

Religion, Politics, and the 2000 Presidential Election: A Selective Survey and Tentative Appraisal[†]

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The 2000 presidential election will long be remembered as one of the most protracted, disputed, and controversial struggles for the White House in our nation's history. Will it also be remembered as a significant turning point in the struggle over the role of religion in American politics and public life? The last century has witnessed a general trend favoring the privatization of religion and a corresponding secularization of politics and public life. But in the 2000 presidential campaign, religious language was unusually prominent, and religious issues were unusually salient. Upon taking office, moreover, President George W. Bush has continued to display his own religiosity and has advanced an agenda that includes an enhanced role for religious organizations in the delivery of social services. These developments may suggest that religion is recapturing a significant role in American politics and public life. In reality, however, the matter is more complex.

Religion can play various public roles, and it can be invoked or discussed by political candidates and by public officials in a variety of ways. In this Article, I will identify and discuss the role of religion in five different contexts. In Part I, I will examine the involvement of religious organizations in the delivery of social services.¹ In Parts II through V, I will address the invocation of religion by political candidates and public officials—in support of governmental policymaking;² as a positive moral and social force in American society;³ as evidence of their own personal character and morality;⁴ and as a source of spiritual meaning.⁵ Throughout the Article, I will draw examples from the 2000 campaign and from the early Bush presidency. I also will offer some tentative commentary about the various contexts that I discuss, contending that each context warrants an independent evaluation. I will suggest that the 2000 election has differing implications for each context and that, more generally, the long-term significance of the election remains to be seen.

I. INVOLVING RELIGIOUS ORGANIZATIONS IN THE DELIVERY OF SOCIAL SERVICES

When Congress adopted the Welfare Reform Act of 1996, it included a “Charitable Choice” provision.⁶ This provision allows churches, synagogues, and other “faith-

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1. *See infra* Part I.

2. *See infra* Part II.

3. *See infra* Part III.

4. *See infra* Part IV.

5. *See infra* Part V.

6. 42 U.S.C. § 604a (Supp. 2001).

based" religious organizations to compete for federal grant money,⁷ channeled through the states, for certain programs designed to serve welfare or welfare-to-work objectives, including food and nutrition education, high school equivalency education, and job training.⁸ The law walks a constitutional tightrope, attempting to protect the religious integrity of the service providers even as it also attempts to avoid an establishment of religion and to protect the rights of the aid recipients.⁹ The law permits the service-providing organizations to retain their existing governance structures;¹⁰ to limit the scope of governmental audits;¹¹ to maintain a religious atmosphere in their facilities, for example, through the display of religious symbols;¹² and to discriminate on the basis of religion in the hiring of program staff.¹³ At the same time, service providers cannot use government funds "provided directly" to them for "sectarian worship, instruction, or proselytization";¹⁴ they cannot discriminate against aid recipients on the basis of religion;¹⁵ and they cannot require recipients to "actively participate" in religious practices.¹⁶ The law further provides recipients with a right of objection that, if exercised, entitles them to receive assistance from a nonreligious provider.¹⁷

Under existing law, Charitable Choice has a limited scope. During the 2000 presidential campaign, however, the issue of Charitable Choice was prominent. Lauding faith-based and community-based "armies of compassion," Republican George W. Bush argued that Charitable Choice, a Republican initiative in 1996,

7. The extension of public funding to religious organizations is not unprecedented. Religiously affiliated organizations, such as Catholic Charities, historically have received public funding, with little objection, under various governmental programs. Although more controversial, public funding likewise has been extended in certain contexts to religious bodies as such, including the Salvation Army, which is organized as a church. *See* STEPHEN V. MONSMA, *WHEN SACRED AND SECULAR MIX: RELIGIOUS ORGANIZATIONS AND PUBLIC MONEY* (1996). Charitable Choice seeks to expand such funding by extending federal grant money not only to organizations that are affiliated with religious bodies, but also to the religious bodies themselves, that is, to "faith-based" organizations such as churches and synagogues.

8. *See* 42 U.S.C. § 604a (Supp. 2001).

9. *See id.* § 604a(b)-(c) (indicating Congress's desire to protect "the religious character" of participating religious organizations, to safeguard "the religious freedom of beneficiaries of assistance," and to avoid Establishment Clause violations).

10. *Id.* § 604a(d)(2)(A).

11. *Id.* § 604a(h)(2).

12. *Id.* § 604a(d)(2)(B).

13. *Id.* § 604a(f). More specifically, this provision states that religious organizations that participate in Charitable Choice will retain their preexisting exemption from the Civil Rights Act of 1964's general prohibition on religious discrimination in employment. For the text of this preexisting exemption, *see id.* § 2000e-1(a) (1994).

14. *Id.* § 604a(j). This restriction does not apply to government funds that religious organizations receive indirectly, through redeemable vouchers or similar forms of disbursement. *See id.* Compare *id.* § 604a(a)(1)(A), with *id.* § 604a(a)(1)(B) (describing and distinguishing direct and indirect methods of governmental funding).

15. *Id.* § 604a(g).

16. *Id.*

17. *Id.* § 604a(e).

should be broadly extended to all sorts of social service programs.¹⁸ Perhaps surprisingly, his Democratic opponent, Al Gore, embraced a similar position, this despite the Democratic Party's traditional support for a relatively strict separation of church and state.¹⁹ Following his election, President Bush has continued to advocate the expansion of Charitable Choice, under conditions and safeguards similar to those in place under the 1996 law. By executive order, he has established a White House Office of Faith-Based and Community Initiatives as well as Executive Department Centers for Faith-Based and Community Initiatives.²⁰ These new federal offices are designed to "coordinate a national effort to expand opportunities for faith-based and other community organizations"²¹ and to facilitate their participation in governmental programs serving "valid public purposes, such as curbing crime, conquering addiction, strengthening families and neighborhoods, and overcoming poverty."²² Bush's executive orders call for administrative action to eliminate barriers to participation not required by existing law,²³ but a broader extension of Charitable Choice will require congressional action.

The expansion of Charitable Choice is the most significant initiative concerning religion to emerge from the 2000 election. If fully implemented, it could substantially alter the landscape of church-state relations in the United States. But it is not clear that the initiative will succeed. Charitable Choice raises unresolved constitutional questions and extremely serious policy issues. Recent Supreme Court decisions have rejected constitutional challenges to the inclusion of religious organizations in funding programs that are neutrally drawn to include religious and nonreligious organizations alike.²⁴ Whether those decisions will be extended to Charitable Choice, however, is an open question.²⁵ In any event, there could be constitutional violations

18. In a July 1999 speech in Indianapolis, Bush, already the front-runner for the Republican presidential nomination, said that the federal government should "rally the armies of compassion" to help provide social services to those in need. Adam Clymer, *Filter Aid to Poor Through Churches, Bush Urges*, N.Y. TIMES, July 23, 1999, at A1; Terry M. Neal, *Bush Outlines Charity-Based Social Policies*, WASH. POST, July 23, 1999, at A2.

19. Like Bush, Gore announced his position in 1999, when he was the front-runner for his party's presidential nomination. See Kevin Sack, *Gore Backs Federal Money for Church Social Service Programs*, N.Y. TIMES, May 25, 1999, at A23; see also *supra* note 18.

20. Exec. Order No. 13,198, 66 Fed. Reg. 8497 (Jan. 29, 2001); Exec. Order No. 13,199, 66 Fed. Reg. 8499 (Jan. 31, 2001); see Laurie Goodstein, *Nudging Church-State Line, Bush Invites Religious Groups to Seek Federal Aid*, N.Y. TIMES, Jan. 30, 2001, at A18; see also Dana Milbank, *Bush Unveils "Faith-Based" Initiative; Effort Will Team Agencies, Nonprofits on Social Issues*, WASH. POST, Jan. 30, 2001, at A1.

21. Exec. Order No. 13,198, 66 Fed. Reg. at 8497; Exec. Order No. 13,199, 66 Fed. Reg. at 8499.

22. Exec. Order No. 13,199, 66 Fed. Reg. at 8499.

23. Exec. Order No. 13,198, 66 Fed. Reg. at 8497-98; Exec. Order No. 13,199, 66 Fed. Reg. at 8499-8500.

24. See, e.g., *Mitchell v. Helms*, 530 U.S. 793 (2000); *Agostini v. Felton*, 521 U.S. 203 (1997).

25. For an argument supporting the constitutionality of Charitable Choice, see Carl H. Esbeck, *A Constitutional Case for Governmental Cooperation with Faith-Based Social Service Providers*, 46 EMORY L.J. 1 (1997). For an opposing view, see Alan E. Brownstein, *Interpreting the Religion Clauses in Terms of Liberty, Equality, and Free Speech Values—A*

in the administration of specific grants by religious service providers. Beyond the strictly constitutional questions, moreover, there are serious issues of church-state policy. In particular, it is far from clear that the law can honor its promise to fully protect not only the rights and interests of aid recipients, but also the religious integrity of service providers.

Some of the religious leaders who initially were sympathetic to Charitable Choice later had second thoughts, perhaps for good reason.²⁶ The law's restrictions,²⁷ including especially its restriction on sectarian instruction and proselytization, are inconsistent with the mission of certain religious organizations, including those that promote integrated ministries emphasizing evangelism and conversion even as they address the worldly problems of those in need. These religious organizations might choose not to participate in Charitable Choice, but that would mean that Charitable Choice would have the practical effect of funding religious organizations selectively. More precisely, it would have the practical effect of funding—and to that extent preferring—religious organizations with less evangelistic theologies, theologies that are not offended by the law's restrictions. This effect might be mitigated through the adoption of indirect funding mechanisms, such as the use of redeemable vouchers, because the law's restriction on sectarian instruction and proselytization applies only when public funds are "provided directly" to a service provider.²⁸ Even so, the law is likely to have the effect of skewing American religious pluralism in favor of theologies that are congenial to the government's purposes, a result that is clearly at odds with basic church-state policy.

The future of Charitable Choice is quite uncertain. President Bush's executive orders are likely to facilitate the funding of religious service providers to the extent permissible under existing law. Legislation to extend the scope of Charitable Choice to other areas might be enacted by Congress, but then again, it might not.²⁹ In any

Critical Analysis of "Neutrality Theory" and Charitable Choice, 13 NOTRE DAME J.L. ETHICS & PUB. POL'Y 243 (1999).

26. See, e.g., Thomas B. Edsall, *Robertson Joins Liberals in Faulting Bush's "Faith-Based" Plan*, WASH. POST, Feb. 22, 2001, at A5; Laurie Goodstein, *Bush's Charity Plan Is Raising Concerns for Religious Right*, N.Y. TIMES, Mar. 3, 2001, at A1. More generally, the proposed expansion of Charitable Choice has attracted a range of critics and criticisms. See, e.g., Elizabeth Becker, *Bush's Plan to Aid Religious Groups Is Faulted*, N.Y. TIMES, Apr. 27, 2001, at A21; *Clergy Group Opposes Faith-Based Funding*, CHRISTIAN CENTURY, May 9, 2001, at 10; Thomas B. Edsall, *Jewish Leaders Criticize "Faith-Based" Initiative: U.S. Aid on Social Services Groups Would Undermine Church-State Separation, Official Told*, WASH. POST, Feb. 27, 2001, at A4.

27. See *supra* notes 14-16 and accompanying text.

28. As noted earlier, the existing restriction on sectarian instruction and proselytization applies to programs that provide direct grants to religious organizations, but not to programs that provide funding indirectly, through redeemable vouchers or similar forms of disbursement. See *supra* note 14 and accompanying text. This distinction is likely to be maintained under any expansion of Charitable Choice. As a result, programs of indirect funding are less likely to create the problem of selective participation by religious organizations. This assumes, of course, that the indirect funding is effective in immunizing sectarian instruction and proselytization not only from the Charitable Choice restriction, but also from the strictures of the Establishment Clause.

29. A bill expanding Charitable Choice has passed the House of Representatives.

event, Bush's administrative efforts, as well as any legislative action that might be forthcoming, could be foiled by constitutional challenges. Apart from constitutional challenges, moreover, the expansion of Charitable Choice might be ineffective as a practical matter. The law's specific restrictions, coupled with the more general risk of red tape and governmental meddling, might make religious organizations reluctant to participate.³⁰ Conversely, Bush's Charitable Choice initiative might not fail; it might succeed. Charitable Choice might survive and thrive in an expanded form. There might be broad participation by religious organizations, or at least by religious organizations whose theologies are compatible with the law's restrictions.

Charitable Choice is an important attempt to enhance the role of religion in the United States. Ironically, however, the more "successful" this effort is, the greater the dangers it poses for religion and for the American system of church-state separation that has permitted religion to flourish and prosper. By effectively preferring some theologies over others, Charitable Choice may impair the religious competition that our pluralistic system historically has encouraged and protected. At least in the long run, moreover, religious organizations, whatever their particular theologies, run the risk of being neutralized, homogenized, and secularized when they participate in governmental programs.³¹ In the specific context of Charitable Choice, for example, the existing version of the law exempts religious service providers from the federal

Community Solutions Act of 2001, H.R. 7, 107th Cong. (2001). The House approved the legislation on July 19, 2001, but only by the relatively narrow margin of 233 to 198 and only after a contentious debate, especially on the issue of employment discrimination by religious service providers. 147 CONG. REC. H4222-81 (daily ed. July 19, 2001). The legislation is now pending in the Senate, where it faces substantial opposition, at least in the form approved by the House. See Elizabeth Becker, *House Backs Aid for Charities Operated by Religious Groups*, N.Y. TIMES, July 20, 2001, at A1. Indeed, it appears that President Bush has given up hope for this legislation, at least for the time being. Thus, in a November 7, 2001, letter to Senate leaders, Bush urged the prompt enactment of less controversial legislation—legislation that would not expand the scope of Charitable Choice, but that would instead provide additional funding for existing programs and that would create new tax incentives for charitable giving. Mary Leonard, *Bush Urges New Tax Incentives for Charity Giving*, BOSTON GLOBE, Nov. 8, 2001, at A10. As this Article went to press, it appeared that the Senate might be moving toward the adoption of this sort of scaled-back legislation. See Elisabeth Bumiller, *Accord Reached on Charity Aid Bill After Bush Gives in on Hiring*, N.Y. TIMES, Feb. 8, 2002, at A19.

30. For these and other reasons, religious organizations have made only limited use of the existing version of Charitable Choice. See Laurie Goodstein, *Religious Groups Slow to Accept Government Money to Help the Poor*, N.Y. TIMES, Oct. 17, 2000, at A22.

31. Although sympathetic to President Bush's initiative, the Rev. Richard John Neuhaus expresses an "urgent" concern about preserving the integrity of religious organizations:

In too many places around the country, agencies such as Catholic Charities are so dependent upon government funding and subservient to government direction that they have become mere extensions of the state. Says one midwestern bishop, "Catholic Charities in my diocese is about as Catholic as the motor vehicles bureau." . . . [M]ediating institutions [must not] be co-opted and fatally compromised by well-intended government policy.

Richard John Neuhaus, *The Public Square: A Continuing Survey of Religion and Public Life*, FIRST THINGS, April 2001, at 63, 79.

prohibition on religious discrimination in employment,³² but there is growing political support for eliminating that exemption and for subjecting religious service providers to other employment discrimination laws as well.³³ More generally, the government's funding conditions and restrictions are likely to increase over time, even as the participating religious organizations are likely to become more and more dependent on the government's financial support. No less than the stick of direct regulation, the carrot of governmental funding may work to the long-term detriment of religion, inducing religious organizations to modify and weaken their religious practices and requirements in response to secular demands.³⁴

No less ironically, the underlying premise of Charitable Choice belies the distinctive character and special importance of religion. Its supporters cite the need for spiritual transformation in changing the lives of those in need.³⁵ But Charitable Choice cannot support this spiritual transformation, at least not directly, without transgressing the constitutional boundary between church and state, a boundary that the law's restrictions are specifically designed to police. More generally, Charitable Choice ultimately is grounded not on the spiritual value of religious truths, but rather on the equality—the sameness—of religious and nonreligious organizations. All religious organizations are equally eligible for funding, the Nation of Islam and the Church of Scientology no less than mainstream Christian and Jewish organizations. So, too, are secular organizations. Needless to say, equality is a fundamental value, but religion is not the same as nonreligion, nor is every religion equally worthy and valuable. Religion's special place requires it to make claims of truth about spiritual reality, and it calls for the government to permit those claims to compete for acceptance, free from governmental support or interference. Charitable Choice runs the risk of undermining these central principles.³⁶

32. See *supra* note 13 and accompanying text.

33. A proposal along these lines was defeated in the House of Representatives on July 19, 2001, during the debate over legislation expanding Charitable Choice, but only by a vote of 195 to 234. 147 CONG. REC. H4278-81 (daily ed. July 19, 2001); see also *supra* note 29 (describing the status of the current legislation in Congress).

34. Some of the thoughts and text in this paragraph are drawn from Daniel O. Conkle, *The Path of American Religious Liberty: From the Original Theology to Formal Neutrality and an Uncertain Future*, 75 IND. L.J. 1, 22-23 (2000).

35. In his "armies of compassion" speech, for example, George W. Bush praised the "transforming power of faith." Clymer, *supra* note 18. Earlier, using similar language in support of a similar position, Al Gore had noted that faith may be "essential to spark a personal transformation and to keep that person from falling back into addiction, delinquency or dependency." Sack, *supra* note 19. See generally William Raspberry, *A GI Bill of Faith*, WASH. POST, Mar. 19, 2001, at A17 ("[R]ehabilitation from drug or alcohol abuse, reconnecting with family members, even changing the attitudes that make it hard for some people to escape poverty—these things may require something closer to transformation than education or training.").

36. In addition to his proposed expansion of Charitable Choice, President Bush also has advocated—and legislation currently before Congress includes—various tax incentives for charitable donations, including a modest extension of the charitable tax deduction to taxpayers who do not itemize. Community Solutions Act of 2001, H.R. 7, 107th Cong. (2001); see also *supra* note 29 (describing the status of this legislation in Congress). In terms of church-state policy, these proposed tax incentives do not raise the same issues as Charitable Choice. In

II. INVOKING RELIGIOUS VALUES IN SUPPORT OF GOVERNMENTAL POLICYMAKING

As the Charitable Choice initiative suggests, religious organizations can play a public role when they are enlisted to provide social services. A different public role for religion relates not to religious organizations as service providers, but to the invocation of religious values in support of governmental policymaking. This public role is no less controversial than the role suggested by Charitable Choice. The debate about religious values and governmental policymaking is complex, but the essential dispute is not. On one side stand those who insist that in a liberal democracy, religious values should play no direct role (or, at most, a constrained role) in governmental policymaking, even when the government is addressing nonspiritual, worldly issues—for example, issues relating to abortion, stem cell research, the death penalty, welfare, or environmental protection.³⁷ On the other side are those who contend that in addressing worldly issues such as these, citizens and policymakers in a democratic society should be free to rely on whatever values and arguments they find persuasive, regardless of whether those values and arguments are religious.³⁸

In the 2000 campaign, three of the four candidates for president and vice president—George W. Bush, Al Gore, and Joe Lieberman—were unusually open about their religion and its impact on their lives.³⁹ Bush famously suggested during a primary debate that Jesus Christ is the most influential philosopher he has encountered.⁴⁰ In a similar vein, Gore, a professed born-again Christian,⁴¹ noted that he addresses difficult questions by asking himself, what would Jesus do?⁴² “Faith is

particular, the tax incentives would be unlikely to impair the integrity of religious organizations, and they would be unlikely to impede the religious competition among them.

37. See, e.g., ROBERT AUDI, *RELIGIOUS COMMITMENT AND SECULAR REASON* (2000); Suzanna Sherry, *The Sleep of Reason*, 84 GEO. L.J. 453 (1996); Kathleen M. Sullivan, *Religion and Liberal Democracy*, 59 U. CHI. L. REV. 195 (1992).

38. See, e.g., Douglas Laycock, *Freedom of Speech That Is Both Religious and Political*, 29 U.C. DAVIS L. REV. 793 (1996); Michael W. McConnell, *Five Reasons to Reject the Claim That Religious Arguments Should Be Excluded from Democratic Deliberation*, 1999 UTAH L. REV. 639; Steven Shiffrin, *Religion and Democracy*, 74 NOTRE DAME L. REV. 1631 (1999).

For intermediate positions in this debate, see, for example, KENT GREENAWALT, *RELIGIOUS CONVICTIONS AND POLITICAL CHOICE* (1988); KENT GREENAWALT, *PRIVATE CONSCIENCES AND PUBLIC REASONS* (1995); MICHAEL J. PERRY, *LOVE AND POWER: THE ROLE OF RELIGION AND MORALITY IN AMERICAN POLITICS* (1991); MICHAEL J. PERRY, *RELIGION IN POLITICS: CONSTITUTIONAL AND MORAL PERSPECTIVES* (1997).

39. The fourth, Dick Cheney, Republican candidate for vice president, was more reticent. A Methodist, Cheney explained during the campaign that as “a matter of personal taste, I don’t talk about my personal faith.” Martin Kasindorf, *At First Uneasy, Cheney Settling into Campaign: VP Candidate Adds Weight to Bush Ticket, but He’s Also Trying to Loosen Up a Little*, USA TODAY, Sept. 11, 2000, at 14A.

40. See Dan Balz & David Von Drehle, *Bush and McCain Clash: Debate in Des Moines Reflects Intensifying Competition*, WASH. POST, Dec. 14, 1999, at A1; see also Hanna Rosin, *Bush’s ‘Christ Moment’ Is Put to Political Test by Christians: Act of Faith or Partisan Ploy, It Draws Faithful’s Attention*, WASH. POST, Dec. 16, 1999, at A14.

41. *The Piety Parade*, L.A. TIMES, Dec. 20, 1999, at B6.

42. *Id.*

the center of my life," he stated.⁴³ "The purpose of life is to glorify God. I turn to my faith as the bedrock of my approach to any important question in my life."⁴⁴ Quoting from his 1992 book, *Earth in the Balance*, Gore elaborated: "My own faith is rooted in the unshakable belief in God as creator and sustainer, a deeply personal interpretation of, and relationship with, Christ."⁴⁵ In part as a result of statements like these, "it [was] hard to tell whether Al Gore or George W. Bush [was] the more zealous Christian" in his campaign for the White House.⁴⁶

Christian though he is, Gore made history by naming an observant and devout Jew, Joe Lieberman, as his running mate.⁴⁷ And Lieberman quickly became even more vocal than Bush and Gore concerning the importance of religion, not only personally but politically. Echoing George Washington, Lieberman suggested that religious faith is essential to morality.⁴⁸ He argued that "the Constitution guarantees freedom of religion, not freedom *from* religion,"⁴⁹ and he contended that the philosophy of the Declaration of Independence is directly related to biblical traditions.⁵⁰

Despite their conspicuous Christian identities, Bush and Gore made little effort during the campaign to directly link their religious values to the policy proposals they were advancing.⁵¹ Lieberman, by contrast, at times made the linkage open and explicit. He cited God's creation—and the human equality that it implies—in support of civil rights and nondiscrimination policies.⁵² He suggested that God's creation of the natural world called for human stewardship in the form of environmental protection.⁵³ And he linked his support of publicly provided health care for senior

43. Scott Shepard, *Gore Opens Up: "Faith is the Center of My Life"; Religious Ideals, Public Service Bound Together, Democrat Says*, ATLANTA J. & CONST., June 6, 1999, at 4B, available at 1999 WL 3776322.

44. Cathy Lynn Grossman, *Gore Goes Public with His Faith As He Pushes Church Charity Plan*, USA TODAY, June 1, 1999, at 10A.

45. *Id.* (quoting AL GORE, *EARTH IN THE BALANCE: ECOLOGY AND THE HUMAN SPIRIT* (1992)).

46. See Michael Kazin, *Pietists and Pluralists: Religion and American Politicians*, in RELIGION AND AMERICAN POLITICS: THE 2000 ELECTION IN CONTEXT, at 63, 72 (Mark Silk ed. 2000).

47. Ronald Brownstein, *News Analysis: Choice May Help Gore Slip from Clinton Shadow*, L.A. TIMES, Aug. 8, 2000, at A1 (referring to Gore's selection of Lieberman as "the most dramatic statement of religious inclusion" since the 1960 election of John F. Kennedy, the nation's first Roman Catholic president).

48. See Richard Pérez-Peña, *Lieberman Seeks Greater Role for Religion in Public Life*, N.Y. TIMES, Aug. 28, 2000, at A14.

49. *Id.* (emphasis in original).

50. *Id.*

51. This is not to say that they made no effort at all. See, e.g., Kevin Sack, *In a Texas Church, Gore Campaigns for Morality, Values and "Prosperity of the Spirit"*, N.Y. TIMES, Oct. 23, 2000, at A17 (describing a speech by Gore in which he linked environmental protection to "glorify[ing] God" and "God's creation" and in which he otherwise embraced a "social gospel" message).

52. Richard Pérez-Peña, *Lieberman Stakes Claim to Basic Values*, N.Y. TIMES, Oct. 17, 2000, at A28.

53. Richard Pérez-Peña, *Lieberman Cites Religion As Foundation of Environmentalism*, N.Y. TIMES, Oct. 19, 2000, at A24.

citizens to the biblical commandment that we honor our fathers and mothers.⁵⁴

If the 2000 campaign has no other effect on the debate about religious values and governmental policymaking, it should dispel the impression that the Republican Party is uniquely connected to religious values and that such values are inherently “conservative” in a political sense. In fact, the political implications of religion vary not only from one denomination to the next, but also within the same denominations, with different religious interpretations leading to different political perspectives.⁵⁵ Historically, religion was on both sides of the slavery issue, and it was invoked not only to support prohibition, but also the movement for civil rights.⁵⁶ Today, it supports “conservative” viewpoints on abortion, same-sex marriage, and sex and violence in the media, but it also supports “liberal” positions of the sort that Lieberman declared. To equate religion with conservative politics is grossly misleading, and it does nothing to advance our understanding of the appropriate role of religion in politics.⁵⁷

A more doubtful question is whether the 2000 campaign heralds a trend favoring the invocation of religious values in support of governmental policymaking. To be sure, Lieberman specifically linked some of his policy positions to his understanding of Judeo-Christian religious values, values that he believed were or should be shared by a majority of the American people. But this linkage was only a small part of Lieberman’s public discourse during the campaign, and, indeed, it was only one facet of Lieberman’s discussion of religion. And those at the top of their respective tickets, Bush and Gore, did even less to link their religious perspectives to their political positions.

As a matter of theory, the notion that governmental policies addressing worldly problems should not be based on religious values is exceedingly controversial and, in my view, is exceedingly difficult to defend.⁵⁸ As a matter of practice, however, it seems that in this particular respect, the secularization of politics is generally accepted by political candidates and elected officials, at least insofar as their own direct advocacy is concerned. To be sure, religious values influence political viewpoints, and the influence is substantial.⁵⁹ Religious leaders and religious

54. Pérez-Peña, *supra* note 52.

55. See generally James Davison Hunter, *CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA* (1991); ROBERT WUTHNOW, *THE RESTRUCTURING OF AMERICAN RELIGION: SOCIETY AND FAITH SINCE WORLD WAR II* (1988).

56. Mark W. Cordes, *Politics, Religion, and the First Amendment*, 50 *DEPAUL L. REV.* 111, 113 & n.9 (2000).

57. This is not to deny that in the contemporary period, religion plays a more influential role on the conservative side of the American political landscape. In the 2000 election, for example, religiously observant voters—except for African-Americans and Jews—were considerably more likely to support Bush than Gore. John Dillin, *Growing Gap at Ballot Box: Religious vs. Secular Vote*, *CHRISTIAN SCIENCE MONITOR*, Jan. 29, 2001, at 4.

58. Elsewhere I have addressed the role of religious and secular values in American politics and public life. See Daniel O. Conkle, *Different Religions, Different Politics: Evaluating the Role of Competing Religious Traditions in American Politics and Law*, 10 *J.L. & RELIG.* 1 (1993-94); Daniel O. Conkle, *Secular Fundamentalism, Religious Fundamentalism, and the Search for Truth in Contemporary America*, 12 *J.L. & RELIG.* 337 (1995-96).

59. See, e.g., John C. Green, *Religion and Politics in the 1990s: Confrontations and*

organizations may make this linkage explicit, and they may use it in the promotion of particular policies and candidates.⁶⁰ But political candidates and elected officials are reluctant to make the connection in their own political discourse.

This reluctance reflects contemporary cultural understandings concerning the proper role of religion in American public life, and it also reflects pragmatic politics in a religiously pluralistic society. Some citizens may share a candidate's political position for religious reasons; for example, they may have religious grounds for believing that the candidate is right about abortion, or about the death penalty, or about the environment. But other citizens may hold the same view on the basis of a different religious perspective or on the basis of reasoning that is not religious at all. The pragmatic politician wants the support of all of them, support that might be lost if the politician offers a religious explanation that might be perceived by some as exclusionary or even offensive. Lieberman's religious explanations for some of his policy positions might be said to point in a different direction, but it is no accident that he invoked religious positions that were extremely generic, widely accepted, and uncontroversial—the importance of creation and the obligation to honor one's parents. He did not propose a talmudic analysis of controversial policy questions.

Lieberman's express reliance on religious values was a significant aspect of the 2000 campaign. Even so, I doubt that it portends a meaningful break from contemporary political practice. Following Lieberman's example, politicians sometimes may invoke general religious values in support of their policy positions. But they will remain reluctant to rely on more specific and therefore more controversial religious values, leaving it to religious individuals and groups to discern the political implications of particular religious values and to act accordingly in their own political behavior.

III. PRAISING RELIGION AS A POSITIVE MORAL AND SOCIAL FORCE

Politicians may invoke religion and religious values not in support of particular governmental policies, but instead to suggest that religion is a positive moral and social force, and that, as such, it has had and should continue to have an important public role in the United States. This type of political discourse has been present since the founding, but it received renewed attention in the 2000 campaign. And once again, it was Joe Lieberman who made religion a prominent topic of public discussion.

Coalitions, in RELIGION AND AMERICAN POLITICS, *supra* note 46, at 19.

60. The Christian Coalition, for example, promotes particular policies and candidates, in part through the issuance of its famous voting guides. Matthew Vita & Susan Schmidt, *The Interest Groups: Religious Right Mutes Voice, Not Efforts*, WASH. POST, Nov. 2, 2000, at A20. Other religious and religiously affiliated organizations also take political stances that are derived from religious values. In a 1999 statement, for example, the U.S. Conference of Catholic Bishops urged Roman Catholics to participate in politics and, in so doing, to consider church teachings on issues such as abortion, physician-assisted suicide, poverty, and environmental protection. Gustav Niebuhr, *U.S. Bishops Urging Catholics to Be Politically Involved*, N.Y. TIMES, Oct. 20, 1999, at A18. For a historical analysis of the involvement of organized religion in American politics, see Michael E. Smith, *Religious Activism: The Historical Record*, 27 WM. & MARY L. REV. 1087 (1985-86).

Shortly after the Democratic convention at which he was nominated, Lieberman began to speak out in ways that captured national attention and that generated considerable controversy. As noted earlier, Lieberman sometimes connected his discussion of religious values to particular policy positions,⁶¹ but most of his discourse was more general. Urging America to reaffirm its religious faith, Lieberman suggested that without religion there can be no morality:

As a people we need to reaffirm our faith and renew the dedication of our nation and ourselves to God and God's purpose. . . . John Adams, second president of the United States, wrote that our Constitution was made only for a moral and religious people. . . . George Washington warned us never to indulge the supposition "that morality can be maintained without religion."⁶²

Critics on the left—including, ironically, the Anti-Defamation League⁶³—immediately objected.⁶⁴ They argued that there can indeed be morality without religion, and they claimed that Lieberman's rhetoric was unduly sympathetic to the religious right.⁶⁵

Lieberman did not stop with his endorsement of religion as a source of morality. He went on to suggest that religion has played a formative role in the American constitutional system and that religious values undergird our government and our laws:

[W]e know that the Constitution wisely separates church from state, but remember: the Constitution guarantees freedom *of* religion, not freedom *from* religion. . . . Without biblical traditions from the Ten Commandments to the compassion and love and inspiration of Jesus of Nazareth, . . . it could never have been written, and wouldn't have been written, in our Declaration of Independence, "We hold these truths to be self-evident, that all men are created equal."⁶⁶

This statement, too, was controversial. Many believe that the Constitution protects not only religion from government, but also government from religion.⁶⁷ More generally,

61. See *supra* notes 52-54 and accompanying text.

62. Pérez-Peña, *supra* note 48.

63. Gustav Niebuhr, *The Religion Issue: Lieberman Is Asked to Stop Invoking Faith in Campaign*, N.Y. TIMES, Aug. 29, 2000, at A19.

64. The Anti-Defamation League stated that although candidates "should feel comfortable explaining their religious convictions to voters," there was "a point at which an emphasis on religion in a political campaign becomes inappropriate and even unsettling in a religiously diverse society such as ours." *Id.*

65. See Richard Pérez-Peña, *The Democratic Running Mate: Lieberman Explains Call for Bigger Role for Religion*, N.Y. TIMES, Aug. 30, 2000, at A21. In response to the criticism, Lieberman repeated his claim about religion and morality in less categorical terms, noting that "[r]eligion in my opinion can be, and in my opinion usually is, a source of good behavior," but he stated that he had not meant to imply that nonreligious people cannot be moral. "I'm talking here about probabilities," he said. *Id.*

66. See Pérez-Peña, *supra* note 48 (emphasis in original).

67. See, e.g., William P. Marshall, *Religion As Ideas: Religion As Identity*, 7 J. CONTEMP.

many would dispute Lieberman's implicit argument that although the separation of church and state should be maintained, this separation should not be rigid, and it should not preclude lawmaking influenced by religious values.⁶⁸

In discussing the moral and social role of religion, Lieberman was not relying on religion to support any particular policy position. Indeed, he was not even addressing particular governmental policies, and his statement had no direct connection to any political action that he might take or promote if elected to office. Rather, Lieberman was using his political position as a platform, one that permitted him to offer general commentary on the importance of religion to the lives of Americans and to the society and the political system of which they are a part.

As with Lieberman's reliance on religious values in support of particular policy positions, his more general rhetoric concerning religion played an important role in the 2000 campaign. Although it had no immediate policymaking significance, it spoke to our self-understanding as a religious people and how that self-understanding might affect the place of religion in American public life. Lieberman's position, suggesting an enhanced public place for religion, triggered the criticism of those who believe that religion should play a different—and lesser—public role. One can join Lieberman's critics and challenge the merits of his arguments, but it is difficult to maintain that Lieberman was wrong to broach the subject. Determining the proper role of religion in American public life is an important issue on which political leaders appropriately may comment. The debate that Lieberman engendered was healthy, and the debate should continue.

IV. INVOKING RELIGION AS EVIDENCE OF PERSONAL CHARACTER AND MORALITY

In connecting religion and morality, Lieberman was engaged in general social commentary, but his statement also served to promote his own candidacy by implying that he, as a deeply religious man, was ethically well-suited for high office. More generally, Lieberman's religiosity gave rise to news accounts detailing his religious beliefs and practices—beliefs and practices that were unfamiliar to most Americans.⁶⁹ Lieberman attends an Orthodox Jewish synagogue, but he has interpreted and adjusted his Orthodox faith to accommodate the modern world and his duties as a public official.⁷⁰ For example, he generally honors the Saturday Sabbath, but he interprets this religious obligation to permit an exception for essential governmental

LEGAL ISSUES 385, 387 (1996) ("The challenge of the religion clauses . . . is to create a doctrine that can work simultaneously as a protection for religion and as a protection against religion.").

68. Toward the end of the campaign, in a speech at the University of Notre Dame, Lieberman revisited the role of religion in American public life, repeating many of the themes that he had voiced earlier. Richard Pérez-Peña, *Lieberman Revisits Faith's Role in U.S.*, N.Y. TIMES, Oct. 25, 2000, at A24. For an extended excerpt from the Notre Dame speech, see Joseph Lieberman, *Vision for America: A Place for Faith*, RESPONSIVE COMMUNITY, Winter 2000/01, at 41.

69. See, e.g., Laurie Goodstein, *The Observances: Lieberman Balances Private Faith with Life in the Public Eye*, N.Y. TIMES, Aug. 18, 2000, at A19.

70. Because he departs from Orthodox Judaism in some respects, Lieberman prefers to call himself an "observant" Jew, rather than Orthodox. Despite his stated preference, Lieberman's religious practices suggest that he might properly be labeled a "modern Orthodox Jew." *Id.*

business.⁷¹ During the campaign, the picture that emerged was that of a sincere and thoughtful religious man, a positive image that clearly enhanced Lieberman's stature as a candidate. This in itself was a remarkable and noteworthy development: an Orthodox Jew was a major-party candidate for vice president, and, by all indications, his religion did not diminish, but instead enhanced, the strength of his candidacy.⁷²

President Bill Clinton's ethical failures made personal character an especially important issue in the 2000 campaign,⁷³ and Lieberman was not alone in suggesting that his character was informed by his religious identity and his religious understandings. In context, George W. Bush's reference to Jesus Christ during the primary debate was a statement about Bush's character and personal morality. Asked to name the philosopher who had influenced him the most, Bush responded, "Christ, because he changed my heart."⁷⁴ Pressed to elaborate, Bush responded: "When you turn your heart and your life over to Christ, when you accept Christ as the savior, it changes your heart."⁷⁵ Bush's remarks dramatically highlighted an important theme in his campaign: that Bush was truly a new man after his midlife conversion to evangelical Christianity, a conversion that had turned Bush away from drinking and other personal misbehavior.⁷⁶ Although perhaps less dramatic than Bush's comments, Al Gore's expressed reliance on a "What would Jesus do?" decisionmaking framework⁷⁷ also was a statement, in part, about Gore's personal character, morality, and ethics.

Is a candidate's religion relevant to his or her personal character and morality and, if so, is a candidate's religion an appropriate topic of public discussion? Challenged on his statement linking religion and morality, Lieberman conceded that he was generalizing; he noted that nonreligious people could be moral, and he suggested that he himself would be willing to vote for a nonreligious candidate.⁷⁸ But surely a person's religion—like any other constituent element of his or her being—helps inform the person's character. As a result, it helps inform the person's moral and ethical framework, and it provides a basis for understanding and predicting the person's decisions and actions as a public official, for example, in confronting unforeseen issues or crises. Some voters might be attracted to the character suggested by evangelical Christianity or by Orthodox Judaism; others might find it problematic.

71. *Id.*

72. See Gayle White, *Joe Lieberman: Candidate's Experience Seen As Sign of Openness*, ATLANTA J. & CONST., Dec. 14, 2000, at 3C, available at 2000 WL 5491539.

73. Ironically, President Clinton frequently emphasized his own religious identity, serving to demonstrate simply that a professed religious identity is no guarantee of upright character. Indeed, at a highly publicized White House prayer breakfast during the midst of the Monica Lewinsky scandal, Clinton tearfully confessed that he had sinned. James Bennet, *Tearful Clinton Tells Group of Clerics, "I Have Sinned"*, N.Y. TIMES, Sept. 12, 1998, at A1. See generally Nina Burleigh, *In God He Trusts*, GEORGE, Dec. 1996, at 58 (recounting an interview with Clinton concerning his religion and its impact on his political decisionmaking).

74. Balz & Von Drehle, *supra* note 40; Rosin, *supra* note 40.

75. Rosin, *supra* note 40.

76. Hanna Rosin, *Applying Personal Faith to Public Policy: "Changed Man" Advocates Church-Based Programs*, WASH. POST, July 24, 2000, at A1.

77. *The Piety Parade*, *supra* note 41.

78. See Pérez-Peña, *supra* note 65.

An evaluation of religiously informed character, of course, could degenerate into religious bigotry or into irrational hostility toward nonreligious candidates. This risk was certainly substantial in the past. As Lieberman's candidacy suggests, however, there is a growing tolerance for candidates of minority faiths.⁷⁹ The tolerance of voters might not extend to the members of more peculiar religions, and it might not extend to atheists. Even so, it is not clear why voters should be expected to ignore a candidate's religious identity or religious understandings. If religion affects character and if character affects the conduct of public officials, then a candidate's religion would seem an appropriate topic for public discussion and consideration.

V. INVOKING RELIGION AS A SOURCE OF SPIRITUAL MEANING

As I have discussed, candidates and public officials may invoke religion in support of particular governmental policies,⁸⁰ as a positive social force,⁸¹ or as evidence of personal character and morality.⁸² In each of these contexts, religion is invoked politically for its relevance to worldly matters—that is, its relevance to social issues in the temporal world, how those issues should be addressed, and whether particular individuals are well suited to address them. A separate question is whether or how candidates or public officials should invoke religion in its strictly spiritual sense, that is, as a source of spiritual meaning transcending the temporal world and our everyday physical lives. This issue arises when a candidate or public official, in a political or governmental setting, leads or authorizes a prayer or religious ritual or when he or she otherwise makes explicitly spiritual claims, for example, about the nature of God or about eternal salvation.

In connection with the 2000 presidential election, the most notable and controversial episodes concerning the spiritual invocation of religion occurred not during the campaign, but after the election, at the inauguration and during the early presidency of George W. Bush. At the inauguration, ministers offered prayers that included specific references to Jesus Christ. In concluding the ceremony, for example, one minister said that his prayer was submitted “in the name that's above all other names, Jesus, the Christ,” adding, “Let all who agree say, ‘Amen.’”⁸³ Early in his presidency, moreover, President Bush himself spoke at the dedication of a museum honoring the victims of the Oklahoma City bombing. Bush's speech was emotional, poetic, and deeply religious. Bush noted the apostle Paul's admonition, “Be not overcome with evil, but overcome evil with good.”⁸⁴ He went on to promote

79. According to a recent survey, Americans tend to believe that religion should play a more prominent role in society, but they also have a strong respect for religious diversity and are reluctant to base their voting on candidates' specific religious affiliations. *For Goodness' Sake*, Public Agenda Research, at <http://www.publicagenda.org> (last visited May 15, 2001) [hereinafter *For Goodness' Sake*].

80. See *supra* Part II.

81. See *supra* Part III.

82. See *supra* Part IV.

83. Bill Broadway, *God's Place on the Dais: Use of "Jesus" in Inaugural Prayers Breeds Some Worry*, WASH. POST, Jan. 27, 2001, at B9. Bush himself, by contrast, made history by offering an inaugural address that referred to mosques as well as churches and synagogues. *Id.*

84. *Bush Opens Museum Marking Bombing in Oklahoma City: Survivor Says It Leaves*

a particular, and distinctly Christian, sense of spiritual meaning and comfort:

We are never closer to God than when we grieve. . . . [We must] look beyond our lives to the hour when God will wipe away every tear and death will be swallowed up in victory. . . . On this earth, tragedy may come even on a warm spring day, but tragedy can never touch eternity. This is where [the victims] were last; but beyond the gates of time lie a life eternal and a love everlasting.⁸⁵

Bush encountered substantial criticism for the inaugural prayers,⁸⁶ but not for his remarks in Oklahoma City.⁸⁷

Some months later, in response to the deadly terrorist attacks on the World Trade Center and the Pentagon, President Bush declared September 14, 2001, a national day of mourning and remembrance, and he participated that day in a dramatic, nationally televised prayer service at the National Cathedral in Washington. The service was decidedly interreligious. Especially significant was the inclusion of an Islamic cleric, who offered the opening prayer.⁸⁸ Bush himself took the pulpit, offering remarks that were not only eloquent and moving, but powerfully religious. He spoke primarily in nonsectarian terms, but, as he had done in Oklahoma City, he also invoked a Christian understanding of spiritual comfort and eternal life:

We come before God to pray for the missing and the dead, and for those who loved them. . . .

...

This world [God] created is of moral design. Grief and tragedy and hatred are only for a time. Goodness, remembrance and love have no end. And the Lord of life hold[s] all who die and all who mourn. . . .

...

On this national day of prayer and remembrance, we ask almighty God to watch

Legacy for All Americans, ST. LOUIS POST-DISPATCH, Feb. 20, 2001, at A1 [hereinafter *Bush Opens Museum*]. Bush was referring to Paul's statement in *Romans* 12:21.

85. *Bush Opens Museum*, *supra* note 84; cf. *Revelation* 21:4 (Revised Standard Version) ("[God] will wipe away every tear from their eyes, and death shall be no more, neither shall there be mourning nor crying nor pain any more, for the former things have passed away."); 1 *Corinthians* 15:54 (Revised Standard Version) ("When the perishable puts on the imperishable, and the mortal puts on immortality, then shall come to pass the saying that is written: 'Death is swallowed up in victory.'"); *Isaiah* 25:8 (Revised Standard Version) ("He will swallow up death for ever, and the Lord GOD will wipe away tears from all faces, and the reproach of his people he will take away from all the earth; for the LORD has spoken.").

86. See *Broadway*, *supra* note 83.

87. Two months after his Oklahoma City speech, in a radio address on the Saturday before Easter, President Bush used somewhat similar religious language, but this time he conspicuously included non-Christian faiths in his message of rebirth and renewal. He reiterated his belief that "in the end, even death itself will be defeated," and he referred to "the promise of Easter morning," but he also alluded to Passover, and he stated that "[r]enewal is the hope of every person, and the promise of many religions." Katharine Q. Seelye, *Bush Celebrates Easter at an Outdoor Service*, N.Y. TIMES, Apr. 16, 2001, at A12.

88. See Robert D. McFadden, *A Day of Mourning: President, in New York, Offers Resolute Vows Atop the Rubble*, N.Y. TIMES, Sept. 15, 2001, at A1.

over our nation and grant us patience and resolve in all that is to come. We pray that he will comfort and console those who now walk in sorrow. We thank him for each life we now must mourn and the promise of a life to come.⁸⁹

Paraphrasing Paul's letter to the Romans, Bush continued, "As we've been assured: Neither death nor life, nor angels, nor principalities, nor powers, nor things present, nor things to come, nor height, nor depth can separate us from God's love."⁹⁰ Notably, however, Bush did not include the full text from Romans, which refers not simply to "God's love," but to "the love of God in Christ Jesus our Lord."⁹¹ Earlier in his remarks, moreover, Bush emphasized the importance of national unity, including "the unity of every faith and every background."⁹²

The Establishment Clause of the First Amendment generally forbids the government, as such, to endorse or advance the spiritual claims of any particular religion or of religion in general.⁹³ The prohibition on generalized governmental endorsement is controversial, but the prohibition on more specific, sectarian endorsement is not.⁹⁴ Thus, even the Justices most critical of the Supreme Court's contemporary Establishment Clause doctrine agree that the government cannot endorse sectarian spiritual claims, for example, claims supporting the divinity of Jesus Christ or the theological correctness of particular forms of prayer or ritual.⁹⁵

The Establishment Clause extends to individual public officials only to the extent that they are deemed to be speaking for the government and not simply for themselves. One could argue that the President's public pronouncements, at least in the modern era, inevitably speak for the government. Conversely, one could argue that the President—even the President—cannot be denied his individual rights of freedom of speech and religion, and that, as a result, he should be permitted to speak as he pleases, even in offering prayers and in making spiritual claims. Whatever the strictly constitutional analysis, however, it is plain that constitutional policy counsels caution when the President or other public officials offer or endorse sectarian prayers

89. *President's Remarks: "We Are in the Middle Hour of Our Grief,"* N.Y. TIMES, Sept. 15, 2001, at A6.

90. *Id.*; see also *Romans* 8:38-39 (Revised Standard Version).

91. *Romans* 8:39 (Revised Standard Version).

92. *President's Remarks, supra* note 89.

93. See, e.g., *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 316-17 (2000); *Wallace v. Jaffree*, 472 U.S. 38, 56 (1985); *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971); *Everson v. Bd. of Educ.*, 330 U.S. 1, 15-16 (1947).

94. According to the Supreme Court, the general principle that government cannot discriminate between or among religions is "[t]he clearest command of the Establishment Clause." *Larson v. Valente*, 456 U.S. 228, 244 (1982); see also *Everson*, 330 U.S. at 15 (declaring that government cannot "prefer one religion over another").

95. See *Lee v. Weisman*, 505 U.S. 577, 641 (1992) (Scalia, J., dissenting) (conceding that America's constitutional tradition "rule[s] out of order government-sponsored endorsement of religion . . . where the endorsement is sectarian, in the sense of specifying details upon which men and women who believe in a benevolent, omnipotent Creator and Ruler of the world are known to differ (for example, the divinity of Christ)"); see also *Wallace*, 472 U.S. at 113 (Rehnquist, J., dissenting) (agreeing that government is precluded "from asserting a preference for one religious denomination or sect over others").

or when they otherwise make sectarian spiritual claims.

Whether or not it amounts to governmental action as such, a public official making a sectarian spiritual claim in a political or governmental setting—for example, invoking Jesus Christ as a source of spiritual sustenance for the American people—offends the constitutional policy of religious equality. At the same time, such a claim is unnecessary to any worldly purpose and therefore, it would seem, to any proper governmental objective. As a result, dissenting religious believers, as well as nonbelievers, are likely to perceive the sectarian spiritual claim, in context, as not only insulting but gratuitous. In general, therefore, the President and other public officials, in their political capacities, should steer clear of sectarian spiritual claims. Political candidates seeking office are somewhat more removed from the government and therefore might have somewhat more leeway. Because they are campaigning for governmental positions, however, they, too, should generally refrain from making sectarian spiritual claims in their public campaign appearances.

One could argue that public officials, and perhaps political candidates, should always refrain from making spiritual claims, including nonsectarian spiritual claims, when they are speaking in their political capacities. But this would be inconsistent with our national tradition, which, throughout history, has seen presidents and other officials making spiritual claims of a nonsectarian nature.⁹⁶ At least in special times of tragedy or crisis, moreover, it can be fitting and appropriate for political leaders to make spiritual claims that embrace and invoke the general religious sentiments of

96. George Washington issued a Thanksgiving Proclamation, calling on citizens to thank that “great and glorious Being . . . for the civil and religious liberty with which we are blessed.” George Washington, *Proclamation (Nov. 26, 1789)*, in 1 A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 1789-1907, at 64, 64 (James D. Richardson ed., 1908). Other early presidents also issued Thanksgiving Proclamations, including even the religiously reticent James Madison, although he later qualified the nature of his pronouncements. *Id.* at 513, 532-33, 558, 560-61; see also James Madison, *To Edward Livingston, July 10, 1822*, in MADISON: WRITINGS 786 (Jack Rakove ed., 1999). The tradition of Thanksgiving Proclamations has continued to the present day. See, e.g., *President’s Proclamation*, N.Y. TIMES, Nov. 19, 2000, § 1, at 45 (text of President Clinton’s Proclamation for Thanksgiving 2000, declaring a “National Day of Thanksgiving” and encouraging Americans “to express heartfelt thanks to God for our many blessings”).

Abraham Lincoln’s Gettysburg Address referred to “this nation, under God,” and his second inaugural address offered a deeply theological interpretation of the Civil War. *Lincoln’s Gettysburg Address*, at <http://www.bartleby.com/43/36.html> (last visited May 29, 2001); Abraham Lincoln, *Second Inaugural Address*, at <http://www.bartleby.com/124/pres32.html> (last visited May 29, 2001). More recently, President Ronald Reagan stated in his first inaugural, “We are a nation under God, and I believe God intended for us to be free. It would be fitting and good, I think, if on each Inauguration Day in future years it should be declared a day of prayer.” Ronald Reagan, *First Inaugural Address*, at <http://www.bartleby.com/124/pres61.html> (last visited May 29, 2001). In line with President Reagan’s suggestion, President George W. Bush, shortly after his own inauguration, declared a National Day of Prayer and Thanksgiving. See Mike Allen & Edward Walsh, *Bush Calls for Unity, Civility: Texan Sworn in as the Nation’s 43rd President*, WASH. POST, Jan. 21, 2001, at A1.

For a general recounting of the American history of nonsectarian prayer at public ceremonies, see *Lee v. Weisman*, 505 U.S. 577, 632-36 (1992) (Scalia, J., dissenting).

the American people. Both in Oklahoma City and at the National Cathedral, President Bush was speaking in special circumstances of precisely this sort. Even in these special situations, however, the constitutional policy of religious equality counsels against sectarian claims and suggests that the spiritual references should be as religiously inclusive as possible. Whether Bush crossed the line in his remarks is not an easy question. As a religious person, he spoke from the heart, and, in each case, he spoke in the context of a tragedy that, for him and for most of his audience, had profoundly spiritual as well as public significance. His remarks plainly reflected his own Christian theology, and, as such, they were sectarian to a substantial degree. But he did not explicitly invoke Jesus Christ, nor did he offer other, more narrowly focused theological claims. Bush could have used more generic, non-Christian spiritual language, but that might have made his speeches less authentic, less inspirational, and ultimately less effective. Although others might disagree, I do not believe that Bush's religious language was improper or inappropriate, given the particular circumstances in which he spoke and the particular language that he chose.

The sectarian spiritual references during the Bush presidency have been limited, and I doubt that they foreshadow a trend. As noted earlier, ours is a religiously pluralistic society, and, as a result, it is politically treacherous for politicians to publicly invoke particularistic religious values even when those values are directly relevant to governmental policymaking.⁹⁷ It would seem that sectarian spiritual claims are politically risky for the same reason, and that they therefore will be self-limiting. This is certainly true for the spiritual claims of religious minorities, such as Joe Lieberman. Distinctly Christian claims, by contrast, might resonate with many American voters, and one might suppose that they could provide political gain sufficient to offset the political cost that they inflict. In our contemporary political culture, however, most citizens, including Christians, believe that politicians should be sensitive to the interests and sensibilities of religious minorities.⁹⁸ Politicians therefore have political reasons to be cautious about making sectarian spiritual claims in a political setting, even if the sectarian claims reflect a Christian theology that most of their constituents share. As a result, I doubt that political figures, whether Christian or otherwise, will be inclined to make an increasing use of sectarian spiritual claims.

If and when politicians do make sectarian spiritual claims, they are properly subject to inquiry and criticism on the basis of constitutional policy. There are good reasons—spiritual reasons—for offering sectarian prayers and making sectarian spiritual claims in the private domain. In general, however, there are no good reasons for offering such prayers or making such claims in a governmental or political context. In the special circumstances of tragedy or crisis, politicians have somewhat more leeway, but even then, they should be extremely cautious in making sectarian spiritual claims, especially claims that are explicitly sectarian or that depend upon a narrow theological perspective.

97. See *supra* Part II.

98. More generally, Americans strongly embrace religious tolerance and diversity. See *generally For Goodness' Sake, supra* note 79.

CONCLUSION

The 2000 presidential election is an interesting chapter in the history of religion's relationship to American politics and public life. It is also a complex chapter, and it is part of a history that continues to unfold. As a result, the long-term significance of this chapter remains to be seen.

The Charitable Choice initiative⁹⁹ might have a lasting impact, and then again it might not. Any long-term effect on religion and religious freedom, moreover, might not be positive. The road to Charitable Choice is paved with good intentions. But Charitable Choice might have the unintentional effect of skewing American religious pluralism and of undercutting our system of church-state separation, a system under which religion has flourished and prospered.

During the 2000 campaign, presidential and vice presidential candidates also invoked religion and religious values in several other, and distinct, political contexts—as support for particular governmental policies;¹⁰⁰ as the foundation of American society and the American political system;¹⁰¹ and as evidence of the candidates' personal character and morality.¹⁰² In each of these contexts, religion is potentially relevant to worldly political concerns, and its invocation is neither surprising nor (categorically) inappropriate.¹⁰³ The 2000 election might herald an increasing emphasis on religion in these contexts, although religious tolerance and political pragmatism are likely to discourage political candidates from relying openly on controversial or sectarian religious claims, thereby likewise reducing the risk of religious bigotry in the political domain.

The use of religion in a distinctly spiritual context¹⁰⁴ is different, because, in its spiritual dimension, religion generally lacks direct political significance. In a broadly religious society such as ours, it sometimes is fitting for political leaders, in their political capacities, to make nonsectarian spiritual claims, but they generally should avoid sectarian spiritual claims, especially claims that are explicitly or narrowly sectarian. A general presumption against sectarian spiritual claims not only honors sound constitutional policy; it also serves the political interests of politicians, because sectarian spiritual appeals may needlessly alienate voters who would otherwise be supportive. As a result, I doubt that the 2000 election portends an increasing use of such claims.

As I have discussed, the 2000 presidential election demonstrates that religion can play a variety of roles in American politics and public life. Each potential role raises its own set of issues, and each, therefore, should be evaluated independently. In this Article, I have identified some of these diverse roles and have offered tentative appraisals of each, not only in the context of the 2000 election but also with a speculative eye to the future. Although most of my conclusions are tentative, of this

99. *See supra* Part I.

100. *See supra* Part II.

101. *See supra* Part III.

102. *See supra* Part IV.

103. I add the parenthetical qualifier because a complete evaluation of religion's role in each of these contexts might include a variety of more specific considerations.

104. *See supra* Part V.

I am certain: religion will continue to play a part in American politics and public life, and the part that it plays will continue to be contested and debated.