. at 400.

⁹ *Meyer*, 262 U.S. at 401.

¹⁰ *Meyer*, 262 U.S. at 403.

Society of Sisters of the Holy Names of Jesus and Mary, who ran schools, sued the state. The private and non-sectarian Hill Military Academy also sued the state on the grounds that the law would destroy their business and depreciate their property.

The Sisters' case asserted that the law conflicted "with the right of parents to choose schools where their children will receive appropriate mental and religious training, the right of the child to influence the parents' choice of a school, [and] the right of schools and teachers therein to engage in a useful business or profession."¹¹ The appellees insisted that they were not questioning the state's right "reasonably to regulate all schools, to inspect, supervise and examine them." They did not question requiring children to be educated or regulating what was taught to foster "good citizenship" and to avoid anything "manifestly inimical to the public welfare."¹² The Sisters and Hill Military won in Oregon District Court, and the case was then appealed directly to the Supreme Court, which heard the case in March 1925.

The Court unanimously upheld the lower court's decision. Justice James McReynolds' majority opinion cited "the doctrine of *Meyer v. Nebraska*" and concluded that "the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control." It insisted that protected liberty "excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. *The child is not the mere*

¹¹ *Pierce v. Society of Sisters*, 268 U.S. 510, 532 (1925).

¹² *Pierce*, 268 U.S. at 534.

creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”¹³

In 1972 the Supreme Court held in *Wisconsin v. Yoder* that the state’s interest in “universal education” could not overwhelm “other fundamental rights.” Citing both *Meyer* and *Pierce*, the majority opinion defined fundamental rights as including “those specifically protected by the Free Exercise Clause of the First Amendment and the traditional interest of parents with respect to the religious upbringing of their children.” It held that the state of Wisconsin could not force the Old Order Amish and members of the Conservative Amish Mennonite Church to send their children to school past the eighth grade.¹⁴ The Court argued that the state's desire to provide secondary education could not “be sustained against [the] free exercise claim” made by the Amish. Part of the Court's

¹³ *Pierce*, 268 U.S. at 534–535. Emphasis added. Tracy Steffes argues that in these two cases the Court replaced the common law protections of parental rights with a new and firmer “foundation in constitutional law” that “was absolute rather than relative.” She argues that this move was part of a twentieth-century expansion of “negative, absolute constitutional liberties” that limited the power of the state. In her account, parental rights were nearly unlimited under common law, severely restricted in the progressive era, and then largely re-instated by the Supreme Court. Steffes, *School, Society, and State*, 149, 150. Steffes probably overstates the extent of parental rights in nineteenth-century law. For instance, Laura Edwards shows that early nineteenth-century common law permitted prosecution for child abuse despite the theoretical right of a father over his child’s body. Edwards argues that male heads of household “could not exercise patriarchal authority unconditionally, because they did not possess it by individual right.” Rather, between “1787 and 1830, a more encompassing form of patriarchy emphasized everyone’s subordination to the peace and their place within the body politic.” Laura F. Edwards, *The People and Their Peace* (Chapel Hill: University of North Carolina Press, 2009), 104–111, 110, 111.

Indeed, Michael Grossberg argues that “the end of the eighteenth century and the early nineteenth century was the time when jurists, legislators, and commentators most fundamentally redirected the governance of the American home.” The Catholic argument for parental rights appeared in the midst of this reorientation. Throughout the nineteenth century, Grossberg argues, “legal developments substantially rearranged the balance of power within the home, and between family members and the state.” This shift encompassed “diminished paternal authority, enlarged maternal and filial prerogatives,” as well as fixing “more clearly the state's responsibilities in domestic affairs.” Like Steffes, he notes the importance of the state judiciary in seizing “the institutional authority to govern the home.” The purpose of this shift was “ensuring family stability and guaranteeing the present use and future transmission of household property and other resources.” Michael Grossberg, *Governing The Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985), xi-xii, 3–4.

¹⁴ *Wisconsin v. Yoder*, 406 U.S. 205, 205 (1972).

reasoning was that Amish parents were fulfilling their duties as parents reasonably. “[F]orgoing one or two additional years of compulsory education” the Court held, “will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society.”¹⁵ Moreover, “the values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society.”¹⁶

The *Yoder* decision, unlike that of *Meyer* and *Pierce*, rested on the First Amendment, which was not held to bind the states until the 1940s. The new legal logic created an odd parallel to the traditional Catholic argument. Now the importance of the religious quality of the parents’ claims was considered essential. A “way of life,” the opinion stated, “may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations.” “[P]arents right of free exercise” determined “Wisconsin’s power to impose criminal penalties on the parent.”¹⁷ The Court stated that the “*holding in Pierce stands as a charter of the rights of parents to direct the religious upbringing of their children.*” When “*the interests of parenthood*” were “*combined with a free exercise claim*” like that in *Yoder*, parents won.¹⁸

¹⁵ *Yoder*, 406 U.S. at 206.

¹⁶ *Yoder*, 406 U.S. at 213.

¹⁷ *Yoder*, 406 U.S. at 215, 231.

¹⁸ The exception being if “*it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens.*” *Yoder*, 406 U.S. at 233–234. Emphasis in original.

In the twenty-first century, cases have grappled with funding for religious schools without assuming that the separation of Church and State requires a total ban. The introduction of voucher systems and charter schools in the late twentieth century created a mechanism for promoting “school choice” in education without funding religious denominations per se. This modern emphasis on *choice* assumes a theory of family autonomy foreign to traditional Catholic thought. It does, however, share the presumption that parents are responsible for educating their children, and that “the child is not the mere creature of the state.” Perhaps unsurprisingly, given the continued financial struggles of Catholic schools, the American episcopacy has embraced this argument.¹⁹ Further research would be required to say to what degree the earlier relentless Catholic refrain of parental rights shaped the much more successful modern campaign for school choice.

Nineteenth-century English-speaking Catholics used parental rights arguments to fight for their schools amidst a dramatically changing educational landscape. That landscape has continued to change. Schooling and society in the twenty-first century are very different than they were when parental rights arguments were first made. While nineteenth-century public schools were essentially Protestant, twenty-first century public education is secular. Although Catholics today are much more integrated into national life than their nineteenth-century predecessors, the gap between traditional Catholic thought and mainstream public opinion is far wider. However, the alliance with

¹⁹ The United States Conference of Catholic Bishops supports “legislative initiatives that promote parental choice in education.” “Current Advocacy Position,” USCCB website, accessed September 5, 2017, <http://www.usccb.org/beliefs-and-teachings/how-we-teach/catholic-education/public-policy/>.

conservative Protestantism that nineteenth-century American Catholics had hoped for now exists. Moreover, the rights of private schools to operate and for parents to home-school are solidly entrenched. The prospect of entangling state money and religious schools continues to alarm many Americans. Nonetheless, the success of the school choice movement has placed proponents of publicly funded religious schools closer to their goal than they have ever been.

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