Religious Liberties

Why Nineteenth Century Bans on “Sectarian” Aid Are Facialy Unconstitutional: New Evidence on Plain Meaning

By Robert G. Natelson

Note from the Editor:

This article presents original research on the nineteenth century meaning of the word sectarian. The author argues that, based on this new evidence, bans on sectarian aid in state constitutions—often called Blaine Amendments—are likely unconstitutional on their face because they discriminate among religions.

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In Trinity Lutheran Church of Columbia, Inc. v. Comer1 the Supreme Court struck down a Missouri state policy of restricting religious institutions from participating in grant programs. The policy arose from the state government’s efforts to comply with its state constitution’s prohibition on use of public funds to benefit “any church, sect or denomination of religion.”2

Many states have prohibitions even broader than the one in the Missouri constitution. Most state constitutions adopted during the nineteenth century, unlike that currently prevailing in Missouri, identified their prescribed recipients and purposes as sectarian. This was true of Missouri’s superseded 1875 charter,3 and it is also true of charters under which many states still operate.4 For example, the current Colorado constitution, ratified in 1876, provides:

No appropriation shall be made for charitable, industrial, educational or benevolent purposes . . . to any denominational or sectarian institution or association.

Neither the general assembly, nor any county, city, township, school district or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatsoever; nor shall any

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2 Mo. Const. art. I, § 7:
That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship.
3 Mo. Const. (1875), art. XI, § 11:
Neither the general assembly, nor any county, city, town, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, anything in aid of any religious creed, church, or sectarian purpose; or to help to support or sustain any private or public school, academy, seminary, college, university, or other institution of learning, controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any county, city, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever.
4 E.g., Colo. Const. (1876), art. V, § 34 & art. IX, §§ 7 & 8 (discussed infra notes 29 and 34 and accompanying text); N.D. Const. (1889), art. VIII, § 5 (“No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school”); Nev. Const. (1864), art. XI, § 9 (“No sectarian instruction shall be imparted or tolerated in any school or University that may be established under this Constitution.”).
No sectarian tenets or doctrines shall ever be taught in the public school . . . .

In some cases, prohibitions against aid to sectarian organizations or for sectarian purposes were not in the state’s original constitution, but were added by amendment during the nineteenth century; many of these changes were minor alterations in wording, suggesting that no major substantive changes were contemplated. In other cases, twentieth century constitution writers copied such prohibitions from their states’ earlier charters.

Commentators have long argued that prohibitions against aid to sectarian groups are void under the First and Fourteenth Amendments to the U.S. Constitution. Their arguments traditionally have taken one of two forms:

- Assuming that sectarian means merely “religious,” then a ban on aid to sectarian recipients unconstitutionally discriminates against religion in favor of non-religion.
- Of course, this argument is not persuasive with “strict separationist” jurists, who believe it is fully consistent with—and may be required by—the First Amendment Religion Clauses for a state to put space between its official functions and religion, so long as all religious are treated equally.

- Sectarian is principally a nineteenth century code word for “Catholic,” so the intent behind such provisions was to discriminate among religions, which almost everyone agrees is prohibited by the Religion Clauses.

In support of the latter contention, opponents typically connect these provisions to James G. Blaine’s 1875 effort to harness anti-Catholic sentiment to his presidential ambitions by sponsoring a federal amendment barring state aid to schools controlled by any “sect” or “denomination.” Although that proposal failed, the argument goes, Blaine remained so powerful that federal territories seeking statehood felt compelled to insert anti-sectarian language in their proposed state constitutions in order to win congressional approval. In commemoration of the putative link between state constitutions and Blaine’s proposal, anti-sectarian clauses are frequently called “Blaine amendments” or “Blaine provisions.”

However, there are some weaknesses in arguments blaming anti-Catholic sentiment or James G. Blaine for anti-sectarian provisions in state constitutions. First, the historical record does not support a link in every state between anti-Catholic animus and the state constitutional language. Second, several state

6 Id., art. IX, § 7 (italics added).
7 Id. art. IX, § 8 (italics added).
8 E.g., Nev. Const. art. XL § 10 (added in 1880) (“No public funds of any kind or character whatever, State, County or Municipal, shall be used for sectarian purpose.”).
9 E.g., Tex. Const. (1876), art. VII, § 5 (“nor shall the same or any part thereof ever be appropriated to or used for the support of any sectarian school”), which now reads “The permanent school fund and the available school fund may not be appropriated to or used for the support of any sectarian school.” Id., § 5(c); Neb. Const. (1866-67), art. I, § 16, which is now id., art. VII, § 11.
10 E.g., Mt. Const. (1972), art. X, § 6:

The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination. (Italics added.)


Blaine’s proposal read:

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

Id. at 17 (statement of K. Hollyn Hollman).

16 Use of the word “sectarian” has been called “the watermark of a true Blaine Amendment.” Id. at 6 (statement of Anthony R. Picarello).

17 Id. at 17 (statement of K. Hollyn Hollman) (calling the history “not uniform” and claiming that these provisions “developed independently of any bias against a particular religion.”).
anti-sectarian clauses antedate Blaine’s proposed constitutional amendment.\footnote{18} Third, Blaine himself was far from anti-Catholic: . . . born to a Catholic mother and a father who later converted to Catholicism; as a child, he apparently was baptized in the Catholic Church. . . . He does not seem to have harbored anti-Catholic animosity, and he refused to be drawn into “any avowal of hostility or unfriendliness to Catholics.”\footnote{19}

Indeed, Blaine’s amendment, although it exploited anti-Catholic animus for political support, would not have placed Catholic church schools in a position any worse than schools sponsored by other religious denominations.\footnote{20}

The same evenhandedness among religions cannot be ascribed to clauses that, unlike Blaine’s amendment, specifically forbid aid for \textit{sectarian} institutions or purposes. Of course, provisions in state constitutions generally are interpreted to signify what their ratifiers understood them to mean,\footnote{21} so the language means what it did when it was ratified.\footnote{22} When understood in its nineteenth century context, the addition of the word \textit{sectarian} creates effects more discriminatory and sinister than anything Blaine proposed.

Part I of this article examines language from nineteenth century state constitutions to determine whether, as some claim, \textit{sectarian} meant merely “religious” or “denominational.” The texts tell us rather clearly that this was not the case—that \textit{sectarian} held a meaning quite distinct from “religious” or “denominational.” Part II surveys contemporaneous dictionary definitions and newspaper usage. Those sources show that \textit{sectarian} referred specifically to religions and religious people the speaker deemed bigoted or out of the mainstream. Part III summarizes the constitutional implications of these findings. However, this article does not discuss the standards of constitutional review or aspects of those standards such as levels of scrutiny or burdens of proof. The focus here is on the meaning of \textit{sectarian}—a subject not heretofore reported accurately in the legal literature.

I. Nineteenth Century Constitutional Provisions Show that “\textit{Sectarian} Had a Meaning Separate from “Religious” or “Denominational”

Although the texts of nineteenth century constitutions do not define the word \textit{sectarian}, their language and structure show that it was not merely a synonym for religious. For example, the Nebraska constitution banned “sectarian” instruction and the use of public funds for “sectarian” purposes.\footnote{23} Yet the same document made it clear that public schools were to promote religion in general: “Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the legislature . . . to encourage schools and the means of instruction.”\footnote{24}

In other state constitutions, “religion,” “church,” and “\textit{sectarian}” appear under circumstances suggesting that the drafters were not merely stringing together synonyms. For example, the 1875 Missouri constitution provided:

Neither the general assembly, nor any county, city, town, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, anything in aid of any religious creed, church, or \textit{sectarian} purpose; or to help to support or sustain any private or public school, academy, seminary, college, university, or other institution of learning, controlled by any religious creed, church, or \textit{sectarian} denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any county, city, town, or other municipal corporation, for any religious creed, church, or \textit{sectarian} purpose whatever.\footnote{25}

The presumption against surplus counsels against reading the individual components of “religious creed, church, or \textit{sectarian} denomination” or “religious creed, church, or \textit{sectarian} purpose” as synonymous. So does the presumption that different words and phrases in the same document mean different things. Moreover, this section contains several other word lists:

- “general assembly . . . county, city, town, township, school district, or other municipal corporation;”
- “appropriation . . . public fund;”
- “school, academy, seminary, college, university, or other institution of learning;”
- “grant or donation;” and
- “personal property or real estate.”

Although the meanings of some components of these lists overlap, none is simply a synonym of another. They have different meanings, thereby implying that the lists in which \textit{sectarian} appear are not to be read as repetitive.

In addition, some nineteenth century constitutions used the term \textit{sectarian} to modify “religion,” a modification that would have been unnecessary if they meant the same thing. In 1864 a

\footnotetext{18}{Id. at 14 (statement of K. Hollyn Hollman).}
\footnotetext{21}{E.g., People v. Rodriguez, 112 P.3d 693, 696 (Colo. 2005).}
\footnotetext{22}{\textit{Cf.} Hawke v. Smith, 252 U.S. 221, 227 (1920) (“What it meant when adopted it still means for the purpose of interpretation.”).}
\footnotetext{23}{\textit{Neb. Const.} (1866-67) art. VIII, § 11:}
\footnotetext{24}{\textit{Id.}, art. I, § 16.}
\footnotetext{25}{\textit{Mo. Const.} 1875, art. XI, sec 11; \textit{Mt. Const.} (1889), art. XI, § 8 (italics added).}
The same conclusion. The final Colorado Constitution (tracked closely in the 1889 Montana charter)28—contained this language:

No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as a teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatsoever. No sectarian tenets or doctrines shall ever be taught in the public school . . . .29

Note how the language distinguished between “religious test[s]” and “religious service[s]” for teachers as opposed to “sectarian tenets” in the material taught. Again, the change in language raises a presumption that “religious” was not the same as sectarian. Indeed, in a 1927 case interpreting this section, the Colorado Supreme Court confirmed explicitly that they were not the same. In that case, the court held that the King James Version of the Bible, while religious, was “non-sectarian” and therefore appropriate for reading in Colorado schools.30

Similar interpretive considerations tell us that sectarian was not a synonym for “denominational.” Constitutional provisions often used sectarian in addition to versions of “denomination” as a separate concept or as a qualifier. The 1873 Pennsylvania Constitution banned aid to any “denominational or sectarian institution.”31 The 1870 Illinois,32 1875 Missouri,33 and 1876 Colorado34 constitutions did not ban aid to denominations in general but only to “sectarian denominations.” Hence, the structure and language of these instruments inform us that sectarian had a special meaning of its own.

II. The Nineteenth Century Meaning of “Sectarian”

What was that special meaning? To answer the question, I consulted nineteenth-century dictionaries to learn how drafters and ratifiers of these constitutional provisions used sectarian and certain related words. I then examined contemporaneous newspapers to verify whether the dictionaries were accurately reflecting common usage.

A. The Dictionaries

The ten dictionaries I consulted were published between 1828 and 1895. Four were American, five were British, and one issued from a publisher with offices in Britain, the United

26 (Italics added).

27 Colo. Const. (proposed, 1865), Article XIII, § 3.

28 Mt. Const. (1889), art. XI, § 9:

No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the state . . . .

29 Colo. Const. art. IX, § 8 (italics added).


31 Pa. Const. (1873), art. III, § 18 (“No appropriations, except for pensions or gratuities for military services, shall be made for charitable, educational, or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation, or association.”).

32 Ill. Const. (1870), Art. X, § 3:

Neither the General Assembly nor any county, city, town, school district, or other public corporation shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose. (Italics added.)

33 Mo. Const. 1875, art. XI, § 11, quoted supra notes 3 and 25 and accompanying text.

34 Colo. Const. Art. IX, §7:

Neither the general assembly, nor any county, city, town, township, school district or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatsoever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation to any church, or for any sectarian purpose.

See also Colo. Const. art. V, § 34 (banning aid to “any denominational or sectarian institution or association”) (italics added).
States, and Australia. In chronological order of publication, the dictionaries are:

- Noah Webster, American Dictionary of the English Language (1st ed. S Converse, New York 1828) (2 vols.) [hereinafter Webster (1828)].
- Noah Webster, An American Dictionary of the English Language (3d ed. S. Converse, New York 1830) [hereinafter Webster (1830)].
- John Longmuir, Walker and Webster Combined in A Dictionary of the English Language (Aberdeen, 1864) [hereinafter Longmuir].
- Webster’s Academic Dictionary: Dictionary of the English Language (American Book Company, New York, Cincinnati, Chicago 1895) [hereinafter Webster’s Academic].

Each of these works defines sectarian in ways that (1) state directly that a sectarian was a dissenter or otherwise out of the mainstream, (2) associate the word with a negative term, such as “prejudice,” “bigot,” or “heretic,” or (3) do both. For example, Webster (1828) defines the word this way:

SECTA’RIAN, a. [Latin sectarius.] Pertaining to a sect or sects; as sectarian principles or prejudices.

SECTA’RIAN, n. One of a sect; one of a party in religion which has separated itself from the established church, or which holds tenets different from those of the prevailing denomination in a kingdom or state. The 1830 edition drops the word “prejudice,” but still indicates the marginalized nature of a sectarian:

SECTA’RIAN, n. One of a sect; one of a party in religion which has separated itself from the established church, or which holds tenets different from those of the prevailing denomination in a kingdom or state.

Longmuir’s Dictionary contains a list of synonyms for common words. The entry for sectarian is “see Heretic.” The listed synonyms for “heretic” are “schismatic, sectarian.” Longmuir defines “heretic” thus:

HER’ETIC, n. One who departs from the fundamental doctrines of Christianity—Syn: Schismatic; sectarian. . . . A Sectorian is one who originates or promotes a sect or distinct organization which separates from the main body of believers. Hence the expression, “a sectarian spirit,” has a slightly bad sense, which does not attach to denominational.”

Although Longmuir defines the adjective sectarian merely as “Pertaining or peculiar to a sect,” it defines the noun sectarian as “One of a sect, or one devoted to the interest of a sect; one of a party in religion which has separated itself from the established church. See Heretic.” Longmuir’s entry for “catholicity” is “The faith of the early fathers and councils; freedom from sectarianism or narrowness of views.”

The Globe Dictionary defines the adjective sectarian as “Pertaining to a sect;—devoted to a sect;—one-sided, bigoted,” and its entry for the noun is “One of a sect;—. . . one devoted to his party; a bigot; partisan.” The Cabinet Dictionary defines the adjective as “Pertaining or peculiar to a sect or to sects;—devoted to a sect;—hence, narrow-minded; one-sided; bigoted” and the noun as “One of a sect;—. . . one devoted to his party; a bigot; partisan.”

The definitions in Ogilvie’s work were as follows:

Sectarian (sek-ta’ri-an), a. . . . Pertaining to a sect or sects; peculiar to a sect; strongly or bigotedly attached to the tenets and interests of a sect or religious denomination;

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35 All these dictionaries are retrievable (with some effort) from Google Books. To enable readers to examine them more conveniently, however, I have collected PDF versions of all relevant volumes online at https://i2i.org/non-legal-materials-pertaining-meaning-sectarian-19th-century-state-constitutions/.

36 2 Webster (1828) (unpaginated).
37 Webster (1830) at 735.
38 Longmuir at xxii.
39 Id. at xix.
40 Id. at 203 (italics in original).
41 Id. at 415.
42 Id. at 66 (italics added).
43 Globe Dictionary at 520.
44 Cabinet Dictionary at 666.
as sectarian principles or prejudices. ‘Men of sectarian and factious spirits.’ . . .

Sectarian (sek-ta´ri-an), n. One of a sect; a member or adherent of a special school, denomination, or philosophical or religious party; especially, one of a party in religion which has separated itself from the established church, or which holds tenets different from those of the prevailing denomination in a kingdom or state.45

The Encyclopaedic Dictionary’s entries are similar. It defines sectarian, as an adjective, as:

Of or pertaining to a sect or sects; strongly or bigotedly devoted to the tenets and interests of a particular sect or religious denomination; characterized by bigoted devotion to a particular sect or religious denomination; peculiar to a sect.46

It then defines sectarianism as “The quality or state of being a sectarian; the principles of sectarians; devoted adherence to a particular sect or religious denomination; characterized by bigoted devotion to a particular sect or religious denomination; peculiar to a sect.”47 The multi-volume Century Dictionary contains this extensive entry:

... I. a. 1. Of or pertaining to a sect or sects; peculiar to a sect: as, sectarian interests; sectarian principles.—2. That inculcates the particular tenets of a sect: as, sectarian instruction; a sectarian book.—3. Of or pertaining to one who is bigotedly attached to a particular sect; characterized by or characteristic of bigoted attachment to a particular sect or its teachings, interests, etc.:

Zeal for some opinion, or some party, beareth out men of sectarian and factious spirits in such practices [as slander]. Barrow, Works, Sermon xviii.

The chief cause of sectarian animosity is the incapacity of most men to conceive systems in the light in which they appear to their adherents, and enter into the enthusiasm they inspire. Leeky, Europ. Morals, I. 141.

II. n. One of a sect; especially, a person who attaches excessive importance or is bigotedly attached to the tenets and interests of a sect.

But hardly less censurable, hardly less contemptible, is the tranquilly arrogant sectarian, who denies that wisdom or honesty can exist beyond the limits of his own ill-lighted chamber. Landor, Imaginary Conversations, Lucian and Timotheus.

= Syn. See heretic.48

Webster’s Academic defines sectarian as “a. Pert[aining] to a sect, or to sects; bigotedly attached to the tenets of a denomination. — n[oun]. One of a sect. . . . Syn. — See HERETIC.”49

Although Chambers appears to define sectarian more neutrally—“adj., pertaining to or peculiar to a sect.—n. one of a sect”—this definition depends on the following definition of “sect”: “those who dissent from an established church: those who hold the same views, esp. in religion or philosophy.”50

As shown by some of the foregoing extracts, dictionaries frequently connected sectarianism with bigotry. Webster (1828) defines bigot as:

A person who is obstinately, and unreasonably wedded to a particular religious creed, opinion, practice, or ritual. The word is sometimes used in an enlarged sense, for a person who is illiberally, attached to any opinion, or system of belief; as a bigot to the Mohammedan religion; a bigot to a form of government.51

B. Nineteenth Century Newspapers

Nineteenth century newspapers show how these definitions worked in context. I examined two newspaper databases: (1) The New York Times collection at ProQuest Historical Newspapers and (2) the Gale Group’s Nineteenth Century U.S. Newspapers. Entering “sectarian” in the query lines generated thousands of usages amply confirming the word’s negative sense.52 A representative sample illustrates six conclusions about the meaning of the word sectarian in the nineteenth century.

First, there is no evidence whatsoever that sectarian merely meant “religious.” The non-identity between sectarianism and religion is why an editor could criticize “sectarian” influence while also mocking a proposal for dismissing religion from public life.53 Further evidence of this non-identity appears below.

Second, sectarian had very negative associations. Newspapers frequently paired sectarian with other disparaging words: “sectarian

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45 Ogilvie’s Dictionary at 16.
46 Encyclopedia Dictionary at 315.
47 Id. at 316.

48 5 Century Dictionary at 5457.
49 Webster, Academic at 504.
50 Chambers’s Dictionary at 457 (italics in original).
51 Id.
52 1 Webster (1828) (unpaginated) (Emphasis added.). Other definitions did not include the reference to Islam. See, e.g., Webster’s Academic at 62:

Bigot . . . One who regards his own faith as unquestionably right, and any other as unreasonable and wicked; one blindly devoted to his own church, party, belief, or opinion.—Bigoted, a.—Bigetry [sic], n. Syn.—Prejudiced; intolerant; narrow-minded.

53 I have collected the representative examples discussed below in PDF format at https://i2i.org/non-legal-materials-pertaining-meaning-sectarian-19th-century-state-constitutions/.
bigotry,"55 "sectarian bigot,"56 "sectarian dogma,"57 "sectarian prejudice,"58 "sectarian fanatics,"59 and "sectarian hatred."60 An Atlanta Daily Sun story referred to "the narrow standpoint of the sectarian bigot, or that of the factious demagogue."61 In announcing the new academic year, a professor at Colorado College assured readers that "the college had its origin, and is maintained in no narrow, exclusive or sectarian spirit."62 A classified advertisement in a Boston newspaper coupled "Sectarian Revivals" with "Witchcraft" and other exotic phenomena.63 Third, clinging to an unpopular religion in a way incomprehensible to the majority rendered a person sectarian. A Washington, D.C. paper assailed "men, otherwise respectable for understanding and deportment, [who] are so warped by sectarian or party spirit as not to acknowledge truths as plain as axioms."64

As a religious minority, Roman Catholics were frequent targets of "anti-sectarian" rhetoric. The New York Times ran stories about the "threat" from "sectarian" Catholic Schools.65 A San Francisco paper reported a Protestant clergymen’s warnings about "sectarian" Catholics and the risks not reading the Bible in the public schools:

Rev. Dr. Clarke . . . made a severe argument against the Roman Catholics, and asserted that the cause of this sectarian movement was that the Papacy, which was growing weak in Europe, seeks to recover its vigor on our soil. He warned the people of the Divine displeasure in seeing God’s Word banished from the school.66

In an article discussing the "sectarian question," an editor complained that a Catholic clergyman, under cover of a state statute granting free exercise of religion, was encouraging prisoners not to attend the prison chaplain’s Protestant Sunday school. The editor urged prison authorities to prevent the priest from interfering.67 A Protestant minister wrote that readers should "rejoice in the increase of an unsectarian spirit." But he went on to warn that if Protestants started thinking that pointing out differences among Protestant sects was "the mark of a narrow and sectarian spirit," then "some tolerance [would] soon be extended to the utmost doctrines of Ritualism and Popery."68

Yet Catholics were not the only "sectarians." A contributor to a Boston paper attacked "sectarian bigots" of varying denominations.69 Denver’s Rocky Mountain News referred to "Roman and other sectarian schools."70 Mormons were tarred as sectarian.71 Among those so tarring them was President Rutherford B. Hayes.72 Some thought Jews could be sectarians.73 But Jewish speakers could turn the slur back against others. An Ohio paper reported that "A Jew proposes starting a National Young Men's Hebrew Association, not, as he says, after the sectarian idea of the Young Men's Christian Association, but on a national basis, progressive and social."74

Fourth, in contemporaneous discourse most Christians were not considered sectarian. Josiah Quincy, the president of Harvard

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55 In addition to the examples in the text, see also Telegraphic, DAILY ROCKY MTN. NEWS, Aug. 10, 1876, Gale Document No. GT3011717001 ("sectarian bigotry"); and the results at https://search-proquest.com, weblib.umb.edu:2443/npnewyorktimes/results/DA689F95F7464754PO?&accountid=14593.
56 In addition to the examples in the text, see also http://find.galegroup.com, weblib.umb.edu:8080/ncnp/paginate.do?tabID=T093&currentPosition=1&searchId=NCNP&tab.limitValue=&tabLimitIndex=.
57 E.g., Canadian Department, BOSTON INVESTIGATOR, Dec. 27, 1876, Gale Document No. GT3018547924 ("Mr. Cook strongly urged the contemplation of the above subject . . . as . . . striking at the root of sectarian dogma."); see also http://find.galegroup.com, weblib.umb.edu:8080/ncnp/advancedSearch.do?sessionid=780549FB6FBA644316540FC42E8A29E.
58 E.g., The Easter Festival, DAILY ROCKY MONT. NEWS, Mar. 28, 1875, Gale Document No. GT3011714227; The Electoral Vote, DAILY ROCKY MONT. NEWS, Nov. 10, 1875, Gale Document No. GT3011712378.
59 E.g. Letter to the Editor, BOSTON INVESTIGATOR, May 16, 1860, Gale Document No. GT3015813153.
60 Mr. Moody in recent sermon is reported to have said . . ., DAILY ROCKY MYN. NEWS, Jan. 7, 1876, Gale Document No. GT3011719757 ("bad passions . . . sectarian hatred").
62 Winthrop D. Sheldon, COLORADO COLLEGE ANNOUNCEMENT, DAILY ROCKY MONT. NEWS, Dec. 22, 1876, Gale Document No. GT3011718433.
63 Multiple Classified Advertisements, BOSTON INVESTIGATOR, Jan. 25, 1860, Gale Document No. GT3015812500.
64 Philo, Plain Questions for Plain People, DAILY NATIONAL INTELLIGENCER, Washington, D.C., Nov. 11, 1814, Gale Document No. GT3017469883.
65 E.g., Sectarian Education: Anti-Public School Crusade. Aggressive Attitude of the Roman Catholic Clergy—The Terrors of the Church Threatened, N.Y. TIMES, Aug. 24, 1873, ProQuest Historical Newspapers.
College, explained that Unitarians, Quakers, Methodists, Baptists, Episcopalians, and the Orthodox Church were all non-sectarian. From Quincy’s remarks, an Ohio editor deduced that he thought only “Roman Catholics and the Mohammedans” were sectarian.\(^7\) Hence, a charity named for a Christian saint could be described in another article as “non-sectarian.”\(^6\)

Fifth, as Quincy implicitly did, authors often contrasted sectarianism unfavorably with “good” Christianity. The New Hampshire Statesman praised a school for being “under a thoroughly Christian, not a sectarian, influence.”\(^7\) A Colorado editorial celebrated Thanksgiving by rejoicing that “What was once sectarian is now Christian; that which was provincial is now national.”\(^7\) A Central City (Colorado) newspaper paper contrasted sectarian “rigidity” with Christian charity.\(^9\) Newspapers even printed articles on how to be a good Christian and avoid sectarianism.\(^8\)

Sixth, as Josiah Quincy’s list suggests, sectarian was not a mere synonym for denominational. Like Quincy, an editor observed that many colleges and universities were “organized, endowed, and fostered by leading denominations”—and were therefore “denominational” schools. But they were “not sectarian schools, like the Catholic.”\(^9\) In an article celebrating “The Denominational Spirit,” an Ohio paper quoted Reverend Dr. Skinner:

“There ought,” says Dr. S., “to be no sectarianism among Christians, notwithstanding their differences . . . No matter, I repeat, what the differences may be, the fact that they [sic] are differences among Christians is decisive that they form no sufficient basis for sectarianism.” Dr. Skinner . . . deprecated an evil sectarian spirit, as heretical and schismatic.

As an alternative to sectarian spirit, Skinner claimed, Christians should cultivate “The true denominational spirit” which “A consistent Christian will always seek and strive to bring out, in himself and in his associates.”\(^8\)

These articles illustrate the difference between denominational and sectarian as the terms were used in the nineteenth century. The former was, or could be, good; the latter was always bad. Accordingly, there were good denominations and there were sectarian (bad) denominations. The difference helps explain why the Illinois, Missouri, and Colorado constitutions did not ban aid to all denominations, but only to “sectarian denominations.”\(^9\)

This survey of dictionary and newspaper evidence shows that, during the nineteenth century, sectarian was a word used to tar and marginalize unpopular religious groups. Bans on aid to “sectarian” institutions were designed to target religious groups of which the dominant culture disapproved.

IV. Implications for Constitutional

State constitutional provisions adopted during the nineteenth century prohibiting aid to sectarian groups required the state to discriminate against religions that majority opinion deemed prejudiced, bigoted, or extreme. In some states, the most natural targets were Roman Catholics, but these provisions authorized discrimination against other unpopular religions as well. Because constitutional provisions are construed according to the understanding of their ratifiers,\(^4\) those provisions mean what they meant in the nineteenth century.\(^4\) Their meaning is not changed or “purged,” as some have argued,\(^6\) by easing of anti-Catholic animus or other intervening events.

Consider an analogy: Suppose a state constitution provided that “No law shall be passed impairing the freedom of speech, except for the speech of extremists.” The exception purports to enable those controlling the state government to deny speech rights to what they see as fringe groups. Therefore it facially violates the First and Fourteenth Amendments, regardless of whether the exception was directed at any particular minority at the time of adoption, or whether there was a subsequent reduction of animus toward the original target.

Under the Fourteenth Amendment’s Equal Protection Clause, state discrimination driven by animus generally is unconstitutional.\(^8\) Moreover, equal treatment of religions is at

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\(^{75}\) What is Sectarianism?, Ohio Observer, Mar. 26, 1845, Gale Document No. GT3004755960.

\(^{76}\) A Woman’s Letter, Daily Rocky Mtn. News, Mar. 6, 1875, Gale Document No. GT3011710762.


\(^{78}\) Thanksgiving Day and What It Suggests, Daily Rocky Mtn. News, Nov. 27, 1873, Gale Document No. GT3010660793; see also The Quakers, id., Dec. 5, 1875, Gale Document No. GT301706705 (contrasting “sectarian infatuation” with “true christianity”).

\(^{79}\) Religious Tendency of the Times, Daily Central City Register, Jan. 17, 1872, Gale Document No. GT301604976.


\(^{82}\) The Denominational Spirit, Ohio Observer, Jan. 9, 1850, Gale Document No. GT3004766875.

\(^{83}\) Supra notes 32-34 and accompanying text.

\(^{84}\) Supra notes 21 and 22 and accompanying text.


\(^{86}\) E.g., USCCR, supra note 11 at 47-48 (statement of the Anti-Defamation League).

\(^{87}\) E.g., Romer v. Evans, 517 U.S. 620, 632 (1996) (provision of Colorado Constitution “inexplicable by anything but animus toward the class it affects” lacks a rational basis); City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 448 (1985) (“mere negative attitudes, or fear” cannot justify legislation targeting a particular group); cf. Palmore v. Sidoti, 466 U.S. 429, 433 (1984) (“Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”); cf. U.S. Dept of Agric. v. Moreno, 413 U.S. 528, 534 (1973) (“bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.”).
the core of the First Amendment’s Religion Clauses, applied to the
states through the Fourteenth Amendment’s Due Process Clause.88
A state’s violation of this “core” equal treatment standard triggers
the strict scrutiny requirement that the state demonstrate that
its discrimination is narrowly tailored to advance a compelling
governmental purpose.89 As suggested by the Supreme Court in
Widmar v. Vincent,90 this is a very difficult standard for any state
to meet.

88 E.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508
U.S. 520 (1993) (holding that targeting unpopular religions violates
the Free Exercise Clause); Larson v. Valente, 456 U.S. 228, 244 (1982)
(“The clearest command of the Establishment Clause is that one religious
denomination cannot be officially preferred over another.”); Robert G.
Natelson, The Original Meaning of the Establishment Clause, 14 Wm. &
Mary Bill Rights J. 73 (2005) (discussing the equal treatment principle
underlying both clauses).

89 E.g., City of Hialeah, 508 U.S. at 531, 546.

90 454 U.S. 263 (1981) (holding that wider separation of church and state
did not meet this standard).