

# Church and State on the Frontier: The History of the Establishment Clauses in the Washington State Constitution

by ROBERT F. UTTER\* AND EDWARD J. LARSON\*\*

## Introduction

The Washington State Constitution touches lightly on the subject of religion. As originally drafted by seventy-five delegates to the state constitutional convention in Olympia in 1889, the document contained 254 sections, only three of which dealt with religion. The first section, the preamble, expressed gratitude to “the Supreme Ruler of the Universe for our liberties . . . .”<sup>1</sup> Another section contained a general establishment clause and a free exercise clause.<sup>2</sup> A third section codified a special establishment clause dealing with religion in public education.<sup>3</sup> Except for a minor addition regarding chaplains in state institutions<sup>4</sup> the current text of these three sections remains unchanged.

This Article examines the complete history of the two establishment clauses in the Washington State Constitution—clauses that the United States Supreme Court recently characterized as “far stricter” than the federal Constitution’s Establishment Clause.<sup>5</sup> This historical analysis does not suggest that the original intent of the drafters—an uncertain concept at best—governs or controls the interpretation of those clauses today; it merely recognizes that the history of a constitutional provision influences future interpretations to some degree. This Article begins by outlining the current debate over the significance of original intent in

---

\* Justice, Washington Supreme Court; B.S., University of Washington, 1952; LL.B., University of Washington, 1954.

\*\* Assistant Professor, University of Georgia; B.A., Williams College, 1974; M.A., University of Wisconsin, Madison, 1976; J.D., Harvard Law School, 1979; Ph.D., University of Wisconsin, Madison, 1984.

The author wishes to thank Antonia More for her editorial assistance, and Jonathan M. Bryant for his research assistance.

1. WASH. CONST. preamble.
2. WASH. CONST. art. I, § 11.
3. WASH. CONST. art. IX, § 4.
4. WASH. CONST. art. I, § 11.
5. *Witters v. Washington Dep’t of Servs. for the Blind*, 474 U.S. 481, 489 (1986).

constitutional law. The Article then examines the federal Enabling Act,<sup>6</sup> which authorized the drafting of the Washington Constitution. This section focuses particular attention on the Act's request for nonsectarian public schools in the new state. Finally, the Article discusses the drafters' purposes. Of course, their intent cannot be determined with absolute certainty. The state establishment clauses contain ambiguous terms and abstract concepts, making their meaning unclear. Yet it is possible to discern a general appreciation of the principles and concerns underlying the establishment clauses. Understanding the principles and concerns behind these clauses is invaluable when applying them to current situations that the drafters or ratifiers of the constitution could not have foreseen.

## I. The Uses of Original Intent

### A. The Debate

The debate over the role of original intent in interpreting the federal Constitution has recently spilled over from law schools and academic journals into public speeches and the media.<sup>7</sup> This debate demonstrates

---

6. Ch. 180, § 4, 25 Stat. 676-77 (1889).

7. For example, New York Governor Mario Cuomo, in an August 11, 1986, address to the American Bar Association, observed:

That perennial argument, over whether and to what extent the precise language of the Constitution should be molded to accommodate new realities, is again the focus of national debate. In that debate, the two sides seem frequently driven to extremes.

For example, it seems absurd to believe literally in the notion of "original intent"; that the reach of our fundamental law should be limited to only the specific realities known to the Founding Fathers two centuries ago. It seems obvious that interpretation is necessary in order to keep the Constitution a workable document. But the case isn't as easy as that, because it's outrageous to believe, on the other hand, that the Constitution empowers the Supreme Court to design *its own* social policy without having to find justification in the Constitution. As usual, the truth lies somewhere between Scylla and Charybdis and finding the safe route can be difficult.

Governor Mario Cuomo, 10 *HAMLIN L. REV.* 97, 98 (1987) (emphasis in original) (partial transcript of speech by Governor Cuomo before the 108th Annual Meeting of the American Bar Association). The fact that original intent became the topic for Governor Cuomo's speech and that the speech was widely publicized is evidence of the contemporary public interest in the issue.

In 1980, several years before the appearance of the current heightened public interest, Stanford University law professor John Hart Ely described the matter as a "long-standing dispute in constitutional theory." J. ELY, *DEMOCRACY AND DISTRUST* 1 (1980) (footnotes omitted). In 1986, before his own nomination to the United States Supreme Court made the debate on original intent even more topical, Judge Robert H. Bork added, "This issue has been a topic of fierce debate in the law schools for the past thirty years. The controversy shows no sign of subsiding. To the contrary, the torrent of words is freshening." Bork, *The Constitution, Original Intent, and Economic Rights*, 23 *SAN DIEGO L. REV.* 823, 823 (1986). Characterizing the controversy as an "uproar", University of Iowa Professor H. Jefferson Powell noted in 1987:

the current legal significance of the principles and concerns underlying the establishment clauses in the Washington Constitution.

The Reagan Administration's advocacy of the so-called "originalist" position has, in part, sparked this debate.<sup>8</sup> Attorney General Edwin Meese III, during a speech in 1985, publicly stated his views on the role of original intent:

In the main, a jurisprudence that seeks to be faithful to our Constitution—a jurisprudence of original intention, as I have called it—is not difficult to describe. Where the language of the Constitution is specific, it must be obeyed. Where there is a demonstrable consensus among the Framers and ratifiers as to a principle stated or implied by the Constitution, it should be followed. Where there is ambiguity as to the precise meaning or reach of a constitutional provision, it should be interpreted and applied in a manner so as to at least not contradict the text of the Constitution itself . . . .<sup>9</sup>

---

Much recent constitutional scholarship has revolved around the necessity and possibility of originalist interpretation of the Constitution. Various members of bench, bar, and professoriat have warned that only faithful adherence to "the original intent of the framers" can enable courts to exercise "neither force nor will but merely judgment," as is their commission. Other justices and academics have denied an obligation to follow directly the founders' extratextual intentions, and some have suggested that, desirable or not, the endeavor is impossible.

Powell, *Rules for Originalists*, 73 VA. L. REV. 659, 659 (1987) (footnotes omitted).

8. See, e.g., Kurland, *History and the Constitution: All or Nothing at All?*, 75 ILL. B.J. 262 (1987).

Professor Powell has noted:

Those who advocate giving normative force to the "original intent" of the Constitution's framers and adopters go by several names: intentionalists, originalists, interpretivists. I have chosen to use "originalist" in this essay because it suggests adherence to the Constitution's original meaning(s) in the founders' actual intentions.

Powell, *supra* note 7, at 659 n.1. The term "originalist" will be used in this Article.

9. Meese, *Addresses—Construing the Constitution*, 19 U.C. DAVIS L. REV. 22, 26-27 (1985) (transcript of Meese's speech before the District of Columbia Chapter of the Federalist Society Lawyers Division, Nov. 15, 1985). Meese delivered similar public statements during the summer of 1985. The Administration's position is also reflected in scholarly articles written by two people who were nominated by President Reagan for positions on the United States Supreme Court. First, William H. Rehnquist, who was nominated by Reagan for Chief Justice, noted:

Once we have abandoned the idea that the authority of the courts to declare laws unconstitutional is somehow tied to the language of the Constitution that the people adopted, a judiciary exercising the power of judicial review appears in a quite different light. Judges then are no longer the keepers of the covenant; instead they are a small group of fortunately situated people with a roving commission to second-guess Congress, state legislatures, and state and federal administrative officers concerning what is best for the country.

Rehnquist, *The Notion of a Living Constitution*, 54 TEX. L. REV. 693, 698 (1976). Second, Robert H. Bork, who was nominated by Reagan for Associate Justice, wrote:

The only way in which the Constitution can constrain judges is if judges interpret the document's words according to the intentions of those who drafted, proposed, and ratified its provisions and its various amendments. It is important to be plain at the

Thus, according to the Attorney General, the Framers' original intent should govern or at least narrowly guide all constitutional law.

United States Supreme Court Justice William J. Brennan, Jr., takes issue with the originalist approach. He believes that "[i]t is arrogant to pretend that from our vantage we can gauge accurately the intent of the Framers on application of principles to specific, contemporary questions."<sup>10</sup> He has described his own use of original intent as follows:

We current Justices read the Constitution in the only way we can: as Twentieth Century Americans. We look to the history of the time of framing and to the intervening history of interpretation. But the ultimate question must be, what do the words of the text mean in our time? For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs.<sup>11</sup>

Justice Brennan does not altogether reject a role for original intent in constitutional law, but rather advocates using it as a guide to understanding the principles behind the language.

The respective positions of Meese and Brennan do not represent the full debate on the role of original intent. Many legal scholars, jurists, and attorneys articulate completely different views.<sup>12</sup> The positions of Meese

outset what intentionalism means. It is not the notion that judges may apply a constitutional provision only to circumstances specifically contemplated by the Framers. In such a narrow form the philosophy is useless. Because we cannot know how the Framers would vote on specific cases today, in a very different world from the one they knew, no intentionalist of any sophistication employs the narrow version just described. . . .

[A]ll an intentionalist requires is that the text, structure, and history of the Constitution provide him not with a conclusion but with a major premise. That premise states a core value that the Framers intended to project. The intentionalist judge must then supply the minor premise in order to protect the constitutional freedom in circumstances the Framers could not foresee.

Bork, *supra* note 7, at 826.

10. Brennan, *Addresses—Construing the Constitution*, 19 U.C. DAVIS L. REV. 2, 4 (1985) (transcript of speech by Justice Brennan at Georgetown University, Oct. 12, 1985).

11. *Id.* at 7.

12. In addition to the books and articles cited *supra* notes 7-11, and *infra* notes 13-15, recent scholarly commentary on this issue include, e.g., R. DWORKIN, *A MATTER OF PRINCIPLE* (1985); L. TRIBE, *GOD SAVE THIS HONORABLE COURT: HOW THE CHOICE OF SUPREME COURT JUSTICES SHAPES OUR HISTORY* (1985); Bennett, *Judicial Activism and the Concept of Original Intent*, 69 JUDICATURE 218 (1986); Berger, *New Theories of "Interpretation": The Activist Flight from the Constitution*, 47 OHIO ST. L.J. 1 (1986); Clinton, *Judges Must Make Law: A Realistic Appraisal of the Judicial Function in a Democratic Society*, 67 IOWA L. REV. 711 (1982); Cooke & Kende, *Jurisprudence of Original Intention: A Critical Evaluation*, 4 DET. C.L. REV. 1003 (1986); Lay, *The Constitution, the Supreme Court, and Mr. Meese: Habeas Corpus and the Doctrine of Original Intent*, 4 DET. C.L. REV. 983 (1986); Perry, *The Authority of Text, Tradition, and Reason: A Theory of Constitutional "Interpretation"*, 58 S. CAL. L. REV. 551 (1985); Powell, *The Original Understanding of Original Intent*, 98 HARV. L.

and Brennan, however, establish general boundaries for the debate and are used by courts to interpret the Constitution. Indeed, University of Chicago law professor Philip B. Kurland argues that courts should act within the parameters set by Meese and Brennan on this issue.<sup>13</sup>

Constitutional interpretation inevitably involves some consideration of the intent of the Framers.<sup>14</sup> As a practical matter, the history behind provisions of the Constitution influences constitutional interpretation even if it does not control it.<sup>15</sup> In recent years, the United States Supreme Court has become deeply involved in an historical inquiry con-

---

REV. 885 (1985); and White, *Reflections on the Role of the Supreme Court: The Contemporary Debate and the 'Lessons' of History*, 63 JUDICATURE 162 (1979).

13. In an article citing the positions of Meese and Brennan as extremes, Kurland observed that "if you wish to speak or think about the real world and to understand the Supreme Court as an institution of government with important functions to perform, you are not likely to find satisfaction either as a Meesian or as a Brennanite." Kurland, *supra* note 8, at 262. Some commentators have suggested that, in practice, Brennan grants a larger role to original intent in constitutional interpretation than his theoretical comments might suggest. See, e.g., McAfee, *Constitutional Interpretation—The Uses and Limitations of Original Intent*, 75 ILL. B.J. 263, 267 (1987).

14. Harvard Law School professor Richard H. Fallon, Jr. recently noted:

With only a few dissenters, most judges, lawyers, and commentators recognize the relevance of at least five kinds of constitutional argument: arguments from the plain, necessary, or historical meaning of the constitutional text; arguments about the intent of the Framers; arguments of constitutional theory that reason from the hypothesized purposes that best explain either particular constitutional provisions or the constitutional text as a whole; arguments based on judicial precedent; and value arguments that assert claims about justice or social policy.

Fallon, *A Constructivist Coherence Theory of Constitutional Interpretation*, 100 HARV. L. REV. 1189, 1189-90 (1987) (footnote omitted). See also Powell, *supra* note 7, at 697. In his article, which is highly critical of the originalists' position, Professor Powell noted that historical arguments based on original intent are an "inextricable part of the constitutional tradition we have received and carry on." *Id.*

15. Commenting on the interpreter's role, Stanford University law professor Paul Brest asserted:

The interpreter's task as historian can be divided into three stages or categories. First, she must immerse herself in the world of the adopters to try to understand constitutional concepts and values from their perspective. Second, at least the intentionalist must ascertain the adopters' interpretive intent and the intended scope of the provision in question. Third, she must often "translate" the adopters' concepts and intentions into our time and apply them to situations that the adopters did not foresee.

Brest, *The Misconceived Quest for the Original Understanding*, 60 B.U.L. REV. 204, 218 (1980). Brest dismissed strict textualism as antagonistic to such intentionalism. He did, however, acknowledge a role for the "moderate textualist", whom he described as:

[One who] takes account of the open-textured quality of language and reads the language of provisions in their social and linguistic contexts. A moderate intentionalist applies a provision consistent with the adopters' intent . . . consistent with what is sometimes called the "purpose of the provision." Where the strict intentionalist tries to determine the adopters' actual subjective purposes, the moderate intentionalist attempts to understand what the adopters' purposes might plausibly have been, an aim far more readily achieved than a precise understanding of the adopters' intentions.

*Id.* at 223 (footnotes omitted).

cerning the federal constitutional proscription against establishment of religion. The next section discusses this historical inquiry and its usefulness in constitutional interpretation.

## B. The Federal Establishment Clause and Principles of Constitutional Interpretation

Prior to 1947, the courts rarely made reference to the federal Establishment Clause. In 1947, the Supreme Court held in *Everson v. Board of Education*<sup>16</sup> that the Clause applied to state as well as federal action through the Due Process Clause of the Fourteenth Amendment. Justice Hugo Black, writing for the majority, relied heavily on original intent to determine whether the Establishment Clause barred New Jersey from using state tax revenue to finance parochial school transportation.<sup>17</sup> Justice Black discussed colonial and early national conceptions of the separation of church and state. He concluded that the first amendment religion clauses "had the same objective and were intended to provide the same protection against governmental intrusion on religious liberty" as the 1787 Virginia Bill for Religious Liberty authored by Thomas Jefferson and supported by James Madison.<sup>18</sup> Black reasoned that "[i]n the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'"<sup>19</sup> Since the New Jersey law under review in *Everson* did not breach this wall, the law was upheld.<sup>20</sup>

Twenty-four years later, Justice Brennan adopted a similar approach to interpreting the Establishment Clause. In a concurring opinion supporting a New York law that exempted church property from taxation,<sup>21</sup> Justice Brennan examined the Framers' attitudes toward religious tax exemptions and concluded, "it seems clear that the exemptions

---

16. 330 U.S. 1 (1946).

17. At the start of his analysis, Black wrote:

Whether this New Jersey law is one respecting an "establishment of religion" requires an understanding of the meaning of that language, particularly with respect to the imposition of taxes. Once again, therefore, it is not inappropriate briefly to review the background and environment of the period in which that constitutional language was fashioned and adopted.

*Id.* at 8 (footnote omitted).

18. *Id.* at 13.

19. *Id.* at 16 (citation omitted).

20. *Id.* at 18.

21. Referring to an earlier ruling against school prayer, Justice Brennan wrote: "I adhere to the view . . . that to give concrete meaning to the Establishment Clause, 'the line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers.'" *Waltz v. Tax Comm'n*, 397 U.S. 664, 680 (1970) (Brennan, J., concurring) (citation omitted).

were not among the evils that the Framers and Ratifiers of the Establishment Clause sought to avoid.”<sup>22</sup> Relying heavily on this historical research into the Framers’ attitudes, he agreed that the New York tax exemption did not violate the federal Establishment Clause.

- Regardless of the interpretive approach courts choose to follow, the Framers’ intent often guides efforts to interpret the Establishment Clause and other provisions of the federal Constitution. Whether or not jurists and scholars believe that they are bound by the original purpose of a constitutional provision, its history is a necessary starting point for analysis.

The United States Supreme Court has relied on constitutional history to determine the meaning of the Establishment Clause; this method of analysis provides a model for state courts to follow in exploring the meaning of similar clauses in their state constitutions. State courts should keep in mind, however, two fundamental differences between state constitutions and the federal Constitution. First, the federal government is in theory a government of limited powers. It possesses only those powers expressly granted to it by its Constitution.<sup>23</sup> State governments, on the contrary, are governments of plenary power. They have the power to act in any manner not expressly proscribed by their state constitutions or the United States Constitution.<sup>24</sup> Thus, while the federal Constitution confers an affirmative grant of power, a state constitution constrains a state’s otherwise general powers. Second, a state constitution is an expression of the people’s will and depends on ratification for its validity. Under Washington law, state courts must construe the words of the state constitution according to their common and ordinary meaning at the time the particular provision was adopted.<sup>25</sup> Courts must

---

22. *Id.* at 682. Brennan focused particular attention on the attitudes of Jefferson and Madison, noting:

Thomas Jefferson was President when tax exemption was first given Washington churches, and James Madison sat in sessions of the Virginia General Assembly that voted exemptions for churches in that Commonwealth. I have found no record of their personal views on the respective Acts. The absence of such a record is itself significant. It is unlikely that two men so concerned with the separation of church and state would have remained silent had they thought the exemptions established religion.

*Id.* at 684-85.

23. U.S. CONST. amend. X.

24. *Id.*

25. *State ex rel. O’Connell v. Slavin*, 75 Wash. 2d 554, 557, 452 P.2d 943, 945 (1969); *State ex rel. Albright v. Spokane*, 64 Wash. 2d 767, 770, 394 P.2d 231, 234 (1964); *State v. Brunn*, 22 Wash. 2d 120, 139, 154 P.2d 826, 835 (1945), *rev’d on other grounds*, *State v. Matuscewski*, 30 Wash. App. 714, 717, 637 P.2d 994, 996 (1981); *State ex rel. Linn v. Superior Court*, 20 Wash. 2d 138, 143, 146 P.2d 543, 546 (1944); and Utter, *Presenting a State Constitutional Argument: Comment on Theory and Technique*, 20 IND. L. REV. 635, 654-58 (1987).

look to the meaning that the words would have had to the vast majority of ordinary voters, not merely to the drafters.<sup>26</sup> Keeping these principles of interpretation in mind, this Article next examines the historical setting and political debate underlying the establishment clauses of the Washington State Constitution to determine whether there was a decisive consensus on their original purpose.

## II. The Federal Enabling Act of 1889

The delegates to the Washington Constitutional Convention in 1889, and the territorial electorate that ratified their work, had to contend with some restrictions imposed by the Federal Enabling Act, which authorized the Convention as a step toward statehood. There was one particularly significant limitation in the area of religious freedom. The Enabling Act required that the convention include a provision for "the establishment and maintenance of a system of public schools, which shall be open to all children . . . and free from sectarian control."<sup>27</sup>

The Convention addressed this matter by drafting article IX, section 4 of the state constitution: "All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence."<sup>28</sup> The language of this provision, which constitutes a special establishment clause dealing with religion in public education, is sufficiently similar to the public school provision of the Enabling Act to link the two. Thus, in order to determine the intent behind the state provision, it is helpful to examine the intent behind the federal provision.

The Enabling Act has a long and tortuous legislative history that stretches over several Congresses and is mired in partisan politics. Partisan politics created an especially deep mire at the time. The Enabling

---

*See also* B.F. Sturtevant Co. v. O'Brien, 186 Wis. 10, 19, 202 N.W. 324, 327 (1925) (words of state constitution must be construed in the context of the "general run of voters to whom they were submitted").

The malleable character of the English language suggests that the meaning of words in a constitutional provision is not always clear even with words that may be familiar to us. The usage and connotations of words changes over time, and it is important to evaluate the context in which the words are used. Therefore, in trying to determine the intent of the people who ratified the state constitution, "the public history of the times should be consulted and have weight . . ." *State ex rel. Mason County Logging Co. v. Wiley*, 177 Wash. 65, 74, 31 P.2d 539, 543 (1934).

26. *State ex rel. Albright*, 64 Wash. 2d at 770, 394 P.2d at 233.

27. Enabling Act, ch. 180, § 4, 25 Stat. 676-77 (1889). This restriction was to be enforced by an ordinance revocable only with the consent of both the federal government and the people of Washington, making it more difficult to change than a state constitutional provision. Article XXIII of the Washington State Constitution included such an ordinance; article IX, § 4 of the state constitution specifically addresses this issue.

28. WASH. CONST. art. IX, § 4.

Act was signed into law by Democratic President Grover Cleveland just days before he was to be succeeded by Republican Benjamin Harrison. Harrison won an electoral college victory over Cleveland, although Cleveland had received a majority of the popular vote.<sup>29</sup> The Congress that passed the Enabling Act was also split. Both the Democratic and Republican Parties claimed popular support and political power; Republicans controlled the Senate, and Democrats controlled the House of Representatives.<sup>30</sup> This division affected consideration of the Enabling Act because, under the Act, Congress would authorize the admission of new states that would change the precarious partisan balance in Congress and the Electoral College. The addition of any new state could significantly influence national politics, therefore both parties stood firm in blocking the admission of states likely to support the opposition.<sup>31</sup>

#### A. The Senate and Senate Bill 185

The Congress reached a compromise in Senate Bill 185 (S. 185).<sup>32</sup> When S. 185 passed the Republican-controlled Senate in 1888, it provided for the admission of only the Republican-dominated southern part of the Dakota territory. Although the Bill set aside federal land to support education, it neither mandated a system of public schools nor addressed the issue of sectarian control over education.<sup>33</sup> Democratic Senator M.C. Butler of South Carolina unsuccessfully offered an alternative version of S. 185, which would have authorized all of the Dakota Territory to enter the union as one state.<sup>34</sup> This alternative contained the public school provision, but Butler struck this provision on his own motion prior to floor debate. Butler's reason for dropping the provision was that he had "no doubt the State [would] provide for a system of common schools, but [did] not believe that the Congress of the United States ha[d] anything to do with the question."<sup>35</sup> The Senators said nothing further about the public school issue during the debate, and Butler's alternative lost.

---

29. Cleveland rebounded to defeat Harrison in the 1892 presidential election. Numerous books and articles analyze voting behavior in this era of American political history. *See, e.g.,* W. BURNHAM, *CRITICAL ELECTIONS AND THE MAINSPRINGS OF AMERICAN POLITICS* (1970).

30. CONGRESSIONAL QUARTERLY'S GUIDE TO U.S. ELECTIONS 1124 (1985).

31. *See, H. SCHELL, HISTORY OF SOUTH DAKOTA* 212-22 (1961).

32. S. 185, 50th Cong., 1st Sess. (1887).

33. *Id.*

34. 19 CONG. REC. 2831 (1888). M.C. Butler was the ranking or senior Democratic member of the Senate Committee on Territories at this time. 19 CONG. REC. 16 (1887).

35. *Id.*

## B. The House and House Bill 8566

Meanwhile, the Democrat-dominated House was passing its own quite different statehood legislation in 1888. Led by Chairman William M. Springer,<sup>36</sup> the House Committee on the Territories merged four separate bills into House Bill 8566 (H.R. 8566).<sup>37</sup> This proposal authorized the admission of the Dakota Territory as one state, to be offset by the admission of three potentially Democratic states: Montana, New Mexico, and Washington.<sup>38</sup> H.R. 8566, however, contained the public school provision. As for this restriction on the state constitutional conventions, the Committee Report accompanying H.R. 8566 simply stated, "Other provisions usual in enabling acts are required, especially that . . . provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of . . . States and free from sectarian control."<sup>39</sup> This statement is deceiving. The public school provision was not "usual." The Colorado enabling act immediately preceding it had contained no such provision;<sup>40</sup> neither had any of the eleven unsuccessful statehood bills introduced in the previous Congress (1885-1887), including the three sponsored by Springer himself.<sup>41</sup> Indeed, the earliest proposed enabling act in which such language can be found was a bill introduced by Springer on January 4, 1888, to admit the Dakota Territory as a single state.<sup>42</sup>

A crucial step in breaking the stalemate on the admission of new states occurred early in 1889 when the House grafted the language of H.R. 8566 onto the Senate-passed S. 185 and allowed splitting of the

---

36. (D.-III.).

37. 19 CONG. REC. 3002 (1888).

38. *Id.*

39. H.R. Rep. No. 1025, 50th Cong., 1st Sess. 2 (1888).

40. *See* Enabling Act, ch. 139, § 4, 18 Stat. 474-75 (1875).

41. The 11 unsuccessful statehood bills are the following: S. 40, 49th Cong., 1st Sess. (1885); S. 67, 49th Cong., 1st Sess. (1885); S. 578, 49th Cong., 1st Sess. (1885); S. 967, 49th Cong., 1st Sess. (1886); S. 1138, 49th Cong., 1st Sess. (1886); H.R. 2820, 49th Cong., 1st Sess. (1886); H.R. 4363, 49th Cong., 1st Sess. (1886); H.R. 5518, 49th Cong. 1st Sess. (1886); H.R. 7376, 49th Cong., 1st Sess. (1886); H.R. 8120, 49th Cong., 1st Sess. (1886); and H.R. 10,225, 49th Cong., 2d Sess. (1886). Springer sponsored H.R. 5518, H.R. 8120, H.R.10,225.

42. H.R. 1276, 50th Cong., 1st Sess. § 5 (1888). Three weeks after Springer offered this bill in the House, Senator Butler offered the same text as a minority Democratic alternative to S. 185 in the Senate. But, at his first opportunity, Butler singled out the public school provision for deletion, even though his overall alternative was doomed to defeat. S. 185, 50th Cong., 1st Sess. § 6 (Butler Substitute, Jan. 25, 1888). *See also* 19 CONG. REC. 2132-2831 (1888). Since both sponsors were Democrats, it is not surprising that Butler borrowed Springer's bill as a readily available alternative to the majority Republican version of S. 185. Butler may not have known that H.R. 1276 contained a public school provision when he borrowed it. He certainly did not want that provision to remain in his bill. *See infra* note 67.

Dakota Territory into two states.<sup>43</sup> The two versions of S. 185 went before a conference committee; the final compromise retained the House language, but deleted New Mexico from the bill.<sup>44</sup> As a result, the Enabling Act covered four states: Washington, Montana, and North and South Dakota, but those states were subject to a variety of restrictions from H.R. 8566, including the public school provision. Perhaps because that provision appeared only in the last version of S. 185 and had been casually dismissed as a "usual provision" in H.R. 8566,<sup>45</sup> there was little discussion of it during final congressional action on the Conference Report.

### C. Senator William W. Blair

Only Senator William W. Blair, Chairman of the Senate Education Committee, mentioned the public school provision. But Blair did so in such a way as to link the provision to a long-standing congressional and public controversy.<sup>46</sup> During a Senate floor debate, Blair referred to a proposed federal constitutional amendment that he had introduced in the Senate seven months earlier.<sup>47</sup> That proposal would have extended the first amendment religion clauses to the states, required each state to provide free public schools, prohibited state support for parochial schools, and barred sectarian instruction in public schools.<sup>48</sup>

For Blair, the concept of sectarian instruction had a precise meaning. This meaning was apparent in the proposed amendment which, while barring sectarian instruction, would have required the free public schools to educate children "in virtue, morality, and the principles of the Christian religion."<sup>49</sup> Blair believed that an education in religious principles was necessary. For him these principles made up the "very fabric of

---

43. 20 CONG. REC. 806-08 (1889).

44. 20 CONG. REC. 2096 (1889). Of the five states being considered for admission, only New Mexico was solidly Democratic, while Montana and Washington were mixed, and the Dakotas were solidly Republican. By early 1889, however, Democrats in Congress had lost much of their bargaining power because Republicans won the 1888 election and soon would take control of both the presidency and the House of Representatives while retaining the Senate. CONGRESSIONAL QUARTERLY'S GUIDE TO U.S. ELECTIONS 1124 (1985).

45. See *supra* note 38 and accompanying text.

46. See *infra* notes 53-58 and accompanying text.

47. 20 CONG. REC. 2100 (1889). Blair described the public school provision as "the substance of a constitutional amendment now pending before the body designed to secure the same in substance to the people of all the States." *Id.* No member of Congress objected to or disagreed with Blair's comments on this issue during the congressional debate on S. 185. At the time, the First Amendment of the United States Constitution did not apply to actions by the states.

48. S. 86, 50th Cong., 1st Sess. (1888).

49. *Id.* § 2.

society . . . [and formed] the basis of our customs and laws . . . .”<sup>50</sup>

Blair clearly did not intend the public school provision of the Enabling Act to prohibit instruction on religious principles. He believed that this instruction did not constitute promotion of sectarian religion. Quite to the contrary, he intended that the Act would advance the teaching of Christian principles without advancing sectarianism.<sup>51</sup> Support of the Enabling Act’s public school provision and Blair’s proposed constitutional amendment indicates that Blair favored the common school<sup>52</sup> over the parochial school.

#### D. Appeal for a Constitutional Amendment

The issue did not begin or end with Blair. On the national level, the issue was prominently raised for the first time by President Ulysses S. Grant in a speech to a veterans’ convention in 1875. After asserting that better education was vital to the promotion of prosperity and political freedom, Grant declared “[e]ncourage free schools, and resolve that . . . neither the State or Nation, nor both combined, shall support institutions of learning, other than those sufficient to afford to every child growing up in the land the opportunity of a good common school education, un-mixed with sectarian, pagan, or atheistical dogmas.”<sup>53</sup>

---

50. 20 CONG. REC. 434 (1888).

51. In support of the Enabling Act’s public school provision, Blair read from a petition signed by “a large number of the leading citizens of the city of Philadelphia.” The petition stated:

Two grave dangers threaten at this hour the American system of common schools, the atheistic tendency in education and the strenuous demand for a division of the school funds in the interest of sectarian or denominational schools. Through the former tendency the reading of the Christian Scriptures and the offering of prayer have been forbidden in the schools of some of our principal cities, while one at least has gone so far as to throw out of her schools every text-book containing any reference to God. This attempt to exclude all religious ideas from the instruction given in the public schools we hold to be both unphilosophical and inimical to the public good, because it neglects the moral faculties, which are the most important faculties of man, and the right exercise of which is most important to the State; and because it does not correspond to the character of the institutions for which the common school is designed to prepare the citizens of this Republic.

20 CONG. REC. 2100 (1889). The original petition is retained in the limited records of the Senate Committee on Education and Labor, 50th Congress, at the National Archives, Washington, D.C.

52. The common school is typically defined as a public elementary school. *E.g.*, AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 269 (1975). It is open to all local school-age children, regardless of their religious beliefs. In his floor statement supporting the public school provision, Blair asserted, “All over the country our people are learning that a great question has arisen. It is this: Which shall be the survivor, the common school or the parochial, the denominational school in this country?” 20 CONG. REC. 2100 (1889).

53. N.Y. Tribune, Oct. 1, 1875, at 1, col. 4 (text of Grant’s speech to Army of Tennessee). The decisive role this speech played in catapulting concern over nonsectarian public schools to a national issue is discussed in C. MOEHLMAN, THE AMERICAN CONSTITUTIONS AND RELI-

The influential Republican Congressman James G. Blaine<sup>54</sup> introduced a constitutional amendment to this end in the House of Representatives later in 1875.<sup>55</sup> The amendment provided that no state would support religion, but also stated that it should not be construed to restrict Bible reading in school.<sup>56</sup> Despite acrimonious debate, the “Blaine

---

GION 16-17 (1938); L. PFEFFER, *CHURCH STATE AND FREEDOM* 533-34 (1967); and 2 A. STOKES, *CHURCH AND STATE IN THE UNITED STATES* 68 (1950). Three months later, Grant included similar observations in a message to Congress, and recommended adoption of a federal constitutional amendment to enforce this resolve on the states. 4 CONG. REC. 175 (1875). With respect to a constitutional amendment, Grant stated as follows:

I suggest for your earnest consideration . . . that a constitutional amendment . . . making it the duty of each of the several States to establish and forever maintain free public schools adequate to the education of all the children in the rudimentary branches within their respective limits, irrespective of sex, color, birthplace, or religions; forbidding the teaching in said schools of religious, atheistic, or pagan tenets; and prohibiting the granting of any school funds, or school taxes, or any part thereof, either by legislative, municipal, or other authority for the benefit or in aid, directly or indirectly, of any religious sect or denomination, or in aid or for the benefit of any other object of any nature or kind whatever.

*Id.* The Republican National Party endorsed this proposal in its 1876 platform. A. STOKES & L. PFEFFER, *CHURCH AND STATE IN THE UNITED STATES* 272 (1964); and Klinkhamer, *The Blaine Amendment of 1875: Private Motives for Political Action*, 42 CATH. HIST. REV. 15, 37-38 (1956). Grant's successor, Republican President Rutherford B. Hayes, endorsed the proposal in his first message to Congress in 1877. *Id.* at 49.

54. (R.-Me.). Blaine was the acknowledged Republican leader in the House, and had served as Speaker of the House from 1869 to 1875, when Democrats took control of that body. He ran unsuccessfully for President in 1876, 1880, 1884, and 1892, securing the Republican nomination for that office once, in 1884. He was elected to the Senate in 1876, and served as the Secretary of State in 1881 and from 1889 to 1892. BIOGRAPHICAL DIRECTORY OF THE AMERICAN CONGRESS 1774-1971, at 599 (1971); CONGRESSIONAL QUARTERLY GUIDE TO U.S. ELECTIONS 54, 57, 59, 62, 63, (1985).

55. 4 CONG. REC. 205 (1875). Even before Grant formally called for a constitutional amendment prohibiting the use of state school funds for sectarian schools, Blaine had favored an amendment *extending* the Establishment Clause to cover state as well as federal action and *expanding* the scope of the restriction so that “all possibility of hurtful agitation on the school question should be ended also.” C. BALESTIER, *JAMES G. BLAINE: A SKETCH OF HIS LIFE* 58 (1884) (quoting letter from Blaine to an unnamed Ohio politician) (Oct. 20, 1875). In this sense, the Blaine Amendment was intended to be stricter (or at least more specific) with respect to state action on religion in public education than the federal Establishment Clause was with respect to federal action in that sphere.

56. In its final Senate form, that amendment provided as follows:

No State shall make any law respecting an establishment of religion or prohibiting the free exercise thereof; and no religious test shall ever be required as a qualification to any office or public trust under any State. No public property, and no public revenue of, nor any loan or credit by or under the authority of, the United States, or any State, Territory, District, or municipal corporation, shall be appropriated to, or made to be used for, the support of any religious or antireligious sect, organization, or denomination or to promote its interests or tenets. This article shall not be construed to prohibit the reading of the Bible in any school or institution; and it shall not have the effect to impair the rights of property already vested. Congress shall have power to appropriate legislation to provide for the prevention and punishment of violations of this article.

C. MOEHLMAN, *supra* note 53, at 17.

Amendment" passed the House in 1876 by a vote of 180 to 7, and fell only two votes short of the two-thirds majority required for passage in the Senate.<sup>57</sup> Blaine continued to support an amendment during the remainder of his long political career. After Blaine left Congress, Blair took up the cause by introducing the proposal during the 1880s and 1890s. The proposal was never successful.<sup>58</sup>

#### E. Movement for Nonsectarian Schools

The acrimony that dogged and ultimately defeated the Blaine Amendment stemmed from its nativistic undertones. A common school movement had been growing at the local and state levels in many parts of the country for at least half a century before the introduction of the Blaine Amendment. In part, this movement supported free public education to assimilate the increasingly diverse immigrant groups then entering the United States in steadily multiplying numbers.<sup>59</sup> To achieve this objective, the states and local government moved away from sectarian instruction and toward the teaching of core community values, typically explicitly Christian and implicitly Protestant.<sup>60</sup> Many Roman Catholics, especially Irish immigrants protective of their religious and ethnic traditions, found the resulting common schools unacceptable. Some sought a share of public education funds to support their own schools.<sup>61</sup> Many common school advocates resisted these efforts, leading many states in the mid-1800s to adopt legal and constitutional restrictions against both the use of public funds for sectarian schools and the sectarian control of public schools.<sup>62</sup> President Grant and Representative Blaine led the national government's foray into this controversy by advocating a federal

---

57. See 4 CONG. REC. 5191 (1876) (98 congressmen, mostly Democrats, voted present, rather than for or against the proposal, but first-term Democratic Rep. William M. Springer voted for it); and 4 CONG. REC. 5595 (1876) (Senate vote was 28 for, 16 against, and 27 not voting).

58. Klinkhamer, *supra* note 53, at 39 n.63, 49.

59. A. STOKES & L. PFEFFER, *supra* note 53, at 271-73.

60. *Id.*, at 264-68, 272.

61. See 2 A. STOKES, *supra* note 53, at 57-58.

62. The history of the common school movement in the 1800s and Roman Catholic opposition to that movement is discussed in 2 A. STOKES, *supra* note 53, at 47-70. One of the most prominent early leaders of this movement was Horace Mann, secretary of the Massachusetts Board of Education from 1837 to 1849. Mann firmly opposed sectarian instruction in the common school, but distinguished such instruction from religious education. He summarized his views on this point in his final annual report to the Board of Education in 1848:

constitutional amendment limiting state support of sectarian education.<sup>63</sup>

Nativistic appeals and accusations marked the congressional debate over the Blaine Amendment. For example, while the original amendment was still pending in the House, opponent Representative S.S. Cox<sup>64</sup> decried "a sinister sentiment of religious bigotry"<sup>65</sup> behind the proposal, while supporter Representative Henry W. Blair<sup>66</sup> denounced Roman Catholic efforts to undermine the common school movement.<sup>67</sup> In the Senate, Frederick T. Frelinghuysen,<sup>68</sup> a leading member of the committee that drafted the Senate version of the Amendment, assured members that the proposal would not prevent teaching that "pure and undefiled religion which appertains to the relationship and responsibility of man to God, and is readily distinguishable from the creeds of sects."<sup>69</sup> According to Frelinghuysen, that pure religion, "which is our history" and

---

I believed . . . that sectarian books and sectarian instruction, if their encroachment were not resisted, would prove the overthrow of the schools.

I believed . . . that religious instruction in our schools, to the extent which the Constitution and the laws of the State allowed and prescribed, was indispensable to their highest welfare, and essential to the vitality of moral education. . . .

Our system earnestly inculcates all Christian morals; it founds its morals on the basis of religion; it welcomes the religion of the Bible, and in receiving the Bible, it allows it to do what it is allowed to do in no other system, to speak for itself.

*Id.* at 57.

The movement for nonsectarian common schools arose during the 1830s and 1840s in the Northeast, just as that area was receiving the first major wave of Roman Catholic immigration to America. Roman Catholic immigration continued to increase and spread to other areas of the country during succeeding decades. *See* W. GARRISON, *CATHOLICISM AND THE AMERICAN MIND* 97 (1928) (table of U.S. Catholic and immigrant population).

Roman Catholic leaders still opposed the common school movement, or at least hoped for a share of the common school fund for their parochial schools, both when the Blaine Amendment was first proposed and when the Enabling Act for Washington State was enacted. *See, e.g.*, 4 CONG. REC. 5455 (1876) (explanation by Blaine Amendment opponent Sen. Theodore F. Randolph (D.-N.J.) of the reasons for Catholic concern regarding that Amendment); N.Y. Times, Nov. 16, 1888, at 4, col. 3 (reporting Bishop Chatard of Indiana making "a bold and positive demand for public funds to be used for the support of Roman Catholic parochial schools").

63. *See supra* notes 53-56 and accompanying text.

64. (D.-N.Y.)

65. 4 CONG. REC. 180 (1876).

66. (R.-N.H.). Blair was later to become a United States Senator.

67. 4 CONG. REC. 243 app. (1876). Blair accused Southern Democratic political leaders of opposing the spread of common schools to their region as a means to retain power. He claimed that Roman Catholics exploited this situation by opening schools in the South, thereby spreading their doctrines. Blair stressed that although he favored common schools, a Roman Catholic school education was better than none. This suggestion of Southern and/or Democratic opposition to the common school movement may have been reflected in Senator Butler's deletion of the public school provision from his version of S. 185 in 1888. *See supra* note 42.

68. (R.-N.J.)

69. 4 CONG. REC. 5562 (1876).

should be taught in public schools, "is a very, very different thing from the particular creeds or tenets of either religionists or infidels."<sup>70</sup> Without expressly identifying any wrongful sectarian instruction, the ensuing debate repeatedly focused on the divisiveness of separate schools for Roman Catholics.<sup>71</sup> Thus, the ongoing debate controlled the discussion of a national amendment for nonsectarian schools.

Although later incarnations of the Blaine Amendment did not receive as much public attention or political support, their basic intent to prohibit sectarian instruction remained unchanged.<sup>72</sup> The original intent

---

70. *Id.* Expanding on this distinction between religious and sectarian instruction, Frelinghuysen said, "Let me say that the saving clause in favor of the Bible is just, because it is a religious and not a sectarian book." *Id.* After leaving the Senate and serving as the United States Secretary of State, Frelinghuysen became president of the American Bible Society. BIOGRAPHICAL DIRECTORY OF THE AMERICAN CONGRESS 1774-1971, at 971 (1971).

71. 4 CONG. REC. 5580-95 (1876). Special concern focused on American Roman Catholics' loyalty to the Pope. A Catholic view of this debate is provided by Klinkhamer, *supra* note 53. Charges of anti-Catholicism dogged Blaine during the remainder of his political career and may have cost him the 1884 presidential election. In the final days of the campaign, he failed to repudiate promptly a supporter's characterization of the opposition party as supporting "Rum, Romanism and Rebellion." N.Y. Times, Nov. 2, 1884, at 1, col. 5; *id.* at 8, cols. 3-4; Farrelly, "Rum, Romanism and Rebellion" *Resurrected*, 8 W. POLITICAL Q. 262, 262-70 (1955). Shortly after Blaine introduced the original Blaine Amendment, a Roman Catholic cousin, Ellen E. Sherman (wife of General William T. Sherman), warned Blaine, "Your demonstration regarding the State Constitutions and school laws will play sad havoc with your interests among our Irish friends and Catholics." G. HAMILTON, BIOGRAPHY OF JAMES G. BLAINE 382 (1895).

72. This is demonstrably true of the 1888 proposal, which Blair equated with the Enabling Act's public school provision. Blair supported this proposal with petitions circulated in Protestant churches advocating the public school teaching of general Christian principles without sectarianism. The largest group of petitions came from the Boston area, which was then embroiled in a heated controversy ignited by the Democratic-dominated (and therefore Catholic- and immigrant-leaning) Boston school committee's removal of an allegedly anti-Catholic history textbook from the public schools. The Protestant-backed Boston Evangelical Alliance responded in a public campaign with a three-fold thrust: it protested the school committee's action as reflecting wrongful sectarian control or influence over public education; it supported public school instruction in nonsectarian Christian principles; and it called for all students to attend either public or state-supervised private schools. Blair must have known of this nationally publicized controversy when he submitted the Boston petitions in support of the amendment and referred to similar petitions as supporting the Enabling Act's public school provision. *See, e.g.*, 20 CONG. REC. 433 (1888); 20 CONG. REC. 2100-01 (1889); N.Y. Times, July 13, 1888, at 1, col. 4; *id.*, Sept. 11, 1888, at 1, col. 5; *id.*, Oct. 10, 1888, at 3, col. 5. When the school committee refused to reintroduce the controversial textbook, protesters organized a voter-registration drive and election campaign that elected a Republican-dominated school committee in the next election. This drive focused on Protestant women, who registered to vote in large numbers for the first time. At the time, women in Massachusetts could only vote for the school committee. This voter registration drive was not matched by the other side in the dispute, and Roman Catholic religious leaders actively discouraged women from voting. N.Y. Times, Sept. 23, 1888, at 4, col. 7; *id.*, Dec. 12, 1888, at 1, col. 7; *id.*, Sept. 26, 1888, at 2, col. 1; *id.*, Oct. 2, 1888 at 5, col. 2; *id.*, Dec. 12, 1888, at 1, col. 7; and *id.*, Dec. 13, 1888, at 1, col. 7. Blair also cited the dangers of Mormon sectarian education in Utah in support of his

of the Blaine Amendment, including Blair's 1888 version of that amendment, and Blair's understanding of the Enabling Act's public school provision is clear from this historical context. Common schools teaching core community values (including instruction about general Christian principles) were to be encouraged, and divisive sectarian education discouraged. The visibility of the common school issue on the local and national level, both before and during consideration of the Enabling Act, further suggests that this issue influenced the Act's public school provision. On this less than clean slate, the delegates to the Washington State Constitutional Convention would begin to write the state constitution's establishment clauses.

### III. State Establishment Clauses

The Enabling Act's public school provision provides a frame of reference for understanding the intent behind the state constitution's establishment clauses.<sup>73</sup> The people of Washington who ratified the 1889 state constitution and the delegates who wrote it were Americans, most of whom had come from other parts of the country.<sup>74</sup> The delegates to the Washington Constitutional Convention came from educational and social backgrounds similar to those of the congressmen who had debated state establishment of religion on the national level.<sup>75</sup> Evidence from the Convention and elsewhere suggests that the delegates to the Washington Convention shared the same general goals, values, and understandings

---

proposed constitutional amendment, but does not identify those dangers. 20 CONG. REC. 433-34 (1888).

73. Because the Washington State Constitution was designed as an expression of the people's will, any analysis of its provisions must focus on the intent of those who ratified it. Of course, evidence of the drafters' intent is also crucial. It is often the best evidence of the people's understanding; the people elected the drafters as representatives. See Utter, *Freedom and Diversity in a Federal System: Perspectives on State Constitutions and the Washington Declaration of Rights*, 7 U. PUGET SOUND L. REV. 491, 518-21 (1984).

74. See *infra* note 75.

75. The American Academy of Political and Social Science concluded:

- (a) That nearly all the members of the conventions were from States immediately east of the new States; (b) that the members were all fairly well educated, and that many of them had pursued courses of study in institutions of learning widely famed; (c) that a large number of the delegates had received legal training, and many had held important legal offices; . . . (d) that . . . many of the delegates had belonged at one time to legislatures in the Eastern states; (e) That the members represented in their various occupations the principal interests of modern society, and particularly the interests of their own Territory; (f) that the majority of the delegates were young men, less than forty years of age; (g) that none of them, except one delegate to the Washington Convention, were natives of the Territory for which they were forming a State constitution; and not of least importance[,] . . . the conventions were composed of men who had been highly successful in life.

Thorpe, *Recent Constitution-Making in the United States*, 2 ANNALS 152 (1891).

regarding the establishment of religion, as reflected in the congressional debate on the Blaine Amendment and the public school provision.<sup>76</sup> More importantly, a similar original intent and purpose is evident in the debates on the Washington establishment clauses and the Blaine Amendment.<sup>77</sup>

The language of the state constitution's establishment clauses is similar to that found in the Blaine Amendment. The constitution's general establishment clause provides:

No public money or property shall be appropriated for, or applied to any religious worship, exercise or instruction, or the support of any religious establishment. No religious qualification shall be required for any public office, or employment, nor shall any person be incompetent as a witness, or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.<sup>78</sup>

The document's special establishment clause for public education adds: "All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control and influence."<sup>79</sup> Taken together, these clauses address state support for religious activities, secular control or influence over public schools, and religious qualifications for public office. These are the same three issues that the Blaine Amendment addressed.<sup>80</sup>

#### A. Analogy to the Blaine Amendment and Enabling Act Debates

The adoption of these clauses was no surprise given the partisan makeup of the delegation. A comfortable majority of Republicans was elected to the Washington Constitutional Convention in 1889.<sup>81</sup> In all likelihood, these new members were Blaine Republicans. At the time, the Republican Party was split into three factions, with Blaine leading one of them.<sup>82</sup> The Washington territorial delegations to the Republican National Conventions in 1876, 1880, and 1884 had solidly backed Blaine for President, and the state delegation to the 1892 Republican National Convention would again back Blaine over incumbent Republican Benja-

---

76. See *supra* notes 46-72 and accompanying text.

77. See *infra* notes 78 - 138 and accompanying text.

78. WASH. CONST. art. I, § 11 (1889, amended 1958). Compare text of Blaine Amendment, *supra* note 56.

79. WASH. CONST. art. IX, § 4.

80. For the text of the Blaine Amendment, see *supra* note 56.

81. Thorpe, *supra* note 75, at 151-52; W. Airey, A History of the Constitution and Government of Washington Territory 441-42 (1945) (unpublished thesis available in the University of Washington library). The delegates included 43 Republicans, 29 Democrats, 2 Labor Party members, and 2 independents. *Id.*

82. CONGRESSIONAL QUARTERLY'S GUIDE TO U.S. ELECTIONS 54, 59 (1985).

min Harrison.<sup>83</sup> The Washington State Republicans also supported Blaine's well-known and long-standing views on religious establishment and common schools.

At the Constitutional Convention, discussion of the relationship of the new state government to religion was reminiscent of the congressional debate on the Blaine Amendment and Blair's comments on the Enabling Act's public school provision.<sup>84</sup> Delegates discussed this general topic in some form on four separate occasions. Although no transcript of the debate exists, newspaper accounts provide a clear picture of events.<sup>85</sup>

## B. Discussion of Religion and the Washington Constitution

### 1. *God in the Preamble*

The most extensive and revealing convention discussion involved the constitution's preamble. The Committee on the Preamble and Bill of Rights proposed that the preamble read: "We, the people of the State of Washington, to preserve our rights, do ordain this constitution."<sup>86</sup> When the proposal came before the entire convention on July 29, it precipitated a serious and prolonged debate. Three delegates promptly introduced amendments to recognize God in the preamble.<sup>87</sup>

First, Republican attorney Trusten P. Dyer of Seattle proposed inserting an expression of the people's gratitude "to Almighty God for the

---

83. N.Y. Times, June 21, 1876, at 2, col. 1 (both Washington delegates voted for Blaine on all seven ballots); *id.*, June 8, 1880, at 1, col. 4 (both Washington delegates voted for Blaine on all 17 ballots); *id.*, June 10, 1880, at 1, col. 4 (both Washington delegates stuck with Blaine through the 35th ballot); *id.*, June 7, 1884, at 1, col. 4 (both Washington delegates voted for Blaine on all four ballots); and *id.*, April 16, 1892, at 5, col. 2 (entire Washington delegation committed to Blaine). Blaine did not run for President in 1888.

84. *See supra* notes 46-58 and accompanying text.

85. Because a verbatim record of the debates at the Washington State Constitutional Convention does not exist, the State Supreme Court has used various extrinsic sources such as contemporary newspaper reports as authority to fill the gaps in the official minutes. *See Yelle v. Bishop*, 55 Wash. 2d 286, 292-94; 347 P.2d 1081, 1084-86 (1959); *State v. Brunn*, 22 Wash. 2d 120, 139; 154 P.2d 826, 835 (1945).

86. JOURNAL OF THE WASHINGTON STATE CONSTITUTIONAL CONVENTION 1889, at 492 (B. Rosenow ed. 1962) [hereinafter JOURNAL OF THE CONVENTION].

87. *Id.* One newspaper described the debate as "fervid." Puget Sound Weekly Argus, Aug. 8, 1889, at 1, col. 3. Another described it as "extended and acrimonious." Seattle Post-Intelligencer, July 30, 1889, at 1, col. 6. Yet another reported, "The convention was unusually quiet during the progress of the debate, and every person present was evidently impressed with the solemnity of the subject under discussion." Tacoma Daily News, July 29, 1889, at 1, col. 4. The three delegates proposing amendments to recognize God were all Republicans: Seattle attorney Trusten P. Dyer, rancher Addison A. Lindsley from the Columbia Valley, and Spokane Falls Judge George Turner.

blessings of liberty and self government.”<sup>88</sup> In support of his amendment, Dyer described the role of God in the state constitution in a manner reminiscent of how common school advocates supported the presence of a nonsectarian God in public schools.<sup>89</sup> After characterizing constitution-making as “one of the most sacred and solemn duties that could be performed,” Dyer declared, “We are not to discuss revealed or natural religions. From the beginning of history all peoples have had a God.” He believed in “beginning this great constitution by recognizing the Supreme Being, whether as God, Allah or Jehovah.”<sup>90</sup>

Spokane Falls Judge George Turner, who had supported Blaine at three separate Republican National Conventions, proposed similar, albeit more extensive, revisions to the preamble. “While I am opposed to sectarianism, I believe in recognizing the supremacy of God,”<sup>91</sup> Turner declared, drawing a distinction that Blaine and Blair likely would have appreciated.<sup>92</sup> He added that his proposal reflected “the sentiments of 999 out of 1,000 adults of the state for which we are making this constitution, and the convention would simply be recreant to their trust if they [sic] did not represent this sentiment in the preamble.”<sup>93</sup> Three other delegates expressed similar observations regarding popular opinion on this issue, which no delegate refuted. Indeed, Republican attorney, and later governor, S.G. Cosgrove expressed doubt as to whether the people would ratify a constitution that did not recognize the deity.<sup>94</sup>

Seattle Republican attorney James Z. Moore added that while he was not a church member himself, failure to recognize a deity would set “a bad example to the youth of a growing state.”<sup>95</sup> In response to questioning by Republican rancher George Comegys, Moore opined that “[a]theism goes hand in hand with nihilism and communism, and that

---

88. Spokane Falls Rev., July 30, 1889, at 1, cols. 4-5.

89. See *supra* notes 59-72 and accompanying text.

90. Spokane Falls Rev., July 30, 1889, at 1, cols. 4-5.

91. Tacoma Daily News, July 29, 1889, at 1, col. 4.

92. See *supra* notes 46-58.

93. Oregonian, July 30, 1889, at 1, col. 2.

94. Morning Oregonian, July 30, 1889, at 3, cols. 1-2. The other two delegates (in addition to Turner and Cosgrove) who discussed popular sentiment were James Z. Moore and Thomas M. Reed, both Republican attorneys. *Id.* See also Puget Sound Weekly Argus, Aug. 8, 1889, at 1, col. 3; Spokane Falls Rev., July 30, 1889, at 1, col. 5; Tacoma Daily Ledger, July 30, 1889, at 4, col. 2; and Tacoma Daily News, July 29, 1889, at 1, col. 4. The Argus and both Tacoma papers report Turner as saying that 99 out of 100 Washington citizens favored recognizing God in the state constitution, rather than 999 out of 1,000 citizens as reported in the Oregonian and the Spokane paper.

95. Seattle Post-Intelligencer, July 30, 1889, at 1, col. 7.

the latter had their origin in the former.”<sup>96</sup> While stressing that he was not referring to any particular religion, Cosgrove agreed, stating that “[t]he man who is not accountable to some deity or other is an unsafe man to have in the community.”<sup>97</sup> Although none of the supporters of an amendment to the preamble endorsed a particular religion, all emphasized the importance of religion to society. This concern parallels the historic common school movement, which rejected sectarian instruction in favor of teaching about core community values, including those values rooted in nonsectarian religious principles.<sup>98</sup>

After the extended July 29 debate, the delegates voted to send the preamble back to Committee for revision. Two days later, the Committee offered two options. A majority report filed by three Democratic and two Republican delegates (including Comegys) did not refer to a deity. Two Republican delegates filed a minority report that suggested including a phrase expressing gratitude “to the Supreme Ruler of the Universe.” After agreeing to accept one of these options without further debate, the minority report won overwhelmingly, fifty-five to nineteen.<sup>99</sup> In reporting this event, a Seattle newspaper noted that “the preamble does not contain the name of God, but it makes reference to the more generic Supreme Ruler of the Universe.”<sup>100</sup> This comment aptly reflected the delegates’ intention to recognize religion in general, but not sectarianism. In the “Supreme Ruler of the Universe” the delegates had a nonsectarian God that they believed could mingle in government affairs without offending the separation of church and state.

---

96. Seattle Post-Intelligencer, July 30, 1889, at 1, col. 7. See also Seattle Times, July 29, 1889, at 1, col. 1; Tacoma Daily Ledger, July 30, 1889, at 4, col. 2. Comegys’ opposition reflected his deep personal animosity toward Christianity and traditional religion. Comegys’ close friend and associate, Judge S.J. Chadwick, observed in the formal tribute at Comegys’ funeral: “He had no toleration for what to him was creed and dogma, yet withal he had a deep religious nature. His impulse was to measure Christianity by the bigotry of the middle ages . . . . So intense was his nature that he failed to understand that existing organizations are not in themselves Christianity.” Oakesdale Tidings, Feb. 12, 1904 (transcript available at Washington State Library). While no record exists of the delegates’ religious beliefs, surveys of the 1883 and 1885 territorial legislatures reported a relatively close split between those affiliated with traditional denominations and “Liberals”, with only two members asserting “no religion.” Morning Oregonian, Oct. 16, 1883, at 1, col. 7; *id.*, Dec. 18, 1885, at 3, col. 5.

97. Morning Oregonian, July 30, 1889, at 3, cols. 1-2.

98. See *supra* notes 49-51 and accompanying text.

99. Tacoma Daily News, July 31, 1889, at 1, col. 4; Morning Oregonian, Aug. 1, 1889, at 2, col. 1 (Democrats cast 12 of the 19 votes against the minority report; a Labor Party delegate cast one opposing vote); Tacoma Daily Ledger, Aug. 1, 1889, at 4, col. 2.

100. Seattle Post-Intelligencer, Aug. 1, 1889, at 1, col. 5. See Knapp, *The Origin of the Constitution of the State of Washington*, 4 WASH. HIST. Q. 227, 269-70 (1913).

## 2. *God in the Declaration of Rights*

On the same day that the Committee on the Preamble and Bill of Rights reported the controversial preamble, it also reported a Declaration of Rights containing thirty sections. Section 11 dealt with religious freedom and contained both free-exercise and anti-establishment provisions.<sup>101</sup> This section included the general establishment clause: "No public money or property shall be appropriated for, or applied to, any religious worship, exercise or instruction, or the support of any religious establishment."<sup>102</sup> After the intense discussion during the morning session on whether to recognize God in the preamble, section 11 passed without debate during the afternoon session, along with the entire Declaration of Rights.<sup>103</sup>

Although the delegates did not debate the general establishment clause, their posture toward it must be examined in light of the preamble debate and the text of the clause itself. These two factors reflect the convention's repudiation of government-backed sectarianism, and its lack of hostility toward religion generally. Deliberations on the preamble resulted in the addition of a phrase expressing gratitude to a generic "Supreme Ruler." Similarly, the general establishment clause focused on barring public support for "religious worship, exercise or instruction" and other sectarian manifestations of religion.

The Committee drafted several versions of the religion clauses in the Declaration of Rights. First, before the convention assembled, the Northwest's leading newspaper, *The Oregonian*, commissioned a prominent California attorney and state constitution expert, W. Lair Hill, to draft a model constitution for Washington.<sup>104</sup> This draft, which was published on the opening day of the convention, contained a strict free exercise clause guaranteeing "freedom from religion" coupled with an establishment clause which provided that "no public money shall ever be appropriated for the support of any religious establishment or any form of worship; nor shall any preference be given by law to any religious establishment or mode of worship."<sup>105</sup> Republican newspaperman and delegate Allen Weir formally submitted Hill's entire Bill of Rights draft to the convention, excluding only the second phrase of Hill's establishment clause.<sup>106</sup> Hill's draft may have reflected a hostility toward reli-

---

101. WASH. CONST. art. I, § 11.

102. *Seattle Post-Intelligencer*, July 30, 1889, at 1, cols. 6-7.

103. *Id.*

104. *Morning Oregonian*, July 4, 1889, at 9, col. 3.

105. *Id.* The phrase "freedom from religion" appeared in Hill's written comments to his draft constitution.

106. JOURNAL OF THE CONVENTION, *supra* note 86, at 500.

gion,<sup>107</sup> but Weir's edited version tendered a less hostile anti-establishment provision.<sup>108</sup>

Departing from the Hill draft, the Committee wrote its own establishment clause. An early version proposed that "[n]o money or property of this state shall be given or appropriated for the benefit of any sectarian or religious society or institution."<sup>109</sup> The final text was very similar to Weir's proposal, but the Committee inserted an express restriction against the support of "any religious worship, exercise or instruction." With this insert, the Committee addressed the basic objective of the Blaine Amendment: preventing state funding for parochial education or activities. Blaine had not intended this objective to reflect a hostility toward religion.<sup>110</sup> Given the debate on the preamble, neither did the convention.<sup>111</sup>

---

107. Comments accompanying the draft suggest this possibility. *Morning Oregonian*, July 4, 1889, at 9, cols. 3-4.

108. *Morning Oregonian*, July 4, 1889, at 9, col. 4. Hill's commentary discussed the history of religious freedom in the United States, and noted that "it remained for a later generation to apprehend the true principle of 'soul-liberty'—as Roger Williams named it—and to decree an absolute divorce of the civil government from systems of religion . . ." *Id.*

109. *Seattle Post-Intelligencer*, July 17, 1889, at 1, col. 3.

110. Blaine described his proposal as "fair alike to Protestant and Catholic, to Jew and Gentile, leaving the religious faith and the conscience of every man free and unmolested." C. BALESTIER, *supra* note 55, at 59. Blaine and the various incarnations of his amendment were strongly supported by many traditional Protestant religious groups. *See supra* notes 51, 62, 69, 70, 72 and accompanying text. The final text of the state establishment clause also closed a potential loophole in the Hill draft by specifying that public money and property could not be "applied to" the listed religious activities in addition to not being "appropriated for" them. This is the precise loophole that was closed by Senate backers of the Blaine Amendment when they amended the House-passed version in 1876. *See* C. MOEHLMAN, *supra* note 53, at 17. *Cf.* 4 CONG. REC. 205 (1875). Senators expressed concern that money that was not appropriated for parochial schools might nonetheless be applied to them. 4 CONG. REC. 5561 (1876).

111. This lack of hostility is underscored by a letter from Wyatt A. George, published in *The Oregonian* during the Committee's work on the Declaration of Rights. George, a respected Washington attorney and delegate to an earlier state constitutional convention, proposed adding a specific bar against state support for parochial schools to Hill's establishment clause. George did not intend any hostility toward religion, as evidenced by this letter invoking Biblical grounds to oppose any constitutional provision granting women's suffrage. *Morning Oregonian*, July 11, 1889, at 3, col. 3. George's letter and its possible impact is discussed in B. Parkany, *Religious Instruction in the Washington Constitution 6-7* (Aug. 18, 1965) (unpublished paper available in University of Washington Law School library). Washington's first constitution, which never became effective because the territory was not admitted to statehood under it, did not contain elaborate safeguards against religious establishment. It simply stated: "No person shall be compelled to attend, erect or support any place of worship, against his consent; and no preference shall be given by law to any religious society." WASH. CONST. of 1878, art. V, § 4. Although the impact of George's letter on the state constitution is unknown, it reflected the antisectarian, rather than antireligious, intent commonly underlying late nineteenth-century restrictions against state support for parochial schools.

### 3. *God in the Exemption from Property Tax*

Delegates next faced the issue of religious establishment on August 7, 1889, when they debated constitutional limits on the property tax. The Committee on Revenue and Taxation's majority report proposed granting the legislature authority to exempt "actual places of religious worship," charitable institutions, public libraries, and nonprofit cemeteries from state taxes.<sup>112</sup> Minority Democrats on the Committee offered a counterproposal which would have exempted libraries and cemeteries, but not churches.<sup>113</sup> The counterproposal's chief proponent, Dayton attorney M.M. Godman, argued that exempting churches from taxation violated the separation of church and state.<sup>114</sup> Spokane Democrat and attorney T.C. Griffiths responded that "the principle of union of church and state was in no way here involved. . . . [A]ll houses of worship, all houses used by any sect, creed or organization that worships a supreme being should be exempt."<sup>115</sup> Allen Weir agreed, noting that he "took no stock whatever in the idea that exemption of church property tended to a union of church and state."<sup>116</sup> Griffiths' and Weir's view prevailed, and the convention delegates defeated the minority report. George Comegys, who had earlier led the effort to omit any reference to a deity from the preamble, proposed limiting the exemption for churches to \$1,000, but his amendment failed miserably.<sup>117</sup> After defeating a motion to create an exemption in the constitution for all church property, the convention left the decision to future state legislatures by a solid vote of forty-two to twenty-three.<sup>118</sup>

During the course of the property tax debate, S.G. Cosgrove echoed congressional debate over the Blaine Amendment when he accused exemption opponents of anti-Catholicism. "If it were not for a certain church organization," Cosgrove said, "very few gentlemen would want to tax church property."<sup>119</sup> If Cosgrove were correct in his assessment of

---

112. JOURNAL OF THE CONVENTION, *supra* note 86, at 655.

113. *Id.* at 655-56.

114. Tacoma Daily News, Aug. 7, 1889, at 1, col. 4.

115. Morning Oregonian, Aug. 8, 1889, at 2, col. 2.

116. *Id.* at 2, col. 3.

117. Comegys' amendment garnered only 14 votes. Morning Oregonian, Aug. 8, 1889, at 2, col. 3.

118. Tacoma Daily News, Aug. 7, 1889, at 1, col. 4; Morning Oregonian, Aug. 8, 1889, at 2, cols. 2-3; JOURNAL OF THE CONVENTION, *supra* note 86, at 656-57.

119. Tacoma Daily News, Aug. 7, 1889, at 1, col. 4. After describing the beneficial public service performed by Roman Catholic nurses and hospitals, Cosgrove maintained that all religion was an effective moral force that merited tax exemption. *Id.* The delegate offering the accepted version for the section, T.C. Griffiths, stressed the non-sectarian nature of his position when he declared that "all houses used by any sect, creed or organization that worships a

the opposition, concern over a property tax exemption for churches rested on fear that the exemption would benefit particular sects, rather than religion generally. The prevailing view, however, favored authorizing the common practice of assisting all religious organizations through a property tax exemption.<sup>120</sup>

#### 4. *God in the Public School*

On August 10, 1889, the delegates again debated the separation of church and state a final time, addressing article IX's provisions on public education. Delegates espoused positions already familiar from earlier debates on the preamble and the taxation of church property. The federal Enabling Act required that public schools be "free from sectarian control."<sup>121</sup> W. Lair Hill's model constitution recast this requirement into a provision that stated, "All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence."<sup>122</sup> The delegation endorsed Hill's language as a special establishment clause for public education. Hill, however, left no statement on his intent in including this clause. His addition remains intact today.

The debates do contain some indications of the intent behind this provision. The Committee on Education and Educational Institutions proposed a special establishment clause for public education that was identical to Hill's draft.<sup>123</sup> The persistent, though rarely successful, advocate of strict separation, George Comegys, promptly offered an amendment expressly to prohibit "religious exercise or instruction" in the

---

supreme being should be exempt." Griffiths also noted that he was not a church member. *Morning Oregonian*, Aug. 8, 1889, at 2, col. 2.

120. *Morning Oregonian*, Aug. 8, 1889, at 2, cols. 1-4.

121. Enabling Act, *supra* note 27.

122. *Morning Oregonian*, July 4, 1889, at 11, col. 1. Hill's commentary on this provision simply stated:

This section is taken from the constitution of Illinois, modified only so far as it seems necessary to bring it into conformity to the provision on this subject in the act of congress providing for the admission of the state.

*Id.* However, neither the Illinois constitution nor the Enabling Act referred to sectarian influence. The Illinois constitution simply required that the state provide "a thorough and efficient system of free schools, whereby all children of this state may receive a good common school education." ILL. CONST. OF 1870, art. VIII, § 1. This placed Illinois squarely within the common school movement, which opposed sectarian, but not religious, influence in public schools. The three other state constitutions crafted to comply with the Enabling Act reflected varying positions on this issue. South Dakota's constitution barred sectarian influence in public education. S.D. CONST. art. VIII, § 16. North Dakota's constitution prohibited only sectarian control. N.D. CONST. art. VIII, § 1. Montana's constitution did not expressly bar either, but prohibited public schools from teaching sectarian tenets. MONT. CONST. OF 1889, art. XI, § 9.

123. *Tacoma Sunday Ledger*, Aug. 11, 1889, at 4, col. 3; *Sunday Oregonian*, Aug. 11, 1889, at 7, col. 4.

public schools.<sup>124</sup> Comegys claimed that this amendment was needed to purge schools of religious exercises such as prayers and Bible reading.<sup>125</sup> Education Committee Chairman N.G. Blalock countered that the proposed ban on sectarian influence would adequately fulfill Comegys's stated wishes without his proposed amendment. Indeed, the Committee probably intended to block school prayer and Bible reading by its proposal. The delegates had already adopted a general establishment clause similar to the Blaine Amendment.<sup>126</sup> Fearing that the Blaine Amendment would bar Bible reading in public schools, federal congressional proponents had added an exemption for such activity.<sup>127</sup> In crafting their general establishment clause, which expressly barred public support for religious instruction, Washington Constitutional Convention delegates had not explicitly exempted Bible reading.<sup>128</sup> Comegys simply may have wanted to reinforce this point or he may have wanted to ban teaching about general religious principles.

Trusten Dyer also expressed fears that Comegys' amendment would extend so far as to prohibit religious meetings at schoolhouses outside of school hours, but Comegys assured Dyer that it would not. According to Comegys, "[p]ublic school' did not mean 'public school house.'" <sup>129</sup> Despite this assurance, Comegys' amendment failed.<sup>130</sup>

When the delegates rejected Comegys' language, Tacoma attorney Theodore L. Stiles moved to tighten the provision by barring "religious" instead of "sectarian" control or influence over public schools.<sup>131</sup> This proposal encountered immediate resistance.<sup>132</sup> Assuming that teachers always influence their students, S.G. Cosgrove feared that Stiles' amendment "might exclude any teacher from employment who had any decided religious views of his own."<sup>133</sup> M.M. Godman agreed and added that he "didn't see how anything could exclude religious 'influence'. . . . 'Control' was all that the constitution could prohibit."<sup>134</sup> Acknowledg-

---

124. Sunday Oregonian, Aug. 11, 1889, at 7, col. 4

125. *Id.*

126. *Id.*

127. *See supra* notes 56, 69, & 70.

128. Only a month earlier, the State constitutional convention in neighboring Idaho had battled over just such an authorization for Bible reading in public schools, but the issue was never formally considered by the Washington convention. Spokane Falls Rev., Aug. 1, 1889, at 2, col. 1.

129. Sunday Oregonian, Aug. 11, 1889, at 7, col. 4.

130. *Id.*

131. Spokane Falls Rev., Aug. 11, 1889, at 2, col. 6; Sunday Oregonian, Aug. 11, 1889, at 7, col. 2.

132. *Id.*

133. *Id.*

134. *Id.*

ing a distinction between sectarian instruction and teaching about religion, Godman noted that "christianity and religion are not necessarily identical."<sup>135</sup> Stiles' amendment lost, twenty to thirty-three, and James Z. Moore's motion to delete the words "or influence" then failed without debate.<sup>136</sup>

These votes on the special establishment clause placed the convention squarely within the common school movement, which maintained that public schools should present wholesome, nonsectarian religious influence by teaching about general religious principles.<sup>137</sup> Nearly 50,000 students attended public schools in Washington at the time of the Constitutional Convention.<sup>138</sup> The delegates clearly intended to build the state's educational system on this common school base.

### Conclusion

The framers of the Washington State Constitution displayed a consistent approach to the separation of church and state. Far from being hostile to religion, the framers viewed religion as an important component of a stable society. They voted overwhelmingly to express gratitude to the deity for their liberties.<sup>139</sup> They authorized tax exemptions for church property.<sup>140</sup> They declined to prohibit religious influence in public education.<sup>141</sup> In each instance, delegates spoke warmly of religion as setting an example for youth, contributing a positive moral force to soci-

---

135. *Id.*

136. *Id.*

137. This view permeates the 1889 annual report of the Washington Superintendent of Public Instruction. The territorial superintendent began this report by stressing that the public school teacher's work is to "make citizens." 9 REPORT OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE TERRITORY OF WASHINGTON 1 (1889). In his individual report, San Juan County superintendent E.C. Gillette observed:

[T]he gradual tone of refinement . . . from decade to decade, changes the rude, boisterous, and often profane pioneer into the grave, earnest and thoughtful citizen. How much of this change is due to the public school, it is needless to inquire. Reading begets thought, and to think is to gather the golden apples which grow in paradise. The public school may well be considered, therefore, not only the pillar of the state, but the means whereby we are enabled to minister to our spiritual needs.

*Id.* at 100.

138. *Id.* at 35. The 1888 report of the territorial governor commented, "Amongst the noticeable features of the landscape everywhere was the white school-house. They confront you not only in the cities, but in the villages and hamlets and beside the country roads. The people take pride in them and keep them in good shape." The governor added that the students "were true Americans." REPORT OF THE GOVERNOR OF WASHINGTON TERRITORY 24 (1888).

139. *See supra* notes 87-99 and accompanying text.

140. *See supra* notes 112-120 and accompanying text.

141. *See supra* notes 121-138 and accompanying text.

ety, and providing a welcome positive influence for students.<sup>142</sup> Yet, they were exceedingly careful to purify this state-sanctioned religion from any taint of sectarianism. Rather than accept a reference to God in the preamble, as some proposed, they hailed instead a generic Supreme Ruler of the Universe.<sup>143</sup> Public support for sectarian activities such as religious worship, exercise, and instruction was prohibited.<sup>144</sup> Sectarian control and influence was forever barred from public schools.<sup>145</sup> In distinguishing between religion and sectarianism in the schools, the framers comported with the fifty-year-old common school movement.<sup>146</sup> This result was natural for a convention dominated by Blaine Republicans and influenced by the Enabling Act's public school provisions.<sup>147</sup>

The history of the establishment clauses of the Washington State Constitution does not necessarily control current interpretation. Indeed, the evolution of religious concepts over the past century may make it impossible for history to do so. Yet the debates among the delegates to the Constitutional Convention provide a starting point for analyzing current state constitutional issues on the separation of church and state. Those delegates had sincere and thoughtful convictions about the role of religion in society. The territorial electorate apparently favored this approach by ratifying the convention's work by a vote of 40,152 to 11,879.<sup>148</sup> Current generations can choose to draw on the hopes and beliefs of Washington's pioneers in interpreting Washington's living state constitution.

---

142. *See supra* notes 27-80 and accompanying text.

143. *See supra* notes 86-100 and accompanying text.

144. *See supra* notes 124 and accompanying text.

145. *See supra* notes 121-138 and accompanying text.

146. *See supra* notes 131-137 and accompanying text.

147. *See supra* notes 81-85 and accompanying text.

148. J. Fitts, *The Washington Constitutional Convention of 1889*, at 195 (1951) (unpublished thesis available in the University of Washington library).