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Paul Horwitz

University of Alabama - School of Law, phorwitz@law.ua.edu

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**RELIGION AND
AMERICAN POLITICS:
THREE VIEWS OF THE CATHEDRAL**

PAUL HORWITZ

Associate Professor of Law
University of Alabama School of Law

phorwitz@law.ua.edu

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RELIGION AND AMERICAN POLITICS:
THREE VIEWS OF THE CATHEDRAL

Paul Horwitz*

ABSTRACT

The relationship between religion and politics in the American social and constitutional structure is a subject of endless contestation. Much of that discussion, taking place as it has in an academic environment, has had a decidedly abstract air. In this paper, I shift the focus from the abstract to the practical by looking at the most close-to-the-ground participants in the debate over religion and politics: the political candidates themselves. I offer a close reading of speeches by three of the most prominent political candidates to offer an examination of religion's role in politics: John F. Kennedy, Mitt Romney, and Barack Obama. A close reading of these three speeches reveals much common ground, but also a good deal of change and, I argue, progress in the terms of debate, although that progress is incomplete.

The overall movement in the speeches is from a strategy of avoidance, practiced most notably by John F. Kennedy, in which minority religious candidates are welcomed in the public square but religion is rendered a private matter for both candidates and voters alike, to a dialogic approach, which I call a strategy of inclusion and engagement, in which both religious candidates and religious arguments are increasingly accepted in the public square. Each of the modern candidates examined here achieves only a partial marriage of inclusion and engagement. Mitt Romney pursues a strategy of inclusion in

* Associate Professor, University of Alabama School of Law. This paper was presented at the Boston College Law and Religion Program's 2008 Symposium, *Electing Faith: The Intersection of Law and Religion in Politics Around the World*, on March 18, 2008. Thank you to my co-panelists, Fr. Gregory Kalscheur, Lloyd Mayer, and Mark Scarberry, for their helpful comments, to Bill Brewbaker, Marc DeGirolami, and Rick Garnett for their comments on written drafts, to Jennifer Michaelis for research assistance, and especially to Kelly and Samantha Horwitz for their support and forbearance. I am grateful to the University of Alabama School of Law for its support of this project.

which religious views are permitted in political debate, but seeks to foreclose any genuine engagement with religion. By contrast, Barack Obama offers a thoughtful engagement between religion and politics. But he prescribes a rule of dialogue in which religious individuals are required to speak in publicly accessible terms, thus precluding the total inclusion of religious individuals in the political process in their own voices. In contrast to all three, I argue here for a model of genuine inclusion and engagement, in which religion and openly religious arguments are welcome in the public square but also subject to critical inquiry and disagreement. The model of inclusion and engagement may be messy, but it is also the fairest and best approach to the relationship between religion and politics.

TABLE OF CONTENTS

- I. INTRODUCTION
- II. JOHN F. KENNEDY: THE STRATEGY OF AVOIDANCE
- III. MITT ROMNEY: INCLUSION WITHOUT ENGAGEMENT
- IV. BARACK OBAMA: ENGAGEMENT WITHOUT (FULL) INCLUSION?
- V. CONCLUSION

I. INTRODUCTION

In a recent book defending what he sees as a narrow but vital role for the university, Stanley Fish writes that academic enterprises provide “oases of reflection amid the urgencies that press in on us when we are being citizens, parents, politicians, soldiers, entrepreneurs, lawyers, doctors, engineers, etc.”¹ Much of what follows in his provocative book is an argument that “politically explosive issues” must “be made into subjects of intellectual inquiry” through “academicizing” – “detach[ing] [a topic] from the context of its real world urgency . . . and insert[ing] it into a context of academic urgency, where there is an account to be offered or an analysis to be performed.”²

Leaving aside some vital issues on which we disagree but are of little moment here, I am sympathetic to Fish’s account of the typical academic mission, and the need to effect at least a partial divorce of the timeless – the true subject of great academic inquiry – from the merely timely, the passing fads and passions of the day. That is all the more true in legal scholarship, which so often sacrifices a deeper search for truth in favor of a relentlessly normative, problem-solving, transient approach.³

And yet, when legal scholars and philosophers presume to examine the subject of this paper – what is the proper relationship between religion and politics? – they often fall prey to a contrary, but equally distorting, pressure. When legal scholars prescribe rules of conduct to govern the role of religion

¹ Stanley Fish, *Save the World on Your Own Time* 52 (2008).

² *Id.* at 27 (emphasis omitted).

³ See, e.g., Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 Yale L.J. 1579, 1583, 1605 (1989); Jack M. Balkin & Sanford Levinson, *Law and the Humanities: An Uneasy Relationship*, 18 Yale J. L. & Hum. 155, 178 (2006) (“Much legal scholarship aims to persuade other people about what legal rule or legal interpretation to adopt. As we have noted, this follows from law’s narrow version of normativity – the notion that contributions to legal scholarship are judged in terms of how they might promote prescriptive solutions to legal problems.”); Pierre Schlag, *Normative and Nowhere to Go*, 43 Stan. L. Rev. 167 (1990); Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 Cal. L. Rev. 741, 752 (1994); Edward L. Rubin, *The New Legal Process, The Synthesis of Discourse, and the Microanalysis of Institutions*, 109 Harv. L. Rev. 1393, 1433 (1996) (noting that the “substantive topic” of legal scholarship is “what society in general ought to do”).

in contemporary politics, they must avoid not only the urge to be too timely – to think in terms of particular issues, candidates, or campaigns. They must also avoid the urge to be so “timeless,” so Olympian and de-haut-en-bas, as to render their advice impractical or absurd. Here, they fare less well. Many a reader of the literature on this subject has noted that the rules of dialogue proposed by writers in the field tend to give off the refined vapors of the seminar room or the faculty lounge, not the pugnacious atmosphere of our daily political dialogue.⁴

In this Article, I hope to thread a path through both the timely and the timeless, by examining the eternal question of whether and how religion should involve itself in political debate through the words of the central actors: the political candidates themselves. I want to move the discussion from the seminar room to the war room, as it were, by reviewing and critiquing some of what our politicians have had to say about the role of religion in American politics.

Although this discussion has gone on for so long that it may seem timeless, I do not mean to suggest that time has stood still in the development of either American politics or American religion. Indeed, in examining the movement of political rhetoric on the relationship between religion and public leadership, one cannot help but notice that the rhetoric has evolved with the times. Lawrence Lessig once wrote masterfully about “meaning’s vulnerability to changes in context.”⁵ “At the core” of the law’s response to changing context, he wrote, “is an idea of contestability.”⁶ In Lessig’s conception of contestability, ideas can be either contested or uncontested, and can be either in the foreground or the background of public attention.⁷ An idea may be relatively uncontested, but “continue to occupy public attention.”⁸

⁴ See, e.g., Paul Horwitz, *Religious Tests in the Mirror: The Constitutional Law and Constitutional Etiquette of Religion in Judicial Nominations*, 15 Wm. & Mary Bill Rts. J. 75, 136 (2006); M. Cathleen Kaveny, *Religious Claims and the Dynamics of Argument*, 36 Wake Forest L. Rev. 423, 428 (2001).

⁵ Lawrence Lessig, *Erie-Effects of Volume 110: An Essay on Context in Interpretive Theory*, 110 Harv. L. Rev. 1785, 1801 (1997).

⁶ *Id.* at 1802.

⁷ See *id.* at 1804.

⁸ *Id.*

Conversely, some issues may be the subject of widespread disagreement, but “stay[] quite firmly in the background of social and political life.”⁹ A contestable issue, by contrast, meets two conditions: 1) “there is actual and substantial disagreement about it (that is, . . . it is actually contested),” and “that disagreement is in the foreground of social life.”¹⁰ Contestable issues, for as long as they remain contestable, are the stuff of our greatest public controversies.

So it is with the relationship between religion and American politics. We have always been a religious people, as Justice Douglas famously observed.¹¹ But to leave it at that obscures a great many changes in what it has meant to be religious in America – changes that track, perhaps, what it means to be American, or even what it means to be religious itself, in a society whose pluralism and secularism both unsettle the easy assumptions of earlier generations. Religious belief, which was once so widespread and so widely shared as to be a common and uninteresting trait, has become increasingly contestable, one among many competing belief systems and values. That development has in turn meant that, for those Americans who are deeply religious, religion has also become increasingly salient: it has become an ever more powerful, noteworthy, and publicly debated phenomenon. It is thus no contradiction to say that Americans are a people who have become both more religious, in the sense that religion occupies a greater share of their attention and passion, and less religious, in the sense that an increasing number of Americans either profess no religion or have shunted it off to the side.¹²

Any contemporary consideration of the relationship between religion and American politics must thus start from

⁹ *Id.*

¹⁰ *Id.* at 1802.

¹¹ *Zorach v. Clauson*, 343 U.S. 306, 313 (1952) (“We are a religious people whose institutions presuppose a Supreme Being.”).

¹² Of course, this rather broad view elides a good deal of history. In offering a general sense of the movement of religion from an uncontested to a deeply contestable value, I do not mean to slight the degree to which sectarian differences have been a source of controversy from the very beginnings of American history; nor do I mean to ignore the fact that religiosity has expanded and contracted in previous eras, both during and on either side of the nation’s Great Awakenings.

the perspective of religion in an age of *contestability* – an age in which, precisely because religion is of fading importance to many people, it is of increasing importance to others, and in which the very question of religion is subject to vigorous debate and firmly located in the foreground of public discussion.

Not surprisingly, political strategies for dealing with the relationship between religion and politics in American life have changed to reflect our era of religious contestability. As I will suggest below, in the past half-century we have witnessed a move from strategies of *avoidance*,¹³ in which politicians have attempted to satisfy suspicious voters by relegating religion to the background, to strategies of *dialogue*, in which they have moved religion to the foreground while seeking ways of reaching voters of different faiths and beliefs.

I make no secret of my view that much of the move from strategies of avoidance to strategies of dialogue is a step in the right direction. I believe that religion belongs in public life, and that it neither can nor should be expunged from public dialogue and decision-making, however messy and divisive that dialogic approach may prove.¹⁴ In saying so, I do not mean to minimize the very real divisions and hard feelings that may result when religion enters the public stage. But if religion truly exists in an age of contestability, then it is unlikely that any attempt to relegate it to the background by removing it from public discussion will succeed.¹⁵ Surely it is better, then, to turn our thoughts to an attempt to fashion realistic rules of engagement for religious dialogue in American public life.¹⁶ In an age of contestability, there may be no other choice.

¹³ The phrase is taken from Barack Obama, *The Audacity of Hope: Thoughts on Reclaiming the American Dream* 213 (2006) (describing “strategies of avoidance” of religion in the public square practiced by various politicians, particularly those of a liberal or progressive stripe, including John F. Kennedy).

¹⁴ For an expanded treatment of this view, see Horwitz, *supra* note ____.

¹⁵ See, e.g., *id.* at 135; Steven Shiffrin, *Religion and Democracy*, 74 *Notre Dame L. Rev.* 1631, 1634 (1999); Steven L. Carter, *God’s Name in Vain: The Wrongs and Rights of Religion in Politics* 7 (2000) (“Religion, in short, will be in politics. It cannot reasonably be kept out.”).

¹⁶ See Horwitz, *supra* note ____, at ____.

What follows, then, is an attempt to discern and critique what some of our leading politicians have had to say about the relationship between religion and American politics. I focus in particular on three political figures: two Democrats and one Republican, one from almost 50 years ago and two from today's newspapers, and all of them engaging in politics at the highest and most visible level – the quest for the Presidency. Those figures are John F. Kennedy, Mitt Romney, and Barack Obama.

Let me say something at the outset about the limited scope of this paper. It is not intended as a work of history, although I will necessarily have something to say about that subject in setting the context for my examination of John F. Kennedy's famous speech about the relationship between his religion and his presidential candidacy. In keeping with the urge to maintain something timeless about the enterprise, I have chosen instead to offer a close reading of each of the central political texts I examine here, reading them afresh and somewhat out of context. Although I have suggested that the relationship between religion and politics has changed with the times, each of these speeches speaks timelessly to that broader relationship – or at least as timelessly as politicians are ever likely to speak – and each is rewarding for its own sake and on its own terms.

Nor is this a deeper work of philosophy and jurisprudence on the relationship between religion and politics.¹⁷ Although such a treatment would be beyond the scope of this brief paper in any event, there is a deeper reason for this restricted focus. As I have written, more abstract philosophical considerations of the relationship between religion and politics necessarily operate at a fairly high and general level, and the normative proposals they offer are often abstract and ill-suited to life on the ground. Perhaps, by examining the words of politicians themselves, forged and tested in the crucible of electoral politics, we can learn something about how religion and politics

¹⁷ For discussions along those lines, see the sources listed in Richard Garnett, *Religion, Division, and the First Amendment*, 94 *Geo. L.J.* 1667, 1718 n.317 (2006). I would add to that list two more wonderful works: Christopher J. Eberle, *Religious Conviction in Liberal Politics* (2002), and Kent Greenawalt, *2 Religion and the Constitution: Establishment and Fairness* (2008).

relate at a level that is both muddier and more practical, and that thus offers us a sense of the best we can reasonably hope for when religion really does take the public stage.

II. JOHN F. KENNEDY: THE STRATEGY OF AVOIDANCE

Our reading begins with what is surely the most famous contemporary political discussion of the relationship between religion and American politics: John F. Kennedy's speech before the Greater Houston Ministerial Association on September 12, 1960. Before we can examine the speech itself, however, a little bit of scene-setting is necessary.

Kennedy's speech took place in a social setting that was in some ways utterly familiar, and in some ways strikingly different from our own. Let me focus on just a couple of aspects of the context of the times. First, the speech took place in an America in which the prevailing religious sentiment was broad but shallow. As Mark Massa remarks, the role of religion in American public life in the Eisenhower era was one of both "high visibility *and* . . . almost contentless theology."¹⁸ The state of affairs was best characterized by Eisenhower's own famous statement: "Our form of government has no sense unless it is founded in a deeply felt religious faith[,] and I don't care what it is."¹⁹ That remark, as Gary Scott Smith suggests, surely was meant less to suggest that *any* religion would do than to signify that "all three major American faiths – Protestantism, Catholicism, and Judaism – supported the moral values and spiritual ideas on which the nation rested."²⁰ The spirit of the age was captured in Will Herberg's classic mid-century work, *Protestant – Catholic – Jew*.²¹ It was an era of religious piety,²² but of a decidedly thin brand.²³

¹⁸ Mark S. Massa, *Catholics and American Culture: Fulton Sheen, Dorothy Day, and the Notre Dame Football Team* 130 (1999).

¹⁹ Gary Scott Smith, *Faith and the Presidency: From George Washington to George W. Bush* 254 (2006).

²⁰ *Id.*

²¹ Will Herberg, *Protestant – Catholic – Jew: An Essay in American Religious Sociology* (1955).

²² See Massa, *supra* note ___, at 130.

Second, and notwithstanding the emergence of a concept of “Judeo-Christian tradition”²⁴ that purported to welcome various Christian sects, Kennedy also spoke to a nation in which anti-Catholicism was not only more widespread than it is today,²⁵ but also far more vocal and socially acceptable.²⁶ Nor were those prejudices simply a matter of internecine strife among the deeply religious. Catholicism was also suspect in the eyes of many liberals and progressives of the era, as evidenced by the popularity of Paul Blanshard’s critical book *American Freedom and Catholic Power*.²⁷ As Thomas Berg writes, “liberal intellectuals around mid-century came to define themselves heavily in terms of opposition to the Church, which they viewed as an authoritarian force that threatened reasoned inquiry, democratic politics, and social unity.”²⁸

Of course, liberals were not the only ones voicing criticism of Catholics; that sentiment was also widespread among religious Americans, particularly evangelicals and other conservative Protestant sects.²⁹ And here, although much has stayed the same, one gets a sense of how much has changed at the same time. Certain aspects of the mid-century critique of Catholicism shared a common theme with criticisms of Catholics that had been present in the Republic since its

²³ See Smith, *supra* note __, at 255 (quoting R.W.B. Lewis, writing in the *New Republic* in 1954 about the “thin religiosity” of the Eisenhower administration).

²⁴ Massa, *supra* note __, at 130.

²⁵ In saying so, I of course do not mean to neglect the continuing presence of anti-Catholic sentiment in America through the present day. See, e.g., Mark S. Massa, *Anti-Catholicism in America: The Last Acceptable Prejudice* (2nd ed. 2005).

²⁶ Works discussing the status of Catholicism in American society are too numerous to mention, but two especially relevant and important works are John T. McGreevy, *Catholicism and American Freedom: A History* (2004), and, for a broader history of law and religion in America that features a substantial discussion of anti-Catholicism in the 19th Century, Philip Hamburger, *Separation of Church and State* (2004).

²⁷ Paul Blanshard, *American Freedom and Catholic Power* (1949). For a discussion of the book’s popularity, and the extent to which it described “fears widely shared in the liberal Protestant ‘Establishment’ in America . . . in the years immediately after the Second World War,” see Massa, *supra* note __, at 1-2.

²⁸ Thomas C. Berg, *Anti-Catholicism and Modern Church-State Relations*, 33 *Loy. U. Chi. L.J.* 121, 124 (2001) (citing John T. McGreevy, *Thinking on One’s Own: Catholicism in the American Intellectual Imagination, 1928-1960*, *J. Am. Hist.*, June 1997, at 97).

²⁹ See *id.* at 124-25.

earliest days, and had been particularly strong in the 19th Century, when Catholicism was tied to immigration: a fear of the Church as a foreign body in the United States, under the sway of “an organization that is alien in spirit in control.”³⁰ But some of the prevailing anti-Catholic sentiment focused specifically on the question of public support for parochial schools. Although this theme was hardly new,³¹ it is striking that the language of many of the anti-Catholic religious groups echoed a theme that is now more closely associated with the secular world: that of separation of church and state. Thus, as Thomas Berg notes, the mainline Protestant magazine *The Christian Century* argued that the Catholic Church “would use any method ‘to blur the principle of separation of church and state.’”³²

This language is, of course, in significant distinction to the kind of rhetoric we might see today, in which many evangelical Christians, having established schools of their own, now form a community of interest on this and other issues with many American Catholics.³³ And this change in rhetoric and argument allows us to retrieve a sense of the extent to which the long-standing themes and elements of our public discourse on the relationship between religion and politics can obscure the degree to which positions and alliances have shifted over the years.³⁴

The Church itself has also changed. The Church’s formal position in this pre-Vatican II era remained fairly anti-liberal by modern lights, teaching “that religious freedom was not a moral ideal in itself, but at most a prudential accommodation

³⁰ Randall Balmer, *God in the White House: How Faith Shaped the Presidency From John F. Kennedy to George W. Bush* 11 (2008) (quoting Blanshard, *supra* note __, at 4, 5).

³¹ See, e.g., Hamburger, *supra* note __.

³² Berg, *supra* note __, at 126 (quoting *Getting Down to Cases*, Editorial, 64 *Christian Century* 1512, 1513 (1947)).

³³ See, e.g., Douglas Laycock, *Church and State in the United States: Competing Conceptions and Historic Changes*, 13 *Ind. J. Global Legal Stud.* 503, 511-12 (2006).

³⁴ For more on this subject, with particular attention to the parochial school funding and school prayer issues, see John C. Jeffries, Jr. and James E. Ryan, *A Political History of the Establishment Clause*, 100 *Mich. L. Rev.* 279 (2001).

to the fact of diversity in religious beliefs.”³⁵ That fact may lend *slightly* more credence, or at least a different perspective, to some of the fears that were voiced in those years that Catholicism “was inconsistent with a democratic political system.”³⁶ Certainly some of the criticism of the Church and its role in American politics was more thoughtful and credible, and less poisonous and fervid, than its worst outbursts – the letters and pamphlets likening voting for a Catholic candidate to “voting for a Fascist, a Nazi,” and arguing that “[t]he Pope wants rich America under Catholic control.”³⁷

What the Church’s critics failed to see, perhaps, was that any blanket characterization of American Catholics as anti-freedom, or anti-separationist, based on the official statements of the mother Church hardly reflected the reality on the ground, in which American Catholics had long since emerged as fully participating citizens who shared a common set of values with their non-Catholic neighbors. Indeed, as Garry Wills notes, the rise of Kennedy was coincident with what, until now, was probably “[t]he peak of Catholic prestige and influence” in American public life.³⁸

Moreover, the critics also neglected the extent to which Catholic intellectual currents were moving in the same pluralistic direction as the laity. As American Catholics were moving into the mainstream of public life, the theologian John Courtney Murray was “articulate[ing] in theory what most American Catholics believed instinctively: religious freedom is a human right, and while church and state need not be rigidly separate and could cooperate fruitfully, the Church should not have a privileged connection with the government.”³⁹ Not long before Kennedy sought the presidency, Murray had been sidelined by the Vatican, lending some ammunition to American critics of the Church’s role in public and political life.⁴⁰ But it would not be long before Murray’s views enjoyed a

³⁵ Berg, *supra* note __, at 133.

³⁶ *Id.* at 136; *see also* Balmer, *supra* note __, at 37-38.

³⁷ Balmer, *supra* note __, at 20.

³⁸ Garry Wills, *Head and Heart: American Christianities* 457 (2008).

³⁹ Berg, *supra* note __, at 139. *See, e.g.*, John Courtney Murray, S.J., *The Problem of Religious Freedom* (1965).

⁴⁰ *See, e.g.*, Berg, *supra* note __, at 135-36.

resurgence of popularity, not only in American life but within the Church itself, whose changing views on religious liberty during Vatican II substantially bore Murray's imprint.⁴¹ So the Church's critics were chasing after fading phantoms. But it is nonetheless important not to miss the extent to which the Church's views have, in fact, changed over time in ways which may make its mid-century critics' views seem even more objectionable to modern ears.⁴²

All of this simply provides a broader background to Kennedy the candidate and the faith-based criticisms that beset him. But what of Kennedy himself? It is striking – but, as we will see, perfectly in line with his pronouncements on the subject – that someone who bore so much of the brunt of criticism for his faith was so human, so imperfectly and at times indifferently a representative of that faith.

There is some disagreement about the nature and extent of Kennedy's own religious beliefs, although some of the disagreement clearly owes something to the zeal of the defenders of Kennedy's public image. The child of a devout Catholic, Kennedy certainly observed many of the forms of his faith,⁴³ but "did not appear to be interested in Catholic piety or devotional life."⁴⁴ Although his biographer (and defender) Theodore Sorenson argued against those who suggested that Kennedy was not "deeply religious,"⁴⁵ others argued that Kennedy "never showed 'any special interest in Catholicism,'"⁴⁶ and Sorenson himself said that Kennedy never cared "a whit for theology."⁴⁷ Kennedy certainly never concealed his faith,⁴⁸ but one student of religious faith and the American presidency concludes that Kennedy's "faith had much less influence on his thinking and policies than that of the other presidents

⁴¹ See, e.g., E.J. Dionne, Jr., *Souled Out: Reclaiming Faith & Politics After the Religious Right* 154-55 (2008).

⁴² See also John T. Noonan, Jr., *A Church That Can and Cannot Change: The Development of Catholic Moral Teaching* 154-58 (2005).

⁴³ See, e.g., Smith, *supra* note __, at 260-63.

⁴⁴ *Id.* at 260.

⁴⁵ See *id.* at 261 (internal quotations and citation omitted).

⁴⁶ *Id.* at 261 (quoting Lawrence Fuchs, *John F. Kennedy and American Catholicism* 164 (1967)).

⁴⁷ *Id.* (internal quotations and citation omitted).

⁴⁸ See *id.*

examined” in his work.⁴⁹ Rather, and in keeping with those who staffed the administration of the New Frontier,⁵⁰ Kennedy was a classic technocrat, who “sought to achieve a technically based consensus to direct politics, similar to the one that guided the scientific community.”⁵¹ On taking the presidential oath at his inauguration, with one hand on the Bible, Kennedy’s thoughts turned not to his faith, but to the question of “how the hell” a “powerful Boston businessman . . . managed to procure a seat right behind the Kennedy family.”⁵² In short, while Kennedy certainly was rooted in Catholic belief and practice, he either was not deeply religious or managed to find a distinction between his religious beliefs and his public role as a politician and policy-maker.

Nevertheless, Kennedy’s religion occupied center stage in his candidacy, and was the subject of repeated attack, on the grounds I have already discussed: that Catholicism was an “alien” faith, that electing a Catholic as President would effectively place the Roman Pope in the Oval Office, and that a Catholic would tear down the wall of separation between church and state.⁵³ Even before he declared his candidacy for the presidency, Kennedy sought unsuccessfully to forestall such criticisms by citing both the Religion Clauses of the First Amendment and the Religious Test Clause of the Constitution, which says that “no religious Test shall ever be required as a qualification to any Office or public Trust under the United States.”⁵⁴ Under those clauses, he argued, any such criticisms violated the principle that “our government cannot – directly or indirectly, carelessly or intentionally – select any religious body for either favorable or unfavorable treatment.”⁵⁵ Similarly, in refusing to answer a list of questions submitted by the anti-Catholic writer Paul Blanshard to all Catholic candidates, Kennedy argued that “[t]he mere presentation of a list of questions such as you have suggested betrays a dangerous tendency which is not consistent with the spirit of our

⁴⁹ *Id.* at 260.

⁵⁰ *See, e.g.,* David Halberstam, *The Best and the Brightest* (1972).

⁵¹ Smith, *supra* note __, at 263 (internal quotations and citation omitted).

⁵² *Id.* (internal quotations and citation omitted).

⁵³ *See generally* Smith, *id.*, at 266-71; Balmer, *supra* note __, ch. 1; Carty, *supra* note __.

⁵⁴ U.S. Const., Art. VI, cl.

⁵⁵ Balmer, *supra* note __, at 13-14.

Constitutional principles,” again citing the Religious Test Clause.⁵⁶

At the time, Kennedy’s invocation of the Religious Test Clause occasioned some controversy. For example, the leadership of the American Civil Liberties Union debated whether the Constitution permitted voters to ask candidates such questions, or whether the selective targeting of Catholic candidates for such inquiries itself violated their civil liberties.⁵⁷ For reasons I have developed at length elsewhere,⁵⁸ I think Kennedy was mistaken in invoking the Religious Test Clause, which does not forbid candidates from being asked or answering such questions – although it does not forbid them from refusing to answer those questions either. In any event, this rhetorical strategy did not succeed in staving off criticisms of Kennedy for his faith. Although Kennedy hoped that his decisive primary victory over Hubert Humphrey in the substantially non-Catholic state of West Virginia would put the issue to rest, it did not.⁵⁹ So it was that Kennedy found himself agreeing to come, like Daniel into the lions’ den, to the Rice Hotel in Houston to speak before some 300 Protestant ministers at the Houston Ministerial Association on September 12, 1960.⁶⁰

Kennedy began his speech by arguing that “[w]hile the so-called religious issue is necessarily and properly the chief topic here tonight,” many other issues ought to be “far more critical.”⁶¹ Among them were “the spread of communist influence,” slums, education, and the space race. Kennedy added: “These are the real issues which should decide this campaign. And they are not religious issues – for war and hunger and ignorance and despair know no religious barrier.”⁶²

⁵⁶ Carty, *supra* note __, at 71-72.

⁵⁷ *See id.* at 72.

⁵⁸ *See* Horwitz, *supra* note __.

⁵⁹ *See* Smith, *supra* note __, at 268; Balmer, *supra* note __, at 19-31.

⁶⁰ *See, e.g.,* Balmer, *supra* note __, at 32.

⁶¹ *Id.* at 176. Balmer’s book reprints Kennedy’s speech in full, and I cite to his book in discussing Kennedy’s speech. It can be found in a variety of places. The full text and video of the speech can be found online at <http://www.americanrhetoric.com/speeches/jfkhoustonministers.html> (last visited August 8, 2008).

⁶² *Id.*

This is a jarring, if rhetorically understandable, note on which to start his speech. As a preliminary approach to what I have labeled his overall strategy of avoidance, Kennedy begins not by avoiding but by *minimizing*, even scoffing at, any suggestion that religion ought to pose a significant concern for voters. Rather, he suggests, they ought to focus on the panoply of pressing public issues that confront them on the eve of the election. Read charitably, Kennedy appears to be suggesting that these issues are not “religious” issues because they pose no significant “religious barrier” to a broad public consensus; all people of good faith, no matter what that faith may be, recognize that these are serious issues. So we ought not concern ourselves much with the religious aspects of these questions, but instead should focus on selecting the most technically adept candidate with the best program for dealing with these issues.

Read more literally, however, Kennedy cannot possibly mean what he is saying. As any reader of the Beatitudes, or of many other significant religious texts, surely must understand, “war and hunger and ignorance and despair” are *quintessentially* “religious issues.” That is true not only on the surface, but all the way down. For many deeply religious individuals, not only the issues themselves, but how we address themselves to their solution, implicate any number of deep questions about faith and its manifestation through works, and about how and whether we may work together with adherents of other faiths in resolving these deeply rooted social problems. In my reading, then, Kennedy opens his speech awkwardly and in error. But these remarks are simply a prelude to a broader, and equally disturbing, approach to the question of the relationship between religion and politics.

Kennedy’s speech proceeds to what is surely the most famous passage of the address, prefaced by the statement that because he has been called into question by virtue of his Catholicism, “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.”⁶³
It is worth quoting at length:

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.

I believe in an America that is officially neither Catholic, Protestant, nor Jewish; where no public official either requests or accepts instructions on public policy from the pope, the National Council of Churches, or any other ecclesiastical source; where no religious body seeks to impose its will directly or indirectly upon the general populace or the public acts of its officials, and where religious liberty is so indivisible that an act against one church is treated as an act against all.⁶⁴

Once again, if we look at this passage through political eyes we can see Kennedy the candidate masterfully attempting to defuse a variety of attacks that had been launched against him by combining them under the general rubric of “the separation of church and state” and the indivisibility of “religious liberty.” Thus, at the same time that he denies any authority of a “Catholic prelate” to tell him how to act as President, he also argues that Protestant ministers are forbidden from telling *their* flock how to vote in the election; and at the same time that he denies any interest in preferring Catholic parochial schools for purposes of public funding, he argues that the same principle bars the voters from denying him the Oval Office simply by virtue of his religious beliefs.

⁶³ *Id.*

⁶⁴ *Id.* at 176-77.

As politically successful as this rhetorical strategy may have been, it is far less satisfying on a close reading. But to fully appreciate that, one must add a later piece of the address:

Finally, I believe in an America where . . . there is no Catholic vote, no anti-Catholic vote, no bloc voting of any kind, and where Catholics, Protestants, and Jews, at both the lay and the pastoral levels, will refrain from those attitudes of disdain and division which have so often marred their works in the past, and promote instead the American ideal of brotherhood. . . . [My vision of the presidency] represents a great office that must be neither humbled by making it the instrument of any religious group, nor tarnished by arbitrarily withholding it – its occupancy from the members of any one religious group. I believe in a president whose views on religion are his own private affair, neither imposed upon him by the nation, nor imposed by the nation upon him as a condition to holding that office.⁶⁵

Reading both passages together, one can understand why Mark Massa has written that Kennedy's Houston speech can be "seen as a key moment, not only in American Catholicism's 'coming of age,' but also of the articulation of the *terms* of that rite of passage."⁶⁶ Kennedy offers a vision of the "separation of church and state" that is at once liberating and constraining for the participation of religious believers in public life. His vision of separation liberates by eliminating any barriers whatsoever to the successful participation of religious believers in politics: "no man is denied public office merely because his religion differs from . . . the people who might elect him." It treats separation not only as a formal rule constraining government action – a statement about whether any government office can be "officially . . . Catholic, Protestant, [or] Jewish" – but as an informal constraint on the decisions of *private* citizens entering the voting booth. If religion has no place in political decision-

⁶⁵ *Id.* at 177-78.

⁶⁶ Massa, *supra* note __, at 131 (emphasis in original).

making, private and public, then it cannot prevent a member of any religion from becoming President. So Kennedy “[becomes] a symbol of American pluralism.”⁶⁷

At the same time, Kennedy accepts a high price, not only on his behalf but on the voters’ as well, for the advance of religious pluralism in the American political landscape. He makes a private affair of his own religion, severing it from any deep ties of obligation or belief that might color or command his own views on policy. But he goes a step further too. For if the nation can neither “impose[]” religious views on a candidate for office nor treat religion “as a condition to holding that office,”⁶⁸ then religion ceases to be a valid factor in the voters’ ballot-booth deliberations. It becomes “a private affair” for them as well.

This is not, perhaps, the most charitable reading of Kennedy’s remarks, and I will offer a slightly kinder one in a moment. Nevertheless, ultimately I find it impossible to understand Kennedy’s words any other way. Kennedy’s compromise with the voters finally requires that neither he nor they take religion *too* seriously – that they refrain from viewing it as a source of binding obligation with respect to either his actions in office or their choices as voters.

It is not just that this compromise is too costly – although it is that as well. It is also impossible, at least in this culture. On a wide range of issues – certainly including the classic hot-button issue of abortion, but extending to questions of war and peace, the necessity and nature of various social programs, and much more besides – religious voters cannot separate what their religion demands from the question of which candidate to support.

Even beyond particular issues, voters have always, wisely or not, asked questions about the *character* of the individuals they select to occupy high elected office. To be sure, a thoughtful religious person *can* conclude that religious differences are not a final bar to the kinds of character

⁶⁷ Wills, *supra* note __, at 458.

⁶⁸ Balmer, *supra* note __, at 178.

concerns – integrity, honor, honesty, and so on – that might influence her voting decisions. But she *need* not make such a distinction, and on reflection she may conclude in particular instances that she *cannot*; either her sense of what a candidate’s religious beliefs say about his character or her view of the particular set of virtues, including belief in some particular and (to her) obvious religious truth, that ought to be present in a particular candidate may preclude her from making this sort of distinction.⁶⁹

Ultimately, then, Kennedy is asking the voters to do something that many of them cannot. One might offer the rejoinder that many voters appeared to do exactly that in 1960: that, in an era of substantial social consensus and of belief in the problem-solving power of technology and secular liberal values, American society demonstrated its willingness and ability to honor the compromise Kennedy offered them. Maybe so, although I have already implied that this consensus itself may have rested on a set of thin religious values that were at the time treated as largely beyond contestation. But the instability of Kennedy’s compromise – the ultimate failure of his strategy of avoidance, as we will see – may also suggest that his compromise was fatally weak at the outset and doomed to fail.

We have focused so far on the problems that Kennedy’s strategy of avoiding the “religious question” by privatizing religion pose for religious voters. But Kennedy’s approach, however well it may have suited his own propensities, is equally problematic for candidates and office-holders as well. Kennedy imagines a world in which “no public official either requests or accepts instructions on public policy from the pope, the National Council of Churches, or any other ecclesiastical source”;⁷⁰ where “no Catholic prelate should tell the president – should he be Catholic – how to act”;⁷¹ in which the “chief executive” is “not limited” in the “fulfillment of his presidential

⁶⁹ Cf. Sanford Levinson, *Wrestling With Diversity* 208 n.38 (2003) (“[m]any Protestant groups . . . see no separation between the secular and religious parts of their lives”) (quoting a letter from Professor Laura Underkuffler).

⁷⁰ *Id.* at 177.

⁷¹ *Id.* at 176.

office . . . by any religious oath, ritual, or obligation.”⁷² Perhaps that was true for Kennedy.⁷³ But, of course, it may not be true for other office-holders, most certainly including, but not limited to, other Catholic politicians. They may indeed consider the teachings or instructions of the Pope, or of “Catholic prelates,” authoritative in some circumstances. Even if they do not consider themselves bound in some circumstances by those instructions – if, for instance, the Pope or prelate is advising on a matter that falls outside the scope of the magisterium – they certainly may well welcome counsel from those precincts, and even “request” it. They may, finally, conclude that some commands not only conflict with the Constitution but are superior to it. One response to this prospect is to allow voters to ask just such questions of the candidate before he takes office, and to judge him by his ability to “fulfill[] . . . his presidential office” once he takes it. But Kennedy’s strategy of avoidance, by seeking to eliminate religion from political discourse and decision-making in general, and from voters’ decision-making in particular, closes off this avenue.

We are thus left in a world in which we either pretend that office-holders will face no significant conflicts between their faith and their public obligations, or in which we demand, perhaps futilely, that they ignore those conflicts. In either case, the voters are left with little remedy when the truth turns out to be more complicated than that. Sanford Levinson, writing primarily about Justice William Brennan but drawing on Kennedy’s speech as well, has aptly characterized this view of a conflict-free world as involving a “comic” view of the Constitution. On that view, the Constitution “provid[es] sufficiently ‘happy endings’ to legal dilemmas so that, for example, fidelity to the Constitution never require[s] the judge to acquiesce in something truly evil.”⁷⁴ To conclude otherwise and simply privilege the demands of public office above those of religion turns obedience to the Constitution into a form of

⁷² *Id.* at 178.

⁷³ *See supra* notes ___-___ and accompanying text (discussing the nature and extent of Kennedy’s religiosity).

⁷⁴ Sanford Levinson, *Is it Possible to Have a Serious Discussion About Religious Commitment and Judicial Responsibilities?*, 4 U. St. Thomas L.J. 280, 283 (2006); see also Levinson, *supra* note ___, at 215-16.

idolatry.⁷⁵ Indeed, Kennedy's compromise, which envelops both office-holders and voters alike, seeks to make constitutional idolaters of us all.

Kennedy's approach does not simply exalt the Constitution, however. In important respects, it also diminishes religion – not simply by treating it as subordinate to public obligations, but by implying that it is trivial. Kennedy does not say that in as many words, and he does offer the usual paeans to religious liberty that have studded full many a political speech, writing of “an America where religious intolerance will someday end, where all mean and all churches are treated as equal.”⁷⁶ But this language speaks only in the language of equality; it tells us that all religions are equally important, but not how important they are. Since Kennedy is at pains to argue that religion cannot influence or compel decisions by public actors or voters, the answer must perforce be, not very. And so it is that his Catholicism becomes incidental. While denying, understandably, that he is “*the* Catholic candidate for president,”⁷⁷ Kennedy adds that he is “the Democratic Party's candidate for president who *happens* also to be a Catholic.”⁷⁸ He turns what, for many, is a bedrock aspect of their public and private identity into mere happenstance.

Now, all of this would be startling if it were applied to the world of private actors. To take a standard example, imagine an argument that the Reverend Martin Luther King, Jr. acted wrongly by allowing religion to motivate his struggle for civil rights: that the two must remain separate, and that King would be wrong to seek to impose his religiously derived views of the centrality of equality “indirectly upon the general populace.”⁷⁹ But we are dealing here with private actors, and Kennedy suggests that the calculus is different on this side of the divide. Kennedy argues that the Constitution itself is interposed between the private and the public arena. As he

⁷⁵ Levinson, *supra* note __, at 283 (citing Levinson, *supra* note __, at 215 n.64) (quoting a letter from Professor Thomas Shaffer).

⁷⁶ Balmer, *supra* note __, at 177.

⁷⁷ *Id.* at 179 (emphasis added).

⁷⁸ *Id.* (emphasis added).

⁷⁹ *Id.* at 177.

had in the past,⁸⁰ Kennedy raises the Religious Test Clause of the Constitution, arguing that it forbids any voter from “requiring a religious test, even by indirection.”⁸¹ On this broad view of the Religious Test Clause, voters are constitutionally disabled from asking religious questions of candidates, or voting against candidates for religious reasons.

My own view of the Religious Test Clause is that such a reading is far too broad.⁸² The Clause simply forbids the erection of formal tests that would preclude someone from taking office, or require a candidate formally to avow or disavow a religion or religious precept as a condition of taking office. To read it more broadly – to argue that even “indirect[]” religious tests violate the constitutional bar – is to forbid voters and candidates alike from having a meaningful discussion about the ways in which a particular faith conduces to, or constrains, an office-holder’s performance of his duties.⁸³

I will not address the meaning of the Religious Test Clause in any greater detail here. But it is worth pausing to note, again, the irony that is inherent in Kennedy’s invocation of the Religious Test Clause. At the same time that he denies that religion could ever pose a meaningful conflict with the performance of public duties, he also prevents voters from exercising the basic safeguard of asking particular candidates whether *they* are faced with such conflicts, let alone voting to prevent such a conflict-ridden candidate from reaching office. There is no doubt that many voters may exercise that right crudely or unwisely; but Kennedy’s cure for this potential ill strikes me as being as bad as the disease itself.

If I have thus far been critical of Kennedy, let me end my close reading of his speech on several more appreciative notes. First, Kennedy adds a note of sociological detail which was of great importance to understanding the role of Catholics in American politics in 1960 (and today), and which may also have broader implications for understanding the role of religion

⁸⁰ See, e.g., *id.* at 13; Carty, *supra* note ___, at 71-72.

⁸¹ Balmer, *supra* note ___, at 178.

⁸² See Horwitz, *supra* note ___.

⁸³ See generally Levinson, *supra* note ___.

in American politics more generally. In arguing against those who would hold him accountable for every illiberal statement made by “Catholic church leaders, usually in other countries, frequently in other centuries, and rarely relevant to any situation here,”⁸⁴ Kennedy points to “the statement of the American bishops in 1948 which strongly endorsed church-state separation, and which more nearly reflects the views of almost every American Catholic.”⁸⁵

This is important not only because it suggests that Catholicism is not wholly monolithic and unchanging, and that voters should be aware of its evolving views on the relationship between church and state. It is also important for its focus on what it means to be an “*American Catholic*,” and on the notion that there may at times be distinctions between what has been said in Rome and what is believed in American pews. It suggests that voters should not treat the Church as a specter or a bogeyman, but instead should consider the ways in which both the Church and its members have become fully a part of the fabric of American life, altering both themselves and public life in the process. Kennedy’s own military service, and the sacrifices made in war by his family, both of which he highlights for his audience,⁸⁶ serve as forceful reminders that, whatever voters might make of “carefully select quotations out of context” suggesting that there is a divide between Catholic belief and public service,⁸⁷ in practice Catholic Americans have been every bit as loyal, as involved, and as willing to pay the ultimate price for service to their country as their non-Catholic brethren. The broader lesson here, perhaps, is that voters cannot make general assumptions about what it means to be Catholic, or Jewish, or Muslim, or a member of any other faith. They must keep in mind the unique and shifting ways in which both religious identity and American civic identity have influenced and accommodated one another, so that one must talk about being an *American Catholic* or Jew or Muslim.

Second, for all his efforts to suggest that there can be no meaningful conflict between the commands of faith and the

⁸⁴ Balmer, *supra* note ___, at 179.

⁸⁵ *Id.*

⁸⁶ *See id.* at 178.

⁸⁷ *Id.* at 179.

commands of public service, Kennedy ultimately acknowledges that there may come a point beyond which compromise is impossible:

But if the time should ever come – and I do not concede any conflict to be remotely possible – when my office would require me to either violate my conscience or violate the national interest, then I would resign the office; and I hope any conscientious public servant would do likewise.⁸⁸

Thus, Kennedy does finally concede that religion can be important to the conscience of a public servant, and that it may even finally prevent him from carrying out his duties consistently with his constitutional oath. Quite rightly, he does not suggest that the mere possibility of such a conflict should disqualify anyone from public office. Rather, he says that the appropriate remedy here, if he simply cannot comply with both sets of obligations, is to leave office. In keeping with his “comic” view of the Constitution and his privatized view of religion, he is unwilling to “concede any [such] conflict to be remotely possible.”⁸⁹ But at least he somewhat redeems both religion and the Constitution by restoring something of the stakes involved in both, and rendering them something more than comic.

Third, it is worthwhile to note an important distinction Kennedy makes throughout his speech. Although the main current of his address suggests a strategy of avoidance, by arguing that religion simply cannot be a relevant matter for either candidates or voters, he also makes a somewhat more subtle point. He argues that the presidency must not be “tarnished by *arbitrarily* withholding [its] occupancy from the members of any one religious group,” and later that the election should not be “decided on the basis that forty million Americans lost their chance of being president on the day they were being baptized.”⁹⁰ In other words, it is not simply the use of religion as a qualifying or disqualifying factor by voters that

⁸⁸ *Id.* at 180.

⁸⁹ *Id.*

⁹⁰ *Id.* at 177, 180 (emphasis added).

should disturb us. It is the refusal to think further and deeper than that;⁹¹ the blanket assumption by voters that membership in a faith should be disqualifying in and of itself.

This is both consistent and inconsistent with Kennedy's broader rhetorical strategy. On the one hand, it echoes his treatment of American Catholicism, which assumes that we must evaluate American Catholics by their own beliefs and actions rather than assuming that they follow the Church hierarchy in all things. On the other hand, the suggestion that *arbitrary* disqualification of a candidate on the basis of his or her faith is wrong leaves by implication the possibility that non-arbitrary, thoughtful selection or rejection of a particular candidate based on his or her *own* religious beliefs might be acceptable. That hardly comports with his broader effort to suggest that religion is a forbidden basis for political actions by candidates and voters alike. That inconsistency may be nothing more than an inevitable consequence of the compromises that electoral politics demand. But one might wish that Kennedy had focused on the question of arbitrary or blanket disqualification on the basis of religion from the moment of one's birth, rather than leverage this argument into a broader strategy of avoidance.

Finally, it is worth noting what Kennedy said after the formal address was over, and the fact that he said anything at all. For Kennedy, by design, spoke to a hostile audience, and he did not leave when the address was over. Rather, he willingly accepted audience questions, a number of them "acrimonious."⁹² And he closed his appearance with the following remarks, which I quote at length:

I don't want anyone to think, because they interrogate me on this important question, that I regard that as unfair or unreasonable or that somebody who is concerned about the matter is prejudiced or bigoted.

⁹¹ Cf. Horwitz, *supra* note ___, at 139 n.402 (noting and criticizing Senator Richard Durbin's remark that asking a judicial nominee about her faith "is a legitimate inquiry as long as it doesn't go too far and too deep").

⁹² Balmer, *supra* note ___, at 34.

I think religion is basic in the establishment of the American system, and, therefore, any candidate for the office, I think, should submit himself to the questions of any reasonable man.

My only limit would be that if somebody said, “Regardless of Senator Kennedy’s position, regardless of how much evidence he has given that what he says he means, I still won’t vote for him because he is a member of that church.”

I would consider that unreasonable. What I consider to be reasonable in an exercise of free will and choice is to ask Senator Kennedy to state his views as broadly as possible. Investigate his record to see whether he states what he believes and then make an independent and rational judgment as to whether he could be entrusted with this highly important position.⁹³

These remarks, again, demonstrate both a consistency and a tension with the thrust of his address. Kennedy does suggest here, in keeping with his argument against the arbitrary withholding of support on religious grounds, that religious questions are not necessarily illegitimate in a political campaign, and that one may fairly and in an unprejudiced fashion have concerns about the relationship between a particular candidate’s religious views and his fitness for office. Commendably, he suggests that these are perfectly reasonable questions and that a candidate may reasonably be expected to be asked such questions, and, indeed, to answer them, although he adds the important caveat that these questions ought to be voiced in a reasonable manner. All of this is in some tension with the strategy of avoidance that marks his statement that religion is a “private affair” that should not be raised as a barrier to the holding of public office, and that even indirect inquiries of this sort violate the Religious Test Clause.

⁹³ *Id.* at 34-35.

At the same time, it is not clear exactly what Kennedy means in his peroration when he suggests that it would be reasonable to “ask [him] to state his views as broadly as possible.” These words can be taken in two ways. He might be suggesting here that the only “views” that should be relevant to public inquiry are views on matters of public policy, thus again excluding religion from the ambit of any reasonable questioning. That seems inconsistent with the rest of his concluding remarks, however. Perhaps the better reading is that he believes questions on a candidate’s religion are acceptable, but should be phrased only in a general way and should be closely linked to the candidate’s actual record in office. That kind of compromise is still a popular one in public discourse about religion and politics.⁹⁴ Indeed, we will see it when we consider the words of our next subject, Mitt Romney. But I have argued elsewhere that it is far from clear that such a compromise is either beneficial or acceptable. To allow us to discuss religion only on the condition that we speak about it in the broadest possible terms may, in the long run, be even worse than not discussing it at all, and may prove even less respectful of religion than a simple strategy of silence.⁹⁵

In the end, Kennedy’s speech, and his broader approach to the relationship between religion and American politics, was a politically successful but deeply problematic attempt to resolve the tension between the two. As Mark Massa has observed, the very fact that Kennedy was pressed on the “Catholic question,” and his politically victorious response to this question, presents a painful irony. Kennedy’s victory demonstrated that someone of even what was then viewed by many as an “alien” faith could hope to succeed in seeking the highest office in the land. But it did so by rendering that faith unimportant, by denying the link between one’s own faith and one’s performance in public office, and by denying that link on the voters’ behalf as well. In short, Kennedy achieved a victory for religious pluralism by “‘secularizing’ the American public square by privatizing personal belief.”⁹⁶ Little wonder, then, that even some of his

⁹⁴ See Horwitz, *supra* note __, at __.

⁹⁵ See *id.* at __.

⁹⁶ Massa, *supra* note __, at 146.

closest Catholic allies were ultimately discomfited by the strategy of avoidance Kennedy pursued to the White House.⁹⁷

III. MITT ROMNEY: INCLUSION WITHOUT ENGAGEMENT

Nearly half a century separates John F. Kennedy's speech on religion and politics from the speech given by former Massachusetts governor and Republican presidential candidate Mitt Romney on December 6, 2007, also in Texas. During that time, religion's role in American politics changed dramatically, as did the role of religion in the United States more generally. That story is too long to tell here, but most readers will be familiar with many of the most salient elements of the narrative: the growth in the number of people who profess no religion at all or treat religion as less central to their lives; the corresponding increase in the number of Americans who do treat religion as a primary influence and who adhere to ever more fervent religious views; the rise of evangelical Christianity and its resurgence as a political force.

Religion, in short, has become a more powerful force in American politics in the last half-century, in part precisely because it has become *less* of a bedrock assumption. More Americans have abandoned their faith or found it anew, and the nation has moved through and past periods of technocratic politics and consensus about the basic liberal values that undergird our liberal democracies. In the process, religion has become a more central and powerful force in American politics at the same time as, and *because*, it has become more contested piece of the social fabric. We should not make the mistake of believing that Kennedy and Romney were addressing the same audience.

Beyond the larger social context in which each speech took place, much else was both similar and different in the two speeches and the occasion for their delivery. As we have seen, Kennedy spoke in a period in which Catholicism in America was still the subject of widespread suspicion and prejudice,

⁹⁷ See, e.g., McGreevy, *supra* note ___, at 213; Carty, *supra* note ___, at ___.

coming from both religious Protestants and secular liberals. But that hostility was largely above-board, not couched in code words or hints. Finally, Kennedy ultimately spoke not to reassure voters that his Catholicism was a commendable quality in and of itself, but to remove fears that he would manifest his Catholic faith in public life.

In some ways, Romney, a devout Mormon and scion of past leaders of the church, spoke out of similar needs. As Romney's campaign progressed, the Church of Jesus Christ of Latter-day Saints remained the subject of widespread fears and questions among many Republican primary voters, particularly evangelical Christians, who believed that Mormonism, like Catholicism, was not true Christianity.⁹⁸ Like Kennedy, Romney found himself obliged to confront his doubters and explain his faith and its relationship to his run for the presidency.

Nevertheless, the differences in the context in which Romney spoke far outweighed the similarities. For one thing, Romney's critics were hardly an organized or public force; although many individual voters voiced doubts about his faith, anti-Mormon sentiment was neither as open nor as institutionalized as the anti-Catholic criticism faced by Kennedy.⁹⁹ Nor did Romney's faith play precisely the same role in animating his critics that Kennedy's faith did. Whether or not it was sincere, much of the criticism of Kennedy's Catholicism was based on the view that his obedience to church authorities would lead him to take particular views on matters of public policy, not least among them the provision of public funds for parochial schools. By contrast, few if any of the criticisms of Romney suggested that he would follow his church's bidding in any way that would steer him away from the conservative path favored by many GOP primary voters. Rather, it was his faith in and of itself – its history, its doctrines, its sheer strangeness – that disturbed these

⁹⁸ See, e.g., Barbara Bradley Hagerty, *Romney Faces Uphill Battle for Evangelical Voters*, March 1, 2008, at <http://www.npr.org/templates/story/story.php?storyId=11762390>.

⁹⁹ See, e.g., Kenneth L. Woodward, *Mitt Romney is No Jack Kennedy*, N.Y. Times, Dec. 6, 2007, at ___.

voters.¹⁰⁰ And, for reasons that can ultimately be linked to the content of his speech, Romney's tactical approach was different too. While Kennedy spoke to a hostile audience and welcomed their questions, Romney spoke before a room packed with supporters and took no questions.

If the context of both speeches allows us to see something of the contrast between them, the content of Romney's speech lays bare the differences between them even more clearly. Summing up the two speeches, Garry Wills has written, sharply but too cutely, that "Kennedy had to convince people that he would not let the Vatican push him around. Romney . . . let evangelicals know that he *would* let them push him around."¹⁰¹ Although that might do for a sound-bite, Romney's speech offers far more depth, and far more problematic aspects, than a few well-chosen words can contain. In offering a close reading of Romney's speech, I want to suggest that in some respects it offers a commendable move forward from Kennedy's own strategy of avoidance. It describes a relationship between religion and American politics that gives both religious candidates and voters alike far more room to express themselves fully and completely, and paints a far more satisfying picture of the role of religion in public life. At the same time, Romney's vision of a politically engaged religiosity commits a common error on the part of many who would argue for a wholesome involvement of religion in public life. It allows religion into public dialogue, but only in a one-sided way, in which religion can be a source of praise but not of thoughtful criticism. In its own way, this strategy, which I call a strategy of inclusion without meaningful engagement, risks trivializing religion every bit as much as Kennedy's own privatizing approach does.

Romney opens in a manner that is starkly different from Kennedy's own approach. Rather than argue that religion is a

¹⁰⁰ See Garry Wills, *Romney and JFK: The Difference*, N.Y. Rev. Books, Jan. 17, 2008, at __ (noting that although "[T]he situations are superficially the same" between Kennedy and Romney's speeches, "the obstacles are quite different."). Wills argues that Kennedy's critics "were more solidly political" in questioning his faith, while the objections to Romney's faith were more "theological and cultural." *Id.*

¹⁰¹ Wills, *id.* (emphasis in original).

distraction from the central issues that face the nation, he embraces it as one of the key issues: “Today, I wish to address a topic which I believe is fundamental to America’s greatness: our religious liberty.”¹⁰² He promises to “offer perspectives on how my own faith would inform my Presidency, if I were elected.”¹⁰³ In significant contrast to Kennedy, Romney argues that anyone “who may feel that religion is not a matter to be seriously considered in the context of the weighty threats that face us” is wrong. More forcefully than Kennedy, he invokes history in support of his view, citing what he describes as the Founders’ view that religion is essential in guiding the moral sentiments of the people.¹⁰⁴

Romney’s next argument is somewhat more controversial. He says:

Freedom requires religion just as religion requires freedom. Freedom opens the windows of the soul so that man can discover his most profound beliefs and commune with God. Freedom and religion endure together, or perish alone.¹⁰⁵

This argument lent itself to some criticism, on the grounds that it appears to leave out a purely secular understanding of human freedom, let alone constitutional freedom, and so is dismissive of non-religious citizens.¹⁰⁶ But I think we need not detain ourselves with that criticism. Certainly Romney is not alone in his belief that religion is central to a deeper understanding of human freedom. Writers as diverse as Michael Perry and Seamus Hasson have argued that religion is fundamental to a basic understanding of human rights, whether because they are historically linked or because

¹⁰² Romney’s ‘Faith in America’ Address, available at <http://www.nytimes.com/2007/12/06/us/politics/06text-romney.html> (hereafter Romney).

¹⁰³ *Id.*

¹⁰⁴ *See id.*

¹⁰⁵ *Id.*

¹⁰⁶ *See, e.g.,* Roger Cohen, *Secular Europe’s Merits*, N.Y. Times, Dec. 13, 2007, at ___.

freedom is intrinsically connected to religious belief.¹⁰⁷ But such a belief, however contested it may be, is not necessarily dismissive of the non-religious citizen. It does treat religion as a foundation of human freedom; but it doesn't follow from this that non-religious individuals are not similarly entitled to remain free to believe as they do. Indeed, the importance of individual choice to religious salvation can serve as a religious basis for protecting atheism or agnosticism every bit as much as religious belief.¹⁰⁸ The criticism raised against Romney for this statement thus strikes me as overstated.

Similarly, some critics of Romney's speech have argued that it values religion but says nothing about those who have no religious beliefs or have specifically non- or anti-religious beliefs. The *New York Times* columnist David Brooks, for example, complained, "Romney described a community yesterday. Observant Catholics, Baptists, Methodists, Jews and Muslims are inside that community. The nonobservant are not. There was not even a perfunctory sentence showing respect for the nonreligious."¹⁰⁹

On its face, this criticism is fair enough: Romney does not mention the non-religious.¹¹⁰ But neither does Romney single out the non-religious for exclusion, and I think we can read his omission here as more incidental than intentional.¹¹¹ For what it's worth, Romney himself later characterized the omission of non-religious individuals as a missed opportunity, telling an audience that "In a free society . . . non-believers have just as great a stake as believers in defending religious liberty. . . . We are all in this together. Religious liberty and liberality of

¹⁰⁷ See, e.g., Michael J. Perry, *Toward a Theory of Human Rights: Religion, Law, Courts* (2008); Kevin Seamus Hasson, *The Right to Be Wrong: Ending the Culture War Over Religion in America* (2005).

¹⁰⁸ See, e.g., Michael Kammen, *People of Paradox* 171-73 (1980) (discussing early American Puritan and Congregational support for religious voluntarism and individualism).

¹⁰⁹ David Brooks, *Faith vs. the Faithless*, N.Y. Times, Dec. 7, 2007, at ___; see also Letters, *Romney and the Religion Question*, N.Y. Times, Dec. 8, 2007, at ___.

¹¹⁰ See, e.g., Romney, *supra* note ___ (delivering a lengthy paean to various religious groups and omitting any mention of non-religious groups).

¹¹¹ Although Brooks speculates that Romney left the non-religious out of his speech "in order to generate howls of outrage in the liberal press." Brooks, *supra* note ___.

thought flow from the common conviction that it is freedom, not coercion, that exalts the individual just as it raises up the nation.”¹¹² This is perhaps something less than a full-throated defense of the non-religious; it suggests that they should also value religious freedom, but does not say much about what role they can play as citizens and whether they can be acceptable public office-holders.¹¹³ But it is far from dismissive, and I think we can conclude that the criticism of Romney on the grounds that he excludes the non-religious is also overstated.

Romney goes on to openly equate himself with Kennedy in answering what he believes are “[appropriate] questions regarding an aspiring candidate’s religion.”¹¹⁴ Like Kennedy, he says he is “an American running for President” whose candidacy is not defined by his religion.¹¹⁵ And he similarly assures voters that “no authorities of my church . . . will ever exert influence on presidential decisions. Their authority is theirs, within the province of church affairs, and it ends where the affairs of the nation begin.”¹¹⁶ This statement is marginally more welcoming than Kennedy’s own speech, inasmuch as it implies that church leaders have *some* authority to speak to their flocks on matters of public concern. At the same time, like Kennedy’s speech, it seems to erect some distinction between “church affairs” and “the affairs of the nation.” Again, this seems an unstable distinction. Perhaps Romney means to suggest that the only concern of the church is either the inward, spiritual life of the worshipper or matters internal to the church as an institution. For most churches, however, spirituality is not simply private. Faith and its obligations have deep implications for the most pressing public matters.

¹¹² The Becket Fund for Religious Liberty, *Romneys Awarded 12th Canterbury Medal – Reiterates that “Freedom Requires Religion,”* May 9, 2008, available at _____.

¹¹³ For more evidence of his views on this point, see Leslie Griffin, *Political Reason*, 22 St. John’s J. Legal Comment. 493, 499 (2007) (quoting Romney as saying, “[T]he American people want to see a person of faith lead the nation, and I don’t think the American people care very deeply about which brand of faith that is.”) (quoting Robert B. Bluey, *Q & A: Mitt Romney Discusses Iraq War, Reagan’s Influence and Gay Marriage*, Jan. 1, 2007, <http://www/humanevents.com/article.php?id=18683>).

¹¹⁴ Romney, *supra* note ____.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

Moreover, like Kennedy, Romney flirts with what Professor Levinson calls the “comic” view of the Constitution, and what Professor Shaffer labels a somewhat idolatrous view of the Constitution. He does not simply exalt the Constitution, by declaring that he “will put no doctrine of any church above the . . . sovereign authority of the law.”¹¹⁷ He also offers a broader defense of this approach, arguing that he subscribes to Abraham Lincoln’s description of “America’s ‘political religion’ – the commitment to defend the rule of law and the Constitution.”¹¹⁸ The oath of office one takes as President, he says, will “become[] my highest promise to God,” one that requires him to serve only “the common cause of the people of the United States.”¹¹⁹

These statements are worth unpacking a little. On the one hand, Romney’s statement finds a worthy fit between his religious and political duties. It suggests that religion need not present a conflict with politics – that, to the contrary, taking an oath to fulfill one’s office with the interests of all citizens in mind can itself become a high religious calling.¹²⁰ Romney thus usefully reminds us of the ways in which religious faith can support, rather than conflict with, a politician’s commitment to public office.

But that marriage may not always be as easy as Romney suggests. Indeed, in this Romney takes a step further than Kennedy. While Kennedy acknowledges the possibility of conflict between his faith and his office – albeit he doubts that such a conflict is “remotely possible” – and says he would resign if such a conflict arose, Romney refuses to concede that such a conflict could *ever* exist. Perhaps the reasons for this lie in the differences between Catholic and Mormon doctrine; perhaps there is simply no room for a conflict between faith and politics in Romney’s case. Maybe so. But apart from the fact that Romney’s view offers little guidance to politicians of other faiths for whom a conflict might be more conceivable, it is

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Judge William Pryor has taken a similar position. See William H. Pryor, Jr., *The Religious Faith and Judicial Duty of an American Catholic*, 24 *Yale L. J. Pol’y Rev.* 347 (2006).

hard not to see a comic view of religion and the Constitution alike when a candidate refuses to admit even the *possibility* that one's office might demand something different than one's faith.

In the next section of Romney's speech, he comes to the heart of those "questions regarding an aspiring candidate's religion" that he considers "appropriate."¹²¹ Rejecting those who would ask himself to "distance [himself] from [his] religion," he says: "I believe in my Mormon faith and I endeavor to live by it. My faith is the faith of my fathers – I will be true to them and to my beliefs."¹²² He answers the "fundamental question" he says he has often been asked by saying that he "believe[s] that Jesus Christ is the Son of God and the Savior of mankind," while adding that his "church's beliefs about Christ may not all be the same as those of other faiths."¹²³ And he says:

There are some who would have a presidential candidate describe and explain his church's distinctive doctrines. To do so would enable the very religious test the founders prohibited in the Constitution. . . . It is important to recognize that while differences in theology exist between the churches in America, we share a common creed of moral convictions. And where the affairs of the nation are concerned, it's usually a sound rule to focus on the latter – on the great moral principles that urge us all on a common course.¹²⁴

This is perhaps the most fascinating portion of Romney's speech, and in some ways the most troubling. Romney simultaneously avows the importance of faith in grounding a political candidate and office-holder, its ability to "urge us all on a common course," and is deliberate and specific in placing a divine Christ at the heart of his own faith – and argues that questions about "his church's distinctive doctrines" are out of

¹²¹ Romney, *supra* note ____.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

bounds. Note that this is not simply a warmed-over version of Kennedy's own speech. Kennedy, we have seen, argues that no voter should "arbitrarily" deny an entire faith the possibility of holding public office; a voter should not deny a Catholic the office simply because he was born Catholic. Romney extends this argument by insisting that no *individual* candidate can be pressed in any detail about his *own* understanding of his religious beliefs and how they relate to his performance of a public office.

Professor Noah Feldman has written, sharply but fairly, that this formulation "stak[es] his character and values on his religious beliefs while insisting that no one ask what those beliefs are."¹²⁵ Although I ultimately share Feldman's conclusions, much more can and must be said about this.

There are certainly more charitable ways to understand Romney's remarks. One general reading, which Professor Leslie Griffin has advanced based on other remarks by Romney, is that Romney's approach is ultimately connected to his praise for Lincoln's language of "political religion." On this view, the only religiously related question voters may soundly ask of a political candidate is about their "values," not their "individual theologies."¹²⁶ Romney is thus putting at issue only the "great moral principles" to which he subscribes – values that he elsewhere describes as "quintessential American values; that my religious beliefs are consistent with the religious beliefs of other Judeo-Christian faiths, such as a belief in the divinity of God and the need to provide service to others, [and] the preeminence of the family unit."¹²⁷ But by trafficking in these (important) generalities, he should not be taken to be raising more complex theological questions, and therefore cannot reasonably be challenged on those questions.

¹²⁵ Noah Feldman, *What Is It About Mormonism?*, N.Y. Times, __, at __.

¹²⁶ Globe Staff, *In Interview, Romney Aligns With Christian Right*, Boston Globe, Mar. 17, 2006, at B4 (quoted in Leslie Griffin, *Political Reason*, 22 St. John's J. Legal Comment. 493, 499 (2007)).

¹²⁷ Robert B. Bluey, *Q & A: Mitt Romney Discusses Iraq War, Reagan's Influence and Gay Marriage*, Jan. 1, 2007, <http://www.humanevents.com/article.php?id=18683> (quoted in Griffin, *id.* at 500).

Romney's remarks thus can be read as signaling that he "will govern according to quintessential American values that are not based on his or any other religious tradition."¹²⁸ In citing general tenets of Christianity, he asks "citizens to be governed only by those ideals 'which they can reasonably be expected to endorse,'"¹²⁹ while "free[ing] the political marketplace of ideas from extensive theological debate."¹³⁰ Thus, later in his speech, he asserts:

Perhaps the most important question to ask a person of faith who seeks a political office, is this: does he share these American values: the equality of human kind, the obligation to serve one another, and a steadfast commitment to liberty?

They are not unique to any one denomination. They belong to the great moral inheritance we hold in common. They are the firm ground on which Americans of different faiths meet and stand as a nation, united.¹³¹

In Griffin's view, if this is Romney's approach, he is simply following "the Rawlsian standard of public reason."¹³²

Another reading might move from the general to a more particular, and sympathetic, appreciation of the dilemma faced by Mormons who seek public office in a nation in which they are a distinct minority. As Professor Feldman observes, for outsiders, Mormonism may be seen as presenting an inscrutable juxtaposition of a "wholesome[,] . . . all-American denomination with an idealistic commitment to clean living" with a set of "secret, sacred temple rites and garments" of seemingly "exaggerated oddity."¹³³ The point here, obviously, is not to criticize Mormon religious doctrine; most faiths contain some, or many, tenets and practices that might appear

¹²⁸ Griffin, *id.* at 500.

¹²⁹ *Id.* at 505 (quoting John Rawls, *Political Liberalism* (1993)).

¹³⁰ *Id.*

¹³¹ Romney, *supra* note __.

¹³² Griffin, *supra* note __, at 500.

¹³³ Feldman, *supra* note __.

unexplainable or even bizarre to non-adherents.¹³⁴ Rather, it is to expose a tension at the heart of the undoubted success of the Latter-day Saints in American society and politics. On the one hand, the faith's adherents have achieved significant political and social acceptance, only a century after they were harried across the nation. On the other, both for "internal and theological" reasons and for pragmatic reasons borne of the very persecution suffered by Mormons over their history, the church has maintained an air of "sacred mystery" about many of its practices and beliefs, and has found it politic to "depend[] heavily on th[e] avoidance of public discussion of its religious tenets," to refrain from talking about "the precise content of Mormon religious beliefs."¹³⁵

This strategy has largely been successful, and was helped along by "American political norms" that until recently "made religion a taboo subject in polite civil and political society"¹³⁶ – norms that emerged in part contemporaneously with, and in part because of, John F. Kennedy's success in convincing voters that he was a public servant first and a Catholic only second. With the collapse of the avoidance consensus, Mormons today find themselves in a somewhat difficult position in American civil life. Religion is now treated as an entirely legitimate subject of public and political discourse; but "the combination of secret mysteries and resistance in the face of oppression has made it increasingly difficult for Mormons to talk openly and successfully with outsiders about their religious beliefs."¹³⁷

Devout Mormon office-holders seeking to command the allegiance of broader political constituencies thus face a quandary. Their values are surely "quintessentially American," and those values stem in part from deep reserves in their faith; and yet, to most mainline Christians, their particular religious beliefs are surely a "heterodox" form of

¹³⁴ *See id.* ("[E]ven among those who respect Mormons personally, it is still common to hear Mormonism's tenets dismissed as ridiculous. This attitude is logically indefensible insofar as Mormonism is being compared with other world religions. There is nothing inherently less plausible about God's revealing himself to an upstate New York farmer in the early years of the Republic than to the pharaoh's changeling grandson in ancient Egypt.").

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

Christianity, and public discussion of their beliefs is as likely to lead to political rejection as it is a greater shared understanding.

It is easy to sympathize with this dilemma, and one could understand Romney as offering a reasonable resolution of the problem. Romney could be saying that he is willing to share his religious beliefs to the extent that they speak to the broader values that he shares with the American public, and that *only* those broader shared values and their impact on his character as a would-be president are relevant to the discussion. Answering questions about particular doctrines, by contrast, would serve no purpose, not only because Romney and other Mormon politicians should not be assumed to speak for their faith on complex theological matters, but because those doctrines are not immediately relevant to their character as public servants. Provided that men and women like Romney are cut from a distinctly American cloth, it should make no difference what sacred garments they wear underneath. Romney's paean to the "great moral inheritance" of values "we hold in common"¹³⁸ suggests he may have precisely this approach in mind.

This is an approach that may satisfy many voters. Moreover, it may offer some solace not only to Mormons but to all politicians of a minority faith, whose religious and political values may be widely shared but not their specific religious beliefs. Certainly it is not hard to sympathize with Romney's desire to convince voters that he is one of them, while seeking to turn the political discussion away from an interrogation of his beliefs on particular questions of doctrine.

Ultimately, however, this reading of Romney's remarks is unpersuasive, and his remarks are in reality more troubling than these sympathetic treatments would suggest. That is so for two reasons.

First, and notwithstanding his later gloss on the common "American values" he shares with people of other faiths, these

¹³⁸ *Id.*

friendly readings of Romney's speech are ultimately difficult to square with what Romney actually says and does in the key portion of the speech that I have quoted above. To be sure, Romney makes clear that he will not "confuse the particular teachings of [his] church with the obligations of the office [of President] and of the Constitution."¹³⁹ But neither does he limit the bounds of acceptable discussion to the nature of his general values, whether religiously derived or otherwise. Rather, he is at great pains to answer the "fundamental question" of what he believes about Jesus Christ – his divinity, his place in the Trinity, and his role for the future of humanity.¹⁴⁰ *This* question he impliedly views as a fitting "question[] regarding an aspiring candidate's religion."¹⁴¹ More than that, he deems it "fundamental" to the public discussion of his fitness for office. He does not suggest that a belief in the divinity of Jesus is necessary for a public servant, and we will see evidence later in his speech that he would deny any such thing; but he appears to believe that it is essential to the voters' understanding and approval of Romney himself.

This is thus not simply a case of Romney being unwilling to veil his religious beliefs, or of his mentioning his faith as one among many clues to his character; rather, he treats the question of his faith as a fairly central one. Only *then* does he rule off-limits further questions about the particulars of his beliefs. Not coincidentally, perhaps, it is those very particulars that might cause some Christians to doubt that his theology, or his views of the provenance of Jesus, are in fact consistent with mainstream Christian beliefs.¹⁴²

It seems to me, then, that Feldman's criticism is ultimately true. By invoking specific doctrines about Jesus and treating them as "fundamental" to his candidacy, he puts, not just his *values*, but his *theology*, at issue, while attempting to argue simultaneously that his theology is beside the point. That is an uncomfortable combination, to say the least. Nor will it do to

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² See Feldman, *supra* note ____.

invoke the Religious Test Clause, as Romney does.¹⁴³ Whatever formal tests the Religious Test Clause forbids, it surely does not forbid voters from asking about – or candidates from discussing (or refusing to discuss) – a candidate’s religious beliefs before any vote is cast.¹⁴⁴ That is especially true where, as in this case, the candidate himself puts those religious beliefs at issue, as Romney does by flourishing his belief in the divinity of Jesus as an electoral calling card. If it is consistent with the Religious Test Clause for Romney to raise this point, and to call it fundamental, it can hardly be a violation for a voter to challenge its bona fides.¹⁴⁵

Second, and somewhat more broadly, I am concerned, and I believe all those who think religion should be welcomed in the public square should be concerned, about what Romney’s approach, understandable as it is, ultimately says about the relationship between religion and politics – and especially what it says about religion itself.

In an earlier work, I criticized a press release by one public-interest group that fights on behalf of religious liberty, a group that I generally support. The press release criticized some of the public discussion surrounding the Catholic faith of then-Supreme Court nominee John Roberts. The letter, which drew substantially on the Religious Test Clause, concluded as follows:

To be sure, not every mention of religion is improper. Religion, like ethnicity or race, is a natural part of one’s background and may be referred to as naturally – and as respectfully – as those other things are. . . . But using fervent religious faith, of

¹⁴³ See Romney, *supra* note __ (“There are some who would have a presidential candidate describe and explain his church’s distinctive doctrines. To do so would enable the very religious test the founders prohibited in the Constitution.”).

¹⁴⁴ See generally Horwitz, *supra* note __.

¹⁴⁵ See Levinson, *supra* note __, at 294 (“It is one thing to raise questions about religion with nominees who have not acted to make religious commitments germane to understanding their performance of their public roles. It is another to ask someone who *has* made public profession of the importance of his or her religion what precisely was the meaning of those professions.”) (emphasis in original).

any tradition, as itself a disqualification for public office is unconstitutional.¹⁴⁶

It is this combination – the view that religion belongs in public and political discourse, but only if it is referred to “respectfully” and as a matter of background – that religious believers should ultimately find disturbing, whatever surface attractions it may hold. As I wrote then, to suggest that only “any non-anodyne, *critical* mention of religion is impermissible,” while general invocations of faith not subject to any probing or criticism are acceptable, “is only a seeming show of respect [for religion]; it is not *genuine* respect.

If anything, this rule of dialogue seems to me to be closer to condescension than to genuine respect.”¹⁴⁷ If religion is to be welcome in the public square, it must be welcome on equal terms with other public concerns, and subject to the same rules of critical dialogue. Office-seekers may choose not to mention their religion at all, and to refuse any questions on the subject. That is certainly their right, although I think they cannot argue that they are *compelled* by any rules of public discourse to do so. And they may attempt to limit their discussion to broad generalities about the contribution that religion has made to their values, while avoiding any deeper discussion, as Professor Griffin seems to suggest. This may or may not succeed, and I think voters are not prohibited from probing deeper, but it is closer to a consistent view and it does not foreclose the possibility that voters will reject the values themselves, and so reject the candidate.

But if we are to genuinely value the importance of religion and religious truth (or at least the *possibility* of religious truth), if we are to share with Romney the view that one’s subscription to a particular faith or doctrine, such as the divinity of Jesus, is “fundamental” to understanding and supporting an issue or a candidate, then we cannot rule out the

¹⁴⁶ Letter from Kevin J. “Seamus” Hasson, Chairman, Becket Fund for Religious Liberty, to U.S. Senators (Sept. 6, 2005), *available at* <http://www.becketfund.org/files/e5222.pdf>.

¹⁴⁷ Horwitz, *supra* note ___, at 142.

possibility of more detailed, probing, and even critical public discourse about a candidate's faith.

Kennedy's strategy of avoidance, I argued above, paid too high a price on behalf of other political candidates by allowing anyone to seek public office, but only after treating religion as a private matter for candidates and voters alike. Romney takes a step beyond this, but the price he pays to *reverse* the privatization trend is also too dear. It is a strategy of inclusion without engagement. It permits candidates to mention religion, but limits that discussion of religion to the vaguest generalities while treating any meaningful, let alone critical, discussion of religion and particular religious beliefs as out of bounds. It is a version of religion and religiosity as, if you will pardon the pun, good enough for government work.

The pun speaks to Romney's remarks in two senses. First, by invoking his belief in the divinity of Christ as fundamental to his character and as an acceptable question to ask of him, Romney suggests that he is at least religious enough to do the job of President, a statement that by implication questions whether people who stand outside the Judeo-Christian tradition would be fit for the office. Second, his remarks suggest that religious beliefs that suit a candidate for public service – that literally are good enough for government work – are of necessity fairly vague and airy concoctions, stripped of doctrine and reduced to little more than a generalized set of values and perhaps a brief profession of belief in Christ. Religion is made public again, after Kennedy's strategy of privatization. But its public status comes at the cost of making it insipid.

Something of this spirit is evident in Romney's hymn to the diversity of American faith. He writes of "the profound ceremony of the Catholic Mass, the approachability of God in the prayers of the Evangelicals, the tenderness of spirit among the Pentecostals, the confident independence of the Lutherans, the ancient traditions of the Jews, unchanged through the ages, and the commitment to frequent prayer of the Muslims."¹⁴⁸

¹⁴⁸ *Id.*

This is pleasant language, to be sure, but we would do better to reject the flattery. Far from suggesting the meaningful and nuanced differences in faith that both unite and divide us in a vibrant religiously pluralistic society, the passage reads like an excerpt from a milquetoast's guidebook to faith – "Let's Go Religion."¹⁴⁹ Although Romney allows for public religious dialogue, it is a rather unsatisfying dialogue. It wants to flatter everyone equally, always keeping in mind the restrictions he would impose on meaningful discussion, rather than to allow us to meaningfully and critically examine both our commonalities *and* our differences and evaluate how those differences might affect a candidate or a voter's approach to politics and public office. For those of us who hope that religion, for all the divisiveness it may contribute to public dialogue, can also be a source of passion and revelation in public dialogue, surely it is better to welcome the risk of criticism for particular religious beliefs, particularly if some of those criticisms are valid and perspicuous, than to defend against them with a shield of well-meaning blandness and generality.¹⁵⁰

In short, Romney's strategy appears to be one of inclusion without meaningful engagement. It allows religion back into the public square, but it is a decidedly tame version of religion. And, for reasons that may be peculiar to Romney's own dilemma as a Mormon in public life, it imposes a rule of dialogue – religious sentiment is permissible so long as it is general, and a candidate can profess a particular faith but need not answer any questions about what that faith entails precisely – that is no dialogue at all. It is a step up from Kennedy's strategy of avoidance, but it is too little a step.

¹⁴⁹ Roger Cohen refers to the passage as displaying "a Wikipedia-level appreciation of other religions." Cohen, *supra* note __. And David Brooks observes that, "In rallying the armies of faith against their supposed enemies, Romney waved away any theological distinctions among them with the brush of his hand. . . . In Romney's account, faith ends up as wishy-washy as the most New Age-y secularism. . . . In order to build a voting majority of the faithful, Romney covered over different and difficult conceptions of the Almighty." Brooks, *supra* note __.

¹⁵⁰ See Horwitz, *supra* note __, at 146.

Romney's speech goes on to address a further issue: the content of church-state doctrine. Recall that Kennedy wrote of his vision of an "America where the separation of church and state is absolute."¹⁵¹ By contrast, Romney writes that while we separate church and state in America

for good reason, . . . in recent years, the notion of the separation of church and state has been taken by some well beyond its original meaning. They seek to remove from the public domain any acknowledgement of God. Religion is seen as merely a private affair with no place in public life. It is as if they are intent on establishing a new religion in America – the religion of secularism. They are wrong. The founders proscribed the establishment of a state religion, but they did not countenance the elimination of religion from the public square.¹⁵²

Romney concludes on this basis that "[w]e should acknowledge the Creator as did the founders – in ceremony and word. He should remain on our currency, in our pledge, in the teaching of our history, and during the holiday season, nativity scenes and menorahs should be welcome in our public places."¹⁵³

Romney here engages in a mistake that is, alas, all too common in public discussion of the role of religion in American public and political life. He decries, quite rightly in my view, the privatization of religion that characterized Kennedy's own speech. But he conflates several subtle but distinct aspects of religion and public life. First, he confuses the public *square* with the public *sphere*. Second, he confuses the question of whether religious *citizens*, office-holders, and arguments should be welcome in the public square with the question of whether there are any limits on the kinds of things government itself may do *officially* to advance or acknowledge (or inhibit) religion.

¹⁵¹ Balmer, *supra* note __, at 176.

¹⁵² Romney, *supra* note __.

¹⁵³ *Id.*

It is one thing to say that religion should be welcome in public dialogue by private citizens: that everyone who wishes to speak in public should be able to say nearly everything in public, that the public square is as open to religious sentiments and displays as it is to non-religious statements and displays. In that sense, he is right: the founders “did not countenance the elimination of religion from the public square.”¹⁵⁴ But it is another thing to say that the public *sphere* – the realm of specifically *governmental*, and not private, speech – is and must be acknowledged to be God’s sphere. There is a crucial difference between arguing that private citizens should be allowed to place “nativity scenes and menorahs . . . in our public spaces,”¹⁵⁵ and arguing that government itself may speak in a religious voice in the public sphere by invoking God “on our currency [and] in our pledge.”¹⁵⁶

Whatever the precise limits of the Establishment Clause may be – and that intractable question is decidedly beyond the scope of this paper – there is a difference between arguing that everyone, including religious individuals, must be allowed to participate in public debate, and arguing that government may make particular religious statements. While the public square may indeed be welcome to religious statements by the citizens who throng it, government itself may well be forbidden to take sides on these very issues.¹⁵⁷ As long as vigorous private speech remains a part of the public square, nothing in this approach means that we have established a “religion of secularism.” To be clear, Romney is no antidisestablishmentarian.¹⁵⁸ But neither has he thought carefully enough about the subtle distinctions between private speech in the public square and speech by government itself, and how they ought to affect our thinking about the proper bounds of church and state.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* See, e.g., *Capitol Square Review & Advisory Board v. Pinette*, 515 U.S. 753 (1995); *Chabad of Southern Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427 (6th Cir. 2004).

¹⁵⁶ Romney, *supra* note __.

¹⁵⁷ See, e.g., *Knights of Columbus, Council No. 94 v. Town of Lexington*, 272 F.3d 25, 34 (1st Cir. 2001) (“Although the Constitution protects private expressions of beliefs, it does not authorize – and sometimes even forbids – citizens’ attempts to invoke public backing of their beliefs.”).

¹⁵⁸ See Romney, *supra* note __ (“The establishment of state religions in Europe did no favor to Europe’s churches.”).

Romney concludes with praise for the religious diversity of the nation “and the vibrancy of our religious dialogue.”¹⁵⁹ He offers up an anecdote from the First Continental Congress, in which, amidst the squabbles of the delegates about the possibility of prayer in a group containing a multitude of sects, Sam Adams “rose, and said he would hear a prayer from anyone of piety and good character, as long as they were a patriot.”¹⁶⁰ It is fitting that his invocation of Adams echoes President Eisenhower’s comment that “[o]ur form of government has no sense unless it is founded in a deeply felt religious faith[,] and I don’t care what it is,”¹⁶¹ a statement Mark Massa describes as emblematic of an era of “high visibility [for religion] *and* . . . almost contentless theology.”¹⁶² Elsewhere, Romney has echoed Eisenhower even more directly, asserting that “the American people want to see a person of faith lead the nation, and I don’t think the American people care very deeply about which brand of faith that is.”¹⁶³

These words exemplify Romney’s approach of inclusion without engagement, and underscore what is ultimately both unsatisfying and impossible about his approach. Romney seeks to turn back the clock on Kennedy’s strategy of avoidance and privatization of religion – and he would set the clock precisely to the non-specific public religiosity of the Eisenhower era. His speech ultimately argues, if not in so many words, for the proposition that “the American people want to see a person of faith lead the nation,”¹⁶⁴ and he offers them just enough evidence to assure themselves that he is a sufficiently devoted and devotional man for public office. But it is as vital to him to establish that “the American people [don’t] care very deeply about which brand of faith that is”¹⁶⁵ – not because that is true, although it may be, but because his political success depends on its being true. As a result, Romney offers a mix of religion and American politics that allows religion onto the public stage

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ Smith, *supra* note __, at 254.

¹⁶² Massa, *supra* note __, at 130.

¹⁶³ Griffin, *supra* note __, at 499 (quoting Bluey, *supra* note __).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

but denies it full speaking status. It is there to nod, smile, and wave, but not to speak meaningfully or be spoken to in kind.

For those who truly value religion as a powerful wellspring of human experience and social change, that status is not enough. It is better for religious individuals to be able to participate fully and vigorously – and vocally – in public life; but that entails accepting inquiry and criticism, not just bland praise. Ultimately, accepting critical dialogue on questions of religion is not just a small price to pay. A critical, and sometimes unkind, engagement with religion is ultimately the truest expression of respect for religion's role in the public square.¹⁶⁶

But the sentimental journey that Romney's strategy of inclusion without engagement represents is not just unsatisfying. It is also unattainable. It is just wishful thinking to believe that we can turn the clock back to the Eisenhower era. Our religiosity is not the same as it was in the 1950s, and neither is the social consensus surrounding religiosity. Our society is both more religiously vigorous and enthusiastic than it was then, and more splintered and diverse. Our views about religion's bedrock social role are nowhere as assumed or uncontroversial as they once were, and even those who assume a bedrock role for religion may differ vehemently about what that entails. In a phrase, as I have argued, religion's role in public life is now contested and contestable. In this environment, a strategy of inclusion without engagement, however well it once may have worked (or *seem* to have worked), is now as impossible as it is unsatisfying.

¹⁶⁶ For a similar argument from an explicitly secular perspective, see Austin Dacey, *The Secular Conscience: Why Belief Belongs in Public Life* (2008); see, e.g., *id.* at 51-52 ("So long as the reasons we introduce into public discourse – reasons of conscience included – are regarded by all as open to public scrutiny, then the challenge of subjectivity can be grappled with, if not totally eliminated. Ideally, conversation in politics abides by the norms of all reasoned conversation. Unless we are willing to present others with reasons for what we say that are open to analysis by them, we are engaging in monologue, not dialogue. . . . Honest religious believers have nothing to lose and much to gain by treating their faith as objective in this sense. Susceptibility to criticism is the price of admission to serious public life. But it is a price that they should be willing to pay, for convictions take their strengths from surviving trials, not from avoiding them. Anything less would be a trivialization of religion . . .").

Romney fails to see that, if religion is not to be excluded from public life altogether, it can only be included in a spirit of genuine public engagement – even if it comes at the high, and perhaps unfair, cost of rejecting Romney the candidate.

IV. BARACK OBAMA: ENGAGEMENT WITHOUT (FULL) INCLUSION?

The final candidate whose words on religion and American politics bear examination needs little introduction right now. As of this writing, we do not yet know whether Senator Barack Obama's candidacy for the presidency will go the way of Kennedy or of Romney. No matter the outcome, though, Obama's words also deserve a close and critical reading, for they are the most thoughtful and careful of the three speeches examined here.

That does not mean Obama is right in all he says. In some respects, I will suggest, his speech is a mirror image of Romney's. He offers a rich and meaningful engagement with religion and its role in public life, one that is certainly leagues away from the strategy of avoidance practiced by Kennedy. At the same time, Obama too exacts a price for religion's place in public life, demanding that religion express itself only in terms that may not come naturally to it. We might think of this as a strategy of engagement without full inclusion. Although I think Obama's speech is itself a model of the kind of critical dialogue about religion that we can and should have in public life, the constraints he places on religion are themselves untenable, as his own speech ultimately suggests.

In some ways, Obama enjoyed some advantages over Kennedy and Romney with respect to the timing and nature of his speech. Obama's address at a conference called "Building a Covenant for a New America – this time, refreshingly enough, in Washington, D.C., not Texas – took place on June 28,

2006.¹⁶⁷ Obama was thus still almost a year away from declaring his candidacy for President. The thought of doing so had surely crossed his mind, and so it can hardly be said that he spoke without an eye to that eventuality. Still, even if he knew what was around the corner, it surely helped that Obama was still speaking as a Senator and not a presidential candidate. He was not speaking in the midst of the same maelstrom that surrounded Kennedy or Romney by the time they addressed their own audiences. Moreover, and unlike both Kennedy and Romney, Obama's own faith was not at issue in the public eye, at least at this point in his political career.¹⁶⁸ In this somewhat more comfortable environment, Obama perhaps felt he could better afford a greater degree of candor and specificity than we have seen in either Kennedy or Romney's speeches. The result is a weighty and detailed discussion of the relationship between religion and political life.¹⁶⁹ Let me lay out the speech in full before breaking it down into its component parts and subjecting it to a more critical analysis.

Obama frames his speech at the outset as an effort to "tackle head-on the mutual suspicion that sometimes exists between religious America and secular America."¹⁷⁰ He begins by relating his discomfort at the criticisms he faced in his senatorial campaign against Republican Alan Keyes, who had said that "Jesus Christ would not vote for Barack Obama."¹⁷¹ Obama recalls that although he offered "the typically liberal response in such debates . . . that we live in a pluralistic society, that I can't impose my own religious views on another, that I was running to be the U.S. Senator of Illinois and not the

¹⁶⁷ See Sen. Barack Obama, "Call to Renewal" Keynote Address, June 28, 2006, available at http://obama.senate.gov/speech/060628-call_to_renewal/print.php (hereafter Obama).

¹⁶⁸ Of course, that would change much later in his presidential campaign, when attention was drawn to the sometimes incendiary rhetoric of his pastor, Reverend Jeremiah Wright. See, e.g., Jeff Zeleny, *Obama Urges U.S. to Grapple With Race Issue*, N.Y. Times, March 19, 2008, at A1 (reporting on a speech by Obama in which he "sought to dispel the furor over inflammatory statements by his former pastor.").

¹⁶⁹ The speech is expanded, although to little additional substantive effect, in Obama's book *The Audacity of Hope*, *supra* note ___, ch. 6. I will use the speech rather than the book as my text here.

¹⁷⁰ Obama, *supra* note __.

¹⁷¹ *Id.*

Minister of Illinois,”¹⁷² his response “did not adequately address the role my faith has in guiding my own values and my own beliefs.”¹⁷³ Obama argues that this debate is a microcosmic example of “the broader debate we’ve been having in this country for the last thirty years over the role of religion in politics.”¹⁷⁴

Obama argues that although conservative leaders have effectively managed to talk to voters in religious terms, Democrats have, as often as not, tried “to avoid the conversation about religious values altogether,” either by asserting that they are barred from discussing them by the Constitution or by “dismiss[ing] religion in the public square as inherently irrational or intolerant.”¹⁷⁵ Such “strategies of avoidance” are a mistake, he argues, because they “fail to acknowledge the power of faith in . . . the lives of the American people.”¹⁷⁶ Instead, he calls for “progressives” to “join a serious debate about how to reconcile faith with our modern, pluralistic democracy.”¹⁷⁷

In response to the strategy of avoidance, Obama offers up his own conversion narrative.¹⁷⁸ Beginning with a family background in which a “healthy skepticism of organized religion” was the norm, he found himself working closely as an adult with Christian churches in Chicago, whose values he shared but in which “a part of [him] remained removed,

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Conversion narratives enjoy a longstanding status as a central trope of American religious speech. See, e.g., Perry Miller, *The New England Mind: From Colony to Province* (1953); Patricia Caldwell, *The Puritan Conversion Narrative: The Beginnings of American Expression* (1983); see also D. Bruce Hindmarsh, *The Evangelical Conversion Narrative: Spiritual Autobiography in Early Modern England* (2008). Kris Franklin observes that the conversion narrative “served two seemingly opposed purposes: to fit within a recognizable script of experience by which the larger community could judge the legitimacy of a conversion experience, and to give voice to the unvoiceable, the presence of God.” Kris Franklin, *Homophobia and the “Matthew Shepard Effect” in Lawrence v. Texas*, 48 N.Y.L. Sch. L. Rev. 657, 684 n.123 (2003-04).

detached, . . . an observer in their midst.”¹⁷⁹ He came to feel, he says, the lack of a “vessel for [his] beliefs,” which he came to find in the tradition of historical struggle of the African-American church, which led him to see faith “as an active, palpable agent in the world. As a source of hope.”¹⁸⁰ In this spirit, he ultimately “walk[ed] down the aisle of trinity United Church of Christ . . . and affirm[ed] [his] Christian faith.”¹⁸¹

Like most conversion narratives, this one is ultimately not just about Obama. With some rhetorical effectiveness, he seeks to make this an American story, a story about a nation’s “hunger” for something more than the material or the quotidian.¹⁸² His journey, he says, bending his narrative toward the larger ends of his speech, is one that “has been shared by millions upon millions of Americans – evangelicals, Catholics, Protestants, Jews and Muslims alike. . . . It is not something they set apart from the rest of their beliefs and values. In fact, it is often what drives their beliefs and their values.”¹⁸³

These last sentences are the launching point for Obama’s broader argument that progressives must learn not to “abandon the field of religious discourse.”¹⁸⁴ On a narrow level, his argument is tactical. Progressives must learn to address citizens in religious terms lest, in “forfeit[ing] the imagery and terminology through which millions of Americans understand both their personal morality and social justice,” they lose the argument and cede the field to “those with the most insular views of faith, or those who cynically use religion to justify partisan ends.”¹⁸⁵ If they abandon their hostility to religious discourse in public life, they might “recognize some overlapping values that both religious and secular people share when it comes to the moral and material direction of our country,” and “engage millions of religious Americans in the larger spirit of American renewal.”¹⁸⁶ But Obama also argues that “[o]ur

¹⁷⁹ Obama, *supra* note __.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

failure as progressives to tap into the moral underpinnings of the nation is not just rhetorical.”¹⁸⁷ It also ignores the extent to which the problems that beset society, and the potential solutions to those problems, are deeply rooted in spiritual values, and not just a matter for technocrats “in search of the perfect ten point plan.”¹⁸⁸

From this perspective, Obama reaches a number of conclusions. First, he says:

[S]ecularists are wrong when they ask believers to leave their religion at the door before entering into the public square. Frederick Douglas, Abraham Lincoln, William Jennings Bryant, Dorothy Day, Martin Luther King – indeed, the majority of great reformers in American history – were not only motivated by faith, but repeatedly used religious language to argue for their cause. So to say that men and women should not inject their “personal morality” into public policy debates is a practical absurdity. Our law is by definition a codification of morality, much of it grounded in the Judeo-Christian tradition.¹⁸⁹

Obama argues that the gulf “between religious and secular people of good will” must be bridged by the hard work of public discussion: “The tensions and the suspicions on each side of the religious divide will have to be squarely addressed. And each side will need to accept some ground rules for collaboration.”¹⁹⁰

He sets a number of such conditions. The first is a recognition of “the critical role that the separation of church and state has played in preserving not only our democracy, but the robustness of our religious practice,”¹⁹¹ a role that he sees as being of increasing importance in a nation containing an

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

ever more diverse array of faiths as well as non-religious citizens.

Second, Obama argues that “[d]emocracy demands that the religiously motivated translate their concerns into universal, rather than religion-specific, values. It requires that their proposals be subject to argument, and amenable to reason.”¹⁹² He acknowledges that some faith traditions stress the inerrancy of their views, but responds that “in a pluralistic democracy, we have no choice” but to act and argue “in accordance with those things that we *all* see, and that we *all* hear, be it common laws or basic reason.”¹⁹³

Third, Obama argues that “any reconciliation between faith and democratic pluralism requires some sense of proportion.”¹⁹⁴ As a practical matter, for religious individuals this means recognizing that politics must “accommodate modern life” and thus is unlikely to achieve by legislation the fulfillment of all of their religious and moral beliefs.¹⁹⁵ But he also counsels “a sense of proportion [for] those who police the boundaries between church and state.”¹⁹⁶ He writes:

Not every mention of God in public is a breach to the wall of separation – context matters. It is doubtful that children reciting the Pledge of Allegiance feel oppressed or brainwashed as a consequence of muttering the phrase “under God.” I didn’t. Having voluntary student prayer groups use school property to meet should not be a threat, any more than its use by the High School Republicans should threaten Democrats. And one can envision certain faith-based programs – targeting ex-offenders or substance abusers – that offer a uniquely powerful way of solving problems.¹⁹⁷

¹⁹² *Id.*

¹⁹³ *Id.* (emphasis added).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

Obama concludes by arguing for the importance of engaging in a thoughtful and good faith dialogue with religious individuals, including those who disagree on various public policy positions, “who are looking for a deeper, fuller conversation about religion in this country. They may not change their positions, but they are willing to listen and learn from those who are willing to speak in fair-minded words.”¹⁹⁸ He prays “that we can live with one another in a way that reconciles the beliefs of each with the good of all. It’s a prayer worth praying, and a conversation worth having in this country in the months and years to come.”¹⁹⁹

This is a speech that we may by now have come to think of as characteristically Obamaesque²⁰⁰ in both its virtues and its flaws. It is a thoughtful, rich, and convincing performance, but in some ways it may offer rather less than meets the eye at first. Although it promises to “join a serious debate about how to reconcile faith with our modern, pluralistic democracy,”²⁰¹ it is ultimately as much a political speech about religion as it is a religious speech about politics. Although it says that the “failure [of] progressives to tap into the moral underpinnings of the nation is not just rhetorical,”²⁰² certainly much of the speech is as much about being a political progressive, and finding rhetorical ways of reaching other progressives (particularly those who are religious), as it is about being religious as such. As Obama acknowledges, part of the point of his speech *is* “rhetorical”: he does not want the left to cede the field of “imagery and terminology through which millions of Americans understand both their personal morality and social justice” to “the Jerry Falwells and Pat Robertsons and Alan Keyeses” of the right.²⁰³ Although he wants progressives to adopt religious rhetoric on issues of common cause and sees that move as natural, he is decidedly less charitable to the religious right, which he describes as having “exploit[ed]” the gap between religious and non-religious Americans.²⁰⁴

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ Or Obaman – or, for the more critically inclined, Obamanic. Choose your own poison.

²⁰¹ Obama, *supra* note __.

²⁰² *Id.*

²⁰³ *Id.* (emphasis added).

²⁰⁴ *Id.*

That having been said, there is also no doubt that Obama offers a clearer, more detailed, and more thought-provoking exposition of the relationship between religion and politics than either Kennedy or Romney before him. If, as I have suggested, Obama presents a model of engagement between religion and politics, this speech serves as the best possible evidence of this conclusion.

This is true in two senses. First, Obama's speech, of the three, offers the richest and most unflinching description of religious faith itself. Unlike Kennedy, who treats his faith as incidental, or Romney, who treats it as central but offers no meaningful particulars, Obama describes a life-world in which faith plays a central part. In his depiction, faith is not simply a "bland, smiley-faced" phenomenon that "cover[s] over different and difficult conceptions of the Almighty."²⁰⁵ To the contrary, it is a "hunger" for something more than "nothingness."²⁰⁶ And Obama's faith is not simply an easily satiating, if unsatisfying, bit of pabulum. He acknowledges that "[f]aith doesn't mean that you don't have doubts," that it is part of a fully human and sinful life, and that, even with "God's spirit beckoning [him]," faith did not mean that "[t]he questions [he] had . . . magically disappear[ed]."²⁰⁷ Perhaps this language would not satisfy every person of faith. Some might object to the very possibility that doubt should have any place in a life of faith. But this is surely a far more fully realized description of the religious experience than anything offered up in the speeches we have already examined, and that very fact exhibits a significant level of public engagement between a political office-holder and religion.

Obama's speech also represents a fuller level of engagement between religion and politics on the political side of the ledger. Rather than simply enlist on one side of the culture war to build a "voting majority of the faithful" or the faithless,²⁰⁸ Obama emphasizes the importance of engagement on both sides: the need to "tackle head-on the mutual suspicion that

²⁰⁵ Brooks, *supra* note __.

²⁰⁶ Obama, *supra* note __.

²⁰⁷ *Id.*

²⁰⁸ Brooks, *supra* note __.

sometimes exists between” *both* “religious America and secular America.”²⁰⁹ He makes clear that political progressives should not “shy away from religious venues and religious broadcasts because we assume we will be unwelcome,” thus suggesting that public officials should engage in dialogue within the religious sphere and not simply on the more secular or ecumenical public stage.²¹⁰

Most importantly, Obama rejects Kennedy’s characterization of faith as distinct from politics and public life. He refuses to accept any characterization of issues of social justice as being “not religious issues.”²¹¹ Instead, he argues that “values and culture,” by which he clearly means religious values and culture, play an integral role in questions of public policy.²¹² Although he rhymes off a list of standard progressive positions on various public policy issues – gun control, poverty, education, and so on – in each case he thinks religion makes a distinct contribution to understanding and resolving those issues.²¹³ Echoing Martin Buber, he sees in each of these issues a distinctly religious calling “to think in terms of ‘thou’ and not just ‘I.’”²¹⁴ Indeed, he recognizes not only that religious values may enter into the public sphere, but that it is impossible for it to be otherwise: “to say that men and women should not inject their ‘personal morality’ into public policy debates is a practical absurdity.”²¹⁵ Although he briefly attempts to justify some level of church-state separation, he does so on explicitly religious grounds rather than secular ones.²¹⁶ Given these views, Obama can hardly conclude otherwise than he does – that “secularists are wrong when they ask believers to leave

²⁰⁹ Obama, *supra* note __.

²¹⁰ *Id.*

²¹¹ Balmer, *supra* note __, at 176.

²¹² Obama, *supra* note __.

²¹³ *See id.*

²¹⁴ *Id.* *See* Martin Buber, *I and Thou* (Walter Kaufmann trans. & ed. 1970).

²¹⁵ Obama, *supra* note __.

²¹⁶ *See id.* (“Folks tend to forget that during our founding, it wasn’t the atheists or the civil libertarians who were the most effective champions of the First Amendment. It was the persecuted minorities. It was Baptists like John Leland who didn’t want the established churches to impose their view on folks who were getting happy out in the fields and teaching the scripture to slaves. It was the forebears of the evangelicals who were most adamant about not mingling government with religio[n], because they did not want state-sponsored religion hindering their ability to practice their faith as they understood it.”).

their religion at the door before entering into the public square.”²¹⁷

Perhaps *because* Obama’s view of religion’s role in public life is so rich and nuanced, and because it is not simply an effort to use religion to corral together a voting majority, as David Brooks argues was Romney’s intent,²¹⁸ Obama also makes a more natural place for the non-religious in describing religion’s role in the public square. Rejecting the suggestion that “every progressive suddenly latch on to religious terminology,” he says that “I would rather have someone who is grounded in morality and ethics, and who is also secular, affirm their morality and ethics and values without pretending that they’re something they’re not. . . . None of us need to do that.”²¹⁹ This is arguably a more persuasive, and inclusive, use of common “American values” than Romney’s,²²⁰ which vaguely hints that the truest and most trustworthy American values are specifically religious (and perhaps “Judeo-Christian”) ones. Because Obama unabashedly acknowledges the centrality of religion to his own moral values, and the broader connection between religion and morality for most citizens, he is free to suggest that non-religious citizens can be equally decent and valuable voters and public office-holders, and does not demand that they wrap themselves in religious rhetoric or ceremony to be persuasive.

In short, Obama’s speech offers a model of political engagement in the religious sphere, and religious engagement in the public sphere. It is a decided step away from Kennedy’s strategy of avoidance, and a more meaningful version of engagement than the somewhat pallid one offered by Romney.

But is this an *inclusive* form of engagement? Even if Obama’s speech itself engages with religion in a thoughtful way, do the rules he prescribes in his quest to “reconcile faith with our modern, pluralistic democracy”²²¹ allow for the genuine inclusion of religious citizens in public life? Here the

²¹⁷ *Id.*

²¹⁸ Brooks, *supra* note __.

²¹⁹ Obama, *supra* note __.

²²⁰ See *supra* notes __-__ and accompanying text; Griffin, *supra* note __.

²²¹ Obama, *supra* note __.

answer is more doubtful. Recall Obama's argument that "[d]emocracy demands that the religiously motivated translate their concerns into universal, rather than religion-specific, values. It requires that their proposals be subject to argument, and amenable to reason."²²² He says that "in a pluralistic democracy, we have no choice" but to act and argue "in accordance with those things that we *all* see, and that we *all* hear, be it common laws or basic reason."²²³

This is an entirely common move in liberal theory.²²⁴ In particular, although he is hardly the only person identified with this move, it is characteristic of John Rawls's argument for the primacy of public reason in political argument.²²⁵ It suggests that it is at best imprudent, and at worst morally impermissible, for public arguments to be voiced in religious terms.²²⁶

In some versions of this argument, religious individuals may raise religious arguments in public, but their reasons cannot be *exclusively* religious; they must also be accompanied by publicly accessible reasons.²²⁷ Obama's version appears to be even stricter than that. It demands absolute translation of religious arguments into publicly accessible language rather than simply requiring religious reasons to be joined with publicly accessible ones. In dropping Rawls's "proviso" that religious reasons "may be introduced in public reason at any time, provided that in due course public reasons . . . are presented sufficient to support whatever the comprehensive

²²² *Id.*

²²³ *Id.* (emphasis added).

²²⁴ See Griffin, *supra* note __, at 495 (noting that Obama's language "appears to be consistent with the ideals of many liberal theorists who have argued that appeals to religion in politics should be 'publicly accessible' or 'publicly justifiable,' stated in terms of 'public reason' or 'secular reason,' in the language of universal values instead of sectarian beliefs.").

²²⁵ See Rawls, *supra* note __.

²²⁶ See Jeffrey Stout, *Democracy and Tradition* 64-66 (2004) (summarizing and critiquing Rawls's position).

²²⁷ See *id.* (characterizing Rawls as having shifted from the stricter to the more permissive restriction on religious arguments); see also Kent Greenawalt, *Religious Convictions and Political Choice* (1988); Kent Greenawalt, *Private Consciences and Public Reasons* (1995).

[religious] doctrines are introduced to support,”²²⁸ Obama outdoes Rawls himself.

Of course, it may be that Obama had something less than that in mind. His language may simply have been meant to suggest that it is politically impractical to rely on religious reasons alone. There is some evidence of that in his speech.²²⁹ Or we might charitably assume that a speech delivered orally is subject to error and may not offer the best evidence of Obama’s thought on the subject, although the fact that the same language appears in the print version of the speech counsels against this view.²³⁰ Let us instead pay Obama the honor of assuming that he meant what he said. If so, what should we make of these remarks?

Leslie Griffin has perceptively observed that Obama’s demand that religious individuals translate their arguments into publicly accessible terms is inconsistent with what he says elsewhere. In the print version of his speech in *The Audacity of Hope*, Obama relates a discussion with a lesbian supporter who is disappointed that he has “referred to his religious beliefs in order to explain his opposition to gay marriage but not civil unions.”²³¹ Griffin notes that Obama is led to “reflect more deeply, not on common values, but about his Christian faith,” suggesting that rather than translate his own concerns into universal values, Obama “turned for insight to the teaching of his own faith about a contested moral and legal question.”²³² Now, private reflection is not the same as public argument, so it is not clear that Obama’s reaction violates the rule of translation that he prescribes in his speech. But we might say more broadly that the very fact of his speech, its attempt to grapple with political concerns in explicitly faith-based language in a public address, stands in strong tension with his requirement that religious reasons be translated into publicly accessible terms.

²²⁸ See John Rawls, *Political Liberalism* li-iii (paperback ed. 1996); John Rawls, *The Idea of Public Reason Revisited*, 64 U. Chi. L. Rev. 756 (1997).

²²⁹ See Obama, *supra* note __ (arguing that translation is necessary because “[p]olitics depends on our ability to persuade each other of common aims based on a common reality. It involves the compromise, the art of what’s possible.”).

²³⁰ See Obama, *supra* note __, at 219.

²³¹ Griffin, *supra* note __, at 495; see Obama, *supra* note __, at 223.

²³² Griffin, *supra* note __, at 495.

Griffin's view appears to be that Obama is ultimately not Rawlsian enough. Obama, she argues, "violate[s] the standard of public reason."²³³ Even translation "merely hides [the problem], leaving politicians to govern according to religious beliefs as long as they discover a secular rationale . . . for governmental action."²³⁴ She would prefer that politicians "employ public reason as the starting point," not only for their public arguments, but for their very "decision-making on matters of law and politics."²³⁵

My objection is rather the reverse of Griffin's. Although Obama's speech itself exemplifies what we might hope for in an ideal world of engagement between religion and politics, the rule he sets forth for public dialogue is not a genuinely inclusive one. As the price of political participation for religious individuals, they are required to put their arguments in a language that may be alien to them.²³⁶ Such a requirement, as Richard Stout notes, "strikes me as extremely counterintuitive, given that it seems so contrary to the spirit of free expression that breathes life into democratic culture."²³⁷

This requirement of translation is neither particularly helpful nor especially fair. The hot-button example of abortion may provide an example. Obama says, "I may be opposed to abortion for religious reasons, but if I seek to pass a law banning the practice, I cannot simply point to the teachings of my church or evoke God's will. I have to explain why abortion violates some principle that is accessible to people of all faiths, including those with no faith at all."²³⁸ Now, doubtless it is true as a practical matter that a strictly religious argument for the banning of abortion is less likely to garner sufficient political support than an argument that buttresses religious

²³³ *Id.* at 499.

²³⁴ *Id.* at 502.

²³⁵ *Id.* See generally Leslie Griffin, *Good Catholics Should Be Rawlsian Liberals*, 5 S. Cal. Interdisc. L.J. 297 (1997).

²³⁶ See, e.g., Stout, *supra* note __, at 72 (quoting Nicholas Wolterstorff, *The Role of Religion in Decision and Discussion of Political Issues*, in Nicholas Wolterstorff and Robert Audi, *Religion in the Public Square: The Place of Religious Convictions in Political Debate* 105 (1997)).

²³⁷ *Id.* at 68.

²³⁸ Obama, *supra* note __.

arguments with broader “accessible” reasons that will appeal to a wider constituency. But that does not demonstrate that one is *obliged* to point to these wider reasons.

Moreover, at some level, and particularly on “especially intractable political questions” such as abortion, “[e]veryone holds some beliefs on nonreligious topics without claiming to know that they are true.”²³⁹ Whether the abortion debate should rest on the potential life of the fetus or the moral gravity of abortion, or on the autonomy of the mother, or on some other grounds such as privacy or the limited domain of the state, does not strike me as resting on reasons that are subject to reasoned debate past a certain, fairly shallow point. These questions are subject to what Justice Holmes famously called his “can’t helps,”²⁴⁰ even if we set explicitly religious reasons to one side. These are the sorts of issues about which we are all liable to be “unable to produce an argument that would give [our] interlocutors reason to accept [our] premises.”²⁴¹ It may be that few if any of our “most deeply engrained commitments,”²⁴² secular or religious, are truly and absolutely universal, subject to argument, or amenable to reason. Even if they were, the question for many would remain why this should be the default rule, and not some other default. But as a practical matter, it is unlikely that many of us have ready access to those reasons, even if they can be said to exist.

Thus, and *contra* Obama, it strikes me as unreasonable and unfair to demand that religious reasons be translated into publicly accessible language. That does not mean that religious individuals may not *choose* to use publicly accessible language, whether on its own or in combination with religious language. They may do so for politically pragmatic reasons, or because they think those publicly accessible arguments are *good* arguments that they too find persuasive. But this is not an *obligation*, and certainly should not attach to religious

²³⁹ Stout, *supra* note ___, at 87 (emphasis added).

²⁴⁰ Benjamin Kaplan, *Encounters With O.W. Holmes*, 96 Harv. L. Rev. 1828, 1850 (1983); see also Oliver Wendell Holmes, Jr., *Ideals and Doubts*, 10 Ill. L. Rev. 1, 2 (1915); Albert W. Alschuler, *Law Without Values: The Life, Work, and Legacy of Justice Holmes* 23-27 (2000).

²⁴¹ Stout, *supra* note ___, at 87.

²⁴² *Id.*

individuals in particular, as opposed to holders of any other “can’t help” moral or political beliefs.²⁴³ We are not *required* to be Rawlsian liberals, even if doing so would help us win more political battles. To the contrary, as Nicholas Wolterstorff observes, it is contrary to the deepest values of liberal democracy for “citizens to be morally constrained from deciding and discussing political issues as they see fit.”²⁴⁴

Obama might respond that, “in a pluralistic democracy, we have no [other] choice”²⁴⁵ than to impose a rule of translation. But that is not so. At least two writers have offered thoughtful alternatives to the rule that Obama proposes. Michael Perry offers a somewhat more restrictive version, although it is certainly far more permissive than Obama’s translation requirement.²⁴⁶ He proposes a model of “ecumenical politics,” in which religious individuals are free to “rely on [their] convictions, not only in making political choices but in publicly deliberating about and in publicly discussing them.”²⁴⁷ But he expects religious individuals to engage in dialogue in the public square in a spirit of “fallibilism and pluralism.”²⁴⁸ That is, they should accept[] the ‘ideal of self-critical rationality,’ the relentless scrutiny of one’s own beliefs and the acknowledgement that they are subject to revision,”²⁴⁹ and they should admit the possibility of learning from people of other religious and moral backgrounds.²⁵⁰

Sanford Levinson and others have suggested that these requirements would exclude from the dialogue many of the very religious individuals whose complaints about exclusion have fueled much of the ongoing debate about the relationship

²⁴³ For a short but incisive take on this question, see Christopher J. Eberle, *Religious Reasons in Public: Let A Thousand Flowers Bloom, But Be Prepared to Prune*, 22 St. John’s J. Legal Comment. 431 (2007).

²⁴⁴ Wolterstorff, *supra* note __, at 94 (emphasis omitted).

²⁴⁵ Obama, *supra* note __.

²⁴⁶ See Michael J. Perry, *Love and Power: The Role of Religion and Morality in American Politics* (1991). For an insightful review, see Sanford Levinson, *Religious Language and the Public Square*, 105 Harv. L. Rev. 2061 (1992).

²⁴⁷ Perry, *supra* note __, at 112.

²⁴⁸ *Id.* at 100.

²⁴⁹ Levinson, *supra* note __, at 2069 (quoting Perry, *supra* note __, at 100).

²⁵⁰ See Perry, *supra* note __, at 100.

between religion and politics.²⁵¹ Certainly Perry's proposal is more welcoming than Obama's, however. It allows religious arguments into the public square unfettered by any absolute requirement of public reason, although it suggests that religious citizens must be prepared to be self-critical when they engage in public argument. This is a step up from translation, even if it is an insufficient one.

Jeffrey Stout offers an equally rich and, in my view, thoroughly admirable picture of religious participation in public life in his recent book *Democracy and Tradition*.²⁵² Although it is perhaps more of a rejection of the Rawlsian rule of public reason²⁵³ than it is a programmatic description of the relationship between religion and politics, it nevertheless offers an illuminating picture of how dialogue might take place in a liberal democracy among people who do not share common premises.

The key to Stout's picture of dialogue in these circumstances is "immanent criticism:" an approach in which individuals "either try to show that their opponents' religious views are incoherent, or . . . try to argue positively from their opponents' religious premises to the conclusion that the proposal is acceptable. What they do *not* do is argue from a purportedly common basis of reasons in Rawls's sense."²⁵⁴ His vision of dialogue as immanent criticism is decidedly conversational:²⁵⁵ a discussant who cites religious views against an opponent will "draw [her interlocutor] into a

²⁵¹ See Levinson, *supra* note __, at 2073-74; David M. Smolin, *Regulating Religious and Cultural Conflict in a Postmodern America: A Response to Professor Perry*, 76 Iowa L. Rev. 1067 (1991).

²⁵² See Stout, *supra* note __. For a review that focuses on somewhat different aspects of the book, see Marci A. Hamilton, *What Does "Religion" Mean in the Public Square?*, 89 Minn. L. Rev. 1153 (2005).

²⁵³ See Franklin I. Gamwell, *The Question of Democracy*, 57 DePaul L. Rev. 997, 1006 (2008) (situating Stout as presenting "a decided alternative to Rawlsian liberalism" but arguing that their approaches share in common the assumption "that democracy itself neither has nor requires any moral ground beyond the principles of presuppositions located in its own historicity").

²⁵⁴ Stout, *supra* note __, at 69 (emphasis added).

²⁵⁵ In a thoughtful forthcoming paper, Marc DeGirolami, drawing on the work of Michael Oakeshott, explores and extends the metaphor of a conversation in considering the role of religion in public education. See Marc O. DeGirolami, *The Problem of Religious Learning*, B.C. L. Rev. (forthcoming) (on file with author).

Socratic conversation on the matter, take seriously the objections [raised] against [her] premises, and make a concerted attempt to show . . . how [the interlocutor's] idiosyncratic premises give [the interlocutor] reason to accept [her] conclusions.”²⁵⁶ One can thus “express[] one’s own” religious “reasons for a political policy while also directing fair-minded, nonmanipulative, sincere immanent criticism against one’s opponent’s reasons,” and vice versa.²⁵⁷

This may seem like an idealized account, and that should be problematic. I have, after all, proceeded in this Article on the premise that there is something valuable about examining speeches like those of Kennedy, Romney, and Obama precisely because they bring the dialogue between religion and politics out of the seminar room and into the realm of the practical and pragmatic. Not many political conversations begin as “Socratic conversation[s],” and fewer still end that way. And it may seem that “immanent criticism” is simply another way of packaging Perry’s requirement of fallibilism. But Stout’s vision of dialogue as immanent criticism is, I think, not as impractical as all that. Many citizens, whether they are making religious arguments or not, engage in at least some form of discussion in the public square, and it is not too much of a stretch to expect them to listen to and engage each other’s premises when they do. In any event, as I have already argued, political dialogue regularly takes place around premises that the discussants cannot fully justify or describe. Thus, immanent criticism is no more impractical where religious premises are concerned than where purportedly non-religious premises such as autonomy or (non-religious) morality are involved.

Moreover, Stout’s vision has two great virtues. First, it is more genuinely respectful of religion and its role in the public square and in individuals’ lives than a rule of translation.²⁵⁸ Immanent criticism does not require that one accept another’s religious (or non-religious) premises or abandon one’s own. It

²⁵⁶ *Id.* at 72.

²⁵⁷ *Id.* at 85. *See also id.* at 88 (recommending an approach in which one “express[es] [one’s] actual (religious) reasons for supporting [a] policy . . . while also engaging in immanent criticisms of [one’s] opponents’ views”).

²⁵⁸ On the importance of genuine respect in framing the dialogue between religion and politics, see Horwitz, *supra* note ___, at 141-43.

simply asks that one listen and respond to those premises, treating them as entry points into a deeper and more meaningful conversation. There is nothing disrespectful about this. To the contrary, it respects the very fact that people may hold to these comprehensive convictions more deeply than they do to particular publicly accessible reasons.²⁵⁹

Second, and contrary to the arguments of Richard Rorty, the inclusion of religious premises in political conversation through a model of immanent criticism is not a “conversation-stopper.”²⁶⁰ As Stout observes, religion is at the least no more a conversation-stopper than anything else. As we have seen, all manner of purportedly publicly accessible reasons on matters of political controversy in fact approach the status of “faith-claim[s],” inasmuch as they are “beliefs on nonreligious topics” that one holds “without claiming to know that they are true.”²⁶¹ Moreover, even when religious reasons “lead to a momentary impasse” in conversation, that need not be the end of the dialogue.²⁶² “One can always back up a few paces, and begin again, now with a broader conversational objective” and expressing one’s reasons “in greater detail.”²⁶³ By contrast, a rule that demands translation, either as an absolute rule (as Obama’s speech appears to suggest) or as an accompaniment to religious reasons (as Rawls’s proviso suggests), ultimately reaches a point at which the religious individual must either reach for language he or she considers false or unpersuasive, or dissemble, or fall silent.²⁶⁴ Such a policy, compared to the candid approach of immanent criticism, “would itself be a conversation-stopper.”²⁶⁵

It is thus possible to construct a rule of dialogue between religion and politics that is far preferable to, if messier than, Obama’s rule of translation; in a pluralistic democracy, we *do* have another choice. We can imagine – and in fact often have – a regime of both engagement *and* inclusion. In this regime, the

²⁵⁹ See Stout, *supra* note __, at 72.

²⁶⁰ See Richard Rorty, *Religion As Conversation-Stopper*, in *Philosophy As Social Hope* 168 (1999).

²⁶¹ Stout, *supra* note __, at 87. See *supra* notes __-__ and accompanying text.

²⁶² *Id.* at 90.

²⁶³ *Id.*

²⁶⁴ See *id.* at 90-91.

²⁶⁵ *Id.* at 90.

starting presumption is that political speech about religion, and religiously premised debate about politics, should be the same as political speech in general: “uninhibited, robust, and wide-open,” in the Supreme Court’s classic formulation.²⁶⁶ Religion can be presumed to be an open subject for political debate, and religious premises can be presumed to be valid premises for public argument. Contrary to Obama’s approach, which engages religion but prescribes a rule of translation that amounts to non-inclusion of those who are unwilling to phrase their reasons in publicly accessible terms, no one need reach for publicly accessible terms. We can all adopt and argue from any premises we wish. But those religious premises are themselves always open to criticism – both self-criticism, as in Perry’s description of fallibilism, and the criticism of others.

Sometimes these engagements will be productive, and sometimes they will not. On occasion, a religious premise may illuminate conversation on a matter of public concern, even for those who do not share the faith from which the premise proceeds. On other occasions, a person holding out a religious justification for a particular policy can be engaged on the question of how that premise should apply to other policies, as when one interrogates religious arguments against abortion for consistency with various other life-oriented policies such as the death penalty, or social policies that arguably favor the conditions of life, such as basic health or welfare policies.²⁶⁷ At still other times, one may question a religious premise from a shared internal perspective. And, to be sure, one may simply reject a particular religious premise from an external perspective. Even here, the result is not necessarily a stopped conversation. Rather, the participants in such a debate can arrive at a sharpened realization of the basis for their differences with each other. Sometimes that may lead to convergence on the points on which they agree, albeit for different reasons.²⁶⁸ Other times, it may lead to a clarified

²⁶⁶ *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964).

²⁶⁷ *See, e.g., Obama, supra note __*, at 221 (“In judging the persuasiveness of various moral claims, we should be on the lookout for inconsistency in how such claims are applied”).

²⁶⁸ *See generally* Cass R. Sunstein, *Incompletely Theorized Agreements*, 108 *Harv. L. Rev.* 1733 (1995); Cass R. Sunstein, *Legal Reasoning and Political Conflict* (1996).

understanding of their “can’t helps,” and a mutually respectful standoff.

At other times, one can readily imagine a far more uncharitable and far less productive conversation. There are possible responses here too. One can try to come up with general rules of “etiquette” that might help channel and improve political dialogue about and stemming from religious premises.²⁶⁹ Too, one can always invoke the sovereign prerogative of silence, reserving the right not to engage in dialogue on religious issues. Romney took this approach, although his speech makes apparent that, perhaps for strategic reasons, he also wished to argue that it was wrong for his critics even to *ask* detailed questions about his faith and its implications; he wanted to have the benefits, but not the costs, of an inclusive regime.

If incivility sometimes results from such a regime, as it surely will, this does not distinguish religion adequately from all manner of other political discussions not based on religious topics or premises, which also may be uncivil. Certainly this fear of incivility should not require us to impose an absolute rule of translation of religious premises into publicly accessible terms. Our starting presumption should always be one of both engagement with religion and inclusion of religious citizens and their arguments.

Finally, a few words are in order about Obama’s discussion of church-state doctrine, which somewhat parallels Romney’s own remarks on the subject. Recall that Obama argues that “any reconciliation between faith and democratic pluralism requires some sense of proportion”²⁷⁰ on both sides of the religious/secular divide. I think Obama errs on both sides of the divide.

First, Obama argues that Americans are “intuitively” wise in understanding that some religious premises “may be

²⁶⁹ For one such attempt, see Horwitz, *supra* note __, at 133-44. See also Ronald F. Thiemann, *Religion in Public Life: A Dilemma for Democracy* (1996); Stout, *supra* note __, at 85.

²⁷⁰ Obama, *supra* note __.

modified to accommodate modern life,” as in the case of “Catholics [who] practice birth control” or “some of those opposed to gay marriage [who] nevertheless are opposed to a Constitutional amendment to ban it.” Obama says that religious leaders “need not accept such wisdom in counseling their flocks, but they should recognize this wisdom in their politics.”²⁷¹

On its face, this seems a sensible statement. Obama is right, both as a matter of pragmatic politics and for deeper structural and constitutional reasons, that not every religious individual should assume that the state should decisively resolve every issue in their favor. Some issues should be left for resolution to the political process, or should remain permanently up for grabs, either because individual rights demand it or because the state’s limited domain does not reach far enough to force an authoritative resolution of the matter. For some individuals, gay marriage is certainly one such question; for others, abortion may be.

But these conclusions do not say anything important about “proportionality” in the sense that Obama seems to mean it. To be sure, those who hold strong religious convictions must direct their intellects and consciences to the difficult question of how their views should translate into policy conclusions in particular political and constitutional contexts. But it is certainly not the case that “proportionality” means that a religious individual is *required* to modify or water down his strongly held religious views simply *because* of the need to “accommodate modern life.” If one in fact concludes, after careful deliberation, that one’s religious views on a particular matter are inflexible, one need not modify those views. A Catholic voter *might* conclude that the state should not absolutely bar the availability of birth control, either because it violates the Constitution or because any leviathan state with the power to do so could just as well use the same power to do ill in the future. But it would hardly be disproportionate for her to retain her own belief in the wrongness of birth control, and to refuse to accommodate her *own* practices to “modern

²⁷¹ *Id.*

life.” “A sense of proportion” is largely irrelevant to such questions.

Obama adds that “a sense of proportion should also guide those who police the boundaries between church and state.”²⁷² In saying so, he appears to commit a species of Romney’s error. He conflates a policy of public engagement by *citizens*, in which religious voters and officials need not check their beliefs at the door of the public square, with the question of what sorts of *government* actions are themselves permissible or impermissible in such a regime. He is surely right that “[n]ot every mention of God in public is a breach to the wall of separation.”²⁷³ And I do believe he is right in most of the positions he takes on these questions: the use of public property by “voluntary student prayer groups” and the opening of public funds on an equal basis to “certain faith-based programs” are not constitutionally impermissible and may be a consequence of a larger regime of engagement and inclusion.²⁷⁴

But it is not enough to say that “[i]t is doubtful that children reciting the Pledge of Allegiance feel oppressed or brainwashed as a consequence of muttering the phrase ‘under God.’”²⁷⁵ Whether or not those who are personally offended by such policies should retain a “sense of proportion” about these policies, those who are actually charged with “polic[ing] the boundaries between church and state” are in a different position.²⁷⁶ Indeed, in a regime of genuine inclusion and

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.* Note, however, that even here Obama is not fully inclusive. His proposal for the support of faith-based social services along with similar secular programs, voiced later in the campaign, would, for example, limit the ability of such programs to discriminate against “the people [they] hire.” See *Obama Delivers Speech on Faith in America*, N.Y. Times, July 1, 2008, at ___. Although Professor Martha Minow, who reportedly has advised the Obama campaign on this issue, suggested that “there’s [nothing] too controversial” about this restriction, this surely understates the extent to which any such limitations are at least open to debate. See Jeff Zeleny and Michael Luo, *Obama Seeks Bigger Role for Religious Groups*, N.Y. Times, July 2, 2008, at A1 (quoting Minow); Peter Steinfeld, *In Wooing the Religious, Obama Hits 6-Word Snag*, N.Y. Times, July 5, 2008, at B5 (noting disagreement on the question of whether government can restrict faith-based hiring by religious beneficiaries of federal social services funds).

²⁷⁵ Obama, *supra* note __.

²⁷⁶ *Id.*

engagement, it may be that a firm maintenance of the church-state boundary with respect to *official* government speech, however minor, is both the cost and the consequence of allowing vigorous religious speech in the public and political arena. Just as religious individuals should not be forced to couch their public arguments in “publicly accessible” terms, so it is possible that government itself, when acting officially, must leave such issues up for grabs, and cannot itself couch its own statements in explicitly religious terms.

There is thus a good deal in Obama’s remarks that merits critical reflection, and not just praise. The speech itself is, I have argued, a model of engagement between religion and politics. By its very language and the themes it addresses, it contemplates a world in which religious language and religious arguments are fully welcomed in the public square. And the speech itself demonstrates that, contrary to those who have worried that even attempting to voice religious arguments in public debate will either be intolerably divisive²⁷⁷ or a “conversation-stopper,”²⁷⁸ it is possible to have a discussion about religion and politics that is rich, detailed, and even controversial without becoming uncivil. Religion need not pay for its entry into the public square with the coin of blandness offered up by Romney. At the same time, Obama’s insistence on a rule of “translation,” and the “sense of proportion” he suggests should animate religious believers who enter the public square, suggests that his model is incomplete and unsatisfactory. It offers and exemplifies a policy of engagement; but it falls short of a true policy of inclusion.

V. CONCLUSION

I began this examination of the relationship between religion and American politics by observing that, for all the surface continuity between the debates in Kennedy’s age and in our own, something has in fact changed. Religion has increasingly become a contested and contestable concept in our society. That is not to say its star has dimmed; indeed, it glows

²⁷⁷ See Garnett, *supra* note __ (discussing and critiquing the use of “divisiveness” in Establishment Clause doctrine).

²⁷⁸ Rorty, *supra* note __.

far more hotly and brightly than it did when Kennedy spoke in Houston. But neither religion in general, nor any single faith or faith tradition, are now assumed to be the only star in our firmament. Even those who hold ever more fervently to their faith, and to the belief that faith plays a vital and inescapable role in American political and public life, do so precisely in part because that very belief has become contestable. The themes may not have changed; we can readily understand Kennedy, Romney, and Obama as speaking in the same language about the same issues. But the fact that they are speaking the same language should not obscure the fact that the nature of the conversation – what is assumed, what is accepted, and what is questioned or up for grabs – *has* changed.

Precisely because religion and politics exist today in an age of contestability, it is important that we turn to political speakers like Kennedy, Romney, and Obama for insight, and not just to the many thoughtful academic voices on this issue. To be sure, the speeches examined in this paper may be flawed in part because they were delivered in the public arena rather than the seminar room. But that necessity can be seen as a virtue. Kennedy, Romney, and Obama did not have the luxury of nuance, but neither did they have the luxury of reducing (or raising, depending one's perspective) the question of religion's relationship with politics to the level of a philosophical abstraction. Their speeches took place where religion and politics actually interact: in the messy, contingent, and sometimes uncivil world of public debate. Since that is where any resolution of the conflict between religion and politics must actually occur, it may be worthwhile to consider how politicians, the masters of the art of the possible and practical, would resolve it.

In that light, and in keeping with the combination of stability and change that we have seen in the march of time from Kennedy's age to our own, we might understand all three of these speeches, taken together, as reflecting both stability and change. All three candidates take on the same basic issue of how religious candidates and voters should act in a religiously pluralistic democracy. At the same time, there has been a change – I think it is progress – in how they would resolve this issue. The tune has changed from a strategy of

avoidance to a gradually increasing strategy of public inclusion of religion, in Romney's case, and public engagement *with* religion, in Obama's case.

The next step, and the best one, I have argued, is one of both inclusion and engagement. It is one in which, contrary to Kennedy, one need not privatize one's religion in order to enter the public square. It is one in which, in opposition to Obama, one need not couch one's religious arguments in publicly accessible language in order to participate in public debate. Finally, as against Romney, it is one of genuine engagement, which is ultimately the truest expression of respect for religion. One need not admit religion into the public square at the cost of rendering it banal, or insist that any difficult and unpleasant questions about religion are out-of-bounds. Rather, once we conclude that religion is, or at least can be, of fundamental importance in public debate and decision-making, we must accept that religion, like any other issue or motivation, can be the subject of public debate, criticism, and even derision.

To be clear, I am not recommending that we always ask such questions. Indeed, individual voters and candidates need not ask (or answer) them at all, although we cannot assure them that they will not pay a political price for doing so. And if we do engage in this kind of discussion, I am certainly not urging that we do so carelessly or unkindly, or that we make sweeping judgments on religious grounds. Conversations about religion and politics should be just that – conversations.²⁷⁹ As Kennedy argued, and as his very willingness to answer questions from a hostile audience in Houston suggested, they should be a dialogue rather than an arbitrary granting or withholding of support on religious grounds. But neither should such questions be treated as forbidden ground, as Kennedy and Romney suggest, or forced to adopt a different voice, as Obama proposes.

This model of inclusion and engagement is in some ways the hardest of our alternatives. It may lead to greater open divisiveness than either a strategy of avoidance or a partial strategy of inclusion or engagement. But it will also lead to the

²⁷⁹ For more on the conversational model, see DeGirolami, *supra* note ____.

best, most meaningful, most honest dialogue.²⁸⁰ Our discussions “will be less anodyne but also less antiseptic” than they are now.²⁸¹ In the end, the model of engagement and inclusion is the only truly authentic, respectful, and fair alternative available to us.

²⁸⁰ See Horwitz, *supra* note __, at 146.

²⁸¹ *Id.*