

THE POLITICS OF RELIGION IN THE UNITED STATES FEDERAL
CONTEXT:
THE FAITH-BASED INITIATIVE

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Dissertation Abstract

Nevin Deniz Ekşioğlu, “The Politics of Religion in the United States Federal Context: The Faith-Based Initiative”

Religion in the United States is a complicated, yet often under analyzed and misunderstood, phenomenon. Although it boasts one of the high rates of personal belief in the world, the U.S. is also frequently presented as one of the best examples of institutional separation of church and state available. Despite this, however, recent decades have witnessed the increasing presence of religion and faith in the public sphere and in the political realm. Understanding this reality, along with the simultaneous permeation of the public sphere and the concurrent emphasis on religiosity and religious belief requires analyzing a number of intertwined and overlapping factors. This dissertation seeks to analyze the underlying issues that have contributed to the current atmosphere of neutrality and accommodation towards increased religiosity in the political and public spheres. This is done through a historical analysis of religion in the U.S., a consideration of the role of federalism in allowing for increased religion in politics and public policy, and the in-depth analysis of a recent federal policy, the Faith-Based Initiative, which indicates the new role religion has been able to play in federal, and state, policy.

Despite the decline of religion predictions offered by the secularization thesis, religious belief and practice have played, and continue to play, crucial roles in American political life since the founding of the nation. By considering the historical development of the nation, the degree to which religion was a factor in this development, and the current reality of religion in general, and state-religion relations specifically, this dissertation presents the context for a more in-depth case study analysis of recent federal policies involving religion. Not only have public political attitudes vis-à-vis interaction between religious organizations and government evolved in recent decades, but shifts in judicial opinion have also helped to solidify the development of a new, more accommodating stance towards state-religion relations. Beginning with an analysis of America’s position in general secularization studies, this dissertation then looks carefully at the current position of religion in both the political and judicial realms, and the manner in which this has influenced legislation nationwide.

Using both primary and secondary sources, including Congressional records, Court documents and decisions, government reports and websites, scholarly analysis, and media accounts, the dissertation argues that it is the culmination of these historical and institutional factors that allowed for the rise of two important federal level policies; first the Charitable Choice Amendment of 1996, and second, in 2001, its successor, the Faith-Based and Community Initiative. Together these two programs aimed to enhance the availability of relations between the government and religious social service organizations. The Faith-Based Initiative, its development and implementation by the George W. Bush Administration, its programs, and the challenges the Initiative faced politically, socially, and legally are all examined in detail in order to best present a picture of how the politics of religion function in the federal United States.

Tez Özeti

Nevin Deniz Ekşioğlu, 'The Politics of Religion in the United States Federal Context: The Faith-Based Initiative'

Amerika Birleşik Devletlerinde din komplike ama aynı zamanda genelde yetersiz analize olan ve sıklıkla yalnız değerlendirilmiş olan bir fenomendir. Kişisel inanç seviyesi dünya geneline göre çok yüksek olmasıyla birlikte, aynı zamanda ABD’de din-devlet ayırımı sıklıkla örnek olarak gösterilir. Bu ayırıma rağmen, son senelerde dinin ve inancın varlığı gitgide siyasi ve sosyal arenada yükseliyor. Din-devlet ayırımının gerçeklerini, ve dinin kamu alanındaki yükselen varlığını ve gücünü anlamak için bir takım örtüşen faktörün incelenmesi gerekmektedir. Bu tez bu faktörleri analize edip şu anda din ve dini inancın siyasi ve sosyal alanlardaki rolüne karşı mevcut olan nötr ve açık atmosferi anlamaya çalışır. Bunu yaparken önce dinin Amerikan tarihindeki yerini analize eder, sonra da ülkedeki federal yapının din-devlet ilişkilerindeki yakınlaşmada oynadığı rolü ele alır. Son olarak da yakın zamanda yürürlüğe giren yeni bir federal uygulamayı, Faith Based Initiative’ı dikkatle inceleyerek dinin son yıllarda federal ve eyalet bazında almaya başladığı pozisyonu açıklamaya çalışır.

Dini inanç ve bunun gerekçeleri Amerika Birleşik Devletlerinin kuruluşundan beri siyasi hayatta önemli rol oynamıştır. Laikleşme teorilerinin öne sürdükleri hipotezlerine rağmen, din Amerika’da önemli rol oynamaya devam etmiştir. Tez ülkenin tarihi gelişmesine bakarak dinin bu gelişme sürecinde ne derecede bir faktör olduğunu, günümüzdeki pozisyonunu, ve özellikle şu andaki mevcut din-devlet ilişkilerinin federal siyasi uygulamalarındaki etkisini aydınlatmaya çalışır. Dinin devlet ile ilişkilerindeki yakınlaşma hem kamusal, hem de yargı alanlarında son senelerde yavaş dahi olsa, önemli bir değişim geçirmiştir. Bu değişimler sonucunda ülke genelinde dine karşı daha açık ve uzlaşmaya yönelik bir ortam oluşmuştur. Tez dinin bu yeni pozisyonunu çok yönlü bir şekilde araştırmaya çalışır: hem Amerika’nın genel laikleşme teorilerindeki pozisyonuna bakar, hem de dinin siyasal ve hukuki alanlardaki genel durumuna bakar, son olarak da bu pozisyonun yaşam-yürütme arenasındaki etkisini açıklamaya çalışır.

Tezdeki analiz için hem birinci hem de ikinci el kaynaklar kullanılmıştır. Bunların arasında Kongre tutanakları, mahkeme belgeleri ve kararları, devlet raporları ve internet siteleri, ve akademik ve medya analizler kullanılmıştır. Tezin bulguları tarihsel ve kurumsal faktörlerin değişimlerinin sonucu iki önemli federal uygulamalarını ortaya çıkarır. İlki 1996 yılında onaylanan Charitable Choice Amendment, ikincisi de 2001 de yürürlüğe giren Faith-Based Initiative. İki programında ana temaları devletin soysal hizmetleri veren dini kuruluşları ile olan ilişkilerini kolaylaştırmak ve fazlaştırmaktır. Yukarıda bahsetilmiş olan bağlamsal analizlerin yanı sıra, Amerika’daki dini siyasetlerini daha iyi anlayabilmek için Faith-Based Initiative, George W. Bush hükümeti tarafında geliştirilmesi ve uygulanması, bünyesindeki mevcut programlar, ve siyasi, sosyal ve hukuki alanlarında karşılaştığı itirazlar tezde detaylı bir şekilde ele alınmıştır.

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CHAPTER ONE

INTRODUCTION

The Politics of Religion in the United States Federal Context

The Faith-Based Initiative

On January 29, 2001, George W. Bush signed an Executive Order officially creating the Office of Faith-Based and Community Initiatives.¹ One of the Bush Administration's early priorities, this Office was created in an effort to further the President's self-proclaimed goal of working towards the creation of a society in which he could "rally the armies of compassion" and encourage faith-based and community-based social service groups and providers "to step up to the plate" and work to fill the gaps that often occurred with federal social service programs.² Many academic accounts have since shown that beginning with the arrival of the

¹ Issued on January 29, 2001, Executive Order 13198 established the Agency responsibilities related to the Faith-Based and Community Initiative; situating Centers for Faith-Based and Community Initiatives within the Departments of Housing and Urban Development, Health and Human Services, Justice, Labor, and Education. Its counterpart, Executive Order 13199, outlined the same responsibilities and regulations for the White House Office of Faith-Based and Community Initiatives and officially created the Office as part of the Bush Administration's White House. For the full text of both Executive Orders "Executive Orders Creating White House Office of Faith-Based and Community Initiatives," <http://georgewbush-whitehouse.archives.gov/government/fbci/executive-orders.html>.

² George W. Bush, *A Charge to Keep: My Journey to the White House* (New York: Perennial, 1999), 232.

original colonizers in the United States, religious organizations and congregations have continuously played significant roles in providing social services; not only to their own flocks, but also to the general public. As Ram A. Cnaan explains, based on historical accounts and then, as they became available, local newspaper accounts, early churches served as the main focal point for the settlers and their small communities while also serving as community centers and providing local leadership. Needy members of the community were singled out by church leaders, who then encouraged congregants to provide both material and spiritual support and understanding.³

While religious organizations and their involvement in service activities continued through the late colonial era and early years of the United States, the late 1800s and early 1900s saw the height of this type of philanthropic action on the part of religious organizations. Industrialization, accompanied by both internal migration and immigration to American shores disrupted the traditional social circumstances of many citizens and led to the need for further social services. As Barrington Moore, working from historical accounts written by and large during the period under examination, explains in his *Social Origins of Dictatorship and Democracy*, during the early Industrial era, farming, particularly in the Northeastern United States, was rapidly replaced by burgeoning industrialization and the rise of factories. Farming became more localized in the South and West and increasingly,

³ Ram A. Cnaan, *The Newer Deal: Social Work and Religion in Partnership* (New York: Columbia University Press, 1999).

young people began to leave their homes to find work in urban factories.⁴ Along with these fresh rural labor recruits, newly arrived immigrants did not have the same family-based social safety networks they had enjoyed in their home countries, and the new trend of capitalism dictated a “survival of the fittest” attitude that often allowed people to fall through the cracks of traditional social relationships.⁵

Churches were consistently havens for the needy or newly arrived. People were able to function as communities resembling those they had left behind in their homelands, within their chosen religious organizations, and traditional means of outreach were encouraged and expected within these communities. During this time, many religious organizations also began to create institutional arms of their outreach programs in an effort to go beyond their own congregations.

Organizations such as the Salvation Army,⁶ an organization based on evangelical

⁴ In Chapter Three of *The Social Origins of Dictatorship and Democracy*, Moore looks extensively at the manner in which changes in trade relations, industrialization, and frontier expansion in the United States changed not only the demographics of the nation, but also were leading causes in the Civil War. According to Moore, one final result of these economic, political, and demographic adjustments was a significant shifting of the power and role played by the federal government, then and now. Barrington Moore, *The Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World* (Beacon Press, 1993).

⁵ Theda Skocpol has looked at the manner in which women in particular were affected by the changing economic landscape. Specifically, the fact the fallout from World War One and the Great Depression placed women in the class of the “deserving needy” who were supported not only by their local communities and churches, but also were included in the early governmental efforts to create a social welfare system. Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, Mass: Harvard University Press, Belknap Press, 1992), 65.

⁶ The Salvation Army was first founded in 1865 in London, England, by William Booth with the aim of spreading the Christian faith. The self-proclaimed objective of the organization, as declared in the Salvation Army Charter of 1980, is, “the advancement of the Christian religion...of education, the relief of poverty, and other charitable objects beneficial to society or the community of mankind as a whole”. Its mission statement reads, “The Salvation Army, an international movement, is an evangelical part of the universal Christian Church. Its message is based on the Bible. Its ministry is motivated by the love of God. Its mission is to preach the gospel of Jesus Christ and to meet human needs in His name without discrimination.” The system of organization of the group is based on a quasi-military structure which members credit with its successful ability to maximize efficiency and

Christian beliefs; Catholic Charities USA,⁷ now the second largest social service organization in the United States—surpassed only by the federal government itself; the Jewish Community Centers and Young Men’s and Women’s Hebrew Associations,⁸ both originally established to support newly arriving Jewish immigrants and their families; and the Young Men’s and Women’s Christian

efficacy in its use of material resources and personnel. Personnel are required to focus on leading disciplined and compassionate lifestyles, while abstaining from tobacco and alcohol use. From the start, the Salvation Army has focused its energies specifically on providing women with equal opportunities and working for the social betterment of the poor; especially through ensuring that poverty-stricken citizens are given tools and resources to change their circumstances. In addition, the primary social services the Salvation Army offers include, addiction therapy, health services, social work, emergency response, and family tracing."The Salvation Army," www.salvationarmy.org.

⁷ Catholic Charities USA was originally founded on the campus of Catholic University of America in Washington, DC in 1910 as the National Conference of Catholic Charities. The original purpose of the Conference was to promote the creation of diocesan Catholic Charity bureaus, encourage professional social work efforts with the poor, and “to bring a sense of solidarity” among those in charitable ministries and to be “the attorney for the poor.” Catholic Charities focuses on the alleviation of poverty, especially through the promotion of education about poverty relief in the media and general public, facilitation of networking and communication between other organizations committed to social justice, through the provision of training, technical assistance, financial support and leadership in developing model programs and services, and efforts to enable local agencies to better devote their own resources to serving their communities. Finally, Catholic Charities USA represents and helps to mobilize and organize the Catholic community in times of domestic disaster. "Catholic Charities USA," www.catholiccharities.usa.org.

⁸ The Jewish Community Centers (JCCs) of North America and the Young Men’s and Women’s Hebrew Associations (YMHA, YWHA) have come to function in tandem in their efforts to promote and support the Jewish Community currently residing in the United States. Originally founded in Baltimore in 1854, the original Young Men’s Hebrew Association aimed to “provide support for Jewish immigrants, help ensure Jewish continuity, and to provide a place for celebration”. As described on their website, “As immigration swelled in the late nineteenth century, YMHAs and JCCs helped immigrants adapt to North American life by teaching them English, assisting their acculturation to new customs and mores, and helping them to participate fully in the civic responsibilities and opportunities of their new democratic home.” As the general demographics of the American Jewish community have shifted from urban lifestyles to more suburban ones, the primary efforts of the JCCs of North America have also adapted and their focus has become the provision of more opportunities for community-building, education, recreation, and leisure. JCCs also provide important links to Israel. According to the Jewish Community Centers of North America website, today, “The JCC Movement is leading the way to a vibrant future by establishing cooperative ventures with local and national Jewish organizations, by supporting Jewish culture, community, and education, and by encouraging and enabling Jews of all ages and backgrounds to engage in the joys of Jewish living.” Richard W. Garnett, "Free to Believe," *First Things* (2007).

Associations,⁹ originally designed with the goal of “putting Christian principles into practice, achieved by developing ‘healthy spirit, mind, and body’”¹⁰; all have their starts during the second half of the 19th century; the height of urbanization, industrialization, and rapid migration. These organizations, centered on religious congregations and their core beliefs, have since blossomed into far-reaching, non-discriminatory service organizations.

Recognizing the vital role that these organizations have played in the past, and continue to play in the provision of social services, President George W. Bush introduced the Faith-Based Initiative early in his Presidency. In his first address to Congress on February 27, 2001, Bush outlined his belief that,

We must encourage and support the work of charities and faith-based and community groups that offer help and love, one person at a time. These groups are working in every neighborhood in America to fight homelessness and addiction and domestic violence, to provide a hot meal or a mentor, or a safe haven for our children. Government

⁹ The first Young Men’s Christian Association was founded in 1844, in London, England, by George Williams; a department store worker who recognized that the current era of industrialization and urbanization could be difficult to maneuver for young men recently arrived in the city. The aim of the organization was simply to gather together for Bible study and friendship, while providing a refuge from life on the streets. In 1851, a retired sea captain, Thomas Valentine Sullivan, who recognized that seamen faced similar dangers during their shore leave founded the first American YMCA in Boston, MA. Today, YMCAs are found in more than 10,000 neighborhoods in North America. "The Y: YMCA," YMCA of the USA, www.ymca.net. The Young Women’s Christian Association was originally founded in 1858 in New York City under the name, the Ladies Christian Association. By 1860 it had opened its first boarding house aiming to accommodate female students, teachers and factory workers. The term “YWCA” was first introduced in 1866 in the Boston branch of the organization. Today, the YWCAs of North America focus specifically on empowering women, supporting women’s economic advancement, and eliminating racial injustices. The mission statement of the organization, as published on their website, states, “YWCA is dedicated to eliminating racism, empowering women and promoting peace, justice, freedom and dignity for all.” Within this mission, the YWCA has two hallmark programs, the program for Racial Justice, and the Women’s Economic Advancement program. In 2007, the YWCA annual report showed that the organization had net assets of 74 million dollars, making it a leading non-profit organization in the United States. "Eliminating Racism: Empowering Women: YWCA," YWCA USA, www.ywca.org.

¹⁰ "The Y: YMCA".

should welcome these groups to apply for funds, not discriminate against them. Government cannot be replaced by charities or volunteers. Government should not fund religious activities, but our Nation should support the good works of these good people who are helping their neighbors in need.¹¹

As such, Bush proposed removing pre-existing barriers to federal dollars so as to allow faith-based organizations, large and small, to continue to augment the existing federal social service provision mechanism. Bush pushed the Initiative under the auspices that providing federal funding to these groups might have a dual effect, first, these organizations, as well-endowed, compassionate actors, would be better equipped to serve the nation's needy, and second, their ability to potentially ease the overall burden on the struggling federal welfare system would benefit the nation as a whole.¹²

Recent administrations have taken steps to focus national attention on the perceived and actual impact that these organizations are having on the United States social service landscape. The recognition that these organizations are playing an important role in the national and local provision of social service needs and may actually be more effective, and able to cause deeper, longer lasting changes in people's lives is the foundation of the Bush-era Faith-Based Initiative and its predecessor, the Charitable Choice Amendment. Although members of the Bush Administration, and President George W. Bush himself make bold claims as to the heightened effectiveness and capabilities of faith-based organizations in social

¹¹ Address by the President of the United States, George W. Bush, February 27 2001.

¹² Terry M. Neal, "Bush Outlines Charity-Based Social Service Policies," *Washington Post*, July 23 1999.

service provision, actual academic and scholarly attention to the question is sparse and not yet concrete. Scholars of religious congregations such as Mark Chaves, Heidi Rolland Unruh, and Ronald Sider note that, often, congregations do not actually provide any type of services to people outside of their congregations.¹³ Furthermore, the services that they actually may provide tend to focus on only a certain few types of efforts, rather than attempting to become far-reaching all-encompassing service organizations. ~~Mark~~ Chaves, for example, in *Congregations in America*, analyzes the National Congregations Study of 1998, the most comprehensive and exhaustive study of American congregations to date, and concludes that “congregations are not, in general, social service organizations. The vast majority devote little of their energy or resources to social services, and they play—and will continue to play—only a small role in our society’s social service system.”¹⁴ Congregations that do offer social service programs share certain traits; they are generally large and better endowed, hail from low-income areas, are liberal as opposed to conservative congregations, focus their immediate efforts on their own members, and, in the case that they do work in the larger community, tend to undertake projects that are short-term and specific.¹⁵

On the other side of the spectrum, although respondents to surveys conducted concerning their experiences with both faith-based social service

¹³ For more detailed explanations by these authors see, Mark Chaves, *Congregations in America* (Cambridge, MA: Harvard, 2004); Heidi Rolland Unruh and Ronald J. Sider, *Saving Souls, Serving Society: Understanding the Faith Factor in Church-Based Social Ministry* (New York: Oxford University Press, 2005).

¹⁴ Chaves, *Congregations in America*: 8.

¹⁵ *Ibid.*, 91-93.

providers and government offices aiming to provide similar or identical services have often indicated their preference for religious-based social services, it is difficult to classify whether the organization itself is having a greater impact due to the spiritual content of its program, or whether people with a previous inclination to be religious happen to also be more significantly impacted by religious programming. In other words, explain critics of faith-based services, figures touting not only personal rehabilitation, but also personal salvation, may be exaggerated. They note, that it may be the case that primarily individuals who were previously spiritual choose to participate in faith-based programming; thus the supposedly high influence and effect of faith-based services may not truly exist.¹⁶ In an effort to pinpoint the effectiveness and efficiency often touted by proponents of faith-based social services, experts in both the fields of social work and religion such as Bob Wineberg, Ram A. Cnaan, Stephanie C. Boddie, and Stephen Monsma have undertaken significant efforts to quantify and classify the types and amount of social services being received from religious social service providers and then compare these results with client responses in terms of perceived efficacy and efficiency.¹⁷ Overall, these authors, while focusing on different aspects of the question, have

¹⁶ JoRenee Formicola, Mary C. Segers, and Paul Weber, *Faith-Based Initiatives and the Bush Administration: The Good, the Bad and the Ugly* (Landham, MD: Rowan and Littlefield, 2003), 54-55.

¹⁷ For further analysis of the topic by these authors see, Bob Wineberg, *Faith-Based Inefficiency: The Follies of Bush's Initiatives* (Westport, Conn: Praeger, 2007); Stephen V. Monsma, *Putting Faith in Partnerships: Welfare-to-Work in Four Cities* (Ann Arbor: The University of Michigan Press, 2004); ———, *When Sacred and Secular Mix: Religious Nonprofit Organizations and Public Money* (Lanham: Rowman & Littlefield, 1996); Unruh and Sider, *Saving Souls, Serving Society: Understanding the Faith Factor in Church-Based Social Ministry*; Stephanie C. Boddie and Ram A. Cnaan, eds., *Faith-Based Social Services: Measures, Assessments, and Effectiveness* (New York: The Hayworth Pastoral Press, 2006). Full analysis of the efficacy of faith-based organizations, in particular after the creation and implementation of the Faith-Based Initiative goes beyond the scope of this dissertation and will be addressed in later publications.

converged on the conclusion that, attempting a vast, nation-wide statistical analysis of the results of the Faith-Based Initiative is difficult, inaccurate, and does not shed light on the real picture that has emerged in the wake of the Bush Administration's regulatory changes.

Instead, these authors offer more specific analysis. While they have each looked at different aspects of the question and different types of service providers, there is general agreement that efforts to increase government partnership with faith-based service providers has not been as effective as hoped, nor has the effect of those partnerships created increased the number of positive results from service as imagined. The overall efficacy and efficiency increase that was expected at the start of the project has not occurred, a failure that Wineburg attributes to the fact that, "President Bush's Faith-Based Initiative has been a top-down, inside the Beltway effort that has promoted more competition for fewer dollars because the effort is not really geared to enhance effective service delivery but rather to promote right-wing Evangelical Protestant social services while starving equivalent government programs."¹⁸ On a less critical note, Monsma points out that while faith-based providers may be very successful in terms of specialized or niche services, the idea that activity on such a small and specific level will cause a significant degree of change in the service environment seems unlikely.¹⁹ As Unruh

¹⁸ Bob Wineburg, *Faith-Based Inefficiency: The Follies of Bush's Initiatives* (Westport, Conn.: Praeger Books, 2007), xi.

¹⁹ Stephen V. Monsma, "The Effectiveness of Faith-Based Welfare-to-Work Programs: A Story of Specialization," in *Faith-Based Social Services: Measures, Assessments, and Effectiveness*, ed. Stephanie C. Boddie and Ram A. Cnaan, *Journal of Religion and Spirituality in Social Work, Vol. 25. Numbers 3/4* (New York and London: The Haworth Pastoral Press, Inc, 2006), 194.

and Sider find in their case-study based analysis, the actual number of congregations projected to take advantage of the new measures is slim; thus decreasing the potential effect these congregations may have.²⁰ Boddie and Cnaan, in their edited volume, *Faith-Based Social Services: Measures, Assessments, and Effectiveness*, bring together the views of a plethora of authors who have all attempted to clarify, classify, and pinpoint the manner in which faith-based social services have functioned and might continue to function in the contemporary service landscape. Nearly all these authors emphasize that little empirical data exists to support the increased efficacy claim. Instead, Boddie and Cnaan argue, increased efficiency and efficacy that may simply be the result of changes in supply and demand; more providers results in more competition and, thus, better services.²¹

Based on these experiences and designed with the purported aim of increasing opportunities for religious organizations to partner with and function in tandem with the federal government, and, most importantly, to be eligible to receive federal funding without modification of their religious status; the Faith-Based Initiative quickly became a flashpoint of debate. Previously, although religious social service organizations had been required to create separate secular, non-profit branches, known as 501c3 branches²², of their organizations to which federal funds would actually be delivered, faith-based service providers, such as the Salvation

²⁰ Unruh and Sider, *Saving Souls, Serving Society: Understanding the Faith Factor in Church-Based Social Ministry*: 250.

²¹ Boddie and Cnaan, *Faith-Based Social Services: Measures, Assessments, and Effectiveness*, 12.

²² Stanley Carlson-Thies, "Charitable Choice 101- An Introduction," Center for Public Justice, <http://www.cpjjustice.org/charitablechoice/101introduction>.

Army or Catholic Charities mentioned above, were actually recipients of significant amounts of federal dollars. In fact, analysis of the Salvation Army's yearly budgets shows that in many fiscal years, the federal government was the organization's largest single benefactor.²³ Given this, the Bush Initiative to remove barriers to federal funding to such organizations was received with much skepticism by observers, especially those, such as the Americans United for the Separation of Church and State, and others concerned with any potential violations of the First Amendment clause which states, "Congress shall make no law respecting an establishment of religion..."²⁴ Due to the fact that successful partnerships with the federal government had existed prior to Bush's Executive Orders, critics and scholars in many arenas; politics, social work, religion, and law, have questioned the underlying motives of the Faith-Based Initiative and taken steps to analyze and explain the "reality" of the Faith-Based Initiative.

Both Charitable Choice²⁵ and the Faith-Based Initiative were part of a new political and social philosophy that had been gaining ground since the late 1970s among conservatives throughout the country. Poverty relief and America's general welfare system have consistently been a contentious issue among conservatives and

²³ The Salvation Army often receives up to 15 percent of its operating budget from federal funds. For further information concerning the relationship between the Salvation Army and the federal government see, D Winston, *Soup, soap, and salvation: The impact of Charitable Choice on the Salvation Army* (Annapolis: Center for Public Justice, 2000).

²⁴ The First Amendment in its entirety states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The U.S. National Archives and Records Administration, "The Charters of Freedom: A New World is at Hand," www.archives.gov.

²⁵ "What is Charitable Choice?," United States Department of Health and Human Services, <http://www.hhs.gov/fbci/choice.html>; Carlson-Thies, "Charitable Choice 101- An Introduction".

liberals. Since America's founding, politicians on both sides of the political spectrum have had to address the question of poverty relief. Generally speaking, liberal politicians have been more willing to offer social assistance and aid to poor citizens, regardless of circumstances, and with fewer strings attached. Conservatives, on the other hand, have scrutinized poverty relief programs, called for reforms and demanded that distinctions be drawn between those they consider "deserving poor", including widows, children, and the un-employable, and those, such as the notorious "welfare queens" of the 1980s, who seem to "choose" to remain impoverished so as to benefit from government programs and money. Critics of these views accuse conservatives of practicing Social Darwinism, in which only the fittest survive or prosper, to a fault and call upon government to provide increasingly unfettered social services.²⁶

In conservative circles, one reaction to the social services debate has been the development of the ideology of "compassionate conservatism". Focused on enhancing traditional conservatism with faith, belief, and compassionate action, proponents of this ideology hope they will be able to change the traditional view of conservatives as ruthless, uncaring political and economic capitalists who pay little attention to the plight of the needy. Compassionate conservatism, as a specific philosophy, was first envisioned by Marvin Olasky and outlined in *The Tragedy of American Compassion*. Olasky's book is a response to conservatives and liberals alike. Although he pointedly dismisses the ideas of Social Darwinism and the survival of the fittest as touted by conservatives, Olasky does not give fodder to the

²⁶ Tony Platt, "The State of Welfare: Crises and Challenges," *Social Justice* 31, no. 1/2 (2001); John C. Weicher, "Reforming Welfare: The Next Policy Debates," *Society* 38, no. 2 (2001).

liberal notions that the only way to eradicate poverty and help the underclass is through the introduction of more government programs or aid. Instead, Olasky calls upon conservatives; strict, hard-working, and faithful members of society, to offer human aid and, in doing so, provide first-hand examples of change to the underclass. Compassionate conservatives, Olasky explains, should design, implement, and participate in faith-based community services; as such, they will aid the underclass in both material and spiritual terms. Simply compassion and faith are not enough for Olasky, the conservative attitude, centered on a strict work-ethic, rigid belief structure, and determination to succeed, are also necessary. These traits in combination with a strong religious faith represent what is truly necessary to lift the American underclass out of persistent poverty and strife.²⁷

Olasky's book, and the idea of compassionate conservatism caught the attention of George W. Bush, then governor of Texas~~-governor~~, and quickly became part and parcel of his Presidential campaign. Like Olasky, Bush believed that, "Government can do certain things very well, but it cannot put hope in our hearts or a sense of purpose in our lives."²⁸ The pinnacle point of the Bush campaign's promise of compassion was the Faith-Based Initiative. Building on the original policy of Charitable Choice, which the state of Texas, under Bush, ~~had been among~~ the first to implement, ~~in the state of Texas~~, the Bush campaign's Faith-Based Initiative drew on ideas of Olasky and Myron Magnet, another conservative author.

²⁷ Marvin Olasky, *The Tragedy of American Compassion* (Wheaton, IL: Crossway Books: A Division of Good News Publishers, 1992).

²⁸ Stephen Mansfield, *The Faith of George W. Bush* (New York: Jeremy P. Tarcher/Penguin, 2003), 101.

who argues that the crux of American poverty lies in the existing American social culture, which has moved away from faith, belief, and the idea of consequences, in favor of a more indulgent, self-serving lifestyle. Magnet, like Olasky, is convinced that only a return to ideas of personal responsibility, hard work and sacrifice will raise the underclass out of poverty.²⁹ Bush and his team combined these two similar philosophies and from them developed not only the Bush Administration's general outlook of compassionate conservatism, but also the specific program of federal aid and attention to faith-based and community organizations.³⁰

Although the Faith-Based Initiative that the Bush Administration introduced early in on January 2001¹⁰, just after President Bush's inauguration, differed only in degree and depth from the previous program of Charitable Choice, the Clinton Administration's much more liberal outlook and general unwillingness to put it into practice staved off the overarching, nation-wide debate over faith-based social services, and more specifically, the question of the constitutionality of federal funding for faith-based organizations that had been brewing since 1996. With George W. Bush's Executive Orders of 2001, however, observers, scholars, and critics alike have begun to question the motivations of the Bush Administration, the social ramifications of the program in both the short and long terms, and legal concerns, especially in light of the First Amendment's Establishment Clause.³¹

²⁹ Myron Magnet, *The Dream and the Nightmare: The Sixties' Legacy to the Underclass* (San Francisco: Encounter Books, 1993).

³⁰ Ronald Kessler, *A Matter of Character: Inside the White House of George W. Bush* (New York: Sentinel: Penguin Group), 58.

³¹ The Establishment Clause states, "Congress shall make no law respecting an establishment of religion" Administration, "The Charters of Freedom: A New World is at Hand".[See Appendix A.](#)

Using the Faith-Based Initiative as a case study, this dissertation will consider the opportunity that studying the Initiative provides for a clear contextualization of two ~~its representation of an almost ideal combination of~~ specific aspects of the American political reality—the separation of church and state and the federal system of government. First, Bush’s Initiative, in funding religious organizations with public monies, allows for an inquiry into the American phenomenon of separation of church and state. Seen by many scholars of state-religion relations, such as Peter Berger and Jose Casanova³² in the past, and Ahmet Kuru, Pippa Norris, Ron Inglehart, and Jonathon Fox in the present, as an “exceptional” example of nearly perfect secularization and separation of church and state,³³ the Faith-Based Initiative and its blurring of the lines in the relationship between state and religious organizations casts doubt upon these scholars’ readings of American secularism. Generally “explained away”, or worse, simply ignored in contemporary studies of state-religion relations, American-style separation of church and state is not the solid, static phenomenon it is often depicted to be. Based on this ever-changing fluid aspect of American political, religious, and legal life, this dissertation will seek to use an historical analysis of Charitable Choice and the

³² See, Jose Casanova, *Public Religions in the Modern World* (Chicago, IL: University of Chicago Press, 1994); Peter Berger, *The Sacred Canopy* (New York: Anchor Books, 1967, 1990); ———, “The Desecularization of the World: A Global Overview,” in *The Desecularization of the Global World: Resurgent Religion and World Politics*, ed. Peter Berger (Grand Rapids, MI: William B. Eerdmans Publishing Company, 1999).

³³ See Ahmet Kuru, *Secularism and State Policies Toward Religion: The United States, France, and Turkey* (Cambridge: Cambridge University Press, 2009); Pippa Norris and Ronald Inglehart, *Sacred and Secular: Religion and Politics Worldwide* (Cambridge, UK: Cambridge University Press, 2004); Jonathan Fox, *A World Survey of Religion and the State*, Cambridge Studies in Social Theory, Religion and Politics (Cambridge, New York: Cambridge University Press, 2008).

Faith-Based Initiative and the Presidencies they have spanned to further consider the reality of religion and politics in the United States.

In addition, analysis of the Faith-Based Initiative helps to illuminate another specific aspect of U.S. politics, the federal system. While federal states exist throughout the world, the prevailing federalism of the United States has attracted the attention of scholars and observers as far back as Alexis de Tocqueville in the early 19th century.³⁴ The manner in which state-federal relations evolve and change in the United States; with federal level decisions often carried out only at the state level, or state-based programs picked up and enhanced to fit the federal picture, can be seen clearly in the development and solidification of the Faith-Based Initiative. In addition, understanding the manner in which the federal structure of the United States functions will help to provide a clearer view of how the separation of church and state, and the persistent religiosity of America, have shifted and flowed over the past two and a half centuries. The Faith-Based Initiative offers an exceptional case study with which to study these two dynamic aspects of U.S. politics, state-religion relations and federalism, both as separate entities and in interaction with one another.

America as the Exception to the Rule

The idea that these aspects of American social and political life are “exceptional” has consistently arisen as a theme of both scholarly and popular literature dealing

³⁴ Alexis de Tocqueville, *Democracy in America*, ed. Richard D. Hefner (New York, New York: Signet Classic, 2001).

with the United States.³⁵ Discussions of this sort range from analyses of American politics to culture, religion to work ethic, and beyond. Perhaps one of the very first intellectuals to bestow this delineation upon America was the young Frenchman, Alexis de Tocqueville who travelled in the United States during the early 19th century. Tocqueville, who wrote from the perspective of a detached social scientist, observed that the United States was unique among its peers as it was not only the “lone successfully democracy” of its time, but also in that, unlike its European counterparts in particular, it had no feudal past, nor had it, in its struggles for freedom, been required to overcome a royal family that resided on its shores. In addition, Tocqueville found that the overall attitude of Americans was “exceptional”; the American people were primarily socially egalitarian; awards and positions were based on a meritocracy as opposed to the traditional European class-based system; individuality and basic human rights were critical aspects of everyday life; and finally, religious belief and practice were strongly emphasized. Tocqueville’s analysis honed in on the religious component of American life and he points out that “...there is no country in the world where the Christian religion retains a greater influence over the souls of men than in America.”³⁶

____ In *Democracy in America*, the compilation of the observations made during his trip, Tocqueville notes that, the people’s general personalities and characters

³⁵ Joyce Appleby explains that historically, “Before America became a nation, it was a phenomenon.” Joyce Appleby, “Recovering America’s Historic Diversity: Beyond Exceptionalism,” *The Journal of American History* 79, no. 2 (1992): 419. See also, Seymour Lipset, *American Exceptionalism: A Double-Edged Sword* (W.W. Norton & Company, 1996).; Tocqueville, *Democracy in America*.

³⁶ ———, *Democracy in America*: 314.

were constantly reinforced by the "nonconformist", largely congregationally organized Protestant sects that dominated the American religious landscape and represented the norm in the 1800s. Catholic immigration had not yet begun in earnest and other religious groups, such as the Quakers or Jews remained significant minorities. American Protestantism emphasized an individual's personal relationship with God; people held the key to their own salvation. Through hard work, piety, and devotion each individual was able, in theory, to touch God. This was in sharp contrast to the religion of Europe, which was based on state-supported hierarchically organized churches, catering mainly to the elites.³⁷ In addition, the American type of religiosity that Tocqueville observed was a key component in the development of American democracy. Tocqueville argued that, the "form of Christianity" in early America was "a democratic and republican religion"; this type of religion "trained men" in the type of self-restraint that was required to have a functioning, healthy democracy. As a result, Tocqueville pointed out, "...while the law permits Americans to do what they please, religion prevents them from conceiving, and forbids them to commit, what is rash or unjust."³⁸ This self-restraint was, according to Tocqueville, a truly novel situation that allowed America to become a democracy, yet still manage to avoid the danger of a tyrannical majority, without requiring the existence of a strong, elitist, aristocratic class that would dictate behaviors.

In addition to the role that religion played as an instrument of self-restraint

³⁷ Ibid., 309.

³⁸ Ibid., 316.

and guidance, America, as a nascent democracy, was exceptional, according to Tocqueville, due to its functional and strong federal system. Again in *Democracy in America*, Tocqueville delves into his analysis of the federal system as designed and implemented in the United States. Specifically, Tocqueville debates the advantages and disadvantages that federalism as a system may hold. He argues that the crucial, and powerful element in federalism is that it enables politicians to focus their immediate attention on smaller, more effectively governable units of government, while then also allowing them to benefit from the power that comes along with being a “big” nation; geographically and demographically. For Tocqueville, America’s “exceptionalism” was to be found in its radical departure from the European system of the day. Americans shared an open and deeply penetrating religion, a common outlook on life, and a desire to create and sustain not only more local and individualized systems of governance, but also an overarching, powerful national government. Europe, on the other hand, remained hierarchical, class driven, focused on the personal advancement and national power. The idea of coming together for a common philosophy or purpose was, at that time a distant dream.

Since Tocqueville, the focus on the “exceptional” nature of America and its people has continued. The most widely cited and read author of “American Exceptionalism” is Seymour Lipset.³⁹ In his two seminal works on the subject, *The*

³⁹ The idea of American Exceptionalism as an analytical description and category is not considered in detail in this dissertation. For further reading on American Exceptionalism see, Lipset, *American Exceptionalism: A Double-Edged Sword*; ———, *The First New Nation: The United States in Historical and Comparative Perspective* (New York: Basic Books Inc., 1963). Peter Schuck and James Q. Wilson, eds., *Understanding America: The Anatomy of an Exceptional Nation* (New York: Public Affairs, 2009); Godfrey Hodgson, *The Myth of American Exceptionalism* (New Haven, CT:

First New Nation: The United States in Historical and Comparative Perspective and *American Exceptionalism: A Double Edged Sword*, along with in numerous articles, Lipset focuses on the idea that America, in all realms- political, social, and economic- has made exceptional achievements, primarily as a result of its exceptional characteristics, and because it has always defined itself ideologically.⁴⁰ Lipset's analysis starts where Tocqueville's leaves off, building on Tocqueville's ideas and confirming the continuation of all the aspects he had admired in America and its citizens. Looking at America in historical and comparative perspective, Lipset attempts to explain the unique and exceptional in American politics and social life by offering insight into the manner in which American values and life have been shaped by America's experiences following its break with its colonial master, England. Lipset notes ~~Noting~~ that the United States was the first nation in history to break free from colonialism and strike out on its own as an independent, democratic nation. Although eventually America was able to acquire legitimacy primarily based on the virtue that time had proved that its system was effective, the original design of the nation was highly debated and implementation was tenuous.⁴¹ Generally speaking, colonial rule had served as an overarching unifier that helped

Yale University Press, 2010); Edward A. Jr Purcell, *Originalism, Federalism, and the American Constitutional Enterprise: A Historical Inquiry* (New Haven, CT: Yale University Press, 2007); David W. Noble, *Death of a Nation: American Culture and the End of Exceptionalism* (Minneapolis, Minnesota: University of Minnesota Press, 2002); Andreas Hess, ed. *American Social and Political Thought: A Reader* (New York: New York University Press, 2003); Deborah L. Madsen, *American Exceptionalism* (Jackson, Mississippi: University Press of Mississippi, 1998); Charles Lockhart, *The Roots of American Exceptionalism: Institutions, Culture, Policies* (New York: Pgrave MacMillan, 2003); Donald R. Pease, *The New American Exceptionalism* (Minneapolis: University of Minnesota Press, 2009).

⁴⁰ J. Victor Koschmann, "Review: The Nationalism of Cultural Uniqueness," *The American Historical Review* 102, no. 3 (1997): 762.

⁴¹ Lipset, *The First New Nation: The United States in Historical and Comparative Perspective*: 59.

smooth significant political and social cleavages that existed among the newly established political units. The feeling of unity and connection that America's Revolutionary War had fostered dissipated soon after the American side was declared victorious and the ~~Federal Constitutional~~ Convention in Philadelphia struggled to reconcile the differences of opinion between the Federalists and Anti-Federalists.⁴²

Along with general economic success, a number of factors played significant roles in helping to establish a national identity that could then serve to enhance America's national unity. Early on, America's national identity was formulated based on the notion of revolutionary and democratic values. Populist and provincial values were strong, as was a focus on the opportunities offered by the new nation, and its large, open frontier, in particular. Religious values, especially in the form of Puritanism and the Protestant work ethic were particularly important as religion represented one of the only "traditional" values of the fledgling nation.⁴³ Specifically, these dominant Puritan and Protestant interests, which in time also developed into an all-encompassing secular type of "Americanness", served to legitimize all sectors of American life.⁴⁴ Returning to Tocqueville, Lipset explains,

⁴² Further detail and description of the debates that occurred during the Constitutional Convention will be provided in ~~Chapter One~~Chapter Four. Ibid., 32-34.

⁴³ Ibid., 90-94.

⁴⁴ ———, "Religion in America: What Religious Revival?," *Review of Religious Research* 1, no. 1 (1959). Lipset's continued analysis of American religiosity attempts to show that the relevance of religion in America's national identity has not diminished and that religion has remained a significant factor in American life since the creation of the Republic. ———, "Beyond 1984: The Anomalies of American Politics," *PS* 19, no. 2 (1986).

The Puritan tradition may also have made it easier to legitimize American democracy as the rule of law. Tocqueville saw the special need of an egalitarian and democratic society for a self-restraining value system that would inhibit the tyranny of the majority, a function supposedly once fulfilled in the European societies by a secure and sophisticated aristocratic elite. In a democracy only religion could play this role, and therefore the less coercive the political institutions of such a society, the more it has need for a system of common belief to help restrict the actions of the rules and the electorate.⁴⁵

In addition, Lipset explains that the Puritan respect for learning led to the establishment and support of numerous schools and universities; the Protestant work ethic encouraged hard work and little regard for entrenched social positions, social mobility was based on effort as opposed to class membership; democracy and rule of law were highly respected by the religious community and this respect worked both ways as the community came to expect self-restrain and responsibility from its leaders; and the ideals described in the Declaration of Independence soon merged with the citizenry's overarching religious belief to form a generally revolutionary idea based on equality and liberty.⁴⁶ Finally, Lipset emphasizes that the voluntary nature of American religion has been a crucial element in the continued ability of religion to delineate the contours of America's national identity.⁴⁷ Lipset explains that overall, the American creed has produced a "uniquely economically powerful, politically liberal, and morally admirable nation...while others aspire (to reach this

⁴⁵ ———, *The First New Nation: The United States in Historical and Comparative Perspective*: 95.

⁴⁶ Ibid., 96-97. [For the Declaration of Independence see](#), Robert Bellah, *Beyond Belief: Essays on Religion in a Post-Traditionalist World* (Berkeley: University of California Press, 1991).

⁴⁷ Lipset, *The First New Nation: The United States in Historical and Comparative Perspective*: 32-33; ———, *American Exceptionalism: A Double-Edged Sword*.

level), the extent to which America remains unique is astonishing.”⁴⁸ This creed, Lipset notes, the closest thing to a state religion that exists in the United States.⁴⁹ This unique, national identity continues to be relevant in today’s America and its effects are reflected in the case study this dissertation considers, the Faith-Based Initiative. The values many Americans equate with religion, such as compassion, hard work, responsibility, community service, and egalitarianism can all be seen in the legitimization offered by President George W. Bush in his presentation of his Initiative both during his campaign and early in his Presidency.

The connection between American exceptionalism and religion continues in contemporary scholarship.⁵⁰ Specifically, scholars of religion such as Jonathon Fox and Shmuel Sandler, focus not only on the degree of embedded religiosity that continues to exist in the United States constitute a question of inquiry, but also consider how the American government seems to, for all intents and purposes, manage to retain a strict separation of church and state. Fox and Sandler explain that,

it is clear that religious attitudes continue to influence the US political agenda, but the United States’ political regime seems to

⁴⁸ ———, *American Exceptionalism: A Double-Edged Sword*: 268, 92. For further discussion of Lipset’s work see also, Mary Nolan, "Review: Against Exceptionalisms," *The American Historical Review* 102, no. 3 (1997); Sidney Verba, "Review: American Exceptionalism: A Double Edged Sword," *The American Political Science Review* 91, no. 1 (1997).

⁴⁹ Mark Kingwell, "Why American is the exception and not the rule," *The Globe and Mail*, June 15 1996.

⁵⁰ For further examinations of American Exceptionalism from historical and comparative perspectives see, Harriet Martineau, *Society in America*, first edition 1837 ed., 3 vols. (New York: Cambridge University Press, 2009); Max Weber, "The Protestant Sects and the Spirit of Capitalism," in *Essays and Sociology* (New York: Oxford University Press, 1946).

limit the ability of these attitudes to infringe upon the constitutional separation of religion and state...Thus it can be said that the US is the exception on two counts. First it is the only western democracy with nearly total separation of religion and state on the measures used here. Second, it has the most religious populace of the western democracies.⁵¹

Both the idea that the United States is unique in its degree of religiosity and in its system of separating the state from religion have been frequently mentioned, yet less frequently debated in depth. As we shall see, recent studies such as the ones conducted by Fox and Norris and Inglehart, or the analysis offered by Kuru barely mention the implementation of the Faith-Based Initiative.⁵² The question of how this may or may not impact the prevailing separation of church and state; which many legal scholars argue is no longer necessarily even a stringent separation, is not discussed.⁵³ Scholars who have researched the Faith-Based Initiative itself, on the other hand, also rarely consider the political implications of the program, and Bush's potentially political motivation for its implementation.⁵⁴ They prefer instead

⁵¹ Jonathan Fox and Shmuel Sandler, "Separation of Religion and State in the Twenty-First Century: Comparing the Middle East and Western Democracies," *Comparative Politics* 37, no. 3 (2005): 328.

⁵² Fox, *A World Survey of Religion and the State*. Kuru, *Secularism and State Policies Toward Religion: The United States, France, and Turkey*; Norris and Inglehart, *Sacred and Secular: Religion and Politics Worldwide*.

⁵³ Ira C. Lupu and Robert W. Tuttle, "Legal Update: Jay Hein, Director of the White House Office of Faith-Based and Community Initiatives v Freedom from Religion Foundation, Inc.," in *The Roundtable of Religion and Social Welfare Policy* (Albany, NY: Rockefeller Institute of Government, State University of New York, 2007); ———, "Federalism and Faith," *Emory Law Journal* 56(2006).

⁵⁴ Following the introduction of the Faith-Based Initiative, one of the more common accusations leveled against the Bush Administration, who had failed to gain much of the Black vote during the 2000 election, was that the design and advance of the Faith-Based Initiative was such that it would appeal to leaders of the Black community; and in turn, help to increase President Bush's standing in the eyes of African-American voters. As members of what are often the neediest communities nation-wide, and communities that are often served by their local churches in particular, African-Americans were considered to stand to benefit the most from the program. For some media coverage

to look at the practical functioning, and occasionally, the degree to which it may or may not be unconstitutional. In this dissertation, I will consider these issues and argue that while general studies of American religiosity, or statistical research projects dealing with the separation of church and state are certainly worthy academic exercises, the fact that they often leave out clear contextual, case examples, such as the Faith-Based Initiative may lead to a categorization of the U.S. that leaves it on the outskirts of comparison. Instead, it may be more productive to look at this uniqueness in national perspective and in context of the global debate on secularization and religion.

In a similar manner, federalism and the American federal system, specifically, have also received their fair share of attention. The Founding Fathers devoted a significant portion of their original political efforts to creating and maintaining a healthy, functioning federal system of government. Despite threats that the American federal system has faced, most notably from within, during the Civil War, federalism is alive and well today. In an effort to understand this system we will consider the works of traditional scholars of federalism, such as Daniel Elazar, William Riker, Richard Hofstadter, Alfred Stepan, Thomas Anton, and James Wilson, and look also at more critical scholars, including Carl Becker, Charles Beard, and Howard Zinn, among others, all of whom have considered the American

of this see, Steven Thomma, "Bush Reaching Out to Blacks: He Met Yesterday with Members of the Congressional Black Caucus, The Latest of Several Steps," *The Philadelphia Inquirer*, February 1 2001; Dana Milbank, "Bush Courts Voters Who Rejected Him; African Americans Target of Overtures Designed to Change His Image," *The Washington Post*, January 26 2001; Mike Allen and Thomas B. Edsall, "Black Religious Leaders Hear Bush's Call; Self-Avowed 'White-Guy Repubiican' Urges Clerical Push for 'Faith-Based' Program," *The Washington Post*, March 20 2001.

situation in depth and often in comparison with other federal systems around the world.

Although these two features of American life and politics may seem unrelated at first, a number of noteworthy historical parallels do, in fact, exist. Both federalism and the separation of church and state were developed and instituted at the founding of the nation. While the federal system may have been one of the key features of the original Constitution⁵⁵, building on the previous governing document, the Articles of the Confederation⁵⁶; the notion of America as a religious nation was a crucial aspect of almost all the documents penned in the early Republic. Soon after the drafting of the Constitution, and during the period in which it was ratified, the Founding Fathers were quick to add to it the Bill of Rights, as the Constitution's original amendments. Among these, religious freedom of worship, and a system in which the state and church would remain independent from one another was the first amendment included. Historically then, federalism and church-state relations were among the first, and likely foremost, issues taken in hand by the nation's original legislators. Since the early days of the American nation, both federalism and the separation of church and state have evolved, adapted, and been utilized in new ways by lawmakers and citizens alike. Much of this evolution, in another parallel, has taken place under the watchful eye of the country's judicial branch. Court cases dealing with both federalism and religion have reached the Supreme Court often, and the outcomes of these cases, as we will

⁵⁵ [For the full text, see](#) Nikki R. Keddie, "Secularism and its Discontents," *Daedalus* 132, no. 3 (2003).

⁵⁶ [For the full text, see](#) "Articles of the Confederation," (Library of Congress, 1776).

seen further below, have had a lasting impact on government, politics, social life, and religiosity throughout.

Often times, however, the existing similarities, and the strong degree of interaction, between religion and the system of federalism, have been downplayed or even, ignored. Contextual studies that include both aspects of American life simultaneously are hard to find. An exception to this general trend, can be found within the Charitable Choice Amendment to the 1996 Personal Responsibility and Work Opportunity Reconciliation Act legislation⁵⁷, or welfare reform legislation. The Personal Responsibility and Work Opportunity Reconciliation Act, which will be detailed further in another chapter, was a Republican initiative proposed as the cornerstone of the Party's "Contract with America".⁵⁸ The legislative package focused on altering the existing system of welfare in which welfare recipients relied on monetary handouts. Instead, the 1996 reform act introduced a new strategy of government aid to the needy that focused on encouraging, and, even requiring, welfare recipients to find jobs. Along with this change of focus, the locus of the program was devolved from the federal level to the state and local level, signaling a major shift in the federal arrangements surrounding welfare provision and oversight.⁵⁹ Cooperation with Democrats, and the Clinton Administration

⁵⁷ For the full text see, *Personal Responsibility and Work Opportunity Reconciliation Act*, 104, Pub. L. 104-193, 110 Stat. 2105.

⁵⁸ For further discussion of the "Contract with America" see, "Republican Contract with America," House Republicans, <http://www.house.gov/house/Contract/CONTRACT.html>.

⁵⁹ A full discussion of the devolution that was involved in the 1996 welfare reform act and the manner in which that devolution has or has not continued today is beyond the scope of this dissertation and will be addressed in subsequent analyses of the Faith-Based Initiative. For further scholarly analysis of the topic see, Steven M. Teles, *Whose Welfare? AFDC and Elite Politics* (Lawrence, Kansas: University Press of Kansas 1998); Samuel H. Beer, "Welfare Reform:

specifically, occurred because welfare reform was also a crucial focal point for President Clinton, and figured prominently in his Presidential campaign. In fact, in 1991, Clinton had promised that his administration would, “end welfare as we know it”.⁶⁰ It was hoped that the changes this legislation would make to the national welfare system, including time limits for welfare recipients, incentives to states to reduce their welfare rolls, additional programs for job training and placement, would all help not simply to lighten the burden welfare placed on the federal and state governments, but also alleviate the overall amount of poverty in the nation.⁶¹

Despite a long-standing lack of consensus concerning welfare between conservatives and liberals, The Personal Responsibility and Work Opportunity Reconciliation Act was, remarkably, approved of and supported by both sides of the political spectrum. Liberals were happy with the increases in job training and placement services, while conservatives applauded the newly instituted time limits and roll reduction efforts. However, due to a number of amendments attached to the legislation by Republican lawmakers, the final version of the legislation was barely passed prior to the end of the 104th Congressional session; and President Clinton’s first term in office.⁶² Charitable Choice was one of the most controversial

Revolution or Retrenchment?," *Publius: The Journal of Federalism* 28, no. 3 (1998); Weicher, "Reforming Welfare: The Next Policy Debates."; Ingrid Phillips Whitaker and Victoria Time, "Devolution and Welfare: The Social and Legal Implications of State Inequalities for Welfare Reform in the United States," *Social Justice* 28, no. 1 (2001).

⁶⁰ William J. Clinton, October 23 1991.

⁶¹ For a more detailed discussion of the first Clinton efforts to reform welfare and the results of these efforts see, Teles, *Whose Welfare? AFDC and Elite Politics*: 147-63.

⁶² Two prior versions of the 1996 welfare reform legislation were vetoed by President Clinton before the final version, The Personal Responsibility and Work Opportunity Reconciliation Act, was finally signed it into law. For further discussion of the vetoes and the final effort to pass the welfare reform

amendments attached to the legislation. Proposed by Senator John Ashcroft, a senior Republican lawmaker who would later serve as Attorney General under President George W. Bush, Charitable Choice was the less institutionalized, less stringent precursor to the Faith-Based Initiative. Under Charitable Choice, faith-based organizations that provided social services would be allowed to compete for federal funds on an equal basis with secular service providers. Faith-based service providers who were granted federal funding would also be allowed to retain their religious characteristics and would not be required to create secular venues for service provision. In a speech presented in 1999, Ashcroft described Charitable Choice and its desired effects;

What was the nature of the reform? The nature of the reform was to allow the values of the people to be imposed on the program, instead of imposing the values of Washington...on people across America. When we looked around the country to find out where real solutions were taking place to problems in the Welfare arena, we found out that those solutions happened more frequently in non-governmental institutions in private entities. Even in faith-based organizations where they addressed people as people and understood them and valued them for their entire life, not just for the interval during which they met the profile that made them valuable as a statistic and as a client to the federal agency. We need to tap the resources of these organizations, which are the real genius of America. So we put the Charitable Choice provisions in the Welfare program that said that institutions would be eligible for contracts from the state to help bring people out of Welfare and into independence. We had to be careful about that to make sure that we didn't violate the First Amendment, Freedom of Religion, and that we didn't violate the integrity of the institutions and the churches. There were a lot of our

legislation on both the Republican and Democratic sides of the debate see, Steven Gillon, *The Pact: Bill Clinton, Newt Gingrich and the Rivalry that Defined a Generation* (New York: Oxford University Press, 2008).

charitable organizations that got so afraid of trying to help, because we'd made it so difficult.⁶³

On the ground, the extent of Charitable Choice regulations meant that clients served were not to be discriminated against based on their religious preferences, secular service options were to be provided if necessary, and government funds could not be used in proselytization, worship or religious instruction.⁶⁴

With Ashcroft's support and the power of the Republican Congress, the Charitable Choice Amendment was eventually passed. Although President Clinton did not support the ideals of Charitable Choice, in the final hour, with an end to his first term drawing near and the need for public approval looming large, Clinton signed the legislation into law despite the addition.⁶⁵ It is in the second Clinton Administration's practical application, or lack thereof, of the Charitable Choice Act that a clear intersection of federalism and faith can be seen. Following the Administration's acceptance of the welfare reform legislation, and with it the addition of the Charitable Choice Amendment; the package became law at the federal level. However, based on his Executive prerogative, Clinton was able to minimize the Amendment's actual application in federal departments. Although in principle these departments were now able to facilitate the provision of federal

⁶³ John Ashcroft, "The New Millennium: Technology and Values," *Vital Speeches of the Day* 65, no. 15 (1999).

⁶⁴ The first federal social service program to which Charitable Choice was applied was the Temporary Aid to Needy Families program; TANF. For the text of these changes see, Section 104 in the Personal Responsibility and Work Opportunity Reconciliation Act. *Personal Responsibility and Work Opportunity Reconciliation Act*.

⁶⁵ Carolyn Skorneck, "Clinton Says He Will Sign Welfare Overhaul; House Passes It," *Associated Press* 1996.

funding to religiously-oriented social service providers and increase partnerships between these organizations and themselves, practically speaking, little changed.⁶⁶ Faith-based social service organizations that had traditionally applied for and received federal monies continued to do so while the Clinton era government did little to encourage new organizations to apply or agencies to fund them. At the state level, however, many governors, mayors, and officials took an active interest in promoting the new legislation⁶⁷; Texas governor George W. Bush even created a state-wide Commission whose sole purpose was to encourage faith-based social services by providing education for faith-based providers and government offices, encouraging the development of faith-based programs when possible, and keeping tabs on the results of faith-based programming.⁶⁸ This Texas program would come to serve as the springboard for the much more far-reaching federally guided program, developed and implemented by President George W. Bush, the Faith-Based Initiative, which is the focal point of this dissertation.

Based on analyzing this case study in light of theories of both secularization and federalism, my dissertation, aims to challenge the decontextualized manner in which the United States' experience, especially in the realms of religion and

⁶⁶ Mark Chaves, "Debunking Charitable Choice," *Stanford Social Innovation Review* 1, no. 2 (2003).

⁶⁷ Republican lawmakers and politicians were not the only proponents of faith-based social service programming. Their Democratic counterparts were often also vocal supporters of the manner in which they believed religiously oriented social services could play a role in the service sector. Most prominently, in 1999, Democratic Presidential hopeful Al Gore spoke passionately throughout his campaign in favor of the positive effects that faith-based organizations had demonstrated nationwide. Formicola, Segers, and Weber, *Faith-Based Initiatives and the Bush Administration: The Good, the Bad and the Ugly*

⁶⁸ Steve Benen, "'Faith-Based Failure': Report Documents Tragic Consequences of Bush 'Faith-Based' Experiment in Texas," *Church and State* 55, no. 10 (2002).

federalism, has often been studied and explained by the scholarly community. The Faith-Based Initiative provides an ideal context in which to challenge this view. Since the founding of the nation in 1787, the relationship between the state and the Christian religion, in particular, has been much discussed, but seldom has it received a contextualized analysis. Looking at John Ashcroft's statement concerning the manner in which the Charitable Choice legislation was designed and implemented from the perspective of Fox's *World Survey of Religion and the State*, for one, helps illuminate recent studies that have clearly presented this type of decontextualized analysis. In direct contradiction to Ashcroft's statement, made in 1999, during the time in which Fox was conducting his global study, Fox explains that the United States' absolute separation of religion and state is based on the fact that, "No state except the US (at the federal level) has no religious legislation on the books."⁶⁹ This statement thus confirms two direct contextual shortcomings of Fox's study; both a view of religion-state relations that fails to reach the state level- also part of the United States, and, it seems, a study of actual legislation passed during the period under review. This dissertation hopes to present the Faith-Based Initiative as an ideal context in which the issue of religion in American political life can be more clearly situated and thus better understood as a fluid, dynamic, and porous part of United States at all levels.

Academically, recent comparative literature and even older secularization thesis literature tends to place the United States in a separate category such that American state-religion relations are seldom discussed; and worse, are at times even

⁶⁹ Fox, *A World Survey of Religion and the State*.

portrayed erroneously. The far-reaching secularization thesis, proposed and developed during the last decades of the twentieth century, has taken particular note of the American case, oddly enough generally by either ignoring America or “explaining it away”. Contemporary scholars of religion, while generally more inclusive of the American case, have conspicuously rendered America an exception or a “caveat”. While present in the works of recent scholars such as Kuru and Fox, the American religious experience is consistently either included only as an ideal case, or categorized as an outlier that requires exclusion for risk of rendering a study invalid.⁷⁰ For example, as we will see in further chapters, Fox finds the American system of separation of church and state to be complete. This, he explains is, “primarily due to enforcement of the first amendment of the US constitution by the US federal courts.”⁷¹ In addition, Fox finds that “government involvement in religion” is zero; again, a difficult claim to make given that in America, a President who openly describes himself as a “born-again Christian” and believes that God wanted him to be President, can design and institute a federal office that is focused on promoting faith-based social services and providing federal monies. On the contrary, in this dissertation, I argue that despite the prevailing notions of separation of church and state, and a sincere focus on values prescribed by the First

⁷⁰ Kuru and Fox will be further discussed in later chapters ~~Chapter Two~~, for references see; Kuru, *Secularism and State Policies Toward Religion: The United States, France, and Turkey*; Fox and Sandler, "Separation of Religion and State in the Twenty-First Century: Comparing the Middle East and Western Democracies."; Jonathan Fox, *A World Survey of Religion and the State* (New York: Cambridge University Press, 2008).

⁷¹ ———, *A World Survey of Religion and the State*: 134. As we shall see further in later chapters, the Fox analysis is a very clear example of the manner in which the United States is often “glossed over” and simply left out of the analysis.

Amendment, a notable degree of intertwining of state and religion is occurring in the United States. A fact that requires further discussion and better analysis.

In terms of federalism, the trend of decontextualized analyses that focus only on the *federal* level continues. Prominent scholars of federalism, at the levels of both the national and state governments has such as William Riker, Daniel Elazar, Samuel Beer, and Alfred Stepan have devoted extensive efforts to researching, documenting and analyzing the realities of American federalism; again, looking at the federal level, in particular.⁷² These studies offer extensive, and certainly well conducted analyses of the manner in which federalism was instituted and applied in the American context; the factors that have strengthened the American version of federalism governance, and the anomalies represented in the American system. In terms of federalism, however, the Faith-Based Initiative represents a program, designed and implemented at the federal level, but practically active at the local and state levels. Conferences, programs, and funding provided by the Faith-Based Initiative, we shall see, have all, for the most part, been located locally, thus requiring analyses of the local to understand the federal case. This dissertation will also looks closely at the way in which court decisions, also a fluid and dynamic aspect of the federal system, at both state and federal levels, have helped to shape

⁷² See for example; William H. Riker, *Democracy in America*, Second ed. (New York: The MacMillan Co., 1965); Craig Volden, "Origin, Operation, and Significance: The Federalism of William H. Riker," *Publius* 34, no. 4 (2004); Kellie Maske and Garey Durden, "The contributions and impact of Professor William H. Riker," *Public Choice* 117(2003); Daniel J. Elazar, *Exploring Federalism* (Tuscaloosa, Alabama: The University of Alabama Press, 1987); ———, "Opening the Third Century of American Federalism: Issues and Prospects," *The Annals of the American Academy of Political Science* 509(1990); Samuel H. Beer, "Federalism, Nationalism and Democracy in America: Presidential Address to the American Political Science Association 1977," *The American Political Science Review* 72, no. 1 (1978); ———, *To Make a Nation: The Rediscovery of American Federalism* (Cambridge, Mass: The Belknap Press of Harvard University, 1993); Alfred Stepan, "Federalism and Democracy: Beyond the U.S. model," *Journal of Democracy* 10, no. 4 (1994).

not simply the functioning of both the Faith-Based Initiative, but state-religion relations in general.

Based on these observations, my dissertation aims to challenge this lack of contextualization of the American case and, through the historical and political analysis of the institution of the Faith-Based Initiative, attempts to situate America within the global discussion of state-religion relations. The dissertation will, then, begin with an analysis of religion in America and the separation of church and state, based on secondary historical literature, but bolstered with actual court documents and decisions, in order to pinpoint the way in which the rhetoric surrounding this separation has shifted over the past century. The general contours of the secularization thesis and the manner in which theorists consider the American case will also be examined. I will then briefly trace the historical development of federalism based on both general historical texts and the primary sources remaining from the Founding Fathers; following with a consideration of the scholarly literature, beginning in the mid-1800s and continuing through to the present, generated by America's federal experience. Finally, the recent intersection of these two dynamics, religious and federal, of U.S. life will be discussed in the context of welfare reform, Charitable Choice and the overarching project of the Faith-Based Initiative. This case offers an apt example of how federalism and religion might even, at times, function in conjunction with one another, reinforcing each other's position. In this, again, secondary literature sources will be employed to provide a narrative, but primary sources such as Congressional documents, White House website postings and press releases, and print media accounts will provide

additional support. Contextualized analyses of this type, based on the American experience, should help, in future studies, to promote even greater insight into understandings of American federalism and state-religion relations.

~~Chapter One~~ CHAPTER TWO

RELIGION IN AMERICA

An Exceptional System of Belief

Over the past half a century, despite the many predictions that it would soon become an irrelevant feature of modern life, religion has survived. Religious belief and practice were posited to be relics of a less modern, less learned, and less

interconnected era, and were expected to decline in importance and presence until religion itself remained merely a notion of previous centuries. Sociologists, political scientists, and even theologians observed declining rates of participation, an increasing focus on a less religious public square, and a focus on non-religious reasoning and motivation as leading towards a major trend of secularization in the developed world. Known as the secularization thesis; this theory essentially claimed that as levels of economic, political and social development increased and modernization took hold, in the Western world in particular, peoples' need for and desire to practice religion would decrease at the same rate; leaving the West a "secular" arena in which religious beliefs played little or no role in everyday life. What has actually occurred has been nearly the exact opposite; in many areas modernization and development have increased and so has adherence to religion. Explaining this unexpected trend has become one of the major debates among observers of religion and politics; especially looking at the United States, where not only has the experience of religion been seen as truly exceptional, but the experience itself has been consistently treated as an exception to the secularization thesis. The United States is a nation in which seemingly entrenched notions of separation of church and state are glaringly offset by the general religiosity of its population, openly religious politicians, and religiously oriented political maneuvers by highly visible politicians, including the President himself.

Religion in Early America

Understanding the exceptional relationship between religion and secularization in the U.S. requires first examining, both from a historical and analytical perspective, the background of religion in the United States. The relationship between religion and civil society and politics in the United States stretches back as far as the initial colonization of the continent. In early American history, the Pilgrims designed their original colony on the basis of a covenant, modeled on a religious covenant, that was to govern not only the governmental functions of the colony, but also dictate the social relationships of its inhabitants. The written code of 1648, for example, was a combination of the Bible and English Common Law and was based on the idea that the Bible both ordained and regulated the government's structure while also providing each inhabitant of the colony, regardless of social stature, with equal voice and opinion.⁷³ Over time, as the colonies developed into states and joined together to fight the British Empire and create their own country, religion permeated every aspect of life. In the colony of Massachusetts, founded by the early Puritan settlers, uniformity of religion was a critical focus of governance. Dissenters were expelled from the colony and those who attempted to return faced the potential penalty of capital punishment; a penalty enacted on four Quakers between 1659-1661. Although the United States is known for its focus on religious toleration, it was not until the creation of the colonies of Rhode Island, by Roger Williams in 1636, and Pennsylvania, by the leaders of the Quaker sect in 1681, that these ideas became institutionalized.⁷⁴ In addition, while the tradition of toleration has been

⁷³ Joseph Gaer and Ben Siegel, *The Puritan Heritage: America's Roots in the Bible* (New York: The New American Library, 1964), 69, 79.

⁷⁴ *Ibid.*, 40, 62.

given much attention, and the freedom to practice one's religion was solidified in the First Amendment of the Bill of Rights; as discussed later in the chapter, tensions between religious sects and denominations continue even today.

The idea of covenant was based upon the Puritan belief that religion required the pious to form a covenant with God and therefore to act in a manner that would solidify and consolidate a "Godly community". With their arrival in the New World, the Puritan pilgrims focused on creating a similar covenantal relationship among the inhabitants of the colony. This relationship was a serious one, based on the idea that this new community would not only fulfill God's plan for man, but also create a society that was more perfect than the one from which they had recently fled.⁷⁵ Again, working from the idea of covenant, the Puritans focused on creating an equitable^{ey} judiciary and an elaborate system of publicly supported schools and colleges that would form the basis of the interaction between the church and state; this was created by substituting the Old Testament rulings for English Common Law in which the settlers had been reared. With this change, the Puritan elders quickly assumed that they had a divine mandate to rule the colony based on religion and biblical tradition. Although this type of rule was soon questioned,² as more tolerant, democratically oriented colonies emerged, the seeds of religious influence in politics had been sown, "the roots of secular individualism were embodied in Puritanism itself, in concern for the individual's spiritual and moral well-being".⁷⁶

⁷⁵ Sanford Kessler, "Tocqueville's Puritans: Christianity and the American Founding," *The Journal of Politics* 54, no. 3 (1992): 784.

⁷⁶ Gaer and Siegel, *The Puritan Heritage: America's Roots in the Bible*: 46.

By the 18th century, Americans no longer considered themselves to be “Puritans” in the original sense; yet ironically, while Americans were “interested in rationalizing away Puritan theology and discovering a new secular basis for individual freedom”, these rationalists failed to recognize that they “retained the Puritan dependence on the Bible” to guide their efforts.⁷⁷ Elazar, as a leading scholar of the use of covenant, explains that later in the century, during their efforts to create their new nation, the early Americans Founding Fathers redesigned the idea of Biblical covenant in political terms to function between states, and form part of the philosophical basis for the federal nation.⁷⁸ Additionally, within this federal framework, “Puritan political innovation formed the basis for American constitutionalism; the chief Puritan contribution to our political life was the doctrine of popular sovereignty.”⁷⁹

Religion therefore played a significant role in the definition of early government and social life in the United States. Throughout the Revolutionary period and during the early era of the founding of the nation, religion continued to guide political principles.⁸⁰ In addition, William Dean explains that the United States itself, as a new nation, actually needed to create its own public philosophy, or national belief system. With a prominent role in politics and society, religion was able to function as the new native tradition. In essence, to offset the disadvantages

⁷⁷ Ibid., 44-46.

⁷⁸ Daniel J. Elazar, "Federal Models of (civil) authority," *Journal of Church and State* 33, no. 2 (1991): 240.

⁷⁹ Kessler, "Tocqueville's Puritans: Christianity and the American Founding," 784.

⁸⁰ Gaer and Siegel, *The Puritan Heritage: America's Roots in the Bible*: 65.

of its “newness”, the early Americans focused on creating a national philosophy that would bind together its citizens, strengthen its governments, and define its civil society. This new outlook committed the people to a new sacred history that was based on a way of life in which,

The new Americans would not merely act out their religion somewhere within the boundaries of a nation and its history; they, themselves, would become the promised land, and their story would be the story of the new Israel. They would see Europe as Egypt and their America as the promised land; they would be a chosen people and their history itself would be a religious history...what might have merely been the ‘religion in America’ became the ‘religion of America’.⁸¹

In addition to the need for this powerful native philosophy to consolidate the people, the stresses of the creation of the new nation were also alleviated by religious belief and religious organization. With the expansion of the country toward the West, and the break from the previously all-controlling British Empire, expanding capital markets, uprooted individuals, demographic growth and mobility, related to both market and transportation revolutions all strained the social fabric and the

⁸¹ William Dean, "Religion and the American Public Philosophy," *Religion and American Culture* 1, no. 1 (1991): 55. The belief that the newly founded America resembled Egypt of the Biblical Era is based on the story, written in the Book of Exodus of the Hebrew Bible, or Old Testament. In this account, Moses leads the Israelites out of Egypt and to Mount Sinai, where God, known as Yahweh to the Jews, offers the Israelites a covenant. In exchange for their promise to keep his “torah”, or law of instruction, he promises to deliver the Israelites from their suffering they endured in Egypt and provide them with a new land. The original group of Israelites eventually failed in the eyes of Yahweh and were condemned to remain in the desert until they pass away. The second generation did however; manage to travel to the Promised Land. Having also fled a tyrannical nation in which their religious beliefs were persecuted, it is natural that the Puritans felt a connection with the story of Moses and the exodus from Egypt. The failure of the original generation of Israelites to reach the Promised Land likely influenced the early settlers to be even more “puritanical” in their beliefs and actions, and in their efforts to ensure that covenant, between God and man, and among men, was kept in the colonies. For the full account see, *The Bible: King James Version*, (New York: Oxford University Press, 2008), Book Two.

previously cemented relationships within communities. Religious institutions, churches in particular, were able to offset the decentralizing and peripheralizing forces of social change.⁸² Early on, Tocqueville noted the role religion was able to play in solidifying America's national philosophy. For Tocqueville, one of the Puritan's greatest accomplishments was their ability to cement Christianity and a pious outlook as *the* dominant element in American national character. The Puritan belief in individualism, hard work, and defining one's own fate through effort and perseverance, or the "Protestant ethic", feature prominently in Tocqueville's analysis.⁸³

The overarching Protestantism that defined early American life was also reflected in its community structure. As clergy was scarce in the new colonies, members of the lay community were required to play enhanced roles in the church, as a result, "colonial churches displayed many of the characteristics of voluntary associations."⁸⁴ Churches were staffed with members of the local community, making them an ideal venue for service provision. In addition, colonial governments in rural areas were often weak or stretched thin, this also provided the church with more prerogative to guide the community, arbitrate in local disputes, enforce community standards or rules, and provide social services to its members.⁸⁵ The

⁸² Michael P. Young, "Confessional Protest: The Religious Birth of US National Social Movements", *American Sociological Review* 67, no. 5 (2002): 670.

⁸³ Tocqueville, *Democracy in America*: 46.

⁸⁴ Patricia Bonomi, "Hippocrates' Twins: Religion and Politics in the American Revolution," *the History Teacher* 29, no. 2 (1996): 141.

⁸⁵ Both Bonomi and Young point out that these early church groups might be considered the "original" faith-based service organizations similar to those focused on in the Faith-Based Initiative. Ibid., Young, "Confessional Protest: The Religious Birth of US National Social Movements".

church became an active force in both politics and service provision, second only to the government itself. Looking at the permeation of society with the religious values of these early churches through the lens of civil society as conceived of by Emile Durkheim and Robert Bellah⁸⁶, Bernard Brown explains that the strong role played by the early churches was translated into a strong tradition of “civil religion” and was “instilled in the lives of individuals, operating in our religious communities, and uniting Americans in regard for sacred ideals underlying our common life.”⁸⁷ This also manifests itself in a “public theology...within the communal life of churches, which reaches toward an estimation of the common good necessary for a dignified human existence.”⁸⁸

Although most scholars of early American history adhere to the general belief that Christianity and religious belief have played significant roles in making America “exceptional”, dissenting, critical scholars also exist. Claude S. Fischer, for example, explains that while the Puritans certainly were important players in the nation’s history, they “were an odd lot-the exception, not the rule”. In fact, Fischer

⁸⁶ Durkheim and Bellah each focus intensively in their studies on the question of maintaining civil society. For Durkheim, this included the question of how societies could retain their integrity and coherence despite changes resulting from modernity that whittled away at shared characteristics such as religious or ethnic background. In a similar manner, Bellah questioned the coherence of civil society in the United States in particular, considering what exactly it was that held the nation together; generally speaking, he believed that a type of “civil religion” existed that was able to transcend differences of ethnicity and religiosity and was grounded in overarching national beliefs and identity. See, Kenneth Thompson, ed. *Readings from Emile Durkheim: Key Texts* (London and New York: Routledge, 1985); Robert Bellah et al., *Habits of the Heart: Individualism and Commitment in American Life* (Berkeley: University of California Press, 2007); Robert Bellah et al., *Good Society* (New York: Vintage Books, 1992); Bellah, *Beyond Belief: Essays on Religion in a Post-Traditionalist World*.

⁸⁷ Bernard O. Brown, "A Common Faith: Churches and the Political Order," *The Clergy Journal* 76, no. 1 (1999): 8.

⁸⁸ Ibid.

believes that “over the wider American landscape...colonists were notably ‘unchurched’ and ‘un-Christian’...most Americans had no church to go to and little connection to what we would call organized religion”.⁸⁹ Fischer explains that the picture of America as a religious nation, the idea of a “normal” religious life in America, is actually a view acquired from the 1950s, when church-building and attendance “boomed” along with the arrival of the “baby boomer” generation. Those years, Fischer notes, were “the peak of church membership...much higher than in Early America—but not much higher than today.”⁹⁰ As such Fischer cautions that, “If people want to justify a larger role for religion in the public square, there are grounds to do so. But appealing to an ‘original’ Christian America is inaccurate and probably unnecessary.”⁹¹ However, despite scholarly evidence, such as Fischer’s, to the contrary, public opinion in the United States subscribes to the view that the United States is, and was specifically designed to be, a Christian nation. As reported in the *New York Times Magazine* in February 2010, “...65% of respondents to a 2007 survey by the First Amendment Center agreed with the statement that ‘the nation’s founders intended the United States to be a Christian nation’ and 55% said they believe the Constitution actually established the country as a Christian nation.”⁹² It is this overarching focus on religion and its role in

⁸⁹ Claude S. Fischer, “Was Early America a Christian Nation?,” in *The Immanent Frame: Religious Nones and The Politics of American Spirituality* (Brooklyn, NY: Social Science Research Council, 2010).

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² “How Christian Were the Founders?,” *The New York Times Magazine*, February 14 2010, 10. Political leaders in the United States, especially right-wing Republicans often echo these beliefs. For example, Newt Gingrich, a Republican Congressman from Georgia, who served as Speaker of

American life that renders America exceptional in the context of the secularization thesis.

The Separation of Church and State in the United States: Shifting Boundaries

In a nation and culture in which religion is so clearly present, the current system of separation of church and state cannot be understood without first thoroughly considering the historical development of this system. Contrary to common belief, the ~~F~~founding ~~F~~athers of the United States of America never actually included the idea that a strict separation of church and state should exist within the U.S.

Constitution. Constitutional scholars believe a principle of secularism was not specifically included for two reasons; first, at the time of the drafting, state-church separation had not yet acquired the importance it has now, and second, during the colonial period, the major focus in the religious arena was equality and tolerance; and a concern that no single religion receive special attention or status. This was due, in large part, to the recent history of the colonies; settlers had left England and other European nations behind and travelled to the New World specifically to escape the religious persecution that was occurring as European Kings and Queens adopted one religious denomination to the detriment of all those who believed in

the House between 1995-1999, was a Baptist until he recently converted to Catholicism, his wife's faith. He is also the author of many books, among them *Rediscovering God in America: Reflections on the Role of Faith in our Nation's History and Future*, in which he details the significant role he believes religion has played in American history by detailing the religious inscriptions found on the national monuments in Washington, DC. Gingrich was also the leading figure in the 1996 welfare reform in which the members of the Republican Congressional block introduced the Charitable Choice Amendment that will be discussed later in the dissertation.

another.⁹³ However, despite this focus, the issue of freedom of religion and exercise was not even included in the Constitution; rather it is the subject of the First Amendment in the Bill of Rights. Specifically, the Establishment Clause, also known as the Freedom of Religion Clause I, and the Free Exercise Clause, Freedom of Religion Clause II, which together state, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”⁹⁴

These two clauses have come to represent current legislative and judicial theory concerning religion. First, the Establishment Clause, which requires that “Congress shall make no law respecting an establishment of religion”. This clause thus forbids Congress and the government from becoming excessively involved with any one religion or religious group and it also is cited as an impediment for federal funding for religious organizations, groups, congregations, and houses of worship. The second clause, the “Free Exercise Clause”, reads, “or prohibiting the free exercise thereof”; this guarantees citizens the right to follow and practice their respective religious beliefs without fear of persecution or discrimination at the hands of the government and its regulatory branches. Examples of the types of activities that may be allowed under this clause have come to include door-to-door

⁹³ For a thorough discussion of the relationship between the Founding Fathers and religion; especially discussion concerning the First Amendment and the separation of church and state see, Forrest Church, *So Help Me God: The Founding Fathers and the First Great Battle Over Church and State* (Orlando: A Harvest Book, Harcourt, 2007).

⁹⁴ The full text of the First Amendment reads, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” E.J. Dionne and John J. DiIulio, eds., *What's God Got to Do with the American Experiment?* (Washington DC: Brookings Institution Press, 2000).

proselytizing, televangelism, privately run educational facilities that focus on a certain type of religious belief, etc. Free exercise, does not however, hold in cases where free exercise may go against the good or the norms of society, for example in the case of polygamous marriages, or in any case where one citizen's free exercise of religion may cause an unnecessary burden on any other citizen, for example if a religion required human sacrifices as part of its practice.

The First Amendment clearly shows that the founding fathers and prevailing religious groups at the time, notably the Virginia Baptists, led by Elder Leland, placed a great deal of importance not on the strict separation of church and state, but rather were more concerned with ensuring that early citizens be allowed to create denominations, practice as they chose, and be free from the burdens that they had carried in Europe where believers had often been forced to join national churches or face persecution.⁹⁵ It was not until later, through the writings of James Madison and Thomas Jefferson that a clearer focus on the need to create a distinct separation between the state and its duties, and the church and its particular duties and services began to emerge.

From “No-Aid Separationism” to “Neutrality”: Shifting Views on the Separation
of Church and State

As discussed above, historically and traditionally, citizens of the United States of America have demonstrated high levels of religious belief and the concept of “God”

⁹⁵ Church, *So Help Me God: The Founding Fathers and the First Great Battle Over Church and State*: 314-21.

and religious values have been integral both in private life and in public discourse. Symbols of religious belief are found on the currency, in public language and public buildings, and seldom do American Presidents end a national speech without intoning the words, “God Bless the United States of America.” However, the origins of the United States, dating back to the arrival of the Pilgrims and their efforts to escape religious persecution in Europe, have also led to a strong focus on religious freedom and tolerance that continues today. To fully understand the way in which religion has been treated in the U.S. it is helpful to survey the ways in which religion has been treated by the government and judiciary through the years.

Beginning with the Revolutionary period, the issue of how to deal with religious belief in the newly emerging states permeated the writings of nearly all the Founding Fathers. During this period, the, mainly Protestant, elite was generally convinced that strong religious belief and affiliation were crucial to the proper functioning of the country’s government and should not be omitted from the public arena. Although America has always been considered one of the leading examples of the successful implementation of secularism; during the colonial era, this separation of church and state had not yet been articulated or instituted. In fact, many leaders of the country, such as George Washington, believed that the continuation of the Republic was contingent on virtue and morality. Washington explained that since neither of these were natural states, the fostering and encouragement of religious belief was necessary as it would help lead people to more virtuous, moral lives. According to Washington, it was possible for the government to support religion yet still remain within the bounds of legitimate

secular reasoning. He encouraged a two-fold approach; first, government non-interference grounded in the concept that government should stay out of religion, allowing free exercise, unless dealing with matters that affected the common good; and second, government should practice discretionary toleration for matters involving duties of citizenship and the essential interests of the nation.⁹⁶ In other words, the government should get involved if religious belief began to negatively affect the functioning of the government or society. Washington's ideas are not exceptional, many of his peers, and many leading members of the Religious Right, the Republican Party, and even members of the Democratic Party of today have voiced their beliefs that religion and morality may provide a sounder basis for government than might be found in a "virtue-less, secular government".

Although Washington's ideas linking good governance to religion and morality may have echoed the sentiments of his peers, other political leaders of the time, James Madison and Thomas Jefferson in particular, have had a more profound influence on current discourse concerning the separation of church and state. During the founding of the Republic, James Madison laid out his ideas concerning church state relations in a number of written works. One of the most frequently cited of these is "Memorial and Remonstrance Against Religious Assessments", which was presented to the General Assembly of the Commonwealth of Virginia in 1785. "Memorial and Remonstrance" lays out fifteen points upon which Madison builds his defense of the need for separation of church and state and cautions the General Assembly against passing a law that would allow taxes to be used to pay

⁹⁶ Vincent Phillippe Munoz, "George Washington on Religious Liberty," *The Review of Politics* 65, no. 1 (2003).

“teachers of the Christian Religion”.⁹⁷ Madison bases his argument on excerpts from the Declaration of Independence⁹⁸, the Articles of the Confederation⁹⁹, and the written, but not yet ratified, Constitution of the United States of America.¹⁰⁰

Madison points out that, relying on the principles dictated in these documents, “The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate...in matters

⁹⁷ In his letter, Madison, writing at the request of the Religious Society of the Baptists of Virginia, petitions the General Assembly of Virginia with fifteen points he believes are persuasive reasons against the passage of the proposed tax. He states, “the law will be a dangerous abuse of power...because, (it is) a fundamental and undeniable truth that religion...and the manner of discharging it, can be directed only by reason and conviction, not by force or violence...because, if religion be exempt from the society at large, still less can it be subject to that of the legislative body...because, it is proper to take alarm at the first experiment on our liberties...because, the bill violates the equality which ought to be the basis of every law...because, the bill implies, either that the civil magistrate is a competent judge of truth, or that he may employ religion as an engine of civil policy...because, the establishment proposed by the bill is not required for the support of the Christian religion...because, experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of religion, have had a contrary operation...because, the establishment in question is not necessary for the support of the civil government...because, the proposed establishment is a departure from the generous policy which, offering an asylum to the persecuted and oppressed of every nation and religion, promised a luster to our country...because, it will have a like tendency to banish our citizens...because, it will destroy the moderation and harmony which the forbearance of our laws to intermeddle with religion has produced among its several sects...because, the policy of the bill is adverse to the diffusion of the light of Christianity...because, attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of citizens, tends to enervate the laws in general, and to slacken the bonds of society...because, a measure of such general magnitude and delicacy ought not to be imposed, without the clearest evidence that it is called for by a majority of citizens...because, finally, the ‘equal right of every citizen to the free exercise of religion, according to the dictates of conscience’ is held by the same tenure with all our other rights.” James Madison, "Memorial and Remonstrance Against Religious Assessments," in *The Religious Freedom Page* (Charlottesville, VA: University of Virginia 1785).

⁹⁸ Written in 1775. For full text go to Bellah, *Beyond Belief: Essays on Religion in a Post-Traditionalist World*. [http://memory.loc.gov/cgi-bin/query/r?ammem/bdsdcc:@field\(DOCID+@lit\(bdsdcc02101\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/bdsdcc:@field(DOCID+@lit(bdsdcc02101)))

⁹⁹ Written in 1781. For the full text of the Articles of the Confederation see, <http://www.loc.gov/rr/program/bib/ourdocs/articles.html>

¹⁰⁰ Ratified in 1788. For the full text of the Constitution of the United States of America go to <http://www.archives.gov/exhibits/charters/constitution.html>, The Bill of Rights, in which the First Amendment specified ideas against the government Establishment of religion or churches, and the Free Exercise clause that guaranteed all United States citizens the right to worship as they chose, was ratified in 1791. For the full Bill of Rights go to, http://www.archives.gov/exhibits/charters/bill_of_rights.html. €

of Religion, no man's right is abridged by the institution of Civil Society and that Religion is wholly exempt from its cognizance."¹⁰¹

For Madison, then, not only were religion and belief exempted from Civil Society, but also from the Government and the Legislature, in particular. He asks, "Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects? That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?"¹⁰² Madison is aptly pinpointing the dilemma that, if the Virginia government, in this specific case, were to force all its citizens to pay a tax designed to aid the Christian religion, there would be little to keep the same government from shifting its focus to an even more specific sect of the Christian religion and forcing the very same citizens to support this sect specifically; thus severely limiting the religious freedom of a number of its citizens. In addition, Madison explains, "Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us."¹⁰³ Thus, simply because the majority of Virginia may be Christian, Madison

¹⁰¹ Madison, "Memorial and Remonstrance Against Religious Assessments."

| ¹⁰² Ibid.

| ¹⁰³ Ibid.

notes that to claim the right to practice freely for oneself, but deny it to others, would be in direct violation of true liberty and freedom.¹⁰⁴

Additionally, Madison deals with the role that religion should, or should not play, in legitimizing Civil Government; “a just Government instituted to secure and perpetuate it (public liberty) needs them (the Clergy) not. Such a Government is best supported by protecting every Citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another.”¹⁰⁵ It is important to note here that the focus at the time was not on creating tolerance for different religions; Christianity was the prevailing religion throughout the United States (with the exception of the Native American Indians and African slaves, neither of whom were legal citizens at the time). The pressing issue of the era was to avoid any repetition of the warfare and strife that had occurred in the previous century in Europe as Christian sects had squared off against one another due to disputes over Christian doctrine, practice, and the ability to worship freely. These themes were what drove Madison to write his address; avoiding inner-Christian dispute and government favoritism towards any single denomination was considered

¹⁰⁴ Ironically, the Blaine Amendments, discussed in detail later in this dissertation, proposed to eliminate state funds to religious educational facilities in an effort to facilitate what would amount to the exact sort unequal distribution of government funds about which Madison is writing. James G. Blaine proposed limiting government monies to educational facilities affiliated with any specific sect in order to keep Catholic schools from receiving government stipends. During this time, however, the dominant Protestant ideology was very much a part of United States public schools. By proposing the Blaine Amendment, which was unsuccessful at the federal level but adopted in many states, James Blaine was essentially proposing a method to continue the unequal distribution of funds to religious organizations. For further information see, "The Blaine Amendments," The Becket Fund for Religious Liberty, <http://www.blaineamendments.org/>.

| ¹⁰⁵ ———, "Memorial and Remonstrance Against Religious Assesments."

crucial for the survival of the new country.¹⁰⁶ Madison concludes his address by emphasizing that “the equal right of every citizen to the free exercise of his Religion according to the dictates of conscience” is held by the same tenure with all our rights.”¹⁰⁷ Therefore, allowing the Virginia Assembly to enact the tax for Christian teachers would be opening the door to any number of violations of the citizen’s rights. For this reason, the only available option is to drop any call for this type of legislation or for the government establishment of religion in any other manner, and refocus government efforts on maintaining a true separation of government from religious affairs, except in protecting the rights of all religions to exercise equally and freely.

In another document, the “Detached Memoranda”, written in 1817, Madison focuses on a number of actions taken by the federal government that he considers to be questionable. He looks specifically at the appointment of two chaplains to the House of Congress, the accumulation of property by ecclesiastical corporations, exemptions from taxes for houses of worship, and even public displays of religiosity by government officials in the form of statements such as “One Nation under God” or proclamations of national days of thanksgiving and prayer; questions still valid today.¹⁰⁸ Making these points is part of Madison’s general approach and effort to convince the federal government of the United States that while the Federal Constitution does guarantee freedom of religion and a separation of church and state

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ ———, “Detached Memoranda,” in *The Founder's Constitution* (Chicago, IL: The University of Chicago, ca. 1817).

affairs, this is not laid out clearly enough and will likely lead to even more instances of confusion similar to these. Instead, Madison calls for the federal government to emulate Virginia, “where religious liberty is placed on its true foundation and is defined in its full latitude. The general principle (of religious liberty) is contained in her declaration of rights, prefixed to her Constitution: but it is unfolded and defined, in its precise extent, in the act of the Legislature, usually named the Religious Bill.”¹⁰⁹ The clear definition of each man’s right to practice as he chooses, along with the creation of barriers to any type of government interference or establishment of government sanctioned religion that is contained in this Bill represents, for Madison, “a true standard of Religious liberty: its principle the great barrier against usurpations on the rights of conscience. As long as it is respected & no longer, these will be safe. Every provision for them (rights of conscience) short of this principle, will be found to leave crevices at least thro’ which bigotry may introduce persecution; a monster, that feeding & thriving on its own venom, gradually swells to a size and strength overwhelming all laws divine & human.”¹¹⁰ Madison believed that drafting “proper” laws would allow the government to “unshackle the Constitution from persecuting laws” and “establish among religious sects a legal equality”.¹¹¹ While the federal government did not chose to add a Religious Bill to the Federal Constitution, by the mid-1940s, ~~as will be discussed in the next section,~~

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Elizabeth Fleet, "Detached Memoranda," *The William and Mary Quarterly 3rd Series* 3, no. 4 (1946).

Madison's ideas had been incorporated into the general legislative and judicial body of law and due process.

Another primary voice in the drive for the separation of church and state was Thomas Jefferson's. Like Madison, he was a staunch proponent of not only focusing on the need for separating spiritual and temporal affairs, but also on clearly delineating and solidifying this separation through laws and amendments such as the "Virginia Statute for Religious Freedom", which he authored. In the "Statute for Religious Freedom", Jefferson first presents a lengthy treatise on the value of free religious practice, noting numerous times that any imposition of religion on one man by another is an infringement of rights and serves to deprive men of their liberty and freedom of conscience. Any government that would attempt to impose such laws and requirements upon its citizens, is, accordingly "sinful and tyrannical" and is acting in a way that amounts to "depriving him (the citizen) injuriously of those privileges and advantages to which in common with his fellow citizens he has a natural right".¹¹² While Madison's ideas have become a part of present day law in the form of prohibitions against the government establishment of religion and excessive entanglement of government in religious affairs, Jefferson's ideas were what laid the groundwork first for the full right to free exercise, and later for the separation of church and state.

This portion of his philosophy is developed in the second part of the "Virginia Statute". Jefferson states that by the law of the General Assembly, "no man shall be compelled to frequent or support any religious worship, place, or

¹¹² Thomas Jefferson, "The Virginia Statute for Religious Freedom," in *The Religious Freedom Page* (Charlottesville, VA: University of Virginia, 1786).

ministry whatsoever, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion and that the same shall in nowise diminish, enlarge, or affect their civil capacities.”¹¹³ These views on the free exercise of religion, along with the Jefferson’s belief that “hereafter... any act (restricting free exercise) will be an infringement of natural right”, were novelties for his time. The legacies of the European wars of religion were strong in people’s minds and religious persecution and surrounding difficulties persisted, even as America tried to draw its own new path.¹¹⁴ It was for this reason that Madison and Jefferson, each with his own primary focus, were such stalwart proponents of clarifying the laws concerning government and religion to every extent possible; without this, they feared, the atmosphere of religious freedom and toleration that so many sought might simply disappear.

Jefferson also penned one of the most cited phrases in the implementation of church-state separation to this day, describing a “wall of separation between church and state” in a letter to the Danbury Baptist Association of Connecticut. In 1802, Jefferson wrote a response to a letter sent by the Danbury Baptists asking then-President Jefferson to prevail upon the State of Connecticut to solidify its stance vis-à-vis religious groups. Lamenting the situation they faced in Connecticut, the Danbury Baptists wrote,

¹¹³ Ibid.

¹¹⁴ Ibid.

Our ancient charter together with the Laws made coincident therewith, were adopted on the Basis of our government, at the time of our revolution; and such had been our Laws & usages, and such still are; that Religion is considered as the first object of Legislation; and therefore what religious privileges we enjoy (as a minor part of the State) we enjoy as favors granted, and not as inalienable rights: and these favors we receive at the expense of such degrading acknowledgements, as are inconsistent with the rights of freemen.¹¹⁵

In response, Jefferson sent a letter to members of the Danbury Baptist association of Connecticut outlining his views on the separation of church and state and the provisions laid out by the Federal constitution and First Amendment. Jefferson wrote, “Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, ¬ opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof’, thus building *a wall of separation* between Church &State .”¹¹⁶ (my emphasis) The idea of a wall of separation between Church and State has since become one of the most used and most cited examples of the Founding Father’s original sentiments concerning the church-state relations, it has permeated fully into the system of due process in the federal courts, which will be examined in the next section, and has become the cornerstone of American secularism. Ironically, while the idea of “a wall of separation” is probably one of

¹¹⁵ Danbury Baptist Association, 1801.

¹¹⁶ Thomas Jefferson, "Letter to the Danbury Baptists," in *Library of Congress* (Washington, DC: Library of Congress Archives, 1802).

the most well-known aspects of American church-state religions, nowhere is it stated in the First Amendment.¹¹⁷

The Jeffersonian concept of a wall of separation between church and state was not actually incorporated into U.S. judicial practice until nearly 75 years after

¹¹⁷ In the United State federal system, the federal government and state governments both have equal and simultaneous jurisdiction over the citizens of each respective state. Each state has its own state constitution, which has priority in executive, legislative, and judicial terms. In instances of conflict, however, the Federal Constitution does take precedence. Originally, the Bill of Rights was designed only to apply to the federal system and was not expected to be applied at the state level. However, in 1868, Congress passed the Fourteenth Amendment, in response to concerns that some state laws and constitutions were not treating basic human rights and liberties with the necessary degree of respect. This rendered the Bill of Rights applicable at the state level and began a process in which the Supreme Court required states to consider these Amendments within the body of state law.

Despite the passage of the Fourteenth Amendment, struggles between state and federal power concerning the Bill of Rights have continued to be played out in the Supreme Court. As cases make their way through the state and federal court system and finally are reviewed by the Supreme Court, however, the laws by which the states must abide are largely clarified. In the United States judicial system, once the Supreme Court has heard and decided a case, the decision is then “incorporated” into due process and the lower courts must decide any cases they hear concerning the same issues along the lines used by the Supreme Court.

While the system of due process does result in the adaption of federal law for the state level, this does not preclude state officials from taking their own particular state’s constitution into consideration. In fact, a significant number of state constitutions are more vehemently separationist than the federal constitution. As debates over the separation of church and state have continued into the twenty-first century, these stricter state constitutions have become an arena for vigorous debate. The historical background of the stricter, more separation focused state constitutions dates back to 1875 and the raging anti-Catholic sentiment of the time. During this period, recently arriving Catholic immigrants who were unhappy with the pervasive Protestant ideology that permeated the United States public school system began to demand state and federal funding for the creation of their own schools. The Blaine Amendments, were proposed, and employed where possible, in an effort to forbid the distribution of any state land or money for public schools to go to religious sects. Blaine’s underlying aim was to allow the dominant Protestant world-view to flourish unthreatened by any Catholic attempts to secure public funding or recognition. Many states continue to use the Amendments in an effort to promote a more strict separation of church and state that would stave off any mixing of government funding and religious programming. Opponents of the current Amendments, often also proponents of vouchers for educational and social service programs, argue that the amendments are the outdated remnants of anti-Catholic discrimination and should be eliminated from state constitutions altogether. This issue has not been resolved despite Supreme Court cases authorizing both limited direct aid and vouchers to religious organizations. Lupu and Tuttle explain that, realistically, none of the options that currently exist for solving the debate; subjecting state law fully to the Federal Constitution and Supreme Court jurisprudence or practicing an extreme separationist position of no government aid whatsoever to *any* religious and non-religious private facility, are unlikely to help or be implemented successfully. They explain that “State constitutional law, and its validity under federal constitutional norms, is likely to play a major role in the struggle over vouchers (indirect government aid), but it is impossible at this point to identify all the ways in which the state-federal interplay may evolve.” Ira C. Lupu and Robert W. Tuttle, “*Zelman's* Future: Vouchers, Sectarian Providers, and the Next Round of Constitutional Battles,” *Notre Dame Law Review* 78, no. 4 (2003): 960-72. For more detailed analysis of the Blaine Amendments see, “The Blaine Amendments”.

Jefferson introduced it in a letter sent to the Danbury Baptists.¹¹⁸ Not only was this letter the forerunner to the idea of a “wall of separation between church and state”, but it also presents a crucial insight into the relationship between the federal government and the states on questions of religion. Often overlooked, yet relevant for our study, Jefferson, in a reference to the Constitution and the Bill of Rights, explains to the concerned Baptists that they should take comfort in fact that this wall will be built as a result of, ‘that act of the whole American people which declared that their legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,”’. This, Jefferson continues was, the “expression of the supreme will of the nation in behalf of the rights of conscience”.¹¹⁹ In saying this, Jefferson essentially predicted the course that the relationship between the states and the federal government would eventually take. At the time of his writing, the Bill of Rights, originally drafted in order to curb fears of excessive federal power, was not applicable to the states. In fact, as we shall see, the First Amendment, dealing with the Establishment and Free Exercise of religion would not be incorporated into state level law until the 1940s. Jefferson’s letter was a harbinger of the rising power of the federal government, and the increased need for a more uniform understanding of the rights of citizens at both levels of government.

¹¹⁸ Since then, as a result of cases heard and decisions rendered, the Supreme Court has incorporated into standard procedure three crucial concepts, the idea of a “wall of separation between the church and state”, the requirement that no law be made “respecting the establishment of religion”, and the provision that “free exercise” of religion is a basic right of all citizens.

¹¹⁹ Jefferson, "Letter to the Danbury Baptists."

Returning to the question of the “separation of church and state”; although Jefferson clearly presented his belief in the necessity of a “wall of separation” in 1802, it was not until 1879, when the Supreme Court heard the case *Reynolds v the United States*, dealing with the right of Mormons to practice polygamy, that this term became part of America’s legal lore. The Court’s decision, written by Chief Justice Morrison Waite, to forbid the practice, and indict Reynolds for breaking the law, was based on the notion that religious duty was not a sufficient justification for criminal behavior and that allowing the continuation of this type of behavior was detrimental to the public good and could lead to problems maintaining a healthy and stable social order. Chief Justice Waite pointed out that, as Jefferson had written, there exists a difference between religious belief and actions that flow from this belief. While the secular law does not and cannot interfere with religious belief, actions that stem from this belief that may have negative repercussions for the public *are* within the realm of the law. In addition, the Court’s opinion was that while the First Amendment did keep Congress from being able to legislate against religious belief, Congress was within its bounds to legislate against actions; such as in this specific case, polygamy. Justifying polygamy with religious belief would open the door to any number of other extremes, such as human sacrifice. Chief Justice Waite’s opinion of the Court solidified not only the entry of the idea of a “wall of separation” into Court judicial practice, but also the idea that Congress should deal with the necessities of a good social order without influencing the realm of belief. Quoting from Jefferson’s “Danbury Letter”, Chief Justice Waite opined,

Believing with you that religion is a matter which lies solely between man and his god; that he owes account to none other for his faith or his worship; that the legislative powers of the government reach actions only, and not opinions, -- I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and State.' Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions -- which were in violation of social duties or subversive of good order.¹²⁰

Madison originally drafted a Bill of Rights in which the First Amendment read, "No State shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases," and would have extended the Amendment to the state level.¹²¹ However, the ratifying First Congress struck the "state" reference, leaving the Amendment's applicability only at the federal level. As a result, the incorporation of the Establishment and Free Exercise Clauses into judicial process and *state* level laws did not occur for nearly 150 more years. In the 1940s, cases dealing with both issues came before the Supreme Court. The first was *Cantwell v Connecticut* (1940) brought by the Cantwell family, a family of Jehovah's Witnesses, who were required by their religion to go door-to-door attempting to solicit people to convert to their beliefs. The Cantwells argued that their arrest by the New Haven, Connecticut police on charges of violating Connecticut statutes and common law was against their First Amendment right to exercise of religion and

¹²⁰ *Reynolds v United States of America* 98 U.S. 145, (1878).

¹²¹ Church, *So Help Me God: The Founding Fathers and the First Great Battle Over Church and State*: 321.

free speech. The State of Connecticut held that the Cantwells actions were similar to all other types of solicitation and they would, therefore, be required to obtain certificates allowing them to solicit people in this manner. In response, the Cantwells argued that requirements for them to apply for this type of certificate amounted to a direct violation of their right to practice their religion freely.¹²² In the final analysis, the Supreme Court decided that, in fact, the State of Connecticut's actions were unconstitutional and invoked both the First and Fourteenth Amendments as justification. With this case, the Free Exercise Clause of the First Amendment became part of due process and all states were required to treat their citizens accordingly.

The second case, *Everson v the Board of Education of the township of Ewing*, did for the Establishment Clause what *Cantwell* accomplished for the Free Exercise Clause. In *Everson*, the question at hand was whether or not a Ewing, New Jersey city's decision to reimburse parents for the costs of busing their children to school, even when these schools were religious schools, was constitutional. Under New Jersey law, in areas where the state did not provide transportation itself, transportation costs, to either public or private schools, were to be handled by the state. The question in *Everson* is whether or not, in the case of religious schools, this represented government establishment of religion through support for parents who chose religious education, and thus if it represented excessive government entanglement of any sort.¹²³ The decision in this case focused on the fact that the *purpose* of government reimbursement to the parents was fully secular and did

¹²² *Cantwell v Connecticut* 310 U.S. 296,(1940).

¹²³ *Everson v Board of Education of the Township of Ewing* 330 U.S. 1,(1947).

nothing to advance religion; its aim was simply to aid in advancing education and allowing children to attend different schools.

In the final decision in what has become a cornerstone of understanding in the Establishment Clause, Justice Black wrote on behalf of the court that,

The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws that aid one religion, aid all religions nor prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'¹²⁴

Not only did Justice Black reiterate the Jeffersonian belief in the wall of separation between church and state, ushering the era of strict no-aid separationism between the church and state, but he also facilitated the incorporation of the Establishment Clause to state level laws and constitutions.

With the incorporation of the Establishment Clause and ideals of Free Exercise that occurred during the 1940s, any preferential treatment towards religion that may have been taking place at the state level was now rendered unconstitutional. The national view of church-state relations was based on the

¹²⁴ Ibid.

Supreme Court principle that any public aid must be limited to “secular, neutral, and non-ideological purposes.”¹²⁵ During this period, while levels of religiosity among the public did not decline, religion was confined, by and large to the private sphere. The Supreme Court went as far as to issue a statement on the need for strict separation stating, that it “is a matter of history that this very practice of establishing governmentally composed prayers for religious services was one of the reasons which caused many of our early colonists to leave England and seek religious freedom in America.”¹²⁶ By the 1970s and 1980s, however, a major shift in attitude was occurring among public officials. As more conservative elements entered the government, generally seen as a reaction to the freer ideological period of the 1960s, the views of the Supreme Court also began to take on a more conservative tilt.¹²⁷ With this shift, the manner in which cases concerning religion, especially public

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ The appointment of federal judges, a category that also includes Supreme Court Justices, is dictated by Article III of the United States Constitution. A federal judge must be nominated for appointment by the President of the United States; yet full appointment requires confirmation by the United States Senate. District Court Judges and Appellate court judges, also categorized as federal judges must also be appointed through the same process. Once confirmed, federal judges serve “during good behavior”, which generally indicates that they will serve for life, or until retirement. Due to the manner in which federal judges are appointed, the entire process has, in recent decades, taken on a decided political tone. Judicial decisions, in particular, at the Supreme Court level, have the potential, as we have seen, to alter the application of laws and render some laws unconstitutional. As a result, both the party affiliation of the President and the political leanings of the Senate play a significant role in the type of judges that are appointed. So much so that legal watch groups, such as the ACLU and American Jewish Congress, often work to inform voters during election years concerning the number of federal judge positions that the upcoming President will be filling. A conservative court is more likely to issue conservative decisions, and thus propel the nation’s entire legal structure in a more conservative direction. A number of books dealing with both the appointment and the functioning of Supreme Court Justices have detailed the process. See for example, Jeffrey Toobin, *The Nine: Inside the Secret World of the Supreme Court* (Anchor Books, 2008); Bob Woodward and Scott Armstrong, *The Bethren: inside the Supreme Court* (Simon and Schuster, 1979, 2005); William H. Rehnquist, *The Supreme Court* (Vintage Books, 2001, 2002).

funding to religious entities, crucial to the later debates over the Faith-Based Initiative, also began to change.

In 1971, the Supreme Court heard the case *Lemon v Kurtzman*. The general contours of the case were based on the question of government funding for religious educational facilities. At the time, discrepancies in education and under-performing students had entered the public consciousness and one solution was to provide extra government funding to some of the less successful schools. *Lemon* dealt with supplemental monies being provided by the state of Rhode Island to teachers who were willing to spend extra time and energy on a variety of non-religious subjects. The teachers were often in Catholic schools that were servicing some of the poorest, neediest, and worst performing areas of the state. Critics of the program argued that this type of government funding was in violation of the First Amendment's Establishment Clause and amounted to direct government funding of religion.¹²⁸ In its verdict, the Supreme Court, eventually, decided against this argument and upheld the supplemental monies as constitutional. The Justices decided that since the subjects being taught were non-religious in nature and the goal here was to advance the secular education of under-achieving students, the extra government funding should be allowed to continue. While the Court's decision is important in its own right, the most influential result of *Lemon* was the development of the "Lemon Test" that has continued to dictate the manner in which the Court decides funding questions to this day. The Lemon Test is a three-pronged test that should,

¹²⁸ *Alton J. Lemon, et al. v. David H. Kurtzman, Superintendent of Public Instruction of Pennsylvania, et al.; John R. Earley, et al. v. John DiCenso, et al.; William P. Robinson, Jr. v. John DiCenso, et al.* 403 U.S. 602 (1971).

the Court holds, determine whether or not government funding to a religious school (now expanded to include all religious organizations) is constitutional.

The first prong requires that the purpose of the program that will receive government funds be secular. For example, in the *Lemon* case, the subjects to be taught were secular and therefore public funding was permissible. Because secular purpose is the most glaring aspect of a program, almost all cases that have come before the Court have passed the first prong; often lower courts are able to eliminate the cases much earlier on in the judicial process if secular purpose is lacking. The second prong considers the primary effect of the program, which must also be secular. For example, to take the *Everson* case, the primary effect of public funding is to reimburse the parents and ease their financial burden, not to advance the children's religiosity. Public funding programs are often declared unconstitutional after failing the second prong as the primary effects of programs may be less clear and therefore harder to determine. For instance, funding teachers to work on non-religious subjects may be secular in nature, but if it leaves them with significantly more time to work on religious subjects then it could possibly result in a primary effect that is religious. The final prong requires that any type of public funding not result in excessive government entanglement with religious entities. This is required by the constitution both for the good of the government, and for the religious organizations, as too much interference by the government would result in a loss of autonomy for the organization. The second and third prongs often function in unison. If a program's primary purpose is questionable, the only way for the government to ensure that it is secular may be to become excessively involved in the

activities of the religious organization. This type of deep involvement, in turn, renders the program unconstitutional.¹²⁹

Following its creation in the early 1970s, the Lemon Test became the standard for all subsequent Supreme Court cases in which the separation of church and state came under scrutiny. With the new focus on potentially allowing state and federal aid to flow to religious schools, and later religious organizations, however, the entire church-state landscape in the United States began to shift. By the 1980s, the previous strict, no-aid separationist stance had been replaced by a new ideology, similar to that of George Washington, that a view that interaction with the church may have positive influences on the populace and should be encouraged, if necessary through federal funding of religious programs. The concerted efforts of the Religious Right, working through the organizations of the Moral Majority, the Christian Coalition, and numerous conservative think tanks and political action committees had been able to sway both popular and political opinion away from the less rigid, free-flowing and liberal ideals of the 1960s and 1970s and toward new, conservative ideas of virtue, morality, religiosity, and “family-values.”¹³⁰ While the Lemon Test, in its three-pronged approach, essentially reduced chances that federal funding would go to religious-permeated groups, the “era of accomodationism” that took root during the early 1980s actually focused on ways in which to encourage and enable government funding for pervasively sectarian organizations. A pervasively sectarian organization is one in which religious belief represents a

¹²⁹ Ibid.

¹³⁰ John Micklethwaith and Adrian Wooldridge, *The Right Nation: Conservative Power in America* (Penguin, 2005).

cornerstone of an organization's ideology and functioning. In large part, this attitude adjustment was influenced by an overall shift to the right of the nation's political elite and, the congruous shift of the Supreme Court's Justices towards a more conservative attitude.¹³¹ Despite retirements and resignation since the 1980s, the majority of the Justices that sit on the Supreme Court have proven themselves to be more conservative than not and, due to the manner in which the American judicial system functions; this has also contributed to the prevailing accommodating attitude vis-à-vis religious educational and social service facilities.¹³²

A number of court cases brought before the Supreme Court in the 1980s and 1990s are indicative of the manner in which the Justices were attempting to carve out a more congenial arena for religious education, faith-based services, and citizens who wanted to take advantage of the opportunities these organizations may have to offer. Along with an attitude of accommodationism, the Court was also cultivating a philosophy of neutrality. This did not imply that the Court would act on a neutral basis between religious groups seeking funding; instead, the main goal was to treat religious and secular organizations offering similar services as if they were on equal footing in the eyes of the government. In simple terms, for example, if underprivileged students at state schools received free, state and federally funded breakfasts then students who attended religious schools but could not afford to buy their own breakfasts should also receive free, government provided breakfast opportunities. This type of stance aimed to create neutrality of government policy

¹³¹ Ibid.

¹³² Toobin, *The Nine: Inside the Secret World of the Supreme Court*.

across the board; not just among religious servers themselves or secular servers themselves.

The cases detailed above, and in those that will be discussed below are clear demonstrations of the manner in which the United States judicial branch has often been able to drive government action on the basis of opinion. Although Constitutionally speaking the act of legislation and the design of national and local legal measures are the realm of the Legislative branch of the United States government, the Constitution, in its separation of powers, leaves to the Judicial branch the act of interpretation and application of this same legislation. As a result, the action desired by the law may, as a result of the opinions of the Court, and even of the public, undergo a revision. As we have seen, the original ideals of the Establishment Clause and the Free Exercise Clause of the First Amendment, through years of judicial review, were interpreted and applied at the federal and state levels on the basis of the idea of wall of separation of church and state. The manner in which this has shifted, as we shall see below, clearly demonstrates that way that original ideals of action have been overpowered by shifting opinions. The Supreme Court cases discussed in the following section clearly opened the door for the emergence of the Faith-Based Initiative, an Initiative whose application at the federal level would have likely been unthinkable merely half a century ago. The shift between strict separation and neutral treatment was not a rapid one, but the role that opinion played in its facilitation is clear.

The initial two cases decided on the basis of the Lemon Test and decided in a manner that indicated the early shift towards neutrality between secular and

religious entities were *Widmar v Vincent* (1981) and *Mueller v Allen* (1983).

Widmar v Vincent, dealt with allowances made for registered student groups at the University of Missouri at Kansas City. According to the plaintiffs, the University provided office space and logistical support for meetings and activities of student organizations. However, not only were religious student groups not allowed to use University facilities in the same capacity, they were specifically not given office space due to their religious orientations and messages. Representatives of the religious groups argued that this was in violation of their right to free exercise of their religions and freedom of religious speech and did not amount to neutral treatment at the hands of a state agency; the University after all, receiving state monies and thus being representative of the state. After being tried at the district and appellate levels, the Supreme Court heard the case and eventually decided that University policy did actually “violate the fundamental principle that a state regulation of speech should be content neutral.”¹³³ The University was told to allow for religious groups to receive full access to University facilities and to be provided with every advantage that any other secular student groups might be receiving.¹³⁴

Mueller v Allen (1983) focused on an income tax reduction being paid to parents of primary and secondary school students. The state decided to extend the same income tax reduction to parents of children attending religious schools and this question reached the courts. In the end, again, invoking both the Lemon Test and the idea of neutral treatment for secular and religious entities when the end result

¹³³ *Widmar v. Vincent* 454 U.S. 263,(1981).

¹³⁴ *Ibid.*

was not an advancement of religion, the state's idea to compensate parents of students in religious schools was upheld by the Supreme Court. Under the Court's analysis, the three pronged test was upheld; the program being funded was a secular one- in this case the repayment of income tax could in no way be considered direct aid to a religious entity; the end result should be secular- again, the money was going to the parents, not to the religious schools; and finally, the program should not result in excessive government entanglement- there was no need for the government to become entangled with what was essentially a tax reduction for parents who sent their children to primary and secondary schools, albeit in this case, religious primary and secondary schools.¹³⁵ The decision in *Mueller v Allen* is typical of the Court's decision-making process that continues today. If a program is not overtly religious in nature and if similar payment or funding schemes exist for secular organizations, the Court has leaned toward supporting what critics often consider a breach of the wall of separation between church and state. As we will see later, the George W. Bush Administration's Faith-Based Initiative was presented in terms that mimicked this attitude and focus on government neutrality, not only between religious groups but also among religious and secular entities.

A number of other cases are often considered within this framework and should be touched upon briefly as they help to demonstrate the extent to which the new "neutral treatment" focus of the Court and Federal system allowed for more and more religion to permeate the Federal and State level governments and increasing amount of government funds to flow to religious organizations and aims.

¹³⁵ *Mueller v Allen* 463 U.S. 388 (1983).

In *Witters v Washington Department of Services for the Blind* (1986), the Supreme Court heard arguments debating the validity of a blind patient's use of government rehabilitation funding to attend a Christian college and receive training to become an ordained minister. In this instance, government funding was supporting a specifically religious organization with a specifically religious aim. Although the monies were being paid as a result of patient choice, the manner in which these funds were being spent was open to scrutiny.¹³⁶ The Supreme Court eventually decided that the use of rehabilitation payments for pastoral training was truly a result of patient choice and therefore did not fall under the jurisdiction or responsibility of the state and should be allowed to continue in this capacity.¹³⁷

Bowen v Kendrick (1988) has often been cited as the primary legal precursor and precedent for the Charitable Choice Act of 1996 and the Faith-Based Initiative of 2001. In *Bowen v Kendrick*, originally, litigation was initiated by the American Jewish Congress in US Federal District Court challenging the constitutionality of the Adolescent Family Life Act, which authorized the disbursement of federal grants to "public or nonprofit private organizations and agencies for service and research in the area of premarital adolescent sexual relations and pregnancy."¹³⁸

¹³⁶ *Witters v Washington* also brings into play the question of direct and indirect funding, a concern that has plagued both proponents of Charitable Choice following the 1996 passage of the Personal Responsibility and Work Opportunity Reconciliation Act and the Faith-Based Initiative after 2001. Supporters argue that instances in which government money is provided to recipients who are then able to choose where to disburse the funds are actually above scrutiny as this is a case of indirect aid. Even if welfare or aid recipients choose to spend their government provided funds at extremely religious venues, no governmental responsibility exists at all. Government money, they believe, cannot even truly be considered government money any longer as it belongs to, and is paid out by, the recipients of aid, not by the government itself.

¹³⁷ *Witters v Washington Department of Services for the Blind* 474 U.S. 481,(1986).

¹³⁸ *Bowen v Kendrick* 487 U.S. 589,(1988).

The ~~A~~dolescent Family Life Act~~FLA-Aet~~ required that, due to the nature of subjects that would be considered, the organizations allowed to, and invited to, participate in the program should include, among others, “religious and charitable organizations, voluntary associations, and other groups in the private sector, as well as governmental agencies”.¹³⁹ The American Jewish Congress argued before the District Court that the ~~A~~dolescent Family Life Act~~FLA-Aet~~, in incorporating religious groups as partners with the federal government, was in violation of the First Amendment Establishment Clause and called for the dolescent Family Life Act ~~FLA-Aet~~ to either be revised or eliminated altogether.¹⁴⁰ The Supreme Court, however, after reviewing the case and applying the Lemon Test held that the ~~A~~dolescent Family Life Act~~FLA-Aet~~ was constitutional; it had a secular purpose- “the legitimate purpose of eliminating or reducing social and economic problems cause by teenage sexuality, pregnancy and parenthood.”¹⁴¹ Additionally, while the ~~A~~dolescent Family Life~~A-~~Act increased the role of religious organizations, this was “also motivated by other, entirely legitimate secular concerns, such as attempting to enlist the aid of other groups in the private sector to increase broad-based community involvement.”¹⁴²

The Court also found that the second prong of the Lemon Test, a primary effect of advancing religion, did not hold. While religious organizations were

¹³⁹ Ibid.

¹⁴⁰ *The American Jewish Congress v Adolescent Family Law Act*, (1988).

¹⁴¹ *Bowen v Kendrick* 487 U.S. 589.

¹⁴² Ibid.

invited to apply and become involved, the Adolescent Family Life Act~~AFLA Act~~, did not have a “requirement that grantees be affiliated with any religious denomination, and the services to be provided under the Act are religious in character.”¹⁴³ Also, while the types of information and teaching required by the Adolescent Family Life Act~~AFLA Act~~ may overlap with certain religious ideas, the Court found that this was not always necessarily the case, nor were organizations required by the Adolescent Family Life Act~~AFLA Act~~ to teach in this manner. Subsequently, the second prong of advancing religion could also not be demonstrated. The final prong, excessive entanglement of church and state was also eliminated by the Court. The members of the Court held that any monitoring of money from the Adolescent Family Life Act grant was no different in the case of religious or secular organizations that may be involved in the program. There was also no reason to “assume that the religious organizations which may receive Adolescent Family Life Act grants are ‘pervasively sectarian’”.¹⁴⁴ Overall, the Court, in *Bowen v Kendrick*, applied the Lemon Test for the first time to a situation of government funding for religious organizations as opposed to educational facilities. In many respects this new attitude was a result of changes on the bench of the Supreme Court; the Court itself had become increasingly conservative during this era.¹⁴⁵ In addition, the general shifting of public attitude towards increased conservatism, and an increased tolerance for religious organizations in the public

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Toobin, *The Nine: Inside the Secret World of the Supreme Court*.

and government arenas also helped allow for a more open-minded outlook concerning funding to religious organizations.¹⁴⁶ In essence, the general attitudinal shift, coupled with the Court's decision rendered the Bowen case a landmark case and a clear demonstration that Court doctrine did not necessarily oppose partnerships between the government and religious social service organizations; thus easing the way for future introduction of the Charitable Choice Amendment in 1996.

Following the Court's decision in Bowen and its decisive shift towards a stance that emphasized neutral treatment for secular and governmental organizations, the Supreme Court remained firm in its support for its position vis-à-vis religious organizations. Again, as a result of the federal system of jurisdiction that exists in the United States, the shifting attitude at the top level of the pyramid was quickly reflected in the states. Without the neutrality focus that developed in the 1980s and 1990s, the Charitable Choice legislation that was eventually passed in the Clinton Administration and the Faith-Based Executive Order signed by Bush would have faced much greater scrutiny at the judicial level. The effect that these cases, and four more Supreme Court cases, *Agostini v Felton*, *Rosenberger v The Rector and Visitors of the University of Virginia*, *Agostini v Felton*, *Mitchell v Helms*, and *Zelman v Simmons-Harris*¹⁴⁷ that we will examine shortly, played in changing the federal and state landscapes to allow for greater accommodation of Charitable Choice and later the Faith-Based Initiative cannot be exaggerated. The

¹⁴⁶ Mickelthwaith and Wooldridge, *The Right Nation: Conservative Power in America*.

¹⁴⁷ ~~These cases will all be discussed at length in Chapter Four.~~

slow, but clear, shifting of perspective in legal terms, made available by the system of judicial review that reigns in both federal and local courts in the United States, opened doors to partnerships that legal scholars, such as Lupu and Tuttle, close observers of the Faith-Based Initiative, argue would have remained firmly shut in previous, less accommodationist decades.¹⁴⁸

The Court's decision in *Rosenberger v Rector and Visitors of the University of Virginia* (1995) was especially significant. In this case, a student publication, that happened to have a Christian message, was denied University funding- available to other student publications- based on the fact that the publication constituted "religious activity" and was "therefore prohibited from receiving funding under the university's guidelines".¹⁴⁹ In its opinion, the Court explained that,

To obey the Establishment Clause, it was not necessary for the University to deny eligibility to student publications because of their viewpoint. The neutrality commanded of the State by the separate Clauses of the First Amendment was compromised by the University's course of action. The viewpoint discrimination inherent in the University's regulation required public officials to scan and interpret student publications to discern their underlying philosophic assumptions respecting religious theory and belief. That course of action was a denial of the right of free speech and would risk fostering a pervasive bias or hostility to religion, which could undermine the very neutrality the Establishment Clause requires.¹⁵⁰

¹⁴⁸ Lupu and Tuttle, "Zelman's Future: Vouchers, Sectarian Providers, and the Next Round of Constitutional Battles."

¹⁴⁹ Abigail Lawlis Kuzma, "Faith-Based Providers Partnering with Government: Opportunity and Temptation," *Journal of Church and State* (2000).

¹⁵⁰ *Ronald W. Rosenberger, et al., Petitioners v. Rector and Visitors of the University of Virginia, et al.* 515 U.S. 819 (1995).



Following the *Rosenberger* decision, the Court's focus on ensuring that secular and religious organizations and activities receive neutral treatment at the hands of the government continued to be solidified at both the state and federal levels. In fact, the repeated use of the word "neutrality" in the decision of the Court indicates just how much the Justices have internalized the new neutrality stance.

Agostini v Felton (1997) was also equally significant in terms of the foundational changes that occurred in the Court as a result of the case. Kuzma explains that the case was somewhat similar to the *Lemon* case in that it also dealt with the issue of supplemental monies flowing to teachers and students of parochial schools.¹⁵¹ The case was based on, and eventually specifically overruled, two previous cases, argued before the Supreme Court in the 1980s that had eventually declared the programs that they represented, respectively, unconstitutional.¹⁵² In

¹⁵¹ ———, "Faith-Based Providers Partnering with Government: Opportunity and Temptation."; *Alton J. Lemon, et al. v. David H. Kurtzman, Superintendent of Public Instruction of Pennsylvania, et al.*; *John R. Earley, et al. v. John DiCenso, et al.*; *William P. Robinson, Jr. v. John DiCenso, et al.* 403 U.S. 602

¹⁵² The precedents for *Agostini v Felton* were two cases, both overruled by the Court due to the unconstitutionality of the programs they represented. The first of these was a case in Michigan, *School District of Grand Rapids v Ball* (1985) in which a state initiative implemented by the School District of Grand Rapids, Michigan called "Shared Time" was considered. Shared Time attempted to improve the overall education of non-public school children by offering supplemental "remedial and enrichment" classes at public expense to these students. The Court decided that Shared Time was in fact unconstitutional due to three primary violations of church and state. First, state monies could easily be misused as teachers of the supplemental courses might, "subtly or overtly conform their instruction to the pervasively sectarian environment in which they taught"; second, any public school teachers who might chose to take part in the program and would then teach on the grounds of the parochial schools might misrepresent the state through "creating a graphic symbol of the concert or union or dependency of church and state"; third, the Shared Time program impermissibly financed religious indoctrination by subsidizing "the primary religious mission of the institutions affected". *School District of the City of Grand Rapids, Michigan v Ball* 473 U.S. 373 (1985). This case's sister case was *Aguilar v Felton* (1985), dealt with an educational initiative that was very similar to the Shared Time program. The biggest difference was that an additional section of the program required that the religious content of teaching and study be closely monitored. In this instance, the Court argued that not only did the previous concerns hold, but the added question of government entanglement also rendered the program unconstitutional. The only way the government would be able to fully monitor the program's religious content would have been to get extremely

the *Agostini* case, like many of the other school cases, the program under scrutiny was a system of remedial education efforts for disadvantaged students, often studying at parochial schools, which aimed to provide supplementary education to complement the “core curriculum” of the schools. The classes would be taught by public school teachers, using publicly funded teaching materials, during regular school hours, but on the parochial school grounds.¹⁵³ While its content closely resembled that of both the *Grand Rapids v Ball* and *Aguilar v Felton* cases, in this case, employing a more neutrality-focused interpretation, the Supreme Court held that the program was constitutional based on a number of points. First, any direct funding was deemed acceptable because it advanced the aim of generally educating underprivileged children; second, the incentive, particularly financial incentive, to “undertake religious indoctrination” did not exist, nor did the funding situation indicate any propensity for creating an environment in which religion might be advanced through indoctrination; third, government regulation and observation of the schools and teachers was permissible, in fact, “Interaction between church and state is inevitable”¹⁵⁴ and all entanglement is not necessarily excessive.¹⁵⁵ In addition, in what was the most significant aspect of the *Agostini* decision, the Court actually used a modified version of the Lemon Test, one that would become the prevailing method in coming church-state funding cases, in which it further softened

involved with the functions of the educational initiative and this would result in a clear violation of church-state separation. *Aguilar v Felton* 473 U.S. 402 (1985).

¹⁵³ *Rachel Agostini et al. v. Betty Louise Felton et al.* 521 U.S. 203,(1997).

¹⁵⁴ Ibid.

¹⁵⁵ ———, “Faith-Based Providers Partnering with Government: Opportunity and Temptation.”; *Rachel Agostini et al. v. Betty Louise Felton et al.* 521 U.S. 203.

the Lemon test¹⁵⁶ by collapsing the second prong of ‘primary effect’ and the third ‘excessive entanglement’ prongs into one single prong that asked whether or not the program served to promote religion. Rather than looking carefully at the inner details and workings of the program, “The Court became concerned only about whether a program allocated assistance on religiously neutral criteria.”¹⁵⁷

Agostini v Felton revealed that “the Court appeared to close the door on the era of strict separation...” and proved that “the principle of strict separation was losing currency” and “an alternative constitutional paradigm of neutrality was gaining ground”; “neutrality of access to government resources increasingly trumped objections that the receipt of funds or the use of resources for religious ends violated the establishment clause.”¹⁵⁸ The changes in the Lemon Test were equally significant, specifically because they allowed the Supreme Court to “find ways for governments to support services offered by religious organizations while not discriminating for or against them.”¹⁵⁹ Debate over strict separationism versus neutrality in the government stance on religion has been a historical reality of the

¹⁵⁶ Paul Weber clearly describes the changes that took place in the Lemon Test after the Supreme Court’s review of *Agostini*. While the secular purpose prong, the first prong, was left intact, the second prong was somewhat expanded; determining whether a program advanced religion the Court asked three questions, “Does the program result in government indoctrination?, Does the program define its recipients with respect to religion?, Does the program create excessive entanglements?” Weber notes that this new system was known as “the new neutrality” and violation of any of these three questions would render a program unconstitutional. Weber, like Black, Koopman, and Ryden, also points out that the third prong dealing with excessive entanglement was significantly relaxed. Paul Weber, “The Bad in the Faith-Based Initiative,” in *Faith-Based Initiatives and the Bush Administration: The Good, the Bad, and the Ugly*, ed. JoRenee Formicola, Mary C. Segers, and Paul Weber (Lanham: Rowan and Littlefield, 2003).

¹⁵⁷ Amy E. Black, Douglas L. Koopman, and David K. Ryden, *Of Little Faith: The Politics of George W. Bush's Faith-Based Initiatives* (Washington, DC: Georgetown University Press, 2004).

¹⁵⁸ *Ibid.*, 226.

¹⁵⁹ Weber, “The Bad in the Faith-Based Initiative,” 69.

United States political system. That this debate still continues today is made evident by the shifting in legal attitude even at the highest level of the judiciary. Looking at *Rosenberger* and *Agostini* it becomes quite clear that the current attitude, that government funding should flow in a neutral manner between religious and secular organizations, has made its mark on all branches of the United States government.

Religion and Politics: An Exceptionally Fluid Relationship

The fluid definition of the separation of church and state has also affected religion in America, and its interaction with the political sphere. According to E.J. Dionne, these interactions can best be understood by considering the historical trajectory of the U.S. based on its division into a number of stages that are centered around the continued and fluid relationship that religion and politics have had since the nation's founding. Looking specifically at the modern era, Dionne describes these stages as threefold. First, at the turn of the twentieth century, Protestant hegemony, essentially in place since the first urban settlements of the 1700s, reigned. Politicians, elites, and business leaders were, by and large, exclusively members of the Anglo-Saxon, Protestant Establishment and the country's political focus was modeled along these lines.¹⁶⁰ By the 1960s, the nation experienced the rise of new forces in politics and religion. As church-state separation became more stringent,

¹⁶⁰ For more information concerning the role of the Protestant Establishment in the United States see, Charles T. Matthews, "Reconsidering the Role of Mainline Churches in Public Life," *Theology Today* 58, no. 2 (2002); E. Digby Baltzell, *The Protestant Establishment: Aristocracy and Caste in America* (New Haven, CT: Yale University Press, 1987).

events such as the Scopes Trial¹⁶¹, the end of Prohibition¹⁶², the rising power of Catholics nationwide, and the disruptive events of the civil rights movement all negatively influenced the Protestant Establishment's hold over the political reigns of the nation. Finally, in the current era, Dionne explains, the relationship between politics and religion is experiencing an "era of renegotiation of the separation of church and state."¹⁶³ The boundaries between what is and is not acceptable in terms of church-state interaction is being re-evaluated and re-formulated. The Republican Party, as we will see in the following section, has been able to build upon the more rigid views and fears of liberalism held by its conservative followers and on an underlying and dominant conservative Protestant ideology, and has been able to capitalize on a new area of discussion, the "values debate", to outmaneuver the Democrats.¹⁶⁴ However, while a focus on faith and values that has currently

¹⁶¹ The Scopes Trial has become the classic example of the debate between religion and science in the United States. Focusing on the dispute over the Darwinian notion of evolution and the Christian notion of Divine Creation, the trial, which took place in Tennessee in 1925, has also been called the "Monkey Trial". A local high school teacher was taken to court by conservative religious members of the community and accused with teaching "lies" that man evolved from monkeys. In the final decision, the case was dismissed from Court based on a technicality. However, the attention it brought to the debate between religious conservatism and science has had a long-lasting and far-reaching effect on the state of the Religious Right and religion in the United States in general. For a detailed account of the Trial see, Edward J. Larson, *Summer for the Gods: The Scopes Trial and America's Continuing Debate Over Science and Religion* (Basic Books, 2006).

¹⁶² Prohibition refers to the Prohibition of Alcohol, in particular the era in the United States where the federal government passed legislation, resulting in the 18th Amendment, which forbade the production and sale of alcohol throughout the country. This era lasted from 1919-1933, when the 21st Amendment was signed into law repealing the previous decision. For the conservative portions of society, this repeal represented a significant loss in terms of ideology and practice. For further information concerning the Prohibition Era see, Daniel Okrent, *Last Call: The Rise and Fall of Prohibition* (Scribner, 2010); Norman H. Clark, *Deliver Us from Evil: An Interpretation of American Prohibition* (W.W. Norton & Company, 1976).

¹⁶³ E.J. Dionne, *Souled Out: Reclaiming Faith & Politics After the Religious Right* (Princeton: Princeton University Press, 2008), 34.

¹⁶⁴ Micklethwaith and Wooldridge, *The Right Nation: Conservative Power in America*.

become standard fare in American politics, in previous decades, beliefs concerning the separation of church and state and an overall reluctance to mix personal faith and political ambitions held sway on the national political scene. Rather than actually representing a disinterest in religion, this attitude served the dominant Anglo Saxon Protestant establishment and their beliefs who were able, with political maneuvers such as the Blaine Amendments, to perpetuate their grip on political power.¹⁶⁵

Understanding the manner in which this has continued over the past half century specifically, requires a clearer understanding of the interaction between faith and *party* politics. The party system, based largely on the division between the Republican and Democratic Parties is a crucial aspect of American politics; one that is unique in comparison to both other parliamentary systems, and other presidential systems. While Republicans are generally more conservative, and Democrats are the liberal party, practically speaking both party platforms tend to present a more centered position to enhance their appeal. John C. Green and Alan Wolfe, scholars who have followed religion and politics in the United States for decades, have looked extensively at the role that faith and faith-relations play within the party system. Both authors note that interaction between religion and politics, has had unique repercussions for party popularity and power over the past fifty years. To start, Green explains that three primary aspects of American religious life affect the nation's politics. First, American religious tradition is very diverse, each tradition has its own elements of conservatism and liberalism within it; second, these

¹⁶⁵ See the above discussion for further detail concerning The Blaine Amendments. See also Appendix B for the full text.

religious differences have become, since the 1950s in particular, very politicized; and finally, these different “distributions of traditionalism have become embedded in the major party coalitions at both the mass and elite levels”.¹⁶⁶ As more traditional coalitions moved toward the Republican Party and began to shape the party platform, the more liberal or secular elements of society shifted their focus instead toward the Democrats. The result of this polarization, as we shall see in further detail in the upcoming section, was that by the end of the 20th century, the “God Gap” as it has been described, had become an entrenched aspect of national and local political alliances.¹⁶⁷

The diverse and diffuse federal structure of the United States often complicates the completion of a full scholarly analysis of voter behavior and general political outlooks. However, many academics have focused, instead, on the results of Presidential contests as reflections of the general national political outlook. Understanding the manner in which the Presidential campaigns and administrations of the past half century incorporated religion and values within their rhetoric will serve as important background for our later discussion of the Clinton, Bush, and Obama Administrations and their efforts concerning faith-based service organizations.¹⁶⁸ In 1961, the election of John F. Kennedy, the first Catholic president, was demonstrative of perhaps the first major shifting away from the

¹⁶⁶ John C. Green, "American Faith-Based Politics in the Era of George W. Bush," *European Political Science* 8(2009): 316.

¹⁶⁷ Ibid., 317.

¹⁶⁸ For a more detailed study of the role that Presidential religiosity has played on the national stage see, Randall Balmer, *God in the White House: A History: How Faith Shaped the Presidency from John F. Kennedy to George W. Bush* (New York: Harper Collins: Harper One, 2008).

traditional mainline Protestant Establishment as the undeclared backbone of American culture and politics. As the first Catholic President and one of the first Catholic politicians on the national stage, Kennedy faced many questions. In what is often considered his most significant address concerning religion, Kennedy reassured Protestant ministers and the nation that, his primary allegiance would be not to the Pope and the Vatican, but rather to the American public.

But because I am a Catholic, and no Catholic has ever been elected president, the real issues in this campaign have been obscured — perhaps deliberately, in some quarters less responsible than this. So it is apparently necessary for me to state once again not what kind of church I believe in — for that should be important only to me — but what kind of America I believe in.

I believe in an America where the separation of church and state is absolute, where no Catholic prelate would tell the president (should he be Catholic) how to act, and no Protestant minister would tell his parishioners for whom to vote; where no church or church school is granted any public funds or political preference; and where no man is denied public office merely because his religion differs from the president who might appoint him or the people who might elect him.¹⁶⁹

For a state that was supposed to be secular and enjoy the separation of church and state, the fact that Kennedy's Catholicism was questioned so thoroughly in the public square requires mention. In order to appease these fears, Kennedy refrained from a detailed or extensive discussion of his faith and practiced privately to avoid scrutiny concerning his beliefs. In an effort to convince the public of this, he once declared that a Chief Executive's "public acts are responsible to all and obligated to no one...fulfillment of his presidential office is not limited or conditioned by any

¹⁶⁹ John F. Kennedy, 1960.

religious oath, ritual or obligation.”¹⁷⁰ Unfortunately, while remarks such as these helped to convince the American public that Kennedy would remain privately religious and a general Catholic trend would not be imposed on the nation as a whole, the overall effect of this was to alienate many Catholic voters during the first Catholic Presidency. Amy Sullivan, a leading commentator on Democrats and religious issues, explains that the abortion issue, in particular, which went unaddressed by the Kennedy Administration, helped to push previously Democratic Catholics into the arms of the more vocally conservative Republican Party.¹⁷¹ Despite this, the Kennedy term did signaled the effects that immigration and urbanization were having on the general religious landscape. As a more multinational, multiethnic nation emerged, the Protestant Establishment’s defacto grip on U.S. politics seemed to be loosening. The election of a Catholic President¹⁷² who was committed to full enforcement of the notion of separation of church and state allowed Democrats to flourish in a secular environment. In due time, however, values voters and faith concerns helped Protestantism, especially in its currently popular evangelical, or “born-again”, version, to rise to the forefront of national political debate.

¹⁷⁰ Remarks by John F. Kennedy to Greater Houston Ministerial Association, June 12, 1960 as quoted by D. Michael Lindsay, "Ties that Bind and Divisions that Persist: Evangelical Faith and the Political Spectrum," *American Quarterly* 59, no. 3 (2007): 893.

¹⁷¹ Amy Sullivan, *The Party Faithful: How and why the Democrats are Closing the God Gap* (New York: Scribner, 2008), 50-53.

¹⁷² Kennedy’s nomination and election were the fodder of much press coverage. Two examples published in the New York Times are, "The Kennedy Nomination," *The New York Times*, July 14 1960. And WH Lawrence, "Bostonian Rebuts Critics: Kennedy Rebuts Religion Critics," *The New York Times*, September 10 1960.

The first national figure to openly declare himself to be a “born again” Christian was President Jimmy Carter. Carter, a Southern Baptist and Democrat, was elected President in 1977, and served one term. Carter was one of the first politicians to be vocal, on the national stage concerning his faith, beliefs, and the manner in which these beliefs influenced his politics. It is important to note that during this period, in sharp contrast with today’s religious landscape, Democrats were often openly religious and, after Carter’s original foray into publicizing religion, were not hesitant to share their beliefs with the public. The irony of Carter’s willingness to include religion on his personal platform was that, in the aftermath of the Vietnam War, the hippie movement, and the generally more open direction in which the nation had been drifting, Carter’s continued focus on more liberal issues, may have actually aided the mobilization of the Christian Right. Disillusioned with the increasingly liberal political platform of the first openly evangelical President, many in the Christian Right moved away from the Democratic Party and focused instead on shaping policy in the Republican party in the hopes that this would allow for the creation of a more conservative program. Scholars of religion and politics in the United States frequently return to the theme of “How the Democrats lost the Religious Vote”¹⁷³; looking specifically at both the manner in which political campaigns have ignored the burgeoning power of a faith-focus, and the way in which policy decisions have often been made without any

¹⁷³ Many recent works have debated the reasons and results of the Democratic Party’s lack of connection with religious voters. For examples of this see, Jim Wallis, *God’s Politics: Why the Right Gets It Wrong and the Left Doesn’t Get It* (San Francisco: Harper San Francisco, 2005). Lindsay, “Ties that Bind and Divisions that Persist: Evangelical Faith and the Political Spectrum.” Frederick Clarkson, ed. *Dispatches from the Religious Left: the Future of Faith and Politics in America* (Brooklyn, New York: I.G. Publishing, 2009). Sullivan, *The Party Faithful: How and why the Democrats are Closing the God Gap*.

consideration of possible ramifications among devout voters. These missteps, while not purposefully anti-religious have negated potential constituency gains, and worse, branded Democrats as “staunch secularists” and “anti-religious”.¹⁷⁴

The Christian Right: Values and Politics

It was following Carter’s presidency, with the election of Ronald Reagan, that Republicans began to consolidate their firm hold on the religious vote. Disappointed by the lack of religious agenda and by the more liberal stance of the Democrats, fundamentalist religious leaders such as Jerry Falwell, founder and leader of the Moral Majority¹⁷⁵; Pat Robertson, the vocal and well-know head of the Christian Coalition¹⁷⁶; and, although less fiery, equally morally and faith focused Reverend Billy Graham came¹⁷⁷, among others, to represent the values and morals that many voters felt the national political atmosphere was lacking.¹⁷⁸ Values voters

¹⁷⁴ William McKenzie, "So you think you know the religious agenda?," *Knight Ridder Tribune News Service*, September 29 2004.

¹⁷⁵ For more information concerning the Moral Majority see, David Snowball, *Continuity and Change in the Rhetoric of the Moral Majority* (Praeger Publishers, 1991).

¹⁷⁶ For Pat Robertson’s website, and his own description of his movement see, www.patrobertson.org
See also, Joel D. Vaughan, *The Rise and Fall of the Christian Coalition: The Inside Story* (Eugene, OR: Resource Publications, 2009).

¹⁷⁷ Reverend Billy Graham’s Evangelical organization also has its own website; www.billygraham.org
For a more detailed account of Billy Graham’s mission, see Deborah Hart Strober and Gerald S. Strober, *Billy Graham: A Narrative and Oral Biography* (San Francisco: Jossey-Bass).

¹⁷⁸ The issue of the Religious Right in American civil and political society has been a frequent topic of study since the first rise of the Moral Majority and Christian Coalition in the early 1980s. For more in-depth discussion of the subject see, Steven Bruce, *Fundamentalism* (Cambridge: Polity Press, 2008); Steve Bruce, *Politics and Religion* (Cambridge: Polity Press, 2003); Christian Smith,

were reacting, in particular, to the events of the recent decades; the hippie movement and anti-War efforts, the rising feminist movement, the decline of the traditional family, increased female participation in the workforce, and the erosion of the classic make-up of family life. As Wilcox and Bartkowski note, “Conservative Protestantism’s links to political conservatism grew largely out of its more fundamental concern with the preservation of the ‘traditional’ family.”¹⁷⁹ In fact, looking at the Christian Right and its voting patterns, Regnerus, Skinnik, and Smith, found that people who have been the most affected by rapid population and social change are the most likely to support the Religious Right. Morally, feelings of cultural embattlement, and economically, structural issues influencing everyday life have allowed politicians the ability to appeal to affected groups using a moral/religious toolkit and honing in the notion that America is suffering from moral poverty.¹⁸⁰

Although often seen as a single bloc of socially and politically conservative, religious voters, the Christian Right is actually a “loose fitting, diverse group of competing religious/political organizations...grounded loosely in theologically conservative Protestant thought...that form a broad social network...There is not national consensus among them, for they represent different and competitive

Christian America? What Evangelicals Really Want (Berkeley, CA: University of California Press, 2000).

¹⁷⁹ W. Bradford Wilcox and John P. Bartkowski, "The Conservative Protestant Family: Traditional Rhetoric, Progressive Practice," in *What's God Got to Do with the American Experiment?*, ed. E.J. Dionne and John J. DiIulio (Washington DC: Brookings Institution Press, 2000), 32.

¹⁸⁰ Mark D. Regnerus, David Sikkink, and Christian Smith, "Voting with the Christian Right: Contextual and Individual Patterns of Electoral Influence," *Social Forces* 77, no. 4 (1999): 1401.

religious types.”¹⁸¹ Despite this lack of full consensus, looking at exit polls from elections over the past three decades does demonstrate that a unified block of voters do profess to belong to the Christian Right and that these voters generally display similar voting, and therefore influence, patterns.¹⁸² Beginning with its birth in the 1980s, the Christian Right has gained prominence, particularly due to the efforts of high profile Republican Presidential support, and, especially during the Clinton Presidency, high profile Democratic scandals. Reagan, as the first President to call upon a panel of elites; leaders of conservative Christian groups to offer policy advice and serve in the administration, initiated the trend of incorporating faith and moral values into the work of governing. Pat Robertson’s unsuccessful Presidential bid of 1988 served to further consolidate the movement into the Christian Coalition, a group that still exerts a conservative force in politics today. While President Bush, Sr. had little connection to groups on the religious right, such as the Christian Coalition and the powerful Moral Majority, he did appoint his son, George W. Bush, to handle dealings with conservative leaders during his Presidency. Finally, the events surrounding President Clinton, who himself was actually a practicing and devout Baptist, helped to cement the idea of “morally lax” Democratic leaders. Clinton’s scandals served to “prove the point” of many conservatives who had argued that moral degeneration in America had reached unprecedented levels. All

¹⁸¹ Ibid., 1376.

¹⁸² John C. Green et al., "How the Faithful Voted: Religious COmmunities and the Presidential Vote," in *A Matter of Faith: Religion in the 2004 Presidential Election*, ed. David E. Campbell (Washington, DC: Brookings Institution Press, 2007).

of this had set the stage for the emergence of George W. Bush, a born-again Methodist who claimed that God had chosen him to be President.¹⁸³

Democrats have not, of course, remained oblivious to the obvious rising power and role of religion in recent elections. Like their Republican counterparts, Democrats, especially those who are more religious, have been pushing for the inclusion of religion and faith issues in the Democratic national and state level party platforms. And while the Christian Right is generally associated with the Republican Party, the religious right in America has generally bestowed their support, not based on party affiliation, but rather based on which candidate is more conservative and better represents the group's value set. The key to their success has been the movement's "complex national structure for organizing voters", and it's ability "to mobilize evangelical leaders to build grassroots support for conservative candidates"; a structure that "neither the Democrats nor progressive social movement organizations" can even come close to replicating at this point.¹⁸⁴

At the outset, the Clinton Presidency promised to reverse the previous flow of religious voters to the Republican Party and seemed poised to change the trend of Republican-religious connection that had endured since the late 1970s.¹⁸⁵

¹⁸³ Mansfield, *The Faith of George W. Bush*.

¹⁸⁴ Chip Berlet, "Religious Right, Religious Left," in *Dispatches from the Religious Left: The Future of Faith and Politics in America*, ed. Frederick Clarkson (Brooklyn, NY: Ig Publishing, 2009), 50.

¹⁸⁵ Among other efforts, President Clinton was supportive of the Religious Freedom Restoration Act of 1993 in which the Sherbert Test, resulting from *Sherbert v Verner* and *Wisconsin v Yoder*, considers where a violation of the First Amendment's Free Exercise clause has occurred based on a religiously neutral federal law that imposes an burden on an individual's free exercise of personal religion. Exceptions to the law may arise in cases where one's personal practice of religion interferes with a portion of the federal constitution. Despite Clinton's effort to pass the legislation as a sweeping change at both the federal and state levels, in 1997 a Supreme Court decision rendered it valid only at the federal level. However, many states have since passed mini-RFRAs in an effort to

Personally faithful and well connected to the South, the Clinton Administration designed a religious agenda and focused on encouraging more interaction and engagement with religious communities. Aware of the importance of religious outreach, the Administration used traditionally Republican methods to remain connected to the religious community; the Clintons created a religious liaison and worked hard to shore up the religious credentials of the Democratic Party. Sullivan explains, "For eight years, the Clinton White House reversed what had become the Democratic fight-or-flight instinctive reaction to all things religious."¹⁸⁶

However, the moral questions that surfaced during the Clinton Presidency, cost the Democrats a significant portion of their Catholic and evangelical support.¹⁸⁷ Not only did the events seem to demonstrate a lack of moral compass within the party, but "faithful" voters also came to feel that "the Democratic party of their past had been taken hostage by liberal extremists and special interest groups."¹⁸⁸ The Monica Lewinsky scandal¹⁸⁹ offset any positive aspects of the significant effort that

maintain a certain level of freedom of religious practice. Although the law is primarily applicable to Native Americans and their religious beliefs, it has been invoked in other cases where federal laws designed to be religiously neutral have actually created a burden on personal or group exercise of religion. See Beer, *To Make a Nation: The Rediscovery of American Federalism*; "Unconstitutional Restoration- The Religious Freedom Restoration Act and Religious Liberty in America," Princeton University, <http://www.princeton.edu/~lawjourn/Fall97/II1gupta.html>.

¹⁸⁶ Sullivan, *The Party Faithful: How and why the Democrats are Closing the God Gap*: 101.

¹⁸⁷ Ibid., 81-83. Not only did the Clinton era scandals and the nation's perception of Clinton himself as morally corrupt affect the long term prospects of reconciliation between Democrats and religion, but, Sullivan explains, the religious permeation of the G.W. Bush Presidency and Democratic reactions to the open religiosity Bush displayed were a death knell for relations between Democrats and religion. Ibid., 114.

¹⁸⁸ Ibid., 85.

¹⁸⁹ The Monica Lewinsky scandal refers to an extra-marital affair that Clinton was found to be having with a young staffer in the White House. Rather than the affair itself, the issue that eventually created serious problems for Clinton was that he originally attempted to cover up the liaison and lied

the Clinton Administration had made to regain the trust of evangelicals and conservatives. After the scandal, many voters perceived Clinton's subsequent effort to be little more than maneuvers for political gain; Republicans believed Clinton was simply lying, while many Democrats contended that he was just smart.¹⁹⁰

The political result of the Clinton scandal and the Republican's new, firmer grasp on faith and values issues was the birth of a new outlook in which any type of moral issue or faith-based question was considered to be the sole domain of Republican candidates. "Republicans, for instance, are always assumed to be religious unless they can prove otherwise. Even when pundits mock their religious beliefs and practices, it at least confirms that Republicans are indeed religious. It's understood, however, that Democrats are not religious."¹⁹¹ In fact, Democrats are often reactionary and equally adamant about distancing their party platform from religion. Basing their arguments on the sanctity of the separation of church and state; their strong beliefs that there should not be a relationship between religion and politics, and the perception that a large portion of the country actually does not want a mixing of religion and politics to occur, liberal and conservative Democrats alike

on national television when asked about the nature of the relationship. The Lewinsky affair was discovered after tapes of Lewinsky's conversations with a friend, Linda Tripp, were made public during the investigation of another affair Clinton allegedly had with Paula Jones. Independent Counsel Kenneth Starr released the tapes during his report on the Paula Jones case, calling into question Clinton's national affirmation that he had not had any sexual relations with Lewinsky. The details of the affair, in particular, incensed most Americans as sexual terminology and discussion of sexual acts became part and parcel of the evening news. For a full account of the Lewinsky scandal see, Sydney Blumenthal, *The Clinton Wars: An Insider's Account of the White House Years* (London: Penguin, 2003), 317, 26-27, 551.

¹⁹⁰ Sullivan, *The Party Faithful: How and why the Democrats are Closing the God Gap*: 110.

¹⁹¹ Ibid., 123.

have eliminated religious references from their public speeches, campaigns, policy proposals, and platforms in general.

For example, both Al Gore and John Kerry, in their respective campaigns against George W. Bush, were careful to avoid discussion of their personal faiths; much to their own detriment. In one instance, during Al Gore's unsuccessful Presidential campaign of 2000, his running mate, Senator Joe Lieberman, a devout Jew, was invited to speak about his faith at Notre Dame University, a Catholic and faith-infused institution. Members of Gore's campaign team were highly opposed to the engagement, which they felt would overstep the bounds of separation of faith and politics. The Gore campaign, "liked the idea of a Democratic president who kept religious groups away from government funding more than one who encouraged cooperation with faith-based organizations..."; in fact, "the party would spend the next four years sneering at the latest evangelical to occupy the Oval Office and forgetting the lessons of the Clinton White House's religious outreach effort."¹⁹² Lieberman spoke nonetheless, and national media and scholars both noted that the speech likely provided an important connection for Democrats and voters of faith that had been previously lacking; even greater effort to engage religious voters would have probably have been well received and influential.¹⁹³ Exceptions notwithstanding, however, Republicanism and religion have become intertwined in recent decades. "Republican administrations have more effectively tapped the expressive component of political life in forging close relations with

¹⁹² Ibid., 114.

¹⁹³ Mattewes, "Reconsidering the Role of Mainline Churches in Public Life," 557.

American evangelicals. Through public speech and symbolic expressions such as presidential appointments, political conservatives have created social space in which self-identified evangelicals could rise in political prominence...evangelicalism is a salient identity for many within the political elite, and through both expressive and institutional elements, evangelicalism has been aligned with the political Right.”¹⁹⁴

Hout and Fischer explain that this “growing connection made in the press and in Congress between Republicans and Christian evangelicals may have led Americans with moderate and liberal political views to express their distance from the Religious Right by saying they prefer no religion.”¹⁹⁵ Liberal and progressive voters have also been influenced by changes in religion’s role in the “cultural milieu of America”; specifically demographic changes, as personal and family religiosity decreases; the reality of the secularization thesis, “no preference” does not actually mean no religion as many in the secularization thesis era believed—rather people either believe privately or are “unchurched believers”; and finally the rising influence of religion in politics, has pushed liberal voters, despite their own personal religiosity, to assume stances on the anti-religion or non-religious extremes.¹⁹⁶ In due time, as these reactionary elements merged with the concerted efforts of conservative and religiously oriented voters in the Republican camp, Republicans were able to corner the market on religion, creating an environment in which any citizen who “believed” actually began to feel that the Democrats were not only out

¹⁹⁴ Lindsay, "Ties that Bind and Divisions that Persist: Evangelical Faith and the Political Spectrum," 887-88.

¹⁹⁵ Michael Hout and Claude S. Fischer, "Why More Americans Have No Religious Preference: Politics and Generation," *American Sociological Review* 67, no. 2 (2002): 168.

¹⁹⁶ Ibid., 168-75.

of touch with their values and lifestyle, but, even worse, actually held them in contempt.

The ability of the Religious Right to hone in on this question of moral poverty and ~~misguided~~~~misguided~~-values has proved one of its most useful abilities. A recent study very clearly and effectively explains the manner in which the Religious Right has been able to capitalize on the religious vote, for the past four decades, while the Democrats, as discussed above, have only recently even begun to attempt to pull in religious voters. -John C. Green's, *The Faith Factor*, looks specifically at the. ~~Green's book looks specifically at the~~ manner in which religion, and the power of the Religious Right, has been able to influence American elections, specifically the elections of 2004. Green first defines the ~~Offering a concise and easy to follow comparison~~ "Old Religion Gap" of the previous century, a ~~g~~Gap that was based on a politics of belonging and affiliation. For example, in the decades before the late 1980s and 1990s, voter behavior could be predicted based on affiliation; such as Catholicism, Judaism, or Protestantism. Within these denominations, sects and even, as a country of immigrants, home country, could determine how a voter might chose to cast his vote on a certain issue. In this century, a "New God Gap" has emerged. Reaching across denominations and specific sects, this "Gap" is based on a politics of attendance. Religious fundamentalism, degrees of traditionalism and conservatism affect voting patterns.

Generally speaking, both the general population and the elite members of the Republican Party demonstrate similar attributes, which then determine their voting

patterns.¹⁹⁷ Overall, these voters attend religious services at least on a weekly basis, have a high degree of religious salience in their daily life, and hold literal views of scripture. Traditional voters, although unable to form majorities based on their own specific denominations, have benefited from the politicization of religion and the new trend of coalition forming. These traditional, conservative coalitions have then leaned their weight toward Republican candidates. Non-traditional, less religious, “modernists”, on the other hand, have remained firmly within the ranks of the Democratic Party. Green believes the lack of appeal of the Democratic platform to the traditional coalitions in what proved its undoing in the 2004 elections, specifically, and, to a lesser extent, in the earlier 2000 elections.¹⁹⁸ The “New God Gap” was able to propel the Bush Administration into power, and keep it there, not only allowing, but also encouraging the design and implementation of the Faith-Based Initiative, a program that embodies many of the conservative religious ideals of not only Evangelicals, but as we shall see, conservative Jews and Catholics as well.

¹⁹⁷ John C. Green, Mark J. Rozell, and Clyde Wilcox, eds., *The Values Campaign? The Christian Right and the 2004 Elections* (Washington, DC: Georgetown University Press, 2006), 4-5.

¹⁹⁸ John C. Green, *The Faith Factor: How Religion Influences American Elections* (Potomac Books Inc, 2010).

~~Chapter Two~~ CHAPTER THREE

AMERICA AND THE SECULARIZATION THESIS

The Secularization Thesis Examined: The Scholarly View

The recent trend of rising religiosity in politics, the manner in which many politicians, both Democrats and Republicans, have come to view a majority of voters as religious, or at least “values voters”, and the power of conservative religion in general, both politically and socially, have served to raise serious questions about the continued validity, or at the very least, applicability of the secularization thesis in the United States. Recent years have seen a plethora of debate over the renegotiation of the boundaries of separation of church and state, the interactions between religion and politics, and the general trend of a persistent and increasing religious presence in the public square. Current events and initiatives in the U.S., all with religious tilts, such as George W. Bush’s Faith-Based Initiative,

Bill Clinton's Charitable Choice Amendment, and Barack Obama's Council on Faith-Based and Neighborhood Partnerships¹⁹⁹, play into the influential, long-running and highly debated the secularization thesis. The United States has always been given a unique position in the debate; with its separation of church and state at the institutional and political level, juxtaposed with a highly religious populace, the American case often falls outside, or is left outside, the bounds of the secularization thesis discussion. While an exhaustive analysis of the secularization thesis is beyond the scope of this dissertation, reaching a clearer, contextual understanding of the current state of religion and state-religion relations in the United States requires a basic, general analysis of the contours of the secularization thesis and the scholars who have proposed it. Basing their thesis on perceptions of decreasing levels of religious belief in general and diminishing religion in the public square specifically, scholars have attempted to use social scientific explanations based in sociology, political science, and anthropology to explain changes in the global religious landscape. Proponents, who believed that as the world became more modern, more industrial, more capitalist, and more developed, people's need for and reliance on religion as an explanatory vehicle would rapidly decline, also forecast that science and technology would overcome the previous reliance on religion and would push both citizens and governments to eliminate religion from their public lives. However, most agreed that religion was likely to remain pertinent to some extent, if only in the private arena.

¹⁹⁹ This will be discussed in detail in Appendix G.

The question of secularization and religion was originally studied in terms of this idea of the privatization of religion and its disappearance from the public square. Theories of secularization and modernization relegated religion to the private sphere as something based on tradition, superstition, and unscientific knowledge. Theorists believed that the modern world would not be able to accommodate religious beliefs in its very technological, science oriented, capitalistic framework. Religion would instead, simply be privatized and relativized. Currently one of the foremost philosophers working on the secularization thesis, Charles Taylor explains that, with modernization, secularization has become inescapable, the world is shifting from vertically oriented hierarchical societies to ones in which the notion of direct citizenship, based not on a divine power but rather on the idea of “we the people”, and is dominated by a citizenry for whom a national character and identity is more important than a religious identity.²⁰⁰ Other proponents of the secularization thesis often base their arguments in the framework of rational choice. Early theorists of this school included Max Weber, who focused on the idea of the “Rational Weltanschauung” and the loss of faith that would accompany the modernization of society. Often also described as the demand-side model, or bottoms-up model, this notion proposes that as industrialization and modernization advance, people become more science oriented, look for more rational explanations to life and its trials and tribulations,

²⁰⁰ Charles Taylor, "Modes of Secularism," in *Secularism and Its Critics*, ed. Rajeev Bhargava, *Themes in Politics* (Oxford: Oxford University Press, 2005), 40. See also, ———, *A Secular Age* (Cambridge Mass: The Belknap Press of Harvard University Press, 2007).

and tend to favor more logical explanations as opposed to faith-oriented or supernatural views.

Peter Berger, was one of the original proponents of the secularization thesis based on the notions of rationalization, development and modernity. In his seminal work, *The Sacred Canopy, Elements of a Sociological Theory of Religion*, Berger explains that, “Religion is the audacious attempt to conceive of the entire universe as being humanly significant...religion derives its objective and subjective reality from human beings who produce and reproduce it in their ongoing lives.”²⁰¹ Secularization, on the other hand, is “the process by which sectors of society and culture are removed from the domination of religious institutions and symbols.”²⁰² As a result, this process, which reaches beyond a simply socio-structural process, affects all of cultural life and the creation of ideas while simultaneously affecting and increasing the secularization of individual consciousness. This then has caused a situation, according to Berger, in which the modern economic process, the dynamic of industrial capitalism, has caused “a widespread collapse of the plausibility of traditional religious definitions of reality...there is a crisis of credibility”.²⁰³ This crisis has pushed God to the outside of society, and now, as people disengage from religion in society, “religion manifests itself in its peculiarly modern form, that is, coerced clientele. As such it is located in the private sphere of everyday social life and is marked by the very peculiar traits of this sphere in

²⁰¹ Berger, *The Sacred Canopy*: 28, 48.

²⁰² Ibid., 107.

²⁰³ Ibid., 127.

modern society.”²⁰⁴ Industrial society, especially in the West, is based, for Berger, on the process of rationalization, “the decisive variable for secularization is...the process of rationalization that is the prerequisite for any industrial society of the modern type.”²⁰⁵

The rational and deliberate attitudes that are required by modern society are also emphasized by many other scholars in the field; rationalization as a key component of modern, Western society, is said to be the reason for the decline of religion in the public sphere; as individuals are forced to become more pragmatic and even “market-like” in their behavior, religion has rapidly lost its place. For Berger, as secularization occurred, religion lost its previous monopoly on belief in society and actually came to represent a competing market. Religious organizations are forced to compete with one another and even produce “results” in spiritual terms. The only feasible way for this to occur, Berger explains, is through even further rationalization of the realm of faith. Religious institutions must now bureaucratize and collaborate; at times even cartelization at the national level may be required. In order to make itself more attractive to its secular consumer clientele, religion has been required not only to secularize, but to function based on the notion of consumer controls; standardization and a de-emphasis of traditionalism have occurred, as has a new emphasis on catering to the private, therapeutic needs of clients.²⁰⁶

²⁰⁴ Ibid., 133.

²⁰⁵ Ibid.

²⁰⁶ Ibid., 149. Berger goes on to explain that churches, especially in the United States, the focal point of his study, have been left with one of two options. Given the new, modernization oriented,

Emile Durkheim was one of the earliest scholars to examine this trend, as described by Berger, in which modern societies undergo a functional evolution that results in a loss of purpose for religious organizations. Religious institutions are not simply beacons of faith, according to Durkheim, as organizations they also function as significant social institutions, bringing people together, providing services and even goods, and stepping in at times to help when the state is unable. In the modern world, the “privatization of religion removes much of the social support that is vital to reinforcing beliefs...this makes the maintenance of distinct lifestyles very difficult, weakens the impetus to evangelize and encourages a de facto relativism that is fatal to shared beliefs.”²⁰⁷ The secularization thesis, “asserts that modernization (itself no simple concept) brings in its wake (and may be accelerated by) the diminution of the social significance of religion.”²⁰⁸ Based on this, as a research program, Nikki Keddie notes that, the secularization thesis is “at its core, an explanatory model which asserts that the social significance of religion diminishes in response to the operation of three salient features of modernization,

consumer-type environment in which they have found themselves, churches can either, “play the pluralistic game of religion-free enterprise” and come to terms with the new era by modifying their “product” based on consumer demands; or they can refuse to accommodate and “entrench themselves behind whatever socio-religious structures they can maintain or construct”. Neither is particularly appealing or easy. Both choices cause problems at the level of theory and the level of social engineering, resulting in both a “crisis of theology” and a “crisis of the church” in contemporary society. The main problem in religious, or faith, terms of these crises, is that as the church becomes more market-oriented and less spirituality oriented, adherents to the church have become “cognitive minorities” who must now attempt to find “legitimation” for religion from within themselves; which poses serious social-psychological and theoretical concerns.

²⁰⁷ Durkheim as quoted in, Steve Bruce, *God is Dead: Secularization in the West* (Malden, MA: Blackwell Publishing, 2002), 20.

²⁰⁸ Roy Wallis and Steve Bruce, "Secularization: The Orthodox Model," in *Religion and Modernization: Historians and Sociologists Debate the Secularization Thesis*, ed. Steve Bruce (Oxford: Oxford University Press, 1992), 11.

namely 1) social differentiation; 2) societalization; 3) rationalization.”²⁰⁹ These features of modernization also render moot the social functions of religious institutions as Durkheim described them. As state development, organization, and action increases, the area for faith-based groups may decline in response. Once citizens no longer seek out the services religious organizations provide, they may also no longer need the faith element that had been provided by these very same organizations.²¹⁰

Jonathan Fox and Shmuel Sandler, who have written extensively in recent years concerning the phenomenon of secularization on a worldwide scale, also believe that the secularization thesis stems from ideas of modernization theory. They explain that the rational and modern is likely to win out as “factors inherent within the process of modernization, like literacy, economic development, urbanization, and advancements in science and technology, will lead to the demise of primordial factors in politics, including religion.”²¹¹ For Fox, the key modernization processes of mass education, growing rates of literacy, urbanization, economic development, pluralism, increasing importance of modern secular social and political institutions, advances in science and technology, and the rate at which

²⁰⁹ Nikki R. Keddie, "Secularism and the State: Towards Clarity and Global Comparison," *New Left Review* 226(1997): 21.

²¹⁰ For further discussion of Durkheim’s views on religion as a “set of underlying and almost universal values that support society” see the explanation in, Brown, "A Common Faith: Churches and the Political Order."

²¹¹ Jonathan Fox, "World Separation of Religion and State into the 21st Century," *Comparative Political Studies* 39(2006): 318. Although the study conducted in Fox’s book *A World Survey of Religion* leaves much to be desired from an academic point of view, his observations in this article demonstrate at least a general understanding of the secularization thesis and the deeply held attitude that with modernity and rational thought religion will be relegated to simply a historical phenomenon.

science and rationalism are replacing religion as crucial explanatory variables for individuals' world views, are what will be the major drivers of secularization worldwide.²¹²

Another set of scholars that looks at the secularization thesis from the lens of modernity and development are Pippa Norris and Ronald Inglehart. In their book, *Sacred and Secular: Religion and Politics Worldwide*, Norris and Inglehart undertake a study of world religions, and the manner in which these have spilled into the public arena- or have been relegated to the private sphere- based on a sociological point of departure. Rather than looking at the changes in technology or state structures, or even religious institutions, that have occurred in tandem with modernization, Norris and Inglehart consider two key axioms, “the security axiom” and “the cultural traditions axiom”, that determinate the level of individual and societal religiosity. They explain, “rich and poor nations around the globe differ sharply in their levels of sustainable human development and socioeconomic inequality...and thus basic living conditions of human security and vulnerability to risks...we regard the absence of human security as critical for religiosity.”²¹³ Therefore, societies in which citizens experience ego-tropic risks, direct threats to themselves and their families, and socio-tropic risks, threats to their communities, are likely to demonstrate higher levels of religiosity despite advances in development, industry, and technology.²¹⁴ Through modernization and

²¹² Ibid., 539.

²¹³ Norris and Inglehart, *Sacred and Secular: Religion and Politics Worldwide*: 14.

²¹⁴ Ibid., 16.

development, these existential threats will decline and the result will be the creation of a more secular society. However, with their cultural traditions axiom, Norris and Inglehart emphasize that, “the distinctive worldviews that were originally linked with religious traditions have shaped the cultures of each nation in an enduring fashion.”²¹⁵ As a result, although the societies themselves may become more secular, religious values previously transmitted solely by the church, are now being transmitted as cultural values in other locales, “by the educational system, mass media---and their historical legacy persists.”²¹⁶

The significance of the Norris-Inglehart model lies less in what it seeks to explain specifically, and more in what it demonstrates in terms of changing attitudes of religious scholars vis-à-vis the secularization thesis. Having moved away from the traditional model that equates modernization with declining religiosity, Norris and Inglehart instead offer a model that attempts to explain the significant variations across cultures worldwide in terms of the overall persistence of religiosity. For the authors, nations such as those in Europe, which have had a significant degree of security, no longer require significant levels of religiosity, while those is less secure areas, Africa, the Middle East, or Southeast Asia for example, are likely to remain highly religious due to the existential threats their citizens continue to experience. Overall, Norris and Inglehart’s long terms theory predicts that the importance of religion in people’s lives will gradually diminish, this decrease will be the most pronounced as societies move from the agrarian to the industrial type society and though it will not reverse itself during the second transitional stage from industrial

²¹⁵ Ibid.

²¹⁶ Ibid., 17.

to post-industrial society, the degree of decline in religion will become less pronounced. Thus,

the pattern suggests that the religious gap is not due to agrarian societies becoming more religious over time, as is often suggested....What has happened instead is that rapid cultural changes in the more affluent societies have shifted their basic values and beliefs in a more secular direction, opening up a growing gulf between them and the less affluent societies. This phenomenon may sometimes produce a backlash where the religious groups and leaders in poorer societies seek to defend their values against the global encroachment of secular values...because the prevailing values of richer societies have moved apart from traditional norms.²¹⁷

Questioning the Secularization Thesis: The Resurgence of Religion in the Modern World

Currently the secularization thesis has come under serious attack from a number of different sides. In fact, scholars have declared that, "The secularization hypothesis has failed and failed spectacularly. We must now find a new paradigm that will help us to understand the complexities of the relationship between religion and democracy."²¹⁸ In particular, Jean Bethke Elshtain notes that the rational focus of the secularization thesis fails to take into account the power that beliefs still retain, despite the logic and order that has been gained by modernization, technology, and

²¹⁷ Ibid.

²¹⁸ Jean Bethke Elshtain, "Religion and Democracy," *Journal of Democracy* 20, no. 2 (2009): 15.

development. Faith, dreams, and beliefs do still have a role to play in modern society; rational choice and logical preferences can dictate human behavior only to a certain extent.²¹⁹ Religion remains a powerful and significant driver of human and societal behavior, one that requires scholarly attention and explanation.

Rather than summarily dismissing the secularization thesis as a failure, other scholars prefer to look at it as a process of intertwined changes, rather than as a monolithic single phenomenon. In his wide-reaching work, *Public Religions in the Modern World*, Jose Casanova offers his own analysis of religiosity and the interaction between religion and the public square in a well-defined and applicable tripartite system. Casanova believes that although the secularization thesis is “the only theory in the modern social sciences that has been able to reach a true paradigmatic status”; there remain a number of questions and caveats that must be addressed in terms of the actual validity of secularization as a concept.²²⁰ For Casanova, four simultaneous, and seemingly unrelated events in the 1980s demonstrated that religion is “here to stay”; the Islamic Revolution in Iran; the rise of the solidarity movement in Poland- a Catholic movement that eventually managed to topple the Communist government in the country; the role of Catholicism in Latin American political conflicts; and the public re-emergence of Protestant fundamentalism as a force in United States politics. The combination of these events, for Casanova, demonstrated not only that religion was here to stay and likely to continue to play an important role in world affairs, but also that academics

²¹⁹ Ibid.

²²⁰ Casanova, *Public Religions in the Modern World*: 17.

and politicians alike needed to rethink, systematically, the relationship between religion and modernity and the possible roles that religion might play in the public sphere.²²¹

Casanova does this by breaking down the predominant secularization thesis that simply states that as modernity increases, the role of religion, and public adherence to religion will decline, into separate parts. Secularization, he believes, is actually a combination of three intertwined parts; religious decline, differentiation, and privatization.²²² Casanova's tripartite model is based on the fact that, despite the apparent disappearance of religion, people may actually be simultaneously religious and secular. Although this may seem to be an empirical paradox from a "modern" point of view, Casanova cautions that the study of religion and secularization has often been conducted from a "liberal" perspective of politics and a general bias for the sovereign nation state as a system unit of analysis. Religion may not fit as neatly within this type of a perspective; instead it is important to

²²¹ Ibid., 6.

²²² Ibid., 7. Each of these three parts is then detailed in Casanova's book. The differentiation thesis, he explains, is based on "the process of societal modernization as a process of functional differentiation and emancipation of the secular spheres (state, economy, science) from the religious sphere". He finds that four related events led to this differentiation; the Protestant Reformation, the formation of modern states, the growth of modern capitalism, and the early modern scientific revolution. The combination of these changes decreased the power of religious authorities and the philosophy and knowledge of religion in general and allowed science and reason, secular components, to gain the upper hand in non-religious arenas in the modern world. The privatization thesis focuses on the manner in which rising secular powers abet the disappearance of religion from the public arena, pushing it into the private realm. Finally, this is followed by the decline of religion thesis, a very prominent thesis among academics, which focuses on the increasing marginalization of religion once it has been relegated to the private sphere as less and less adherents remain and religion itself becomes "invisible". Ibid., 20-35. For further discussion of these three interrelated processes, Casanova recommends, Ernst Troeltsch, Robert Bellah and Jean-Jacques Rousseau as leading scholars of the differentiation thesis; Ludwig Feuerbach and Karl Marx to explain the decline of religion thesis; and Thomas Luckmann and Niklas Luhmann as guides to the privatization of religion thesis.

question the liberal conceptions of politics and the public sphere; and to rethink the relationship of religion and modernity allowing for the study of the possible roles that religion may still play in modern society. The relationship between religion and modernity is not as clean cut as traditional secularization theorists would like, rather Casanova proposes, the relationship is different, uneven, and may even be un-integrated. As such, looking at the way that Casanova's observations are manifested in the modern world, only secularization as differentiation is still valid. The composition of religion and religious institutions has been changing in recent decades. This does not, however, imply that there is a simultaneous decline of religion, nor is secularization as privatization necessarily holding true. Instead, it seems that differentiation is helping religion to persevere in the modern world, while various degrees of deprivatization are occurring in which religion itself has become a critique for modernization and institutionalization in the public sphere.²²³

Peter Berger, perhaps the leading early proponent of the secularization hypothesis, has undertaken to study the very real role that religion is playing in the contemporary global arena. In a serious reversal of his own original theory as proposed in *The Sacred Canopy*, Berger admits that, "the assumption that we live in a secularized world is false".²²⁴ He notes that the "world today, ... is as furiously religious as ever", indicating that the secularization thesis that was highly popular in the 1950s and 60s was mistaken. Based on this reality, Berger delves into an attempt to pinpoint the key mistakes of the secularization thesis, explaining that;

²²³ Ibid., 228-30.

²²⁴ Berger, "The Desecularization of the World: A Global Overview," 2.

first of all, the world is actually very religious, much more so than scholars had originally assumed, and that modernization has not, as was once expected, resulted in a significant decline of religion—the exact opposite is actually the case, serious, powerful anti-secularism is taking place instead. The global religious scene is filled with examples of rising, powerfully conservative, orthodox and traditionalist movements; mainly due to the rising uncertainty that modernity has brought in its wake. This is Berger's primary hypothesis; as modernity undermines all previously existing certainties, people have actually clung to religion in the hope that their beliefs and belief structures will provide answers to their questions. Second, two specific religious movements, Islam and Evangelical Christianity, have been the primary drivers of the rising religion in the world; while two main groups, Western Europeans and a global "elite" that exist in the international arena, have been the key exceptions to the religious surge and have continued to press for increased secularization.²²⁵

Other scholars have also taken steps to rework their studies in light of the reality of religion in the modern world. As Elshtain points out, "Many thinkers foresaw a future of cosmopolitanism and secularism in which the hold of the nations and faiths upon persons and societies would steadily weaken....those who subscribed to it (the secularization thesis) missed much that was and still is important."²²⁶ Scholars of contemporary religion in the social sciences must deal, without fail, with the secularization thesis. Whether they subscribe to the general

²²⁵ Peter L. Berger, *The Sacred Canopy: Elements of A Sociological Theory of Religion* (New York: Anchor Books, 1967); Berger, "The Desecularization of the World: A Global Overview."

²²⁶ Elshtain, "Religion and Democracy," 6.

idea that religion and religious belief are on the decline globally, or they take a more nuanced position, preferring to offer evaluations such as Chaves, for example, that look at a specific portion of religion and try to situate that aspect within the secularization thesis, or they reject the validity of the thesis completely, to claim to aspire to religious scholarship without considering the secularization thesis is irresponsible.

Joshua Mitchell explains that “The resurgence of religion around the globe poses a challenge for both empirical and normative social scientists...the two preeminent terms adopted by social scientists today—‘preference’ and ‘choice’—cannot comprehend religious experience.”²²⁷ The idea that religion can be studied from a rational choice perspective, based on “preferences” and “choices”, is nothing but the “Fable of Liberalism”, which Mitchell sets out to explain. For Mitchell, “Religious experience is of a different order than having ‘preferences’ and making ‘choices’.”²²⁸ Religion is of the realm of faith, beliefs, hopes, and dreams. Instead, Mitchell believes that scholars of secularization and religion alike need to look carefully at when and where the terms of choice and preference and the attempts at rationalization with which they were connected first emerged; most likely these shifts were the result of human motivations focused on circumventing religion and influencing human conduct.²²⁹ Thus, a further critique of the secularization thesis is that, in its focus on simple rational choice, it has missed the historical and political

²²⁷ Joshua Mitchell, "Religion is not a Preference," *Journal of Politics* 69(2007): 351.

²²⁸ Ibid., 354.

²²⁹ Ibid., 352-53.

significance of not only the cycle of resurgence of religion, but possibly even previous declines in religiosity.

America and the Secularization Thesis: An Exception to the Rule

The American experience of secularization, or a lack thereof, especially in comparison to Western Europe, has posed a dilemma for secularization thesis scholars from the start. America, as one of the most modern, most developed, and most advanced nations in the world; would, as we have seen, be expected to demonstrate correspondingly low levels of religiosity. Instead, the American experience has shown just the opposite trend. Religious adherence, practice, and belief are high; elected officials demonstrating religious belief are applauded, and prior to the 2008 election, Democrats were criticized for being out of touch with religious values and voters. In the aggregated data from the 1982, 1990, 1995, and 1999 World Values Surveys, Americans responded overwhelmingly positively to the question “Do you believe in God?”; 96.5% of Americans answered “yes” to the question.²³⁰ Data from the latest U.S. survey in 2006, confirms that Americans continue to place a high value on religious attendance, public displays of religiosity, and look to their political leaders to echo this emphasis on religion.²³¹ All of this

²³⁰ See Appendix C “World Values Survey-Aggregate for 1982, 1990, 1995, 1999,” World Values Survey Organization, www.worldvaluessurvey.org.

²³¹ See Appendix D. The results of the survey showed that 24.2% of Americans attended church weekly, 11.8% went to church more than once a week. 57.8% believed that God was important in their lives while 72.1% called themselves “religious”. “World Values Survey- 2005, 2006, 2008 Data,” World Values Survey Organization, www.worldvaluessurvey.org. However, studies of these type may offer erroneous views of religiosity. Respondents’ answers may not always be truthfully given. Answers to religious questions, in particular, may be provided based on a perception of social

points to the need for a further examination of the American experience of the secularization thesis, an analysis of the manner in which leading scholars of secularization and religion have endeavored to explain the American case, and a consideration of how best to understand the reality of American religion in its relation to the political arena and the state.

Within most studies of religion, secularization, and state-religion relations, America is consistently presented as an “outlier”, a caveat, or an exception to the rule.²³² The persistently high levels of religiosity render America, as Inglehart and Baker explain, “...a deviant case, having a much more traditional value system than any other advanced industrial society ...(that) has levels of religiosity and national pride comparable to those found in developing countries...The U.S. has much more traditional values and beliefs than any other equally prosperous society.”²³³ Richard Neuhaus points out that this religiosity is often included in the general definition of what makes America “exceptional”, in particular vis-à-vis its Western European

acceptability. For instance, residents of a more conservative area may be reluctant to respond negatively to questions concerning church attendance or religious belief.

²³² Interestingly, some recent studies, in light of the continued presence and power of religion in the modern world, have re-formulated this aspect of their argument. Rather than looking at the American case as exceptional, they advance the theory that perhaps it is *Europe* that is the exception in having secularized. As religion demonstrates its resilience time and again, scholars have been forced to consider alternative explanations. Berger, for example, presents Europe, as one of the few exceptions to his *desecularization* thesis. Western Europe, is one of the few areas that has continued to demonstrate the connection theorized by the secularization thesis that rising levels of modernity would beget subsequent decreases in expressed beliefs and church-related behavior. Neuhaus also considers whether, rather than continuing to view the United States as the exception, it might be more beneficial to consider Europe as exceptional and allow the United States to represent the “norm.” Peter L. Berger, ed. *The Desecularization of the World: Resurgent Religion and World Politics* (Washington, DC: Ethics and Public Policy Center, 1999), 9-10. Richard John Neuhaus, “Secularizations,” *First Things* (2009): 24.

²³³ Bill Bishop, “In devotion to Religion, Americans stand apart; Issue's political potency reflects our uniqueness among modern nations,” *Austin American Statesman*, March 19 2000, G1.

counterparts that have, as predicted, experienced declining religion in tandem with increasing modernity.²³⁴ Bill Bishop compares Americans with Europeans, noting that Americans, unlike, for example Norwegians or the French, are more likely to believe in heaven and hell...Half of Americans mark '10' when asked to rate the importance of God in their lives."²³⁵ Many scholars of secularization and religion focus on the idea that this resurgence, or continuation, of religiosity, is what sets the United States apart in the developed world.²³⁶ In fact, Neuhaus emphasizes that while secularization has been considered the norm in Europe, in the United States it seems religion gains importance with each passing year.²³⁷

In their efforts to study secularization and religion in the American case, scholars have chosen to look at various aspects of the question. As scholars have pinpointed one or another aspect of the American example, the question of what, specifically, is meant by secularization in the American context, and how, once decided, this is to be measured have also emerged. In analyzing secularization in the United States is one attempting to explain the style of separation of church and state, or political secularization; the changing role of religious institutions, or institutional secularization; or the shifting style of personal religious belief, or the secularization of belief? With its high levels of personal belief, high permeation of religiosity in the public sphere, yet continued insistence on the separation of church and state, the

²³⁴ Neuhaus, "Secularizations," 23.

²³⁵ Bishop, "In devotion to Religion, Americans stand apart; Issue's political potency reflects our uniqueness among modern nations," G1.

| ²³⁶ Neuhaus, "Secularizations," 23.

| ²³⁷ Ibid., 24.

United States has provided an important venue of inquiry scholars and politicians on all sides of the debate. On the one hand, the U.S. is extremely religious, it has one of the highest levels of professed personal religiously worldwide, and its electorate is often vocally and adamantly religious. On the other hand, the tradition of separation of church and state often serves to clearly relegate religion to the private sphere. As a result, “the question of what aspect of religion should be measured”, Fox and Sandler note, is no small concern,

The literature on secularization theory bears on this issue. Secularization theory posits that religion is declining in modern times. There continues to be a vigorous debate in sociology over whether this is, in fact, the case. An important aspect of this debate is whether secularization refers to the decline of personal religiosity or whether it refers to the decline of religious influence over political institutions...the debate has identified two important aspects of religion that are theoretically measurable: religiosity and the influence of religion on political and social behavior.²³⁸

The question of religiosity, while open to measurement, however, does pose significant scholarly obstacles. As Mitchell explains, one traditional explanation within secularization theory has been the idea of rational choice. Often employed to explain the persistence of religion in the United States, despite rising secularization elsewhere, the rational choice model posits that the high degree of religiosity in the U.S. is directly related to the high degree of choice in the religious market. Freedom to choose between religious organizations allows people to become more religious than they might be in a case where only state-sanctioned religious

²³⁸ Jonathan Fox and Shmuel Sandler, "Quantifying Religion: Toward Building More Effective Ways of Measuring Religious Influence on State-Level Behavior," *Journal of Church and State* 45, no. 3 (2003): 572.

opportunities existed.²³⁹ This ties into the supply-side explanation of American religiosity that postulates that, within a free market, heightened competition between religious organizations will force them to all work to provide the best “product” possible, thus consumers (or worshipers, in this case), will seek out the best fit for themselves. The end result will be a more religious population; choice and ample supply will ensure continued religiosity.²⁴⁰ Mitchell, however, argues that simply “explaining away” the American case based on a version of rational choice theory that converges on the relationship between high religiosity and a high degree of choice in the American religious market, ignores a large part of the American religious experience and also overlooks the strong feelings, based on hope and belief, involved in religion.²⁴¹ However, as Mitchell noted previously, “religious experience is of a different order than *having* ‘preferences’ and *making* ‘choices’ . Religious experience cannot be understood as a ‘preference’ ... Neither can religious experience be understood as a ‘choice’ ”.²⁴² Thus any study that attempts to

²³⁹ Mitchell, "Religion is not a Preference," 354.

²⁴⁰ For further analysis of the supply-side theory of secularization see, Lawrence R. Iannaccone, "Voodoo Economics? Reviewing the Rational Choice Approach to Religion," *Journal for the Scientific Study of Religion* 34, no. 1 (1995); Rodney Stark and Lawrence R. Iannaccone, "A Supply-Side Reinterpretation of 'Secularization' in Europe," *Journal for the Scientific Study of Religion* 33, no. 3 (1994); John T.S. Madeley, "A Framework for the Comparative Analysis of Church-State Relations in Europe," *Western European Politics* 26, no. 1 (2003); Rodney Stark and Roger Finke, *Acts of Faith: Explaining the Human Side of Religion* (Berkeley: University of Berkeley Press, 2000).

²⁴¹ John Richard Neuhaus's article "Secularizations" offers a clear argument against this type of "explaining away". In attempting to qualify the strong religiosity in American society (versus the constantly declining religiosity in Europe), Neuhaus notes, "I expect that serious studies focused on this question would demonstrate that the American way of competition better serves religious vitality and, not incidentally, the pluralism that most consider a strength of this society." Neuhaus, "Secularizations," 27.

²⁴² Mitchell, "Religion is not a Preference," 354.

“measure” religion must deal not only with the outward demonstrations of religiosity, such as church attendance, but also with the questions of feelings. Contextual studies may often provide appropriate venues for understanding the role of beliefs as these beliefs may be translated into social actions or policy decisions.

This then ties into the second “measurable” aspect of religion proposed by Fox and Sandler, “the influence of religion on political and social behavior”. The manner in which politics within each nation relates to religion is the combination of a number of structural and institutional attributes. For example, the style of separation of church and state, discussed at length in the previous chapter, which reigns in the United States, is markedly different than the relationship between religion and the state in France. France, with its policies of *laïcité*, has attempted to create a “religion-free public sphere” that would allow religion and the public sphere to flourish without encroaching on one another.²⁴³ The U.S., in contrast, under the guidance of the Founding Fathers and later generations of the judiciary, worked to keep religion and politics separate from one another in order to guarantee that all religions would be provided with equal opportunities, as would their practitioners. In addition, the separation of church and state was emphasized as the most appropriate method to guarantee that the state would remain free of any undue religious influences. This did not, however, preclude religiosity and open displays of religiosity in the public square. In Great Britain, and many other European nations, state religions have remained strong. The Monarchs of Europe function simultaneously as the Heads of their respective churches and state churches are

²⁴³ Murat Akan, “Laïcité and multiculturalism: the Stasi Report in context,” *The British Journal of Sociology* 60, no. 2 (2009): 239.

often supported by religious taxes; a measure that the Founding Fathers specifically fought against.²⁴⁴

As a result, given these divergent experiences, looking specifically at the American context, the question then must be posed as to how best study the secularization thesis, as both religiosity and as the relations between religion, the state, and the social arena. Looking at the United States, in particular, we must attempt to understand the relationships that have developed between these arenas. In this endeavor, however, generalized attempts to explain the unique position that the United States fills in the overall secularization debate will lead to only a certain degree of appreciation of the multiple aspects of American social, political, and institutional structure that all represent relevant aspects of the American experience of religion. In the United States, as Elshtain explains, “democratic and religious values have grown together”; in fact, almost every major social movement that has had any type of following or success has been infused with religion and faith. In addition, in America, “religion has never been an exclusively ‘private’ matter.”²⁴⁵ Therefore, in studying the United States, “a secular state should not be equated with a secularized civil society scrubbed clean of religion. In the United States, in contrast, a dialogical system emerged that combined a secular state with a democratic civil society that was both inspired by and infused with religion, and in which religion and politics intermingled in all sorts of ways.”²⁴⁶

²⁴⁴James E Wood, *Church and State in the Modern World: A Critical Assesment and Annotated Bibliography* (Westport, CT: Praeger, 2005).

| ²⁴⁵ Elshtain, "Religion and Democracy," 8.

| ²⁴⁶ Ibid., 10.

One final aspect of measurement is worthy of note in studying secularization in the United States. As Bruce emphasizes in his comparative study of religion in the West, the secularization thesis, and religion in general, should not be studying based on a linear time line. Instead, a cyclical and historical view should be employed; periodic resurgences of religiosity should be expected to occur. Working from a historical perspective, Bruce finds that this type of cyclical view demonstrates that the continued religiosity demonstrated in Western states, especially the United Kingdom and the United States, may not actually then refute the secularization thesis after all. The enduring religiosity in the United States, he argues, has been affected by the process of secularization, however, rather than disappearing as predicted, it has undergone a changing of its substance and its manner of display in the modern era.²⁴⁷

America in Context?

Having looked at what specific aspects of the secularization thesis require scholarly attention; religiosity, relations between the state, society, and religion, and all of this in a historical context, we now turn to a brief survey of recent studies of the United States experience of the secularization thesis and religiosity. Most of these studies have afforded the American experience a unique position and, as a result, either place the United States outside of the bounds of discussion, “explaining it away”, or attempt to provide concise reasons as to why the American experience of religion

²⁴⁷ Bruce, *God is Dead: Secularization in the West*: 177.

has been different, and therefore represents an “exception” to the secularization thesis. Proposed explanations range from those that point to the American historical experience as exceptional, to ones who focus on the unique economic and capitalist characters of the United States, to a number who chose to emphasize the role played by Christian Fundamentalists. Religion specific explanations, considering changes in the institutions of religion themselves, have also been proposed, as have arguments that focus on the role of the separation of church and state. Finally, some scholars argue that, given the current global religious climate, it is not, in fact, the United States, but rather Europe, that is the exception to the rule.

Turning first to accounts that place the American historical experience at the center of the debate. One such historical account is provided in Ahmet Kuru’s recent book, *Secularism and State Policies Toward Religion*. In his argument, Kuru explains that the lack of secularization in the United States is due to the nation’s corresponding the lack of previous ancien regime. Without religious elites, or theories of divine right America was able to function within a framework of passive secularism where the “state plays an inactive role by allowing the visibility of religion” but prioritizing state neutrality in interaction with religion.²⁴⁸ At the time of its creation, the U.S. was a relatively new country; it had no overarching established church (although the Anglican Church was the church of choice for the British, other churches and denominations had become strong and entrenched by the late 18th century), and its political leaders did not require the support of a religious hierarchy to solidify their political roles. This paved the way for “passive

²⁴⁸ Kuru, *Secularism and State Policies Toward Religion: The United States, France, and Turkey*: 75.

secularism”, creating an environment in which, “secular and religious elites sought and achieved an overlapping consensus on the separation of church and state at the federal level”; churches were free from the influence of the state; and the more lenient style of secularism that developed guaranteed freedom of religious exercise for all citizens.²⁴⁹

In order to support his claim that the U.S. enjoys a tendency toward passive secularism, Kuru looks at the trajectory that American religiosity has followed since the early 1800s. Like many other scholars, Casanova in particular, he splits American religious history into a number of stages based on the rise and fall of Protestantism in particular. His stages are as follows; 1816-1925: Protestant Semi-Establishment; 1925-1950: Distestablishment of Protestantism; 1950-1960s: Establishment of Monotheism; 1960s-1990s: Distestablishment of Monotheism and its aftermath. Currently, Kuru observes that the United States is embroiled in a debate over the degrees of separation of church and state and secularism that should exist. He notes that while the degree to which the Establishment Clause should be upheld has been a subject of conversation, there seems to be little question that the Free Exercise Clause, guaranteeing religious freedom, should be fully supported. Kuru uses his observations of the current state of affairs in American religiosity to support his claims of passive secularism; the overall trends of disestablishment fit in Kuru’s framework and as he notes, “religious groups in America accepted the lack

²⁴⁹ Ibid., 115.

of an established church at the federal level and disestablishment at the state level without nostalgia for an ancien regime.”²⁵⁰

Neuhaus’s explanation of the American secularization experience follows closely along that of Kuru’s. Like Kuru, Neuhaus explains that European secularization is largely the result of the struggle that European nations faced against an ancien regime that was clearly aligned with, and received a significant boost from, the religious orders of the era. Revolutions and struggles against the regime in Europe that were finally successful required later states to sever all ties with the preceding religio-political structures. Eliminating the issue of divine right to rule, in particular, was critical to the survival of fledgling democracies and republics. European states thus required an “assertive secularism” in which the exclusion of religion from the public square was part of a comprehensive doctrine, the continuation of which, in combination with modernization and development, has, as posited by secularization theory resulted in the full confinement of religion to the private domain, where it has stagnated.²⁵¹

Finke, also working from a historical perspective, notes that the United States historical experience has demonstrated a trend that clearly ran in opposition to the secularization thesis. Based on the possibility of free exercise of religion and the presence of a lenient type of secularism, in the U.S., “the secularization model’s prediction of religious decay is simply not supported by the historical trends...Modernization was not accompanied by the long-forecasted process of

²⁵⁰ Ibid., 85-90.

²⁵¹ Neuhaus, "Secularizations," 24.

secularization.”²⁵² Finke looks closely at the patterns that religion have followed in America between the colonial era and the contemporary era and finds that the long-term trend actually indicates that a major increase in religious adherence, church attendance, and church membership has occurred, in direct contrast to the expectations of the secularization thesis. In fact, religious institutions have seen increasing vitality and, unexpectedly, the more moderate institutions have been the ones to lose membership, while more conservative, rigid churches have seen growth in their “flocks”.²⁵³

The religious vitality, especially among conservative churches, that Finke observes has been a critical point of departure for scholars of religion in their attempts to understand the American secularization experience. Specifically, since the 1980s, the consistently increasing power and presence of Protestant Fundamentalism has presented an important arena of inquiry as it represents not only the strength of religiosity in the United States, but also a point of convergence between religion and the state. Protestant Fundamentalists have been active players on the political scene and have, as we shall see, worked to promote their own agendas, encourage sympathetic voters, and influence public policy. Casanova explains that both the deprivatization and repoliticization of the American Protestant Evangelical movement that have played a crucial role in sustaining public religion

²⁵² Roger Finke, "An Unsecular America," in *Religion and Modernization: Sociologists and Historians Debate the Secularization Thesis*, ed. Steve Bruce (Oxford: Oxford University Press, 1992), 154.

²⁵³ Ibid., 148-53. Finke also provides a graph to demonstrate the levels of religiosity present from the colonial period to the 1980s, showing, in particular, the rise in religiosity due to rising levels of Evangelical religion. See Appendix E for the graph.

in America.²⁵⁴ As Evangelicals have gained ground in the religious, social, and political arenas, religiosity in the United States has become more public, and more desirable.²⁵⁵ Casanova, like Kuru, directly ties the rise of the evangelical movement to three disestablishments of *Mainline* American Protestantism, which began with the Founding Fathers' drafting of the U.S. Constitution. The first disestablishment occurred with the secularization of the state via the Constitution and Bill of Rights. Contrary to common belief, however, Casanova explains that the Constitution did not actually privatize religion; rather it created a structural framework for the rise and expansion of Protestantism, within which evangelical Protestantism actually became the public religion of American civil society. This explanation, in fact, helps to shed light on the question of how, in a nation in which the separation of church and state seems so strong, the role of religion can be so prevalent in the political arena.

The second disestablishment caused the secularization of the life of the mind and initiated the first mobilization of Protestant fundamentalism. Fundamentalist Christians throughout the country focused on promoting the conservative components of evangelical belief in response to the changes introduced by technological advances that ushered in the Industrial Revolution.²⁵⁶ After this period, religion became a more private affair and by the 1920s, and the Scopes trial,

²⁵⁴ Casanova, *Public Religions in the Modern World*: 154-56.

²⁵⁵ In fact, Casanova argues that, in some cases, social desirability may be what actually drives people to declare themselves as religious, or to exaggerate their religiosity ———, "Secularization Revisited: A Reply to Talal Asad," in *Power of the Secular Modern: Talal Asad and his Interlocutors*, ed. Charles Hirschkind and David Scott (Stanford, CA: Stanford University Press, 2006).

²⁵⁶ ———, *Public Religions in the Modern World*.

“Evangelical Protestantism had ceased being the public civil religion of American society”.²⁵⁷ Finally, in the 1960s, the third disestablishment of American Protestantism completed the American version of secularization, and an overall secularization of the American worldview occurred. The First Amendment had been reinterpreted to expand ideas of free exercise from “freedom of conduct” to include “freedom of thought, inquiry, and speech”; and, generally speaking, a more pluralistic, inclusive version of public morality and worldview became active on the national stage.²⁵⁸ Some recent studies do confirm a continued presence of a more liberal “secularized” spirituality; Laura Olson, for one looks at the role played by the “religious nones” in the 2004 and 2008 elections.²⁵⁹ However, while Casanova’s final disestablishment, at first, seemed to correspond to the rise of a more liberal, less conservative overall attitude; as we will see in our case study, these liberal ideals, both in religion and in public policy, welfare reform provides a clear example, have been in decline since the 1980s. The strong emergence of Fundamentalist Christianity in the 2000 and 2004 elections seems to indicate that this “America-specific” type of secularization, with Evangelical Christianity relegated to the civil sphere, is experiencing a reversal.²⁶⁰ The George W. Bush

²⁵⁷ Ibid., 143.

²⁵⁸ Ibid.

²⁵⁹ Laura Olson, "Religious Nones: An Untapped Constituency," in *The Immanent Frame: Secularism, religion, and the public sphere*, ed. Jonathan Van Antwerpen (New York: Social Science Research Council, 2010).

²⁶⁰ Elshtain, "Religion and Democracy," 8.

Presidency and the implementation of the Faith-Based Initiative are apt examples of this reversal.

Berger, in a reversal of his previous theoretical stance, has adopted a new focus on the *desecularization* of the world. Looking at the special role fundamentalism has played in affecting an upsurge and the continued resilience and resurgence of religiosity in the United States, Berger explains that the number of Evangelical Christian congregations in the United States, like the one to which George W. Bush belongs, have reached exceptional numbers in the past three decades. These Evangelicals, along with having strength numerically and financially, have gained popularity through their populist characters, which are “over and beyond the purely religious motives...are movements of protest and resistance *against* a secular elite.”²⁶¹ Bringing in the state in her analysis of the rise of fundamentalism, Keddie notes that this reaction may be occurring not only against the secularized elite, but also against the secularized state itself. While a secularized population may encourage a secularized state, the opposite may also occur. In fact, the separation of church and state unique to the United States may not have any effect on the religion in general; she explains that separating church and state will not have an effect on the overall religiosity of the nation, it will simply preclude the existence of a state religion. Secularization will occur primarily within the intellectual, societal, and governmental sphere of Western life and be the domain of the more modern, better educated, liberal and primarily urban segments of the population. Fundamentalism, Keddie explains, is a reaction to this secularism at the

²⁶¹ Berger, "The Desecularization of the World: A Global Overview," 10-11.

state level.²⁶² To this end, the rise of fundamentalist movements should not be surprising. This secular elite, ironically, may be reacting to the fundamentalists. Richard Ostling, in his study of “America’s Ever-Changing Religious Landscape”, explains that American secularization *is* occurring, but as a direct reaction to the rising power of evangelical Christians; faced with the rigid, conservative views of the fundamentalists, portions of the remainder of American society may resort to the strenuous adoption of secular value sets in response.²⁶³

The power and strength of the fundamentalist movement, and the liberty with which it is able to function also figures into Bruce’s argument as to why the American experience of secularization is different and noteworthy. Also conscious of the role that both religion and state-religion relations have to play, and one of the few scholars to point out the role that the American federal structure plays in allowing for continued religiosity, Bruce, questions, “Why the USA is different” in its religiosity.²⁶⁴ According to Bruce, the federal structure allows for religious traditions to strengthen locally and thus sustain competition at a national level. In addition, the top-down federal structure means that national regulations may not be as binding in local circumstances. This allows local churches, schools, and organizations to function more freely, providing “US sectarians” with “the ability to construct their own world.”²⁶⁵ This point is shown clearly in our case study of the

²⁶² Keddie, "Secularism and the State: Towards Clarity and Global Comparison," 23.

| ²⁶³ Richard D Ostling, "America's Ever-Changing Religious Landscape," *Brookings Review* 17, no. 2 (1999): 11-12.

| ²⁶⁴ Bruce, *God is Dead: Secularization in the West*: 219-20.

| ²⁶⁵ *Ibid.*, 225.

Faith-Based Initiative. Its predecessor, Charitable Choice, ignored by the more secular liberal-minded Clinton Administration, was quickly implemented, and expanded under George W. Bush's Evangelically oriented administrations, first at the state and then at the federal level. Bruce confirms that the federal structure allows for action at the local level; where the federal system provides "a pluralistic structure for public administration and government, and allows people considerable freedom to *avoid* diversity."²⁶⁶ Thus since localities are actually generally quite homogeneous and demonstrate strong levels of commitment to a smaller number of religious traditions, this has allowed religion, and policies linked to it, to persist despite predictions to the contrary.

Although they do not point to federalism directly, Norris and Inglehart, do consider both regional and economic explanations in their study of America as, "...one of the most religious countries in the world".²⁶⁷ The authors point out that that America displays that "the pervasive importance of these (religious) values is apparent in many American practices, especially public life, despite the strict separation of church and state."²⁶⁸ This pervasive religiosity may be due to regional and cultural differences; one subculture, the South, is religiously puritanical, family-

²⁶⁶ Ibid., 226.

²⁶⁷ Norris and Inglehart, *Sacred and Secular: Religion and Politics Worldwide*.

²⁶⁸ Ibid. The authors offer a number of other plausible explanations for the high levels of reported religiosity in the American case including the possible existence of a "social desirability bias concerning churchgoing" that may prompt wrong reporting, the role played by rising numbers of religious immigrants- Catholics in particular; changing denominational affiliations-as more people join the ranks of the evangelicals their presence has become more vocal and present on the national stage; and finally, the fact that church-going may represent a social activity as opposed to a religious one.

centered, patriarchal and conformist, while the other, the North, is secular, tolerant, hedonistic, and multicultural.²⁶⁹ Finally, in an economic vein, and in keeping with their theory that levels of religiosity are interwoven with feelings of security, the authors point out that America, although at the forefront of development and modernization, is also the leader of the capitalist pack. “Due to its cultural emphasis on the values of personal responsibility, individual achievement, and mistrust of big government, limiting the role of public services, and the welfare state for basic matters such as healthcare”, a high percentage of the American public harbors feelings of insecurity, economic in particular, leading to a correspondingly high degree of religious belief.²⁷⁰ Overall then, the U.S. case, in comparative perspective begets the conclusion that, “the limited evidence that is available indicates that there is no worldwide decline of religiosity, or of the role of religion in politics...the expanding gap between the sacred and secular societies around the globe will have important consequences for world politics, making the role of religion increasingly salient.”²⁷¹

The above analyses have focused on more generalized conclusions, looking at large scale historical trends, overall state-religion relations, and overarching cultural, economic and political characteristics of the United States, often in comparative perspective. A number of recent studies have also looked more specifically at the dynamics of religion, and state-religion relations within the

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Ibid., 229.

United States, often through case studies. Among these, Mark Chaves, a leading scholar of religion in the United States, who has studied not only the phenomena of religious belief, but also the practical reality of congregations and worship; and issues of faith-based initiatives and social services has conducted in depth and wide-reaching surveys that deal with the activities and ideologies of churches and congregations nation-wide, and has taken the secularization thesis in hand and attempted to explain changing religious attitudes, public and private. Specifically, in the American case, Chaves believes that “secularization is best understood not as the decline of religion, but as the declining scope of religious authority.”²⁷² In this vein, Chaves first defines religious authority based on “the manner in which it legitimates its demands for compliance” and “as a social structure that attempts to enforce its order and reach its ends by controlling the access of individuals to some desired goods, where the legitimation of that control includes some supernatural component, however weak.”²⁷³

For Chaves, in the American context, the decline in religious authority has led to parallel declines in the role that religious institutions have been able to play at national, local, and personal levels. His observations of this also fit concisely into Karl Dobbelaere’s three dimensional model of secularization which focuses on declining religion based on “laicization”, at the societal-process level, in which political, educational, scientific, and other institutions gain autonomy from the

²⁷² Mark Chaves, "Secularization as Declining Religious Authority," *Social Forces* 72, no. 3 (1994): 750. Chaves, as a scholar of primarily American religion, is looking at this issue from a pointedly American perspective. However, for the scope of this study, an American perspective may be very fitting.

²⁷³ Ibid., 755.

religious institutions of a society; internal secularization, where religious organizations undergo transformations- at the local level; and religious disinvolvement, where individuals experience a decline of religious belief and practice.²⁷⁴ Chaves further develops this argument in terms of the United States specifically and explains that, “although religious activity (as indicated by belief in God, church membership, and church attendance) apparently has been quite stable in the twentieth century US, religious authority’s capacity to regulate actions of individuals has indeed declined. It is this kind of important shift in descriptive understanding that results when secularization is seen as declining religious authority rather than as declining religion.”²⁷⁵

Finally, one of the more recent, and ambitious, studies of religion on a global level is Fox’s *World Survey of Religion and State*, which undertakes to conduct a quantitative and qualitative analysis of 175 countries, based on a 62 variable data set. Fox uses his data, in light of the modernization-secularization thesis, in an effort to confirm or disprove the validity of the secularization-modernization thesis in the current global context. In an attempt to illuminate the complex relationships that often exist between religion and the state, Fox uses his data set to examine the links between government involvement in religion (GIR), democracy, and overall religiosity. Government involvement in religion is formulated based on five

²⁷⁴ Ibid., 757. See also, Karel Dobbelaere- 1981, 1985, 1987. Chaves believes that of the early secularization theorists, Karel Dobbelaere, a noted Belgian sociologist of religion, has developed the most articulate and influential statement of secularization’s multidimensionality based on “laicization, internal secularization, and religious disinvolvement.” Chaves uses these three categories to support his own attempts to qualify the decline of religious authority at various levels in American society.

²⁷⁵ Ibid., 769.

measurements; the official role of religion in the state, state restrictions or preferential treatment to some religions, restrictions on minority religious practices, regulation of all religion or the majority religion, and state legislation of religion.²⁷⁶ Based on his observations in these areas, Fox also creates another category, separation of religion and state (SRAS), which he utilizes to postulate concerning the degree and manner in which religious institutions and authority interact with their counterparts in the government.²⁷⁷

In Fox's study, America, based solely on a statistically oriented analysis, with little attention to the details of American religious life or any study that actually examines the level of interaction between religion and the state, is presented as a worldwide exception. It is the *only* country in the world to have a GIR-government involvement in religion-level of *zero*; which essentially means that there is no degree of interference in any religious affairs by the government, a claim this dissertation shows is unsubstantiated. In addition, the United States is found to have an absolute-SRAS, indicating that there is no overlap between the state realm and the religious realm.²⁷⁸ Again, an ambitious and somewhat overreaching conclusion, especially in light of the Faith-Based Initiative. In terms of our study, it is also important to note that while Fox looks at a number of cross-national factors, he never looks at "America specific" issues and what these might mean for the real level of government involvement in religion or separation of religion and state. In

²⁷⁶ Fox, *A World Survey of Religion and the State*.

²⁷⁷ Ibid.

²⁷⁸ Ibid.

addition, the role of the federal system is simplified. Fox believes that without the power of the federal court system, restrictive legislation would be allowed to constrain religious freedoms in the United States. As seen in Chapter Four, and as we shall see in Chapter Seven, the federal courts have actually played a significant role in influencing the trajectory of American religion, and not necessarily in a direction that all Americans would consider desirable. Certainly this would indicate a GIR level of greater than *zero*? In addition, the recent phenomena of Charitable Choice and the Faith-Based Initiative, crucial examples of state-religion interplay are not discussed at all, despite the fact that the survey is dated after the institution of both federal measures.²⁷⁹

As this survey of the American case in light of the secularization thesis has shown, many different aspects of the American religious experience require attention. Specifically, two important questions surface when studying the American case; first the issue of how to study religion and secularization in the American context specifically, and second, how to explain, despite the general argument of declining religion advanced by the secularization thesis, the growing number of Evangelical Christians who have chosen to use the religious liberty granted to them in the United States to lead “ultra-Christian” lifestyles and the manner in which these, despite the separation of church and state, have been projected onto the national political stage. Most studies are quick to label the U.S. as the “exception” to the rule, and present generalized, and often simplified proposals to explain the strong position of religion despite equally strong modernity and

²⁷⁹ Fox’s study is based on the compilation of survey data from between 1999-2002. Ibid.

technology. The existence and power of such a large number of people who prescribe to such strong, all-consuming, and often extreme religious views in a liberal democracy such as the United States raises questions concerning the prevailing notions of separation of church and state that currently exist in the United States. Although it is a secular state, the high degrees of religion and the manner in which many groups, such as the Evangelicals, are able to display and experience their faiths seems to fly in the face of conventional understandings of secularization.

Attempts to understand religion and secularization in the U.S. however, have often displayed significant shortcomings. For example, the studies by Norris and Inglehart and Jonathan Fox are too grand. Missing crucial detail and depth, their proposals, as seen above, can fall apart in light of contextual evidence. Comparative studies, on the other hand, such as Bruce's, historical approaches such as Kuru's, or in-depth, issue specific analyses, such as Chaves' certainly help to provide more comprehensive understandings of the issues with higher explanatory value; yet with their focus on one or another aspect of the question, may overlook influencing factors. Casanova and Berger, both work from a more theoretical lens, yet, nevertheless attempt to pinpoint some certain aspects, fundamentalism in particular, of American religiosity that have made America the exception in the Western experience of secularization, also offer starting points. However, based on this survey of existing studies of the United States secularization and state-religion relations, it seems that a different type of analysis, one that goes beyond simple studies guided by the secularization thesis, or even by ideas of the rising trend of desecularization, may be necessary. Considering these ideas within a case-study

environment, such as the case of the Faith-Based Initiative, is likely to add a deeper analysis and view that, in turn, will help demonstrate not only the theoretical realities of the American situation, but also the unique aspects of the American case that are at play. A more contextualized analysis, one that incorporates history, the federal make-up, and the legislative and judicial processes, along with current realities such as the rise of Protestant Fundamentalism and its role in the George W. Bush Presidency, within its contours are necessary to fully grasp the American experience of religion, the separation of church and state, and America's version of the secularization thesis.

CHAPTER FOUR

÷FEDERALISM IN AMERICA



Exceptional and Fluid

Federalism in the United States has had specific and noteworthy consequences for the American public, public policy, governmental developments, the judiciary, the economy, and even in the manner in which religious belief is internalized, and the separation of church and state is implemented in America. The Charitable Choice Act and the Faith-Based Initiative, as outcomes of the welfare reform of 1996, present an instance in which the functionings of the federal system clearly intersect with religion, an unlikely intersection given the supposed separation of church and

state dictated by the United States Supreme Court, and, in doing so, serve to influence both public policy and government delivery of social services. While scholars of federalism, traditional and critical, have studied, almost exhaustively, various aspects of the American federal structure, looking at the federal government in comparison to other federal and unitary systems, considering the effect of state-level and national level interactions, delving into the social and economic realities of federalism, critiquing the degree of democracy and liberty the federal structure may or may not afford American citizens, it is hard to find scholarly works that consider the role the federal system may play in terms of encouraging or discouraging religion, allowing for constituent units to make their own decisions concerning religion, or, as is especially important in the American case, helping or hindering a clear separation of church and state. America, as we have seen, enjoys a high degree of societal religiosity. The manner in which this has spilled over into arenas that traditionally fall under the aegis of the separation of church and state, institutions, and government itself, requires looking at the issue from within the lens of the federal system. The federal system, in its capacity to dictate governmental duties, relations, and authority must surely be affected in some way by the strong levels of religion that permeate the American social and political landscape. By examining the case of the Faith-Based Initiative, the dissertation hopes to shed light on how, and to what extent, federalism and religion are able to interact, and how this interaction may affect social and political realities.

Beginning from a historical point of departure, and looking at the original documents from the Federal Convention offers a first glimpse of the manner in

which the intellectual elites in the United States have treated the issue of religion. Nowhere during the lengthy debates, minutes kept, and journal entries written during the 1787 Convention is the issue of religion, as a subject of discussion in its own right, discussed. Religion, as seen above, and will see in more detail in the following chapter, is a key aspect of the “American character”. Religiosity and religious values in the United States are often “taken for granted” as part of America’s national identity and sense of self. This has been reflected in the idea of “American Exceptionalism”. During the Federal Convention of 1787, the question of religion as it is sometimes discussed today; does it and should it exist as part of a national idea; was not addressed. Religiosity is simply “there”; no debate occurred over its mere existence. Benjamin Franklin’s point concerning religion demonstrates this matter of fact position of religion well. Franklin, a well-known scientist, mentions that the Founders were influenced by divine guidance in the creation of the Constitution. No debate or discussion surrounds this point; the role that God played in the creation of the United States is simply accepted.²⁸⁰

Two concerns were, however voiced during the proceedings. The first was the question of a religious *test* as a requirement for holding office. Clearly, the idea of religion had permeated American life in general so fully that some argued for the inclusion of a religious test for candidates. Governor Randolph expressed his concerns on this subject and motioned that religious tests should not be included in the Constitution. Speaking before the Convention he stated,

²⁸⁰ Max Farrand, ed. *The Records of the Federal Convention of 1787*, 4 vols., vol. 1 (New Haven, CT: Yale University Press, 1911, 1937, 1966), Vol 3, 293.

Although officers, &c. are to swear that they will support this constitution, yet they are not bound to support one mode of worship, or to adhere to one particular sect. It puts all sects on the same footing. A man of abilities and character, of any sect whatever, may be admitted to any office or public trust under the United States. I am a friend of variety of sects, because they keep one another in order....There are so many now in the Unites States that they will prevent the establishment of any one sect in prejudice to the rest, and will forever oppose all attempts to infringe religious liberty.²⁸¹

The question of holding politicians to a religious test became so important that a guarantee against it was finally included in Article Six of the Constitution. The full text reads:

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.²⁸²

This was done for two reasons, first, and primarily, in order to guarantee that candidates from religious backgrounds outside the mainstream Protestantism of the time would be given equal opportunities to run for office and serve, and second, so that there would be no possibility of forced “conversion” of elected officers.²⁸³

²⁸¹ Ibid., Vol 3., 310.

²⁸² B"People in Political Science," *PS: Political Science and Politics* 34, no. 2 (2001); Carter Lindberg, "There Should be No Beggars Among Christians: Karlstad, Luther, and the Origins of Protestant Poor Relief," *Church History* 46, no. 3 (1977). Keddie, "Secularism and its Discontents."

²⁸³ Discrimination against Quakers and Catholics during the early years of the Republic was an important motivation for the inclusion of Article Six. Swearing an oath to God, or on the Bible is contrary to beliefs in the Quaker religion. The clause hopes to avoid any problems that may arise from this, and also to help avoid any claims of anti-Catholicism, rampant at the time, at the federal level.

The second religious point voiced during the Convention was by Luther Martin. He argued that religious belief should be free so that it may be encouraged. He assured the group gathered in Philadelphia that religious belief would help in restraining any potential majority actions, while also keeping a check on the manner and method of rule of political leaders.²⁸⁴ Together these two concerns clearly demonstrate that religion in the early federal period was not divisive in the same manner as it is today. Although concerns about the need for an underlying religiosity of leaders, and a check on federal and personal discrimination against these leaders were clearly discussed, the underlying acceptance of religiosity in general also clears points to the “exceptionalism” of the American experience.

Turning our attention to the scholarly treatment of religion among scholars of federalism we see that the only considerations of the interaction of religion and federalism come from Daniel Elazar, Alfred Stepan, and Juan Linz. The relationship that may or may not exist between the American system of separation of church and state or the highly saturated American religious landscape and the manner in which this might interact with the federal structure are nearly omitted, with a strong focus placed only on the way in which any federal structure may prove beneficial to the current global trend of multiethnic, multilingual, and multi-religious nations. The proliferation of new nations, often previously under the rule of dictators, dominant outside actors, or colonial arrangements has given rise to a new global landscape in which different peoples, often of radically different and even conflicting ethnic, cultural and religious descent are all thrust together in living

²⁸⁴ Farrand, *The Records of the Federal Convention of 1787*, III, 227.

arrangements that have often proven catastrophic. In addition, as the world “gets smaller”, communication and technology interconnect peoples and governments, these same different ethnicities and religions are increasing in contact with one another. Federal arrangements may provide an alternative to conflict and a method with which people of diverse backgrounds can live together, each inhabiting their own sphere of influence under the greater umbrella of a federal system that may help coordinate policy, deal with international relations, and facilitate overarching functions of government in areas such as the economy or defense.²⁸⁵

Aside from recommendations such as these, and analyses that deal with easing the transition to a more multi-national, multi-ethnic world, Elazar is the only scholar who even takes a cursory glance at what federalism has meant for the separation of church and state in the United States. Premising his discussion on his idea that “federalism is based upon the organization of human affairs through covenant...mutually agreed, morally informed pacts that pledge the moral commitments of the parties to establish and maintain certain relationships and the structures needed for doing so”, Elazar offers a historical analysis of the development of the basic theoretical notion of the separation of church and state in the United States.²⁸⁶ Elazar explains that during the seventeenth century, with the creation of the Puritan Massachusetts Bay colony in 1629, the theological ideas of covenant and the practical notion of the practice of federalism came together to support the idea that a separation of the temporal and spiritual realms may benefit

²⁸⁵ For a much lengthier discussion on this point see, Daniel J. Elazar, "From Statism to Federalism: A Paradigm Shift," *International Political Science Review* 17, no. 4 (1996).

²⁸⁶ ———, "Religious Diversity and Federalism," *UNESCO* (2001): 61.

the overall functioning of society. No doubt, the recent experiences of the Puritan community in its relations with the English government and the King of England were also influential factors in helping the Puritan leaders to foster a new doctrine that relied on separate realms for religion and government.²⁸⁷ This is not to say however, that the Puritan notion of the time was anything like that which reigns today. Religion was, and some argue, has continued to be, an essential aspect of American public life—also one of the most often noted aspects of “American Exceptionalism”. By the eighteenth century, these new ideas of separation of church and state, albeit with a “special federal twist” had become part and parcel of the American constitution.²⁸⁸ This “special twist”, relegating the question of religion to the jurisdiction of each individual state, was, many argue, what has allowed American religious belief to continue to flourish; a more detailed discussion of this will be included in the next chapter. What is important to note is that of all the scholarly attention paid to the federal structure, very little contextualization or examination of the special relationship between federalism and the separation of church and state has occurred.

Federalism in the United States: ÷Roots and Results

The United States federal system has its roots in the original founding of the nation during the American Revolution, in which the colonies struggled to gain their

²⁸⁷ Ibid., 62.

²⁸⁸ Ibid.

independence from the British Monarchy. During the Revolutionary War, in 1776, with the hope of solidifying their position as a free and consolidated nation, leading politicians, landowners, and intellectuals from the original thirteen colonies came together at the Continental Congress with the goal of drafting the Declaration of Independence and also creating a new government. This new government, designed to coordinate the actions and rights of the original thirteen colonies was delineated in the Articles of the Confederation.²⁸⁹ This document created a confederacy, or loose arrangement, that granted significant powers to each individual state. The national government, on the other hand, was granted a limited number of powers that included only the power to declare war, the right to negotiate diplomatically, and the responsibility to resolve issues regarding the western territories. Due to geographical constraints, the difficulties in bringing together state legislatures for debate and voting, and the general wartime situation, full ratification of the Articles of Confederation did not occur until 1781, nearly five years after they were first drafted. Despite this, the Articles still served their purpose of unifying and guiding the government for the duration of the War of Independence. Soon after hostilities ceased however, the deficiencies inherent in the Articles became glaring apparent and calls for their reformulation rose.²⁹⁰

The creation of the loosely worded Articles of the Confederation had originally been designed to provide a maximum degree of self-government and individual rights to the states. Having languished under the strict control of the

²⁸⁹ "Articles of the Confederation."

²⁹⁰ For a concise description of these early events in American history see, *The New York Public Library American History Desk Reference*, (New York: MacMillan, 1997).

British Monarchy, leading figures in the new nation focused on creating a government that would allow for heightened state sovereignty, rule of law that was designed to fit each state specifically, and the hope that these together would allow for higher levels of personal liberty and freedom than previously available. However, as the practical reality of governing soon set in, members of the government realized that the limited powers of the federal government precluded it from many types of necessary authority. Under the Articles of the Confederation, the national government had no power of taxation; no judiciary existed, therefore punishment of any state encroachments or disputes was impossible; no executive agencies existed, nor could the government create them, thus eliminating any chance that the federal government could function successfully; and finally, the government had no means of forcing the states to comply with federal demands, a reality felt only too sharply as the federal government struggled even to secure the states' ratification of the Treaty of Paris, which was to end hostilities with Great Britain.²⁹¹

Noting these serious defects, the Founding Fathers gathered again in Philadelphia between May and September 1787, at the Federal Convention, to undertake a novel effort of unification, this time resulting in the Constitution that persists to present day.²⁹² Despite the general awareness that significant deficiencies existed in the Articles of the Confederation, the issue of states' rights as opposed to national rights was not easily resolved. According to the notes taken by James

²⁹¹ Ibid.

²⁹² Keddie, "Secularism and its Discontents."

Madison, the original plan proposed to remedy the Articles of Confederation was introduced by Governor Edmund Randolph of Virginia and soon came to be known as the Virginia Plan, or the large states plan, as its focus on proportional representation implied an advantage to the larger, more populous states.²⁹³ Randolph's plan soon set the tone of the entire convention as opponents struggled to present alternate plans and proponents focused on bolstering their positions. The primary question faced by the Virginia Plan was the equity of proportional representation. Despite Randolph's proposal for a bicameral legislature in which the two houses would be able to balance each other, smaller states, such as Delaware and New Jersey, argued that their smaller populations would put them at an overall disadvantage.²⁹⁴ Charles Pinckney, another opponent, was more concerned with the general structure of Randolph's plan and proposed the Pinckney Plan, which granted significant powers to the states and was based on a treaty between the states as sovereign units and the creation of a new Confederation.²⁹⁵

The final result of the debate was the proposal and acceptance of the Connecticut Compromise, presented by Roger Sherman, which retained the bicameral legislature yet granted a system of proportional representation to populate the House, while giving the Senate a fixed number of two seats per state. The

²⁹³ Farrand, *The Records of the Federal Convention of 1787*, 18-23.

²⁹⁴~~294~~ The Representative from New Jersey, William Paterson, also presented a plan. Known as the New Jersey plan, the proposal included a single chamber legislature that would provide each state with one vote regardless of population. Both Edmund Randolph and James Madison strongly opposed the New Jersey Plan. *Ibid.*, 242-45.

²⁹⁵ Unfortunately, Charles Pinckney did not write down his plan at any point during the Convention; he simply presented it to his peers orally. Due to this, the account of the plan that is generally cited comes from the notes taken by James Madison. *Ibid.*, 3: 595-608.

proportional representation system was especially important because it allowed each state to have a degree of power that was relative to its size, and its contribution in terms of federal taxation.²⁹⁶ In addition, it was argued that this system would be representative of both the *people*, who would be represented in the House based on their numbers, and the *states* themselves, whose interests would be presented by their Senators.²⁹⁷ Today, as in the original design, the federal ~~government and the~~ state governments still enjoy autonomous spheres of authority and influence; American citizens remain citizens of both spheres. In addition, as discussed in the Federal Convention, the federal government does not legislate to the states but to the actual people themselves who inhabit the states; however, most decisions affecting everyday life are made and carried out at the state level. James Madison, one of the leading participants in the Convention explains in detail how the system will function, the United States government will be of

a mixed character, presenting at least as many *federal* as *national* features... in several cases...States...must be viewed and proceeded against in their collective and political capacities (thus in a federal manner). But the operation of the government on the people in their individual capacities...designate it (the government), in this relation a *national* government.²⁹⁸

²⁹⁶ The Connecticut Compromise essentially changed only the portion of the Virginia plan that dealt with the issue of representation in the House of Representatives and the Senate. Ibid., 1: 355; ———, ed. *The Records of the Federal Convention of 1787* 4vols., vol. 2 (New Haven, CT: Yale University Press, 1911, 1937, 1966). See also, *ibid.*, 13-20, 25.

²⁹⁷ James Madison noted that this compromise would secure the demands of both those members of the convention who were fighting for the people to be better represented, and those that were focused on securing an arena in which the States themselves would be presented. Thus, the hope was that this plan would solve the states' rights-federal government rights dispute. ———, *The Records of the Federal Convention of 1787*, 461-62.

²⁹⁸ Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, ed. Clinton Rossiter (New York, New York: Signet Classics, 2003), 241-42.

Thus, Madison explains, “The proposed Constitution, therefore, even when tested by the rules laid down by its antagonists, is, in strictness, neither a national nor a federal Constitution, but a composition of both.”²⁹⁹ The House of Representatives still serves its purpose as the most direct arena of representation, with each state sending representatives based on their population who then serve as “the voice” for their individual constituencies at the national level. In defense of the Connecticut Compromise, Madison notes that the goal of the Convention and its members, was to mold a nation, through the Constitution, based on a representative government in which the people themselves have both direct and indirect roles in choosing government officials. He explains that,

On comparing the Constitution planned by the convention with the standard here fixed...it is, in the most rigid sense, conformable to it. The House of Representatives...is elected immediately by the great body of the people. The Senate...derives its appointment indirectly from the people. The President is indirectly derived from the choice of the people...even the judges...be the choice, though a remote choice, of the people themselves.³⁰⁰

Continuing the delineation of state and federal divisions that function in tandem is the judicial system, which strives to ensure a strong, yet just, rule of law. And finally, a strong system of separation of powers continues to direct the everyday activities of the federal government with the executive, legislature, and judiciary each functioning in their own private realm but checking the actions of the other.

| ²⁹⁹ Ibid.

| ³⁰⁰ Ibid

The separation of powers is another oft-mentioned feature of the American governmental system. Given their recent experience with an all-powerful monarchy that could essentially act in a tyrannical manner upon a whim, the Framers felt it necessary to include strict limits on each branch of government's respective power. This system was first conceived of by the Founding Fathers during the same debates from which the current Constitution was born and is granted significant space in the Constitution itself, thus making its application and continuity non-negotiable.³⁰¹ It was hoped that by checking and balancing each branch with the other, the danger of tyranny or rule by an elite minority would be avoided (the Founders were equally concerned with the dangers of a majority rule which is why the American Constitution is not actually a direct democracy, but a republic based on representative democratic principles).³⁰² In *The Federalist No 47*, James Madison bases his argument for separation of powers on the ideas of Montesquieu, a source of inspiration for Madison's own political theory,

No political truth is certainly of greater intrinsic value or is stamped with the authority of more enlightened patrons of liberty than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.

³⁰¹ Farrand, *The Records of the Federal Convention of 1787*, 30, 335.

³⁰² The issues of minority rights and democracy were much debated in the Constitutional Convention.⁵ Madison also returned to the subject in his essays in *The Federalist Papers*, and in his correspondence with Hamilton and Jefferson. See, Hamilton, Madison, and Jay, *The Federalist Papers*: Federalist No.10, Federalist No. 50.

According to Madison, Montesquieu's belief that "there can be no liberty, where the legislative and executive powers are united in the same person, or body of magistrates...or if the power of judging, be not separated from the legislative and executive powers", indicates not that "these departments ought to have no partial agency in, or no control over, the acts of each other", as in a system of checks, but rather, "where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution are subverted."³⁰³

This did not mean, however, that these early leaders were anti-state rights. On the contrary, they all recognized as crucial that the states retain their own spheres of authority, autonomy, and power. Alexander Hamilton was initially hostile to the Connecticut Compromise and the idea of a federal government in which the national government would have significant powers. He also presented a plan at the Federal Convention, which came to be known as the Hamilton plan, or the British Plan, due to its focus on a strong centralized single nation in which all the states were to be absorbed.³⁰⁴ However, as the debates continued in the Convention, Hamilton's perspective shifted to the point that he, along with James Madison and John Jay, became one of the more vocal proponents of the federal

³⁰³ Ibid

³⁰⁴ For Hamilton's original plan see, Farrand, *The Records of the Federal Convention of 1787*, 617-30.

plan, as seen in his treatises published in *The Federalist Papers*³⁰⁵. Hamilton, in favor of states rights explains,

Commerce, finance, negotiation, and war...ought, in the first instance, to be lodged in the national depository, the administration of private justice between the citizens of the same State, the supervision of agriculture and of other concerns of a similar nature, all those things, in short, which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction...because the attempt to exercise those powers would be as troublesome as it would be nugatory; and the possession of them, for that reason, would contribute nothing to the dignity, to the importance, or to the splendor of the national government.³⁰⁶

Despite these assurances, and the final acceptance of the draft of the Constitution, based on the Virginia Plan and the Connecticut Compromise, in the Convention on September 17, 1787, the members of the Convention still faced the daunting task of persuading the constituents in their home states to vote for the new government and thus complete the ratification process.

After significant effort by the members of the Convention in their constituents states, bolstered by the effects of the publication of *The Federalist Papers*, the Constitution was sent to the state legislatures for ratification and was first ratified by Delaware on December 7, 1787. Following ratification by New Hampshire, on June 22, 1788, the Constitution officially became the binding legal

³⁰⁵ Three delegates, James Madison, Alexander Hamilton, and John Jay documented the efforts of the Convention, and their beliefs in the validity of a federal government in a series of pamphlets known as *The Federalist Papers*. Persistent fears existed throughout the new states that a stronger federal government would simply return the nation to the previous tyrannical rule they had endured under the British. Madison, Hamilton, and Jay hoped that their pamphlets would assuage these fears and persuade citizens to support the new federal arrangements. Hamilton, Madison, and Jay, *The Federalist Papers*.

³⁰⁶ Ibid., 114-15.

document for the United States government. The need for a number of amendments to clarify the Constitution and the powers of the federal and state governments respectively was recognized early on and the first ten Amendments, known as the Bill of Rights, had been drafted and were enacted even before full ratification, which occurred with Rhode Island's vote in 1790.³⁰⁷ The question of states rights versus federal rights and jurisdiction was one of the primary concerns to be addressed by the Bill of Rights. Article Ten deals specifically with this issue, noting "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people".³⁰⁸ As we shall see later in this chapter, however, the inclusion of Article Ten did not summarily resolve the jurisdictional disputes between the state and federal governments; although this was technically and officially resolved in 1819, questions still persist even today~~this was not fully resolved until 1819~~.³⁰⁹

Scholars have neither overlooked, nor have they underestimated the painstaking effort and serious energy the Founding Fathers put into devising and implementing the federal system. This crucial period in the historical account of the United States provides clues to understanding the manner, not only in which the government functions today, but also to understanding instances in which decisions made at one level may play out differently on other, more local levels, or in which

³⁰⁷ *The New York Public Library American History Desk Reference*. Dionne and DiIulio, *What's God Got to Do with the American Experiment?*

³⁰⁸ Farrand, *The Records of the Federal Convention of 1787* 651.

³⁰⁹ The case in which the Supreme Court finally clearly delineated the spheres of power available to each level of government-, *James McCulloch v the State of Maryland*, will be discussed at length later in this chapter. *James William McCulloch v State of Maryland* 17 US 316,(1819).

local level “experimentation” and projects may in fact be projected onto the national scene and influence public policy nationwide. The case of the Faith-Based Initiative examined in this dissertation clearly demonstrates the manner in which local “experimentation” in the United States in realms of policy, judicial practice, and regulatory adjustments, has managed to surge beyond the boundaries of state practice and enter onto the federal scene; causing federal level adjustments and even potentially influencing federal level legislation.

The Federal Experience Analyzed: Scholarship on the American Federal System

One of the first observers to travel to and concisely study the American experience, Tocqueville wrote extensively concerning the functioning of the federal government. Impressed by the power of the federal system, and cognizant that its coming together as a single federal state had quite obviously influenced the power of the nation, Tocqueville also provides a lengthy analysis of what the presiding governmental arrangements meant for America. One of the first scholars to dwell on the exceptional nature of America’s political and social systems and point out the advantages both federalism and republicanism have to offer both the American nation and its citizens; Tocqueville points out that the American federal constitution allows America to behave simultaneously as both a small and large state. “...in small states, the watchfulness of society penetrates everywhere, and a desire for improvement pervades the smallest details...small states have therefore always been

the cradle of political liberty”.³¹⁰ However, America is unique for Tocqueville because it is also a large state controlling a vast swath of land and resources. This vastness, while potentially detrimental to the “well-being and freedom of men”, nonetheless allows for “an increase in knowledge and the advance of civilization”.³¹¹ Tocqueville notes a number of specific features that render America exceptional, first, “the subjects of the Union are not states, but private citizens” thus the force of the Union, “is not borrowed, but self-derived; and it is served by its own civil and military officers, its army, and its own courts of justice” and “the Federal power has the means of enforcing all it is empowered to demand”.

~~(Tocqueville 2001)~~~~(Tocqueville 2001)~~~~(Tocqueville 2001)~~~~(Tocqueville 2001)~~

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~~(Tocqueville 2001)~~~~(Tocqueville 2001)~~³¹² Also, the ability to act at once as a large

and small nation allows America to be both local and global in outlook, to avoid the disadvantages of a large state, which may lose touch with its citizens, while also

³¹⁰ Tocqueville, *Democracy in America*.

³¹¹ Ibid.

³¹² Ibid.

avoiding the problems faced by smaller states with less resources. Finally, Tocqueville concludes that the primary advantage of the United States lies in its geography; while its size and location allow it to become involved in affairs of the world, its relative isolation renders it solitary and thus powerful.³¹³

As Tocqueville's early analysis demonstrates, understanding the American experience requires understanding federalism. In order to fully grasp the role that federalism has played in the United States it is also important to ~~attempt to~~ define what is meant by a federal system in general, and what type of federal system, approximately, currently exists in the United States. Many scholars of federalism have defined federalism from a variety of perspectives; as a normative term, a philosophical perspective, and a system of governance.³¹⁴ Michael Burgess and Alain Gagnon, explain that "federalism is the recommendation and (sometimes) the active support for federation." They go on to define federation based on the ideas of Preston King, who considered a federation to be an ideological or philosophical position based on, "an institutional arrangement, taking the form of a sovereign state, and distinguished from other states solely by the fact that its central government incorporates regional units...on some constitutionally entrenched

³¹³ Ibid. For further analysis of Tocqueville's views on the United States and the lasting impression that his scholarship has left see; Daniel Elazar, "Tocqueville and the Cultural Basis of American Democracy," *PS: Political Science and Politics* 32, no. 2 (1999); Robert P. Kraynak, "Tocqueville's Constitutionalism," *The American Political Science Review* 81, no. 4 (1987); Barbara Allen, "Alexis de Tocqueville on the covenantal tradition of American federal democracy," *Publius* 28, no. 2 (1998); Aurelian Craiutu and Jeremy Jennings, "The Third 'Democracy': Tocqueville's Views of America after 1840," *The American Political Science Review* 98, no. 3 (2004).

³¹⁴ Other leading scholars of federalism including Alfred Stepan, Juan Linz, and William Riker also offer definitions of federalism relevant to our study.

basis.”³¹⁵ For Ronald Watts, Federalism represents, a “normative term...(and) refers to the advocacy of multi-tiered government combining elements of shared-rule and regional self-rule.”³¹⁶ From a more political and practical perspective, Elazar explains that “federalism involves the linking of individuals, groups, and polities in a lasting but limited union...as to provide for the energetic pursuit of common ends while maintaining the respective integrities of all parties.”³¹⁷ Again on a more systematic note, Robert Dahl defines federalism as “a system in which some matters are exclusively within the competence of certain local units—cantons, states, provinces—and are constitutionally beyond the scope of the authority of the national government; and where certain other matters are constitutionally outside the scope of the authority of the smaller units.”³¹⁸ Anton sums up the practicalities of the system in his definition of federalism as a “general system of rules for the division of public policy responsibilities among a number of autonomous government agencies...the rules of federalism govern interaction between agencies that are autonomous in that they levy taxes, select their own officials but are linked together by rules that govern government action”.³¹⁹ Thus, it seems federalism is at

³¹⁵ Michael Burgess and Alain-G Gagnon, eds., *Comparative Federalism and Federation: Competing Traditions and Future Directions* (New York, London: Harvester Wheatsheaf, 1993), 5-6.

³¹⁶ Ronald L. Watts, *Comparing Federal Systems*, third ed. (Montreal and Kingston: McGill-Queen's University Press, 2008), 8.

³¹⁷ Elazar, *Exploring Federalism*: 5.

³¹⁸ Robert Dahl, "Federalism and the Democratic Process," in *Democracy, Identity, and Equality*, ed. Robert Dahl (Oslo: Norwegian University Press, 1986), 114.

³¹⁹ Thomas J. Anton, *American Federalism and Public Policy: How the System Works* (New York: Random House, 1989), 3. For further discussion of federalism and American government see, George C. III Edwards, Martin P. Wattenberg, and Robert L. Lineberry, *Government in America*:

once a philosophical, or normative arrangement into which states and peoples may chose to enter, while at the same time presenting a practical system of governance for those who have chosen it.

Given this, we turn to the advantages and disadvantages of the system. Unfortunately, the primary advantages of federalism also often represent its disadvantages, while decentralization and autonomy at multiple levels encourages political participation, a more local orientation, and differences in the scope or distribution of benefits throughout a federal nation, these same virtues may also increase disputes among levels of governments, feed challenges to the legitimacy of local politicians by powerful interest groups, and even create confusion over responsibilities in areas of overlapping jurisdiction.³²⁰ Federalist systems often fall under the category of either, dual federalism or cooperative federalism; however, a vast number of varieties exist within these two general typologies. Over the past two hundred years, the federal structure in the United States has shifted from an arrangement of dual federalism, often described as “layer cake federalism” in which “states and the national government each remain supreme within their own spheres. The states are responsible for some policies, the national government for others...in dual federalism, the powers and policy assignments of the layers of government remain distinct...and proponents of dual federalism believe that the powers of the national government should be interpreted narrowly”, to a more flexible

| *People, Politics, and Policy*, 3rd ed. (New York: Addison Wesley Longman, Inc., 1997).; James Q. Wilson and John J. Jr DiIulio, *American Government: Institutions and Policies*, 7th ed. (Boston, New York: Houghton Mifflin Company, 1998).; James MacGregor Burns et al., *Government by the People: Basic Version*, 16th ed. (Englewood Cliffs, NJ: Prentice Hall, 1995).

| ³²⁰ Anton, *American Federalism and Public Policy: How the System Works*: 4-7.

arrangement often called “marble cake” or cooperative federalism.³²¹ Through a series of Supreme Court decisions, powerful Presidents and Congressional leaders, and historical events, cooperative federalist arrangements have emerged in which a number of overlapping areas of authority, responsibility, and power now exist. Shared costs, federal guidelines that dictate the use of federal funds by state and local governments, and shared administration and power in various arenas are now commonplace features of the United States system.³²²

These shifts and the fluidity that the United States federal system has demonstrated are not exclusive to the American government. Throughout the world, governments and political systems are constantly in a state of flux as new actors rise and emerge, changes in the global context require adjustments at the domestic level, and popular demands and agendas push political leaders and bureaucrats to make adjustments in their methods of governance. The German federal government, for example, also has a very strong central government, yet despite this the provincial governments are able to carry out international relations on their own, if desired. The Indian federal system is a vast, complicated system

³²¹ Edwards, Wattenberg, and Lineberry, *Government in America: People, Politics, and Policy*: 41. The federal government retains a number of exclusive powers; printing money, directing the army and navy, declaring war, overseeing the post office, entering into treaties, and regulating commerce and trade internationally and between the states. All other powers, as stated in Amendment Ten of the Bill of Rights are reserved to the states, however at times the federal government may exercise some of these powers as well. There are certain powers that are forbidden to both levels of government, for example, taking private land without paying for it, establishing a national religion or prohibiting the free exercise of religion, among others. Most of the powers that are belong to neither the state nor the federal governments are enumerated in the Bill of Rights and subsequent amendments, however, some others have been added over the years through the jurisprudence of the Supreme Court. Finally, neither level of government has the power to simply abolish the other. Nor can a state government simply dissolve its relations with the federal level; as was shown during the Civil War, one of the historical events that has served to strengthen the authority of the federal government over the past two centuries.

³²² Ibid.

with a large number of states. Unlike the U.S. system, residual powers automatically reside with the Centre, or federal government. Canadian federalism, based on a division of powers between the federal government and the provinces, has undergone significant shifts of power from the center to the periphery; in particular due to the special status of the province of Quebec. Despite the existence of a strongly centralized government during the World Wars, the general Canadian trend has been to enhance decentralization and devolution. The Swiss federal state has demonstrated the opposite trend over the past half century. Although the Swiss federal constitution, originally based on the American example, focused on leaving most matters of domestic policy to the jurisdiction of the cantons into which the nation is divided, recent decades have seen an increase in federal power. Similar to the United States, issues such as education, agriculture, health, energy, the environment, crime and drugs have come increasingly under the aegis of the centralized federal government and Federal Council. The situation in Australia is also similar to those in Switzerland and the United States. Originally, as designed, the states enjoyed significant power vis-à-vis the federal government; however, as was the case in the United States, global events and realities such as war and economic downturns, have rendered the central government increasingly powerful. Specifically, both legislative and financial powers have undergone significant centralization, although all federal action does remain contingent on state approval.³²³

³²³ Other federal states around the world such as Russia, Sri Lanka, the newly constituted federal nation of Iraq, Malaysia, Nepal, Nigeria, and the Philippines have all experienced different forms of federal constitution, different shifts of power and differing federal trajectories. For further information concerning the federal governments and arrangements in these countries see, Watts,

Even in light of recent changes, leading scholars of American federalism agree that in its type of federalism, and in the mutations the system has undergone, the United States is exceptional; one specific group of scholars, discussed at the end of this chapter might even be classified as “exceptionalists”, so clearly do they hone in on the exceptional nature of the United States. Mainstream comparative scholars also echo these sentiments. As Juan Linz and Alfred Stepan, explain, the U.S. is both “the most classic federal country” and “the most radically extreme outlier” on the federalism spectrum.³²⁴ Daniel Elazar, one of the most cited scholars of American federalism, also points to the unique position the United States occupies in the global federal landscape.³²⁵ The U.S. federal system is one of the oldest in the world; the lengthy historical experience America has undergone has helped it to solidify its system and the relationships inherent among levels of government. Other nations, especially in Europe, have had more trouble creating strong, coherent

Comparing Federal Systems; Elazar, *Exploring Federalism*; Burgess and Gagnon, *Comparative Federalism and Federation: Competing Traditions and Future Directions*.

³²⁴ Linz and Stepan’s discussion is centered around the idea of inequality in terms of general rights and privileges. They argue that the more classically federal a nation is, the U.S., Australia, and Switzerland, for example, the less equal people and levels within the states are. Less classically federal states such as Spain, Germany, or Austria, and unitary states reflect greater levels of equality. Juan J. Linz and Alfred Stepan, “Inequality Inducing and Inequality Reducing Federalism: With Special Reference to the ‘Classic Outlier’--The U.S.A.,” in *XVIII World Congress of the International Political Science Association* (Quebec City, Canada2000).

³²⁵ Daniel Elazar was a professor of political science at Temple University in Philadelphia and Bar-Ilan University in Tel Aviv. He was the founder and director of the Center for the Study of Federalism at Temple University as well as the founding editor of *Publius, The Journal of Federalism*. He has published extensively concerning American federalism, drawing connections between the ideas of federalism and the Biblical notion of covenant or federation between man and God. He also looked extensively at the connections that existed between politics and religion that could be found in Jewish scripture and thought. His belief that the American Puritan tradition played a significant role in the manner in which the Founding Fathers came together to create a federal nation figures prominently into our discussion of federalism and religion. Martin E. Marty, “Review of *The Crisis in the Churches: Spiritual Malaise, Fiscal Woe* by Robert Wuthnow,” *The Journal of American History* 85, no. 1 (1998).

institutions due to the entrenchedness of the sovereign state.³²⁶ Stepan continues in Elazar's line of thought and explains that many newly emerging or democratizing nations have also attempted to use federal models. However, unlike the European model, which more than a federal system, should be considered a confederation or a pact among nations, the use of American style federal systems ~~isn~~ generally untenable in these new states; "American-style federalism embodies some values that would be inappropriate for many democratizing countries, especially multinational polities."³²⁷ The United States, Stepan explains, is a mononational environment; different cultures are melded together in the "American melting pot". This eliminates cultural or social differences among levels of government; leaving only differences in political power, which are easier to accommodate.³²⁸

Looking specifically at the American case, Elazar, explains that the federal model, "reflects a polity compounded of arenas within arenas held together by common framing institutions and a shared communications network" and is "the deliberate coming together of equals to establish a mutually useful governmental framework within which all can function on an equal basis, usually defined by a pact"; finally, in the federal system, "authority and power are established constitutionally by design and distributed among the various units in the federal system with the distribution protected by the constitution and the politics and

³²⁶ Elazar, *Exploring Federalism*: 265.

³²⁷ Alfred Stepan, "Federalism and Democracy: Beyond the U.S. model," *Journal of Democracy* 10, no. 4 (1994): 21.

³²⁸ Ibid.

structure that flow from it.”³²⁹ This system also allows citizens to feel a loyalty to all levels of government, thus further strengthening the legitimacy of the government. This type of arrangement, we now know, based on our readings of both the Convention summaries, and *The Federalist Papers*, was precisely the type of federal system that the Founding Fathers envisioned at the Federal Convention of 1787.

Alfred Stepan, a leading scholar of federalism and comparative politics, who has looked extensively at the current American federal system along with other federal systems in the global arena further explains that, “in a robust democratic political system, the more citizens feel a sense of allegiance to both of the democratically legitimated sovereignties, each with its constitutionally guaranteed scope of action, the more democratically secure the federation. Ideally, therefore, citizens within a democratic federation should have dual but complementary political identities.”³³⁰ This type of federal arrangement based on dual but complementary, not competing loyalties, was successfully designed and implemented via the Connecticut Compromise of 1787. Although historically these dual political identities have experienced periods of competitive, as opposed to complementary, co-existence, the representation this arrangement has afforded to both individual citizens and the states themselves, has helped to ensure not only a robust democracy, but, as our analysis of Charitable Choice and the Faith-Based

³²⁹ Daniel J. Elazar, "Contrasting Unitary and Federal Systems," *International Political Science Review* 18, no. 3 (1997): 239-42.

³³⁰ Alfred Stepan, *Arguing Comparative Politics* (Oxford: Oxford University Press, 2001), 326.

Initiative will show, considerably relaxed spheres of individual jurisdiction for both the state and federal governments.

Historically speaking, following the original creation of the federal system in 1787, the United States experienced an era of change. Power was transitioned out of the hands of the previous British rulers; at both the federal and state levels, newly instituted governments worked to assume responsibility for their own affairs through the creation of executive agencies and departments; and, the people themselves came to fully understand what the new administrative system entailed.

In 1819, the Supreme Court heard a case, *McCulloch versus Maryland*, which would have serious ramifications for the relationship between the federal and state levels of government. The case represented one of the first legal and political instances in which the hierarchies of the federal system were debated and solidified, not only in the view of the government, but also in the mind of the public. Although the general question of governance had been resolved by the Continental Congress in 1787, an ongoing debate, between centralists and decentralists, or statists and anti-statists, had occupied the public arena. In *McCulloch*, the Supreme Court was offered its first opportunity to take a stance on the issue and offer a firm legal grounding for the functioning of the government, at both the state and national levels. Especially in the present-day system of “marble cake” federalism, the Supreme Court’s ultimate decision in *McCulloch* has had an important role to play in arbitrating disputes between levels of government.

The power that the Supreme Court wielded in determining the balance between the federal and state levels of government is indicative of the role that the

judiciary in the United States often plays. Examination of court cases, at local, district, and federal levels are extremely relevant to any study of U.S. history, politics, and even religion. Due to the manner in which legislation and legislative documents, such as the Constitution, are designed in the United States, it is often left to the courts to interpret and apply the law at the practical level. As a result, a constant shifting from static to dynamic analysis and understanding is required in any study of U.S. policy and politics. The manner in which Supreme Court decisions, in particular, have demonstrated this dynamism, as clearly seen in the previous section dealing with the shifting interpretation of the separation of church as state, is also relevant in the arena of federal policy. In the United States, the sometimes porous boundaries dividing the state and federal level governments can lead to tenuous situations in which jurisdiction is unclear. In certain circumstances, local level governments may focus on their own state constitutions in order to allow for actions that are at odds with the federal constitution.

The *McCulloch* case demonstrated just such an instance and was based on a dispute between James McCulloch, a cashier at the Bank of the United States Baltimore branch, a bank that had been established by Congress, and the state of Maryland itself over Maryland's requirement that the bank pay a tax to the state. McCulloch argued that Maryland could not require the branch to pay taxes because the bank was "an instrument of the national government". In response, Maryland responded that not only was the tax valid, but the national government itself did not have the authority to incorporate a bank.³³¹ The Supreme Court Chief Justice of the

³³¹ Burns et al., *Government by the People: Basic Version*: 60.

time, John Marshall, was a strong proponent of the Hamiltonian position favoring a strong federal government and argued that while the Constitution did not specifically mention the creation of a national bank, Congress did have the right to set up such a corporation if it so chose.³³² In his decision, he noted that,

Although, among the enumerated powers of Government, we do not find the word "bank" or "incorporation," we find the great powers, to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. ...But it may with great reason be contended that a Government intrusted with such ample powers, on the due execution of which the happiness and prosperity of the Nation so vitally depends, must also be intrusted with ample means for their execution.³³³

In considering the question of whether the state could legitimately tax a body of the federal government, Chief Justice Marshall returned to the idea that, in all conflicts, the Constitution requires that federal law trumps state law. He explained that, “The question is, in truth, a question of supremacy, and if the right of the States to tax the means employed by the General Government be conceded, the declaration that the Constitution and the laws made in pursuance thereof shall be the supreme law of the land is an empty and unmeaning declamation.”³³⁴ With the *McCulloch v Maryland* decision, Chief Justice Marshall set in stone the notion of “necessary and proper” powers afforded to the federal government in its effort to facilitate the overall existence of the nation. He concluded, “Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are

³³² Wilson and DiIulio, *American Government: Institutions and Policies*: 59-60.

³³³ *James William McCulloch v State of Maryland* 17 US 316.

³³⁴ Ibid.

plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.”³³⁵

Although disputes between the federal government and state governments have continued to reach the level of the Supreme Court since 1819, the decision taken in *McCulloch v Maryland*, and, in particular, the manner in which this decision was supported unequivocally by Chief Justice Marshall have helped to solidify the power and supremacy of federal law. Prior to the 1800s, ~~the~~ state governments had been the primary official body to which citizens turned to. Realities of the time such as transportation and communication difficulties forced local governments to become primary arbitrators, legislators, and enforcers. However, again, indicative of the dynamism of the American system, as the United States federal government expanded its reach and power, state level officials and laws have often been trumped by their counterparts at the federal level; propelling the federal government into the spotlight and subsequently initiating the path of increased federal power that has persisted to modern day.³³⁶

However, as we shall see in more detail later in this study, despite the federal government’s increasing muscle in all official arenas, often religious questions and social services were left to the state and local levels to decide. Historically both had been within the realm of the powers granted to the states by the Constitution.

³³⁵ Ibid.

³³⁶ A number of significant troubles faced the United States in the century following the decision; the Civil War, in which the Southern states attempted to gain independence from the federal government- a move quickly declared unconstitutional; World War One, in which the federal government was required to play a pivotal role not only domestically but also internationally; and the Great Depression, an era when Franklin D. Roosevelt, by some accounts, far over-stepped federal bounds in an effort to alleviate the poverty and suffering of everyday citizens.

Religiously speaking, at the time of the founding of the nation, many states remained connected to dominant churches that were often included in state constitutions as the official church of the state. Social service provision by local communities was not only more expedient due to the proximity of local government versus federal government, but such service provision was also often traditionally the realm of the local congregation. With the original installation of a less dominant federal government charged with helping to repair the international and economic position of the United States following its break with the Crown; federal officials were eager to allow states to carry any burden they were able to handle.

Additionally, reaching consensus at the national level, especially in affairs of religion, was often more difficult, due to more diverse interest and religious groups.

For example, in 1875, James Blaine, a Presidential candidate latched onto popular and local fears that the rising trend of Catholicism would soon overcome the dominant Protestant ideology present in most of the states. His solution was to issue and propose an amendment to the federal constitution that would specifically forbid any type of state land or money for public schools to be placed “under the control of any religious sect” or “divided between religious sects of denominations”. The hope was that while Protestant organizations continued to enjoy long-standing beneficial relationships with local government, these legal impediments would impede any newer Catholic organizations from making any gains. The Blaine Amendment was introduced and passed in the House of Representatives, but Blaine was unsuccessful in the Senate. However, within months, thirty-seven states

adopted and implemented the idea at the state level.³³⁷ While these restrictions were not placed in the federal constitution, they were incorporated into a number of state constitutions, where they are presently still valid and known as the “Blaine Amendments”; in fact, states often currently employ the Blaine Amendments to restrict and justify restrictions on any type of state funding; direct or indirect, in the form of vouchers or otherwise, to educational facilities. In a more contemporary example, demonstrating the continued separation of state and federal attitudes concerning religious issues; President Bill Clinton’s Religious Freedom Act was struck down at the federal level and picked up by state governments as a sort of protest measure.³³⁸ Finally, in an instance very relevant to our study, the Charitable Choice Amendment, while successful at the national level was only ever implemented at state levels.³³⁹

Studies of Federalism in Contemporary Scholarship

As discussed above, American federalism represents an exceptional aspect of the American experience. Not only were the Founding Fathers the first to design and implement a true federal system, but the continuation of that system through to modern day, despite changes in technology, wars, globalization, economic

³³⁷ The various ways in which The Blaine Amendments continue to influence domestic policy will be discussed further in subsequent chapters. For more information concerning the Blaine Amendments see; "The Blaine Amendments".

³³⁸ ~~President Clinton’s Religious Freedom Restoration Act will be discussed further in another chapter. For a full text of the Act see,~~ Beer, *To Make a Nation: The Rediscovery of American Federalism*.

³³⁹ Discussion of the Charitable Choice Act will take place in detail in later portions of this paper. For more general information see, Carlson-Thies, "Charitable Choice 101- An Introduction".

downturns, and countless other obstacles, leads observers to note the strength and durability of the system that the Framers instituted. Understanding the manner in which federalism functions theoretically, and the way in which the specific American style of federalism works will help shed light on the significance of our case study of the Faith-Based Initiative. Had it not been introduced into a federal structure, specifically one in which experimentation at the state and local levels, as we shall see, is encouraged, it is likely that Charitable Choice would have fallen by the wayside and never have blossomed into its larger, farther-reaching successor, the Faith-Based Initiative. Given the role that this special environment played in this case, it is important to look closely not only at the general theories of federalism that have been developed, but also at specific analyses, mainstream and critical, of the American federal system, its historical evolution, and its implications.

Daniel Elazar, a leading political scientist and professor who studied the American federalism system, and federalism in general extensively, publishing more than sixty books dealing with the United States federal system both specifically and comparatively, explains that “Two centuries ago, the United States invented modern federalism and added federation as a second form (after the more widespread confederation model), one that was widely emulated in the nineteenth century.”³⁴⁰ Adding to the American influence in the original creation of federalism, Elazar notes, “The federalist revolution is among the most widespread—if one of the most unnoticed—of the various revolutions that are changing the face of the

³⁴⁰ Elazar, *Exploring Federalism*: 7.

globe in our time.”³⁴¹ Elazar’s work plays a large role in our examination of federalism. Not only has he written extensively on American federalism both historically and in the era upon which we are focused, but he also is one of the few authors to clearly point out the connections between the American governmental system and the overarching Protestant ideology that permeates both the social and political realms. His attention to federalism and to the idea of covenant render his analysis of U.S. federalism and religion unique vis-à-vis many of his contemporaries.

For Elazar, the idea of covenant, a Biblically-oriented concept that outlined the relations between a community of believing, God-fearing men also sets American federalism apart from other versions of the same system of governance. Elazar, who along with his studies of federalism in general, published a lengthy four-part series delving into the details of the relations between God and man and their effect on political functioning, defines covenant as,

a morally informed agreement or pact based upon voluntary consent, established by mutual oaths or promises and witnessed by the relevant higher authority, between people or parties having independent, though not necessarily equal status, that provided for joint action or obligation to achieve defined ends under conditions of mutual respect which protect the individual integrities of all the parties to it. Each covenant involves consenting, promising, and agreeing...Covenants can bind any number of partners for a variety of purposes but they are political in their essence in that their bonds are used principally to create political and social bodies.³⁴²

³⁴¹ Ibid., 6.

³⁴² ———, "Federal Models of (civil) authority," 240.

Elazar's analysis demonstrates the deep relationship between federalism and religion that has existed in the United States for centuries. Early U.S. federal arrangements and cooperation between the people and authorities were strengthened due to their resemblance to a Biblical relationship between man and God. For Elazar, "In its original form, the federal idea was theopolitical, defining the relationship between God and man as one in which both were linked by covenant in a partnership designed to make them jointly responsible for the world's welfare."³⁴³ Thus the religious focus of the early American Puritans belie the Biblical roots of the American system; "the Puritans' recognition of this aspect of the covenantal relationship between God and man in sixteenth and seventeenth century Britain and America became the basis of their federal theology."³⁴⁴ As such, it seems, in the late eighteenth century, the choice of federation in the United States was a natural, ingrained choice that was simply strengthened by the Framers' incorporation of political philosophies of federalism such as those of Malthusians, Spinoza, Proudhon, Montesquieu, and Hume into their own ideals of republican government, liberty, and equality.³⁴⁵

Historically, American federalism, "in practice, if not in theory, has traditionally been cooperative, so that virtually all the activities of government in the nineteenth century were shared activities, involving federal, state, and local

³⁴³ ———, *Exploring Federalism*: 115.

³⁴⁴ ———, "Federal Models of (civil) authority," 245.

³⁴⁵ For further discussion of the political philosophies Elazar believes influenced early federalism in the United States see ———, *Exploring Federalism*: 80-114. Chapter Three and ———, "Introduction: Using Federalism Today," *International Political Science Review* 17, no. 4 (1996): 349.

government in their planning, financing, and execution.”³⁴⁶ During the twentieth century however, largely as an unplanned result of global realities, cooperative federalism gave way to a more coercive style of federal governance in which the federal government essentially dictated policy and centralized power in its own hands.³⁴⁷ This shift toward federal power has not been uncontested. A key aspect of the Republican Party, and its conservative supporters’, political platform revolves around re-locating governing power at the state level. For example, in contrast to the existing trend at the time, Ronald Reagan’s Presidential promises looked to increasing state-rights and power; much to the dismay of his Democratic opponents, who focused on the role that a stronger, centralized federal government would be able to play. In a final analysis however, accommodation of the realities of the twenty-first century has created a situation in which, “the actual division of responsibility under the concurrent powers is primarily determined anew for each case through the political process, rather than through legal decisions...while the conflict between rhetoric and practice has, to a certain degree, obscured the image of federalism, the result has nevertheless been the development of that complex mechanism of intergovernmental relations, characteristic of the American federal-state-local partnership, known today as cooperative federalism.”³⁴⁸

Almost by default, cooperative federalism has actually led to a new period of retrenchment of state power. Unable to handle the burden of the entire nation

³⁴⁶ ———, "Federal-State Collaboration in the Nineteenth Century United States," *Political Science Quarterly* 79, no. 2 (1964): 249.

³⁴⁷ ———, "Opening the Third Century of American Federalism: Issues and Prospects," 11.

³⁴⁸ ———, "Federal-State Collaboration in the Nineteenth Century United States," 281.

effectively, even “big government” Democrats have often conceded that locating more responsibility in state hands may be beneficial. As a result, again keeping in the tradition of movement from static to dynamic that is exemplified in the U.S. system, many of the state courts and governments have begun to function, “through the development of a new, vibrant state constitutional law, building state constitutional foundations for public policy in everything from individual rights to relations between religion, state, and society, and to fairer distributions of public services.”³⁴⁹ This new mentality of returning local problems to the hands of local officials to be handled based on the demands and needs of local communities serves as part of the backbone of the arguments supporting the 1996 welfare reform. During the effort to design and implement the new welfare system, based on the Republican Congressional platform, “Contract for America”, attention was focused on the manner in which the federal government was falling short in its social service efforts. Many critics of the existing welfare provision program found regulation and oversight were lacking; needy citizens were being supported, they believed, with little or no impetus to leave the “system”. Job training and job location was not as strong as it needed to be to help people to stand on their own two feet. Proponents of a more local effort, that would be based on state and local oversight and responsibility called for reforms at the federal level that would then effect the state programs. With the Clinton Administration’s eventual passage of the Personal Responsibility and Work Opportunity Reconciliation Act, sweeping changes based on the devolution of authority and accountability to the state level were initiated.

³⁴⁹ ———, “Opening the Third Century of American Federalism: Issues and Prospects,” 15.

The return of authority and oversight to the hands of the local community, as envisioned in the Contract for America that inspired the 1996 welfare reform fits well within the ideas of the original drafters of the constitution. Federalism in general, according to William Riker, who has been described as, “one of the most influential political scientists to write about federalism in the last half-century”³⁵⁰, is “a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions”.³⁵¹ In this vein, the scholars examined in this dissertation agree that the original design, as delineated in the Constitution, practiced by both the state and federal governments, and upheld by the Supreme Court, was meant to be a system of dual federalism in which both levels of government were granted authority over the citizens in their own arenas, which were significantly autonomous from one another. The deliberate choice of a federal republic; the focus on liberty and equality, despite fears of a tyranny of the majority; and the clear separation of powers, not only at the federal level, but *between* the federal and state levels, represent a form of federalism often described as “coming together federalism”.³⁵² This type of joining together to

³⁵⁰ Alfred Stepan, also acknowledged to be one of the leading contemporary scholars of federal systems and democracy in the field of political science and comparative politics, describes Riker as, “one of the most influential political scientists to write about federalism in the last half-century”. Stepan, “Federalism and Democracy: Beyond the U.S. model,” 21.

³⁵¹ Volden, “Origin, Operation, and Significance: The Federalism of William H. Riker,” 91. Riker’s overall influence in the field of political science is not simply in his study of federalism but also in the manner in which he applied positive scientific methods and rational choice models to his studies. For further discussion of Riker’s scientific methods and public choice theory see, Maske and Durden, “The contributions and impact of Professor William H. Riker.”

³⁵² Riker, *Democracy in America*.

form a federal state can only be achieved by two levels of autonomous units that willingly join one another in a mutually beneficial bargain in which the sacrifice of some degree of sovereignty, power, and authority is offset by the benefits provided by the union.³⁵³

Within this system of coming together federalism, however, studying from a perspective of rational choice and the positive study of political science, Riker notes that the origin of “all successful federal systems form from politicians’ desires for territorial expansion coupled with a military threat or opportunity.”³⁵⁴ In the United States, the success of the federal system is a result of its high degree of centralization from the start. ~~For~~ Riker explains that, especially in situations of “coming together” federalism or “bargain federalism” as he also called it, two conditions; “the expansion condition”, in which politicians suggest the creation of an expanded federation because it will benefit their own autonomous units; and “the military condition”, in which citizens accept the federation due to an external military threat or because accepting a union is beneficial to their own agendas, must be met.³⁵⁵ To fulfill these conditions successfully, Riker believes, the central government must be strong, benefits of the federal arrangement must be substantial, and the costs of opting out must be significant.³⁵⁶ This was certainly the case at the

³⁵³ Ibid.

³⁵⁴ Volden, "Origin, Operation, and Significance: The Federalism of William H. Riker," 91.

³⁵⁵ Ibid.

³⁵⁶ Historically, the United States central government, which, at inception was not based on a strong federal government, but rather had strong constituent units, affirmed that the costs of opting out of the Union were high during the Civil War period. Then-President Abraham Lincoln was clear and firm that the attempted succession by the Southern states was intolerable, and in doing so, presented a concise and enduring example to other states and to any potential future rumination that the federal

founding of the United States. Having recently emerged from a major war, with no unified citizenry or economy to speak of, “coming-together” to create a larger, stronger, more inter-connected union of states was a worthy alternative. However, history shows that it was not until after the disastrous Civil War that clear notions of secession and “opting-out” fully dissipated.

~~One of the most interesting aspects of Riker’s work is that while he was one of the foremost scholars of federalism and no analysis of his scholarly legacy is complete without note of his studies of federal arrangements, Riker himself believed that federalism, in and of itself, was an insignificant aspect of the operation of political systems and had very little effect on policy outcomes.~~³⁵⁷

—In terms of the operation of the United States federal system, Riker holds that a high level of centralization had existed from the start and that this was based on the actions of institutions, not federalism itself; in fact, only the work of political parties served to represent the periphery and enhance decentralization.³⁵⁸ In his seminal work, *Democracy in America*, Riker devotes a lengthy chapter to an examination of the United States federal system; building on his belief in its original centralization. Riker continues by focusing on political parties as one of the primary forces driving the political system; attributing the choice of presidential candidate, the direction of local issues, and the rise of sectionalism in American politics to party efforts.

arrangement of the United States was non-negotiable. After this presentation of power, Riker’s theory would suggest that the loss of sovereignty of units and the bargain federal arrangement were more palatable and no longer even questioned at the level of the state governments.

³⁵⁷ ~~For further discussion and critical analysis of Riker’s belief that federalism itself was insignificant see, Stepan, A. (2001). *Arguing Comparative Politics*. Oxford, Oxford University Press.~~

³⁵⁸ Volden, "Origin, Operation, and Significance: The Federalism of William H. Riker," 91.

Generally speaking, the influence given to the political party in power, in particular, allows for the rise of a strong President who is then able to dictate the direction of national politics and policies through the exertion of national powers that have become increasingly broad in definition, and national responsibilities that encompass a greater swath of the political landscape, without which, Riker holds, the United States would not be able to function.³⁵⁹ In an odd manner, then, the federal system is highly centralized; ironically, the only peripheral force, political parties, through their efforts, actually inadvertently perpetuate this centralization in their attempts to increase their own power by installing their chosen Executive. For

Riker then, the “coincidental” nature ~~“insignificance”~~ of federalism is proven ~~yet~~ again;

the essence of federalism...is the political feature: (1) the political bargain it creates and (2) the distribution of power in political parties which shapes the federal structure in its maturity. Everything else about federalism is accident: the demarcation of areas of competence between central and constituent governments, the operation of intergovernmental relations, the division of financial resources, etc.³⁶⁰

Riker’s pinpointing of the “accidental” and “coincidental” reality of a federal state ties into the historical reality of the American federal state. Rather than remaining concretely tied to its original design, the American federal and state government structure has displayed a significant degree of flexibility, often haphazardly delineating jurisdiction based on immediate demands. Even with a retrenchment of power in state courts and an increased focus on the role to be played by state

³⁵⁹ Riker, *Democracy in America*: 295-301.

³⁶⁰ Volden, "Origin, Operation, and Significance: The Federalism of William H. Riker," 102.

constitutions, an underlying ambiguity has often persisted; clear realms of authority and accountability have often been hard to discern. However, especially in the American example, Riker emphasizes the role the American President plays in bringing together the decentralizing tendencies of the federal system, in particular through the use of Presidential power and influence to affect the consistent and normal functioning of the government itself, and the setting of the national agenda.³⁶¹

A well-known voice in comparative politics and federalism, Alfred Stepan also turns his attention to Riker's Presidential focus and looks in-depth at the reality of Presidential versus Parliamentary systems of governance. Together with Cindy Skach, Stepan looks at the unique manner in which the American President is able to drive and perpetuate democratic consolidation. In "Constitutional Frameworks and Democratic Consolidation: Parliamentarianism versus Presidentialism", Stepan and Skach analyze the pure forms of both types of governing structure and find that newly constituted nations that have chosen presidentialism, nations in Latin America, for example, as opposed to those who have chosen pure parliamentarianism, have demonstrated markedly higher instances of undemocratic

³⁶¹ The role that the Executive in the United States political system can potentially play through the use of Executive Orders has been a much-analyzed topic during the George W. Bush Presidency. Executive Orders essentially provide the President with the ability to circumvent the legislative process and institute policy without passing through the normal system of checks and balances. For further discussion of the use of Executive Orders in general, and in the Bush, Jr. Presidency in particular see, Thomas E. Cronin, "Review of *By Order of the President: The Use and Abuse of Direct Executive Action* by Phillip J. Cooper," *The Journal of Politics* 65, no. 2 (2003); Philip J. Cooper, *By Order of the President: The Use and Abuse of Executive Direct Action* (Lawrence, Kansas: University Press of Kansas, 2002).

practices, unfulfilled democratic consolidation, and overall governmental failure.³⁶²

The tendency toward anti-democratic ends is highly correlated with the constitutional framework upon which the national government is based and various institutional characteristics that follow the constitution's guidelines. For example, parliamentary systems tend to have a greater number of functioning political parties; this in turn pushes each party to be more democratic than its rival in order to survive. Because the political parties are often forced to form coalitions, they are generally more open to negotiations and bargains and, due to the fact that power is more equally distributed between the parliament, the prime minister, and the president, the likelihood of a president gaining a perceived excess of power and thus being forced from office is less likely, thus prolonging the duration of democratic governance.³⁶³

In contrast to this more democratic system, pure presidentialism, Stepan and Skach explain,

always produces (1) presidents who are directly elected and (2) presidents with fixed terms. Presidential democracy often produces (1) presidents who feel they have a personal mandate and (2) presidents who do not have legislative majorities. Thus, the logic of presidentialism has a strong tendency to produce (1) presidents who adopt a discourse that attacks a key part of the political society (the legislature and parties) and (2) presidents who increasingly attempt to rely upon a "state-people" political style and discourse that marginalizes organized groups in political and civil society.³⁶⁴

³⁶² Alfred Stepan and Cindy Skach, "Constitutional Frameworks and Democratic Consolidation: Parliamentarism versus Presidentialism," *World Politics* 46, no. 1 (1993): 4.

³⁶³ Ibid., 3-17.

³⁶⁴ Ibid., 20.

The dangers of presidential systems are also articulated in Stepan's paper presented at the Third General Assembly of the Club de Madrid in 2003. Stepan explains that, "there emerged a consensus that many of the democracies currently in danger were so in part because of tendencies within the models of presidentialism and semi-presidentialism".³⁶⁵ Stepan points out that the hope that a strong executive may be able to push through reforms and rally the entire nation behind an impetus for change has been an especially appealing aspect of the pure presidentialism, yet he explains that, in practice, the existence of presidentialism is more likely to contribute to "a new crisis of democratic efficacy and democratic legitimacy".³⁶⁶ From this perspective, the survival intact of the Presidency of the United States since the founding of the nation is truly remarkable, and serves to bolster the idea of American government as an "exceptional" system, based as it is on federal arrangements and a strong Presidential figure.³⁶⁷

³⁶⁵ Alfred Stepan, "Introduction: Under-Theorized Political Problems in the Founding Democratization Literature and New Proposals" (paper presented at the Third General Assembly of the Club de Madrid, Madrid, Spain, November 2003), 13.

³⁶⁶ Ibid., 14.

³⁶⁷ Theodore J. Lowi also studies the presidential system in the United States and offers a number of critical comments congruent with those of Stepan and Skach. He explains that the American presidential system, despite the fact that it has functioned uninterrupted is replete with problems. Lowi points out the irony that, "the president as we understand the job in the context of presidential democracy is almost entirely a product of the middle of the twentieth century. We constructed this modern presidency in the United States by a series of acts of Congress delegating legislative as well as executive powers to the presidency, then we spent five decades trying to democratize it." In addition, as part of these democratization attempts, almost every reform that has been attempted as resulted in the development of an even worse system overall; "the reforms are worse than no change at all" and either "reinforce the system of they amount to a diversion from the real goal of replacing the system". Thus, Lowi's analysis, like Stepan and Skach's does give the American presidency its due recognition in terms of its exceptionalism, however, without omitting the problems that go hand-in-hand with this system of governance. Theodore J. Lowi, "Presidential Democracy in America," *Political Science Quarterly* 109, no. 3 (1994).

Stepan's views of the difficulties of presidentialism tie into his ideas concerning federalism.³⁶⁸ Although Stepan, like Elazar and others, believes that the rise of federal arrangements in the twentieth and twenty-first centuries will be increasingly conducive to democratic arrangements, especially in multinational, multiethnic states, Stepan believes that more and less democratic types of federal arrangements exist. Working from the influential basis of Rikerian bargain federalism, which Stepan also calls "coming together federalism"; Stepan develops his own addition models of, "holding together" and "putting together" federalism. "Putting together" as the name implies is a union in which often an outside power or external constraint has forced groups to join together despite their often radically different realities and potential for severe imbalances of power or equality within the federation. Stepan devotes little attention to this model and describes it as a "heavily coercive effort by a nondemocratic centralizing power to put together a multinational state, some of the components of which had previously been independent states."³⁶⁹ Stepan then turns his attention instead to "holding together" federalism. This occurs when a union of disparate units is created, often by strong national and local leaders, who realize that without the creation of some sort of shared government and federation achieving democracy may be next to impossible. Stepan believes this type of arrangement works particularly well in "multicultural polities" where leaders may find it is "the best way—indeed, the only way—to hold

³⁶⁸ Our case of the Faith-Based Initiative represents, for critics of Bush and his policies, both domestically and internationally, a clear instance of the dangers of too much executive power. For further specific discussion, see Cooper, *By Order of the President: The Use and Abuse of Executive Direct Action*.

³⁶⁹ Stepan, "Federalism and Democracy: Beyond the U.S. model," 23.

their countries together in a democracy” and “devolve power constitutionally and turn their threatened polities into federations”.³⁷⁰

For Stepan, two other specific features of federal models are important in determining the manner in which the system will function, and the degree to which the system is, and will remain democratic; whether federalism is “demos-constraining” or “demos-enabling” and whether there is “constitutional symmetry or asymmetry”. Federal systems, Stepan explains, are inherently more demos-constraining than a unitary system. Numerous factors dictate the demos-constraining nature of a federal system; by default, federal systems cannot have open agendas as power and policy decisions are shared among two levels of governance; the existence of two legislative chambers inevitably leads to overrepresentation in the territorial chamber, and thus, a skewed system of representation that affects any chance for a democratic “one person-one vote” situation; and finally, due to the persistence of jurisdiction disputes, the judiciary, which is not even accountable to the “demos”, must remain powerful and relevant.³⁷¹ However, the degree of “demos-constraint” is based on a continuum; some federal systems, the United States for example, are more constraining, while others are truly more demos-enabling, India for example.³⁷² Finally, Stepan adds the criteria of constitutional symmetry to his analysis of equality and democracy in federal systems. Constitutional symmetry is defined as a system in which, “each full

³⁷⁰ Ibid., 22.

³⁷¹ Ibid., 23.

³⁷² Linz and Stepan, "Inequality Inducing and Inequality Reducing Federalism: With Special Reference to the 'Classic Outlier'--The U.S.A.," 15.

member (canton, state, autonomia, province, or lander) has exactly the same constitutionally embedded obligations and rights” while in a democratic, yet asymmetrical system “the constitution makers, in order to ‘hold together’ the polity in one peaceful democracy, may give constitutionally embedded special rights for distinct members of the federation.”³⁷³

The United States with its “coming together, constitutionally symmetrical” federal system, based on a cooperative style of relationship between states and the general power of having come together voluntarily, is, according to Martin Diamond, not only a strong, but also a unique system of democracy. Rather than being bound to a single level of government, Americans are bound to both the national level and the state level; thus creating “two democracies”. Citizens are the democratic subjects, not only of their states, where they are expected to vote, pay taxes, receive services, and generally participate, but they are also beholden to the larger federal state, which also taxes them, “listens” to their votes, and provides them with services.³⁷⁴ Riker explains that in this system, “Federalism is a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government

³⁷³ Alfred Stepan, "Multi-Nationalism, Democracy, and "Asymmetrical Federalism" (with some tentative comparative reflections on Burma)," (Technical Advisory Network of Burma), 3. Although a constitutionally asymmetrical federation seems undemocratic and constraining, Stepan points out that, “many of the new federations that could emerge from the currently nondemocratic parts of the world would probably be territorially based, multilingual, and multinational”. While these characteristics might preclude the development of American style “coming together, constitutionally symmetrical” federal systems, by creating “holding together” federations bolstered with “asymmetrical constitutions” they may actually be able to reach unexpected levels of freedom and group rights.

³⁷⁴ Martin Diamond, "Conservatives, Liberals, and the Constitution," *Public Interest* 1(1965): 103.

has some activities on which it makes final decisions.”³⁷⁵ Despite this, Elazar notes that significant disagreements and conflicts of jurisdiction have historically occurred between the national and local levels of government. In the U.S., he points out, three specific factors generally serve to determine the relationship that states have with the federal government; the political culture of the state; sectionalism or the relationships that tie together states in the same region; and a feeling of the frontier, where states attempt to extend their power and control over the environment for human betterment. All three factors, Elazar emphasizes, are dynamic processes that continually interact with one another, the states themselves, and the federal government.³⁷⁶ However, despite these tensions, and the centralizing tendencies of the national government, the states “remain viable because they exist as civil societies with political systems of their own...the Constitution...gives the states an important place in the overall fabric of American society. The tradition and the Constitution remain viable because neither Capitol Hill nor the 50 statehouses have been able to serve all the variegated interests on the American scene without working in partnership. The states remain vitally important for larger reasons as well as immediate ones...”³⁷⁷ This continued reliance on state “know-how” and local sensitivities is clearly seen in our case study. The 1996 welfare reform focused on bringing the oversight and responsibility of the welfare system down to the local level. In 2000, President Bush’s argument in launching the Faith-Based

³⁷⁵ Volden, "Origin, Operation, and Significance: The Federalism of William H. Riker," 91-92.

³⁷⁶ Daniel Elazar, *American Federalism: A View from the States* (New York: Harper & Row, Publishers, 1984), 109.

³⁷⁷ *Ibid.*, 257.

Initiative revolved around the idea that local, community based, faith-oriented organizations would be more consistently successful and efficient in solving social service problems nationwide. As we will see later, both welfare reform and the Faith-Based Initiative served to reorient welfare and social services at the state level.

Critical Scholars and Federalism

Another movement of American historical and federal scholarship has also emerged to complement the scholars of federal and American history discussed above.

Generally focused on offering a “critical voice” and questioning the commonly accepted versions of American political and historical analysis, these scholars have their start in the early years of the United States.³⁷⁸ Questioning commonly accepted themes such as the “selflessness” of the revolutionaries’ efforts against the British monarchy and their calls for “no taxation without representation”; critical scholars, as early as the late 1800s, have provided deeper analysis and examination of the inner workings of this elite group, their true ambitions, the inequalities the system they created allowed for- and often even perpetuated, and the ways in which these underlying motives may have affected the country in the long term.

One of the first to delve into such critical analysis of the early era of the United States was Charles Beard. Beard’s ideas were based largely on those of

³⁷⁸ Although, as we shall see, some of these critical scholars are quite serious in their method, research, and substance presented, a generally satirical attitude has also emerged. For an example of this type of book see, James W. Loewen, *Lies My Teacher Told Me: Everything Your American History Textbook Got Wrong* (Touchstone, 2007).

Carl Becker³⁷⁹, who was one of the earliest intellectual inspirations of the Progressive movement. Like Becker, Beard's focus in his books, for example, in *An Economic Interpretation of the United States Constitution*, written in 1913, was the political and economic ambitions of the powerful elite of the era.³⁸⁰ Looking at the men who framed the Constitution, and thereby solidified the entire United States system of government, politics, and commerce, Beard explains that there were, in fact, two groups of men involved in the creation of the new nation. The first, which included Thomas Paine, Patrick Henry, and Thomas Jefferson, were more radical, focused more on the values we have come to associate with the United States; liberty, equality, freedom. These men were, generally, not very wealthy and had little business experience; as such, their interests lay primarily in creating a government structure that would focus on less central and social control and more on the perpetuation of their core economic and social values.³⁸¹ They felt less government was best and were instrumental in drafting the Articles of the

³⁷⁹ Carl Becker posited that the American Revolution was actually fought to decide two crucial issues, first to remove the British monarchy and the tyrannical rule it perpetuated from the colonies, and second, to determine who would actually rule the colonies. Becker provided the early insight that class conflict and elite ambitions likely played a significant role in the manner in which the United States of America was consolidated and the political system the Founders developed to rule this new nation. Carl Becker, *The United States: An Experiment in Democracy* (New York: Harper & Brothers Publishers, 1920).

³⁸⁰ For a full explanation of Beard's ideas concerning the role that economic interests played in the drafting of the Constitution and the institution of federalism see, Charles Beard, *An Economic Interpretation of The Constitution of the United States* (New York: The Free Press: A Division of MacMillan Inc, 1986), 19-51, 73-151. Beard has authored numerous critical histories of the United States. Analysis of all these works goes beyond the limited scope of this paper, for further examples of his work see, ———, *American Government and Politics* (New York: The MacMillan Company, 1931); ———, *Contemporary American History: 1877-1913* (New York: The Macmillan Company, 1918); ———, *An Economic Interpretation of The Constitution of the United States*.

³⁸¹ William Beard, ed. *The Economic Basis of Politics and Related Writings by Charles A Beard* (New York: Vintage Books: A Division of Random House, 1957), 133.

Confederation; which ultimately failed due to its excessive effort to limit government—government was so strictly limited that it was unable to undertake its basic functions of national defense, the protection of property, and the encouragement of commerce.³⁸² As the inadequacies of the Articles of Confederation came to light, the states decided to call for a revision; a demand that resulted in the Continental Congress' reunion in Philadelphia in 1787. Beard's analysis then shifts to consider the individual members who gathered in Philadelphia and he notes, in awe, that the level of expertise and knowledge of politics, law, administration, finance, and political philosophy and experience possessed by the attendees was unprecedented. Added to this high standard of capability and knowledge were overlapping interests in commerce and economics.³⁸³

The difference in composition of attendees of the Philadelphia Congress no doubt affected the trajectory of the meeting, and, as a result, the trajectory of the nation as a whole. The members were “not seeking to realize any fine notions about democracy and equality, but were striving with all the resources of political wisdom at their command to set up a system of government that would be stable and efficient, safeguarded on one hand against the possibilities of despotism and on the other against the onslaught of majorities.”³⁸⁴ A recurring theme in the writings of the Founding Fathers is the dual fear of both monarchy, a kind of tyranny in itself,

³⁸² Ibid., 135.

³⁸³ Ibid., 138-39.

³⁸⁴ Charles Beard, "Framing the Constitution," in *American Government: Readings and Cases*, ed. Peter Woll (New York: Harper Collins College Publishers, 1996), 36.

and the tyranny of the majority, dangerous in that the “propertyless masses” might rise up and threaten the existing economic balance; based on the interests of the elite. Beard explains that the Founding Fathers worried that too much popular control could spill over into the economic arena and severely affect the manner in which not only economic power, but also political power was distributed. The “system of checks and balances” Beard explains, “which is undeniably the essential element of the Constitution, is built on the doctrine that the popular branch of the government cannot be allowed full sway, and least of all in the enactment of law touching the rights of property.”³⁸⁵ Along these lines, not only did the Framers draft the Constitution so as to increase the power of the central government over that of the states, and thus local power coalitions, but the system of representation also perpetuated the power of the elite; the House of Representatives was designed to represent the poorest elements of society and lobby, when necessary, on their behalf, while the Senate was the arena of elite representation that would protect their property and interests against the majority.

Further analysis allows Beard to note that James Madison, writing in *The Federalist Papers*, clearly states the unease felt by the Founders in light of the possibility of majority power when he notes “the majority, having such coexistent passion or interest, must be rendered by their number and local situation unable to concert and carry into effect schemes of oppression”.³⁸⁶ The newly drafted Constitution, Madison believed, was effective in securing the rights of the minority,

³⁸⁵ Ibid., 39.

³⁸⁶ Hamilton, Madison, and Jay, *The Federalist Papers*: 74-76.

the elite property owners, against “the superior force of an interested and overbearing majority.”³⁸⁷ The picture presented by Beard in his critical evaluation of the Constitution, the Federal system, and the Framers themselves flies in the face of conventional views of the early United States. However, it is important to also note that although Beard’s account is critical, it is not necessarily negative. Evaluation of the early creation of the country, the motives of its founders, and the results of their actions is undertaken primarily to shed light on a crucial period in U.S history and thereby attempt to clarify and delineate the current trajectory in which the political, economic, and social system of Americans is entrenched.

A ~~later~~ ~~further~~ generation of progressive historians have followed Beard’s line of questioning and offered their own analyses and exposes of early America.³⁸⁸ Some subsequent scholars were also influenced by Marxist ideas, especially in the first half of the twentieth century and a significant mass of critical histories, “people’s histories”, and progressive analyses of American history and political tradition resulted. Richard Hofstadter’s critical historical study, *The American Political Tradition and the Men Who Made It*, begins with the Founding Fathers and carries a similar strain of analytical criticism through to the era of Franklin D.

³⁸⁷ Ibid.

³⁸⁸ Frederick Jackson Turner was also an influential member of the Progressive movement. Although his work does not look specifically at the Founding Fathers’ efforts in Philadelphia or the immediate impact of the Constitution, he was one of the early historians to go beyond these traditional subjects and consider other explanations for America’s unique historical trajectory. Turner’s “Frontier Thesis”, was his first major contribution to the field of American studies, in it he posits that American culture was influenced and shaped by the reality of the “frontier”; the desire to conquer it and fear of the unknown that existed beyond its outer reaches. Jackson later went on to expand on this thesis with the idea of “sectionalism” in which he argued that different ethno-cultural groups, who made up the fabric of the American “melting-pot” society had different patterns and methods of civilization and settlement, an observation which he tracked and wrote about, adding a fresh vision to the study of America’s history. See, Frederick Jackson Turner, *The Significance of the Frontier in American History* (New York: Penguin Books, 2009).

Roosevelt. Hofstadter's views of the Founding Fathers mimic those of Beard's; he too finds that Framers worried about the dangers of majority rule and hoped to create a balanced government that would not only teach the masses how to function in this new environment- controlled by the Constitution- but that also would ensure property and power interests of the elites against the other classes. Hofstadter explains that, "A properly designed state, the Fathers believed, would check interest with interest, class with class, faction with faction, and one branch of government with another in a harmonious system of mutual frustration".³⁸⁹ Hofstadter concludes that the Constitution is not nearly as democratic as often believed; the primary focus is not liberty and equality but rather the freedom to own property and prosper. The beauty of the Founding Father's system is that they were somehow able to draft a Constitution that allowed them to reconcile republican ideals with a fear of the "rapacious self interest of man", while still allowing for all men with the ability to do so to have the liberty to pursue the acquisition of property.³⁹⁰

Robert Dahl is another leading American political scientist whose ideas on democracy and elite power have often followed along the lines of the critical scholars. Dahl, has written extensively on the nature of politics in general, and in the United States, in particular. He contends that no modern country has reached the theoretical utopia of an idea democracy. Rather, modern nations fall under the heading of polyarchies. These states exhibit many of the criteria of democracies, including governance by elected officials, free and fair elections, inclusive suffrage

³⁸⁹ Richard Hofstadter, *The American Political Tradition and the Men Who Made It*, 4th ed. (New York: Vintage Books, 1989), 11.

³⁹⁰ *Ibid.*, 19.

rights, rights to run for office, freedom of expression, and the availability of alternative information and associational autonomy.³⁹¹ In the context of the American federal system and its creation, Dahl argues that the U.S. was based on not the control and direction of a group of narrowly defined and demographically unitary power elite, but rather defends the idea that power relations in the United States were based on a constant negotiation of power occurring between different groups of elites. This perspective lead to his argument in *Politics, Economics and Welfare*, co-authored with Charles E. Lindblom, that

Federalism; the composition and procedures of the Senate; the bicameral legislature; the separation of President and Congress, and the checks and balances between them...all these provide a variety of narrow defiles where a skillful and aggressive group may fatally mine the path of any group of threatening leaders...the strategic consequence of this arrangement has been that no unified, cohesive, acknowledged, and legitimate representative leaders of the 'national majority' exist in the United States...On a great many policy questions... 'the majority' is a fiction. But even if there were a national majority in the United States, it could not rule...³⁹²

Dahl aptly points out that the creation of a system of representative democracy was, at the time, an impossible task for the Founders; representative democracy did not yet exist beyond a theoretical notion.

In *How Democratic is the American Constitution?* Dahl expands on his theme of minority rule, moving beyond Beard's economic interpretation and Hofstadter's minority rule focus, to consider other shortcomings in the structure of the Constitution; the persistence of slavery; inequalities in terms of suffrage rights-

³⁹¹ Robert Dahl, *Democracy and its Critics* (New Haven, CT: Yale University Press, 1989).

³⁹² Robert Dahl and Charles E. Lindblom, *Politics, Economics and Welfare* (Edison, NJ: Transaction Publishers, 1991).

originally only propertied white males were given the vote; the electoral system of electing the president perpetuated the elite view- at the outset state legislators chose the electors, thus insulating the choice of chief executive from the populous; the manner in which Senators were chosen- not by popular vote until the 17th Amendment was passed in 1911; the original unequal representation system of the Senate; the strength of judicial power- strong judges were and still are essentially able to declare laws invalid; and the limited scope of Congressional powers-which, in turn, limited the full use of federal power.³⁹³ Dahl's explanation of these inequalities is enlightening; he accepts that while some of the inequalities would have been impossible to recognize or even comprehend during the late 18th century, some were the result of necessary compromises in the struggle to create a new nation. He does believe, however, that some of the flaws in the Constitution were a result of the exaggeration of perceived dangers on the part of the Framers. Finally, he notes, with interest, that while the Constitution surely serves to perpetuate some of these inequalities and injustices even today, it is rare to hear any public calls for a revision of the document or the system it has created.³⁹⁴ While he understands that these were part and parcel of the times, he does not hesitate to point them out, and note how eventually a more democratic understanding of the world helped to ferret out most these problems and bring them to a successful resolution.³⁹⁵

³⁹³ Robert A. Dahl, *How Democratic is the American Constitution?*, 2nd ed. (New Haven: Yale University Press, Yale Nota Bene, 2003), 15-20.

³⁹⁴ Ibid., 38-39.

³⁹⁵ Ibid., 39.

Subsequent to these more specifically focused scholars, another genre of critical histories, these more directly influenced by the popular focus of Marxist and Socialist ideologies, has also bloomed in United States Historical Literature. The two most prominent examples of this genre are Harvey Wasserman's *History of the United States* and Howard Zinn's *A People's History of the United States*.

Wasserman's analysis, which begins with the Post Civil War era, looks nonetheless into the underlying political powers and personas of the United States political and economic system. Specifically, Wasserman analyzes the powers of the robber barons of the Victorian Age, who he explains were able to amass vast fortunes and monopolies, control both the Republican and Democratic parties, and manipulate the city machines that determined the outcomes of elections- all through brute force, money and influence. Without the system created by the Founding Fathers, Wasserman believes this level of elite power, which he then traces through the 1970s, would have been impossible to sustain. A combined focus on a strict and fundamentalist doctrine of Protestantism and the primacy of property and capitalism allowed for the creation of a new world technology that rendered America a superpower and "the master organizers of the world" who served "to establish a system where chaos reigns".³⁹⁶

A People's History of the United States reaches further back down the historical timeline to consider the peoples' perspective in the early period of United States history. Zinn, in the same vein as Beard, points out that despite the lofty ideals espoused by the intellectual founders of the United States, the reality on the

³⁹⁶ Harvey Wasserman, *History of the United States* (New York: Harper and Row Publishers 1972), 59-60.

ground was that liberty, equality, freedom, and the chance to prosper were reserved for the elites. Zinn looks specifically at the under-classes of the era, including the Native American Indians; slaves, both those from Africa and those who were indentured servants paying their way to the New World via their labor; and poor propertyless whites, who may not have been indentured but nevertheless had very little prospect of advancing in the system. Zinn's first mention of the American Revolution and the creation of the United States is critical, "Around 1776, certain important people in the English colonies made a discovery that would prove enormously useful for the next two hundred years. They found that by creating a nation, a symbol, a legal unity called the United States, they could take over land profits, and political power."³⁹⁷ Facing serious and numerous threats of rebellions from lower classes of all sort, poor farmers, slaves, Indians, propertyless whites, the intellectual and economic elite of the era devised a system of control that would allow them not only to rally a significant portion of the rebels behind their cause in the hopes of improved fortune, liberty, and freedom, but also secure their own interests, both political and monetary. However, simply proving victorious versus the British would not suffice, further controls were necessary to perpetuate the unity and security of the nation. "The Constitution" Zinn explains,

illustrates the complexity of the American system: that it serves the interests of a wealthy elite, but also does enough for small property owners, for middle-income mechanics and farmers, to build a broad base of support. The slightly prosperous people who made up this base of support are buffers against the blacks, the Indians, the very poor whites. They enable the elite to keep control with a minimum

³⁹⁷ Howard Zinn, *A People's History of the United States: 1492-Present*, 5th ed. (New York: HarperCollins Publishers, 2003), 58.

of coercion, a maximum of law- all made palatable by the fanfare of patriotism and unity.³⁹⁸

The Constitution, in its original form, was open to criticism; even the lesser-educated public could see the power that would reside in the hands of the elite. However, by the time the first Congress was convened, the Bill of Rights had been drafted and was quickly passed in an effort to assuage fears of a new tyranny of the elite;

these amendments seem to make the new government a guardian of the people's liberties: to speak, to publish, to worship, to petition, to assemble, to be tried fairly, to be secure at home against official intrusion. It was therefore, perfectly designed to build popular backing for the new government. What was not made clear- it was a time when the language of freedom was new and its reality untested- was the shakiness of anyone's liberty when entrusted to a government of the rich and powerful.³⁹⁹

Critical historians such as Zinn have helped open the door to other, non-standard, analyses of the founding of the United States and the men and ideas crucial to this period. In his book, *The Other Founders: Anti-Federalism and the Dissenting Tradition in America: 1788-1828*, Saul Cornell focuses on the groups who offered opposing views to the now famous Founding Fathers. Cornell looks at the debates that surrounded the development of the document and considers both the social and economic roots of the conflict and how different types of critique emanated from different elements of society; the elite, the middle class of the time, and the general public all took issue with different aspects of the proposed Constitution. In fact, this

³⁹⁸ Ibid., 99.

³⁹⁹ Ibid.

“dissenting, Anti-federalist” tradition is yet another of America’s unique features that has survived today.⁴⁰⁰ Strong elements of current American society continue the original Anti-federalist or statist demands for smaller central government, a constrained federal judiciary, increased state rights, power, and authority, and local and community pride.⁴⁰¹

Dale Krane is yet another critical voice in the study of federalism and the American system; his critique is more contemporary and focuses on the elements he believes are repeatedly overlooked in analyses of the current functioning of the federal system. Krane believes that both studies of American government and efforts to formulate public policy consistently ignore the way in which federalism and the reality of the state governments affect policy in general. Rather than simply focusing on the passage of policy at the federal level, intergovernmental relations should be addressed and states should be viewed based on an “explanatory role commensurate with their impact on public policy.”⁴⁰² State-level demands and activities inevitably affect the manner in which the federal government formulates and implements policy and as discussed previously, it is the state level at which a

⁴⁰⁰ Echoing Cornell, Anton explains that the debate over states’ rights and national power has become clearly manifested in the contemporary party platforms of the Republicans and Democrats, Anton, quoting James L. Sundquist, explains, “Consistently since the 1930’s, the Democrats have stood for a stronger role for the national government, the Republicans for a smaller one. The Democrats have trumpeted the benefits of federal activism, and the welfare state, and the Republicans have denounced the costs- high taxes, intrusive bureaucracy and, as they were able to argue, inflation. When the Democrats won, they fulfilled their promises and carried out their programs...”Anton, *American Federalism and Public Policy: How the System Works*: 214.

⁴⁰¹ Saul Cornell, *The Othe Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828* (Chapel Hill: University of Chapel Hill Press, 1999).

⁴⁰² Dale Krane, "American Federalism, State Governments, and Public Policy: Weaving Together Loose Theoretical Threads," *PS: Political Science and Politics* 26, no. 2 (1993): 187.

more direct form of democracy is at work. As such, the demands and desires of state governments may be more representative of the national mood than are those of the federal government or even the representatives in Congress and the Senate. Krane suggests that models must do much more to incorporate the reality of the state level into their examinations;

the point here is simple: policy models that assign federalism to a contextual role which only creates complications or obstacles to action miss the fundamental fact that subnational officials are actors whose preferences embody the interests of a particular jurisdiction...American federalism is more than a maze of institutions; it is a matrix of reciprocal power relations.⁴⁰³

Krane's point about the role played by state governments is a valid note; he cautions that any attempt to study policy making in the United States should focus on "weaving together the separate strands of federal studies with policy analysis."⁴⁰⁴ Heeding this direction, this dissertation will attempt to look beyond simple analysis of religion or federalism and search for a better understanding of their interaction, the roles they may play separately, the effects each alone, or together, has had on public and social policy, and the manner in which they each represent exceptional aspects of the fabric of American life and government.

American Exceptionalists and the Federal System

The scholarly works cited above focus primarily on the theoretical and practical applications of the federal system, using the United States as an exemplary case.

⁴⁰³ Ibid.

⁴⁰⁴ Ibid., 189.

Another group of scholars have observed the experience of the United States specifically, looking less at the general theoretical underpinnings of federalism and delving into the American situation more extensively. Samuel Beer is a leading name in this group. Both his earlier works, such as his address to the American Political Science Association in 1977, "Federalism, Nationalism, and Democracy in America" and his more recent work, *To Make a Nation: The Rediscovery of American Federalism*, look specifically at the historical realities of the American situation; trace the origins of the federal system; detail the debate among the Founding Fathers over "national theory", or the national idea, in which the federal and state governments were created and made accountable to the people, and "compact theory", introduced by John C. Calhoun, in which the focus and primary unit was designed as the state, thus leaving the federal government accountable to the states' wishes and demands; and focus on the intellectual antecedents of Montesquieu and Hume that the Framers employed to support their adoption of the national theory.⁴⁰⁵ Beer explains that,

The invention at Philadelphia transformed Montesquieu's model (the idea that a smaller state was more conducive to becoming a republic, while a larger state would allow for more power- therefore the best solution was a confederate republic) by integrating with it this Humean construction (the idea that a republic could take hold in both smaller and larger states and that in a larger representative republic the 'higher magistrates' would be able to refine public opinion so that it would not be overrun by the general public's voice). The new unitary features meant that now the social pluralism of the nation as a whole would be represented in the general government, which, within limits would be able to avert the dangers of faction within the states, while the continued existence of the states meant that, as in Montesquieu's model, territorial pluralism would constitute a

⁴⁰⁵ Beer, "Federalism, Nationalism and Democracy in America: Presidential Address to the American Political Science Association 1977," 11-14.

safeguard against encroachments by the general government. It was a unified, internally coherent and highly original model of a new kind of government. This invention resulted from compromise, to be sure—not the compromise of stalemate, however, but of social learning.⁴⁰⁶

Beer believes that, “in making a democratic revolution, the American rebels created a nation and invented representational federalism as a means of governing their new national democracy”.⁴⁰⁷ The key features of this new democracy were that, along with the overall implementation of a federal system, states were guaranteed an autonomous and distinct level of government, a dual system was developed that encompassed political parties- parties functioned at both the state and federal levels and were instrumental in creating a link between the two levels; a public sector replete with professional, specialized bureaucrats also developed, and this bureaucracy later morphed into a technocracy-consisting of federal bureaucrats- and a topocracy-made up of an intergovernmental lobby that made demands on behalf of the citizens.⁴⁰⁸

Much of Beer’s later work focuses on the manner in which the relationship between the technocracy and topocracy in America has interacted with the general federal system. Beer finds fault in the American system at many junctures requiring coordination and controlled decision-making. He explains that although the federal

⁴⁰⁶ Ibid., 14.

⁴⁰⁷ Ibid., 15.

⁴⁰⁸ Ibid., 14-17. For a more in depth consideration of the manner in which the Framers created the federal nation, focusing on the national idea versus compact theory and the synthesis of Montesquieu’s and Hume’s ideas see ———, *To Make a Nation: The Rediscovery of American Federalism*.

system does allow for experimentation, innovation, and a variety of implementation techniques, at times it can also lead to persistent problems as no single authority exists to remedy crises. Reforms to the system must then be focused not only on making the system more democratic and more responsive, but also more coherent and continuous.⁴⁰⁹ The advantages and specific strengths of the American system, on the other hand, are twofold. First, Beer focuses on the strength of Congress and Congressional committees who are

powerful intermediaries between the multitudinous agents of a huge public sector and the many diverse components of the private sector. Their specialized jurisdictions equip them and their substantial staffs with the expertise to criticize the solutions proposed by the executive and to formulate their own alternatives. Being elected exposes them to the full tide of complaints and demands of the citizenry.⁴¹⁰

Also, lobbies and special interest groups play crucial roles in their ability to leave important imprints on legislation and the general manner in which the nation functions.⁴¹¹

We will see in our cases study that Beer's theory is actually very relevant to the U.S. case. Looking at Charitable Choice and the Faith-Based Initiative, and their interaction clearly demonstrates the way that certain policies have been implemented at either the state or the federal level and how this implementation has then gone on to influence other levels of government. In addition, our case clearly demonstrates the role that Congress can play in influencing state level policy

⁴⁰⁹ ———, "Strong Government and Democratic Control," *The Political Quarterly* (1999): 148.

⁴¹⁰ Ibid., 150.

⁴¹¹ Ibid., 150-51.

through federal legislation. Finally, the power and influence of special interest groups in the U.S. system is also apparent in this instance. Also, as we will see, the Charitable Choice Act, once passed in 1996, was not originally included in any other federal legislation or departmental changes. Due to this overall lack of encouragement for application of the measures at the federal level, the general lack of new programs based on Charitable Choice was not surprising. In a typical example of the manner in which Charitable Choice did, albeit very minimally, effect the federal government, The Department of Health and Human Services added a section concerning Charitable Choice to its website, but other than the existing religious social service providers, new faith-based organizations did not take advantage of the new measures in any significant capacity.⁴¹² The best evidence of this is seen in Mark Chaves' study of faith-based organizations and congregations. Chaves found that few, if any congregations were aware of what the changes inherent in Charitable Choice indicated and, those that were, generally did not take advantage of the new legislation.⁴¹³ In contrast, once the Texas governor's office began to implement Charitable Choice locally, many other states followed suit and, by the time George Bush introduced and implemented the Faith-Based Initiative at the federal level in 2001, these original states had funded dozens of faith-based

⁴¹² "What is Charitable Choice?".

⁴¹³ Chaves notes that at the time of his study, only approximately 12 percent of congregations nationwide were involved in social-service provision and those that were provided primarily short-term services organized in response to need. Mark Chaves, "Religious Congregations and Welfare Reform: Who Will Take Advantage of 'Charitable Choice'?", *American Sociological Review* 6(1999). See also, ———, "Congregations' Social Service Activities," *Charting Civil Society* 6(1999).

organizations in their provision of social services.⁴¹⁴ Charitable Choice and the manner in which it bounced between the federal, state, and back to the federal levels is indicative of one of the “exceptional” aspects of the United States federal system. While other governments may have the possibility of favoring or ignoring certain government policies, few have the ability to “demote” or “promote” policies based on personal preferences or beliefs of their leaders and justifying their actions based on the design of the political system itself.

Beer’s work on the federal government, and the provisions within this level of government, holds many relevant points in terms of our case study. Joining together two aspects of our inquiry, Beer examines the shifting national welfare system landscape and notes how these changes are crucial to understanding the contemporary trajectory of the U.S. federal system. In an effort to examine the current welfare situation and the effects of the 1996 reform efforts, Beer traces the development of the system; starting with original efforts undertaken by President Roosevelt in his Works Progress Administration of 1939. Conducting a thorough historical analysis, Beer works through the century and reaches the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.⁴¹⁵ Looking at welfare from the perspective of general federalism theory, Beer notes that, originally all programs, grants, and activities were tied to the federal government

⁴¹⁴ For a well-documented study of three of these states, North Carolina, Massachusetts, and Indiana see, Sheila Suess Kennedy and Wolfgang Bielefeld, "Charitable Choice: First Results from Three States," (Indianapolis: Center for Urban Policy and the Environment Indiana University-Purdue, 2003).

⁴¹⁵ ~~Beer’s historical efforts and those of others will be revisited in other paper dealing with welfare reform and devolution. later in this paper in my consideration of welfare reform and devolution.~~

and as these programs were designed to help those considered “truly needy”; the current negative connotation that goes hand-in-hand with welfare did not exist.

However, beginning in the 1970s, welfare program administration was increasingly transferred to the domain of state governments. This, Beer explains, was the result of Lyndon B. Johnson’s “Great Society” efforts during which, “as the substance of welfare policy changed, the states also acquired a far more important role in policymaking, financing, and administration than they had previously.”⁴¹⁶ Efforts designed to increase overall economic well-being and racial injustices produced, “new roles for the state in welfare...introduced by the Great Society by its immense increase in grants-in-aid to state and local governments in literally hundreds of new programs in most fields of domestic policy.”⁴¹⁷ Despite the power of conservative politicians throughout the 1980s and early 1990s, Beer explains that welfare remained an essentially untouched aspect of federal and state policy. The conviction that government money represented the ultimate solution for poverty persisted until the late 1980s when a concerted belief that welfare was simply perpetuating poverty arose along with a strenuous focus on reform. Politicians and voters from across the spectrum called for reduction of welfare payments, welfare cases, and a general decrease in the amount of monetary compensation and allowances provided to needy citizens.

The 1996 Personal Responsibility and Work Opportunity Reconciliation Act was the Clinton Administration’s response to these demands. Building on these

⁴¹⁶ Beer, “Welfare Reform: Revolution or Retrenchment?,” 11.

⁴¹⁷ Ibid.

demands, and especially conservative calls, for decreases in the overall number of welfare recipients, the Clinton era legislation placed ultimate responsibility, both in terms of managing federal funding and reducing welfare rolls through job training and placement, in the hands of state and local administrators. It was hoped that local administrators, being closer to the problem, would be more capable of devising and implementing non-monetary solutions to the welfare problem.⁴¹⁸ According to Beer, this system, offered a real chance for reform, since, the federal system, by design, did in fact allow local and state units to have a better grasp of their own constituents' needs and abilities. However, one possible drawback was the potential that this type of system, based on rewards and punishments to local governments who were unable to reduce their case numbers, was the beginning of a "race to the bottom". States, under the 1996 reform, might possibly enter into competition with their neighbors in their attempts to affect the greatest decrease its welfare rolls.

This, in turn, would push the neediest citizens deeper into poverty. ~~(Beer 1998)~~
~~(Beer 1998)~~ ~~(Beer 1998)~~ ~~(Beer 1998)~~ ~~(Beer 1998)~~ ~~(Beer 1998)~~ ~~(Beer 1998)~~ ~~(Beer 1998)~~
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~~(Beer 1998)~~ ~~(Beer 1998)~~⁴¹⁹

Martin Diamond's analysis of the American federal system also hones in on the unique history of the United States federal structure; emphasizing specifically

⁴¹⁸ These grants-in-aid to the states and local governments were the precursors of today's block grants that will be discussed further. Ibid., 10-11.

⁴¹⁹ The issues of devolution, welfare reform, the race to the bottom and the manner in which these fit into the federal structure of the United States will all be discussed at length in later chapters. Ibid.

that, at the time of its creation, the insistence, by the Founding Fathers, on the incorporation of the principles of democracy and liberty. He worries that years of conflict between critical and traditional scholars of American history, and liberal and conservative elements of society have eroded belief in this exceptionalism and skewed the public's view of the nation.⁴²⁰ In particular, he finds fault with the critical and liberal belief that the Constitution itself is actually undemocratic. He points out that, "The 'federal idea' versus the 'national idea' is not a conflict in principle of anti-democracy versus democracy, but of one conception of democracy versus another."⁴²¹ Most critics of the Constitution have focused on the efforts the Founding Fathers made to control for the creation of a tyranny of the majority. This constraint, the liberal view holds, allows, instead, for the creation of a tyranny of the elite in society and the institution of restrictions on popular government. Diamond, on the other hand, argues that such a critical stance obscures the very distinction of the American federal system in which, "two democracies"; direct democracy at the state level and representative democracy at the national level, come together to guarantee heightened liberty for American citizens.⁴²² Diamond explains that "for the founding generation, it was liberty that was the comprehensive good, the end against which political things had to be measured; and democracy was only a form of government which, like any other form of government, had to prove itself

⁴²⁰ Martin Diamond, "The Declaration and the Constitution: Liberty, Democracy and the Founders," *Public Interest* 41(1975): 45-46.

| ⁴²¹ ———, "Conservatives, Liberals, and the Constitution," 103.

| ⁴²² Ibid.

adequately instrumental to the securing of liberty.”⁴²³ Diamond quotes Henry Cabot Lodge, one of the more traditional scholars of United States history, who believes,

the Makers of the Constitution...knew that what they were establishing was a democracy...the vital question was how should this be done...(they tried to) so arrange the government that it should be safe as well as strong...They did not try to set any barrier in the way of the popular will, but they sought to put effective obstacles in the path to sudden action which was impelled by popular passion, or popular whim...⁴²⁴

Like Lodge, Diamond argues that the primary aim of the Constitution and original system of federal republic was designed to make America democratic and to guarantee liberty, *as it was conceived of in the late eighteenth century*. However, Diamond does acknowledge that, over time, constraints on popular democracy have surfaced. He blames these constraints not on the system itself or the original efforts of the Founders, but rather attributes them to the passage of time, adjustments of the system, and the rise of strong political parties and majority interest groups.

Unfortunately, the restrictions on popular government instituted by the Framers have actually worked to aid any group, or party, that is able to garner significant support; “any substantial popular minority (that) acquires, under the constitutional system, a strategic power to exercise in practice a veto on policies it strongly dislikes. The consequence is held to be deadlock and drift, because a people thus fragmented are unable to form a majority united behind coherent programs.”⁴²⁵ A present day example of this is the current situation facing the Obama

⁴²³ ———, “The Declaration and the Constitution: Liberty, Democracy and the Founders,” 47.

⁴²⁴ Henry Cabot Lodge as quoted in *ibid.*, 55.

⁴²⁵ ———, “Conservatives, Liberals, and the Constitution,” 105-06.

Administration; due to their numbers, Republicans in Congress and the Senate are able to rally enough support to successfully stall legislation and bring the entire federal legislature to a standstill through the use of tools such as filibusters.⁴²⁶

Along with his general studies of covenant and federal systems, Elazar also has a number of articles that look specifically at the United States case, especially in the contemporary time period, that are relevant to this study. In these, Elazar has focused extensively on the manner in which the federal system of the nineteenth and twentieth centuries represented a departure from the Founding Fathers' original design. He notes that although the system was conceived of as a dual system in which each level of government would be responsible for its own separate realms, American federalism "in practice, if not in theory, has traditionally been cooperative, so that virtually all the activities of government in the nineteenth century were shared activities, involving federal, state, and local governments in their planning, financing and execution."⁴²⁷ This type of cooperation, from Elazar's perspective was not specifically planned into the Constitution, and, in practice, has not been based on any type of solidified rules or outline, instead, "this 'decision' has been a continuous series of specific decisions involving concrete programs. The continuing evolution of theories, structures, programs, and techniques of the federalism that emerged from this process is what we today term cooperative federalism."⁴²⁸ During the eighteenth and nineteenth centuries, this state-federal

⁴²⁶ For a very timely article concerning the current deadlock in the United States federal government see, Peter Beinart, "Why Washington's Tied Up in Knots," *Time*, March 1 2010.

⁴²⁷ Elazar, "Federal-State Collaboration in the Nineteenth Century United States," 249.

⁴²⁸ *Ibid.*, 251.

collaboration took the form of a number of programs and arrangements, from banking to infrastructure, education to public welfare. By the early years of the twentieth century, cooperative federalism had become an accepted feature of the American federal system.⁴²⁹ As has always been the case, and still is today, conservative and liberal elements of the nation still push for more or less state rights or a stronger central government, but the notion of a cooperative style of federalism described as, “the sharing of responsibilities for given functions by the federal and state governments. In this sense...the opposite of dual federalism...a system of sharing that ranges from formal federal-state agreements covering specific programs to informal contacts on a regular basis for the sake of sharing information and experience” had clearly taken root.⁴³⁰

Ironically, as the rest of the world was slowly undergoing a transition from undemocratic, monarchic, or dictatorial regimes and looking to the United States federal system as an example for the creation of their own decentralized federal systems, the United States, by the mid twentieth century, had become an increasingly centralized state, driven by the policies and efforts of the federal government. Two World Wars, the Great Depression, the push for increased civil rights, and the increase of poverty throughout the country had forced the national government to step in and create policies designed to bolster, either financially or logistically, the efforts of the state governments. Conservative elements of U.S. society, always in favor of greater individual rights and local authority and

| ⁴²⁹ Ibid., 255-75.

| ⁴³⁰ Ibid., 279.

jurisdiction clamored for a concerted effort to turn the tide in favor of decentralization. The Republican administrations of President Nixon and Reagan were quick to capitalize on the political clout any such efforts might offer and instituted a program of “New Federalism”.⁴³¹ New Federalism focused specifically on a return to dual federalism and a renewed focus on a states’ rights ideology. Although the initiative, carried out primarily under President Reagan, did make some inroads in terms of delegating more responsibilities and power to the state level, a number of jurisdictional issues complicated a full return to dual federalism. Elazar believes that the experiences of the 1980s showed that cooperative federalism was the only kind of federalism possible in America, and whenever an issue arises that is beneficial to the federal interests, the general trend is that the federal government simply overrides the state and implements the idea or program itself; this Elazar terms, “coercive federalism”.⁴³²

There have been more successful arenas, however, in which Reagan era “non-centralization”, different from decentralization in that the federal government now simply decides what the state should or should not do-- decentralization would have put greater initiative and authority in the hands of the states themselves-- has

⁴³¹ Reagan and Nixon’s “New Federalism” program built on the previous program instituted by Linz and Stepan, “Inequality Inducing and Inequality Reducing Federalism: With Special Reference to the ‘Classic Outlier’--The U.S.A.,” 6. For further discussion of President Reagan’s efforts to institute a program of “new federalism” see Richard P. Nathan, *Reagan and the States* (Princeton, NJ: Princeton University Press, 1987).

⁴³² Elazar, “Opening the Third Century of American Federalism: Issues and Prospects,” 15. Although the Faith-Based Initiative itself represents an example of the federal system as a laboratory where individual states, in this case Texas, are able to experiment for the benefit of the federal government; the manner in which the Clinton Administration chose to ignore Charitable Choice, as a program that fell outside its agenda, does show signs of coercive, rather than cooperative, federalism. In this instance, then the coercive aspect of the federal government lay in its refusal to promote a measure passed by Congress, and ostensibly, via their Representatives, the people of the United States.

taken root and had an impact. For example, the Nixon Watergate scandal and later crises in the federal government, such as the oil embargo and price shocks of 1973, required state governments to step in and take up the slack left by the federal administration. The Supreme Court became increasingly less activist and allowed the state courts to function, “through the development of a new, vibrant state constitutional law, building state constitutional foundations for public policy, in everything from individual rights to relations between religion, state, and society, and to fairer distributions of public services.”⁴³³ Despite these positive changes, however, Elazar and others argue that coercive federalism has taken root, threatening state level government’s authority, ability to maneuver, and general capabilities. The only hope for a return to a more balanced cooperative federal system is that “if the system has become too complex to simply turn things back to the states, it has also become too complex to simply rely upon the federal government.”⁴³⁴ The end of the twentieth century and the beginning of the twenty-first century have already witnessed the dangers and downfalls of this “bigness” of the federal government, further discussion will be devoted in coming chapters to the efforts of the federal government to speed devolution in many struggling sectors, looking specifically at welfare provision and poverty relief efforts.

The Unique Power of Federalism:

State and Federal Relations in Charitable Choice and the Faith-Based Initiative

⁴³³ Ibid.

⁴³⁴ Ibid., 18.

As seen in the analysis above, scholars across the board, mainstream, critical, and exceptionalists, focus on the idea that the American system, both currently and historically, represents a unique case in global perspective. The analyses these scholars have conducted do shed light on, theoretically, and enrich our comprehension of the history of American federalism and set the stage for a clearer understanding of the interactions between the accepted and “standard” definitions of the original design of the federal system, and the mutations of that design that have dictated the separation of powers; the degrees and types of representation within the government; the distribution of power, authority, and wealth; and the Constitution, especially in the daily functioning of the current American system.

However, the same authors are often quick to classify America and its history as “exceptional” and unique. Although this is true to many degrees, American federalism is one of the first, and longest functioning examples of this type of government structure, to simply make such sweeping declarations of “exceptionalism” or “uniqueness” does not help in understanding the practical and precise functioning of the American federal system. Fully understanding this uniqueness requires a more in-depth, and critical perspective. Looking simply at the face value of the federal system offers very little in terms of understanding the manner in which the Charitable Choice Act was able to evolve into the Faith-Based Initiative and soon be implemented nationwide. Without the flexibility that is granted to states under the federal system, the original states to implement Charitable Choice in 1996 would not have been able to act. Despite reluctance at the federal level to institute sweeping regulatory changes in terms of the new

guidelines for faith-based social service operators, interested state and local level governments were able to encourage and fund faith-based organizations. Based on a state or local level application and evaluation process, state funds, often consisting of federal block grants given to the state for distribution to service organizations, were channeled to religious-oriented service agencies. Although pre-existing relationships did exist, with the YMCA or Salvation Army, in many instances, organizations were founded specifically following the Personal Responsibility and Work Opportunity Reconciliation Act. In Texas, for example, a prison ministry group, Prison Fellowship, whose mixing of government monies and religious programming was quickly criticized, was founded following Charitable Choice and received significant funding for its activities.⁴³⁵

Due to the manner in which the federal system functions, although the state may have been using federal funds to support groups such as PrisonFellowship and InnerChange, little or no federal oversight of these groups was possible. Once federal funds are given to a state in the form of a block grant for social services, it becomes part of the state's jurisdiction to determine how these funds should be utilized. From a critical perspective such as that of Beard or Zinn, this raises questions of how political and economic relationships may have affected decisions

⁴³⁵ The founder of this prison ministry group was Chuck Colson. Once Special Counsel to President Richard Nixon, Colson was convicted and served time in prison. After his release and his experience of being "born-again"; Colson founded Prison Fellowship Ministry and a program known as InnerChange which functions as a faith-based organization within prisons throughout the nation. The author of a 1999 article "Now How Shall We Live?", Colson has been an outspoken proponent of prison reform, prisoner rehabilitation, and faith-based social services. Colson's ministry programs faced significant lawsuits accusing the programs of mixing federal funding with religious programming. These will be discussed, in detail, later in the dissertation. For further discussion of the issues and events that surrounded Colson's programs in Texas see, Anonymous, "Lessons from the Texas FBI," *The Humanist* 63, no. 3 (2003); Dokupil, "A Sunny Dome..." *Texas Review of Law and Politics* 5, no. 1 (2000); Michael E. Schneider, "A Texas Prisoner's Reaction to Faith-Based Rehabilitation Programs," *Social Justice* 28, no. 1 (2001).

concerning the distribution of funds. From the perspective of the First Amendment, these arrangements raise the question of federal funding of religious activities. Because additional oversight from federal agencies was difficult, and state government generally supported the new trend of funding for faith-based organizations, criticism and legal challenges to the relationships that have developed under Charitable Choice and the Faith-Based Initiative have often been led by independent watch groups or clients and employees affected by the faith-based organizations under consideration. These cases and their outcomes will be further examined in a later chapter; federal attention to the issue has generally only been widespread once the cases have reached the Supreme Court level.

Studying welfare reform and the Faith-Based Initiative promises to shed light on the current state of American federalism and its previous evolutions. It is important to note that the American system, like all federal systems, is based on divisions and interactions between levels of government and policy. Looking at federalism through the lens of an institution such as the Faith-Based Initiative helps to expose the interactions of these levels since, as Elazar explains, “the study of federalism directs the attention of political science away from a principal concern with the nature of regimes to a principal concern with the character of political relationships—between political units, between governors and governed, between members of the body politic. In doing so, it forces those concerned with political phenomena to consider questions of political behavior—institutional, group, and individual—first and foremost.”⁴³⁶ Interaction between these levels of society has

⁴³⁶ Elazar, *Exploring Federalism*.

played various and important roles in determining the flow of American policy, not simply at the local level, but also at the national level. as the Faith-Based Initiative demonstrates. ~~—The Faith-Based Initiative offers a clear example of this.~~ As Beer, explains that, the Founders, recognizing the importance of the input of the people set up a system of federalism based on the sovereign power of the people, which would foster innovation and progress. The model was set up to be fluid and based on change, interaction, and movement. It was hoped that the constant interactions among levels would encourage originality.⁴³⁷ The manner in which Charitable Choice developed into the Faith-Based Initiative is a clear contextualization of how this system was supposed to work. As we will examine in depth in the next chapter, Charitable Choice was designed at the national level, yet, essentially tested in local and state level “experimental laboratories”. One of the “experiments” took place in Texas, whose governor, upon becoming President, reinstituted the program at the federal level.

CHAPTER FIVE

CHURCH-STATE PARTNERSHIPS AT WORK

Religion and Compassionate Conservatism

⁴³⁷ Beer, *To Make a Nation: The Rediscovery of American Federalism*.

As we have seen in our analysis of religious history in America, the American system of separation of church and state, and the secularization thesis, the relationship between religion and politics in the United States is fluid, ongoing, and exceptionally nuanced. Consideration of the manner in which politics and religion interact in the U.S., especially in terms of the flow of ideas, policy, and connections between the two, offers insight into the current American situation and the manner in which it may change in the future. Many studies of the United States operate by describing the American case as the ultimate exception to the rule. Rather than studying America at the microlevel, which may be necessary in a nation as vast, multicultural, and multi-religious as the United States is, the above case studies prefer to remain focused on a macrolevel. General sentiments and sweeping generalizations serve to mask the role that policy, specific events, and specific cases may actually play in the United States system of state-religion relations; in particular at the federal level. While statistical methods, general surveys, and overall assessments may shed light on the “big picture”, understanding the nuances of the American separation of church and state, an attempt to truly examine the details of a has yet to be frequently employed. A case study, based on a specific, more tangible instance, such as the one undertaken in this dissertation, would hope to shed light on the actual manner in which religion and politics interact and affect one another specifically.

In the United States, then, a new role for religion is emerging. After witnessing the reign of secular beliefs and a secular-style of government for decades, politicians and citizens alike have been focusing on a return to values and

faith in an effort to realign politics with values; overcome the perceived degeneration of society, often attributed to modern technology such as television; and attempt to demonstrate their “religious credentials” and prove the values aspects of their policy. In a nation as “modern, developed, and industrial” and the United States, this type of change is highly unexpected. It is likely due to a “reaction to secular measures”, “disillusionment with changing values”, and finally, “increased government centralization and increased encroachment.”⁴³⁸ However, despite this, trend Dionne, a liberal columnist for the *Washington Post*, and DiIulio, the first director of the White House Office of Faith-Based and Community Initiatives, point out that, “As a country, we are terribly torn about what religion-in-public should mean. Collectively, we seem suspicious of politicians who are too religious and suspicious of politicians who are not religious at all...The paradoxes of religious faith are obvious. It can create community, and it can divide communities.”⁴³⁹ Glynn, also demonstrates that “Religion is reentering the American life, not so much via the public square as through the back door, via the individual conscience. Individuals are rediscovering religion experientially, almost pragmatically, as the best solution to the real quandaries posed by modern life.”⁴⁴⁰ As religion becomes a more potent force in the lives of the voters, in sharp contrast to what the secularization thesis would have expected, citizens expect their political and civic

⁴³⁸ Keddie, "Secularism and its Discontents," 28.

⁴³⁹ E.J. Dionne and E.J. Dionne, "What's God Got to Do with the American Experiment?," *Brookings Review* 17, no. 2 (1999): 5.

⁴⁴⁰ Ibid., 88; Patrick Glynn, "Conscience and the Public Square," in *What's God Got to Do with the American Experiment?*, ed. E.J. Dionne and John J. DiIulio (Washington DC: Brookings Institution Press, 2000).

leaders to also be more religious and more faith-focused than ever before. Important to note also, is the fact that religion may have never actually left American public life and politics to the degree that liberal and progressive citizens would like to assume. While secularists may take issue with the “new” focus on religion in public life, conservatives argue that Christian activists and politicians may actually have history on their side—religion, Christianity in particular, as we have seen, has been part and parcel of the American political and historical experience dating back as late as the early colonial period. As such, for “conservative Christians, there is no separation of church and state and there never was. There is no legal justification, therefore, (for example) for disallowing crucifixes in government buildings or school prayer”.⁴⁴¹

Given this moral and values oriented environment, “Americans today are generally more conservative in their views on the role of government and more concerned about the country’s moral decline than they were thirty years ago”.⁴⁴² This interest in moral values and the role that such values are to play in political life has been the subject of much discussion and debate in recent years. While staunch secularists worry that allowing religion to pass into the more public, political square cannot help but have a detrimental effect on not only politics but public life in general, many liberals have welcomed the need to include a values rhetoric in liberal political thought, not only as a way in which to appeal to the growing numbers of

⁴⁴¹ “How Christian Were the Founders?,” 7.

⁴⁴² Robert J. Blendon et al., “America’s Changing Political and Moral Values,” in *What’s God Got to Do with the American Experiment?*, ed. E.J. Dionne and John J. DiIulio (Washington DC: Brookings Institution Press, 2003), 27.

religious voters, but also as a way to finally be able to display their own religious values.

To liberals who may be concerned with the new trend of values and faith in left of center political thought, Dionne explains,

But the turn of the millennium in American may well be remembered as a time when the country renegotiated the relationship between religion and public life, faith and culture. Don't be scared by this: We are not about to chuck religious freedom, impose censorship, or herd everyone into a church, synagogue, or mosque. Indeed, it is partly because of advances in religious freedom—the result of court decisions and cultural changes during the 1960s—that it is even possible to talk about increased cooperation between religious and governmental worlds.⁴⁴³

The question of religion and religious belief in the American public square, and concerns over what this might mean for both the American political and religious landscapes, and how much interaction between politics and religion is even legal in the U.S. has been a long debated topic. The question of separation of church and state, Alan Wolfe explains, is ongoing and urgent in the public square;

Two hundred years after the brilliant writings of Madison and Jefferson on the topic, Americans cannot make up their minds whether religion is primarily private, public, or some uneasy combination of the two...If we are confused however, we have good reason: religion is too much part of American self-identity ever to be ignored, especially by institutions that shape our identity as much as government institutions do. Yet nearly all efforts to bring religion and politics closer together seem to end badly, especially in a society populated by people who love religion but hate politics.⁴⁴⁴

⁴⁴³ E.J. Dionne, "The Third Stage: New Frontiers of Religious Liberty," in *What's God Got to Do with the American Experiment?*, ed. E.J. Dionne and John J. DiIulio (Washington DC: Brookings Institution Press, 2000), 115.

⁴⁴⁴ Alan Wolfe, *The Transformation of American Religion: How We Actually Live Our Faith* (Chicago, IL: University of Chicago Press, 2005).

Strong sentiments often dominate both the arenas of politics and religion. In 2001, President George W. Bush, a highly religious person himself, created the White House Office of Faith-Based Initiatives. Designed to facilitate partnership between the federal government and faith-based organizations willing to provide much needed social services to America's needy; the White House Office of Faith-Based Initiatives represents a clear example of the manner in which politics and religion are, in the United States, at once separate and intertwined. The Faith-Based Initiative has been highly touted by more religious and conservative portions of the populace, while more liberal citizens fear that its proper functioning requires the fusion of religion and state in a manner that is unconstitutional. To understand the process by which President Bush came to endorse and institutionalize the idea of federal and faith-based partnerships requires first understanding and examining the ideologies of the President himself and the religious and political establishments that held sway during his Presidency.

~~The Christian Right: Values and Politics~~

Since its rise to prominence beginning in the early 1980s, the Christian Right has been a source of extensive scholarly attention and debate. Although often seen as a single bloc of socially and politically conservative, religious voters, the Christian Right is actually a “loose fitting, diverse group of competing religious/political organizations...grounded loosely in theologically conservative Protestant thought...that form a broad social network...There is not national consensus among them, for they represent different and competitive religious types.”⁴⁴⁵ Despite this lack of complete consensus, looking at exit polls from elections over the past three decades does demonstrate that a unified block of voters do profess to belong to the Christian Right and that these voters generally display similar voting, and therefore influence, patterns.⁴⁴⁶ Beginning with its birth in the 1980s, the Christian Right has gained prominence, particularly due to the efforts of high profile Republican Presidential support, and, especially during the Clinton Presidency, high profile Democratic scandals. Reagan, as the first President to call upon a panel of elites; leaders of conservative Christian groups to offer policy advice and serve in the administration, initiated the trend of incorporating faith and moral values into the work of governing. Pat Robertson’s unsuccessful Presidential bid of 1988 served to further consolidate the movement into the Christian Coalition, a group that still exerts a conservative force in politics today. While President Bush, Sr. had little connection to groups on the religious right, such as the Christian

⁴⁴⁵ Regnerus, M. D., D. Sikkink, et al. (1999). “Voting with the Christian Right: Contextual and Individual Patterns of Electoral Influence.” Social Forces 77(4): 1375-1401.

⁴⁴⁶ Green, J. C., L. A. Kellstedt, et al. (2007). How the Faithful Voted: Religious Communities and the Presidential Vote. A Matter of Faith: Religion in the 2004 Presidential Election. D. E. Campbell. Washington, DC, Brookings Institution Press: 15-36.

Coalition and the powerful Moral Majority, he did appoint his son, George W. Bush, to handle dealings with conservative leaders during his Presidency. Finally, the events surrounding President Clinton, who himself was actually a practicing and devout Baptist, helped to cement the idea of “morally lax” Democratic leaders. Clinton’s scandals served to “prove the point” of many conservatives who had argued that moral degeneration in America had reached unprecedented levels. All of this had set the stage for the emergence of George W. Bush, a born-again Methodist who claimed that God had chosen him to be President.⁴⁴⁷

Democrats have not, of course, remained oblivious to the obvious rising power and role of religion in recent elections. Like their Republican counterparts, Democrats, especially those who are more religious, have been pushing for the inclusion of religion and faith issues in the Democratic national and state level party platforms. And while the Christian Right is generally associated with the Republican Party, the religious right in America has generally bestowed their support, not based on party affiliation, but rather based on which candidate is more conservative and better represents the group’s value set. The key to their success has been the movement’s “complex national structure for organizing voters”, and it’s ability “to mobilize evangelical leaders to build grassroots support for conservative candidates”; a structure that “neither the Democrats nor progressive social movement organizations” can even come close to replicating at this point.⁴⁴⁸

⁴⁴⁷ Mansfield, S. (2003). The Faith of George W. Bush. New York, Jeremy P. Tarcher/Penguin.

⁴⁴⁸ Berlet, C. (2009). Religious Right, Religious Left. Dispatches from the Religious Left: The Future of Faith and Politics in America. F. Clarkson. Brooklyn, NY, Ig Publishing: 43-60.

At the outset, the Clinton Presidency promised to reverse the previous flow of religious voters to the Republican Party and seemed poised to change the trend of Republican-religious connection that had endured since the late 1970s.⁴⁴⁹ Personally faithful and well connected to the South, the Clinton Administration designed a religious agenda and focused on encouraging more interaction and engagement with religious communities. Aware of the importance of religious outreach, the Administration used traditionally Republican methods to remain connected to the religious community; the Clintons created a religious liaison and worked hard to shore up the religious credentials of the Democratic Party. Amy Sullivan, a leading commentator on religion in Democratic politics, explains, “For eight years, the Clinton White House reversed what had become the Democratic fight-or-flight instinctive reaction to all things religious.”⁴⁵⁰ However, the moral questions that surfaced during the Clinton Presidency, cost the Democrats a

⁴⁴⁹ Among other efforts, President Clinton was supportive of the Religious Freedom Restoration Act of 1993 in which the Sherbert Test, resulting from *Sherbert v Verner* and *Wisconsin v Yoder*, considers where a violation of the First Amendment’s Free Exercise clause has occurred based on a religiously neutral federal law that imposes an burden on an individual’s free exercise of personal religion. Exceptions to the law may arise in cases where one’s personal practice of religion interferes with a portion of the federal constitution. Despite Clinton’s effort to pass the legislation as a sweeping change at both the federal and state levels, in 1997 a Supreme Court decision rendered it valid only at the federal level. However, many states have since passed mini RFRAs in an effort to maintain a certain level of freedom of religious practice. Although the law is primarily applicable to Native Americans and their religious beliefs, it has been invoked in other cases where federal laws designed to be religiously neutral have actually created a burden on personal or group exercise of religion. See (1993). Religious Freedom Restoration Act. 42 U.S.C. § 2000bb U. S. Congress. Washington DC.

_____, (1997). “Unconstitutional Restoration—The Religious Freedom Restoration Act and Religious Liberty in America.” *Princeton University Law Journal*. Retrieved October 28, 2010, from <http://www.princeton.edu/~lawjourn/Fall97/H1gupta.html>.

⁴⁵⁰ Sullivan, A. (2008). *The Party Faithful: How and why the Democrats are Closing the God Gap*. New York, Scribner.

significant portion of their Catholic and evangelical support.⁴⁵¹ Not only did the events seem to demonstrate a lack of moral compass within the party, but “faithful” voters also came to feel that “the Democratic party of their past had been taken hostage by liberal extremists and special interest groups.”⁴⁵² The Monica Lewinsky scandal⁴⁵³ offset any positive aspects of the significant effort that the Clinton Administration had made to regain the trust of evangelicals and conservatives. After the scandal, many voters perceived Clinton’s subsequent effort to be little more than maneuvers for political gain; Republicans believed Clinton was simply lying, while many Democrats contended that he was just smart.⁴⁵⁴

The political result of the Clinton scandal and the Republican’s new, firmer grasp on faith and values issues was the birth of a new outlook in which any type of moral issue or faith-based question was considered to be the sole domain of Republican candidates. “Republicans, for instance, are always assumed to be

⁴⁵¹ Ibid.

Not only did the Clinton era scandals and the nation’s perception of Clinton himself as morally corrupt affect the long term prospects of reconciliation between Democrats and religion, but, Sullivan explains, the religious permeation of the G.W. Bush Presidency and Democratic reactions to the open religiosity Bush displayed were a death knell for relations between Democrats and religion. Overall, the Party and Presidential hopeful Al Gore’s advisors, “liked the idea of a Democratic president who kept religious groups away from government funding more than one who encouraged cooperation with faith-based organizations...they certainly liked the idea of a Democrat who was attacked by religious conservatives more than one who worked with these same leaders.” *ibid.*

⁴⁵² Ibid.

⁴⁵³ The Monica Lewinsky scandal refers to an extra-marital affair that Clinton was found to be having with a young staffer in the White House. Rather than the affair itself, the issue that eventually created serious problems for Clinton was that he originally attempted to cover up the liaison and lied on national television when asked about the nature of the relationship. The details of the affair, in particular, incensed most Americans as sexual terminology and discussion of sexual acts became part and parcel of the evening news.

⁴⁵⁴ Sullivan, A. (2008). *The Party Faithful: How and why the Democrats are Closing the God Gap*. New York, Scribner.

religious unless they can prove otherwise. Even when pundits mock their religious beliefs and practices, it at least confirms that Republicans are indeed religious. It's understood, however, that Democrats are not religious."⁴⁵⁵ In fact, Democrats are often reactionary and equally adamant about distancing their party platform from religion. Basing their arguments on the sanctity of the separation of church and state; their strong beliefs that there should not be a relationship between religion and politics, and the perception that a large portion of the country actually did not want a mixing of religion and politics to occur, liberal and conservative Democrats alike have eliminated religious references from their public speeches, campaigns, policy proposals, and platforms in general.

For example, both Al Gore and John Kerry, in their respective campaigns against George W. Bush, were careful to avoid discussion of their personal faiths; much to their own detriment. In one instance, during Al Gore's unsuccessful Presidential campaign of 2000, his running mate, Senator Joe Lieberman, a devout Jew, was invited to speak about his faith at Notre Dame University, a Catholic and faith-infused institution. Members of Gore's campaign team were highly opposed to the engagement, which they felt would overstep the bounds of separation of faith and politics. The Gore campaign, "liked the idea of a Democratic president who kept religious groups away from government funding more than one who encouraged cooperation with faith-based organizations...the party would spend the next four years sneering at the latest evangelical to occupy the Oval Office and

⁴⁵⁵ Ibid.

forgetting the lessons of the Clinton White House's religious outreach effort."⁴⁵⁶

Lieberman spoke nonetheless, and national media and scholars both noted that the speech likely provided an important connection for Democrats and voters of faith that had been previously lacking; even greater effort to engage religious voters would have probably have been well received and influential.⁴⁵⁷

Exceptions notwithstanding, however, Republicanism and religion have become intertwined in recent decades. "Republican administrations have more effectively tapped the expressive component of political life in forging close relations with American evangelicals. Through public speech and symbolic expressions such as presidential appointments⁴⁵⁸, political conservatives have created social space in which self-identified evangelicals could rise in political prominence...evangelicalism is a salient identity for many within the political elite, and through both expressive and institutional elements, evangelicalism has been aligned with the political Right."⁴⁵⁹ Hout and Fischer explain that this "growing connection made in the press and in Congress between Republicans and Christian evangelicals may have led Americans with moderate and liberal political views to express their distance from the Religious Right by saying they prefer no religion."⁴⁶⁰

⁴⁵⁶ ~~Ibid.~~

⁴⁵⁷ ~~Matthewes, C. T. (2002). "Reconsidering the Role of Mainline Churches in Public Life." Theology Today 58(2): 554-567.~~

⁴⁵⁸ ~~Lindsay, D. M. (2007). "Ties that Bind and Divisions that Persist: Evangelical Faith and the Political Spectrum." American Quarterly 59(3): 883-911.~~

⁴⁵⁹ ~~Ibid.~~

⁴⁶⁰ ~~Hout, M. and C. S. Fischer (2002). "Why More Americans Have No Religious Preference: Politics and Generation." American Sociological Review 67(2): 165-190.~~

~~Liberal and progressive voters have also been influenced by changes in religion's role in the "cultural milieu of America"; specifically demographic changes, as personal and family religiosity decreases; the reality of the secularization thesis, "no preference" does not actually mean no religion as many in the secularization thesis era believed—rather people either believe privately or are "unchurched believers"; and finally the rising influence of religion in politics, has pushed liberal voters, despite their own personal religiosity, to assume stances on the anti-religion or non-religious extremes.⁴⁶¹—In due time, as these reactionary elements merged with the concerted efforts of conservative and religiously oriented voters in the Republican camp, Republicans were able to corner the market on religion, creating an environment in which any citizen who "believed" actually began to feel that the Democrats were not only out of touch with their values and lifestyle, but, even worse, actually held them in contempt~~George W. Bush: God's President

Not all Americans have experienced the same qualms concerning the relationship between religion and politics. George W. Bush, for example, is quite possibly the most openly religious President in American history. For Bush, personal faith, and belief in its power, have become defining aspects of his work as a public servant. As evidenced by his efforts to advance the capacity for faith-based organizations to work in Texas, Bush places a great deal of faith in the ability of faith-based organizations to help alleviate social problems throughout the nation, and throughout the world. Stephen Mansfield, in his book *The Faith of George W.*

⁴⁶¹ ~~Ibid.~~

Bush, demonstrates that while the Bush family has always been a family of believers, the personal faith of George W. Bush represents a much more prominent position in not only Bush's personal life, but also in his public persona.⁴⁶² From the start of his presidential campaign in 2000, the American public has become well-versed in the manner in which Bush, who himself admits that he was once, "drinking too much"⁴⁶³ and jumping from one business venture to another, came to find God and the deep impact being "born again" has had upon his lifestyle, belief system, and politics.⁴⁶⁴

Understanding the Bush era, his campaigns, his Presidencies, and the policies that he has developed and implemented in terms of social policy, specifically, require an examination of his personal history and style of belief. Throughout his political career, Bush has been eager to share details not only of his family history, but also concerning his personal beliefs and religiosity. The admittedly political and influential Bush family have been a fixture of American politics since the time of Prescott Bush, G.W. Bush's great-grandfather; and have been active players at both the state and national levels of government. George W. Bush's personal beliefs, as we shall see shortly, have had a marked influence on his actions as President, a fact that not only has he, himself chronicled in a memoir

⁴⁶² Mansfield, *The Faith of George W. Bush*. Stephen Mansfield, a former pastor, who like G.W. Bush, experienced a Christian conversion and was "born again", is an author and speaker who focuses mainly on issues of faith, culture, and politics. His book, *The Faith of George W. Bush*, was an international bestseller and spent numerous weeks on *The New York Times* bestsellers list. He has written extensively concerning religion in the United States, recently also writing about Barack Obama's faith and the faith of American soldiers stationed in Iraq. For more information concerning Mansfield's books and background see, www.mansfieldgroup.com

⁴⁶³ Bush, *A Charge to Keep: My Journey to the White House*.

⁴⁶⁴ Ibid.

published soon after he was elected to his first term, but that others, including biographers, journalists, and scholars of American politics, have been keen to depict in their accounts of the era. In this chapter we will examine these sources in order to attempt to understand the trajectory of the Bush White House, as well as to attempt to grasp the underlying rationale with which Bush introduced, honed in on, and implemented the ideas of the Faith-Based Initiative; a program that has raised both support and controversy nationwide.

His Personal Faith: Finding God

Although the Bush family, and George W. Bush have always been “church-going people”, it was not until after he met and married Laura Bush, and became a father, that George W. Bush’s personal faith began to follow the trajectory that has made him the evangelical Methodist that he is today. Prior to his entry into the Methodist Church, Bush both attended and taught Sunday school at the Presbyterian Church in Midland, Texas, the small Texas town where Bush spent much of his childhood and later moved with his family. As Bush explains in his memoir, *A Charge to Keep*, it was after the baptism of his daughters that he joined The First United Methodist Church in Midland and, in what is described as having more to do with personal habit and expectation, as opposed to faith, served on the administrative committee of the Church and became an active member of the church community.⁴⁶⁵

⁴⁶⁵ Mansfield, *The Faith of George W. Bush*: 59-61.

While Bush has always believed in the importance of community and the faith-based community in particular, as demonstrated by his volunteer work both under the umbrella of church programs and outside the church, such as through the opportunities offered by the United Way. Mansfield describes Bush's attitude during church as typical of someone who was "bored and unengaged"; Bush even went so far as to play pranks during sermons, such as the time when he set his watch alarm to go off in the middle of the sermon given by an especially long-winded preacher.⁴⁶⁶ Bush's change of focus and engagement in the church actually began as late as 1984. Mansfield relates that church leaders in Midland feared that much of their population was also suffering from a lack of interest and engagement in the church and matters of faith and, as a remedy, invited a well-known evangelical preacher, Arthur Blessit, to visit Midland and speak.⁴⁶⁷ Heralded as "Decision '84", during Blessit's visit to Midland he preached at the church, spoke on local radio, and visited local schools to spread his message that, "with sincere prayer...we might experience the grace of the Lord Jesus Christ and the fellowship of the Spirit".⁴⁶⁸

George W. Bush did not actually attend any of Blessit's sermons during the time that Blessit was in Midland due to the fact that his father, President Bush Sr., was Vice-President under Reagan and the Bush family did not want to draw undue attention to Blessit or to themselves. Instead, after hearing Blessit speak on the radio, Bush and his friend, Jim Sale, an oilman who had "found God" with Blessit's

⁴⁶⁶ Ibid., 58-59.

⁴⁶⁷ Arthur Blessit had, at this time, become somewhat of a hero among church-goers and Protestants for his travels carrying a huge wooden cross. Having begun in 1969, as of the time he arrived in Midland, Blessit had carried the cross for over 38,300 miles and through 284 countries. Ibid., 61.

⁴⁶⁸ Arthur Blessit as quoted in *ibid.*

help, met with Blessit at a coffee shop and spoke with him at length concerning Bush's questions and the curiosity he had concerning Jesus Christ. Mansfield speculates that the "nearness" Bush probably felt toward Jim Sale and his journey toward God had to do with the similarities of their positions in the town, employment, and lifestyles.⁴⁶⁹ After a lengthy conversation, the three men prayed together and Blessit gave Bush a pamphlet entitled, "the New Life", in the hope that it would guide him on his journey of finding Christ. Bush and Blessit spoke often in the following two years until their respective travels and schedules caused them to lose touch.⁴⁷⁰

Bush remained true to his new focus on God thanks to another close friend in Midland, Don Jones, who was also a member of the First United Methodist Church and who had "found Christ" himself; but some questions remained. Bush participated in a Men's Bible Study, read the Scriptures and affirmed that he had "gained a confidence and understanding in his faith", and believed that "faith changes lives. I know, because faith has changed mine."⁴⁷¹ However, even as late as a year later, in an encounter with the Reverend Billy Graham, Bush worried that he was not yet "right with God" and asked for Graham's guidance.⁴⁷² In the summer of 1985, Bush encountered Graham at the Bush family's summer home and was able to

⁴⁶⁹ Ibid., 65.

⁴⁷⁰ Interestingly, neither Bush nor Blessit discussed their meeting or their continued contact until a much later date; only after Bush had been elected President in 2000 were details of their interactions made public by either side. Ibid., 67.

⁴⁷¹ Bush, *A Charge to Keep: My Journey to the White House*: 137, 39.

⁴⁷² Mansfield, *The Faith of George W. Bush*: 68.

spend some time speaking with the Reverend one-on-one and then, later, listening as Graham spoke to all the guests who had gathered at the Bush home. It was this experience, Bush explains, that “planted a mustard seed in my heart, a seed that grew over the next year” and that the walk the two men shared represented, “the beginning of a new walk where I would recommit my heart to Jesus Christ”.⁴⁷³

1984 and 1985 thus marked the years that would, in terms of personal belief and devotion, represent the beginning of the trend that played a crucial role in making George W. Bush and his Presidency it would become.⁴⁷⁴ One noteworthy aspect of Bush’s religion and its relation to his political position is that, Bush’s experience of being “born again” is actually atypical. For most Christians, “finding” Christ is usually followed by a “quiet season of reflection and depth”. For Bush, who began campaigning with his father soon after he found Christ and then continued with his own gubernatorial campaigns, this time of reflection and depth was replaced by the reality of Bush’s hectic life; the type of Christian he became has also, Mansfield notes, been determined by this different trajectory.⁴⁷⁵

⁴⁷³ Bush, *A Charge to Keep: My Journey to the White House*: 136.

⁴⁷⁴ George W. Bush took one more important step that had come to embody another important aspect of his new life as a “born again” Christian; he quit drinking around his fortieth birthday. An aspect of his religion that Bush has frequently noted, he describes the events that led his decision in his memoir, *A Charge to Keep*. Having gone to celebrate with friends for the weekend, Bush explains that he awoke feeling badly from the night before and was unable to run at his normal pace. Apparently upon returning from his run he told his wife that he was finished with drinking. Bush explains that he did not quit drinking because he believed he was an “alcoholic”; rather he realized that the alcohol was slowing him down and “magnified aspects of his personality that probably don’t need to be larger than they already are”. The result of this decision, Bush says is that he “felt different...had more time to read...had more energy...became a better listener... (and was) more focused and disciplined”. Ibid.

⁴⁷⁵ Mansfield, *The Faith of George W. Bush*: 77.

Compassionately Conservative and Political

Politically, the most visual aspect of George W. Bush's faith has been his focus on the importance of "compassionate conservatism"; a label that he has repeatedly bestowed upon himself, his social programs, and his campaign and administration overall. Bush's two primary intellectual and compassionate guidance counselors in this have been Marvin Olasky and Myron Magnet. Olasky, who has held both academic and journalistic careers, was once a Marxist who joined the Communist Party of the U.S.A. Soon after, having read Christian scripture and Christian authors extensively, he experienced a "born-again" experience and since then has been a devout, conservative Christian and advisor to George W. Bush.⁴⁷⁶ Olasky is currently the editor of *WORLD* magazine, a bi-weekly magazine. His seminal work, *The Tragedy of American Compassion*, introduced the idea of compassionate conservatism and argued that an overwhelming focus on government efforts to alleviate poverty and related problems has caused people to turn away from the most basic of solutions, such as individual responsibility and a reliance on God.⁴⁷⁷ Myron Magnet had a similar influence on Bush's social policy. Also a journalist who has taught at Columbia University, Magnet is now the editor-at-large of the *City Journal*, a publication of the conservative think-tank, The Manhattan Institute,

⁴⁷⁶ For more information concerning Marvin Olasky and *WORLD* magazine see, D.E. Smith, "India as a Secular State," in *Secularism and its Critics*, ed. Rajeev Bhargava (Oxford: Oxford University Press, 1998).

| ⁴⁷⁷ Marvin Olasky, *The Tragedy of American Compassion* (Wheaton, IL: Crossway Books, 1995).

and writes extensively concerning social issues and American politics.⁴⁷⁸ Magnet's book *The Dream and the Nightmare*, adds to the call for a return to religious values and argues that, the "feel-good permissive values of the 1960s undermined the strength of families and created a dependency on government."⁴⁷⁹ Both Magnet and Olasky contend that the war on poverty, as led by the federal government, has hindered rather than helped; actually deepening the nation's social problems. Compassionate conservatism calls upon citizens and politicians alike to break the cycle. Rather than allowing the continuation of prevailing attitudes toward the poor that have simply perpetuated the problem; "the poor need the larger society's moral support; they need to hear the message of personal responsibility and self-reliance, the optimistic assurance that if they try-as they must-they will make it."⁴⁸⁰ Prior to the widespread focus on welfare support, Olasky explains, moral, and material, support was often provided by religious and community groups. He focuses on the need for these groups to be reawakened to their role, and encouraged as primary providers of social services.⁴⁸¹ Bush, having been newly awakened to his own faith,

⁴⁷⁸ For more details concerning Magnet's career, The Manhattan Institute and the City Journal see, "Myron Magnet Biography," Manhattan Institute, <http://www.manhattan-institute.org/html/magnet.htm>.

⁴⁷⁹ Ronald Kessler, *A Matter of Character: Inside the White House of George W. Bush* (New York: Sentinel, Penguin Books, 2004), 58. Ronald Kessler is a former Washington Post author who now works at [newsmax.com](http://www.newsmax.com), a conservative website and magazine. His account of the George W. Bush White House was hailed by Bush supporters as one of the first to "finally set the record straight", after numerous books attacking the Bush Presidency had been published. "Ronald Kessler Biography," <http://www.newsmax.com/blogs/RonaldKessler/bio-69>.

⁴⁸⁰ Myron Magnet, "What is Compassionate Conservatism?," *The Wall Street Journal* 1999.

⁴⁸¹ Olasky, *The Tragedy of American Compassion*.

took up the banner of compassionate conservatism and began to champion it in his campaigns.

For Bush, compassionate conservatism offered an opportunity to close the “gap of hope” that the needy in American were facing. Rather than searching for the solution in government programs, Bush called upon compassionate conservatism to,

outline a new vision of the proper role for the American government. Government must be limited and focused, but it has an important job within its bounds. Government is too often wasteful and overreaching. But we must correct it and limit it, not disdain it...in some cases, the job is best done not by government itself, but by directing government resources to neighborhoods and parents and schools and faith-based institutions that shape values and change lives. Compassionate conservatism is neither soft nor fuzzy. It is clear and compelling. It focuses not on good intentions but on good results. Compassionate conservatism applies conservative, free-market principles to the real job of helping real people, all people, including the poor and disadvantaged. My vision of compassionate conservatism also requires America to assert its leadership in the world. We are the world’s only remaining superpower, and we must use our power in a strong but compassionate way to help keep the peace and encourage the spread of freedom.⁴⁸²

As Bush advanced his compassionate conservatism agenda, conservatives throughout the nation began to take note. Most importantly, “even detractors soon realized that Bush was actually doing what conservatives had talked about in theory for decades...even Bush’s critics admitted that some cooperation was needed between private and public services.”⁴⁸³ The successes that Bush and his compassionate agenda began to amass would later carry over into his campaign for

⁴⁸² Bush, *A Charge to Keep: My Journey to the White House*: 235-36.

⁴⁸³ Mansfield, *The Faith of George W. Bush*: 101-02.

the presidency and, combined with his own strong personal faith and spirituality, find a very receptive audience in an American public weary of the scandals and deceitfulness they had perceived in the Clinton administration. In fact, as David Frum, White House economic speechwriter between 2000-2002 explains in *The Right Man*, his “insider” account of his time in the White House, what the American public, and Bush’s supporters in particular, wanted from Bush was “something much simpler: They wanted him not to be Clinton.”⁴⁸⁴

The Presidential Campaign: 2000

As is often the case when a political star is on the rise, toward the end of his second term as Governor of Texas, George W. Bush began to be courted not only by members of his own administration and leaders of the Republican party, but also by leaders of the national faith community who were impressed with the effects that “compassionate conservatism” had demonstrated in Texas.⁴⁸⁵ James Robinson, who is largely considered the heir apparent to the influential Reverend Billy Graham,

⁴⁸⁴ David Frum, *The Right Man: An Inside Account of the White House* (Random House Trade Paperbacks, 2005), 9. Ironically, observers have noted that one of the main contenders in the 2000 election was President Bill Clinton. According to Emmett Buell, Clinton’s preceding presidency and his persona itself, “cast a giant shadow on the 2000 elections”. In light of Clinton’s previous moral failings in the eyes of the American public, his impeachment at the hands of the Republican members of the House in 1998, and the scandals that seemed to spring up around every corner of the Clinton White House- from the Lewinsky scandal to Whitewater; both Bush, Jr. and Al Gore focused on distancing themselves from the Clinton Administration throughout the race for president. Emmett H. Buell, Jr., "Review: The 2002 Elections: Reviewed Works: *The Perfect Tie: The Story of the 2000 Presidential Elections* by James W. Ceasar, Andrew E. Busch; *America's Choice 2000* by William Crotty; *The Elections of 2000* by Michael Nelson; *The Election 2000* by Gerald M. Pomper," *The Journal of Politics* 64, no. 2 (2002): 633, 44.

⁴⁸⁵ Further detailed discussion of the implementation of Charitable Choice in Texas will be provided in another chapter.

was one of the most active members of the faith community to help Bush in his bid for Presidency as the Republican candidate for 2000. With Robinson's support, on both a personal and political level, Bush was introduced to, and began to forge relations with various religious leaders nationwide such as, Tony Evans, Bishop Keith Butler, Ed Young Jr., and David Walker, among others from various denominations: "Pentecostal, Southern Baptist, Charismatic,... and more mainline Baptists and Methodists".⁴⁸⁶ Bush's ability to relate to and incorporate any number of these leaders in his campaign; reaching across racial and denominational lines as opposed to getting too caught up in one or another groups' ideas, interests, or concerns was a skill that also served Bush well in the early stages of his campaign.⁴⁸⁷ Despite the strong support Bush was enjoying from these varied religious organizations, the Religious Right itself did not, at first, actively support Bush as a Presidential candidate.⁴⁸⁸ This obstacle was overcome as a result of two factors, first, Bush was endorsed by Pat Robertson, whose efforts on Bush's behalf were very helpful in convincing other leaders in the Religious Right to accept Bush as a potential candidate, and second, Bush was well served by his previous experience as his father's liaison to the religious world during Bush Sr.'s 1988 campaign.⁴⁸⁹

⁴⁸⁶ Mansfield, *The Faith of George W. Bush*: 109-11.

⁴⁸⁷ Ibid., 112.

⁴⁸⁸ Ibid.

⁴⁸⁹ In 1988, together with prominent evangelist Doug Wead, who was also a major player in the conservative political world, it was George W. who was given the initiative to compose the Bush campaign's religious method. As Mansfield describes it, Bush Jr. was selected to work on this aspect of his father's campaign because he "spoke the language" of the Religious Right. He knew which issues were more or less important to religious groups and he knew how to most effectively deliver

Although the Bush family had long been affiliated with the Republican Party, originally, the mainstream Republican Party and its conservative leaders were wary of Bush's new labeling of "compassionate conservatism". By qualifying his own position as "compassionate" conservatism, Bush was, other conservatives feared, inadvertently implying that "there was something wrong with being a conservative".⁴⁹⁰ During the Republican primaries, in fact, much criticism was leveled at Bush's philosophy for representing a "slur in past Republican accomplishments".⁴⁹¹ However, simultaneously, for a great many Republicans, "compassionate conservatism" represented much more than "an empty slogan...it was a well-formed domestic policy agenda".⁴⁹² In fact, as Magnet predicted in his Wall Street Journal article of February 1999, "...in the next election compassionate conservatism will change the face of American politics."⁴⁹³

After securing his position as the Republican Party's Presidential candidate for the 2000 elections⁴⁹⁴, Bush was able to step back and begin to formulate his plan

his father's political message while simultaneously building support for and trust in the Bush campaign. Bush Jr. was charged with maintaining good relations with the Evangelicals, members of the mainline denominations, the socially conservative Catholics, the Charismatics, and the Pentecostals; many of whom he would later meet with, and gain the support of, during his own bid for the Presidency. According to a staffer in the Bush Sr. campaign, "his father wasn't comfortable dealing with religious types...George knew exactly what to do".
Ibid.

⁴⁹⁰ Kessler, *A Matter of Character: Inside the White House of George W. Bush*: 58.

⁴⁹¹ Magnet, "What is Compassionate Conservatism?."

⁴⁹² Ibid.

⁴⁹³ Ibid.

⁴⁹⁴ According to James Caesar and Andrew Busch, Bush's advantage was that he "figured out how to campaign effectively against Clinton"; primarily through seemingly unrelated references to honor and dignity inserted into each speech; these allowed Bush to practice "anti-Clintonism" without pushing it onto the open agenda. Constantly openly critiquing Clinton would not have actually served

of attack for the general election.⁴⁹⁵ This was an important opportunity for Bush to re-formulate his message, from the more rightward lean he had needed to defeat McCain, towards a more centrist position geared for a more general audience, and heavily infused with Bush's ideas of "compassionate conservatism"; the ideology that would serve as the backbone for most of his primary initiatives.⁴⁹⁶ Based on inclusive themes that would allow Bush to incorporate politically important groups such as African-American and Hispanic voters, "compassionate conservatism" was

Bush very well, Dionne explains, especially when Clinton was not even in the race, and had actually left the country, politically and economically, if not morally, in a better place than when he took office eight years ago. In fact, Clinton had helped to lead the nation by ending the budget deficit and actually achieving a budget surplus, by modifying the view of the government as the "problem" as opposed to the "solution", by diminishing the lines dividing "race, religion, culture, and sexual orientation"; all the while managing to also survive impeachment! See, E.J. Dionne, "The Clinton Enigma: Seeking Consensus, Breeding Discord," in *The Election of 2000: Reports and Interpretations*, ed. Gerald M. Pomper (New York, New York: Chatham House Publishers, 2001), 10; Buell, "Review: The 2002 Elections: Reviewed Works: *The Perfect Tie: The Story of the 2000 Presidential Elections* by James W. Ceasar, Andrew E. Busch; *America's Choice 2000* by William Crotty; *The Elections of 2000* by Michael Nelson; *The Election 2000* by Gerald M. Pomper." However, with the end of the Clinton era, both parties were forced to hold open nominating races and while Al Gore represented a logical, if not probable candidate for the Democrats, Bush was forced to win his own nomination the hard way. According to Buell, then-Governor Bush was actually aided significantly in his quest for the Republican nomination by his election to the Governor's seat in 1998. During the 1998 election in Texas, Buell explains, Bush won his reelection, "in a landslide", making a good showing with women, Hispanics, and Blacks. William Mayer explains that in addition to this strong showing among minority groups, Bush's moderate positions on issues such as bilingual education, aid to illegal immigrants, and focus on bipartisan understanding and cooperation, spurred the Republican leadership to rally behind Bush. The result of this party support, and the appeal that Bush's message had to the core of the Republican Party was most fully demonstrated, according to Caesar and Busch, in the Iowa straw poll 1999. Although his major opponent, John McCain did not participate, Bush won the largest percentage of the vote and set himself up for the nomination as his victory, "decimated the prospects and drained the treasuries of several rivals." Despite Bush's major loss in New Hampshire and the "nasty" race between the potential Republican nominees in South Carolina and Michigan, Bush was able to guarantee his nomination by March 7th. See, William G. Mayer, "The Presidential Nominations," in *The Election of 2000: Reports and Interpretations*, ed. Gerald M. Pomper (New York: Chatham House Publishers, 2001); James W. Ceasar and Andrew E. Busch, *The Perfect Tie: The True Story of the 2000 Presidential Elections* (Rowman and Littlefield, Inc., 2001); Buell, "Review: The 2002 Elections: Reviewed Works: *The Perfect Tie: The Story of the 2000 Presidential Elections* by James W. Ceasar, Andrew E. Busch; *America's Choice 2000* by William Crotty; *The Elections of 2000* by Michael Nelson; *The Election 2000* by Gerald M. Pomper."

⁴⁹⁵ Ceasar and Busch, *The Perfect Tie: The True Story of the 2000 Presidential Elections*.

⁴⁹⁶ Ibid.

also expanded to include two of Bush's other policy foci, social security reform, for which he recommended the Faith-Based Initiative as a means to alleviate suffering and provide aid for needy portions of the population, and education, in which his "No Child Left Behind" agenda called on whole communities to rally to improve education and prospects for all children.⁴⁹⁷

In the end, the election⁴⁹⁸ was actually decided in a "post-election" election, in Florida. Again here Bush benefitted from a number of realities; first he was more successful among Hispanic voters; and, although he received only a tiny fraction of African American votes, this translated into a significant advantage in Florida; second, the haste in which major television networks proclaimed Bush "President-elect" on election night strongly influenced public opinion and swayed the decision-making mechanism towards Bush from the outset; and third, Republican control of the House and Senate, along with strong Republicans within Florida, Governor Jeb

⁴⁹⁷ Bush's other priorities were tax cuts, an energy bill, and military upgrades and a missile defense shield; all of which drew the interest of Republican voters. Gerald M. Pomper, "The Presidential Election," in *The Election of 2000: Reports and Interpretations*, ed. Gerald M. Pomper (New York: Chatham House Publishers, 2001).

⁴⁹⁸ In addition to getting his message out clearly, and gaining a good deal of support from previously untapped portions of the electorate, Bush also benefitted from the over-arching idea that he was less intelligent than Al Gore; especially in the three presidential debates that he took part in with Gore. Because viewers had low expectations concerning Bush's general intelligence, knowledge, and debating capacity, Bush's performance-by default- was well received. Gore, on the other hand, was unable to reach the high expectations that his years as vice-president and general reputation as a well-educated, eloquent orator had defined for him. James Campbell explains that the first debate, and Bush's relatively good performance in it, helped to convince the public that Bush was, in fact, smart enough to be President. Gore underperformed again in the second debate and, while able to regain his footing in the third, was too late to "alter many impressions". Overall, Nelson summarizes the role played by the debate performances in that Bush, while not necessarily a standout debater was consistent and clear while Gore's waffling raised questions about "who he really was". See, Michael Nelson, ed. *The Elections of 2000* (CQ Press, 2001); James E. Campbell, "The Curious and Close Presidential Campaign of 2000," in *America's Choice 2000: Entering a New Millenium*, ed. William Crotty (Boulder, CO: Westview Press, 2001).

Bush⁴⁹⁹ in particular, all helped to “confer a distinct advantage on Bush”.⁵⁰⁰

However, although the Supreme Court rulings that were eventually handed down that conferred legitimacy and validity on the Bush campaign and administration, many scholars who have analyzed the proceedings concur that the Florida recount that led to Bush’s election as the 42nd President of the United States represented a type of “politics by other means”.⁵⁰¹

The Role of the Evangelicals

The 2000 election season marked the first instance in which religious fundamentalists and evangelical groups turned out en masse to support a common candidate. The amount of support that Bush was able to garner from the more conservative portions of the nation shocked liberals and progressive politicians and, launched much examination and debate.⁵⁰² Since their defeat in the 2000 election

⁴⁹⁹ Jeb Bush is President George W. Bush’s younger brother who served as the 43rd Governor of Florida between 1999-2007.

⁵⁰⁰ Buell, "Review: The 2002 Elections: Reviewed Works: *The Perfect Tie: The Story of the 2000 Presidential Elections* by James W. Ceasar, Andrew E. Busch; *America's Choice 2000* by William Crotty; *The Elections of 2000* by Michael Nelson; *The Election 2000* by Gerald M. Pomper," 650-51.

⁵⁰¹ Benjamin Ginsberg and Martin Shefter, *Politics by Other Means* (New York: W.W. Norton, 1999); Buell, "Review: The 2002 Elections: Reviewed Works: *The Perfect Tie: The Story of the 2000 Presidential Elections* by James W. Ceasar, Andrew E. Busch; *America's Choice 2000* by William Crotty; *The Elections of 2000* by Michael Nelson; *The Election 2000* by Gerald M. Pomper," 651.

⁵⁰² For further reading concerning the sentiments of the Democrats and the Left in America concerning the relationship between liberal politics and religion see, Sullivan, *The Party Faithful: How and why the Democrats are Closing the God Gap*; Wallis, *God's Politics: Why the Right Gets It Wrong and the Left Doesn't Get It*; ———, *Faith Works: How Faith-Based Organizations are Changing Lives, Neighborhoods and America* (San Francisco, Tulsa: Council Oaks Books, LLC, 2000,2001); Clarkson, *Dispatches from the Religious Left: the Future of Faith and Politics in America*; Jim Wallis, *The Great Awakening: Reviving Faith and Politics in a Post-Religious Right America* (New York: Harper One: Harper Collins Publishers, 2008).

(and subsequently in the 2004 election), leading conservative Democrats, have written and spoken extensively concerning the need for change in the tactics of the Democratic party; arguing that the time has come for Democrats learn to appeal to and harness their own stores of more conservative, values based voters. Tired of being seen as having little understanding or connection to the faith world, or worse, as having no faith at all, leading liberals and liberal religious figures, such as Amy Sullivan, a former aide to Tom Daschle and editor at Time magazine, Barry Lynn of Americans United for the Separation of Church and State, Jim Wallis of the Sojourners, former Vice President Al Gore and his running mate Lieberman, have all called upon Democrats to be more open to the religious ideas and faithful within their rank. In her book, *The Party Faithful: How and Why the Democrats are Closing the God Gap*, Sullivan looks closely at the manner in which Democrats historically lost touch with the rising numbers of evangelicals in the United States. Sullivan, offering a thorough analysis of the political and historical events that led to the disconnect between Democrats and religion, explains that, the Democrats, “largely threw religion overboard” in terms of their political platform; quickly losing any chances that they may have had to connect with a significant portion of the believing electorate. Michael Lindsay expands on this notion and explains that, “In essence, Democrats, like Republicans, have drawn upon both expressive and institutional components of political action to form alliances with American evangelicalism. However, relations between the political Left and evangelicalism are not as cohesive as they are between evangelicalism and the political Right,

which is not surprising given the divergent paths pursued by the two national parties since the 1960s.”⁵⁰³

Academics observing the recent monopoly of Republican power in religious circles have also chronicled the political prowess of the Republican movement and the Religious Right. In a recent article, Dr. Jean Hardisty and Deepak Bhargava list the crucial “secrets of their success”. First and foremost, as mentioned repeatedly in analyses of the Religious Right, there is “no monolithic conservative movement but rather a plethora of ideologies successfully harnessed together in a grand coalition”.⁵⁰⁴ This ability to encourage and engage different points of view within a general movement, and their ability to successfully combine different strands of what is essentially the same ideology has helped propel the Right to political success.⁵⁰⁵ Additionally, as Robert Wuthnow discovered in his study of faith-based activism and mainline Protestant churches, “rather than direct intervention in the political processes of elections and public-policy advocacy, the mainline churches are indirectly influential, through their influence on the broader ‘civic culture’ . They preach a gospel of social involvement that encourages their congregants’

⁵⁰³ Lindsay, "Ties that Bind and Divisions that Persist: Evangelical Faith and the Political Spectrum."

⁵⁰⁴ Jean Hardisty and Deepak Bhargava, "Wrong about the Right," in *Dispatches from the Religious Left: The Future of Faith and Politics in America*, ed. Frederick Clarkson (Brooklyn, NY: Ig Publishing, 2009), 130.

⁵⁰⁵ For further reading concerning the rising power of the Religious Right in American politics see, Kenneth D. Wald and Allison Calhoun-Brown, *Religion and Politics in the United States* (Lanham, MD: Rowan and Littlefield Publishers, Inc., 2007); Bruce, *Fundamentalism*; Robert Wuthnow, "Religion," in *Understanding America: The Anatomy of an Exceptional Nation*, ed. Peter H. Schuck and James Q. Wilson (New York: Publicaffairs, 2008); Clyde Wilcox and Carin Larson, *Onward Christian Soldiers: The Religious Right in American Politics* (Boulder, CO: Westview Press); Smith, *Christian America? What Evangelicals Really Want*; Michelle Goldberg, *Kingdom Coming: The Rise of Christian Nationalism* (New York, London: W.W. Norton & Company, 2006).

participation in debates about the common good...they collaborate with other groups...they provide spaces for public discourse...the churches influence public life in significant ways.”⁵⁰⁶

The movement has also been able to focus on “ideas, not messages”; promoting a “general ideological blueprint for their movements” and converting ideas that were originally outside the general scope of “accepted political discourse” into a coherent set of conservative issues, including current mainstays of “support for family values, limited government, a strong military, white domination, and the primacy of Christianity over other religions”.⁵⁰⁷ Active listening, focusing significant effort on converting believers and recruiting them to the movement, presenting their political positions fearlessly and boldly, have all influenced the scope and power of the Right. Finally, unlike their liberal counterparts, the Right very deftly used electoral politics as a means, rather than an end. As such, the Right did not focus on using their politics simply to get state and federal officials elected. Instead, they aspired to a “takeover of the (Republican) party” that “was important because it would turn the country toward a reactionary agenda...approaching the movement-building as a whole package...explains much of the right’s growth and effectiveness.”⁵⁰⁸

Sullivan, in an attempt to assuage the Left, expands the explanation of the Right’s success and notes that, “The disparity (between Democratic and Republican

⁵⁰⁶ Robert Wuthnow and John Evans, eds., *The Quiet Hand of God: Faith-Based Activism and the Public Role of Mainline Protestantism* (Berkeley, CA: University of California Press, 2002).

⁵⁰⁷ Hardisty and Bhargava, "Wrong about the Right," 131.

⁵⁰⁸ Ibid., 133.

efforts and successes at reaching values voters) had a lot to do with the fact that religious conservatives had a three decade head start and millions in funds at their disposal...and incredibly sophisticated methods of reaching religious voters, and they coordinated those efforts with the work of religious conservatives.”⁵⁰⁹

However, since the 2000 (and 2004) elections, the American political landscape shows that increasing Democratic understanding of their lack of serious engagements with the more religious elements of U.S. society, Democrats “today are edging their way toward greater engagement of religious themes and constituencies, but they know they must tread lightly to avoid alienating their secular supporters” while still appealing to their liberal minded “believers”.⁵¹⁰ As Lindsay cautions, “It remains to be seen if Democrats’ more recent strategies, framing particular policy initiatives, and establishing supportive organizational networks like the Democratic Faith Working Group, will decrease the distance between their party and evangelicals.”⁵¹¹

One of the most vocal liberal voices on the subject of Democrats and religion is Jim Wallis, founder of the Sojourners group, a faith-based organization that has been very active, not only in inner city Washington DC, but also at the national level. Wallis’ group designed and implemented the “Call for Renewal” campaign that has pressed national politicians to be more aware of religion, to avoid using it for personal and political gain, and to recognize that what faith requires is

⁵⁰⁹ Sullivan, *The Party Faithful: How and why the Democrats are Closing the God Gap*: 145.

⁵¹⁰ Ibid.

⁵¹¹ Lindsay, "Ties that Bind and Divisions that Persist: Evangelical Faith and the Political Spectrum."

action, especially for the disadvantaged members of society. Wallis' view is that Democrats have become too focused on restricting religion to the private sphere, while Republicans have used religion to drive a number of hot button issues while simultaneously manipulating religion so that it does not adversely affect their own agenda. Although Wallis notes that, for example, in the 2004 elections, Republicans were too quick to use religion simply for political gain, he cautions that Democrats should avoid reacting too vehemently and explains that,

Today there are new fundamentalists in the land. These are 'secular fundamentalists', many of whom attack all political figures who dare to speak from their religious convictions. From the Anti-Defamation League to Americans United for the Separation of Church and State, to the ACLU and some of the political Left's most religion-fearing publications, a cry of alarm has gone up in response to anyone who had the audacity to be religious in public. These secular skeptics often display an amazing lapse of historical memory when they suggest that religious language in politics is contrary to the 'American ideal'. The truth is just the opposite. As we have discussed, many of the most progressive social movements in American history—anti-slavery, women's suffrage, the fight for child labor laws, and the civil rights movement—had overt religious roots and motivations.⁵¹²

Sullivan and Wallis' recognition of the role that religion has played in American politics and history and the need for an awareness of the religiosity in the general American public, affiliated or not, is clearly demonstrated by the rise the religious "nones". Another significant voting block, the "nones" have become increasingly influential in forming the relation between religion and politics in contemporary American society in recent decades. These voters who, while "believers" in some capacity, are not formally affiliated with any specific religion or denomination, are

⁵¹² Wallis, *God's Politics: Why the Right Gets It Wrong and the Left Doesn't Get It*.

generally Democrats, primarily liberal ideologically, often support gay rights and abortion, and are increasingly interested in environmental issues. The “nones” have not been, “without political significance. Because the Democratic Party knows this constituency is by and large on its side, Democratic candidates have taken great care not to overdo religious rhetoric on the campaign trail.”⁵¹³ Laura Olson notes that Democratic awareness of the political value of the “nones” and other non-religious voters, the Party’s effort to accommodate these voters, and the “Democrats’ reluctance to do religion”, has, in recent elections, “given the Republicans a powerful strategic advantage among religious constituencies.”⁵¹⁴ Added to this general trend, explains Robert Putnam, in *Bowling Alone*, the influential book which considers social capital in the United States and traces its general decline in recent years, is the phenomenon of technological change, the rise of a “television generation”, and declining interest in civic engagement, all of which have all further affected degrees of American religious affiliation.⁵¹⁵ His extensive studies of American social culture confirm Olson’s belief that religious practice has become increasingly less denominational, with “believers” less inclined to belong to any one institution and more focused on “self-defined” styles of faith and worship.⁵¹⁶

Since the clear Republican advantage in religious votes in the 2000 election, Democrats have begun to expend more political capital on courting religious votes,

⁵¹³ Olson, "Religious Nones: An Untapped Constituency."

⁵¹⁴ Ibid.

⁵¹⁵ Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (Simon and Schuster, 2001).

⁵¹⁶ Ibid.

modifying their party platform to accommodate more belief oriented citizens, and presenting candidates, such as Barack Obama, who are not afraid to speak about their personal faiths and religious experiences. Although the sitting Bush Administration was a strong candidate and quickly consolidated its religious votes in the 2004 election, the 2008 Presidential campaign offered proof of the new Democratic effort and more open religiosity.⁵¹⁷ For the first time, religion took center stage in the campaign. The heightened focus on and the prominent place that religion took in the campaign was because,

religious conflict over the past three decades has taken on a new form. Until the 1970s, the divide was between the mostly Republican Protestant majority and mostly Democratic Catholic and Jewish minorities, but both political parties retained at least a tacit commitment to so-called Judeo-Christian values. From the late 1970s until today, however, conservative Protestants, Catholics, and Jews have increasingly found common cause in so-called moral values issues, whereas the American left has become increasingly secular...A division between religious conservatives...and religious liberals or secularists has therefore replaced the fault lines between Protestants and Catholics and between Christians and Jews...The rise of politically engaged religious groups and religious leaders concerned with public policies...has increased these divisions.⁵¹⁸

Understanding the manner in which George W. Bush was able to capitalize on the rising power of the Christian fundamentalist movement, along with the coalition of conservative religious voters mentioned above, while Democrats were left at a significant disadvantage adds a crucial dimension to the continued interaction between religion and politics that seems, with the Bush Presidency, to have reached

⁵¹⁷ Daniel DiSalvo and Jerome E. Copulsky, "Faith in the Primaries," *Perspectives on Political Science* 38, no. 2 (2009).

⁵¹⁸ Lindsay, "Ties that Bind and Divisions that Persist: Evangelical Faith and the Political Spectrum."

a peak point. Unlike the difficult to pinpoint, and rapidly changing, definition of the separation of church and state in the United States, or the contentious question of secularization theory and its applicability in the U.S. case, the issue of Protestant Evangelicalism specifically, and the role of the Religious Right in politics is much easier to quantify and therefore, understand. Despite changes occurring in the overall the focus of religion in the United States, and the clear increase in the number of “alternative religions”, such as religion for self-help and Eastern spirituality, efforts by conservative Christian groups to dominate not only the religious landscape, but also the public square, have paid off. Conservative Christians have become increasingly prominent and powerful in recent elections; possibly because, the American political structure itself may have promoted and perpetuated this shifting power structure. Bruce explains that the federal and diffuse structure present in America allows conservative Christians the freedom to construct distinct sub-cultures in which Christianity retains hegemony, as such, the political system itself in the United States actually makes it easier for conservative Christians to have an impact.⁵¹⁹ In fact, as seen in Chapter Three, the continued presence of such a strong Protestant Evangelical movement has forced scholars to reevaluate their ideas concerning America and the secularization thesis. For the purposes of this study, the powerful Evangelical movement and the confidence it provided President George W. Bush, represents one cornerstone of support for the creation and continuation of first the Charitable Choice Act, and later, the Faith-Based Initiative.

⁵¹⁹ Bruce, *God is Dead: Secularization in the West*: 205.

CHAPTER SIX
THE FAITH-BASED INITIATIVE

Charitable Choice and the Compassionate Movement:

The Faith-Based Initiative is Born

The ideals of the Religious Right, the Protestant Evangelical movement, and the compassionate conservatism introduced on the national stage by George W. Bush all culminated, in 2001, with the founding of the White House Office for Faith-Based and Community Initiatives. As we have seen, and will discuss in more detail in subsequent sections of this chapter, the Faith-Based Initiative was born, in large part, from the application of the 1996 Charitable Choice Act in Texas. Focusing on the experiences he had with faith-based organizations during his time as Governor of Texas, and meshing the results seen in the Texas case with the general ideas of compassionate conservatism and a belief in the effectiveness of faith-oriented service provision, Bush proposed the idea of the Faith-Based Office early in his campaign. Despite a number of legislative setbacks, the Office was eventually created with two Executive Orders⁵²⁰ in January 2001.

The mission statement of the White House Office for Faith-Based and Community Initiatives, as stated on the Office's website, explains the goals of the Initiative,

Identifying and eliminating barriers that impede the full participation of Faith-Based and Community Organizations in the Federal grants process; Ensuring that Federally-funded social services administered by State and local governments are consistent with equal treatment

⁵²⁰ See <http://georgewbush-whitehouse.archives.gov/government/fbci/executive-orders.html>

provisions; Encouraging greater corporate and philanthropic support for Faith-Based and Community Organizations' social service programs through public education and outreach activities; Pursuing legislative efforts to extend charitable choice provisions that prevent discrimination against faith-based organizations, protect the religious freedom of beneficiaries, and preserve religious hiring rights of faith-based charities.⁵²¹

Reverend Mark V. Scott, one of President Bush's advisors, summarizes the compassionate role that the White House encouraged the Office of Faith-Based Initiatives to undertake through the bolstering of faith-based organizations who "have relationships with one another, with people around the community, with people in government agencies and in other human services agencies, and they can function as an adhesive, as glue. They are able to connect people to services because of their presence in the community and because of the depth and variety of their relationships and the freedom they have to go and work where there is a need, at the courthouse, at the police station, the health center, the community development corporation."⁵²²

Given its compassionate and conservative mission, the Bush plan focused on five essential policy assumptions; first that "compassion is a government and public concern"; second, that the government can actually encourage the participation of Faith-Based and Community Organizations in social service provision without actually changing the essential missions of these organizations; third, that "charity groups can never replace government involvement"; fourth, government can treat

⁵²¹ "The White House Office of Faith-Based and Community Initiatives: Compassion in Action," United States government, www.fbc.gov.

⁵²² Reverend Mark V. Scott as quoted in Doug Brown and Jeanie Stokes, "Losing Faith: Turf Battle Derails Funding," *The Nonprofit Times* 1(2002).

faith-based organizations and secular non-profit organizations equally; fifth, faith-based organizations will always have the ear of the George W. Bush White House without having to face any policy implications or the imposition of any solutions.⁵²³

Brown and Stokes explain that the White House Office of Faith-Based and Community Initiatives honed in on adjusting six points of enforcement; increased tax incentives, specifically such that charitable donations of food and other goods would receive higher deductions, and stipulations that would encourage needier families in their efforts to save money; implementation of streamlined rules that would facilitate the creation of 501(c)(3) organizations by grassroots groups; changes in the grant application process rules that had previously given “grant bonus points” to prior grantees-thus giving new applicants a way into the process; the foundation of the “Compassion Capital Fund” with 100 million dollars endowment that would be used to educate sacred and secular groups concerning how to access social service dollars; utilization of the Corporation for National and Community Service to train and provide volunteers in these organizations; and focusing of efforts to “heap help” on the toughest problems, including a 65 million dollar national mentoring of children of prisoners program.⁵²⁴ Jim Towey, the second director of the White House Office of Faith-Based and Community Initiatives, explains that these efforts will, hopefully, help to “knock down the barriers that prevent churches, synagogues, mosques and other faith-based groups from receiving federal funds to carry out an essential part of their mission; serving

⁵²³ JoRenee Formicola and Mary C. Segers, "The Bush Faith-Based Initiative and the Catholic Response," *The Journal of Church and State* 44, no. 3 (2002): 696.

⁵²⁴ Brown and Stokes, "Losing Faith: Turf Battle Derails Funding," 4-5.

the needy.”⁵²⁵ Olasky, looking at the Office from the perspective of compassionate conservatism, explains that faith-based, and community organizations are often at a disadvantage in the federal grant application process; he notes that to make a difference the Office must focus on creating “legislation establishing a level playing field for any organization that’s fighting poverty.”⁵²⁶

Welfare Reform and Charitable Choice

The specific features and general functioning of the American federal system of government have played a significant role in the trajectory that the American welfare system has followed since the nineteenth century. The division of powers among the levels of national, state, and local government renders each level of government legally autonomous in its own realm. However, each is held to and must also follow the laws and regulations delineated by correspondingly higher levels of authority. In addition, numerous social, educational, and health care programs that are controlled by federal oversight are actually implemented to varying degrees by state and local governments. Historically, poverty relief in the United States was part of the responsibility of each individual community, seldom reaching even to the level of the state government. Religious organizations, as part of their “missions”, were often the main providers of local assistance and care and administered primarily to those who were truly deserving; generally families in

⁵²⁵ Joe Feuerherd, "Faith-Based Chief Faces Ideological Minefield," *The National Catholic Reporter* 38, no. 43 (2002).

⁵²⁶ Brown and Stokes, "Losing Faith: Turf Battle Derails Funding," 5.

which the breadwinner was, “dead, disabled, or...absent”. Until the 1930s and the Great Depression, the Protestant ethic dictated that poverty was mainly a personal matter that could be solved through personal effort and work. With the realities of the economic crisis and the ever-increasing numbers of unemployed and poor, the federal government, through President Franklin D. Roosevelt’s introduction of the New Deal in 1935, was forced to become an active player in the alleviation of poverty.⁵²⁷

Originally however, the federal welfare system represented only a modest means of monetary assistance to extremely needy families; most relief was centered in the opportunity to find work and support through publicly funded jobs created under the Works Progress Administration. Despite the lack of monetary compensation, this new system demonstrated that the overarching mentality vis-à-vis need had begun to shift toward a new attitude that “gave legal currency to progressive reformers’ definition of poverty as a public issue rather than a private trouble...it was difficult for most Americans of this era to conceive of poverty as a purely individual matter.”⁵²⁸ Still, according to Ronald Sider, at the outset, the majority of welfare recipients were single-mothers and their children, people who could work were expected to do so and monetary assistance was not readily available.⁵²⁹ Social services and assistance programs were, however, provided by

⁵²⁷ Jim Powell, *FDR's Folly: How Roosevelt and his New Deal prolonged the Great Depression* (New York: Crown Forum, 2003).

⁵²⁸ John P. Bartkowski and Helen A. Regis, *Charitable Choices: Religion, Race and Poverty in the Post-Welfare Era* (New York: New York University Press, 2003), 50.

⁵²⁹ Ronald J. Sider, *Just Generosity: A New Vision for Overcoming Poverty in America*, Second ed. (Grand Rapids, MI: Baker Books, 2007), 228.

local governments and community organizations, churches in particular, during these decades. In time, Congress reorganized the federal assistance program placing widows and wives of the disabled under the umbrella of the existing old age insurance program, later to become Social Security, and by the end of the 1950s, welfare, as monetary assistance, was provided only for mothers and children of absent fathers.⁵³⁰

The 1960s saw the rise of a new era of welfare. The civil rights movement, coupled with the multiple other societal changes of the decade, such as gender equality and a new attitude toward sexual relations, resulted in demographic changes that required government attention. Not only had the number of people who could not afford adequate health care risen, but new ways of life had produced a large number of unmarried, single parents and children born out of wedlock. In addition, Sider reports that this period also saw a dramatic change in the general attitude towards welfare; what was once an embarrassment was now seen as an entitlement as more and more people applied for, were deemed eligible, and received welfare benefits. Statistically, in the early 1960s, only 33 percent of families that applied for welfare had been granted assistance, by 1971, the number of families eligible for benefits had risen to 90 percent.⁵³¹ The economic downturn of the 1970s occurred within this atmosphere and by the early 1980s huge gaps appeared in the existing system. Inflation and economic recession caused a

⁵³⁰ Bartkowski and Regis note that even these benefits were often hard to come by, single mothers' homes were often "raided" by Social Security officials in order to ascertain whether or not the women were living with men. Bartkowski and Regis, *Charitable Choices: Religion, Race and Poverty in the Post-Welfare Era*: 52.

⁵³¹ Sider, *Just Generosity: A New Vision for Overcoming Poverty in America*: 228.

situation where benefits were no longer sufficient to support families and welfare mothers were forced to resort to “cheating” the system in order to make ends meet. It was during this period that the negative view of welfare mothers and “welfare queens”, mothers who have children simply to receive ever greater welfare benefits became pervasive and calls for welfare reform increased.

Unfortunately, attempts to reform the system, decrease benefits, encourage long term self-sufficiency and responsible parenting were, on the whole, unsuccessful. Under President Reagan, efforts to rework welfare were endeavored with The Family Support Act of 1988 which required

states to establish a job opportunity and basic skills training program to help needy families with children obtain the education, training, and employment that will help them avoid longterm (sic) welfare dependence...guarantee child care services to families receiving Aid to Families with Dependent Children to the extent that such services are necessary for a family member's employment or participation in a state-approved education or training activity...provides families losing Aid to Families with Dependent Children benefits because of an increase of income or employment hours...transitional child care and transitional Medicaid health coverage...⁵³²

This new focus on employment versus benefits and state responsibilities to encourage and provide long-term employment opportunities represented the initial re-focusing of federal assistance on the importance of work. Although it was unsuccessful in this instance, by 1994, as many as 14.8 percent of families with children were receiving some type of welfare; the Family Support Act set the stage for subsequent attempts to reform the United States system of poverty assistance.⁵³³

⁵³² "Public Law 100-485, Family Support Act of 1988, 13 October 1988.," <http://www.ncbi.nlm.nih.gov/pubmed/12289195>.

⁵³³ ———, *Just Generosity: A New Vision for Overcoming Poverty in America*: 229.

An enduring philosophical argument concerning welfare has focused on the question of whether the provision of benefits for essentially negative behaviors simply perpetuates the whole system. Often, welfare recipients become caught in a vicious circle where full time employment may actually be less beneficial than remaining unemployed, unmarried, and bearing children out of wedlock. During the Reagan years, conservative attitudes focused on the value of work, the realities of the economy, and the belief that any type of government assistance or redistribution of wealth simply served to propagate poverty while undermining self-sufficiency. Conservatives postulated that only fully experiencing “the spur of poverty” would entice the poor to work harder.⁵³⁴ The pinnacle of this debate pitted conservatives, arguing that it was welfare itself that caused social problems, against liberals, countering that with or without welfare the problems would exist. By the early 1990s, however, conservative or liberal, the reigning attitude was that the United States welfare system, as it stood, required major changes. President Bill Clinton campaigned on the promise that he would “end welfare as we have come to know it”, and by the end of his first term, the Republican majority in Congress had passed the Personal Responsibility and Work Opportunity Reconciliation Act.⁵³⁵ Although the Act was originally twice vetoed by President Clinton, by the end of August 1996, just prior to the 1996 Presidential election, public opinion was so strongly in

⁵³⁴ Brian Steensland, "The Hydra and the Swords: Social Welfare and Mainline Advocacy: 1964-2000," in *The Quiet Hand of God: Faith-Based Activism and the Public Role of Mainline Protestantism*, ed. Robert Wuthnow and John H. Evans (Berkeley, CA: University of California Press, 2002), 219.

⁵³⁵ Adam Nagourney, "Priority Status for Welfare Reform," *USA TODAY*, February 3 1993; Todd Spangler, "Va., Md., support reforms; Clinton's welfare plans applauded," *The Washington Times*, February 4 1993.

favor of “overhauling” the welfare system that President Clinton was compelled to signed the Act into law.⁵³⁶ In reality, Brian Steensland explains that the reform package passed under the Clinton Administration was as close to a compromise between the conservative and liberal attitudes as possible; on the conservative side, the package followed the general contours of the Family Support Act of 1988, while clearly liberal elements- a focus on childcare, job training, and other services aimed to ease the transition to work- were also prominent.⁵³⁷

In its original form, the Personal Responsibility and Work Opportunity Act of 1996 focused on eight primary changes to the federal welfare system. Aid to Families with Dependent Children⁵³⁸, the primary means of monetary support for needy families, was transformed into a new program, Temporary Aid to Needy Families, in which the benefits were term-limited to five years, work requirements were enhanced, and discretion for determining eligibility was placed in the hands of

⁵³⁶ Welfare reform was touted as one of the Clinton Administration’s original goals during the campaign and Presidency. As early as February 1993, President Clinton emphasized his desire to reform the system in speeches and meetings, such as the speech he gave to the National Association of Governors on February 2, 1993. Clinton’s original plan focused on three major changes: increases in tax credits to boost incomes for the working poor, guaranteed medical coverage for all, and a focus on strong families with efforts to “clampdown” on “deadbeat dads”. As seen in the final form, not only was welfare reform one of the last pieces of legislation to be passed during Clinton’s first term in office, but none of the President’s reform goals were truly successful; only an effort to focus on strong families follows the original Clinton agenda. Rupert Cornwell, "Clinton Swings into his stride with 'new deal' on welfare," *The Independent*, February 3 1993.

⁵³⁷ Steensland, "The Hydra and the Swords: Social Welfare and Mainline Advocacy: 1964-2000," 221.

⁵³⁸ The original version of this program, Aid to Dependent Children, was created and instituted in 1935 as part of the Social Security Act of the New Deal. The name was first changed in the 1960s due to the fear that it would discourage marriage and encourage childbirth out of wedlock with its seeming focus only on children. For more information concerning the Aid to Dependent Families with Children, predecessor to the Temporary Aid to Needy Families program see, "A Brief History of the AFDC Program," <http://aspe.hhs.gov/hsp/AFDC/baseline/1history.pdf>.

the state.⁵³⁹ Food stamp eligibility regulations were changed and no longer applied to legal immigrants or adults without children; however, the system remained an “entitlement” meaning that all who applied and were eligible would receive aid. Overall aid for legal immigrants was placed solely in the hands of the states, who would now be able to choose to exclude immigrants from not only food stamps, but also cash assistance and health care.⁵⁴⁰ Childcare and support requirements were increased to ensure that absent parents actively supported their children. Programs teaching abstinence until marriage and aiming to reduce teenage pregnancy were increased and new requirements for teenage parents were added. Finally, one of the most contentious aspects of the Act, Charitable Choice, which focused on changing regulations to make government funding opportunities more available for faith-based social service organizations and clarifying or eliminating restrictions on the use of public funds in faith institutions, was included as an amendment written by then-Senator John Ashcroft.⁵⁴¹

The Personal Responsibility and Work Opportunity Reconciliation Act resulted in a significant devolution of power and responsibility for welfare from the federal to the state level. In *The Newer Deal*, Ram A. Cnaan explains that, “devolution is the antithesis of the welfare state in which the central government assumes full responsibility for the social and health needs of individuals with low

⁵³⁹ For more information concerning Temporary Aid to Needy Families see; "<http://www.acf.hhs.gov/programs/ofa/tanf/about.html>."

⁵⁴⁰ Some of these restrictions were subsequently lifted in 1997 with President Clinton’s efforts to remedy what he considered “mistakes” in the 1996 Personal Responsibility and Work Opportunity Reconciliation Act.

⁵⁴¹ Pub. L. 104-193. Enacted August 22, 1996. United States of America Congress, "Personal Responsibility and Work Opportunity Reconciliation Act," in *Pub. L. 104-192* (1996).

income. In the United States, the process of devolution has resulted in the replacement of federal allocations for social services by smaller block grants to states. The state, in turn, asked counties and cities to do more with less and to engage nonprofit organizations in the provision of services.”⁵⁴² Specifically, prior to Personal Responsibility and Work Opportunity Act, states had been given substantial amounts of federal monies to be dispensed primarily through state and local agencies. After welfare reform, “Political devolution has moved the lion’s share of responsibility for welfare service provision from the federal government back to state and municipal authorities”.⁵⁴³ In 1996, not only were these federal entitlements replaced with block grants bound only by generalized federal guidelines, but states were required to slowly wean recipients of aid off the welfare system and secure them fulltime employment in order to reduce state caseloads; a priority under the new system for which states with high case numbers would be penalized.⁵⁴⁴

⁵⁴² Cnaan, *The Newer Deal: Social Work and Religion in Partnership*: x.

⁵⁴³ Bartkowski and Regis, *Charitable Choices: Religion, Race and Poverty in the Post-Welfare Era*: 57. Both Schram and Stepan and Linz, in their articles examining the state of U.S. Federalism in the late 1990s consider the role that the 1996 welfare reform effort, and the shifting of federal grants from direct, program oriented grants, to block grants given to the states, had on the overall federal-state relationship. Not only were states given significant discretion, authority, and responsibility as a result of this shift, but, in the social service provision arena, a strong “decentralizing” tendency was emphasized. Sanford E. Schram and Carol S. Weissert, "The State of US Federalism 1998-1999," *Publius* 29, no. 2 (1999): 2-3. Linz and Stepan, "Inequality Inducing and Inequality Reducing Federalism: With Special Reference to the 'Classic Outlier'--The U.S.A.," 6, 18-21.

⁵⁴⁴ Ram A. Cnaan and Stephanie C. Boddie, "Charitable Choice and Faith-Based Welfare: A Call for Social Work," *Social Work* 47, no. 3 (2002): 226. Cnaan and Boddie, note that “It has been suggested that much of the success in reducing welfare rolls and shifting people from welfare to work will be attributed to the discretionary power at the local level...kind of “second-order devolution”.

Critics point out that while states were given the prerogative to create and implement welfare regulations and exemptions tailored to their own needs, devolution has created an atmosphere of “experimenting in the laboratory that is American democracy. Welfare reform law permits state governments to ‘partner’ ...with organizations in order to deliver an array of social services to disadvantaged citizens.”⁵⁴⁵ Proponents of welfare reform, on the other hand, explain that locating responsibility and decision-making at state and local levels should increase efficiency and efficacy of service provision. However, based on historical analysis, critics counter that, locally run assistance programs now have the potential to discriminate against “outsiders” and adjust benefits accordingly; a concern confirmed by the treatment of legal immigrants in Personal Responsibility and Work Opportunity Reconciliation Act.⁵⁴⁶ Although President Clinton did try to remedy some of these “mistakes”, the passage of Personal Responsibility and Work Opportunity Act opened the door to changes in the federal system that have changed the balance of power between the federal and state levels of government; complicating the relationship between the two, and thus rearranging the system of social service provision.⁵⁴⁷

⁵⁴⁵ Bartkowski and Regis, *Charitable Choices: Religion, Race and Poverty in the Post-Welfare Era*: 58.

⁵⁴⁶ Ibid., 52, 58. Bartkowski and Regis look specifically at the way in which local governments used assistance programs during the New Deal of 1935 to reinforce racial stratification and gender inequality, especially in the Southern States. Charitable Choice and the Faith-Based Initiative, discussed in detail later, also raise similar concerns as to whether religious groups offering social services will discriminate against non-believers or members of different religious faiths in the provision of services.

⁵⁴⁷ In particular, Clinton focused on restoring the cuts made in food stamps and remedying changes made to welfare opportunities for legal immigrants. , *Congressional Quarterly 1997 Almanac*.

Faith-Based Social Service Provision

The localizing effects of devolution combined with the implications of Charitable Choice, have served as a major bone of contention for both proponents and opponents of welfare reform. Charitable Choice focused on the role that faith communities have traditionally played in offering significant social services to the communities they serve. Proponents of Charitable Choice, and later the Faith-Based Initiative, called for new regulations that would not only eliminate any unwarranted discrimination against faith-based organizations, but also allow them to use the “faith factor” in their service activities. While faith-based groups had never been technically barred from partnering with government, restrictions against displays of faith, faith-based names, and administrative requirements have often complicated their receipt of federal funds.⁵⁴⁸

Charitable Choice, in its original form, encompassed a limited number of federally provided social services. Temporary Aid to Needy Families and its tangential services aimed at increasing self-sufficiency were the main areas in which faith-based organizations were to be given greater access.⁵⁴⁹ Faith-based

⁵⁴⁸ Stanley Carlson-Theis, "Transforming American Welfare: An Evangelical Perspective on Welfare Reform," in *Toward a Just and Caring Society: Christian Responses to Poverty in America*, ed. David Gushee (Baker Book House, 1999).

⁵⁴⁹ In 1998, Charitable Choice was expanded to include provisions for the Community Service Block Grant, a federal program in which the federal government passed monies down to the state level for state governments to distribute as they saw fit. In 2000, prior to the election of George W. Bush, under the Clinton Administration Congress expanded Charitable Choice even further to include the Public Health Service Act. However, even with these expansions, Charitable Choice was not the all-encompassing policy that the Faith-Based Initiative of the Bush Administration would come to be.

organizations were encouraged to participate in services related to food provision, health and child care, substance abuse, job training and placement, domestic violence counseling, maternity, and English as a second language classes, among others.⁵⁵⁰ While these were traditionally areas of involvement for faith-based organizations, the introduction of legislation specifically focused on removing barriers to federal funding for religious organizations was hoped to encourage increased participation, especially by smaller, more localized congregations and faith-based organizations.⁵⁵¹ In reality, faith-based organizations have been integral to the social service environment for decades with many larger organizations even receiving a majority of their budgets from government grants. However, prior to Charitable Choice, these large organizations, including household names such as the Salvation Army, Habitat for Humanity, and Catholic Charities of America had been required to create separate 501(c) 3 organizations.⁵⁵²

⁵⁵⁰ Cnaan and Boddie, "Charitable Choice and Faith-Based Welfare: A Call for Social Work," 225.

⁵⁵¹ Charitable Choice legislation was originally written by Professor Carl Esbeck, a Professor of Law at the University of Missouri School of Law a firm believer in the advantages offered by holistic and faith-based healing and services; see Carl Esbeck, "Statement Before the United States House of Representatives Concerning Charitable Choice and the Community Solutions Act," *Notre Dame Journal of Law, Ethics and Public Policy* 16, no. 567 (2002). After being given a draft of Professor Esbeck's work, Senator Ashcroft, also a firm believer in the role to be played by faith in helping the needy; worked to get the Amendment included in the 1996 welfare reform legislation bill. Charitable Choice was supported by many conservative politicians, think-tanks, and religious organizations. The Family Research Council statement concerning the value of faith-based services summarizes the general view of the movement; Charitable Choice is "a community-based welfare replacement strategy that places the family and the church at the foreground of assistance, rather than in the background...church based outreach to the poor will renew the country's...churches as well as families in need." Mark Chaves, "Religious Congregations and Welfare Reform," *Society* 38, no. 2 (2001): 25.

⁵⁵² 501 (c)3 organizations are secular non-profit charity organizations that receive tax-exempt status from the Internal Revenue Service. Prior to Charitable Choice, faith-based organizations often created separate 501(c)3 organizations as a secular social service division to receive government funds, partner with all levels of government, provide services deemed necessary to the community, and follow government regulations such as bookkeeping and non-discrimination towards employees and clients and were, as such, immune to concerns of excess religiosity due to their "separateness"

The purported aim of Senator Ashcroft's amendment was to enable smaller faith-based groups, often already active in local communities, providing services and easing the burden of the needy, to function more effectively and efficiently, and to be eligible for federal assistance in their efforts. Aschroft's office designed an amendment that was to increase access via a number of regulations⁵⁵³; faith-based organizations were to retain their religious autonomy⁵⁵⁴; religious expression and practice were no longer forbidden, instead, requirements to change internal governance or remove "religious art icons, scripture or other symbols" were now forbidden; the right to hire co-religionists as staff was retained under the Civil Rights Act of 1964; the establishment of separate 501(c)3 organizations as the official recipients of federal monies was no longer required, however, full fiscal accountability remained and federal funds could not be used for any type of proselytizing; finally, clients were protected by requirements that faith-based providers not "discriminate against participants...on the basis of religious belief, or refusal to participate in a religious activity" and any client who objected to a religiously oriented program be offered a secular alternative by the state.⁵⁵⁵

Supporters of the Charitable Choice movement believed that these new regulations would eliminate discrimination against faith-based organizations and

from their faith-based branches. United States of America Internal Revenue Service, <http://www.irs.gov/charities/charitable/article/0,,id=122670,00.html>.

⁵⁵³ For a full discussion of the changes entailed in the Amendment see, "A Guide to Charitable Choice: The Rules of Section 104 of the 1996 Federal Welfare Law Governing State Cooperation with Faith-Based Social-Service Providers," (1997).

⁵⁵⁴ See http://www.fns.usda.gov/FSP/rules/Legislation/pdfs/PL_104-193.pdf for the 1996 Personal Responsibility and Work Opportunity Reconciliation Bill.

⁵⁵⁵ Cnaan and Boddie, "Charitable Choice and Faith-Based Welfare: A Call for Social Work," 226.

allow them to compete on a more equal plane; thus easing their entry into the social service sector. However, the reality of the federal landscape, and the desires of faith-based groups themselves, is often different. In this context, Chaves, finds three primary misguided assumptions held by Charitable Choice proponents. First, the idea that “significant discrimination against religious organizations in competition for government grants and contracts” exists is wrong. Instances do exist where service providers have been denied public money or have lost funding due to religious discrimination; yet, many actually receive high percentages of their operating budgets from government funds. In his study, Chaves found that, “months of diligent searching for anti-religious discrimination in five federal agencies was not able to produce compelling evidence that such discrimination is even a minor problem...it is more accurate to say that, in the social services arena, collaboration between government and religious organizations is the norm, and has been the norm for a long time.”⁵⁵⁶

The second misguided assumption about Charitable Choice is that “religious congregations are intensively involved in social service activity”. Rather, Chaves explains that the federal government has chosen to focus attention on the most active congregations, while, in reality, only 6 percent of congregations have staff that devote even a quarter of time to social services, the median dollar amount spent on social services is generally less than 2 percent of the congregations’ budgets, the

⁵⁵⁶ Chaves, "Debunking Charitable Choice," 30. Chaves' studies on faith-based organizations, congregations, and social services include Mark Chaves and William Tsitsos, "Congregations and Social Services: What They Do, How They Do It, and With Whom," *Nonprofit and Voluntary Sector Quarterly* 30(2001).; Chaves, *Congregations in America*.; Mark Chaves, Laura Stephens, and Joseph Galackiewicz, "Does Government Funding Suppress Nonprofits' Activity?," *American Sociological Review* 69, no. 2 (2004).; Mark Chaves, "Religious Congregations and Welfare Reform: Who Will Take Advantage of 'Charitable Choice'?", *American Sociological Review* 64, no. 6 (1999).

number of volunteers for any given community service project is generally very low, and overall, congregations focus on serving the needy within their own flock, and often only in times of emergency and short term need.⁵⁵⁷ Finally, proponents claim that religious organizations are more personal, deliver social services in a more caring, long term-oriented manner, and are thus much more effective and efficient.⁵⁵⁸ On the contrary, Chaves finds fault in the efficacy argument and explains that the results of his study found that congregations tend to focus on more short term, emergency need situations that render deep personal transformations or the integration of service recipients into the congregation difficult and unlikely.⁵⁵⁹

Following its implementation, critics of the Charitable Choice movement honed in on these misguided assumptions, as well as numerous other potential problems and consequences. These included, the fear that proselytization may become rampant, at the taxpayers' expense; churches might turn against other churches in competition for federal funds; the religious sphere would become accountable to government; employees in these service organizations would have no

⁵⁵⁷ ———, "Debunking Charitable Choice," 32.

⁵⁵⁸ Ibid.

⁵⁵⁹ Chaves' study found that congregations tend to focus on providing emergency relief and short term services such as clothing, housing, food aid, and child care rather than more difficult, knowledge-based services such as mental health services, substance abuse relief, and job placement. In addition, different denominations are also more or likely to provide service in the first place. For example, Evangelical churches, known for "saving souls", are actually the least involved in community projects that go beyond the confines of their own congregations. Catholic congregations and Mainline Protestant churches are the generally more likely to provide social services and to apply for government funding to aid their efforts. The congregations, who most often apply for, receive, and use government funds, however, are African-American churches, of all denominations. In fact, African-American congregations are five times likelier to use government funds than other groups; a willingness that Chaves attributes to the difficulties faced by most black communities. ———, "Religious Congregations and Welfare Reform: Who Will Take Advantage of 'Charitable Choice'?"

real job protection; religious providers would be allowed to set their own standards and regulations leading to confusion and possibly decreased levels of service; and finally, “Charitable Choice would function to domesticate religion and render it harmless” while “the moral voice of religion at its best will likely grow silent”.⁵⁶⁰ Charitable choice was not just criticized by firm secularists, numerous religious groups⁵⁶¹ also issued a statement arguing that the “aim of Charitable Choice is to divest the state of its social responsibilities...the churches in effect, became administrative arms of these government programs.”⁵⁶² Thus arose an environment in which churches became administrators, state governments divested too many of their responsibilities and powers of oversight, and potential violations of church and state, not to mention shoddy social service provision, could potentially proliferate unchecked.

Despite the plethora of competing assumptions and realities, by 1998, Charitable Choice had become an integral part of the welfare reform movement, was being implemented by a number of state governments, including Texas, and

⁵⁶⁰ Elena Matsui and Joseph Chuman, "The Case versus Charitable Choice," *The Humanist* 61, no. 1 (2001).

⁵⁶¹ The organization Americans United for the Separation of Church and State assembled a group of liberal religious groups who were opposed to Charitable Choice; these included The Baptist Joint Committee, The Presbyterian Church USA, The American Jewish Committee, The Conference of Seventh Day Adventists, The Church of the Brethren, Roman Catholic Organization, the Friends Committee on National Legislation, and The Unitarian Universalist Association; Catholics for a Free Choice, Central Conference of American Rabbis, General Board of Church and Society, the United Methodist Church, the Unitarian Universalist Association, United Church of Christ, and Union of American Hebrew Congregations. Ibid. Chaves, "Religious Congregations and Welfare Reform," 25.

⁵⁶² Matsui and Chuman, "The Case versus Charitable Choice."

new funding opportunities for faith-based organizations were being explored.⁵⁶³

The Texas case is particularly significant as it laid the groundwork for George W. Bush's later presidential effort to increase federal funds to faith-based organizations.

⁵⁶⁴ Bush, upon the passage of the Charitable Choice Act of 1996, immediately implemented a gubernatorial executive order requiring all state executive agencies to comply with Charitable Choice regulations and created a task force charged with “two objectives: to identify laws and regulations that impeded the work of faith-based groups and to recommend ways to lift some of those regulations.” By 1997, the Task Force suggestions had been solidified into a number of necessary changes to state law that would enable faith-based organizations and volunteers from the faith communities of Texas to partner with the government more freely; without the added hindrance of government and bureaucratic discrimination, while still allowing them to retain their “unique ecclesiastical” nature.⁵⁶⁵

⁵⁶³ Interestingly enough, just prior to the passage of the Personal Responsibility and Work Opportunity Act and Charitable Choice, Texas found itself in the midst of a “faith-based social services” debate. As Bush describes in his memoir, in 1995, shortly before the passage of the Charitable Choice provision by the federal government, Texas state officials attempted to close down a successful drug and alcohol abuse program, also a faith-based social service, known as “Teen Challenge of South Texas”. Teen Challenge did not offer standard medical treatment; rather its focus was on personal transformation and faith, taught through Bible study and prayer. At the time, as Bush claims was typical state and federal behavior prior to the passage of Charitable Choice, local officials compiled a list of “violations”, based on mixing of government monies with religious behavior, and took steps to shut down a program that Bush calls “hugely successful”. Bush, *A Charge to Keep: My Journey to the White House*: 213.

⁵⁶⁴ For more information concerning the state of Texas' application of Charitable Choice see, George W. Bush, "The Future of America: A better day for our children," *Vital Speeches of the Day* 63, no. 23 (1997); Bush, *A Charge to Keep: My Journey to the White House*; Mansfield, *The Faith of George W. Bush*. Anonymous, "Lessons from the Texas FBI."; Robyn Blumner, "BUSH'S CHURCH-STATE MESS TAKES LIBERTIES WITH OURS," *St. Petersburg Times*, July 1 2007.

⁵⁶⁵ Steve Benen, "Pat Gets Paid: TV Preacher Robertson Gets 'Faith-Based' Grant from Bush Administration," *Church and State* 55, no. 10 (2002).

Even in Texas, which demonstrated high levels of interest in the idea of faith-based organizations, Governor Bush's office originally struggled to find enough legislative support to enact a Charitable Choice type program at the state level. Through Bush's strong advocacy of faith-based programs, general attitudes eventually shifted and the state legislature adopted statewide measures to encourage faith-based organizations. The previously closed TeenChallenge organization was reinstated, and child and daycare services were allowed to function on the basis of religion; with little regard to local licensing needs, an issue that later critics of both Charitable Choice and the Faith-Based Initiative would frequently raise. Also during Bush's governorship, Texas also enacted a "Good Samaritan Law" that would help to protect medical volunteers from lawsuits; legislation to protect the free exercise of religion; and, finally, Bush, in a harbinger of what was to come at the federal level, issued an executive order that encouraged states agencies to do more to work within the new guidelines set by Charitable Choice.⁵⁶⁶

The Texas Charitable Choice experience saw the foundation of a number of programs that endured through the Bush Presidency and Faith-Based Initiative. One of these, discussed briefly earlier was Chuck Colson's PrisonFellowship Ministries, Inner Change program. InnerChange, works with prisons to institute a system, based on Bible study, worship, exercise, and physical fitness, that is focused on reducing prisoner recidivism. As all faith-based programs are, in theory, required to be in Texas and elsewhere, participation in InnerChange is strictly voluntary. InnerChange is a "values-based prerelease program" that hopes by changing hearts

⁵⁶⁶ Bush, *A Charge to Keep: My Journey to the White House*.

and encouraging better values and spirituality it will be able to decrease the recidivism rate.⁵⁶⁷ As of 2001, the program had been very successful in Texas, and in other states in which the original program was instituted; however, it has also face a number of lawsuits questioning its use or misuse of federal monies.⁵⁶⁸

The manner in which programs designed and implemented in the state of Texas, under the Charitable Choice Act, were later re-vamped, enlarged, and instituted at the federal level is a classic example of the “experimentation” that often takes place in America’s federal system. Rather than having strict divisions between program availability and applicability at various levels of government, the American system often works like a laboratory with smaller scale programs first attempted at the local level and carried, if successful, to the national level; often to the advantage of the citizens as a whole. In this case, for example, the contours of Colson’s InnerChange system were later echoed in President Bush’s Prisoner Re-entry Initiative; as one of the original programs of the White House Faith-Based Initiative. Other Texas agencies involved in Charitable Choice under Bush were also reformulated and included in the later Faith-Based Initiative as part of the federal program. Some examples include, the Department of Health and Human Services of San Antonio, which partnered with Lutheran Social Services in a program that provided mentoring for welfare recipients as they attempted to find and retain gainful employment, and the Christian Women’s Job Corps, which received state funding in its efforts to provide mentoring, nurturing, and job skills training to

⁵⁶⁷ Ibid., 214.

⁵⁶⁸ The details of these cases and others will be discussed further in the section of legal challenges to the Faith-Based Initiative.

unemployed, needy Texas women.⁵⁶⁹ Both mentoring and job training figured prominently in the White House Office of Faith-Based Initiatives Prisoner Re-entry Initiative, undertaken in conjunction with the Federal Department of Justice. Under this Initiative, faith-based organizations and congregations were encouraged to provide volunteers who could serve as “buddies” and ease the struggles of prisoner re-entry to “normal” life after incarceration.⁵⁷⁰

The concentration of faith-based organizations in arenas that service the particularly downtrodden has raised concerns from both critics of the programs and the national and local media. Although the inclusion of a voluntary participation rule is a clearly defined requirement for faith-based organizations receiving government funding, the question arises that if clients are seriously under-privileged will they not be more willing to enter *any* program that offers them any sort of advantage. As we will see more clearly in the next section, many of the lawsuits brought against faith-based organizations that have benefited from Charitable Choice and the Faith-Based Initiative have been based on the question of a “captive” or “uniformed” audience. For example, the InnerChange program has been criticized for focusing on prison inmates while the Dakota Boys and Girls Ranch has received similar attention due to the fact that the children in the program were placed there by the state, not based on their own choice.

These concerns, and others soon surfaced as a result of the Charitable Choice experiment in Texas. Despite positive perceptions of the program, both

⁵⁶⁹ Bush, *A Charge to Keep: My Journey to the White House*: 216-17.

⁵⁷⁰ The specific programs included in the White House Office of Faith Based Initiatives will be discussed later in this chapter.

proponents of faith-based social services and compassionate conservatives have called for examination of the aggressive entry of faith-based organizations into the Texas social service arena. In particular, following complaints and investigations, numerous childcare and substance abuse services have since been revised as deficient standards and rampant favoritism have led to lawsuits and even reversals of earlier deregulation attempts.⁵⁷¹ In addition, numerous service providers licensed under Texas's Charitable Choice guidelines have later faced court cases and been either fined or closed.⁵⁷² Critics of Charitable Choice and later, the Faith-Based Initiative, have focused on the Texas example as proof that excessive government entanglement with faith-based service providers can wreak havoc; facilitating involvement of "fringe religious providers avoiding legitimate state oversight and regulations", lowering "the standard of client health, safety, and quality of care", and allowing for "preferential treatment of faith-based providers in government contracting opportunities".⁵⁷³

In 2002, Church and State magazine published a report by the Texas Freedom Network, "Report Documents Tragic Consequences of Bush "Faith-Based" Experiment in Texas", detailing problems that have occurred as a result of the application of Charitable Choice in Texas.⁵⁷⁴ In particular, Bush's executive

⁵⁷¹ Anonymous, "Lessons from the Texas FBI."

⁵⁷² These court cases will be discussed at length later in the dissertation.

⁵⁷³ Anonymous, "Lessons from the Texas FBI." Benen, "'Faith-Based Failure': Report Documents Tragic Consequences of Bush 'Faith-Based' Experiment in Texas."

⁵⁷⁴ The Texas Freedom Network is a statewide, non-profit organization that has dedicated itself to protecting religious freedom, defending civil liberties, and strengthening public schools in the state of Texas. Founded in 1996, it has been a strong critic of certain Charitable Choice oriented programs, and efforts by members of the State government to add increasingly higher amounts of

order served to allow faith-based groups to function without state accreditation; a step that eliminated safety and health regulations for faith-based service providers and “even allowed the religious groups to bypass criminal background checks and minimum training requirements for employees.”⁵⁷⁵ The Texas Freedom Network’s report notes that rather than improve care given to needy clients, the Texas effort actually, “endangered people in need and lowered standards of client health, safety and quality of care”, while, it “provided a refuge for facilities with a history of regulatory violations, a theological objection to state oversight and a higher rate of abuse and neglect.”⁵⁷⁶ Overall, questions Reverend Barry W. Lynn, the executive director of Americans United for the Separation of Church and State, one of the premier critics of President Bush’s Faith-Based Initiative, “If the policy was a disaster in Texas, why in the world would we want it expanded to the entire country?”⁵⁷⁷

The Faith-Based Initiative Meets the White House: An Exceptional Executive Process

| religious education to the Texas curriculum. "The Texas Freedom Network," Texas Freedom Network, www.tfn.org.

| ⁵⁷⁵ ———, "'Faith-Based Failure': Report Documents Tragic Consequences of Bush 'Faith-Based' Experiment in Texas," 7.

| ⁵⁷⁶ Ibid.

| ⁵⁷⁷ Ibid.

In the weeks following his inauguration Bush “brought faith-based initiatives onto the national stage”.⁵⁷⁸ Faith-based initiatives at the national level represented, according to Jo Renee Formicola and Mary Seger, the “charitable opportunity of a lifetime, a chance to help the under-served and to welcome godly people back into the public square...a national effort to mobilize communities of faith together with non-profit organizations and government agencies to work as partners for the poor.”⁵⁷⁹ Not only did the Faith-Based Initiative, as presented by Bush during his campaign and the early weeks of his time as President, represent a marvelous opportunity in terms of social services and faith communities, but it was also an issue that, at the time, was thoroughly bipartisan and would help to solidify Bush’s image as willing to work in a bipartisan manner; this was especially important coming on the heels of the tax cut legislation that was admittedly partisan. Both leading Republicans and Democrats had championed the merits of faith-based social services as a manner in which to increase access for the needy to care and assistance.

However, while the Faith-Based Initiative originally enjoyed high levels of bipartisan and popular support, it eventually ended up in “legislative limbo”.⁵⁸⁰ As can often be the case in the United States House of Representatives and Senate, snags in the legislative process; member focus on popular opinion at home, or the

⁵⁷⁸ Norman Ornstein and John Fortier, “Relations with Congress,” *PS: Political Science and Politics* 35, no. 1 (2002): 48.

⁵⁷⁹ Formicola, Segers, and Weber, *Faith-Based Initiatives and the Bush Administration: The Good, the Bad and the Ugly* 115.

⁵⁸⁰ Ibid.

interests of their state government; and even the simple process itself complicated what had promised to be a smooth passage of the Faith-Based Bill. The first snag the White House faced occurred when Speaker of the House, Dennis Hastert chose JC Watts, a Republican Conference chair, the Representative from Oklahoma, to be the Faith-Based bill (HR 7)'s major sponsor in the House.⁵⁸¹ The choice of Congressman Watts to sponsor the bill was based on the fact that he was a former minister and had repeatedly demonstrated a belief in the merits of faith, values, and compassion in his political career; it was hoped that his strong belief would allow him to lobby strongly for the passage of the bill in the House.⁵⁸² To co-sponsor the bill, the Bush Administration had courted Representative Tony Hall, the representative from Ohio; however, Hastert, in his capacity as Speaker, bypassed the White House and, not only decided to co-sponsor the bill himself, but also assigned the bill leadership priority, which signified both that it came directly from the President and that it was also a top priority for all House Republicans.⁵⁸³ Despite efforts to create a strong bipartisan feeling around HR 7, the Republican leadership did not really expect to encounter significant opposition in the House, it believed the Republican majority in Congress would successfully manage to pass the original, "purist", religious form of the bill with little need for compromise.

⁵⁸¹ For the full text of HR 7, the Community Solutions Act, also known as "the Faith-Based Bill", see www.loc.gov

⁵⁸² Formicola, Segers, and Weber, *Faith-Based Initiatives and the Bush Administration: The Good, the Bad and the Ugly* 118.

⁵⁸³ Black, Koopman, and Ryden, *Of Little Faith: The Politics of George W. Bush's Faith-Based Initiatives*: 126.

However, a number of factors external to the House forced internal debate on the bill. First, the long, drawn out Florida recount had soured the overall political atmosphere in the Capital. Democrats and Republicans throughout the nation had squared off on seemingly trivial issues such as “hanging chads” and the merits (or downfalls) of electronic voting, and suddenly larger political and legislative issues began to feel the brunt of these debates.⁵⁸⁴ When Representative Watts introduced the “purist” form of HR 7, it felt more partisan, than bipartisan, to a number of Democrats. In addition, the Florida recount had also decreased the normal transition period in which the incoming President was traditionally able to gain support for some of the first measures his administration introduced; instead Bush was forced to “cool his heels” while he waited for confirmation that he had actually won the election.⁵⁸⁵ Third, during this period the breakdown of national voting patterns also emerged, demonstrating that Bush had actually only managed to garner an extremely small percentage of the African-American vote.⁵⁸⁶ Almost simultaneous to the introduction of HR 7 by Representative Watts, was the beginning of the national African-American Summit, also organized and led by Watts. Detractors of the Faith Bill pointed out this coincidence and argued that the

⁵⁸⁴ For further discussion of the 2000 election, the problems encountered in the vote count in Florida, and the eventual Supreme Court decision that was required to declare George W. Bush President see, Buell, "Review: The 2002 Elections: Reviewed Works: *The Perfect Tie: The Story of the 2000 Presidential Elections* by James W. Ceasar, Andrew E. Busch; *America's Choice 2000* by William Crotty; *The Elections of 2000* by Michael Nelson; *The Election 2000* by Gerald M. Pomper."; Pomper, "The Presidential Election."; Ceasar and Busch, *The Perfect Tie: The True Story of the 2000 Presidential Elections*; Nelson, *The Elections of 2000*.

⁵⁸⁵ Formicola, Segers, and Weber, *Faith-Based Initiatives and the Bush Administration: The Good, the Bad and the Ugly* 115.

⁵⁸⁶ Gerald M. Pomper, ed. *The Election of 2000: Reports and Interpretations* (Chatham House Publishers 2001).

real motivation behind the administration's introduction of faith-based legislation was nothing more than an attempt to sway African-American opinions of Bush through the appeal of increased social service offerings.⁵⁸⁷

The changing power and voting balance in the Senate that had occurred just prior to the initiation of legislation efforts for the faith-based bill was the final factor that helped to encourage Democratic opposition to the Faith-Based Initiative, both in the form of HR7 in the House, and later, in the Senate version. During the Bush administration's tax cut legislation and the deal making that takes place as part of the normal legislative process, one largely unknown Republican Senator from Vermont, James Jeffords, had shifted control of the Senate to the Democrats. As a result, although passage of HR7 in the House could more or less be guaranteed simply if Republicans stuck to the party line, its continued success and thus translation into actual legislation by the Senate was no longer guaranteed.⁵⁸⁸

As it turned out, the combination of all these factors led to heated debate over the faith-based initiative in its purely religious form. During the hearings on HR7, Democratic Representatives Robert C. "Bobby" Scott, of Virginia and Chet

⁵⁸⁷ Formicola, Segers, and Weber, *Faith-Based Initiatives and the Bush Administration: The Good, the Bad and the Ugly* 117.

Many observers of the early days of the Faith-Based Initiative believed that the Administration's effort to aid faith-based organizations through the dispersal of federal funds was actually simply an attempt to "buy" the African-American community, especially on the heels of such dismal numbers in terms of voter percentages. For further discussion see, Mark O'Keefe, "Bush Charities Initiative Reaches Out to African-Americans," *Newshouse News Service*, January 30 2001; Joseph Perkins, "Outreach to the Black Caucus," *The Washington Times*, February 10 2001; Ken Herman, "BUSH'S FAITH-BASED INITIATIVES: Black Clergy could add surprising support," *The Atlanta Journal Constitution*, March 11 2001; Rebecca Carr, "GOP hopes faith-based plan draws black clerics; Summit to preach Bush's charity gospel," *The Atlanta Journal-Constitution* 2001; Allen and Edsall, "Black Religious Leaders Hear Bush's Call; Self-Avowed 'White-Guy Republican' Urges Clerical Push for 'Faith-Based' Program."

⁵⁸⁸ Formicola, Segers, and Weber, *Faith-Based Initiatives and the Bush Administration: The Good, the Bad and the Ugly* 115, 17.

Edwards, of Texas voiced their opposition and even went as far as to present legal experts to testify concerning whether or not the faith-based initiative conformed to constitutional standards in terms of the separation of church and state.⁵⁸⁹ Another major question revolved around the continuation of hiring exemptions for faith-based social service providers that were guaranteed by the Faith-Based Initiative. Under these assurance, although they would now be providing a *public* service, religious groups would be able to retain their hiring exemptions as promised in Title VII of the Civil Rights code of 1964.⁵⁹⁰ Title VII exemptions allow religious providers to practice hiring discrimination in the choice of their employees (although arguably they may not discriminate in taking on clients under the Faith-Based Initiative) so that the integrity of the religious program being offered is not compromised. This exemption also raised questions of the Faith-Based Initiative's legality during the House hearings and was portrayed as open discrimination by opponents of HR7.⁵⁹¹

In the end, HR7 was passed in the House in July of 2001. Formicola and Segers note that, in the greater scheme of Washington politics this can actually be considered a “speedy” passage for a bill. The draft of HR7 that passed was, they explain, essentially a group of “creative deductions and a simple extension of the

⁵⁸⁹ For full account of Congressional debates over HR 7 see, "HR 7 Congressional Proceedings," United States House of Representatives, <http://thomas.gov/cgi-bin/bdquery/D?d107:1:/temp/~bdmtL6:/home/LegislativeData.php?n=BSS;c=107>].

⁵⁹⁰ "Title VII of the Civil Rights Act," ed. United States Equal Opportunity Commission (Washington, DC1964).

⁵⁹¹ Melissa Fritsch, "The Dynamic Duo: Representatives Scott and Edwards Rally the Opposition," in *Of Little Faith: The Politics of George W. Bush's Faith-Based Initiative* ed. Amy E. Black, Douglas L. Koopman, and David K. Ryden (Washington DC: Georgetown University Press, 2004), 128-30.

Charitable Choice provision of the Welfare Reform Act”.⁵⁹² The issue of hiring exemptions was not included in the draft; the representatives simply applied Title VII; with the explicit stipulation that faith-based and community organizations partnering with the government to provide social services could practice discrimination in hiring but never, under any circumstances, could they discriminate in client acceptance. In fact, if a client did not want to be a part of the religious program offered, the faith-based organization was obliged to offer a corresponding secular version.⁵⁹³ Though there was some opposition from the Republican side, all the Democrats opposed HR7, the hearings on the bill were eventually concluded with a colloquy and the agreement that the details of HR7 would be worked out in conference. Overall, at this early stage in the Bush Presidency, and in the legislative process, the passage of HR7 through the House represented a significant win for Speaker Hastert, Representative Watts, and the President.

Having left the House, the next step for the Faith-Based Initiative was in the Senate. Senator Santorum, a Republican from Pennsylvania and Senator Lieberman, a Democratic Senator from Connecticut sponsored the Senate version of HR7, the “Charity, Aid, Recovery and Empowerment Act (CARE)”. Santorum was chosen as co-sponsor due to a combination of his previous positions-not only did Santorum believe firmly in the viability and necessity of public-private partnerships to solve social issues and alleviate suffering, he was also a strong proponent of

⁵⁹² Formicola, Segers, and Weber, *Faith-Based Initiatives and the Bush Administration: The Good, the Bad and the Ugly* 138.

⁵⁹³ Ibid., 138-40.

compassionate conservatism, and active in religious outreach in the Senate.⁵⁹⁴

Lieberman, though a Democrat, who seldom voted outside the party line, had managed to carve out a “niche role as a sometimes lonely, moral crusader...” and though he made a very unlikely couple with the extremely conservative Santorum; would lend Democratic credibility to the Senate bill.⁵⁹⁵ The bill which first appeared as S592 and was heralded as a “consensus bill” had a three pronged approach; it called for tax incentives for individual charitable giving, tax incentives for corporate charitable gifts, and the extension of Charitable Choice provisions in an effort to increase faith-based providers of social services and encourage clients, or potential recipients of social services, to take advantage of faith-based programs on a more regular basis. In addition, the bill promised “a large increase in social service block grants, expanded individual development accounts, compassion capital funds, and a few narrowly tailored ‘religious freedom’ provisions.”⁵⁹⁶

Much to the dismay of the Senate Republicans and the Bush Administration, the Charity, Aid, Recovery and Empowerment bill in its original form also ran into problems similar to those that HR7 encountered in the House. Unfortunately, for the Senate, without its partisan majority, these issues, especially the debate over the constitutionality of funding faith-based social service providers without the added requirements for secularization that had existed in the past and the concerns that had

⁵⁹⁴ Santorum was also a member of the Renewal Alliance in the Senate and chosen to be chairman of National Bible Week 2001. Ibid., 140.

⁵⁹⁵ Black, Koopman, and Ryden, *Of Little Faith: The Politics of George W. Bush's Faith-Based Initiatives*: 149.

⁵⁹⁶ Ibid., 148.

been voiced over allowances for hiring discriminations, proved to be deal-breakers.⁵⁹⁷ Soon after the House bill was passed in the summer of 2001, Lieberman announced that, in light of all the controversy surrounding the original Charity, Aid, Recovery, and Empowerment bill, he would draft his “own comprehensive faith-based bill” that would not include any charitable choice elements or provisions that allowed for hiring exemptions across the board.⁵⁹⁸ Black, Koopman, and Ryden explain that the White House response to Lieberman’s proposal was markedly more pragmatic than purist; rather than holdout for a full Senate version of the bill that would mimic that passed by the House, Bush announced that he, and his staff, were “willing to work with Lieberman without compromising on principle”.⁵⁹⁹ The Bush Administration’s willingness to work with Lieberman signaled that the White House had set its sights on coming up with a bill that would pass the Senate easily—even if it meant compromising on some of its original provisions.

Although Santorum originally withdrew his support for the bill once Lieberman took the reins, by the end of the summer the conservative Senator was back on board, arguing in particular that, based on the effects of welfare reform, a redistribution of social services was occurring in the United States and that faith-based social services could provide one of the primary tools necessary to help America’s needy. The primary difference between the Republican and Democratic

⁵⁹⁷ Ibid., 152-56.

⁵⁹⁸ Formicola, Segers, and Weber, *Faith-Based Initiatives and the Bush Administration: The Good, the Bad and the Ugly* 140-42.

⁵⁹⁹ Bush as quoted in Black, Koopman, and Ryden, *Of Little Faith: The Politics of George W. Bush's Faith-Based Initiatives*: 163.

perspectives on the issue of faith-based social service provision was not, interestingly, the issue of government and religious partnership; both parties were in favor of the idea and supported public-private partnering in the provision of social services, and both agreed that faith-based and community organizations were often able to play an extraordinary role in service to the needy. Rather, the underlying difference between the two parties was in their respective approaches to the funding of faith-based initiatives. The Democrats proposed an increase in government spending as the ideal manner in which to fund these new partnerships, while the Republicans focused on plans to increase deductions and expand Charitable Choice options in order to find the funds without increasing federal spending.⁶⁰⁰

The final version of the Senate Charity, Aid, Recovery, and Empowerment bill, S1924, eventually failed to be approved by the Senate. This failure has numerous reasons. First, the drawn out process of debate and the drafting of three bills overall caused Senators to lose interest in the issue and get mired down in the details of constitutionality and hiring exemptions. Second, other than Senator Lieberman, who also harbored his fair share of concerns over these two opposition issues, there was no real champion for the faith-based initiative among either House or Senate Democrats—this gave the whole initiative a truly partisan tinge that did not help it along its way. Third, special interest groups, once exposed to the two main issues of constitutionality and hiring discrimination, refused to back down on the concerns and made opposition to the Faith-Based Initiative a priority—helping

⁶⁰⁰ Formicola, Segers, and Weber, *Faith-Based Initiatives and the Bush Administration: The Good, the Bad and the Ugly* 141-42.

to sour popular opinion.⁶⁰¹ Finally, having already expended a great deal of political capital on passing the tax cut legislation just weeks before the introduction of the Faith-Based Initiative, the Bush Administration was unable to expend the legislative and political capital necessary to ensure the passage of faith-based legislation; rather than focusing their efforts on a large legislative package, the administration turned its attention to smaller, discrete initiatives that could be undertaken on an administrative level.⁶⁰²

Following the failure of the legislative process to deliver any significant gains in passing faith-based legislation during 2000 and 2001, the Bush Administration turned to the power of the Executive Office to advance its faith agenda. According to Philip Cooper, the executive order is one of the more viable tools available for a President to implement his own agenda even in cases, such as this one, in which the legislative branch may not be acting as swiftly as the executive branch may require.⁶⁰³ Executive Orders essentially allow the President to make changes at the federal level without requiring the approval of Congress and the Senate. Based on the federal legislative power delegated only to the House of Representatives by Article I, Section I of the U.S. Constitution, Executive Orders may not be issued in a manner that directly affects U.S. citizens. Instead, by design, this executive tool is expected to function only as general orders to the staff of the Executive. In practice, however, and as is the case in the Faith-Based Initiative, the

⁶⁰¹ Ibid., 142-43.

⁶⁰² Ornstein and Fortier, "Relations with Congress," 48.

⁶⁰³ Cooper, *By Order of the President: The Use and Abuse of Executive Direct Action*.

ramifications of the Order may, in fact, affect the population at large.⁶⁰⁴ Executive Orders are reflective of the more unstable situations that can often be found in purely presidential political systems. As Stepan and Skach point out in their comparative study of presidential versus parliamentary systems, in purely presidential regimes democracy is based on “a system of mutual independence” in which both the legislative and executive branches have a “fixed electoral mandate that is its own source of legitimacy.”⁶⁰⁵ As a result, “a series of incentives and decision rules” emerge; including, “maximizing legislative impasses, motivating executives to flout the constitution”, which “creates the possibility of a political impasse between the chief executive and the legislative body.”⁶⁰⁶ As Stepan and Skach aptly question, “How often did these (presidential system) executives find it necessary to govern by decree of law—at the edge of constitutionalism—in order to implement the economic restructuring and austerity plans they considered necessary...?”⁶⁰⁷ These types of Executive Orders have come under increasing scrutiny as they represent attempts to circumvent the separation of powers upon which the federal government rests, and open abuses of Executive power.

In the case of the White House Office of Faith-Based and Community Initiative, President Bush issued two consecutive orders, Executive Order 13119 and Executive Order 13198, on January 29, 2001. The first created the Office itself, and

⁶⁰⁴ Ibid.

⁶⁰⁵ Stepan and Skach, "Constitutional Frameworks and Democratic Consolidation: Parliamentarism versus Presidentialism," 3.

⁶⁰⁶ Ibid., 16.

⁶⁰⁷ Ibid.

the second, placed five Faith Based Centers within the government agencies of the Department of Health and Human Services, the Department of Justice, the Department of Education, the Department of Housing and Urban Development and the Department of Labor.⁶⁰⁸ During the legislative effort the Bush Administration had been touting its new program and working to shape the actual contours of the Office itself; staff, cornerstone programs, and initial activities were all recruited, designed and implemented during this period. John J. DiIulio, Jr., a Democrat who, at the time, was the Fox Leadership Professor of Politics, Religion, and Civil Society at the University of Pennsylvania, was chosen to fill the position of director.⁶⁰⁹ Although a Democrat, DiIulio was also a strong supporter of the idea that faith-based and community organizations had a role to play in social services and in helping in the re-orientation of moral and social issues in the United States.

Despite DiIulio's enthusiasm upon assuming his position as Director of the White House Office of Faith-Based and Community Initiatives, and the initial understanding that his would be a temporary posting, problems between the Bush Administration and DiIulio soon peppered the national media.⁶¹⁰ The Administration staff was a tight circle, almost all of whom had close ties with President Bush, the entry of an "outsider", however qualified, was problematic and

⁶⁰⁸ See <http://georgewbush-whitehouse.archives.gov/government/fbci/executive-orders.html>

⁶⁰⁹ DiIulio received his PhD from Harvard in 1986 and his primary areas of interest are public management, faith-based social programs, criminal justice, and government reform. DiIulio is also a senior fellow at the Manhattan Institute, senior counsel to Public/Private Ventures and founding director of the Center for Public Management at the Brookings Institute. He is also the author, editor and coordinator of more than a dozen books and journal articles, many of which deal with faith issues, social services, and the Faith-Based Initiative "People in Political Science," 339.

⁶¹⁰ Ron Suskind, "Why are These Men Laughing?," *Esquire* 139, no. 1 (2003).

caused tension.⁶¹¹ In addition, Bush's personal interest in the Office may have actually hindered policy implementation; many decisions were contingent on Oval Office approval but were often delayed due to a lack in internal White House coordination and inflated expectations.⁶¹² In what seemed to be adding insult to injury, DiIulio also experienced significant problems with members of the Republican Party in terms of faith-based services. Libertarians in the party were strictly opposed to any type of social spending on the part of the federal government, be it allocations to religious groups or block grants to states for social service providers, and the religious right did not feel that the Faith-Based Initiative went far enough in terms of what it allowed religious groups to do; namely they called for the initiative to allow active proselytization, even with federal funds, a move that DiIulio argued would be in direct violation of the ideals of separation of church and state.⁶¹³

The Program: The Faith-Based And Community Initiative

Regardless of the administrative problems being tackled in the White House Office itself, implementation of the cornerstone programs of the Faith-Based Initiative, primarily through the auspices of various federal departments, continued apace. The

⁶¹¹ Martha Joynt Kumar, "Recruiting and Organizing the White House Staff," *PS: Political Science and Politics* 35, no. 1 (2002).

⁶¹² Formicola, Segers, and Weber, *Faith-Based Initiatives and the Bush Administration: The Good, the Bad and the Ugly* 115-16.

⁶¹³ *Ibid.*, 118.

“Compassion Capital Fund”, the “Prisoner Re-Entry Initiative”, the “Mentoring Children of Prisoner’s Program”, and the “Access to Recovery Program” represented the original efforts of the Faith-Based Initiative. In addition, President Bush tasked the Office with conducting an inquiry of the entire federal government and all its departments and regulations investigating the actual relationship between government agencies and faith-based social service providers. Stated in Executive Order 13198, Bush called upon the Faith-Based Office and the Departmental Centers for Faith-Based and Community Initiatives to undertake “a department-wide audit to identify all existing barriers...including but not limited to regulations, rules, orders, procurement, and other internal policies and practices, and outreach activities that either facially discriminate against or otherwise discourage or disadvantage the participation of faith-based and other community organizations in Federal programs.”⁶¹⁴

The Compassion Capital Fund, run in conjunction with the Department of Health and Human Services, is one of the most important tools available to the White House Office of Faith-Based and Community Initiatives. The Compassion Capital Fund, rather than providing direct aid to needy citizens, instead provides technical assistance, training and guidance to intermediary organizations that then help faith-based organizations in their efforts to apply for federal grants, use the monies they have been awarded, meet the required accounting and accountability standards imposed by federal and state governments, and recruit and train volunteers to staff their organizations or provide social services. On its website, the

⁶¹⁴ <http://georgewbush-whitehouse.archives.gov/government/fbci/executive-orders.html>

Compassion Capital Fund describes its mission to work through “intermediary organizations that serve as a bridge between the Federal government and faith-based and community organizations”. These intermediary organizations also have the ability to award “capacity-building sub-awards”. In addition the Compassion Capital Fund also has the power to award one-time 50,000-dollar capacity-building grants to approved Faith-Based and Community Organizations.⁶¹⁵ The Fund is especially important because it does not simply support Faith-Based and Community Organizations in their social service efforts; instead it actively helps to create an infrastructure for increasing the amount of federal money and assistance that faith-based and community organizations receive and, in turn, their capacity and efficiency as social service providers.

The Prisoner Re-Entry Initiative, run jointly through the Departments of Justice and Labor, is aimed to provide the hundreds of thousands of Americans who exit prisons each year with guidance, training, housing opportunities and work options in the hope of reducing recidivism rates across the country. According to statistics published on the Department of Justice’s website, each year, of the 650,000 prisoners who are released from prison, approximately two-thirds will return to prison within three years. Since 2004, when George W. Bush announced the Prisoner Re-Entry Initiative as the further development of the already existing program, Ready4Work, which had previously been spearheaded by the Department of Labor, joint efforts by the 30 Prisoner Re-Entry Initiative grantees across the country and the federal government have helped decrease Prisoner Re-Entry

⁶¹⁵ "Compassion Capital Fund," U.S. Department of Health and Human Services: Administration for Children and Families, <http://www.acf.hhs.gov/programs/ocs/ccf/>.

Initiative participants' recidivism to "less than half the national average recidivism rate".⁶¹⁶ At the first Prisoner Reentry Summit in California in 2007, Secretary of Labor Elaine Chao reaffirmed the position that faith-based and community organizations were able to play in efforts to restore ex-prisoners' sense of dignity and hope when she stated, "The heaviest cost is the loss of dignity when people are living lives of poverty, addiction, and despair. We must—and we can—break that cycle. And faith-based and community organizations possess unique and invaluable strengths to help us reach out to those most in need."⁶¹⁷

A tangential problem to the issue of recidivism is the question of the children who may be left behind when one or both parents are in jail. These children face tough decisions, living on their own or with relatives, and often the only types of guidance available to them may come from misguided peers or, even worse, gang-like groups in their neighborhoods. Along with the Prisoner Re-entry Initiative, one of the cornerstone programs of the Faith-Based Initiative is the Mentoring Children of Prisoners program, run by the Department of Health and Human Services' Administration for Children and Families. According to the Department of Health and Human Services' website, the primary purpose of the program, which was officially launched in 2003, is to "make competitive grants to applicants serving urban, suburban, rural, or tribal populations with substantial

⁶¹⁶ "Reentry: Prisoner Re-entry Program," United States Department of Justice: Office of Justice Programs, <http://www.ojp.gov/reentry/>; "The President's Prisoner Re-entry Initiative," Employment and Training Administration: United States Department of Labor, http://www.doleta.gov/budget/docs/5_Pris_Reent_07.pdf http://www.doleta.gov/RExO/eta_default.cfm.

⁶¹⁷ Elaine Chao, Prisoner Reentry Summit, Los Angeles, CA November 27-28, 2007. "Reentry: Prisoner Re-entry Program".

numbers of children of incarcerated parents and to support the establishment and operation of mentoring programs”.⁶¹⁸ Specifically, programs must link mentors, who have been trained in the elements of Positive Youth Development, with children of incarcerated parents. In addition, grantees are expected to enhance their programs through partnerships with local government, businesses, community and non-profit organizations in order to create an even stronger mentoring environment and support system for children of prisoners.⁶¹⁹

Finally, the Access to Recovery program represents the last cornerstone project of the original Faith-Based and Community Initiative. Access to Recovery, first proposed by President Bush in his 2003 State of the Union address, is run through the Substance Abuse and Mental Health Administration of the Department of Health and Human Services and is a “three year competitive discretionary grant program...which provides vouchers to clients for purchase of substance abuse clinical treatment and recovery support services”.⁶²⁰ Essentially, the aim of the Access to Recovery program is to support the Charitable Choice principle that allows recipients of social services to choose, for themselves, what represents the best possible access to treatment for their particular situations. The hope is that with

⁶¹⁸ "Mentoring Children of Prisoners Program: More than 100,000 Matches," U.S. Department of Health and Human Services: Administration for Children and Families, http://www.acf.hhs.gov/programs/fbci/progs/fbci_mcp.html.

⁶¹⁹ "Mentoring Children of Prisoners Program (MCP)," U.S. Department of Health and Human Services: Administration for Children and Families, <http://www.acf.hhs.gov/programs/fysb/content/programs/mcp.htm>.

⁶²⁰ "Access to Recovery: SAMHSA: Prevention Works, Treatment is Effective, People Recover," U.S. Department of Health and Human Services: Substance Abuse and Mental Health Services Administration, <http://www.atr.samhsa.gov/>
<http://www.samhsa.gov/>.

Access to Recovery, treatment for drug and alcohol abuse will become “tailored to the needs of the individual, (making) addiction treatment ...as effective as treatments for other illnesses, such as diabetes, hypertension, and asthma.”⁶²¹ Three principles serve as the backbone of the Access to Recovery program; consumer choice, in which recovery is recognized as a very personal effort and it is hoped that by being allowed to choose their own program, addicts will be able to participate in a program that is more tailored to their specific needs and demands; an outcome oriented outlook, in which outcomes and the success of the addiction programs will be measured based on their ability to affect factors such as , “abstinence from drugs and alcohol,...attainment of employment or enrollment in school, no involvement with the criminal justice system, stable housing, social support, access to care, and retention in services”; and increased capacity to treat patients, it is hoped that by including faith-based and community organizations among the ranks of program providers general capacity to treat addicts in the United States will increase significantly.⁶²²

By June 2001, the original task handed down to the Office of White House and Faith-Based Initiatives of a federal audit of government partnerships with faith-based organizations had been completed. Entitled, “Unlevel Playing Field: Barriers to Participation by Faith-Based and Community Organizations in Federal Social Service Programs”, the report detailed the realities of faith-based and community

⁶²¹ Ibid.

⁶²² Ibid.

involvement in the United States as of 2001.⁶²³ Overall, the findings of the audit proved that a funding gap did exist between the amounts of federal dollars received by secular non-profit organizations in comparison to those that were received by faith-based and grassroots community organizations. The report states that, “Despite the vast, varied, and vital community-serving role of these diverse, sacred, secular grassroots groups, when the Federal Government reaches out for partners to help fulfill the Nation’s social agenda, it mainly ignores them.”⁶²⁴ Reinforcing their position, the authors list statistics for federal discretionary grants awarded directly to providers provided by each of the five Faith-Based and Community Initiative Centers. In 2001, the Department of Justice awarded only 0.3% of grants to faith-based organizations and 7.5% to community-based organizations; the Department of Education awarded only 2% of grants to faith-based and community organizations in 2000; the Department of Labor, despite efforts to include new, more local groups in competition, eventually gave only 3% of awards in the Welfare to Work program to faith-based and community organizations, while they did distribute 20% of funds in the Youth Opportunity Grant Program to faith-based and community organizations; the Department of Housing and Urban development reported that 399 faith-based and community organizations were given funds, thus receiving 16% of the Department’s grants; finally, Health and Human services had the highest

⁶²³ For the full text of *Unlevel Playing Field*, see White House Office of Faith-Based and Community Initiatives, "Unlevel Playing Field: Barriers to Participation by Faith-Based and Community Organizations in Federal Social Service Programs," (Washington DC: White House Office of Faith-Based and Community Initiatives, 2001).

⁶²⁴ Ibid., 3.

overall level of funding to faith-based and community organizations, 21%.⁶²⁵

Formula and Block Grants to state and local governments were also scrutinized as part of the audit and the overall funding pattern. Notwithstanding their distribution through state and local authorities, who the administration expected should have had access to and been understanding of the benefits of faith-based and community organizations, these funds were found to follow the same general pattern as federal discretionary funding.⁶²⁶

Although the authors do caution that these statistics may, in some cases, be “fragmentary and not wholly reliable”, overall they confirm that, “there is a striking disjunction between service organizations that Federal grant funds predominately support and the organizations that actually provide most of the critical social services.”⁶²⁷ In addition, the report points out that, in the United States, there is “A Federal System inhospitable to Faith-Based and Community Organizations”. The authors explain that, while billions of federal dollars have been spent, overall results are incongruent with the amount of monies awarded. They believe the primary culprit for these lackluster results is that granting has become “routinized”, the same organizations receive money year after year without being forced to undergo enough performance monitoring and the existing monitoring mechanism, the 1993

⁶²⁵ Ibid.

⁶²⁶ Ibid.

⁶²⁷ Ibid.

Government Performance and Results Act, has not been an effective measurement method.⁶²⁸

Perhaps *Unlevel Playing Field's* most important contribution is its close examination of the “barriers”, that each Center has determined as representing the primary impediments to greater partnering between the federal government and faith-based and community organizations. The barriers faced specifically by faith-based organizations are listed in Section Three of the report as, first, “a pervasive suspicion about faith-based organizations, specifically, federal and state programs seem to believe in a ‘no-aid’ framework as part of separation of church and state”; second, “faith-based organizations excluded from funding”, in particular, unspoken attitudes result in the division of faith-based organizations into two groups, “pervasively or primarily sectarian” versus “secular enough”, and exclusion of those that are “too religious” from receiving federal funding-because these divisions are often only implied, criteria can be haphazard and a program may demonstrate serious inconsistencies even within itself; third, faith-based organizations often face “excessive restrictions on religious activities” if they wish to receive federal monies; fourth, departments and programs often restrict funding or partnership opportunities with government through the “inappropriate expansion of religious restrictions to new programs”; fifth, the hiring issue, or the Title VII right given to religious organizations to “take religion into account in employment decisions” is often denied or open hiring is used as a preliminary criterion for receiving funding; sixth, Charitable Choice and the changes it allows for and requires in allowing and

⁶²⁸ Ibid.

encouraging social service provision by faith-based organizations is often ignored by Federal administrations.⁶²⁹

The list of barriers continues in Section Four, these are barriers that are considered to be more specific to “community-based organizations and other small and newcomer organizations”. These are, first, the “limited accessibility of Federal grants information”, an extension of the argument that grant giving has become so routine that only repeat recipients are able to maneuver, making it “difficult for newcomers to move from the sidelines to the frontlines”.⁶³⁰ Second, regulations and other requirements may be unnecessarily strict and though each “reflects important social, environmental, legal and health concerns”, all of these together may over-complicate the grant competition process for faith-based and community organizations, discouraging them from applying for federal grants. The third and fourth barriers function along the same line, requirements to be met before applying for support and the “complexity of grant applications and grant agreements” can be overwhelming for a smaller organization run by volunteers or others who may not be professionals in the field. The following two barriers deal with favoritism, first, favoritism towards faith-based organizations, making it hard for secular community-based and grassroots organizations to win grants, and second, “an improper bias in favor of previous grantees” may also often times exist. Another obstacle that faith-based and community organizations may face deals with inappropriate requirements placed on competitors to collaborate with one another; while this may enhance

⁶²⁹ Ibid., Section 3.

⁶³⁰ Ibid.

effectiveness through overall numbers of people served or programs instituted, it is not necessarily the ideal situation for many faith-based and community organizations.⁶³¹ For many faith-based and community organizations, formal 501(c)(3) status is not necessary in order to apply for and receive federal funding, however, the authors of *Unlevel Playing Field* discovered that these types of requirements are often stipulated, thus making it impossible, or at least, extremely difficult for faith-based and community organizations to receive money from federal grants.⁶³² Finally, overall, the authors recognized that “inadequate attention” has been given to faith-based and community organizations in the “federal grants streamlining process”. This process was designed in 1999 and implemented in 2001, and although it represented an effort to eliminate barriers to federal funding, the authors of *Unlevel Playing Field* believe that without a reform of the reform process, the federal grant process will not be as “welcoming to faith-based and community-based organizations” as it ought to be.⁶³³ Overall, the *Unlevel Playing Field* report concludes that “The Federal Grants process, despite a few exceptions and a growing sensitivity to and openness toward both faith-based and community groups, does more to discourage than to welcome the participation of faith-based and community groups”.⁶³⁴ Given this, the authors highly recommend, “government must do a far better job at equipping and empowering America’s

⁶³¹ Ibid.

⁶³² Ibid.

| ⁶³³ Ibid., Section 4.

| ⁶³⁴ Ibid., Section 7.

social entrepreneurs-the quiet heroes...that are conquering social ills in every corner of America”.⁶³⁵

A second round of Executive Orders, dealing with the Faith-Based Initiative, were issued on December 12, 2002. With the events of September 11, 2001, the Bush Administration had been required to refocus its attention on international, rather than domestic issues; pushing many domestic efforts, especially those that did not deal with domestic security to the background. However, by December 2002, the Administration had witnessed overall popular recognition of the potential benefits offered by social service provision by religious and community organizations and the President felt the time was ripe to expand the initiative to include more agencies. Executive Order 13279, issued in December, unilaterally implemented the religious non-discrimination provisions of the Charity, Aid, Recovery, and Empowerment Act and Charitable Choice; requiring that federal agencies not discriminate against religious organizations in awarding money to community and religious social service providers of programs to assist with the needy. In essence it was a guarantee of “equality” in terms of “equal treatment” and “equal protection” for faith-based and community organizations engaged in social service efforts.⁶³⁶ Executive Order 13280 expanded the scope of the Faith-Based Initiative by creating agencies in the Departments of Agriculture and the US Agency for

⁶³⁵ Ibid.

⁶³⁶ See <http://georgewbush-whitehouse.archives.gov/government/fbci/executive-orders.html>

International Development.⁶³⁷ On June 1, 2004, Executive Order 13342 created three new centers in the Departments of Commerce and Veteran's Affairs and the Small Business Administration, and on March 7, 2006, Executive Order 13397 created a final center in the Department of Homeland Security.⁶³⁸ Each of these centers was required to revise funding guidelines, create new final rules regarding the manner in which each respective agency distributes agency and federal funds, approves related grants, and helps support community and religious organizations in their efforts to provide agency-related social services. In addition, each agency has since also created separate websites for their respective Faith-Based Center, offering information and links to prospective grantees.⁶³⁹ With the creation of these additional agencies and the expansion and continuation of programs connected directly to the White House Office of Faith-Based and Community Initiatives, the scope of faith-based funding and activity has become "immense"; however, according to the White House, there has been no deviation from the ultimate purpose, described as, "the paramount goal is compassionate results..."⁶⁴⁰

⁶³⁷ See <http://georgewbush-whitehouse.archives.gov/government/fbci/executive-orders.html> for full text of Executive Order 13280.

⁶³⁸ See <http://georgewbush-whitehouse.archives.gov/government/fbci/executive-orders.html> for the full text of Executive Order 13342 and 13397.

⁶³⁹ See, <http://www.usda.gov/wps/portal/usda/usdahome?navid=FBCI&navtype=CO>; http://www.usaid.gov/our_work/global_partnerships/fbci/; <http://www.commerce.gov/office-secretary/center-faith-based-and-neighborhood-partnerships>; <http://www.va.gov/CFBNPARTNERSHIPS/index.asp>; <http://www.sba.gov/about-offices-content/1/36>; http://www.dhs.gov/xabout/structure/editorial_0829.shtm

⁶⁴⁰ "The Quiet Revolution: The President's Faith Based and Community Initiative: A Seven-Year Progress Report," (Washington DC: The White House Office of Faith Based and Community Initiatives, 2008), 2.

In its most recent publication, *The Quiet Revolution: The President's Faith-Based and Community Initiative: A Seven Year Progress Report* the White House Office of Faith-Based and Community Initiatives provides an executive summary of what efforts over the past seven years have achieved in terms of these compassionate results.⁶⁴¹ In particular, the authors focus on a number of “innovations”, including, leveling the playing field; expanding partnership with grassroots organizations; implementing the Faith-Based and Community Initiative through cabinet agencies; building mutually-reinforcing clusters of service; applying the Faith-Based and Community Initiative vision to International Aid and Development; growing key elements of the Faith-Based and Community Initiative in all 50 states; building the capacity of nonprofit sector leaders through training and technology; expanding public-private partnerships; forging a united strategy with the President's Call to Service; and catalyzing the Compassion Agenda as their true accomplishments in the field of social service provision.⁶⁴² It is the hope of the Office that, although specific instances and personal examples play important roles in the Faith-Based Initiative, the overall changes in legislation, implementation, and mindset that have occurred will eventually make a difference by influencing policy in years to come.⁶⁴³

While the innovations in the White House Office of Faith-Based and Community Initiatives represent the more legislative and procedural aspects of the

⁶⁴¹ Ibid.

⁶⁴² Ibid.

⁶⁴³ Ibid.

Faith-Based Initiative, the programs that have been situated within the Departmental Centers for Faith-Based and Community Initiatives represent the more practical, day-to-day functioning of the Initiative. While, as discussed earlier, some of these programs are especially significant as cornerstone projects, by 2008, each of the twelve Departments participating in the Faith-Based and Community Initiatives had developed at least one “pet project”. For President Bush, these programs form the backbone of what he calls a “determined attack on need” both within the borders of the United States, and, most recently, internationally.⁶⁴⁴ Because all of these programs function either through direct funding offered by the federal government or through the provision, encouragement, or training of volunteers, they all help

⁶⁴⁴In the Department of Health and Human Services, the primary focus, as discussed earlier, is the reality of addiction and at-risk behavior and lifestyles for America’s youth, the balancing program for this is the Mentoring of Children of Prisoners and the SAMSHA programs for addiction both among youth and adults. Another program, also mentioned previously, is the Prisoner Re-Entry Initiative, led by the Department of Labor, in its efforts to engage the support of faith-based and community organizations in order to reduce overall recidivism rates. Along these lines, the Department of Justice also works hard to encourage participation in its serious and violent offender re-entry initiative that it hopes will lead to gang and violence reduction. The Department of Housing and Urban Development leads the “Unlocking Doors Initiative” which provides, among other things, low-cost housing opportunities, federal loans, support to faith-based and community organizations that help in the construction of or other types of provision of housing opportunities, and even beds. The Corporation for National Service also aims to aid at-risk youth, primarily through the provision of volunteers with the Americorps program. The Department of Homeland Security, in its capacity for support, looks to encourage the provision of emergency shelters and food programs as part of its effort to alleviate suffering caused by natural disasters. The Small Business Administration’s focus is on supporting small businesses and their needs, which it does by engaging the efforts of a service corps of retired executives. Similarly, the Department of Commerce tries to use faith-based and community organizations’ support to encourage economic development overall in the country. The Department of Education hopes to improve the performance of both schools and their students through encouraging faith-based and community organization involvement in supplemental educational services. The US Department of Agriculture supports faith-based and community organizations who help in the provision of food and nutritional services, often to the same children that are aided by the supplemental educational services of Department of Education grantees. Finally, domestically, the Veteran’s Administration, often over-stretched in terms of the programs it is able to offer veterans, engages with faith-based and community organizations to encourage action in terms of veteran’s benefits. The addition of the USAID program to the Faith-Based and Community Initiative has added a serious international dimension to the initiative. USAID has been particularly active in a medical capacity; helping to spearhead both the President’s Emergency Plan for Aids (and HIV) Relief, and the President’s Malaria Initiative; both of which work through faith-based and community organizations overseas to bring relief to people suffering from, or at risk of suffering from, HIV/AIDs or malaria. Ibid.

contribute to the President's vision of an "attack on need" as they, either directly or indirectly, make a significant difference in the number of people that are able to receive aid, of any kind. In fact, the role that these centers are able to play has led many scholars and critics of the Faith-Based Initiative to focus their attention the daily and programmatic functions of the Departmental centers and their outreach efforts.⁶⁴⁵

CHAPTER SEVEN

THE FAITH-BASED INITIATIVE AND THE COURTS

Neutrality and the Limits of Separation of Church and State

The case of the Faith-Based Initiative, in its inspiration, design, and application provides a relevant example of, and a better understanding of, the manner in which the separation of church and state in the U.S. has followed its own trajectory, independent of the secularization styles of other democracies, and often at odds with expectations. The context of the federal state has played a central role in defining the relationship between religion and government. Additionally, the Faith-Based Initiative and its consequences offer clear demonstrations of the contours not only of this relationship, but also of the manner in which the American ideal of "the

⁶⁴⁵ Formicola, Segers, and Weber, *Faith-Based Initiatives and the Bush Administration: The Good, the Bad and the Ugly*

separation of church and state” has shifted over the past century, from a focus on strict separationism, to accomodationism, to neutral treatment. This chapter, through a historical, political, and legal analysis of the court cases that have influenced the trajectory of the Faith-Based Initiative over the past ten years, aims to offer a contextualized understanding of this shift. Although an involvement in religion and social service policy are accepted aspects of American government; the Faith-Based Initiative and its programs have, some critics argue, pushed the envelope.⁶⁴⁶ Critics’ complaints and legal suits, detailed below, have focused on the overreaching of the federal government in its application of the Faith-Based Initiative and questioned not only the motivations of the Bush Administration, but the specific functioning of faith-based organizations encouraged and supported by Departments of the federal government.

As detailed in Chapter Two, the past two decades have seen a marked shift from a judicial focus on strict no-aid separationism in matters of church and state to one of neutrality; particularly in terms of government funding to faith based organizations, including social service providers, congregations, and parochial schools. Beginning with the 1983 Supreme Court decision allowing the use of vouchers in parochial schools; and continuing with a plethora of cases including, *Witters v. Washington Department of Services for the Blind* (1986), *Widmar v. Vincent* (1981), *Bowen v Kendrick* (1988), *Rosenberger v. Rector and Visitors of the University of Virginia* (1995), and *Agostini v Felton* (1997), in which the Supreme

⁶⁴⁶ For an exhaustive list of the court cases in which the faith-based organizations and the federal government have been involved due to the Faith-Based Initiative see, "Religious Laws: U.S. Government Funding of Charitable Choice Programs," Ontario Consultants on Religious Toleration, www.religioustolerance.org/char-choi.htm.

Court acknowledged that government funds that flow to organizations indirectly, as a result of “the genuinely independent and private choices of aid recipients” were, in fact, constitutionally acceptable and did not breach the church-state divide, this attitude of neutrality versus strict-separation has become ever-more embedded in Court rhetoric.⁶⁴⁷ However, the solidification of this new attitude in the Supreme Court does not bar lawsuits from being brought against organizations supported via Charitable Choice and the Faith-Based Initiative. As we have seen in each chapter, political, judicial, and religious trends in the United States often function on a dynamic basis, the institution of the Faith-Based Initiative has not, especially in judicial terms, been an exception to the dynamism. Since inception, neither program has been immune to constitutional challenges at both the local and federal levels.

Prior to the full institution of the Faith-Based Office in the Bush Administration, decisions in two cases specifically, *Mitchell v Helms* and *Zelman v Simmons-Harris*, helped to add even greater support to the proponents of government partnership with faith-based organizations. *Mitchell v Helms*, decided in 2000, was a case that dealt with the constitutionality of government aid to private religious schools in the form of educational materials and equipment; such as computers. Again, as dictated by the general trend of neutrality in the separation of church and state, the Court held that government aid to religious schools should be allowed to mirror that of government aid to public, non-religious educational facilities and focused on the belief that aiding public schools and not private ones,

⁶⁴⁷ Decision made in *Witters v. Washington Department of Services for the Blind* (1996), quoted from Kuzma, "Faith-Based Providers Partnering with Government: Opportunity and Temptation."

even religious ones, would constitute a form of non-equal, discriminatory policy. Based on the Lemon Test, the Court explained that since the purpose of government aid to the parochial schools was secular and no extraordinary government entanglement was required in the program; the program itself was secular. Therefore, the government's program of providing materials and resources to private, albeit religious schools, did not cross the bounds of constitutionality in terms of separation of church and state.⁶⁴⁸ Justice Thomas wrote, on behalf of Chief Justice Rehnquist, and Justices Scalia and Kennedy, that, "the program does not run afoul of any of three primary criteria we currently use to evaluate whether government aid has the effect of advancing religion: It does not result in governmental indoctrination; define its recipients by reference to religion; or create an excessive entanglement."⁶⁴⁹ The course altering decision reached by the Court was, however, only a plurality and not a majority decision, indicating the controversial nature of the situation under review.

In its decision, the plurality explained,

In distinguishing between indoctrination that is attributable to the State and indoctrination that is not, we have consistently turned to the principle of neutrality, upholding aid that is offered to a broad range of groups or persons without regard to their religion. If the religious, irreligious, and areligious are all alike eligible for government aid, no one would conclude that any indoctrination that any particular recipient conducts has been done at the behest of the government. For attribution of indoctrination is a relative question...To put the point differently, if the government, seeking to further some legitimate secular purpose, offers aid on the same terms, without regard to religion, to all who adequately further that purpose, see *Allen*, 392 U.S., at 245—247 (discussing dual secular and religious

⁶⁴⁸ *Mitchell, et al v Helms, et al.* 530 US 793,(2000).

⁶⁴⁹ *Ibid.*, 234.

purposes of religious schools), then it is fair to say that any aid going to a religious recipient only has the effect of furthering that secular purpose. The government, in crafting such an aid program, has had to conclude that a given level of aid is necessary to further that purpose among secular recipients and has provided no more than that same level to religious recipients.⁶⁵⁰

Here the Court both affirms its neutral position that aid should be provided on an equal basis to both secular and religious organizations, and, through its focus on client choice, distances itself from any problems that may arise due to religious program participation and potential indoctrination. *Mitchell v Helms* consolidated the government and Court position that government aid to religious entities that was undertaken in order to uphold the principle of neutral treatment vis-à-vis secular and religious organizations was, in fact, constitutional. In addition, “The Mitchell plurality also explicitly and vehemently repudiated a central tenet of the Separationist ethos. From the time of *Lemon v Kurtzman* until the decision in *Mitchell*, the Court had repeatedly insisted that the state could not aid “pervasively sectarian” institutions.”⁶⁵¹ The sum of these changes of viewpoint within the Court, and the “loophole” that the *Mitchell* decision provided concerning judicial liability in situations of patient choice, would eventually guide the arguments of constitutionality by the proponents of the Faith-Based Initiative.

With the Court’s decision in *Zelman v Simmons-Harris* in 2002, the previous *Mitchell* decision was toughened and the open-minded judicial position vis-à-vis the Faith-Based Initiative, neutrality and private choice was reinforced. *Zelman* focused

⁶⁵⁰ Ibid.

⁶⁵¹ Lupu and Tuttle, “*Zelman’s* Future: Vouchers, Sectarian Providers, and the Next Round of Constitutional Battles,” 924.

on the state of Ohio's Pilot Project Scholarship Program, designed to "provide tuition aid for certain students...to attend participating public or private schools of their parent's choosing and tutorial aid for students who choose to remain enrolled in public school. Both religious and nonreligious schools in the district may participate."⁶⁵² The program dictated that "Tuition aid is distributed to parents according to financial need, and where the aid is spent depends solely upon where parents choose to enroll their children."⁶⁵³ In analysis of the program results, it was found that sixty percent of the participating children and families were below the poverty line and that of children who received the tuition aid, 96% enrolled in religiously affiliated schools. These statistics were what eventually caused the program to be challenged in the District Court. However, in its final judgment, the Supreme Court held that the program did not violate the Establishment Clause; because the program was based on vouchers, any government money that flowed to religious organizations did so based entirely on personal and private choice without any real element of direct governmental aid involved.⁶⁵⁴

In *Zelman*, the Supreme Court decision was a majority decision declaring the program constitutional. This demonstrates the dynamism of the Court and the U.S. judicial process. In just two years time, the idea of neutrality towards opportunities

⁶⁵² *Zelman, Superintendent of Public Instruction of Ohio, et al. v Simmons-Harris et al* 536 US 639,(2002).

⁶⁵³ Ibid.

⁶⁵⁴ Ibid; ———, "Zelman's Future: Vouchers, Sectarian Providers, and the Next Round of Constitutional Battles."

in religious settings had been further solidified. The decision emphasized the importance of personal choice in the expenditure of federal monies;

The instant program is one of true private choice, consistent with the Mueller line of cases, and thus constitutional. It is neutral in all respects towards religion, and is part of Ohio's general and multifaceted undertaking to provide educational opportunities to children in a failed school district. It confers educational assistance directly to a broad class of individuals defined without reference to religion and permits participation of all district schools, religious or nonreligious, and adjacent public schools. The only preference in the program is for low-income families, who receive greater assistance and have priority for admission.⁶⁵⁵

This emphasis the Court placed on neutrality and constitutionality, especially when voucher use demonstrated clear personal choice, represented a far-reaching effect on the path for the implementation of the Faith-Based Initiative and its various programs. *Mitchell* and *Zelman*, opened the door to increased partnerships between faith-based organizations and federal and local governments. The criteria of "true individual choice" "will certainly have a major impact if the court requires that it be integral to faith-based initiatives. Constitutionality would depend on how the social service delivery plan is structured."⁶⁵⁶

Two legal scholars, Ira Lupu and Robert Tuttle, have closely scrutinized the Faith-Based Initiative, its constitutionality, and the legal battles it has faced, which will be detailed in the remainder of this Chapter; posting their findings as updates on the Pew Forum Roundtable on Religion and Social Welfare Policy⁶⁵⁷, one of the

⁶⁵⁵ *Zelman, Superintendent of Public Instruction of Ohio, et al. v Simmons-Harris et al* 536 US 639.

⁶⁵⁶ Weber, "The Bad in the Faith-Based Initiative," 70.

⁶⁵⁷ The Roundtable, part of the Rockefeller Institute of Government at the State University of New York, was supported by the Pew Charitable Trusts Foundation. The original aim of the Roundtable, as stated on its website in 2002, at the time of its founding was, "To engage and

most diligent watchdog groups that has followed the Faith-Based Initiative. In 2002, following the Court's decision, Lupu and Tuttle, aptly pointed out that, "*Zelman* will have enduring importance...the powerful consequences that the *Zelman* decision is likely to have outside the education context. The President's faith-based initiative needed a boost, and *Zelman* may have provided it."⁶⁵⁸ In practical terms, Lupu and Tuttle explain, the *Mitchell* decision, dealing with the constitutionality of direct government aid was more tenuous, the Court decision was based on a plurality and not a majority, and the decision itself remains open to

inform government, religious and civic leaders about the role of faith-based organizations in our social welfare system by means of nonpartisan, evidence-based discussions on the potential and pitfalls of such involvement." Through December of 2008, the end of the Bush Presidency, the Roundtable attempted, "to increase awareness among key stakeholders, including policy makers, religious and civic leaders, and the media, of the critical issues related to faith-based social service programs by means of in-depth analysis and discussion based on the best social service science, legal and policy research." In addition, according to the website, "Over the seven years in which it was engaged in this effort, the Roundtable served as the preeminent source of expert, unbiased information on policy and legal developments concerning the involvement of faith-based organizations in social services. Drawing on a wide range of experts from government, civic, religious and research organizations, the Roundtable's events and publications helped to better define and measure the character of faith-based social services; to gauge private and public sector support for their work; and to provide new views on their comparative effectiveness." See, "The Roundtable of Religion&Social Welfare Policy: Impartial News and Analysis of Faith-Based Social Services from the Rockefeller Institute of Government, State University of New York," Rockefeller Institute of Government, State University of New York, <http://socialpolicyandreligion.org/index.html>.

⁶⁵⁸ The distinction, importance, and constitutionality of vouchers versus direct financing from the government are explained in Chief Justice Rehnquist's opinion of the Court. The Chief Justice, drawing on precedents for both types of cases, writes, "our decisions have drawn a consistent distinction between government programs that provide aid directly to religious schools, *Mitchell v. Helms*, 530 U. S. 793, 810.814 (2000) (plurality opinion); *id.*, at 841.844 (O'CONNOR, J., concurring in judgment); *Agostini*, *supra*, at 225.227; *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 842 (1995) (collecting cases), and programs of true private choice, in which government aid reaches religious schools only as a result of the genuine and independent choices of private individuals, *Mueller v. Allen*, 463 U. S. 388 (1983); *Witters v. Washington Dept. of Servs. for Blind*, 474 U. S. 481 (1986); *Zobrest v. Catalina Foothills School Dist.*, 509 U. S. 1 (1993). While our jurisprudence with respect to the constitutionality of direct aid programs has changed significantly. Over the past two decades, *Agostini*, *supra*, at 236, *our* jurisprudence with respect to true private choice programs has remained consistent and unbroken. Three times we have confronted Establishment Clause challenges to neutral government programs that provide aid directly to a broad class of individuals, who, in turn, direct the aid to religious schools or institutions of their own choosing. Three times we have rejected such challenges." *Zelman, Superintendent of Public Instruction of Ohio, et al. v Simmons-Harris et al* 536 US 639.

constitutional impediments, especially in cases where funds are transferred directly from the government to a faith-based organization; government oversight and proper use of the funding for secular purposes are still required. However, the Court ruled that, “voucher-financed programs may include faith-intensive components”, as a result, “*Zelman* provides an unmistakable sign that voucher financing of faith-based services is the Administration’s most promising route to constitutional success (for the Faith-Based Initiative). In principle (*Zelman*’s) approval of indirect funding of services provided by religious entities extends seamlessly to other social services. Formal neutrality and ‘true private choice’ remain the measure of constitutionality.”⁶⁵⁹ While faith-based programs will still be required to demonstrate, “true, genuine, and independent” choice, along with the availability of alternative secular programs and a “relevant universe of choices” among service programs to pass constitutional muster; Lupu and Tuttle caution that regulation of service providers, especially those that have not created separate 501 3(c) non-profit organizations, will need to be increased to ascertain that these requirements are being met.⁶⁶⁰ Nonetheless, “Whatever the political dynamics, *Zelman*’s answer to the main constitutional question guarantees that vouchers will play a central role in the Bush Administration’s strategy for its faith-based initiative. If the

⁶⁵⁹ Lupu and Tuttle, “*Zelman*’s Future: Vouchers, Sectarian Providers, and the Next Round of Constitutional Battles,” 982.

⁶⁶⁰ Black, Koopman, and Ryden, *Of Little Faith: The Politics of George W. Bush’s Faith-Based Initiatives*: 244.

Administration wants a “level playing field” for religious and non-religious organizations, vouchers are the constitutionally safest game in town.”⁶⁶¹

The Faith-Based Office Faces Opposition, and the Courts

The first cases to be brought specifically against the implementation of Charitable Choice surfaced in 1998. Spearheaded by the group American United for Separation of Church and State,⁶⁶² and supported by a number of other civil liberties groups, including the American Civil Liberties Union⁶⁶³ and People for the American Way,⁶⁶⁴ concerns voiced in court ranged from fears over the manner in which federal funding might serve to advance congregational agendas during the provision of social services, to concerns about what government involvement and funding might mean for the integrity and autonomy that congregations themselves enjoy.⁶⁶⁵ Originally, critical groups waited for the full implementation of the Charitable Choice Act, and the creation of specific programs under the Act, before filing legal complaints against issues arising from the receipt of federal funds. As a

⁶⁶¹ Ira C. Lupu and Robert W. Tuttle, "Zelman, Superintendent of Public Instruction of Ohio, et al. v Simmons-Harris, et al.," in *The Roundtable of Religion and Social Welfare Policy* (Albany: Rockefeller Institute of Government, State University of New York, 2002).

⁶⁶² For further information concerning the Americans United For the Separation of Church and State see, www.au.org

⁶⁶³ The national website for the American Civil Liberties Union details to group's mission statement, programs, and provides links to regional and local unions. See www.aclu.org

⁶⁶⁴ See www.pfaw.org

⁶⁶⁵ Libby Quaid, "Groups Battle Welfare Law's Church Option: Provision Allows States to Contract for Services with Religious Agencies," *The Fresno Bee*, January 10 1998.

result, although the Personal Responsibility and Work Opportunity Reconciliation Act, and Charitable Choice, had been passed in 1996, media reports of complaints and possible legal action did not surface until 1998. There are two primary reasons for this; first, during the period between 1996-1998, the massive devolution effort, shifting the burden of responsibility for welfare from the federal level to the shoulders of state welfare offices and state governments was only just underway and implementation was time consuming and labor intensive.⁶⁶⁶ As a result, the true effects of the state-level implementation of Charitable Choice remained to be seen. Second, it was not until 1998, a Congressional election year, and the need for Congressional extension of the Charitable Choice Act, that civil-liberty groups, in particular, fully recognized the implications of the Act and the potential it held to injure the prevailing notions of church-state divide in the United States. In 1998, Derek Davis, then the director of Baylor University's Church-State Institute and the subsequent author of numerous articles concerning Charitable Choice and the Faith-Based Initiative⁶⁶⁷, noted that Charitable Choice, "...has the potential to become the primary church-state issue of the next ten to fifteen years...this kind of direct funding to churches to perform any kind of service is unprecedented."⁶⁶⁸

Due to the timing of Charitable Choice and the Faith-Based Initiative, a number of cases that were originally debated as part of the Charitable Choice Act,

⁶⁶⁶ Whitaker and Time, "Devolution and Welfare: The Social and Legal Implications of State Inequalities for Welfare Reform in the United States."

⁶⁶⁷ Derek H. Davis, "President George W. Bush's Office of Faith-Based and Community Initiatives: Boon or Boondoggle?," *Journal of Church and State* 43, no. 3 (2001).

⁶⁶⁸ Libby Quaid, "Can a Helping Hand Offer Welfare and a Prayer Too? "Charitable Choice" might widen aid but separation of church and state is an issue in some assistance programs," *The Philadelphia Inquirer*, March 8 1998; *ibid.*

often continued into the era of the Faith-Based Initiative. In fact, with the creation of the Faith-Based Office, critics of Charitable Choice were able to gain judicial ground. In addition, the outstanding Charitable Choice cases served as cautionary reminders during the legislative process for the Faith-Based Bills, H.R.7 and the Charity, Aid, Recovery, and Empowerment Act, helping to demonstrate the serious questions of church-state separation and basic constitutionality that passage of the Bill would inevitably face. Any expansion beyond Charitable Choice in terms of programming, funding, and requirements for the separation of secular and faith-oriented programs funded by the government would enter into a gray area, and, when held to Supreme Court scrutiny, might not pass muster.⁶⁶⁹ As Representatives attempted to reach a decision on faith-based legislation, critics of the President's plan testified and spoke out against the plan; focusing primarily on a number of areas in which the separation of church and state would be breached and constitutional concerns would abound.⁶⁷⁰

In response to these concerns and legislative missteps, the Faith-Based Bill, as originally drafted, was eventually abandoned. The Bush Administration promptly created the White House Office of Faith-Based Initiatives and the

⁶⁶⁹ Black, Koopman, and Ryden, *Of Little Faith: The Politics of George W. Bush's Faith-Based Initiatives*: 122-23. Black, Koopman, and Ryden draw an important distinction at this point between the Pragmatists, legislators who believed in the value of federal funding for faith-based organizations and their provision of social services, and were therefore willing to forgo some of the overall expansion of Charitable Choice in order to guarantee that the new Faith-Based Initiative's legislation would pass judicial muster, and the Purists, who were focused in fully implementing their compassionate agenda and expanding faith-based legislation beyond the previous bounds to further ease the way for faith-based organizations to compete for and obtain federal funding for their programs. In the end, the Purists prevailed, a victory that probably cost them the success of the bill overall in the House and Senate.

⁶⁷⁰ For full, Congressional accounts of these testimonies see, "Bill Summary & Status: 107th Congress (2001-2002)," United States of America Library of Congress, <http://thomas.loc.gov/cgi-bin/bdquery/z?d107:H.R.7:>.

Departmental Centers of Faith-Based Initiatives, and the practical work of adjusting federal legislation to accommodate faith-based social services, encouraging applications by faith-based organizations, and providing government funding either to states in the form of block grants to be used in funding social service providers, or to various Departmental Agencies to be used in Departmental programs focused on encouraging partnerships with faith-based providers, such as the Prisoner Re-Entry Initiative, began. Soon after this, beginning at the local and state court levels, a number of cases emerged that demonstrated the magnitude of the challenges facing the regulatory changes proposed by the Faith-Based Office. Although, based on the federal system, these challenges did not reach the Supreme Court until the middle of the decade. Nonetheless, precedents set in the lower courts served to pinpoint the two primary concerns, the constitutionality of hiring exemptions when utilizing federal or state funds, and the unconstitutional use of government funds for proselytization or the indoctrination of a “captive” audience, any faith-based organizations, large or small, nationally oriented or locally-focused, should be prepared to address its attempts to provide social services.

Hiring Exemptions and the Faith-Based Initiative

The first major challenge to faith-based legislation under scrutiny is the question of hiring discrimination allowances. According to Title VII allowances, religious organizations and houses of worship are given allowances for discriminatory practices in their hiring decisions. In the Title VII subchapter of the Civil Rights Act

of 1964, the Equal Employment Opportunity Commission notes that discriminatory hiring “shall not be an unlawful employment practice” for institutions that are “in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society or if the curriculum...is directed toward the propagation of a particular religion.”⁶⁷¹

The underlying logic of this clause is that a religious organization, in its efforts to remain true to its own spiritual agenda, should have the ability to choose its employees based on the compatibility of their spiritual beliefs with the organization and its mission. Under standard circumstances, it is rare for this hiring discrimination allowance to face serious opposition; generally speaking, when a potential employee chooses to apply for a job in a house of worship or with a particular religious congregation, it is often the spirituality of that employer that prompts the application in the first place. However, under the continued application

⁶⁷¹ According to the United States Equal Employment Opportunity Commission’s report, Title VII of the Civil Rights Act of 1964, located in volume 42 of the United States Code, “prohibits employment discrimination based on race, color, religion, sex and national origin.” Title VII of the Civil Rights Act of 1964, www.eeoc.gov/policy/vii.html. Specifically the Title VII subchapter states, “This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.” (Title VII subchapter p.4) and that “Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training and retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.” “Title VII of the Civil Rights Act,” 6.

of Title VII and with the expansion of Charitable Choice under the Faith-Based Office, organizations and programs, to which other qualified professional and volunteers might wish to apply, which were being funded essentially by government money, would be allowed to hire based on discriminatory criteria.

In 2001, during the debate over the Faith-Based Bill, Representative Bobby Scott, an African-American Democrat from Virginia, made hiring exemptions; proposed as an area of expansion of the previous Charitable Choice Act; the focal point of his opposition. According to Scott, "Funding of religious services would...invite federally funded bigotry based on religion, race and sexual preference."⁶⁷² Scott's point was not without merit, including hiring discrimination allowances in this type of a federally-funded program might encourage houses of worship to justify unlawful employment practices with federal reasoning; it would also essentially to federally funded discrimination, a position the United States has been careful to avoid for decades. Throughout 2001, numerous newspaper articles also pointed out the concerns that were being voiced on this subject by members of the government, civil society organizations, and the scholarly community.⁶⁷³

Representative Scott's concerns soon proved to be well founded. In 2001, *Pedreira v. Kentucky Baptist Homes for Children* was brought before a judge in Kentucky. The case was based on the firing of Alice Pedreira, a therapist at one of

⁶⁷² ———, *Of Little Faith: The Politics of George W. Bush's Faith-Based Initiatives*.

⁶⁷³ The issue of hiring discrimination figures prominently in American government concerns due to the underlying legacy of segregation and racial discrimination. For media accounts of the Bush era concerns over hiring discrimination see, Frank Bruni and Elizabeth Becker, "Charity is Told It Must Abide By Antidiscrimination Laws," *The New York Times* 2001; Michael Heath, "QUESTIONS WHETHER IT'S FAITH-BASED CHARITY OR FAITH-BASED DISCRIMINATION," *The Post-Standard*, April 23 2001; Mark O'Keefe, "Another trouble spot for charitable choice: hiring policies; Would groups have to employ non-believers?," *The Dallas Morning News* 2001.

the Baptist Homes for Children, a faith-based organization that is the state's largest provider of services for troubled youth. According to the case records, Pedreira claims that, despite having worked at the Home for a number of years, and having received positive feedback from both the children she treated and her supervisor, she was fired as a result of discrimination towards her lesbian lifestyle. Pedreira, whose sexual orientation was not known by the Home originally, was photographed without her knowledge at a lesbian parade, and after administrators saw the picture, claims she was abruptly fired. In response, the Home alleged that Pedreira's lifestyle violated the core values of its Baptist spirituality and outlook. However, Pedreira's council argued that discrimination of this sort, by a federally funded program, in fact, violates the Establishment Clause of the First Amendment; in which it is stated that government may not fund or abet the Establishment of any particular religion or denomination. The original trial judge, Judge Simpson, who heard *Pedreira v. Kentucky Baptist Homes* dismissed the case and explained that Kentucky Baptist Home's action was legal as "civil rights statutes protect religious freedom, not personal lifestyle choices".⁶⁷⁴ Once it reached the District Court, the presiding Judge, Judge Simpson, upheld the original ruling, explaining that, while Kentucky Baptist Homes for Children's attitude vis-à-vis Pedreira was based on religious tradition and values, neither federal law, nor Kentucky state law prohibited discrimination based on sexual lifestyle; and as a result, neither federal nor state law

⁶⁷⁴ *Alice M. Pedreira (and others) v Kentucky Baptist Homes for Children (and others)* 186 F. Supp. 757, 759 (WD Ky 2001), (2001).

had been violated.⁶⁷⁵ In addition, the plaintiffs had claimed that state funding for the Kentucky Baptist Homes for Children was a violation of the Establishment Clause and that children placed in the Homes were being religiously indoctrinated. On this portion of the case, Judge Simpson did not rule promptly and it was not until after the passage of *Hein v. the Freedom From Religion Foundation*⁶⁷⁶ landmark decision that he ruled that the plaintiffs did not have taxpayer standing to pursue the case. Pedreira has since appealed both these decisions to the Sixth Circuit Court of Appeals, the appellate court that decides cases in Kentucky, Ohio, Michigan, and Tennessee.⁶⁷⁷

Although the *Pedreira* case was one of the most high profile cases of the sort; examination a number of other cases dealing with the constitutionality of hiring exemptions will help illuminate the depth of the potential risks states and organizations are likely to face in encouraging faith-based social service provision. For example, another case of discrimination based on sexual and religious

⁶⁷⁵ In response to concerns over the right of faith-based organizations to discriminate in hiring, the White House Office of Faith-Based and Community Initiatives published a booklet outlining its view that preserving the religious integrity of an organization was central to that organization's ability to provide effective and efficient social services. See, "Protecting the Civil Rights and Religious Liberties of Faith-Based Organizations: Why Religious Hiring Rights Must Be Preserved," ed. White House Office of Faith-Based and Community Initiatives (Washington, DC: United States Government, 2005).

⁶⁷⁶ An important case in which the Supreme Court decision that taxpayers did not have the right to sue the Faith-Based Office resulted in the mass dismissal of many outstanding cases brought against faith-based organizations. The *Hein* case will be discussed in detail in this Chapter. See, Scott W. Allard, "The Changing Face of Welfare During the Bush Administration," *Publius* 37, no. 3 (2007).

⁶⁷⁷ *Pedreira v. Kentucky Baptist Homes* was one of the cases that also felt the outerlying effects of the recent Supreme Court Decision in *Hein v Freedom From Religion Foundation* (2007) in which the Supreme Court decided that taxpayers do not have standing to sue faith-based organizations or concerning faith-based programs under the Establishment Clause as the Faith-Based Office and the federal funding that flows from the office to states was created as an Executive Order and not as an act of Congress. *Alice M. Pedreira (and others) v Kentucky Baptist Homes for Children (and others)* 186 F. Supp. 757, 759 (WD Ky 2001).

orientation was *Bellmore v United Methodist Children's Home of the North Georgia Conference, Inc. and the Department of Human Resources, State of Georgia*.

Sponsored by the Lambda Legal Defense and Education Fund, the case dealt with Aimee Bellmore, hired as a youth counselor but fired after she “expressed disagreement with the anti-homosexual statement of principle” adopted as part of the Home’s “Methodist value system”, and Dr. Alan Yorker, a trained psychotherapist who was interviewed and allegedly had his application rejected due to his Jewish heritage.⁶⁷⁸ The Legal Defense team argued that, due to the receipt of funding from the state, part of which was used to pay Ms. Bellmore’s salary and would have been used in the hiring of Dr. Yorker, both of these actions of the part of the Home were illegal. In addition, the requirement that “all of its youth residents, irrespective of their faith, to attend Methodist services and Sunday school on a weekly basis”; represents attempts at religious indoctrination that, due to the state funding the Home receives, also places the organization in direct violation of both federal and state Constitutions. Finally, the Legal Defense team criticized the Home for its policy of forcing gay or lesbian wards to attend “potentially dangerous behavioral intervention therapy”, bolstered with religious ideology and Methodist values, in an effort to alter sexual orientation from homosexual to heterosexual.⁶⁷⁹

⁶⁷⁸ According to Ms. Bellmore, she had also expressed her disagreement with the anti-homosexual stance of the Home at the time of her hiring, however, she was assured that “she would be able to respect...diversity of...sexual orientations”. I.C. Lupu and R.W. Tuttle, "Legal Update: *Bellmore v United Methodist Children's Home of North Georgia Inc. and the Department of Human Resources, State of Georgia*," ed. Roundtable of Religion and Social Welfare Policy (Albany, NY: Rockefeller Institute of Government: State University of New York, 2002), 2.

⁶⁷⁹ Ibid.

In response to these charges, the United Methodist Children's Home denied the complaints concerning hiring and religious indoctrination; the Department of Human Resources of the State of Georgia claimed that they did not know that any unlawful activities were occurring at the Home.⁶⁸⁰ However, in a significant step for litigation against federal and state funding of faith-based organizations and the numerous complaints that have accompanied this new trend, in November 2003, the parties involved in the case had reached a settlement agreement. Not only were personal settlements were reached concerning the firing of Aimee Bellmore and the rejection of Dr. Alan Yorker for employment,⁶⁸¹ but the case prompted both the state of Georgia and the United Methodist Children's Home to adjust their general policies and guidelines.⁶⁸² The Georgia State Constitution, one of the state constitutions to include a Blaine Amendment, specifically, and in no uncertain terms, forbids any state funding from flowing to religious organizations, "No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution"; in this, the Georgia Constitution mandates that judges should look not only at the programming being provided, but also at the character of the organization providing services.⁶⁸³ The Department of Human Resources and the United Methodist Children's Home had quite obviously violated this statute. Commenting on the

⁶⁸⁰ Ibid., 2-3.

⁶⁸¹ These settlements, as personal settlements, were not disclosed to the public.

⁶⁸² I.C. Lupu and R.W. Tuttle, "Settlement of the Bellmore Litigation: Analysis "; Jim Martin, "Terms to Apply to Child Welfare Providers," (Georgia Department of Human Resources).

⁶⁸³ "Georgia State Blaine Amendment: Georgia Constitution."

settlement, Sheila Suess Kennedy, the principal investigator for the Charitable Choice Research Project, noted the case clearly demonstrated that, “states did not monitor constitutional violations and did little to educate contractors about constitutional compliance.”⁶⁸⁴

The example of hiring exemptions concerns and the manner in which changes at the federal level quickly spill over into the state and local levels, and vice versa, demonstrates the “intertwinedness” that has come to describe the American federal system. In America’s unique system, not only do decisions made in one state, such as Georgia, serve as examples, or cautionary tales, to other states nationwide, but state-level actions clearly affect policy and positions in the federal executive, legislative, and judicial branches. While the connected nature of the American system may provide for greater opportunities to experiment and advance, actions taken at different levels, be it state or federal levels, can also have a detrimental effect on their counterparts. Despite the eventual conclusion of these two cases, the issue of hiring exemptions has continued to plague the federal government. As recently as the 2008 Presidential elections, candidates in both the primary races and federal competition were forced to declare their positions on the contentious issue. While Senator McCain did not comment on the program often, Hillary Clinton and Barak Obama both mentioned the White House Office of Faith-

⁶⁸⁴ "In a First-of-its Kind Example, Lambda Legal Announces Settlement Agreement that Lays Groundwork for Civil Rights Safeguards in Public Funding of Faith-Based Organizations," Lambda Legal Defense and Education Fund, <http://www.lambdalegal.org/news/pr/in-a-first-of-its-kind.html>. Sheila Suess Kennedy is a Professor of Law and public policy at the Indiana University-Purdue University Indianapolis and was the principal investigator for the Charitable Choice Research Project, a three year, three state study funded by the Ford Foundation and directed by the Center for Urban Policy and the Environment at the University of Indiana. It was the first academic project that focused on determining the efficacy of faith-based and secular providers of social services in a comparative framework.

Based and Community Initiatives a number of times in their speeches and policy proposals.⁶⁸⁵

Funding and the Faith-Based Initiative

Along with Representative Scott, Chet Edwards, a Democratic representative from the 17th District of Texas who was first elected to Congress in 1990, was also one of the primary opponents of H.R.7 and previous Charitable Choice legislation; his concerns were based more on the basic principles of separation of church and state and the fear that, as federal funding became available for religious organizations, the organizations themselves would begin to focus less on their traditional roles of providing of spiritual guidance and social outreach; vibrant and integral aspects of American society; and become increasingly concerned with competing for more and more federal funding.⁶⁸⁶ On July 19, 2001, during the debate over the Faith-Based Bill, Edwards pressed his point concerning the dangers of federal funding to faith-based organizations numerous times; arguing that “Sending billions of tax dollars each year directly to churches is unconstitutional...It will lead to government regulation of our churches, which is exactly why our Founding Fathers rejected the idea of using tax dollars to fund our churches when they wrote the Bill of Rights.”⁶⁸⁷

⁶⁸⁵ President Obama’s stance on the Faith-Based Initiative and the issue of hiring exemptions will be more fully examined in the next section.

⁶⁸⁶ For analysis of the debates see, Black, Koopman, and Ryden, *Of Little Faith: The Politics of George W. Bush's Faith-Based Initiatives*: 130. For the debates themselves see, "Bill Summary & Status: 107th Congress (2001-2002)".

⁶⁸⁷ "Bill Summary & Status: 107th Congress (2001-2002)".

Prior to the final vote, Edwards continued, explaining that, “As all human history has proven, entanglement between government and religion will lead to less religious freedom and more religious strife. Government funding of our churches will absolutely lead to government regulation of our churches, it will cause religious strife as thousands of churches compete for billions of dollars annually.”⁶⁸⁸

Although the Scott-Edwards opposition team was ultimately unsuccessful; they *were* able to get “nearly all Democrats to vote against H.R. 7 and force House GOP leaders to scramble mightily to avoid defeat”; in this, they were able to demonstrate that, while the idea of faith-based organizations participating in social services might be acceptable to most, their funding by the federal government was certainly much less palatable.⁶⁸⁹

As occurred in the realm of hiring discrimination, after the implementation of Charitable Choice and the Faith-Based Initiative, cases questioning the constitutionality of use of federal funds by religious organizations soon began to pop up in local and district courts. One of the earliest cases, *Freedom from Religion Foundation v. McCallum* (Wisconsin FaithWorks) was decided in October 2000 when the District Judge ruled that the FaithWorks program, in essentially attempting to indoctrinate program participants, was in violation of federal funding laws. The Freedom from Religion Foundation charged that FaithWorks was using the 600,000 dollars in federal funding, distributed by the state per the 1996 welfare reform act, for its residential program treating drug and alcohol addictions, to fund an overtly

⁶⁸⁸ Ibid.

⁶⁸⁹ ———, *Of Little Faith: The Politics of George W. Bush's Faith-Based Initiatives*: 129.

religious program which patients at the facility were required to attend (although not to participate in) as part of their treatment.⁶⁹⁰ The Western District of Wisconsin Court ruled that the program was unconstitutional and noted that, “the FaithWorks program indoctrinated its participants in religion, primarily through its counselors...Religion is so integral to the FaithWorks program that it is not possible to isolate it from the program as a whole.”⁶⁹¹ In a significant finding, raising questions about the manner in which faith-based legislation would likely function, the Freedom from Religion Foundation discovered that, following the institution of Charitable Choice in Wisconsin, FaithWorks had received almost one million dollars in state funds. Despite this, the case decision did not rule on the constitutionality of Charitable Choice, rather the presiding judge looked specifically only at the funding streams and the issues presented by the use of federal funds for religious programming.⁶⁹² In fact, in a later decision on the same case, the District Court decided that while the general use of direct government aid had been unconstitutional, the indirect aid that flowed to the organization as a result of beneficiary choice was constitutional and could be continued; a decision the Freedom from Religion Foundation criticized as a face-saving measure for the state and federal governments.⁶⁹³

⁶⁹⁰ *Freedom From Religion Foundation, Inc. v Scott McCallum*, (2001).

⁶⁹¹ *Ibid.*

⁶⁹² *Ibid.*

⁶⁹³ See, *ibid.* 2002 U.S. Dist. LEXIS 14177. In this decision, the District Court judge relied on the precedent set by *Zelman v. Simmons-Harris* (2002). See also, "Federal Court Halts Public Funding of Faith Works," The Freedom from Religion Foundation, <http://www.ffrf.org/news/releases/federal-court-halts-public-funding-of-faith-works/>.

During this period another state-level case, *American Jewish Congress and the Texas Civil Rights Project vs. Texas Department of Humans Services* was also filed on January 27, 2000, making it one of the original cases against Charitable Choice that, in time, later flowed into the judicial battle against the Faith-Based Initiative. Although it was not yet evident, from a historical perspective, this case has proven to be especially significant in that it deals with organizations located in Texas. Due to its position as one of the first states to fully implement Charitable Choice, observers noted that Texas is likely to remain a forerunner in more ways than one in the debate over federal partnerships with faith-based social service providers; “perhaps more than any single factor, such legal challenges as those occurring in Texas will determine the fate of the Faith-Based Initiative, both within states and nationally...Texas is in the forefront of testing the ground and setting the precedent for the success of the Faith-Based Initiative”.⁶⁹⁴ In this specific case, The American Jewish Congress and the Texas Civil Rights Project charged that the Texas Department of Human Services had funded a program that was, “permeated by Protestant Evangelical Christianity.”⁶⁹⁵ They claimed that 8000 dollars in public funding received by the Department’s Brenham program was used for the purchase of Bibles; payment of the salary of the program director, who supervised both the religious and non-religious aspects of study; and to fund biblical teaching and study. Additionally, the Brenham program was charged with running a program in which

⁶⁹⁴ Helen Rose Ebaugh, "The Faith-Based Initiative in Texas: A Case Study," *The Roundtable on Religion and Social Welfare Policy* (2003).

⁶⁹⁵ Black, Koopman, and Ryden, *Of Little Faith: The Politics of George W. Bush's Faith-Based Initiatives*.

the secular and religious portions of the program were so fully intertwined that they could not be extricated from one another.⁶⁹⁶ Between 2000-2002, the case was tried at both the local level and the District Court level; however, the District Court judge dismissed the case on the grounds that the program had already ended by the time the case was presented at the District level.⁶⁹⁷

In May 2002, in Louisiana, another state quick to implement both the changes wrought by Charitable Choice and the Faith-Based Initiative, the American Civil Liberties Union of Louisiana filed a lawsuit against the Governor and other state officials charging them with violating the Establishment Clause by providing government funding to the Governor's Program on Abstinence. The plaintiffs claimed that the program "promotes religious precepts in its own literature and events"; funds organizations that convey religious messages and promote religion in their Governor's Abstinence Program-financed programming; and awards public dollars to "pervasively sectarian institutions".⁶⁹⁸ In response to the American Civil Liberties Union request that the Court order a cessation to the Governor's Abstinence program and any related funding to faith-based organizations, the District Court of Louisiana, ruled that the current state of the Governor's Program on Abstinence was unconstitutional, forbid disbursement of government funds to abstinence programs that used specifically religious themes and language as part of

⁶⁹⁶ *American Jewish Congress and Texas Civil Rights Project v Bost: Texas Department of Human Services*, (2001).

⁶⁹⁷ The American Jewish Council and the Texas Civil Rights Project have since taken their case to the Fifth Circuit Court of Appeals, and believe that a final ruling in this case is likely to be significant in terms of the constitutionality of a number of other programs. Ibid.

⁶⁹⁸ *American Civil Liberties Union Louisiana v Foster*, (2002).

their program, and required the state to institute firm guidelines stating that faith-based organizations could only use government funding for secular programming.⁶⁹⁹

In *Americans United for the Separation of Church and State (and others) v. Prison Fellowship Ministries (and others) in Iowa*, the Prison Fellowship-
InnerChange Ministries, discussed in previous chapters, was found to be unconstitutional; a finding which raised a number of pertinent, tangential questions on the constitutionality of housing and funding faith-based organizations in prison settings.⁷⁰⁰ The complaint in Iowa, was based on the Newton Correctional Facility's transfer of an entire prison wing to the Prison Fellowship Ministries' InnerChange program. Aside from numerous complaints, beginning in 1999, charging that InnerChange did not separate its religious and non-religious programming, using federal funds for both; the wing of the prison used by InnerChange participants was "physically superior" to the rest of the prison. Only inmates who fully accepted the InnerChange faith-intensive program's requirements, were able to use the facility. The program, which focused on rehabilitation via "Bible study, Christian classes, religious revivals, and church services", in a separate wing of the prison in which "indoctrination was persistent", offered no other comparable value-based program. As a result, participation in the program was "not allocated on neutral criteria and was not available on a nondiscriminatory basis".⁷⁰¹ After reviewing the case, both

⁶⁹⁹ Ibid.

⁷⁰⁰ These will be discussed further in the next chapter and discussion of the case *Freedom From Religion Foundation v. Alberto Gonzales et al. The Bureau of Prisons* (2006)

⁷⁰¹ *Americans United for the Separation of Church and State (and others) v Prison Fellowship Ministries (and others)* 432 F. Supp. 2d 862 (S.D. Iowa2006),(2003).

the District Court and the Court of Appeals for the 8th Circuit declared the InnerChange program unconstitutional and required the state of Iowa to cease its engagement in any partnership with the program. On the question of reimbursement of funding, the court found that Iowa, and Prison Fellowship Ministries, had acted in terms of their belief in the constitutionality of the program until the original ruling by the District Court in June 2005 and would therefore only have to repay funds it had received after that date.⁷⁰²

The courts have also disputed the constitutionality and validity of indirect and direct funding when it comes to faith-based organizations and their programs. As seen in *Zelman*, the general standard for acceptable federal funding for openly religious programming has been that indirect aid, that in which the recipient, or program participant, chooses to attend a religious program and pays using a government voucher or through federal funds, is acceptable. Again, as in the *FaithWorks* case, the portion of the program that dealt with patient choice and indirect aid was not struck down as unconstitutional. In *The American Jewish Congress v. Corporation for National and Community Service* (2004) case, the courts debated and attempted to clarify what exactly constituted “indirect aid” and what represented the legal limits to government employee participation in religious programs. The case was based on the complaint that the AmeriCorps Education Award Program was unconstitutional on two counts; first, that it provided education

⁷⁰² Ibid. This case resembles the *American Jewish Congress and Texas Civil Rights Project v the Brenham Work-to Welfare* case in that the court did not require repayment of funding received prior to litigation and court decision. According to Lupu and Tuttle, this is generally the judiciary’s position concerning funding reimbursement; only funds received *after* a program has been declared unconstitutional are required to be repaid. “The Roundtable on Religion and Social Welfare Policy; Rockefeller Institute of Government, State University of New York.”

awards to teachers who serve in religious schools, and second, that it provided grants to religious organizations that oversaw the same teachers.⁷⁰³ Lupu and Tuttle note that prior to the creation of the White House Office of Faith-Based Initiatives, the Corporation for National Service had actually had quite stringent and clear guidelines restricting engagement with religious groups and activities on the part of Education Award Program recipients; these were later revised to be more lenient and allow for greater participation in religious programming.⁷⁰⁴ Despite this revision, Judge Gladys Kessler of the United States District Court for the District of Columbia interpreted the case as a violation of the Establishment Clause and ruled so as to place even greater restrictions on funding to participants in the Education Award Program and programs with religious components.⁷⁰⁵

⁷⁰³ *American Jewish Congress v. Corporation for National and Community Service*, (2005). Under the AmeriCorps Education Award Program teachers who perform 1700 hours of teaching service may be awarded 4725 dollars, which they may use to repay student loans or they may count toward future costs of education. In addition, the Americorps Education Award Program also gives grants to intermediary organizations including state and local governments, colleges, universities, and secular and religious non-profits for the recruitment, training, placement and supervision of AmeriCorps participants of 400 dollars per participant. See, www.nationalservice.gov

⁷⁰⁴ Ira C. Lupu and Robert W. Tuttle, "American Jewish Congress v. Corporation for National and Community Service," in *The Roundtable of Religion and Social Welfare Policy* (Albany: Rockefeller Institute of Government, State University of New York, 2004). According to the CNCS EAP Regulations prior to 2002, section 2520.30 states that "Some activities are prohibited altogether", these include, "Engaging in religious instruction, conducting worship services, providing education as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization." (45 CFR section 2520.3, found at 57 Fed. Reg. 13794 (1994)) After 2002, the provision was amended to state, "While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the Americorps program or Corporation, staff and members may not engage in the following activities: Engaging in religious instruction, conducting worship services, providing education as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization." www.nationalservice.gov.

⁷⁰⁵ Not only did Kessler's decision place the Education Awards Program in violation of the Establishment Clause, but, according to Lupu and Tuttle, they are also significantly more restrictive than federal policies have been in the past; they expect the government to appeal the decision in the

The cases discussed above have primarily focused on instances where the court has found programs functioning under Charitable Choice and Faith-Based Initiative mandates to be representative of unconstitutional funding and in violation of the Establishment Clause. Some instances of funding to faith-based organizations have, however, been debated and found to be fully within the general confines of constitutionality; these cases, represent examples upon which faith-based organizations that may seek to partner with the federal or state governments may model themselves in order to avoid legal challenges. For example in 2007, The Freedom from Religion Inc. charged the Department of Veterans Affairs hospital chaplaincy program with violation of the Establishment Clause based on the argument that “the program systematically integrates spirituality into the Veterans Affairs’ health care”.⁷⁰⁶ Federal district judge, Judge John C. Shabaz heard the case and concluded that the program fit within the confines of the Constitution and refuted the Freedom from Religion Foundation’s two primary complaints. First, Judge Shabaz noted that making “spiritual assessments” of all patients was actually

Court of Appeals for the District. Judge Kessler’s decision was based on the fact that this case actually did not resemble *Zelman* in terms of indirect aid to religious organizations and therefore did not require the same type of leniency regarding its participants. First of all, unlike students using vouchers or patients in a treatment facility, the participants in the program were not recipients of services- they were actually the ones providing services and receiving funds from the government as a sort of payment *for* their services. In addition, the Corporation for National Service accepted that some of the intermediary groups who were charged with choosing and supervising participants had been making these decisions based on religious criteria- also in violation of the Establishment Clause. Second, the participants were only allowed to enter programs that had been pre-approved by the Corporation for National Service, thus severely limiting the ability of participants in the Education Award Program to exercise choice as *Zelman* would dictate in their choice of program to attend. Finally, participants in the program were not strictly required to separate their religious and secular teaching, nor were they consistently monitored to ensure this type of separation occurred. Ibid.

⁷⁰⁶ ———, "Freedom from Religion Foundation Inc. (and others) v. R. James Nicholson, Secretary of the Department of Veteran Affairs (and others)," in *The Roundtable of Religion and Social Welfare Policy* (Albany, NY: Rockefeller Institute of Government, State University of New York 2007).

an integral part of the Veterans Affairs' holistic treatment program.⁷⁰⁷ Second, any interaction between patients and resident chaplains was completely voluntary and only initiated and continued in the circumstance that the patients desired it.⁷⁰⁸ This case worked from the precedent set in *Agostini v. Felton*, in which the Supreme Court ultimately ruled that government actions must have a secular purpose and secular effect; here, the chaplaincy program at the Veterans Affairs had, as its overarching aim, the secular purpose of promoting the holistic treatment of its patients, thus rendering the program constitutional.⁷⁰⁹

Each of the cases discussed above have had an effect on the overall litigation facing programs designed, implemented, funded, and continued under the auspices of the Charitable Choice Act of 1996 and the Faith-Based Initiative and efforts of the White House Office of Faith-Based and Community Initiatives established in 2001. At times, these cases have also had significant repercussions at a higher level. For example, the *Bellmore and Prison Fellowship Ministries-InnerChange* case settlements are demonstrative of the new focus that states will inevitably need to have on the legal intricacies of funding for providers of faith-based social service. Rather than facing repeated litigation, states are likely to adopt clearer rules of engagement that will not only aid organizations in their efforts to maintain transparency and compliance with state laws; but also state departments that are

⁷⁰⁷ *The Freedom from Religion Foundation v. R. James Nicholson, Secretary of the Department of Veteran Affairs*, (2008).

⁷⁰⁸ Ibid.

⁷⁰⁹ ———, "Freedom from Religion Foundation Inc. (and others) v. R. James Nicholson, Secretary of the Department of Veteran Affairs (and others)."

providing funds. In fact, since the *Bellmore* decision, the Georgia Department of Human Resources has clarified and specified the position of the state, a position that probably existed prior to this case but was not as clearly discernable; the new policy specifically forbids agencies “funded in whole or in part by, or acting on behalf of the Department of Human Resources or its divisions” from engaging “in religious activities including religious worship, instruction, proselytization, or promotion, funded with or supported by government monies.”⁷¹⁰ With *PrisonFellowship Ministries*, the ultimate result has been a much more thorough scrutiny of prison programs and the potential pitfalls of faith-based programming in what can only be considered a captive audience. As the last two cases demonstrated, a significant “gray area”, defined by the fluidity of the federal system and the separation of church and state, remains in which faith-based organizations and federal and state level funding and programming schemes requires further delineation.

Hein v Freedom from Religion Foundation: The Exception to Taxpayer Standing?

The culmination of the legal battles faced by the White House Office of Faith-Based and Community Initiatives was the Supreme Court decision in the *Hein v. Freedom from Religion Foundation* case on June 25, 2007. Not only will this case, and its decision will have significant implications for faith-based efforts at both the federal

⁷¹⁰ Martin, "Terms to Apply to Child Welfare Providers."

and state levels, but it may also potentially redefine the Court's overall stance toward the separation of church and state and is worthy of in-depth review. *Hein v. Freedom from Religion Foundation* is actually the end result of a number of appeals at local, state, and district court levels by the Freedom from Religion Foundation based on its original suit, *Freedom from Religion Foundation v Jim Towey, director of White House Office of Faith-Based and Community Initiatives and Department of Health and Human Services (Mentorkids)*.⁷¹¹

In the *Freedom from Religion Foundation v Jim Towey et al.*⁷¹², the original form of the *Hein v Freedom from Religion Foundation* case, the Freedom from Religion Foundation sued the both the White House Office of Faith-Based Initiatives and the United States Department of Health and Human Services based on two points. The United States Department of Health and Human Services was charged with violation of the Establishment Clause of the First Amendment due to

⁷¹¹ The cases are, *Freedom from Religion Foundation v Jim Towey, director of White House Office of Faith-Based and Community Initiatives and Department of Health and Human Services (Mentorkids)* (2004); *Freedom from Religion Foundation v Alberto R. Gonzales, et al. (Bureau of Prisons)* (filed 2006); and *Freedom from Religion Foundation v Jim Towey, Director of White House Office of Faith-Based and Community Initiatives, et al.* (which later becomes *Hein v. Freedom from Religion Foundation*) (decided 2007).

⁷¹² This case also brought allegations against the Department of Health and Human Services Compassion Capital Fund program that had awarded a three year grant to the Interfaith Health Program within the Rollins School of Public Health at Emory University. The Freedom from Religion Foundation claimed that the sub-grants and technical assistance provided to social service organizations through this grant were based on a process that was not neutral and was biased in favor of faith-based organizations. The plaintiffs do not question the constitutionality of the Compassion Capital Fund specifically, rather they argue that "the grant program is applied to Emory University's Strong Partners Initiative violates the Establishment Clause because Emory University and its SPF intermediaries give preferential treatment to religious organizations in their selection of organizations for sub-awards under the grant". (Memorandum and Order p.6-7) In the final decision, Judge Shabaz does not support the Freedom from Religion Foundation's complaints and points out that the slight ambiguity in the Emory University program's selection criteria is not enough to render the program in violation of the Establishment Clause. (Memorandum and Order, p. 10) Therefore Judge Shabaz affirms the Department of Health and Human Service's Compassion Capital Fund Grant to the University. (Memorandum and Order p.11)

its funding of the MentorKids USA program, under the auspices of the Mentoring of Children of Prisoners Program. The White House Office of Faith-Based and Community Initiatives was challenged based on a number of general, initiative wide activities; specifically, the sponsoring and undertaking of regional conferences and workshops aimed primarily at educating and encouraging faith-based social service providers to apply for, receive, and utilize funds from the Faith-Based Offices and Departmental Centers. The Freedom from Religion Foundation argued first that “MentorKids USA works exclusively with Christian, churchgoing volunteers to be a ‘presence for Jesus’ in the lives of children of incarcerated prisoners. Mentors must sign a religious mission statement that the bible is ‘without error in all its teachings, including creation, history, its origins and salvation’”.⁷¹³ Not only was this the first case to challenge faith-based funding at the cabinet level; the MentorKids USA case focused on violations of church-state separation that were being funded specifically by a federal level department, but, the case implies that government placement of minors in religious mentoring situations may amount to government-sanctioned indoctrination.⁷¹⁴ The complaints against the federal office itself were also novel,

⁷¹³ “Landmark Decision: Health and Human Services Ordered to “Vacate” Faith-Based Funding of MentorKids USA,” *Freedom From Religion Foundation Website*, January 12 2005.

⁷¹⁴ Another crucial case deals with this type of placement specifically. In *Freedom from Religion Foundation (and others) v Lisa Bjergaard, Daniel P. Richter, and the Dakota Boys and Girls Ranch, Inc.* filed in 2007, the Freedom from Religion Foundation petitioned the US District Court for the District of North Dakota to declare the state’s referral of children to the program unconstitutional and to stop both further referrals and further funding of the Ranch and its programs. In particular, this program raises questions about the importance of direct and indirect funding in terms of constitutionality. As seen in *Zelman v Simmons-Harris*, indirect funding of programs that may have religious elements due to client choice of such a program has been supported by the Supreme Court. In the case of the Dakota Boys and Girls Ranch, however, the state was placing troubled teens, without their consent, Freedom From Religion argues, at the Ranch and their placement was then being funded by state monies. While at the Ranch, the children were placed in a Christian residential counseling environment which emphasized “weekly spiritual activities, church attendance, prayers at meals, and discussions with spiritual life staff”(complaint par. 23). In addition, the staff “attempted

the Freedom from Religion Foundation claimed that the conferences were aimed only at religious organizations, discriminated in favor of religion, and represented the unconstitutional encouragement and establishment of religion.⁷¹⁵

Freedom from Religion Foundation v Towey was first decided in the Western District of Wisconsin. The Court held that the *Mentorkids* portion of the case did, in fact, represent unconstitutional activity and a violation of the Establishment Clause.⁷¹⁶ The result of the case was heralded by groups critical of the Bush program as a way forward in challenges to government funding of faith-based organizations in social services and it was hoped to draw attention to the numerous constitutional issues and social dangers that could converge in this new

to modify behavior by directing children to find faith in the Lord Jesus Christ” (complaint par. 16). Finally, not only were non-Christian religious services forbidden at the Ranch, but children were disciplined in a variety of ways for refusing to participate in the spiritual aspects of their therapeutic treatment plan” (complaint par. 25, par. 43). All of these allegations demonstrate the underlying concerns that are inherent in any faith-based program. The real issue here is the state’s placement of minors within such an obviously Christian environment and its funding of the program despite the clear religious character of the Ranch. In this case, the District Court never actually passed judgment on the constitutionality of the Ranch and its programming. Instead, as was the case in the *Pedreira* appeal, the Supreme Court decision in *Hein v Freedom From Religion Foundation* that taxpayer standing did not exist in cases dealing with the Faith-Based Initiative was invoked and the case was thrown out. (Decision in *Freedom from Religion Foundation v. Olson, Bjergaard et al.* July 16, 2008)

⁷¹⁵ *Freedom from Religion Foundation, et al. v Jim Towey, Director of White House Office of Faith-Based and Community Initiatives, et al.* 04 C 0381 S,(2004).

⁷¹⁶ After reviewing the Freedom from Religion Foundation’s complaints in the *Mentorkids* case, Judge Shabaz of the U.S District Court of the Western District of Wisconsin ordered the Department of Health and Humans Services to “vacate” the continuation of funding to the program; in particular its final installment of its \$225,000 federal grant. Specifically, Judge Shabaz noted that in this case the defendants themselves are “effectively conceding that federal funds have been used by the MentorKids program to advance religion in violation of the Establishment Clause” and “it is further ordered that judgment be entered in favor of plaintiffs against defendants declaring that the Mentoring of Children of Prisoners grant to MentorKids USA is vacated and further funding is denied as it relates to present structure”. "Landmark Decision: Health and Human Services Ordered to "Vacate" Faith-Based Funding of MentorKids USA."

program.⁷¹⁷ Specifically, the *MentorKids* case focused not simply on the problems involved in government funding of religious organizations, but on situations where minors, or incarcerated prisoners, were being placed, by the state, into a mentoring or holding situation that could easily become one of pure religious indoctrination.⁷¹⁸

⁷¹⁷ The *MentorKids* and *Emory University* challenges to the Faith-Based Initiative are the direct forerunners to the Supreme Court challenge that took place in 2007 with *Hein v Freedom From Religion Foundation*. For another important case, similar to the *Mentorkids* case, see *Freedom From Religion Foundation v Alberto Gonzales*. This case also deals with the constitutionality of faith-based services in a “captive” audience, in this case federal prisons. In *Freedom from Religion Foundation v Alberto R. Gonzales et al.* filed in 2006, the plaintiffs argue that the Life Connections Program implemented by the Bureau of Prisons in a number of federal institutions is unconstitutional. Life Connections One, the original program already underway in five prisons, was an 18 month program “designed to effect personal transformation using the participant’s faith commitment”; while Life Connections 2, at the time of filing had yet to be implemented but was to focus on the creation of “single-faith” residential re-entry programs within prisons that would be based on the religious transformation of inmates as a manner of rehabilitation. These re-entry programs would emphasize three essential areas, “program curricula and activities that will ‘foster growth’ in ten areas: ‘daily living; mental health; wellness; interpersonal skills; academic; cognitive; vocational; leisure time; character; and spirituality’”; “individual mentors for each program participant; the mentoring relationship should ‘reflect on spiritual (faith-based) or secular issues of broken-ness and healing; model appropriate social behaviors; and work with the participant in developing an appropriate action plan for maintaining life skills after release or reentry into the inmate population’”; and finally the development of a partnership between the inmate-participant and a ‘faith-based or other community organization’ in the location to which the participant will go upon release from custody”. In their complaint, the Freedom from Religion Foundation brought allegations against both the existing programs and the planned programs and noted that “The mission of the Life Connections Program is to facilitate personal transformation by providing inmates with an intensive opportunity for alleged personal growth through the sharing of common living space and program components, including faith-based components. Proposals for the Life Connections Program, at a minimum, must outline how the contractor(s) plans to incorporate program components that foster growth in program areas, including spiritual development. Participants in the Life Connections Program will live together in a single-faith housing unit...will engage in program components designed to foster personal growth in the program areas, including spiritual development. The Bureau of Prisons Life Connections program is a single-faith residential, faith-restorative justice program based upon the premise that inmates should develop their faith and spirituality. Inmates participate in religion-specific and interfaith program components designed to cause inmates to explore faith as a way to restoration with one’s god, family, community, and self.” Finally, the Freedom from Foundation, having listed these complaints and approximately fifty more similar points in support of their claim that the Bureau of Prison’s Life Connections Programs represent violations of the Establishment Clause, note that the programs themselves and the actions of the Bureau of Prisons officials hinge on “supporting the integration of religion into Bureau of Prison Programs” and “give the appearance of the government’s official support for and advocacy of religion, including...proposals to provide single-faith programming”.

Ira C. Lupu and Robert W. Tuttle, "Freedom from Religion Foundation v Alberto R. Gonzales, et al.," in *The Roundtable on Religion and Social Welfare Policy* (Albany, NY Rockefeller Institute of Government, State University of New York, 2006).

⁷¹⁸ ———, "Legal Update: *Jay Hein, Director of the White House Office of Faith-Based and Community Initiatives v Freedom from Religion Foundation, Inc.*"

Following the district court decision on the MentorKids portion of the case, the Freedom from Religion Foundation refocused its efforts on the questioning the constitutionality of the regional conferences of the White House Office of Faith-Based and Community Initiatives. At this point, the government moved quickly to shift the focus of the case away from questions of violations of the Establishment Clause and toward the issue of taxpayer standing.⁷¹⁹ In the United States, under normal circumstances, taxpayers at the municipal (local), state, or federal levels may not sue the government due to objections concerning the disbursement of funds, or even the sale of government property.⁷²⁰ However, in a 1968 case, *Flast v Cohen*, the Supreme Court made an exception for taxpayers objecting to government expenditures they believed violated the First Amendment; the Establishment Clause or the Free Exercise Clause.⁷²¹

Flast v Cohen questioned the use of federal funds to acquire educational materials for primary and secondary schools that were religious in nature. In 1968,

⁷¹⁹ As Lupu and Tuttle point out, final decisions in a number of outstanding cases and appeals have already begun to be effected by the final decision in *Hein* that taxpayers do not have standing to sue at the federal level concerning perceived violations of the Establishment Clause. They note that one of the first to demonstrate this trend is the appeal in *Pedreira* in which the District Court judgment stated that “the Amended Complaint, even embellished with the proposed recitation of funding sources, fails to demonstrate taxpayer standing to bring the Establishment Clause challenge herein. For the reasons stated herein the motion of the defendants to dismiss the Establishment Clause claim for lack of standing will be granted and the action will be dismissed with prejudice.” (United States District Court Western District of Kentucky at Louisville, Memorandum Opinion, p. 13; March 28, 2008). As such, the overall decision that *Flast v Cohen* does not hold in cases dealing with the Faith-Based Initiative is bound to influence court decisions not just at the Supreme Court level but inevitably also at the state and local court levels.

⁷²⁰ The reasoning for this is based on the idea that if these types of lawsuits were allowed, taxpayers would be able to object to any and all types of government spending and could effectively cause gridlock in the judicial system as each and every expenditure was debated down to the very last detail. This became the legal precedent in *Frothington v Mellon*, (1923).

⁷²¹ *Flast v Cohen* 392 U.S. 83, (1968).

the U.S. judicial system was still steeped in a system of strict no-aid separation, under which any type of federal assistance to religious educational institutions was considered unconstitutional. Although the case would have previously been dismissed for a lack of standing, in this instance the Supreme Court made an exception, following which, the local and district courts were more inclined to hear, consider, and pass judgment on cases dealing with the First Amendment and federal spending.⁷²² In November 2004, the District Court for the Western District of Wisconsin ruled, however, that the plaintiffs in the case did not, in fact, have taxpayer standing to challenge the federal government and the White House Office of Faith-Based Initiatives because the program was actually based on expenditures made by the Executive Branch. The District Court ruled that taxpayer standing, as declared in *Flast* was applicable only in cases where expenditures were Congressional expenditures and payment was being made in direct connection with

⁷²² In the opinion of the court, then Chief Justice Warren wrote, the previously, in *Frothington v Mellon* “this Court ruled that a federal taxpayer is without standing to challenge the constitutionality of a federal statute. That ruling has stood for 45 years as an impenetrable barrier to suits against Acts of Congress brought by individuals who can assert only the interest of federal taxpayers. In this case, we must decide whether the *Frothington* barrier should be lowered when a taxpayer attacks a federal statute on the ground that it violates the Establishment and Free Exercise Clauses of the First Amendment.” After establishing that in cases involving the First Amendment, taxpayers have an added interest in assuring the constitutionality of Congressional spending and decision-making, Chief Justice Warren concludes by point out that, “the Establishment Clause of the First Amendment does specifically limit the taxing and spending power conferred by Article 1, section 8. (of the US Constitution) Whether the Constitution contains other specific limitations can be determined only in the context of future cases. However, whenever such specific limitations are found, we believe a taxpayer will have a clearer stake as a taxpayer in assuring that they are not breached by Congress. Consequently, we hold that a tax payer will have standing consistent with Article III to invoke judicial power when he alleges that congressional action under the taxing and spending clauses is in derogation of those constitutional provisions which operate to restrict the exercise of the taxing and spending power.” *ibid*.

Congressional knowledge and decisions.⁷²³ With this decision, the first major lawsuit against the White House Office of Faith-Based Initiative got its start.

Based on the Freedom from Religion Foundation's appeal, in January of 2006, the U.S. Court of Appeals for the Seventh Circuit reversed a portion of the district court's ruling. The panel of judges claimed that, although the funding for the conferences *was* distributed by the Executive Branch at its discretion, the original funds came from the Legislative Branch as part of a Congressional appropriation and were thus open to challenge by taxpayers. In addition, the panel of judges pointed out that a taxpayer has standing to challenge the federal government as long as "the marginal or incremental cost to the taxpaying public of the alleged violation of the establishment clause is greater than zero".⁷²⁴ This reversal represented a significant, if temporary, victory for the Freedom from Religion Foundation and opponents of the Faith-Based Initiative nationwide.⁷²⁵

⁷²³ *Freedom from Religion Foundation, et al. v Jim Towey, Director of White House Office of Faith-Based and Community Initiatives, et al.* 04 C 0381 S.

⁷²⁴ *Freedom from Religion Found., Inc. v. Chao*, (2006). This concept of marginal cost being greater than zero is best explained with a hypothetical example. Take then, a case in which taxpayers wish to challenge an official for making a statement such as "God Bless America" at the end of a public speech. In this case, the marginal cost to the taxpayer is zero because whether the religious language is or is not in the speech, the speech will be given regardless. As such, no taxpayer standing exists to challenge the expenditures incurred in the speech. In the case of the regional conferences funded by the White House Office of Faith-Based Initiatives, on the other hand, the 7th Circuit Court of Appeals judges argued that the marginal cost is greater than zero since, if it were not for the aim of holding the conferences in which religious organizations participate, are encouraged by the federal government to expand their social service provisions, and in which, as a result, religion itself is advanced by the government, these expenditures would not be made at all. Therefore, the marginal cost of the conferences are greater than zero, present an "injury" to taxpayers, and are then in violation of the Establishment Clause.

⁷²⁵ In his dissenting opinion, Judge Ripple of the 7th Circuit noted that the majority's decision represented "a dramatic expansion of current standing doctrine" that "cuts the concept of taxpayer standing loose from its moorings". He further noted that, in fact, "the Executive can do nothing without general budget appropriations from Congress"; yet he did not believe that this would warrant taxpayer standing as *Flast* covers only direct funding decisions by Congress; "the plaintiff must bring

Soon after, following a number of attempted appeals by government, the case was remanded to the Supreme Court for final arbitration; the final case was submitted as

Jay F. Hein, Director, White House Office of Faith-Based and Community

*Initiatives, et al. Petitioners v Freedom from Religion Foundation, Inc., et al.*⁷²⁶

After a period of three months for the filing of briefs, petitions, and position papers, the Court heard oral arguments on February 28, 2007.⁷²⁷ The case echoed

an attack against a disbursement of public funds made in the exercise of *Congress'* taxing and spending power". Ibid.

⁷²⁶ In its decision granting the Freedom from Religion Foundation taxpayer standing to charge the White House Office of Faith-Based Initiatives with violation of the Establishment Clause, the US Court of Appeals for the Seventh Circuit remanded the case to the district level and called upon the District Court to rehear the case based on claims against, "an executive branch program, alleged to promote religion, that is financed by a congressional appropriation, even if the program was created entirely within the executive branch, as by executive order." *ibid.*

⁷²⁷ Five Amicus Briefs (Amicus briefs are "friends of the court" briefs that present the position of either the plaintiff or the defendant and enjoin the court to look more positively on one or the other position) were filed on behalf of the White House Office of Faith-Based and Community Initiatives. First, the Office of the Indiana Attorney General, on behalf of twelve other states, argued that allowing for taxpayer standing in this case would lead to lawsuits in other states focusing on their conferences, designed to promote the Faith-Based and Community Initiative and other executive branch activities that were allegedly promoting religion. The Office of the Indiana Attorney General brief also enjoined the Court to re-evaluate the broad interpretation of standing being used as it could lead to excessive interference by federal courts in state activities. Second, the American Center for Law and Justice argued in its brief that, not only should the case be dismissed, but that *Flast* should be overruled because it goes beyond what is generally permissible in terms of taxpayer standing to bring cases against government actions based on personal injury; wallet or psychic. Third, We Care America, a group of faith-based organizations, called for the case to be dismissed because it argued that faith-based organizations are already wary when partnering with the government and the Court should act to minimize chances of taxpayer lawsuits by re-interpreting *Flast* so as to reduce the number of situations in which standing exists. Also, We Care America notes their concern with reimbursement orders that have been issued against faith-based organizations that have partnered with government. An important note, We Care America, a faith-based organization operating in Ohio, was actually shut down for misuse of government funding shortly after it filed its amicus brief on behalf of the government. (see the Dayton Daily News, March 22, 2007. The article states, "[t]he state of Ohio terminated its 20-month, \$2.1 million contract with We Care America, a non-profit hired to administer grants to faith-based and community organizations serving the needy".) Fourth, The Christian Legal Society claimed that *Hein* using *Flast* as a precedent goes too far because it allows the Freedom from Religion Foundation to attack too wide of a group of executive branch actions and represents an excessively broad reading of *Flast*. Finally, the Foundation for Moral Law, Inc. filed a brief noting that U.S. style federalism actually often leaves matters of religion up to the states and that allowing for taxpayer standing too often at the federal level could result in unnecessary federal judiciary interference in state and local religious concerns and decisions. The Freedom from Religion Foundation also had five amicus briefs filed on its behalf. The strongest of these briefs was a joint brief written by the American Civil Liberties Union, Americans United for the Separation of Church and State, the Baptist Joint Committee for Religious Liberty, People for the

the focus of the earlier cases, it did not delve into any new territory concerning funding or the constitutionality of programming; rather the focus continued to be on the issue of taxpayer standing and whether or not the Freedom from Religion Foundation should be able to sue the government based on objections to the federal funding of regional conferences by the White House Office of Faith-Based Initiatives. Andrew Pincus, the lawyer for the Freedom from Religion Foundation, argued that the Foundation, as comprised of federal taxpayers, did have standing to sue the government for violating the Establishment Clause in organizing the conferences and thus encouraging religion, in general, and religious organizations, in particular. As mentioned above, the focus of the Freedom from Religion Foundation's legal counsel centered on the precedent of *Flast*. Echoing previous instances, the government position, presented by Solicitor General Paul Clement Jr., argued that the Freedom from Religion Foundation did not, in fact, have standing to

American Way, and the Anti-Defamation League. Their joint argument revolved primarily around strengthening the idea of taxpayer standing, noting that lower courts have generally made good decisions concerning issues of standing and calling upon the Supreme Court to uphold *Flast* and preserve its general principle. A second brief was filed by a group of historians and scholars in an attempt to challenge, on historical and academic grounds, the argument that the Establishment Clause focuses on spending by Congress and not the Executive. Specifically, the group argues that the Founding Fathers were equally concerned with monarchy, as with excessive parliamentary powers, and designed the First Amendment so as to limit both branches' powers. The American Jewish Congress and the American Jewish Committee also focused on the "illogical and unpersuasive distinctions" that were being drawn between executive and legislative expenditures and noted in their brief that *any* government expenditure used to promote religion is a violation of the Establishment Clause. This brief also noted that importance that the decision would carry in lower and district courts; pointing out that in state law no distinction exists between executive and legislative expenditures- a decision in *Hein* that the Freedom from Religion Foundation did not have standing would actually, contradictorily, overrule state constitutional law. The American Atheists' brief looked specifically at the Freedom from Religion Foundation's allegations against the regional conferences; arguing that the expenditures made in the conferences were in fact unconstitutional. Finally, the Center for Inquiry and the Council for Secular Humanism's joint brief noted that, in its appropriations, Congress was actually aware that it would be funding the Faith-Based conferences; Congress had been aware of the Faith-Based Initiative and had also made specific appropriations for the federal agencies that had within them Centers for Faith-Based Initiatives. Accordingly, rendering the argument that these expenditures had nothing to do with Congress and were therefore not in the realm of the First Amendment moot.

sue because, in this case, the expenditures made for the conferences did not emanate specifically from the legislative branch and were instead made at the direct discretion of the Executive Branch.

On February 28, 2007, having reviewed the briefs filed by the plaintiffs and the respondents, the amicus curiae briefs filed on behalf of both sides, and the previous court decisions at the district and court of appeals levels, the Supreme Court heard the oral arguments from the government, presented by United States Solicitor General Paul D. Clement, Esq.⁷²⁸ and the Freedom from Religion Foundation, represented, pro bono, by Andrew J. Pincus, Esq..⁷²⁹ The Supreme Court Justices at the time were Chief Justice John G. Roberts who was appointed to the Court, and nominated as Chief Justice by President George W. Bush and has served since 2005; Justice John Paul Stevens, who was nominated by President Gerald Ford and has served on the Court since 1975; Justice Antonin Scalia, who was nominated by President Ronald Reagan and has been serving the Court since 1986; Justice Anthony M. Kennedy, who was also nominated by President Reagan

⁷²⁸ Representing the government was United States Solicitor General Paul D. Clement, Esq. The United States Solicitor General is a lawyer, appointed by the President, who argues any case in which the government is involved before the Supreme Court. In addition, the Solicitor General and his office are charged with following cases at the federal level and writing amicus curiae briefs any time the government's position is at stake or involved in any legal issue. The Solicitor General's legal position is generally in tune with the President's political position and the positions he or she takes on cases reflect this connection. The Solicitor General also, more often than not, has a strong relationship with the Justices of the Supreme Court and has even been considered, at times, to be a 10th Justice (the Supreme Court normally has 9 Justices). The Office of US Solicitor General represents the highest reachable office possible as a practicing lawyer; the Office of the Attorney General, while held by a lawyer, focuses more on administrative versus political or litigation functions. "United States Solicitor General," http://en.wikipedia.org/wiki/United_States_Solicitor_General.

⁷²⁹ Andrew J. Pincus is a Visiting Lecturer in Law at Yale University Law School. He is also a partner in the Washington, DC law firm Mayer Brown. Mr. Pincus' specialty is preparing, briefing and arguing cases before the Supreme Court; he has argued 16 cases before the Court and filed more than 100 briefs in the Supreme Court. "Andrew J. Pincus," <http://www.law.yale.edu/faculty/APincus.htm#>.

and has been part of the Court since 1988; Justice David Hackett Souter, who was nominated by President George Herbert Walker Bush and has been serving since 1990; Justice Clarence Thomas, who was also nominated by President Bush Sr. and has served since 1991; Justice Ruth Bader Ginsburg; who was nominated by President Clinton and has been serving the Court since 1993; Justice Stephen G. Breyer, who was also nominated by President Clinton and has served the Court since 1994; Justice Samuel Anthony Alito, Jr., the second Justice nominated by President George W. Bush and who has been serving since 2006.⁷³⁰

Both sides, as is standard Supreme Court procedure, filed briefs outlining their positions prior to the oral arguments. The White House Office of Faith-Based Initiatives counsel, Clement, attacked The Freedom from Religion Foundation's argument. Clement explaining that the organization is simply challenging "the decisions of Executive Branch officials to meet with faith-based and secular community organizations and to discuss the role such groups can play in community programs."⁷³¹ Clement argues that taxpayers may, in fact, never challenge such internal expenditures, even if religious; only external expenditures, such as Congress directly funding an outside religious organization, are eligible for debate. The *Hein* case, he claims, represents an internal operating cost for the Executive

⁷³⁰ A final Justice, who has retired is also often sometimes mentioned in connection with the Court, Justice Sandra Day O'Connor. O'Connor, who retired on January 31, 2006 and was replaced by Justice Alito, was one of the more moderate voices on the Court who often represented a crucial swing vote that would turn decisions, such as *Hein*, from a 5-4 decision to a 4-5. Liberal authors discussing the Court have noted the different outcome that might have occurred had she still been an active member of the Court. Toobin, *The Nine: Inside the Secret World of the Supreme Court*; Rehnquist, *The Supreme Court*.

⁷³¹ Paul D. Clement, "Reply Brief for the Petitioners," ed. The Supreme Court of the United States, *Jay F. Hein, Director White House Office of Faith-Based and Community INitiatives, et al v Freedom From Religion Foundation, Inc., et al* (Washington, DC2007).

Branch's Office of Faith-Based Initiatives.⁷³² In opposition, The Freedom from Religion Foundation's brief draws upon numerous precedents, and focusing specifically on the validity of *Flast*, and emphasizes that the 7th Circuit "correctly held that Congressional tax appropriations to the Executive Branch of the Federal Government may not be used to endorse religion"; as such taxpayer standing exists and the Freedom From Religion Foundation may continue pursue lawsuits against the Office of Faith-Based Initiatives.⁷³³ On the issue of spending by the Executive Branch that is in violation of the Establishment Clause, the respondents brief explains that "taxpayer standing requires only that executive action involve the misuse of tax money raised through a congressional appropriation"; a requirement that, in the case of executive expenditures to sponsor the regional faith-based conferences, is fulfilled.⁷³⁴ Concerning the issue of Executive power and the Executive Branch, The Freedom from Religion Foundation brief also notes, "the Constitution does not distinguish between Congressional appropriations made to administrative 'spending programs' and Congressional budget appropriations made to the Executive Branch. All appropriations require Congressional legislative action".⁷³⁵ As such, any government expenditure that violates the Establishment Clause is up for debate. In challenging the White House Office of Faith-Based and

⁷³² Ibid.

⁷³³ The precedent for this, according to the Freedom from Religion Foundation is based on the Court's decision in *Bowen* Richard L Bolton, "Brief in Opposition," ed. The Supreme Court of the United States, *Jay F. Hein, Director White House Office of Faith-Based and Community INitiatives, et al v Freedom From Religion Foundation, Inc., et al* (Washington, DC2007).

⁷³⁴ Ibid.

⁷³⁵ Ibid.

Community Initiatives, the Freedom from Religion Foundation is also demonstrating an effort to question the validity of presidential power, in this case President Bush’s creation of the Office of Faith-Based Initiatives.⁷³⁶

Oral arguments were heard in the Supreme Court on February 28, 2007. Clement’s oral argument followed closely along the lines of his brief, additionally he noted that the Freedom from Religion Foundation is concerned with, “the way that certain conferences were conducted by Executive Branch officials”; a concern that would, actually not fall under the exception created by *Flast* as it does not deal at all with government spending but rather with government actions.⁷³⁷ Clement argues that, in this case, a Presidential decision to disburse money from a general appropriation to people who are helping others as part of the Faith-Based Initiative represents neither a discernable injury, or an expenditure that could be considered external.⁷³⁸ Andrew Pincus’ argument on behalf of the Freedom from Religion Foundation attempts to prove that *Flast* does hold in this case. First, Pincus claims that the requirement that monies spent go outside the government is not relevant; he notes that the “injury is the expenditure of funds in a way that violates the Establishment Clause”; where these funds are spent is not important.⁷³⁹ Next, Pincus explains that in *Hein*, “the challenge is that these conferences were—the

⁷³⁶ For further discussion of Executive power and Executive Orders see, Cooper, *By Order of the President: The Use and Abuse of Executive Direct Action*.

| ⁷³⁷ Jay F. Hein, *Director White House Office of Faith-Based and Community Initiatives, et al v Freedom From Religion Foundation, Inc., et al* 06-157,(2007).

| ⁷³⁸ Ibid.

| ⁷³⁹ Ibid.

entire conference program was a program to further religion over non-religion”.⁷⁴⁰

As such, due to the direct violation of the Establishment Clause; Pincus calls on the Court to uphold *Flast* because, “there are two steps to our analysis...one is, is there a discrete and identifiable expenditure that only arises with respect to religious activities. The second question is, does that particular expenditure, is that particular expenditure and incidental one?”⁷⁴¹ In conclusion, Pincus summarizes his argument,

the injury is the same. The conducts that’s—that’s the core of the violation is the same. It’s an Executive Branch decision to use funds in a way that’s impermissible under the establishment clause...and to leave out, to insulate from any taxpayer challenge really huge swaths of conduct that is really at the very core of what Madison was concerned about...and for the idea that the executive would be given free reign to exercise discretion with respect to spend and there would be no concern about the types of injuries that gave rise to *Flast* we think is just not right.⁷⁴²

Clement, in his closing rebuttal, manages to re-focus the attention of the Court on the issue of taxpayer standing as opposed to the question of constitutionality of the Faith-Based program; which had been raised in the hypothetical discussions posed by the Justices during the oral arguments. Clement says, “It’s important to emphasize what’s at issue here...It is a challenge to the particular offices (of Faith-Based Initiatives) and the assertion that the Executive Branch officials at the conferences spent too much time talking about faith-based groups and not enough talking about community-based groups. If that isn’t intrusive on the Executive

⁷⁴⁰ Ibid.

⁷⁴¹ Ibid.

⁷⁴² Ibid.

Branch, I don't know what it."⁷⁴³ Given the generally conservative tilt of the Court at the time, this point clearly has an impact.

On Monday, June 25, 2007, the Court issued its final ruling in *Hein v Freedom from Religion Foundation*, finding in favor of the White House Office of Faith Based and Community Initiatives that the Freedom from Religion Foundation did not, under current legal jurisprudence, have the taxpayer standing necessary to sue the United States Executive Branch for alleged violations of the Establishment Clause.⁷⁴⁴ The decision had far reaching consequences; not only were numerous outstanding court cases dealing with the Faith-Based Initiative and faith-based organizations providing social services under the auspices of the Initiative immediately dismissed from local and district courts nationwide, but the potential to question the constitutionality of these programs, at either the local or Supreme Court level, was also instantly eliminated. Legal scholars, journalists, civil society groups, and politicians all responded to the decision; articles, comments, and numerous web postings surfaced during the legal arguments and following the decision lamenting the Supreme Court's final decision in the case.⁷⁴⁵

⁷⁴³ Ibid.

⁷⁴⁴ Samuel Anthony Jr. Alito, "Opinion: *Jay F. Hein, Director, White House Office of Faith-Based and Community Initiatives, et al. v. Freedom from Religion Foundation, Inc. et al.*," in 06-157, ed. The Supreme Court of the United States (Washington, DC2007). See Appendix H for full discussion of the decision, written by Justice Alito.

⁷⁴⁵ Although the government and supporters of the White House Office of Faith-Based and Community Initiatives responded to the ruling, the majority of responses came from other civil rights groups and groups critical of the Faith-Based Initiative. For full texts of these reactions see, George W. Bush, "Statement by the President: June 25, 2007," ed. Office of the Press Secretary (Washington, DC2007). Lupu and Tuttle, "Legal Update: *Jay Hein, Director of the White House Office of Faith-Based and Community Initiatives v Freedom from Religion Foundation, Inc.*"; WHOFBCI, "Supreme Court Rules in Favor of Faith-Based and Community Initiative," in *OFBCI Newsletter* (Washington DC: White House Office of Faith-Based and Community Initiatives, 2007); ACLJ--American Center for Law and Justice, "News Release," ed. American Center for Law and

The *Hein* Decision: The Fluid Realm of the Separation of Church and State

Having considered the general background of constitutionality and the shifting trends in national legal opinion and implementation, it remains to consider the Faith-Based Initiative specifically in the context of the new era of “neutrality” and federal funding to religious organizations. Although the Charitable Choice legislation of 1996 was obviously the forerunner to the Faith-Based Initiative, due to its lack of true implementation, Charitable Choice, especially at the federal level, never really came under much scrutiny. The Initiative, on the other hand, has been hotly debated in terms of its overall constitutionality at both the federal and state levels. At the state level, as seen above, a number of cases have been brought before state courts concerning funding to religious institutions. This is due in large part to the fact that while the Federal Constitution may be less clear on the subject open to greater interpretation, which allows federal funding to religious organizations, many state constitutions, through Blaine Amendments, actually have clear positions on the issue.⁷⁴⁶

Justice (2007); Jay Sekulow, "Justice Alito-A Promise Kept," in *ACLJ American Center for Law and Justice* (2007); Freedom from Religion Foundation, "Hein v FFRF Ruling: Court Insulates Executive Branch Violations," *Freethought Today* 24, no. 5 (2007); Baptist Joint Committee for Religious Liberty, "Supreme Court limits challenge to administration's Faith-Based Initiative," (Baptist Joint Committee for Religious Liberty, 2007); American Atheists, "High Court Ruling on Faith-Based Initiative Avoided First Amendment Issue," (American Atheists, 2007); Anti-Defamation League, "ADL Disappointed in Supreme Court Decision Limiting Taxpayers' Right to Challenge Faith-Based Funding," (Anti-Defamation League, 2007); American Jewish Congress, "AJCongress: House and Senate Should Correct Supreme Court Decision Threatening Church State Separation," (American Jewish Congress, 2007); Joan Biskupic, "Church-state question before justices; Issue is when programs can be challenged," *USA TODAY*, February 28 2007; "Government by Law, Not Faith," *The New York Times*, February 28 2007; Linda Greenhouse, "In Steps Big and Small, Supreme Court Moved Right," *The New York Times*, July 1 2007.

⁷⁴⁶ Black, Koopman, and Ryden, *Of Little Faith: The Politics of George W. Bush's Faith-Based Initiatives*: 244.

Scholars of the Faith-Based Initiative, and state-religion relations in general, have differing views on the issue of the constitutionality of the Initiative, the Faith-Based Office, and the programs run under its auspices. Looking at these opinions offers insight into the exceptional nature not only of religion, and the primary place that religion has been accorded in the American psyche, but also into the functioning of the federal system. State and federal level programs, as seen in this case, often overlap, coincide, have serious ramifications for one another, and may even compete for jurisdiction. In terms of its constitutionality, the fact that federal and state level regulations may not be identical has given both Charitable Choice and the Faith-Based Initiative the ability to maneuver more freely; programs permissible at the state level may not be so in federal terms, and vice versa, this allows programmers to situate their efforts within the bounds of constitutionality; often facing significant criticism.

Even among more liberal observers, not all analysts agree that the Charitable Act and Faith-Based Initiative are unconstitutional. Laura Mutterperl argues that Charitable Choice, while controversial, actually falls within the bounds of neutrality and successfully passes the two-pronged test, a revised version of the Lemon test. She notes that *Mitchell*, as applied to the White House Office of Faith-Based and Community Initiatives, focuses on the secular purpose and effects of social service programs and in this, the Faith-Based Initiative is within legal parameters of the First Amendment.⁷⁴⁷ Sullivan takes this argument even further and notes that

⁷⁴⁷ Laura B. Mutterperl, "Employment at (God's) Will: The Constitutionality of Anti-Discrimination Exemptions in Charitable Choice Legislation," *The Harvard University Civil Rights-Civil Liberties Law Review* 37.

Charitable Choice and the Faith-Based Initiative are actually *part of* the First Amendment since not allowing for this type of activity would be akin to governmental discrimination against religion; with the passage of these programs, the “hostility and discrimination against religion that has prevailed is being destroyed”.⁷⁴⁸ Lupu and Tuttle also believe the programs are well within the bounds of current constitutionality. They echo the position that “pervasive sectarianism is essentially a dead letter” and “no longer does the nature of the organization receiving funds matter constitutionally”; instead they agree that the nature of the services provided is what now determines constitutionality.⁷⁴⁹ Other important scholars of religion and politics in the United States, such as Steve Monsma and Ron Sider also support the constitutionality of the Faith-Based Initiative, noting that, “publicly funded programs are permissible even if they advance religion, as long as the religious benefits are incidental to the secular ones, and beneficiaries can choose from a range of other, secular, alternatives to that program.”⁷⁵⁰ On the conservative side, Jim Towey, the second director of the White House Office of Faith-Based and Community Initiatives, defended the Office and neatly summed up the above-mentioned positions when he explained that, “this is about the poor, when you hear this is about separation of church and state, this is a lie. The question you should be asking is, do the programs work and are they turning people’s lives

⁷⁴⁸ Winnifred Fallers Sullivan, “Neutralizing Religion: or, What is the Opposite of ‘Faith-Based’?,” *History of Religions* 41, no. 4: Essays on the Occasion of Frank Reynold’s Retirement (2002): 369-70.

⁷⁴⁹ As quoted in, Black, Koopman, and Ryden, *Of Little Faith: The Politics of George W. Bush’s Faith-Based Initiatives*: 239.

⁷⁵⁰ As quoted in, *ibid.*, 240.

around?”⁷⁵¹ The consensus demonstrated concerning the Faith-Based Initiative demonstrates just how fluid the boundaries of separation of church and state in the United States have become, and how Americans on both sides of the spectrum—liberal and conservative—in their belief in an exceptional national religion, or national ideology, have internalized the new focus on neutrality and accommodation of religious organizations.

On the other hand, critics of the Initiative do remain, as seen above in the number of amicus briefs filed on behalf of the Freedom from Religion Foundation and the numerous articles published soon after the Supreme Court’s *Hein* decision. Fears that the Faith-Based Initiative blurred the lines of the separation of church and state too much, led concerned observers of the Office and its programs to vocalize their critiques. Looking at the original Executive Orders themselves, opponents of the Faith-Based Initiative have noted that the primary aim of the Faith-Based Office in removing barriers to federal funding for faith-based organizations has actually been taken too far and has actually become a sort of “protection” oriented stance; moving beyond simple neutrality as decided by the Supreme Court and into the realm of full protectionism or even the favoring of religious social services versus secular ones.⁷⁵² In addition, with this protection, it is feared, the Faith-Based Initiative actually invites the government to indirectly support sectarian purposes because, due a potential lack of effective oversight, with the receipt of federal

⁷⁵¹ "Faith-Based Approach Fraught with Problems: New Study Finds," *Church and State* 55, no. 11 (2002): 15.

⁷⁵² "Faith-Based Initiative," *The New York Times* 2007; Blumner, "BUSH'S CHURCH-STATE MESS TAKES LIBERTIES WITH OURS."

funding, faith-based groups may be able to redirect their own private funds, which had previously been used for social programs, directly into sectarian activities. As such, no true distinction can be drawn between direct and indirect funding in this instance.⁷⁵³

Specifically, as lines between direct and indirect funding become blurred, programs funded through the Faith-Based Initiative are likely to face more obstacles in potential violations of the Establishment Clause; especially in terms of hiring discrimination.⁷⁵⁴ While Title VII does allow private religious organizations to practice hiring discrimination, once a private institution receives any federal funding to support its services, it essentially becomes a public institution; one at which hiring discrimination becomes type of federal discrimination and thus unconstitutional.⁷⁵⁵ Paul Weber laments that, “faith-based initiatives do precisely what Patrick Henry proposed and both James Madison and Thomas Jefferson so adamantly opposed- provide aid to religious organizations so that religion may support government policies, most notably aid to the poor and needy.”⁷⁵⁶ Weber,

⁷⁵³ Wendy Kaminer from the Lehrer Newshour 30 January 2001 as quoted in, Formicola, Segers, and Weber, *Faith-Based Initiatives and the Bush Administration: The Good, the Bad and the Ugly* 177-78.

⁷⁵⁴ The manner in which the Faith-Based Initiative will be continued under President Obama’s Administration has been much considered by scholars and media observers alike. However, a full discussion of the Obama Administration’s application of the Faith-Based Initiative is beyond the scope of this dissertation. Not only is it too soon to see exactly the results that may or may not be achieved by the Obama White House Office of Faith-Based and Neighborhood Partnerships, but the Office, during a period of two international wars, and possibly the largest global financial crisis in history, has not been one of the top priorities of the Obama Administration. For a brief analysis of what has occurred over the past three years of the Obama White House, see Appendix G.

⁷⁵⁵ Mutterperl, "Employment at (God's) Will: The Constitutionality of Anti-Discrimination Exemptions in Charitable Choice Legislation."

⁷⁵⁶ Formicola, Segers, and Weber, *Faith-Based Initiatives and the Bush Administration: The Good, the Bad and the Ugly* 92.

from a decidedly separationist point of view, also argues that these programs are dangerous and have the potential to undo years of constitutional law that has helped the United States develop the “strong system of separation of Church and state that has made the U.S. as it is today”.⁷⁵⁷

| ⁷⁵⁷ Ibid.

CHAPTER EIGHT

CONCLUSION

America in Context

Religion, Secularization, and the Role of Federalism

The United States systems of both state-religion relations and federalism have, over the past two and a half centuries, shifted and changed considerably. As technological advance, globalization, increased immigration, changing economic realities, and many other pertinent factors have influenced the nation as a whole, so too, have these two foundational aspects of the American fabric been affected. The aim of this dissertation has been to use an examination of Charitable Choice and the Faith-Based Initiative in order to demonstrate this fluidity and dynamism through the advantageous position of an in-depth study of a political institution; viewed from a historical and political perspective, shedding light on the shifts and changes not only experienced by the institution itself, but also by its underlying elements and features. From our analysis of the Faith-Based Initiative, we have been able to observe the manner in which, in America, “democracy and religion have grown together”⁷⁵⁸ to form a type of national identity which, in turn, has strengthened religiosity in American culture, society, and politics. This resilient religion, then,

⁷⁵⁸ Elshstain, "Religion and Democracy."

has continued to interact with politics, despite the separation of church and state; perhaps aided in its efforts by the overarching federal system.

The question of federal government and the idea of covenant, have been important factors underlying not only the original creation of the American nation and government, but also the continued functioning of the system. As demonstrated in this analysis of the Faith-Based Office and its methods, the federal system has allowed for increased flexibility, higher levels of local and state initiative and oversight, and greater amounts of state authority, while, at the same time, the federal government, through its position at the top of the jurisdictional pyramid, has been able to keep a significant amount of power in its own hands. Charitable Choice and the Faith-Based Initiative represent clear examples of the manner in which the state-federal government relationship in the United States has experienced constant fluctuations, as power has shifted back and forth between levels of government depending on the program under consideration, the personal agendas of politicians and administrators, and the degree of popular support or critique. The example of the Texas Charitable Choice program demonstrates just how easily authority and implementation can shift from the federal to state level; the continuation of faith-based programs under federal oversight with the Faith-Based Initiative of 2001, confirms how easily these shifts can then be readjusted yet again to the federal level.

The Charitable Choice Act and the Faith-Based Initiative, in addition to reflecting the continuation of shifting federal power, also demonstrate the manner in which changes in the state of federalism can affect other aspects of national and state character. With the devolution of federal oversight concerning welfare and

social services to the state level, the 1996 welfare reform act, with the inclusion of the Charitable Choice Act, essentially devolved authority over religion to the states as well. Although, all levels of government in the United States are bound to the Constitution and Bill of Rights, the manner in which the devolution occurred affected changes in the everyday practice of state-religion relations. States implementing Charitable Choice, and later those who were more ardent supporters of the Faith-Based Initiative, were quick to ignore state constitutional restrictions or Blaine Amendments, focusing instead on bolstering partnerships between state governments and faith-based organizations. The legal proceedings faced by the State of Georgia are a case in point⁷⁵⁹; although the state constitution specifically forbade the flow of government monies to religious organizations, using the new federal guidelines set in place by the Faith-Based Initiative, the Georgia Department of Human Resources was able, nonetheless, to form a successful partnership with a faith-based social service provider.

The fluidity and shifting between levels of governmental authority demonstrated by the Faith-Based Initiative is not exclusive to matters of policy. Analysis and understanding of the Faith-Based Initiative, has served, as a contextualized case study of the phenomenon of American religion, an all-encompassing aspect of American life, yet according to many scholars of religion, simultaneously “secular” and separate. It has also served to clearly illuminate the manner in which the shifting, fluid boundaries of religion, in particular the boundaries of the separation between church and state, have also flowed from strict

⁷⁵⁹ Lupu and Tuttle, "Legal Update: *Bellmore v United Methodist Children's Home of North Georgia Inc. and the Department of Human Resources, State of Georgia*."

to more lenient over the past century. Although the American system is based on a “secularized” government apparatus, the manner in which the Chief Executive, George W. Bush, was able to pursue his own personal religious agenda at the federal level, enjoy support for this program incorporating state-religion partnerships, and garner a significant level of popular support based on his programs of the Faith-Based Initiative and “compassionate conservatism”, pinpoints the fact that while the American government apparatus may itself be free from religion, the overarching political and social fabric of the nation is not.

Viewing this persistent religiosity from the perspective of an actual case study, with its entire minutia, has been beneficial in calling into question the recent scholarly efforts, such as those of Fox and Norris and Inglehart, who place the American case on a separate “exceptional” plane. Considering these studies, with their belief that the American case represents an anomaly on the world stage of absolute separation of church and state, or religion based on high degrees of inequality among citizens; in tandem with an analysis of the 2005-2009 World Values Survey; and contrasted with the actual levels of partnerships that seemed to have occurred between faith-based service providers and the government under the Faith-Based Initiative, demonstrates the shortcomings inherent in more de-contextualized readings of secularization in the American case. In addition, such a perspective helps to highlight realms of state-religion and state-society relations that require increased attention and continued examination. Specifically, the persistence of a fluid, adaptable, and shifting religiosity, encouraged by the flexibility afforded

by the federal system is an important, and under-analyzed aspect of the American experience.

The contextualized reading of the religion and the secularization thesis and the issue of federalism conducted in this dissertation has attempted to go beyond many recent scholarly efforts by providing a concise, and combined examination not only of theoretical views of religion, secularization, and federalism in general; but also of the manner in which these characteristics function and interact in the American context. One pertinent point of convergence among scholars of religion and secularization, also evidenced by the Faith-Based Initiative and the Bush Presidency, is the role of the burgeoning Protestant Fundamentalist movement and its corresponding political power. In attempting to explain the increasing secularization and subsequent apparent reversal of the trend, leading scholars have honed in on this movement. Other specific and general trends such as the Protestant ethic, the cyclical resurgences that religion likely experiences, levels of economic and social inequality, the decline of religious authority, differentiation of religion and social life, the privatization (and later deprivatization) of religious belief, and the role of rational choice and competing religious markets have also figured into their analyses. However, further contextualization of the American case, helps reveal the degree to which these factors, generally, and Protestant Fundamentalism, specifically, have influenced American religion and, inadvertently federal policy in realms of religion and faith-based services. While Finke, Bruce, Ostling, Casanova, Berger, and Elshaintain do all consider the role that Protestant fundamentalists have played in supporting levels congregational belonging, weekly attendance, and

personal religiosity in theory or in the abstract, the actual functioning of state-religion relations, as shown in Charitable Choice and the Faith-Based Initiative, serve to confirm these general notions and offer tangible evidence.

The Faith-Based Initiative is likely to remain a prominent feature of American social and religious policy, at both the state and federal levels, for at least the foreseeable future. The American public, President, Administration, Legislative and Judicial branches, and Democratic and Republican Parties, each in their own way and based on differing degrees of importance, all recognize the important role that religion has to play in the United States social and political, and even economic, arenas. Especially in light of the continued influence and power of the Protestant Fundamentalist movement, changes to this role in the near future are unlikely. Religion been an ingrained aspect of American social and political life since its inception; this, combined with the strong notion of separation of church and state, and the First Amendment's separation of religion from government has created an environment in which religion is actually omnipresent, yet in a more generally secularized, civil form, that is, on the whole, acceptable to the general population. This environment, encouraged by the dynamic federal system, has, in turn allowed popular support for faith-based social services efforts such as the Faith-Based Initiative, to flourish, despite having received its fair share of criticism. As the White House Office of Faith-Based Initiatives continues to develop and change under successive Presidencies, it is likely that the phenomenon of American religion, state-religion relations, and the federal structure will all so continue to evolve and shift. As this dissertation has endeavored to show, understanding these

shifting dynamics, relationships, and their results will be enhanced by further contextualized studies that successfully combine theoretical perspectives with specific case analysis.

APPENDIX A

The First Amendment⁷⁶⁰

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

⁷⁶⁰ Retrieved from, <http://public.findlaw.com/constitution-day/bill-of-rights-complete.html>

APPENDIX B

The Blaine Amendment⁷⁶¹

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

⁷⁶¹ Retrieved from; "The Blaine Amendments".

APPENDIX C

World Values Survey Aggregate 1982-1999⁷⁶²

Values Survey Databank

Selected Countries/Samples: United States 1982, 1990, 1995, 1999

Belief in God

Base = 6806 Weight (with split ups)	Country	Region
Believe in : God	Total	United States
No	3.5%	3.5%
Yes	96.5%	96.5%
Total	6745 (100%)	6745 (100%)

Belonging to Religious Denomination

Base = 6806 Weight (with split ups)	Country	Region
Belong to religious denomination	Total	United States
Yes	16.5%	16.5%
No	83.5%	83.5%
Total	6806 (100%)	6808 (100%)

⁷⁶² Retrieved from, www.worldvaluessurvey.org

APPENDIX D

World Values Survey- United States Data 2006⁷⁶³

Values Survey Databank

Selected Countries/Samples: United States 2006

How Important is God in Your Life?

Base = 1195 Weight (with split ups)	Country	
How Important is God in Your Life?	Total	United States
Not at all important	5.3%	5.3%
2	1.5%	1.5%
3	2.3%	2.3%
4	2.4%	2.4%
5	5.8%	5.8%
6	5.6%	5.6%
7	4.7%	4.7%
8	6.9%	6.9%
9	7.6%	7.6%
Very Important	57.8%	57.8%
Total	1195 (100%0	1195 (100%)
Base for Mean	1195	1195
Mean	8.2	8.2
Standard Deviation	2.69	2.69

Politicians Who Don't Believe in God are Unfit for Public Office

Base = 1190 Weight (with split ups)	Country	
Politicians Who Don't Believe in God are Unfit for Public Office	Total	United States
Agree Strongly	15.4%	15.4%
Agree	16.6%	16.6%
Disagree	46.9%	46.9%

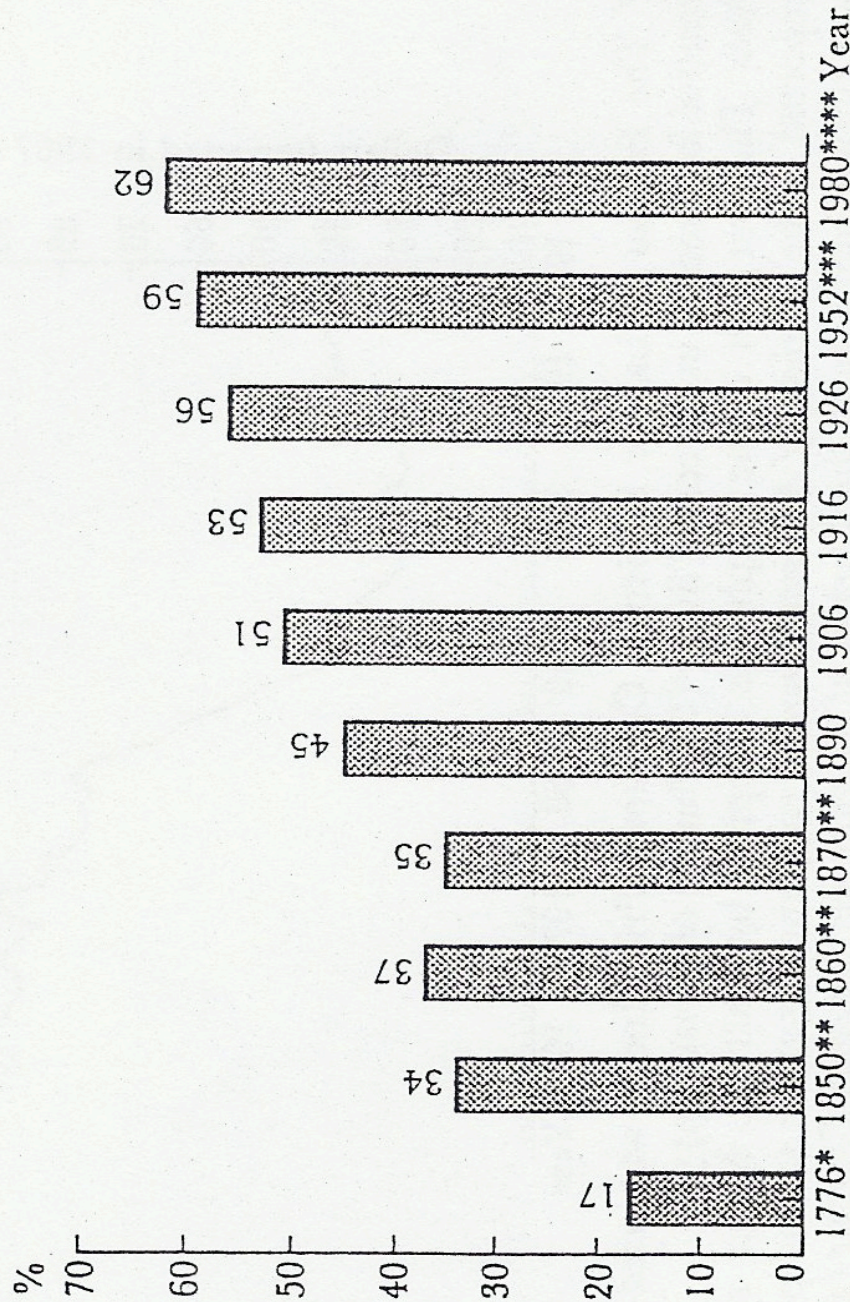
⁷⁶³ Retrieved from, www.worldvaluessurvey.org

Strongly Disagree	21.0%	21.0%
Total	1190 (100%)	1190 (100%)

Religious Denomination

Base = 878 Weight (with split ups)	Country	
Religious Denomination	Total	United States
Buddhist	0.4%	0.4%
Hindu	0.2%	0.2%
Jew	1.6%	1.6%
Muslim	0.3%	0.3%
Orthodox	0.4%	0.4%
Other	23.6%	23.6%
Protestant	44.7%	44.7%
Roman Catholic	28.8%	28.8%
Total	878 (100%)	878 (100%)

APPENDIX E



* Stark and Finke, 'American Religion in 1776'.

** Finke and Stark, 'Turning Pews into People'.

*** Zelinsky, 'Approach to Religious Geography'.

**** Stark, 'Correcting Church Membership Rates'.

APPENDIX F

The *Hein* Decision⁷⁶⁴

The final decision of the Court was in favor of the government; reversing the decision of the Seventh Circuit, the Supreme Court ruled that Freedom from Religion Foundation, “in their capacity as federal taxpayers...sought to challenge Executive Branch expenditures for these conferences, which, they contended, violated the Establishment Clause”, however, given the facts, they did not have taxpayer standing and thus, the case was dismissed. In this case, three Justices, Justice Alito, Justice, Kennedy, and Justice Scalia, wrote concurring opinions in favor of dismissing the case. Because each opinion was slightly different, Hein was not dismissed by a majority of votes, but rather with a plurality of votes. All of these opinions focused on the fact that, in Hein, expenditures were not actually being made by the legislative branch, but rather at the discretion of the executive branch, thus *Flast* did not apply. However, each group presented differing views about the future of *Flast* as a precedent in Supreme Court, federal district court, and

⁷⁶⁴ 2007). *Jay F. Hein, Director White House Office of Faith-Based and Community Initiatives, et al v Freedom From Religion Foundation, Inc., et al* 06-157, The Supreme Court of the United States of America.

, Alito, S. A. J. (2007). Opinion: *Jay F. Hein, Director, White House Office of Faith-Based and Community Initiatives, et al. v. Freedom from Religion Foundation, Inc. et al. . 06-157*. T. S. C. o. t. U. States. Washington, DC.

local court litigation. These alternate views are discussed below, along with the relevance they represent for future cases.

Justice Samuel Alito wrote the opinion of the Court in which he was joined by Chief Justice John G. Roberts, Jr. and Justice Anthony M. Kennedy. They opined that the Seventh Circuit Court of Appeals reading of *Flast* was incorrect and had been unnecessarily extended to cover the Freedom from Religion Foundation's allegations. The Alito group's opinion listed a number of reasons to support its decision that taxpayer standing did not exist in this instance. In his written opinion, Alito begins by pointing out that the Bush Administration's White House Office of Faith-Based and Community Initiatives was not created with a legislative mandate; rather he confirms that it was created as a result of Executive Order 13199 and that the details of this Executive Order dictated that the Office function precisely along the lines that it had been within the context of the regional conferences; aiding faith-based organizations to obtain federal funding and grants, increasing these organizations' technical capacity so as to render them better able to serve the needy, and working to eliminate discrimination against or unequal treatment of religiously oriented social service providers. Procedurally, Alito notes the prior court decisions, commending the District Court of Western Wisconsin for dismissing the case, and noting that the 7th Circuit's decision was wrong. Critical in the Alito group's decision is the stance that they take concerning *Flast*. While the group acknowledged that *Flast* is a valid exception to the rule on taxpayer standing, they point out that in this specific case, spending by the executive branch rendered *Flast* invalid. The Alito group's decision and interpretation of *Flast* is the most

straightforward; they find no fault with the logic behind the precedent, only with its application in this particular case.

Although he joined the plurality of Justices who voted to dismiss the case, Justice Kennedy wrote his own opinion, focusing on a deeper point of contention concerning *Flast*, the case at hand, and future cases that may be brought before state and federal courts. Specifically, Kennedy is concerned with the problems that may arise if cases like this one, challenging actions of the executive branch, are granted standing and allowed to multiply. Kennedy's concurring opinion, according to the legal update written by Lupu and Tuttle, "expands on a rationale that the Alito group mentions, but does not develop at any length." Specifically, while the Alito group's decision notes that this case involves the Executive Branch and not the Legislative Branch and therefore *Flast* cannot be applied; Kennedy goes further to caution that excessive judicial supervision of the executive will not serve the country well, nor is it constitutionally mandated. In fact, Kennedy explains, "The Executive Branch should be free, as a general matter, to discover new ideas, to understand pressing public demands, and to find creative responses to address governmental concerns." In addition, Kennedy writes, "The Court should not authorize the constant intrusion upon the executive realm that would result from granting taxpayer standing in the instant case (Hein)...(and) the Court's precedents do not require it to do so." However, in closing, Kennedy does provide one final cautionary note to the Legislative and Executive Branches. He says, "It must be remembered that, even when parties have no standing to sue, members of the Legislative and Executive Branches are not excuse from making constitutional

determinations in the regular course of their duties. Government officials must make a conscious decision to obey the Constitution whether or not their acts can be challenged in a court of law and then must conform their actions to these principled determinations.” This note tellingly cautions the White House Office of Faith-Based Initiatives, along with the vast number of critics of the programs to be vigilant in terms of violations of church-state separation and to take note that *Flast*, as a precedent is valid and viable, yet should never be invoked in cases dealing with the Executive Branch.

Justice Antonin Scalia, on behalf of Justice Clarence Thomas, also wrote a concurring opinion to the decision to dismiss the case. The Scalia group concurred that, in this case, the expenditures are not being made by the legislature and therefore taxpayer standing does not exist. However, the group goes even further in its decision and recommends that the Court review, and ultimately overturn *Flast*. In the opening paragraph of his opinion Scalia neatly summarizes his view of the cases that have used *Flast* as a precedent in the past; “Either *Flast v Cohen* should be applied to (at a minimum) all challenges to the governmental expenditure of general tax revenues in a manner alleged to violate a constitutional provision specifically limiting the taxing and spending power, or *Flast* should be repudiated. For me, the choice is easy. *Flast* is wholly irreconcilable with the Article III restrictions on federal-court jurisdiction that this Court has repeatedly confirmed are embodied in the doctrine of standing.” Scalia goes on to detail the past cases that have invoked *Flast* as sufficient to demonstrate taxpayer standing and points out that the critical flaw in *Flast* is to be found in the issue of Psychic versus Wallet

injury. He advises that “Ultimately, the arguments by the parties in this case and the opinions of my colleagues serve only to confirm that *Flast*’s adoption of Psychic Injury has to be addressed head-on.” He asks, “Is a taxpayer’s purely psychological displeasure that his funds are being spent in an allegedly unlawful manner ever sufficiently concrete and particularized to support (Article III) standing?” He believes not, and, in addition, believes that “experience has shown that *Flast*’s lack of a logical theoretical underpinning has rendered our taxpayer-standing doctrine such a jurisprudential disaster that our appellate judges do not know what to make of it...It is time-it is past time-to call an end. *Flast* should be overruled.” Obviously, the Scalia group’s opinion is the harshest vis-à-vis the issue of taxpayer standing; it is significant to note however, that the Scalia opinion, unlike the previous opinions does not draw a distinction between spending by the legislature or executive, the group simply believes that taxpayers, arguing they have been subjected to psychic injury, should be barred from suing the government in general; which would be the direct result of overruling *Flast*.

Finally, in cases that are not decided unanimously, the group of Justices who voted against the majority or plurality must write and submit a dissenting opinion. In *Hein* Justice David Hackett Souter wrote this opinion on behalf of himself and Justice John Paul Stevens, Justice Ruth Bader Ginsburg, and Justice Stephen G. Breyer. The Souter group’s most stringent opposition to the plurality is that there should not be a distinction draw between expenditures made by the legislature or the executive as all executive spending is actually done on the basis of congressional appropriations of taxpayer monies. In the instance that these monies are used in

order to advance, support, or encourage religion, the Souter group argues, this is a direct violation of the Establishment Clause and prevailing judicial rhetoric as initiated by James Madison when he wrote, “the Religion...of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate”. In addition, Madison wrote that, “the government in a free society may not force a citizen to contribute three pence of his own property for the support of any one establishment.”

Any situation where a taxpayer feels that he has experienced an injury of this sort, be it a wallet injury or a psychic injury; according to the Souter group; warrants review and consideration by the Court. In his notes, Souter explains that “The plurality warns that a parade of horrible would result if there were standing to challenge executive action, because all federal activities are ‘ultimately funded by some congressional appropriation’. But even if there is...standing in all of the cases...that does not mean taxpayers will prevail in such suits. If these claims are frivolous on the merits, I fail to see the harm in dismissing them for failure to state a claim instead of for lack of jurisdiction.” As a result, as is the case in *Hein*, where “*Flast* speaks for this Court’s recognition (shared by a majority of the Court today) that when the Government spends money for religious purposes a taxpayer’s injury is serious and concrete enough to be ‘judicially cognizable’”; the Freedom from Religion Foundation, as federal taxpayers, does in fact have standing to sue and the case should not be dismissed.

APPENDIX G

The Obama White House Office of Faith-Based and Neighborhood Partnerships

The controversy surrounding the Bush Administration's Faith-Based Initiative did not dissipate with the end of the President Bush's time in Office. Presidential hopefuls in the 2008 Presidential election, Republican John McCain and Democrat Barack Obama were also questioned by members of the press and fellow politicians concerning their views on the proliferation of faith-based social service organizations in the national social service landscape.⁷⁶⁵ President Obama, coming from a deep-seated belief in Christianity himself, was quick to associate himself with the idea of faith-based organizations in general, while distancing himself from some of the more difficult problems surrounding the White House Office of Faith-Based and Community Initiatives. Specifically, Obama addressed the issue of the Faith-Based Initiative, and his own personal faith, at a July 1, 2008 speech in Zanesville, Ohio. Obama explained that, "We know that faith and values can be a source of strength in our lives. That's what it's been to me. And that's what it is to so many Americans. But it can also be something more. It can be the foundation of

⁷⁶⁵ As early as the primaries, the question of personal religiosity, the acceptability of state-religion interactions, and the general question of diversity surfaced in debates. See, Daniel DiSalvo and Jerome E. Copulsky, "Faith in the Primaries," *Perspectives on Political Science* 38, no. 2 (2009).

a new project of American renewal.”⁷⁶⁶ Vowing to work together with leaders of the faith-based community, and to continue the White House’s focus on encouraging the role that faith-based organizations can, and have, played in social service provision, Obama noted, “The challenges we face today, from saving our planet to ending poverty, are simply too big for government to solve alone. Leaders in both parties have recognized the value of a partnership between the White House and faith-based groups.”⁷⁶⁷

Obama’s relationship with the religious community in the United States has been a long time in the making. Not only was he, prior to his Presidency, a prominent member of the well-known Chicago mega-congregation, Trinity United Church of Christ⁷⁶⁸, but he was also active as a “community organizer” during his younger years.⁷⁶⁹ As a community organizer, Obama endeavored to accomplish essentially the same goals, proponents of faith-based social services would say, as the faith-based organizations that are the target of the Faith-Based Initiative do. He

⁷⁶⁶ Barack Obama, July 1 2008.

⁷⁶⁷ Ibid.

⁷⁶⁸ The Trinity United Church of Christ, the Obama family’s church, in which Barack and Michelle Obama were married and their two daughters were baptized, is a mega-church in Chicago that boasts over 6,000 members. Its controversial pastor emeritus, Jeremiah Wright, gained notoriety during the Obama Presidential Campaign due to his anti-White, and anti-American comments. Although he struggled to keep his relationship with the Pastor intact, Obama was finally forced to distance himself from Wright following the publication of a number of incendiary videos of Wright. For more information concerning the church see, www.trinitychicago.org. For discussion of the events surrounding Jeremiah Wright, see, David Plouffe, *The Audacity to Win: The Inside Story and Lessons of Barack Obama's Historic Legacy* (New York: Viking: Penguin Group, 2009), 222-27. For a detailed analysis of Obama’s personal faith see, Steven Mansfield, *The Faith of Barack Obama* (Thomas Nelson, 2008).

⁷⁶⁹ For a full description of Obama’s experience as a community organizer in his own words, see, Barack Obama, *Dreams from My Father: A Story of Race and Inheritance* (New York: Three Rivers Press, 2004), 144-271.

was active in attempts to organize members of the local community, often working with church groups, or at least, working within congregations to recruit members, and encouraging them to take responsibility for the problems in their own communities. Obama encouraged the people he worked with not only to work together to solve local problems, but also helped them to come together and lobby local and state government officials for funding. Essentially, Obama's early career set the stage for his later willingness to work with faith communities; his efforts in Chicago showed Obama the instrumental role that member of local communities could play in social service provision.⁷⁷⁰

Obama carried this knowledge with him into his political career, and later into his Presidency. As early as 2006, Obama spoke at the annual "Call to Renewal" meeting organized by the Sojourners group and Jim Wallis.⁷⁷¹ Pointing out his own belief in the deep-seated religiosity of the citizens of the U.S., Obama explained, "We first need to understand that Americans are a religious people. 90 percent of us believe in God, 70 percent affiliate themselves with an organized religion, 38 percent call themselves committed Christians, and substantially more people in

⁷⁷⁰ Ibid., 150-60.

⁷⁷¹ The Sojourners Community was founded in 1971 under the auspices of Jim Wallis in conjunction with Trinity Evangelical Divinity School. After its original creation in Deerfield, Illinois, the community relocated in 1975 to Washington DC where it felt it would have a greater impact. The Community's mission statement is, "to articulate the biblical call to social justice, inspiring hope and building a movement to transform individuals, communities, the church and the world." The group also publishes a monthly magazine in which relevant political and faith matters are discussed. The Call to Renewal was started in 1995 and since then has focused on specifically using houses of worship and faith-based organizations to combat poverty throughout the United States, one of the broadest Christian coalitions of the current era, Call to Renewal has been active during the past three Presidencies in calling for more attention to poverty relief and diverse opportunities for cooperation nationwide. Carlson-Thies, "Charitable Choice 101- An Introduction".

America believe in angels than they do in evolution.”⁷⁷² Obama went on to focus on the fact that, while the separation of church and state is an integral part of the American political system, radical secularism, to the detriment of values, religion, compassion, and morality, is an equally dangerous threat. Instead, Obama counsels moderation, tolerance, and understanding. Working with religious communities, rather than against them, Obama points out will have the greatest effect on the well-being of the nation.⁷⁷³

Despite the continued controversy surrounding the Faith-Based Initiative, especially on the issue of hiring discrimination allowances, the Obama campaign, promised to keep the general program in tact. Obama laid out the contours of his planned office in his July 2008 Zanesville campaign speech. Building on his belief that true change could only occur from the bottom up, with the help of community and faith leaders, Obama explained that, along with encouraging partnerships with communities of faith, the Faith-Based Office would, establish an Advisory Council for Neighborhood and Faith-Based Partnerships. This council would work to, in a similar vein to the Bush audit, examine the actual degree of government partnership with faith-based organizations and groups, and also examine any impediments to this partnership. The council would report back to Obama with its findings. In addition, Obama explains, “the council will ...work closely with state and local governments to ensure that governors and mayors have the resources they need to support local organizations, and evaluate faith-based or secular community-serving

⁷⁷²Barack Obama, June 28 2006.

⁷⁷³ Ibid.

nonprofits for effectiveness.”⁷⁷⁴ Obama also charged the new Office with creating a “Train the Trainers” program that would focus on training local faith-based organizations to train other local faith-based organizations “on the best practices, grant-making procedures, service delivery, and compliance with federal laws and regulations.”⁷⁷⁵ Finally, the Advisory Council, and the White House Office, Obama cautioned, “will be guided by a core set of principles to ensure that such work is done in a way consistent with our values and constitutional principles. First, no program will be favored on partisan or philosophical reasons. Second, faith-based organizations cannot use federal funds to proselytize or discriminate and must be held to the same standards of accountability as other federal grant recipients.”⁷⁷⁶

On February 5, 2009, now President Obama officially announced the White House Office of Faith-Based and Neighborhood Partnerships.⁷⁷⁷ The major adjustments made to the Office following the Bush Administration were a slight modification of the name, and the creation of the new “President’s Advisory Council on Faith-Based and Neighborhood Partnerships”. The Council was to be comprised of twenty-five members who would all serve yearlong terms. In addition, Obama appointed a young Pentecostal pastor and former campaign Director of Religious Affairs, Joshua Dubois, as its first director. Obama then

⁷⁷⁴ ———, *Change We Can Believe In: Barack Obama's Plan to Renew America's Promise* (New York: Three Rivers Press, 2008), 160.

⁷⁷⁵ *Ibid.*, 161.

⁷⁷⁶ *Ibid.*, 162.

⁷⁷⁷ For the Executive Order that created the White House Office of Faith-Based and Neighborhood Partnerships see, http://www.whitehouse.gov/the_press_office/AmendmentstoExecutiveOrder13199andEstablishmentofthePresidentsAdvisoryCouncilforFaith-BasedandNeighborhoodPartnerships/

detailed the goals of the Office, and the Centers located with the federal Departments, he explained that:

The Office's top priority will be making community groups an integral part of our economic recovery and poverty a burden fewer have to bear when recovery is complete. It will be one voice among several in the administration that will look at how we support women and children, address teenage pregnancy, and reduce the need for abortion. The Office will strive to support fathers who stand by their families, which involves working to get young men off the streets and into well-paying jobs, and encouraging responsible fatherhood. Finally, beyond American shores this Office will work with the National Security Council to foster interfaith dialogue with leaders and scholars around the world.⁷⁷⁸

Technically speaking, the primary changes made by the Executive Order to the details of the Faith-Based Office aside from the name change, were four fold. First, the subsection dealing with constitutionality and the functioning of the Office and its programs under strict constitutional limits was re-emphasized. The Amendment aims to "ensure that services paid for with Federal Government funds are provided in a manner consistent with fundamental constitutional commitments guaranteeing the equal protection of the laws and the free exercise of religion and prohibiting laws respecting an establishment of religion."⁷⁷⁹ Second, the Advisory Council was created. Third, the majority of the activities and programs of the White House Office of Faith-Based and Neighborhood Partnerships were delegated to the Department of Health and Human Services. And finally, in a nod to the controversy

⁷⁷⁸ The White House, "Obama Announces White House Office of Faith-based and Neighborhood Partnerships," ed. The White House (Washington, DC2009).

⁷⁷⁹ ———, "Amendments to Executive Order 13199 and Establishment of the President's Advisory Council for Faith-Based and Neighborhood Partnerships," ed. The White House (Washington DC2009).

surrounding it's predecessor, "In order to ensure that Federal programs and practices involving grants or contracts to faith-based organizations are consistent with the law, the Executive Director, acting through the Counsel to the President, may seek the opinion of the Attorney General or any constitutional and statutory questions involving existing or prospective programs and practices."⁷⁸⁰

The idea of having the Attorney General go "case-by-case" in terms of controversy surrounding the White House Faith-Based Office stemmed from the continued scrutiny the Faith-Based Initiative, even under Obama, was facing concerning questions of constitutionality. In particular, the question of hiring discrimination was a constant thorn in the side of the Administration. Although Obama specifically addressed the issues of both hiring discrimination and proselytization in his Zanesville speech, affirming, "If you get a federal grant, you can't use that grant money to proselytize to the people you help and you can't discriminate against them—or against the people you hire—on the basis of their religion", critics concerned with the general trajectory of the Obama Administration's faith program continued to question the White House Office's position on the issue.⁷⁸¹ Critics claim that Obama is simply pushing the issue to the Justice Department in order to avoid having to make good on his campaign promises from Zanesville. They believe that simply addressing the issue on a case-

⁷⁸⁰ Ibid.

⁷⁸¹ Carrie Johnson, "Obama Cautious on Faith-based Initiatives; Activists Cite Campaign Pledge, but President is slow to Break with Bush Policies," *The Washington Post*, September 15 2009.

by-case basis will not be able to “catch” all violations, nor will the proper application of the First Amendment by the Obama Administration.⁷⁸²

Notwithstanding the questions surrounding the manner in which the Obama Administration will apply the Faith-Based Initiative, general levels of popular support remain for faith-based provision of social services, as evidenced by a Pew Research Poll, which revealed, in 2009, that Democratic support for faith-based programs had increased from 70% in March 2001 to 77% in 2009 (Republican support had declined, a result either of the changes in Presidential power, or the results of efforts by Democrats to increase their portion of the religious vote).⁷⁸³ Despite these increases, the question of efficacy still remains. The major remaining question surrounding the Faith-Based Initiative is its results. Although numerous studies, such as those conducted by Chaves and Wineberg, have considered the efficiency, effectiveness, and popularity among recipients of faith-based services, the program itself is still, relatively speaking, new.⁷⁸⁴ In addition, the reality of the American federal system and the manner in which welfare provision has been carried out, especially after the 1996 welfare reform shifted the locus of funding and oversight to the state and local levels, has complicated information gathering further. The American system makes it very hard to trace who is receiving what degree of funding, how these funds are actually being used, and the results achieved

⁷⁸² Americans United for the Separation of Church and State and the American Civil Liberties Union are the leading voices in criticism of the Obama Administration. Ibid. "Leap of Faith; The president's faith-based initiative must limit religious hiring discrimination," *The Washington Post*, March 29 2009.

⁷⁸³ "Pew Research Poll: Faith-Based Programs Still Popular, Less Visible," *Targeted News Service*, November 16 2009.

⁷⁸⁴ See, Chaves, "Debunking Charitable Choice."; Wineberg, *Faith-Based Inefficiency: The Follies of Bush's Initiatives*.

based on funding and support flowing from the government to faith-based organizations. Furthermore, the fact that the recipients are generally needy citizens who may not have permanent addresses, full contact information, and may be former prisoners or substance abusers further complicates proper study. The next pertinent task facing the Obama Administration, if it wishes to continue to partner with faith-based and community organizations should be to attempt an in-depth study necessary to fully evaluate the results of its efforts. Not only would such a study likely shed light on the reality of partnerships between government and faith-based organizations, but it will also provide significant insight into the manner in which the United States federal and religious systems function.

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