

SHAPING THEIR BETTER CHARACTER:
RELIGION IN AFRICAN AMERICAN POLITICS IN THE
AGE OF OBAMA

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I. INTRODUCTION AND PURPOSE OF STUDY

Religion plays a major role in American life. The English writer Gilbert K. Chesterton (1874-1936) characterized the U.S. as “a nation with the soul of a church, and the only country founded on a creed.”¹ The proposition is more axiomatic for African Americans² than for any other U.S. group.³ From a historical standpoint, religion is central to a conception of Blacks’ identity “forged in the struggle for freedom in the New World.”⁴ Going forward, studies show that African Americans “are markedly more religious on a variety of measures than the U.S. population as a whole.”⁵

¹ THOMAS E. PATTERSON, *THE AMERICAN DEMOCRACY* 28 (10th ed. 2011).

² On a note of style and to minimize monotony, I interchange *African Americans* with *Blacks*. I also adopt a similar practice with the adjectival form: African Americans’ and Blacks’. I use an initial capital letter for the noun form of Black (as for White, as I just did) and a small letter in every other case. Finally, I use an initial capital when referring to the collective conglomeration of African American religious institutions and infrastructure, the *Black Church* (as I just did) but small letter in every other case.

³ Blacks constitute a political subculture within the broader American political system. See David Easton, *quoted in* HANES WALTON, JR. & ROBERT C. SMITH, *AMERICAN POLITICS AND THE AFRICAN AMERICAN QUEST FOR UNIVERSAL FREEDOM* 44 (4th ed. 2008). Easton defines a *political subculture* as “refer[ring] to patterns that are dominant within the respective subgroups, but which other members of the system may choose to ignore and reject without remorse, guilt, shame, condemnation, or fear of sanctions.” *Id.* Easton and other scholars who recognize this concept, acknowledge that various subgroups in the political system distinguished by race, ethnicity, language, religion, and the like, *may be regulated by different normative and value systems* and conceptions of authority, regarded as political subcultures. For them, there is not a single homogeneous political culture, but a composite of several subculture variations. *Id.* at 44-45. Turning to its distinctive makeup, Black political culture is built on “identity and self-respect and . . . coded in a black church tradition that blends a sacred and secular vision.” CHARLES HENRY, *CULTURE AND AFRICAN AMERICAN POLITICS* 107 (1990).

⁴ Cornell West & Eddie S. Glaude, Jr., *Introduction: Towards New Visions and New Approaches in African American Religious Studies*, in *AFRICAN AMERICAN RELIGIOUS THOUGHT: AN ANTHOLOGY* at XX (Cornell West & Eddie S. Glaude Jr., eds., 2003). For more on the historical backdrop related to the topic, see *infra* Part III for a background chronicle of religion in African American politics.

⁵ *The Black Church*, BLACKDEMOGRAPHICS.COM, blackdemographics.com/culture/religion/ (last visited Mar. 24, 2014) (citing a U.S. Religious Landscape Survey in 2007 by the Pew Research Center). The survey found that 87% of Blacks, compared to 83% of all Americans, are affiliated with a religion. *Id.* It also found that 79% of Blacks, compared to 56% of all Americans, say that religion is “very important in their life.” *Id.*

“Shaping their better character,” the quote embedded in the topic of this Article is attributed to Atticus G. Haygood (1839-1896),⁶ a noted clergy and educator,⁷ who “gained national prominence as a spokesman for the New South,” through various means, notably his advocacy of increased educational opportunities for Blacks.⁸ In one of the most eloquent statements ever uttered regarding the enduring influence of religion in African American life, Haygood posited that, regardless of any “imperfections” Blacks may show “in their religious development[,] nevertheless their religion is their most striking and important, their strongest and most formative, characteristic.”⁹ He indicated that Blacks’ “religion has had more to do in *shaping their better character in this country than any other influence*,”¹⁰ something he also predicted “will most determine what they are to become in their future development.”¹¹

These words were written in the 19th century. What is the situation at the present time? Black churches perform a set of useful functions that include exemplifying the richness of the African American experience, providing useful insights into the social condition of Blacks in U.S. society, and affording a ready platform for the exhibition of cultural identity.¹² These churches

⁶ W.E. BURGHARDT DU BOIS, *THE NEGRO CHURCH: REPORT OF A SOCIAL STUDY MADE UNDER THE DIRECTION OF ATLANTA UNIVERSITY* 214 (1903).

⁷ Haywood was a bishop of the Methodist Episcopal Church, South, from 1890 till his death in 1896. Before then, from 1875 to 1884, he was president of Emory College in Oxford, GA. For a sample of the many published biographies on Haygood, see HAROLD W. MANN, *ATTICUS GREENE HAYGOOD: METHODIST BISHOP, EDITOR, AND EDUCATOR* (1965); and ELAM FRANKLIN DEMPSEY, *ATTICUS GREEN HAYGOOD* (1940).

⁸ Frederick V. Mills, *Atticus G. Haygood (1839-1896)*, NEW GEORGIA ENCYCLOPEDIA (Feb. 3, 2006), www.georgiaencyclopedia.org/articles/arts-culture/atticus-g-haygood-1839-1896 (last visited Nov. 10, 2014). Haygood was the first agent for a fund for Negro education in the South, the John F. Slater Fund, that some commentators view as a 19th century affirmative action plan for black education. See JOHN E. FISHER, *THE JOHN F. SLATER FUND: A NINETEENTH CENTURY AFFIRMATIVE ACTION FOR NEGRO EDUCATION* (1987) (analyzing the operations and principals of the John F. Slater Fund during its formative years from 1882 to 1892).

⁹ W.E. BURGHARDT DU BOIS, *supra* note 6, at 214; for a slightly variant version of the same quote, see also G. B. WINTON, *SKETCH OF BISHOP ATTICUS G. HAYWOOD* (1915).

¹⁰ W.E. BURGHARDT DU BOIS, *supra* note 6, at 214 (emphasis added).

¹¹ *Id.*

¹² See Hans A. Baer, *African American Religious Experience*, HARTFORD INSTITUTE FOR RELIGION RESEARCH, hrr.hartsem.edu/ency/African.htm (last visited Jan. 6, 2015).

are also a forum for the expression of resistance in a White-dominated society.¹³ Politics shapes these factors, which in turn shape politics. For many African Americans, analysis of the influence of religion on black life necessarily turns on an examination of several points. This includes the duplicity of holding black people down as chattel slaves within a supposedly democratic system where individuals, irrespective of their ethnoracial backgrounds, were to be granted freedom as a natural right.¹⁴

This Article updates the narratives by exploring the nature of religion in African American politics in the contemporary period. This analysis utilizes the life and career of President Barack Obama, specifically his faith-based initiative, as a window into the world. I argue that, now, as in the past, religion is a major influence on African American politics. However, it does so today in a manner possibly unforeseen by shapers of a Black Church, even for an institution that, in its creative instrumentalism, blends sacred and secular visions.¹⁵

The paper is organized as follows. First, I dispose of two threshold issues revolved around whether Obama is black, and which members of the black community in the U.S. are considered African Americans. Next, there is a historical overview related to the topic, followed by a commentary on the role of religion on African American life. Finally, I examine President Obama's faith-based program. The sense the reader gets is that his religion-based initiative constitutes the centerpiece of this work. That is true, although that was *not* my intent when I wrote the initial introduction of this Article. However, as my research unfolded, I found the need to develop sufficient discussion that would give this piece better concrete grounding while providing insights that would enable my readers to form their own independent assessment regarding the dynamic influence of religion in African American politics, the contribution of President Obama and his faith-based policy, as well as the connection of these issues of black politics to larger U.S. politics and legal system.¹⁶ I then close and

¹³ *Id.* (stating that “[p]erhaps more than any other institution, religion illustrates the diversity of strategies that African Americans have adopted in attempting to address racism and class inequality.”).

¹⁴ West & Glaude, Jr., *supra* note 4, at xx.

¹⁵ HENRY, *supra* note 3, at 107.

¹⁶ Legal arrangements in every polity form an integral part of the political system. For a recent comment on the nature of the relationship between the two

crown the presentation with a conclusion where I return, full circle, to the nagging two questions of this work: why African Americans; and why President Obama and his religion-based initiative?

II. IS PRESIDENT OBAMA BLACK?

I denominate this issue *threshold* in my introduction because it is a question that, to proceed, we must answer yes—or else, we cannot go any further. To be sure, it is arguably possible to analyze the influence of religion in African American politics in the contemporary period without bringing in Obama. However, such an account would lack persuasiveness, much less eloquence. This is not only because of the huge impact, for good or bad, that this remarkable individual has interjected into U.S. politics since his entrance into national limelight,¹⁷ but also because of the intersection of race, religion, and politics (the impetuses driving this study) that Obama and his faith-based initiative distinctively embody.

But we still have to answer the question whether he is black, rather than assume the issue. The answer to the question is that Obama, unequivocally, is black. When he ran for president in 2008,¹⁸ Obama called himself black. This is because, as he

systems, see Robert Post, *Theorizing Disagreement: Reconceiving the Relationship Between Law and Politics*, 98 CAL. L. REV. 1319 (2010).

¹⁷ In a discussion on the role of political parties in the African American quest for universal freedom that form the central theme in their text, Professors Walton and Smith devoted extensive space to Obama, whom they justifiably assessed as a “phenomenon.” See HANES WALTON, JR. & ROBERT C. SMITH, *AMERICAN POLITICS AND THE AFRICAN AMERICAN QUEST FOR UNIVERSAL FREEDOM* 154-72 (6th ed. 2012). They observed, “The Obama campaign was a genuine phenomenon, not in the technical sense that scientists use the word but rather as a rare, exceptional, unexpected occurrence. That an African American—any African American—could win a major party nomination for the presidency is phenomenal in itself. However, that an African American of African heritage with a foreign-sounding name and less than four years’ experience in national politics could be nominated is even more phenomenal.” *Id.* at 154; see also *infra* note 20 (discussing literature on the 2008 presidential election that Obama decisively won).

¹⁸ The U.S. presidency is an institution that is one of a kind. See Fred W. Friendly, *Foreword*, in NEWTON MINOW ET AL., *PRESIDENTIAL TELEVISION* vii (1973) (“No mighty King, no ambitious Emperor, no Pope, no prophet ever dreamt of such an awesome pulpit, such a magic wand.”). The assessment remains mostly accurate today. Given the importance of the office, as Professors Walton and Smith point out in their text on African American politics, “the racial attitudes

explained then, such is the way Americans identify and view him.¹⁹ It is now history that Obama won the 2008 presidential election, which he contested on the platform of the Democratic Party, against John McCain who ran on the ticket of the Republican Party.²⁰

Two years into his presidency, in the 2010 census, Obama checked himself in the box for “Black, African American or Negro.”²¹ This was the first time the Census Bureau gave Americans the option and opportunity to identify themselves in more than one category. It was also a chance that the nearly 7 million Americans, who reported being of two or more races, seized.²² The innovation in 2000 was dictated by dissatisfaction with the “one-drop rule” under which any person with the smallest “percentage of Negro blood” was considered black. Under this peculiar formula laid down long ago by the Census Bureau:

A person of mixed white and Negro blood should be returned as a Negro, *no matter how small the percentage of Negro blood*. Both black and *mulatto*

and policies of American presidents [are] a crucial factor in the African American quest for universal freedom.” WALTON, JR. & SMITH, *supra* note 17, at 231.

¹⁹ On February 11, 2007, then-candidate Obama gave an interview in a CBS “60-Minutes” appearance. Asked by his interviewer, “Your mother was white, your father was African. You were raised in a white household, yet at some point you decided you were black?” Obama responded: “I’m not sure I decided it. I think, you know, if you—if you look African-American in this society, you’re treated as an African-American.” Leslie Fulbright, *Obama’s Candidacy Sparks Debates on Race: Is He African American if His Roots Don’t Include Slavery?* SFGATE (Feb. 19, 2007, 4:00 AM), www.sfgate.com/politics/article/obama-s-candidacy-sparks-debate-on-race-is-he-2616419.php.

²⁰ See DAVID PLOUFFE, *THE AUDACITY TO WIN: HOW OBAMA WON AND HOW WE CAN BEAT THE PARTY OF LIMBAUGH, BECK, AND PALIN* (2010); KATE KENSKI ET. AL., *THE OBAMA VICTORY: HOW MEDIA, MONEY, AND MESSAGE SHAPED THE 2008 ELECTION* (2010); LARRY J. SABATO, *THE YEAR OF OBAMA: HOW BARACK OBAMA WON THE WHITE HOUSE* (2009); CHUCK TODD & SHELDON GAWISER, *HOW BARACK OBAMA WON: A STATE-BY-STATE GUIDE TO THE HISTORIC 2008 PRESIDENTIAL ELECTION* (2009).

²¹ Oscar Avila, *Obama’s Census-Form Choice: ‘Black,’* L.A. TIMES (Apr. 4, 2010), articles.latimes.com/2010/apr/04/nation/la-na-obama-census4-2010apr04; Sam Roberts & Peter Baker, *Asked to Declare His Race, Obama Checks “Black,”* N.Y. TIMES (Apr. 2, 2010), www.nytimes.com/2010/04/03/us/politics/03census.html?_r=1&. The Census Bureau retained the faded and jaded term *Negro* on the form because it believes some older Blacks still refer to themselves that way.

²² Avila, *supra* note 21; Roberts & Baker, *supra* note 21. The precise number was 6.8 million people. *Id.*

persons are to be returned as Negroes, without distinction. A person of mixed Indian and Negro blood should be returned as a Negro. ... Mixtures of non-white races should be reported according to the race of the father, except that Negro Indian should be reported as Negro.²³

This became the basis for, first, the three-race classification, and, subsequently, the five-race categories the Census Bureau and other government agencies use to collect statistical data.²⁴ Over the years, with the U.S. Supreme Court lifting the ban on interracial marriages²⁵ and a major increase occurring in the number of biracial or mixed-race couples in the U.S.,²⁶ dissatisfaction with the five-category definition equally increased.²⁷ This was reflected in demands for the addition of a new “mixed race” or “multiracial” category.²⁸ The Office of Management and Budget (OMB), the government agency charged with oversight responsibility for the federal bureaucracy, responded to this demand in 1993 by appointing a task force to study the issue.²⁹ But rather than suggest a new multiracial category, the task force recommended that Americans be allowed to check more than one race on the census questionnaire.³⁰ The

²³ WALTON JR. & SMITH, *supra* note 17, at 288, *quoting* LANGSTON HUGHES & MILTON MELTZER, A PICTORIAL HISTORY OF THE NEGRO IN AMERICA 2 (1964) (emphasis added).

²⁴ *Id.* The three races recognized initially were black, white, and red. In 1977, the classification changed to the current five categories: Black or African American, White, American Indian or Alaskan Native, Asian, and Native Hawaiian or Other Pacific Islander. A possible sixth category, Hispanic or Latino, is classified as an ethnicity, rather than as a race. *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*, THE WHITE HOUSE (Oct. 30, 1997), www.whitehouse.gov/omb/fedreg_1997standards.

²⁵ See *Loving v. Virginia*, 388 U.S. 1 (1967) (ruling state bans on interracial marriage unconstitutional).

²⁶ Following *Loving v. Virginia*, the number of mixed black-white marriage increased dramatically from 149,000 to 964,000 by 1996. WALTON, JR. & SMITH, *supra* note 17, at 288.

²⁷ *Id.*

²⁸ *Id.* See also JON MICHAEL SPENCER, THE NEW COLORED PEOPLE: THE MIXED RACE MOVEMENT IN AMERICA (1997) (commenting on the energetic campaign by the multiracial movement, whom the author dubbed the “Rainbow People of God,” to add a “multiracial” category to the official racial classifications).

²⁹ WALTON, JR. & SMITH, *supra* note 17, at 289.

³⁰ *Id.*

justification for this recommendation was that a new multi-racial category would “add to racial tensions and further fragmentation of our population.”³¹

In opinion polls, most non-Black Americans consider Obama as “mixed race.”³² For Whites, that number was 53 percent, compared to 24 percent who said he is black. For Hispanics, 61 percent called him mixed, as opposed to 23 percent who think he is black.³³ For their part, many Blacks consider Obama black. According to the same Pew survey, 55 percent of Blacks think he is black, which is little more than the same proportion of Whites who view him as mixed, compared to 34 percent of African Americans who call him mixed.³⁴ In opting for “Black, African American or Negro” in the 2010 census form, Obama remained consistent with his initial position that he is black, just the way he said many Americans view him.

Since no mixed race category exists in the U.S., and because Obama identifies himself as black, that is how we view him in this Article. Calling him anything other than black runs against the “judgment of American history,” to use the expression of one black commentator.³⁵ Despite the innovation in the 2010 census that permitted the choice of more than one “race” categories, the U.S. still has no separate category for “mulatto persons” like Obama. Instead, mulatto persons “must be returned as Negroes, without distinction” under the rule, irrespective of the race of the father.³⁶ That said, the reader must keep in mind that, although black, Obama perceives himself as president of all Americans, with no more special obligation toward Blacks as a group than he owes to other Americans.³⁷

³¹ *Id.*, citing Steven Holmes, *Panel Balks at a Multiracial Census Category*, N. Y. TIMES, July 9, 1997, at A8.

³² See, e.g., Olga Yazhgunovich, *Majority of Americans say Obama is “Mixed Race”—Poll*, THE VOICE OF RUSSIA (Apr. 18, 2014), http://sputniknews.com/voiceofrussia/2014_04_18/Majority-of-Americans-say-Obama-is-Mixed-race-poll-1058/; Nick Chiles, *Majority of Americans Don’t Consider Obama Black, Despite Judgment of American History*, ATLANTA BLACK STAR (Apr. 15, 2014), [atlantablackstar.com/2014/04/15/majority-americans-don’t-consider-president-obama-black-despite-judgment-american-history/](http://atlantablackstar.com/2014/04/15/majority-americans-don-t-consider-president-obama-black-despite-judgment-american-history/).

³³ Yazhgunovich, *supra* note 32; Chiles, *supra* note 32.

³⁴ Yazhgunovich, *supra* note 32; Chiles, *supra* note 32.

³⁵ Chiles, *supra* note 32.

³⁶ See WALTON, JR. & SMITH *supra* note 23 and accompanying text.

³⁷ Pressed by Black intellectual and political leaders to address the double-digit unemployment rate of 16% among Blacks, Obama stoutly refused, indicating “The only thing I cannot do is, by law I can’t pass laws that say I’m just helping

III. WHICH BLACKS ARE AFRICAN AMERICANS?

A second *threshold* question this Article grapples with is: which Blacks are African Americans? However, this threshold is *less* preliminary than the first because we can plod on with this research, even if we choose not to answer this question. Nevertheless, it is still an interesting question that needs to be addressed. To put the question more directly, is the designation *African Americans* restricted to the slave generation (individuals whose four grandparents were born in the U.S.), or should the term be extended to include non-slave immigrants from Africa and the Caribbean? I posit that the meaning of the term has changed to include *all* categories of black Diasporas, original and recent alike.

African Americans are one of several racial groups that comprise the U.S. population.³⁸ There are over 42 million black people in the U.S., or 13.6 percent of the U.S. population.³⁹ The

black folks. I am the President of the United States.” See Howard Kurtz, *Color of Change*, WASH. POST (Dec. 23, 2009, 8:57 AM), <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/23/AR2009122300954.html>. For the appeals he rejected that he develop policies targeted at blacks, see Michael Shear & Perry Bacon, *Black Lawmakers Call on Obama to Do More on Behalf of Blacks*, WASH. POST (Dec. 9, 2009, 10:06 PM), <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/09/AR2009120903613.html>; and Steven Greenhouse, *NAACP Prods Obama on Job Losses*, N.Y. TIMES (Nov. 17, 2009), www.nytimes.com/2009/11/17/us/17labor.html. See also Boyce Watkins, *President Obama: “I am not the President of Black America,”* BLACK AGENDA REP. (Aug. 8, 2012), blackagenda.com/content/president-obama-“i-am-not-president-black-america” (recounting Obama’s reported declaration to the effect that “I am not the president of Black America. I am the President of the United States of America.”). A sample of the boundlessness of Obama’s signature love of country would be the keynote at the Democratic Convention in 2004 that shot him into national limelight. There, the future president intoned, “There is not a black America and a white America and Latino America and Asian America; there’s the United States of America. The pundits like to slice-and-dice our country into Red States and Blue States; Red States for Republicans, Blue States for Democrats. But I’ve got news for them, too We are one people, all of us pledging allegiance to the stars and stripe, all of us defending the United States of America.” *Barack Obama: Keynote Address at the 2004 Democratic National Convention*, ENCYCLOPEDIA BRITANNICA’S GUIDE TO BLACK HISTORY, <http://kids.britannica.com/blackhistory/article-9442554> (last visited Jan. 6, 2015).

³⁸ See *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*, *supra* note 24 and corresponding text for the six categories, including Black or African American.

³⁹ *The Black Population: 2010*, U.S. CENSUS BUREAU (Sept. 2011), www.census.gov/prod/cen2010/briefs/c2010br-06.pdf.

number includes over 3 million people in the 2010 census who identified themselves as mixed.⁴⁰ Blacks are the only ones, among U.S. racial groups, whose members were singled out for peculiar treatment as chattel slaves.⁴¹ This was probably the point the writer Thomas Sowell alluded to when he characterized Blacks as “a cultural and biological product of the New World, rather than direct descendant of any given African nation or culture,” with a “cultural heritage” “formed almost exclusively on American soil.”⁴² The notion also points to the four-grandparent theory devised by some black nativists, for whom the appellation *African Americans* is confined to black persons with four grandparents born in the U.S.

The debate regarding who, within the black community in the U.S., is “really” black is one that has broken out in recent times in two settings. The first is as a side show in the affirmative action debate over exactly which portion of the black world within the U.S. should be the true beneficiary of affirmative action policies.⁴³ I brand the debate “side show” because the main controversy is between white opponents of affirmative action (mostly males) and their supporters (some of whom, like Clarence Thomas, Associate Justice of the U.S. Supreme Court, are black), and supporters of the programs, many of whom are minorities.⁴⁴

⁴⁰ *Id.*

⁴¹ See, e.g., *Feature: Indentured Servants in the U.S.*, PBS HISTORY DETECTIVES, <http://www.pbs.org/opb/historydetectives/feature/indentured-servants-in-the-us/> (last visited Jan. 12, 2015). As this PBS statement elaborates, when the first set of Blacks imported involuntarily to the U.S. arrived in Virginia in 1619, they were treated as indentured servants and afforded the same opportunities for freedom due white indentured servants. *Id.* At this point, Virginia had no slave laws in place. *Id.* But the situation soon changed for worse. Following the passage of slave laws in colonial America, first in Massachusetts in 1641 and subsequently in Virginia in 1661, “any small freedoms that might have existed for blacks were taken away.” *Id.*

⁴² THOMAS SOWELL, *ETHNIC AMERICA: A HISTORY* 183 (1981).

⁴³ *Affirmative action* refers to preferential programs that use minority factors, such as race/ethnicity, gender, and, in some jurisdictions, even sexual orientation, to level the playing-field in competition in admission to elite public schools, government employment, and government contracts for minority groups long held down by discrimination, especially given the failure of anti-discrimination laws to do the job of promoting equal opportunity for all groups. Philip C. Aka, *Affirmative Action and the Black Experience in America*, 36 HUM. RTS. 8-10 (2009).

⁴⁴ *Id.* For a more extended discussion of these policies, see, e.g., Philip C. Aka, *The Supreme Court and Affirmative Action in Public Education, with Special Reference to the Michigan Cases*, 2006 B.Y.U. EDUC. & L.J. 1 (2006)

African American intellectuals involved in this debate include Henry Louis Gate, Jr. and Lani Guinier, both of Harvard University. The two spoke in 2004 at a black alumni gathering, where they argued that affirmative action programs at some of the nation's most elite educational schools, public and private,⁴⁵ leave behind too many African American students.⁴⁶ For these educators, these descendants of slaves were the students intended as principal beneficiaries of affirmative action in university admissions. Instead, a majority of black students at these selective schools, including Harvard University, are either immigrants or children of immigrants.⁴⁷ "I just want people to be honest enough

(focusing on two cases in 2003 involving the University of Michigan); and Philip C. Aka, *Assessing the Impact of the Supreme Court Decision in Grutter on the Use of Race in Law School Admissions*, 42 CAL. W. L. REV. 1 (2005) (applying the Michigan cases to law school admissions).

⁴⁵ Although affirmative action refers to the use of minority factors, such as race, in decision-making regarding government benefits, rather than benefits allocated by private organizations, many private institutions also adopt affirmative action programs, as a condition for receipt of government grants or irrespective of such requirement. For example, Harvard University, a private institution, was among the first institutions in the U.S. to design and implement the "Harvard Plan," an affirmative action plan. Aka, *Supreme Court and Affirmative Action in Public Education*, *supra* note 44, at 6, n.21.

⁴⁶ See Sara Rimer & Karen W. Arenson, *Top Colleges Take More Blacks, but Which Ones?* N.Y. TIMES (June 24, 2004), <http://www.nytimes.com/2004/06/24/us/top-colleges-take-more-blacks-but-which-ones.html>. See also Karamagi Rujumba, *Affirmative Action: Which Blacks Benefit Most?* THE BLADE (Sept. 12, 2004), <http://www.toledoblade.com/oldsaxolinks?query=extrefid:409120340>.

⁴⁷ Rimer & Arenson, *supra* note 46. The debate is one of those issues on which, as the saying goes, reasonable people disagree. Beyond the African American community, supporters of both sides in the debate exist. Anthony W. Marx, president of Amherst College, believed colleges should care about the ethnicity of black students because in overlooking those with predominantly American roots, they miss an "opportunity to correct a past injustice" and deprive their campuses "of voices that are particular to being African-American, with all the historical disadvantages that that entails." *Id.* Others see no reason to take the ancestry of black students into account. As Lee C. Bollinger, a renowned higher educator and supporter of affirmative action programs, explained, "[t]he issue is not origin, but social practices. It matters in American society whether you grow up black or white. It's that differential effect that really is the basis for affirmative action." *Id.* Reinforcing this latter view is the fact that, over the several decades affirmative action has existed in higher education, the focus has been on increasing the number of black students at selected colleges, not on their family background. *Id.* The reaction of African and Caribbean immigrants to the debate was decidedly negatively cool. One commentator, a Ghanaian, labeled the four-grandparent theory as "colored-on-black racism." See KWAME OKOAMPA-AHOOFE, JR., *THE NEW SCAPEGOATS: COLORED-ON-BLACK RACISM* (2005) (debunking allegations regarding Africa's complicity in the slave trade). Another,

to talk about it,” Gates told the participants at the gathering of black alumni. “What are the implications of this?”⁴⁸ For her part, Guinier, whose mother is white and whose black father migrated from Jamaica, maintained that “[m]any colleges rely on private networks that disproportionately benefit the children of African and West Indian immigrants who come from majority black countries and who arrived in the United States after 1965.”⁴⁹ In fairness to her, Guinier has a much broader view of the matter. “Colleges and universities are defaulting on their obligation to train and educate a representative group of future leaders,” she pointed out. “And they are excluding poor and working-class whites, not just descendants of slaves.”⁵⁰ The reason is because these institutions rely overly on standardized tests, which correlate strongly with family wealth and parental education.⁵¹

Another context in the debate regarding which Blacks are African Americans occurred in 2007 as Barack Obama sought to run for the U.S. presidency.⁵² Proponents of this worldview include Debra J. Dickerson; David Ehrenstein; and religious leaders, such as Charles Steele Jr. of the South Christian Leadership Conference (SCLC), among others. The views of these individuals converged around the position that Obama was not black enough to run for president as an African American. Dickerson argued that the term *black* should be limited to descendants of Africans brought to U.S. shores as slaves, and not include children of black immigrants who lack that ancestry.⁵³

Orlando Patterson, a Harvard University sociologist born in the West Indies, said he wished that the contenders would “let sleeping dogs lie[.]” adding that “[t]he doors are wide open—as wide open as they ever will be—for native-born black middle-class kids to enter elite colleges.” Rimer & Arenson, *supra* note 46.

⁴⁸ *Id.*

⁴⁹ Rujumba, *supra* note 46.

⁵⁰ Rimer & Arenson, *supra* note 46.

⁵¹ *Id.*

⁵² As indicated before, *supra* note 20 and corresponding text, Obama decisively won the 2008 presidential election. He did the same in 2012 when he earned the chance for a second term in office with over 50% of the popular vote. See *infra* note 295 and corresponding text.

⁵³ See DEBRA J. DICKERSON, *THE END OF BLACKNESS: RETURNING THE SOULS OF BLACK FOLK TO THEIR RIGHTFUL OWNERS* (2004) (arguing that the designation *African Americans* should be limited to Blacks “descended from West African slaves.”). Dr. W.E.B. Du Bois, who is reputed for originating scholarly studies on African American religion, wrote about the “souls of Black folk,” whose contents instructively, for our purpose here, included black “spiritual strivings,” organized as the very first chapter of the work. W.E. BURGHARDT DU BOIS, *THE SOULS OF BLACK FOLK: ESSAYS AND SKETCHES* 499 (2d ed. 1903). Dickerson turned the

Ehrenstein coined the term “Magic Negroes,” supposedly designating black persons with no past that he accused white liberals of flocking to in an attempt to promote their mainstream agenda.⁵⁴ Steele complained that the mainstream media treated now First Lady Michelle Obama “more roughly than her husband, because of her slave heritage.”⁵⁵ Black nativists share the common view that extending the term *African Americans* to immigrants born outside the U.S. minimizes or denies the lingering effects of slavery among Blacks, while denying black immigrants recognition of their own supposedly unique ancestral backgrounds.⁵⁶

Despite this controversy, a much broader definition of the term has evolved to include contemporary African and Caribbean

thesis of this work on its head by indicating that Blacks not born in the U.S. were usurpers who were not part of that “souls” heritage. In an earlier work with the same line of argument, Dickerson indicated that Obama, offspring of a black man from Kenya and mother a white woman born in the U.S., was not actually black, although technically African American. See Debra J. Dickerson, *Colorblind*, SALON (Jan. 22, 2007), www.salon.com/2007/01/22/obama_161/ (positing that “Barack Obama would be the great black hope in the next presidential race—if he were actually black.”). Dickerson averred that “Black, in our political and social reality, means those descended from West African slaves. Voluntary immigrants of African descent . . . are just that, voluntary immigrants of African descent with markedly different outlooks on the role of race in their lives and politics. At a minimum, it can’t be assumed that a Nigerian cabdriver and a third-generation Harlemites have more in common than the fact a cop won’t bother to make the distinction. They’re both ‘black’ as a matter of skin color and DNA, but only the Harlemites . . . is politically and culturally black . . .” *Id.*

⁵⁴ David Ehrenstein, *Obama the “Magic Negro,”* L.A. TIMES (March 19, 2007), www.latimes.com/la-oe-ehrenstein19mar19-story.html. The Magic Negro is a figure of postmodern folk culture, coined by 20th century sociologists, to explain a cultural figure with “no past” and “simply appears one day to help the white protagonists,” that emerged in the wake of the Supreme Court’s decision in *Brown v. Bd. of Educ. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483 (1954). The Magic Negro is there, among other things, to assuage white guilt, i.e., the discomfort Whites feel over the role of slavery and racial segregation in American history. *Id.* For Ehrenstein and others who embrace this term, the concern was that Obama “lends himself to white America’s idealized less-than-real black man.” Ehrenstein, *supra* note 54.

⁵⁵ See Janet Shan, *SCLC Head, Charles Steele Jr. Says Michelle Obama Treated More Roughly Because of Slave Heritage*, HINTERLAND GAZETTE (June 22, 2008), hinterlandgazette.com/2008/06/sclc-head-charles-steele-jr-says.html (“Why are they attacking Michelle Obama . . . and not really attacking to that degree, her husband? Because he has no slave blood in him. He does not have any slave blood in him, but Michelle does.”).

⁵⁶ See DICKERSON, *supra* note 53 (maintaining that “[j]umping us all together erases the significance of slavery and continuing racism while giving the appearance of progress.”).

immigrants.⁵⁷ This expanded definition was stimulated by the influx of non-white immigrants that came on the heels of the immigration reforms of 1965,⁵⁸ alluded to by Lani Guinier.⁵⁹ Some of those immigrants include President Obama's father and relatives who migrated to the U.S. from Kenya. These changes dramatically increased the number of Blacks, in the post-slavery era, from African and Caribbean countries. More than a few of the over 25 million immigrants who entered the U.S. since the 1960s came from Africa and the Caribbean.⁶⁰ Under this expanded reading, black persons with less than four grandparents in the U.S., including President Obama himself, are considered African Americans.

Even the nativists concede that Blacks with less than four grandparents can be African Americans. Sowell's definition, revolved around a cultural heritage "formed *almost exclusively* on American soil" (emphasis added), implied that cultural heritage formed *outside* the U.S. may be denoted African American. Many immigrants from Africa and the Caribbean whose grandparents were not born in the U.S., were among the individuals who subjectively identified themselves as African Americans in the 2010 headcount. Instructively, classification of the U.S. government also includes black immigrants.⁶¹ Today, no less than in the pan-Africanist Movement in the first quarter of the twentieth century,⁶² African Americans have drawn on the

⁵⁷ See YOKU SHAW-TAYLOR, ET AL., *THE OTHER AFRICAN AMERICANS: CONTEMPORARY AFRICAN AND CARIBBEAN IMMIGRANTS IN THE UNITED STATES* (2007) (broadening readers' understanding regarding these other African Americans).

⁵⁸ See Immigration and Nationality Services Act (also known as the Hart-Cellar Act), H.R. 2580, Pub. L. 89-236, 79 Stat. 911, (codified as amended in scattered sections of 8 U.S.C.), *available at* library.uwb.edu/guides/usimmigration/1965_immigration_and_nationality_act.html.

⁵⁹ See Rujumba, *supra* note 46 and corresponding text.

⁶⁰ REUEL R. ROGERS, *AFRO-CARIBBEAN IMMIGRANTS AND THE POLITICS OF INCORPORATION: ETHNICITY, EXCEPTION, OR EXIT 1* (2006).

⁶¹ See *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*, *supra* note 24 (defining a *Black or African American* as "[a] person having origins in any of the black racial groups of Africa," adding that "[t]erms, such as 'Haitian' or 'Negro' can be used in addition to 'Black or African American.'").

⁶² Pan-Africanism is an ideology that stresses the solidarity of black people all over the world. It is a belief that black people, no matter where they make their home in the world, share a common history and destiny. See, e.g., MILFRED C. FIERCE, *THE PAN-AFRICAN IDEA IN THE UNITED STATES, 1900-1919: AFRICAN AMERICAN INTEREST IN AFRICA AND THE INTERACTION WITH WEST AFRICA* (1993) (analyzing the pan-Africanist linkages between Blacks in North America and

thoughts and experiences of Blacks outside the U.S. to make sense of their conditions here in the U.S.⁶³

In sum, the presence of a large number of Blacks from outside the U.S., has complicated the definition of who is black in the U.S. The debate regarding who is “really” black underscores the reality that, like any other U.S. group, black people are not a unified monolith. It is also a debate, fueled by competition for limited economic opportunities among native-born and foreign-born Blacks, that has every likelihood of flaring up again in the future. After all, Obama’s “history-making campaign did not transcend all divisions in the black community.”⁶⁴ But the debate also underscores the ties of color that bind black people everywhere, including here in the U.S., irrespective of ancestry or diversity in family background. Dr. Du Bois’s edited seminal volume on the topic indicated that “[t]he Negro Church is the only social institution of the Negroes which *started in the African forest* and survived slavery.”⁶⁵ More recently, Hanes Walton Jr. and Robert C. Smith, two African American scholars, referred to Obama as an “African American of African heritage.”⁶⁶ This phraseology, though confusing, suggests that Obama is African American. In the poignant language of one African immigrant, “[w]hen you come here as an African, you not only have to fit into American culture, you also have to fit into African-American culture.”⁶⁷

Blacks in Africa); P. OLISANWUCHE ESEDEBE, PAN-AFRICANISM: THE IDEA AND MOVEMENT 1776-1991 (2d. ed. 1994) (tracing the roots of pan-Africanism from the period of the American revolution in 1776 to the early 1990s).

⁶³ See VERNON D. JOHNSON & BILL LYNE, WALKIN’ THE TALK: AN ANTHOLOGY OF AFRICAN AMERICAN STUDIES xx (2003) (indicating that the text includes selections by black writers “from beyond the United States, such as Quobna Ottobah Cugoano and C. L. R. James, whose work we feel has direct relevance to the African American situation.”).

⁶⁴ WALTON, JR. & SMITH, *supra* note 17, at 172.

⁶⁵ W.E. BURGHARDT DU BOIS, *supra* note 6, at ii (quoting the Report of the Third Atlanta Conference held in 1898) (emphasis added).

⁶⁶ WALTON, JR. & SMITH, *supra* note 17, at 154.

⁶⁷ Rujumba, *supra* note 46. The statement was in response to the claim that affirmative action benefits Blacks born outside the U.S. than those born in the U.S. *Id.*

IV. HISTORICAL BACKDROP ON RELIGION IN AFRICAN AMERICAN POLITICS

Before the American Revolution in 1776, few slaves were Christian in any real sense of the word.⁶⁸ Many slave owners were reluctant to foster the conversion of their slaves to Christianity because they feared that such conversion might serve to plant in the minds of these slaves the notions of freedom and equality.⁶⁹ Subsequently, however, some slave owners became convinced that a selective interpretation of the Gospel would foster docility in their slaves.⁷⁰ However, this was not always the case, given that some slaves who were introduced to Christianity participated in slave rebellions.⁷¹

Religion scholars identify “great awakenings” or periodic outbursts of religious devotion that characterize American history.⁷² There is no agreement on the exact number of these events; while some writers say three, others put the number at four (the number I use here). Similarly, there is no agreement on their exact dates. My research on the topic uncovered the following approximate timeframes: First Great Awakening, circa 1731-1755; Second Great Awakening, circa 1790-1840; Third Great Awakening, circa 1850-1900; and Fourth Great Awakening, circa 1960-1980. Great awakenings are religious moments that are laden with political meaning. For example, the First Great Awakening is viewed as precursor to the American Revolution of

⁶⁸ Many Blacks who arrived during the Middle Passage were either Muslims or adherents of traditional religions (so-called “heathens”), but some, incidentally, were also Christians. *See, e.g.*, Cliff Odle, *African American Religion in Early America*, FREEDOM TRAIL FOUNDATION, www.thefreedomtrail.org/educational-resources/article-religion.shtml (last visited Nov. 25, 2014); *Slavery Fact Sheets*, DIGITAL HISTORY, www.digitalhistory.uh.edu/dis_textbook.cfm?smtID=11&psid=3807 (last visited Nov. 25, 2014); and Kimberly Sambol-Tosco, *The Slave Experience: Religion*, PBS, www.pbs.org/wnet/slavery/experience/religion/history.html (last visited Jan. 8, 2015).

⁶⁹ Baer, *supra* note 12, at 1.

⁷⁰ *See id.* (citing EUGENE GENOVESE, *ROLL JORDAN, ROLL* (1976)), to support this position.

⁷¹ Baer, *supra* note 12 at 1.

⁷² Joseph Tracy, a minister and historian, is credited with coining the term *Great Awakening*. *See generally* JOSEPH TRACY, *THE GREAT AWAKENING: A HISTORY OF THE REVIVAL OF RELIGION IN THE TIME OF EDWARDS AND WHITEFIELD* (1842) (providing material necessary for dispassionate assessment of the revival of religion that took place in the New England area in 1840).

1776,⁷³ while the Third is believed to have set the ground for the Civil War (1861-65) and the reconstructive events that marked the war's aftermaths.⁷⁴ Most recently, in 2006, President George W. Bush indicated that he sensed a religious revival that has coincided with the nation's struggles with international terrorists, a war Bush depicted as "a confrontation between good and evil."⁷⁵

Some of the most momentous events in Black history occurred during these periods of great awakening. The Abolitionist Movement of the 1830s⁷⁶ coincided with the Second Great Awakening, and the same period witnessed the birth and maturation of the *Black Church*. The Emancipation Proclamation and the civil rights guarantees of the Thirteenth, Fourteenth, and Fifteenth Amendments (collectively referred to as the Civil War Amendments)⁷⁷ coincided with the Third Great Awakening. Last but not least, the Civil Rights Movement, from about 1955 to 1968⁷⁸ overlapped the period of the Fourth Great Awakening.

⁷³ See *id.*

⁷⁴ See, e.g., TIMOTHY L. SMITH, REVIVAL AND SOCIAL REFORM: AMERICAN PROTESTANTISM ON THE EVE OF THE CIVIL WAR (paperback ed. 2004) (analyzing the impact of Protestant evangelical Christianity on U.S. society during the late antebellum period).

⁷⁵ See Peter Baker, *Bush Tells Group He Sees a "Third Awakening,"* WASH. POST (Sept. 13, 2006), www.washingtonpost.com/wp-dyn/content/2006/09/12/AR2006091201594_pf.html.

⁷⁶ For more information on the movement for the abolition of the slave trade and slavery within the U.S., see, e.g., JOHN HOPE FRANKLIN & EVELYN BROOKS HIGGINBOTHAM, FROM SLAVERY TO FREEDOM: A HISTORY OF AFRICAN AMERICANS 184-207 (9th ed. 2010) (a broad-ranging account on African American history).

⁷⁷ The Emancipation Proclamation refers to the executive order President Abraham Lincoln signed in 1861, designed to free the slaves in the Confederate States. This left the work of emancipation to be completed in the Union States after the Civil War via the Civil War Amendments, which the Confederate States ratified to facilitate their readmission into the Union at the end of hostilities. The Thirteenth Amendment abolished slavery and involuntary servitude; the Fourteenth made anybody born within the U.S. a citizen of the country, effectively nullifying *Dred Scott v. Sanford*, 60 U.S. 393 (1857), where the Supreme Court ruled otherwise; and the Fifteenth Amendment, by forbidding denial or abridgment of the right to vote on account of race, color, or previous condition of servitude, effectively gave Black males the right to vote. See, e.g., FRANKLIN D. GILLIAM, JR., FARTHER TO GO: READINGS AND CASES IN AFRICAN-AMERICAN POLITICS 21-25 (2002) (documenting the changing fortunes of African Americans from the period of the Emancipation Proclamation in 1862 to the passage of the Fifteenth Amendment in 1870).

⁷⁸ I use the death of the Rev. Dr. Martin Luther King Jr. in April of that year as an endpoint. A sample of the numerous studies on the Black struggle for equality in America, whose strategies other minority groups draw upon in their

Though all the preceding events are important, the *Black Church* stands out for some more elaboration because of its centrality in this Article. The expression is used colloquially to designate the religious institutions of African Americans as a collective entity.⁷⁹ Although many Blacks are also members of historically white organizations (such as the Episcopal Presbyterian Congregational Church, United Methodist Church, and Roman Catholic Church), nine denominations to which most Blacks belong are:

- The African Methodist Episcopal (AME) Church,
- The African Methodist Episcopal Zion (AMEZ) Church,
- The Christian Methodist Episcopal (CME) Church,
- The National Baptist Convention, USA, Inc. (NBC),
- The National Baptist Convention of America, Unincorporated (NBCA),
- The Progressive National Baptist Convention (PNBC),
- The Church of God in Christ (COGIC),
- National Missionary Baptist Convention (NMBC),
- and
- The Full Gospel Baptist Church Fellowship (FGBCF).

Of the nine, the first seven denominations are traceable to the Free African Society (FAS), formed in 1787, by Richard Allen and other black leaders in reaction to the treatment of Blacks as

own struggles for equality, include DIANE MCWHORTER, *CARRY ME HOME: BIRMINGHAM, ALABAMA: THE CLIMATIC BATTLE OF THE CIVIL RIGHTS REVOLUTION* (2013); JAMES H. CONE, *MALCOLM & MARTIN AND AMERICA: A DREAM OR A NIGHTMARE* (1991); HENRY HAMPTON & STEVE FAYER, *VOICES OF FREEDOM: AN ORAL HISTORY OF THE CIVIL RIGHTS MOVEMENT FROM THE 1950S THROUGH THE 1980S* (1990); TAYLOR BRANCH, *PARTING THE WATERS: AMERICA IN THE KING YEARS 1954-1963* (1988); DAVID GARROW, *BEARING THE CROSS: MARTIN LUTHER KING JR. AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE* (1986); and MARTIN LUTHER KING JR., *WHY WE CAN'T WAIT* (2011).

⁷⁹ See generally ERIC C. LINCOLN & LAWRENCE MAMIYA, *THE BLACK CHURCH IN THE AFRICAN AMERICAN EXPERIENCE* (1990) (a wide-ranging study revolved around the seven denominations and clergy of the Black Church). The reader should note that, contrary to its connotation of complete independence, the Black Church nonetheless maintains connection to white religious institutions (as the next statement suggests) in the sense that several predominantly African American churches exist as members of predominantly white denominations. Baer, *supra* note 12.

second-class citizens in white-dominated churches. The seven strictly form the Black Church;⁸⁰ the last two came later.⁸¹

Another important development, tied to the maturation of the Black Church, was religious diversification among Blacks. By the period of the Great Depression in the 1930s, the African American community “was literally glutted with churches of every variety”⁸² The net effect of the diversification, and differentiation, is that the Black Church is no longer marked by “a singular Christian preoccupation”—or simply “Black and Christian,”⁸³ as was previously the case. Instead, the African American religious experience today includes various churches, such as: Black spiritual churches, Buddhism, Humanism, Judaism, Protestant churches, the Roman Catholic Church, the Nation of Islam, Sunni Islam, Santería, and Voodoo.⁸⁴

Other accounts in the literature parallel and complicate the period above based on the Great Awakening. One such account, with which I complete the discussion in this section, is the measurement by Professors West and Glaude. They identify five major eras in African American religious history, from the eighteenth century to the present time, with key events that mark and define each era.⁸⁵ The eras are: mid-18th century-1863; 1864-1903; 1904-1954; 1955-1964; and 1965-today. A major event that marked the first era was the Emancipation Proclamation. During this period, Blacks used religion to cure the harms caused by slavery. It was in response to this problem that, as we will see shortly, African Americans embraced Christianity.

⁸⁰ *Id.* See also *supra* note 2, for my definition of the *Black Church*.

⁸¹ Other than the formation of the African Methodist Church by Richard Allen in 1787, religion scholars debate the specific event that marked the emergence of an independent Black Church. Some see that moment as the establishment of a slave congregation in 1758 near Mecklenberg, Virginia, while others pinpoint the establishment of the Silver Bluff Church in South Carolina, between 1773 and 1775, as that moment. Baer, *supra* note 12.

⁸² *Id.* (citing G.S. WILMORE, BLACK RELIGION AND BLACK RADICALISM (1983)).

⁸³ West & Glaude, Jr., *supra* note 4, at xv.

⁸⁴ ANTHONY B. PINN, THE AFRICAN RELIGIOUS EXPERIENCE IN AMERICA (2005) (providing snapshots of eleven religious traditions practiced by African Americans, aimed at enhancing understanding of how Blacks practice their faiths in the U.S.).

⁸⁵ West & Glaude, Jr., *supra* note 4, at xiii-xv. This measurement has two merits that the first lacks. First, it fills the lacuna in dates between each great awakening and the other, that the first measure leaves unfilled. In one instance, as between the Third and Fourth, that gap ran into 60 long years. Second, its periodization extends all the way to the present time.

During the second era (1864 to 1903), a reckonable event was the publication of the book, *Souls of Black Folk* by Dr. Du Bois. Besides praising the Black Church,⁸⁶ the work ushered in the treatment of African American religion as a legitimate object of inquiry. After the Civil War, the Reconstruction era was expected to herald a new moment in civil rights for Blacks. Instead, it sired Jim Crow laws, including a host of vote(r) suppression techniques like literacy tests, grandfather clauses, poll taxes, intimidation, lynching and other acts of terror. These laws segregated Blacks from Whites, and prevented many Blacks from using their newly-won right to vote. In short, the harm that Blacks used their religion (and faiths) to rectify this time were the problems arising from emancipation.

Two events defined the third era (1904 to 1954), namely: the Supreme Court decision in *Brown v. Board of Education*⁸⁷ ruling that segregated schools violated the equal protection clause of the U.S. Constitution, and expressly overruling the separate-but-equal doctrine in *Plessy v. Ferguson*;⁸⁸ and second, urbanization of a large segment of the black population, resulting in diversification of the African American religious experience beyond its singular Christian accent. Regarding the second occurrence, this period witnessed the flowering of scholarship on the influence of religion on African American life, drawing on the example set by Du Bois's work in the second period.⁸⁹

⁸⁶ See DU BOIS, *supra* note 53, at 198 (applauding the black church as "particularly [expressing] the inner ethical life of a people in a sense seldom true elsewhere.").

⁸⁷ *Brown v. Bd. of Educ. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483 (1954).

⁸⁸ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

⁸⁹ These studies include: ARTHUR HUFF FAUSET, *BLACK GODS OF THE METROPOLIS: NEGRO RELIGIOUS CULTS OF THE URBAN NORTH* (1944) (arguing, in what some commentators praise as a prescient anticipation of the Civil Rights Movement, that the Black Church provided the one place where Blacks could experiment without hindrance in diverse fields of human endeavors, including business, politics, and social reform); CARTER GODWIN WOODSON, *THE HISTORY OF THE NEGRO CHURCH* (1921) (providing a comprehensive and consolidated account of the Black Church from its earliest days to the period of the book's appearance in 1921); and BENJAMIN E. MAYS & JOSEPH W. NICHOLSON, *THE NEGRO'S CHURCH* (1912) (portraying the Black Church as a key component of community life that, for continued relevance in the lives of its members, must creatively adapt to its environment).

The flowering of scholarship that marked the third period extended into the fourth from 1955 to 1964.⁹⁰ But the era also witnessed “the complex relationship between the religious dimensions of the Civil Rights Movement and the Black Power phase, as well as the significance of Malcolm X and the politics of black nationalism.”⁹¹ The fifth and current period, beginning from 1965, is an era when African American religion, along with the systematic study of that religion, “begins to emerge from under the rubric of black theology and a singular Christian preoccupation.”⁹²

V. RELIGION IN AFRICAN AMERICAN LIFE

Judged by indicators, such as frequency of church attendance and prayers, and subjective identification with God, no other ethnic or racial group in America is more religious than African Americans.⁹³ There are about 60,000 black churches of all types and sizes, spread across all four corners of the U.S.⁹⁴ These churches have a collective membership of more than 17 million worshippers, and are led by about 50,000 ministers.⁹⁵ Through their numerous religious and secular programs,⁹⁶ these churches foster a ubiquitous presence among Blacks that have made them the center of community life.

There are three parts to the discussion in this section. The first is the evolution of the African American church from a singularly Christian preoccupation, into a diverse condition embracing many denominations. The second part tracks the manifestations of politics in African American religion as a prelude to President Obama’s faith-based initiatives, which is analyzed toward the end of the Article. Finally, there is a discussion on *race*, *freedom*, and *equality*, presented explicitly, as three concepts central to the African American religious tradition.

⁹⁰ One characteristic work was JAMES H. CONE, *BLACK THEOLOGY AND BLACK POWER* (1969) (an intriguing product of the Civil Rights and Black Power Movements that identifies liberation as the heart of the Christian Gospel and blackness as the primary mode of God’s presence).

⁹¹ West & Glaude, Jr., *supra* note 4, at xv.

⁹² *Id.*

⁹³ See *The Black Church*, *supra* note 5 and corresponding text.

⁹⁴ WALTON, JR. & SMITH, *supra* note 17, at 68.

⁹⁵ *Id.*

⁹⁶ See discussion *infra* Part IV.B.

A. Diversification Away from Christianity

Once upon a time, the African American church was “[b]lack and Christian,” with a configuration marked by “a singular Christian preoccupation.”⁹⁷ That is no longer the case. Today, the African American experience has emerged from its singular Christian preoccupation to include, first, Islam,⁹⁸ and beyond that faith a diversity of other religions.⁹⁹ To borrow the elegant language of one commentator, “the chosen peoples of the metropolis” go beyond Christians to include “Black Muslims, Black Jews, and Others[,]”¹⁰⁰ such as black spiritual churches, Buddhism, Humanism, Judaism, Protestant churches, the Roman Catholic Church, the Nation of Islam, Sunni Islam, Santería, and Voodoo.¹⁰¹ Moreover, Blacks embrace religious experiences that have elements of more than one denomination. For example, although the founder of the Moorish Science Temple viewed his denomination as a sect of Islam, the organization also drew from Buddhism, Christianity, Freemasonry, Gnosticism, and Taoism.¹⁰² To get a sense of the changing times, where in the past officialdom used the expression “the church” to designate all religious institutions (including African American organizations), today the choice language has become “our churches, our synagogues, our

⁹⁷ West & Glaude, Jr., *supra* note 4, at xv.

⁹⁸ See, e.g., MICHAEL A. GOMEZ, *BLACK CRESCENT: THE EXPERIENCE AND LEGACY OF AFRICAN MUSLIMS IN THE AMERICAS* (2005) (broad-ranging analysis of the social history of African Muslims and their descendants throughout the Americas, including the Caribbean); RICHARD B. TURNER, *ISLAM IN THE AFRICAN-AMERICAN EXPERIENCE* (2d ed. 2003) (examining the involvement of African Americans with Islam, including the roots of that involvement and the leaders of the new urban-based Black Muslim movements of the 20th century); EDWARD E. CURTIS IV, *ISLAM IN BLACK AMERICA: IDENTITY, LIBERATION, AND DIFFERENCE IN AFRICAN AMERICAN ISLAMIC THOUGHT* (2002) (tracing the origin and development of modern African-American Islamic thought, focusing on the works of five notable figures that include Elijah Muhammad, and Malcolm X).

⁹⁹ See generally PINN, *supra* note 84 (providing snapshots of eleven religious traditions practiced by African Americans).

¹⁰⁰ Wilson J. Moses, *Chosen Peoples of the Metropolis: Black Muslims, Black Jews, and Others*, in West & Glaude, Jr., *supra* note 4, at 534-49.

¹⁰¹ PINN, *supra* note 84 (providing snapshots of eleven religious traditions practiced by African Americans).

¹⁰² See, e.g., Susan Nance, *Mystery of the Moorish Science Temple: Southern Blacks and American Alternative Spirituality in 1920s Chicago*, 12 *RELIGION & AMERICAN CULTURE* 123-66 (2002); and Susan Nance, *Respectability and Representation: The Moorish Science Temple, Morocco, and Black Public Culture in 1920s Chicago*, 54 *AMERICAN Q.* 623-59 (2002).

temples, and our mosques”—where these public officials did not use the more secular “places of worship.”¹⁰³

Besides Christianity, another religion with a substantial black followership is Islam.¹⁰⁴ Therefore, it is appropriate that I spend the rest of this discussion on that denomination, particularly the Nation of Islam (“NOI”). This is the group that arguably symbolizes the face of the Muslim religion in America today. Some commentators depict the NOI to signify “[t]he resurgence of Black nationalism in the post-civil rights era.”¹⁰⁵ The group was founded in 1931 by Wallace Fard Muhammed (also known as W. D. Fard), who, in turn, was succeeded by Elijah Muhammad, NOI leader until his death in 1976. Part of Muhammad’s leadership overlapped with that of Malcolm X (formerly Malcolm Little) who, from the 1960s until his death in 1965, was the organization’s national spokesperson. Malcolm built a large following for the group among the urban poor and working class and under his watch the NOI experienced tremendous growth.¹⁰⁶

Led today by the Rev. Louis Farrakhan, the NOI contributes magnificently to the secular function of the Black Church that is related to the political socialization of African Americans. In October 1995, the organization accomplished a Million Man March. Viewed as the largest demonstration in U.S. history to be staged in the country’s capital city, this march brought more African Americans to Washington, D.C., than Dr. Martin Luther King Jr.’s 1963 March on Washington. After the meeting, numerous Blacks returned to their local communities rededicated to their grassroots agenda of personal empowerment and economic self-reliance.¹⁰⁷

¹⁰³ Barack Obama, Speech on July 1, 2008 in Zanesville, OH. Laura Meckler, *Faith-Based Program Gets Wider Focus*, WSJ (Feb. 5, 2009), online.wsj.com/news/articles/SB123379504018650159.

¹⁰⁴ Eighty-three percent of all African Americans affiliated with a religion identify themselves as Christians, compared to only 1% who identify themselves as Muslim. *See The Black Church*, *supra* note 5. However, Blacks make up about 14% of all Muslims in the U.S. and Canada. *See American Muslims Population Statistics*, PEWRESEARCHCENTER (May 22, 2007), <http://www.pewresearch.org/files/old-assets/pdf/muslim-americans.pdf>.

¹⁰⁵ WALTON, JR. & SMITH, *supra* note 17, at 137.

¹⁰⁶ *Id.*

¹⁰⁷ *See* Nick Chiles, *Minister Farrakhan Stresses Need for Black Economic Self-Reliance in Saviors Day Speech*, ATLANTA BLACK STAR, (Jan. 13, 2015), <http://atlantablackstar.com/2013/02/25/minister-farrakhan-stresses-need-for->

Under the leadership of Elijah Muhammad, the NOI maintained a doctrine of nonparticipation in U.S. electoral politics, rooted in advocacy for a separate black nation within the U.S. including racial chauvinism, and glorification of everything black.¹⁰⁸ Farrakhan formally abandoned this policy in 1993.¹⁰⁹ Before then, in 1983, he encouraged his followers to register and vote for Chicago mayoral candidate Harold Washington.¹¹⁰ Subsequently, in 1984, he supported Jesse Jackson's campaign for president.¹¹¹ With a membership estimated at 20,000,¹¹² the NOI operates about 120 mosques in various cities across the U.S., runs a series of modest small business enterprises, maintains a simulacrum of social welfare system for its members, and publishes a weekly newspaper called *The Final Call*. It also operates more than 120 radio and television stations across the country, through which the organization pursues its mission.¹¹³

B. Manifestations of Religion in African American Politics

Religion is a private matter, but also a phenomenon that can spill over into the other aspect of the lives of a group that is obvious or perceptible to observers. Blacks are no exception, as their religious beliefs and behaviors have an effect on their political attitudes. Black ministers, irrespective of denomination, played a pivotal role in the Civil Rights Movement. Testament to its diminished influence, Obama is among the first set of Black leaders who is not a minister and has no direct personal experience of the movement. Yet, many leaders who rise to leadership draw on the congealed sweat of predecessors. Obama is no exception; as Professors Walton and Smith appropriately point out, “[a]fter hundreds of years of slavery, lynching, and Jim Crow

economic-self-reliance-in-black-community/ (noting that “[e]conomic self-reliance has long been a key aspect of the Nation of Islam’s message since its founding in the 1930’s”).

¹⁰⁸ WALTON, JR. & SMITH, *supra* note 17, at 137. This nationalistic orientation departs strikingly from the advocacy of emigration to Africa favored by Marcus Garvey and previous nationalist movements. *Id.*

¹⁰⁹ *Id.* at 138.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² The organization keeps the size of its membership a guarded secret. *Id.* at 141.

¹¹³ WALTON, JR. & SMITH, *supra* note 17, at 141.

segregation, Obama's candidacy came to embody Dr. King's dream."¹¹⁴

Back to the early days of African American presence in this country, religion has had a major influence in black political activism.¹¹⁵ The locale for this activism has been, and continues to be the Black Church, praised as "historically the most important institution in black America."¹¹⁶ In black communities, the pulpit (symbolizing the church) has the power and status that may be analogized only to those of the black press.¹¹⁷ Testament to this ennobled status is the fact that, in black communities, the church is often the oldest and wealthiest institution able to hold its own in competition with a range of non-religious organizations within the notoriously secular environment of the U.S.¹¹⁸ Reflecting the religiosity of African Americans, black churches "serve the Lord" through programs of worship¹¹⁹— but arguably with more color, evidenced by a plenitude of praise songs and prayers, symptomatic of the rich oral tradition and moralism of black political culture.¹²⁰

To complement their services to God, black churches also serve humankind. They do so in two ways. First, they are a forum of public engagement. This was a role that grew over time in the black experience. During the days of slavery and segregation, with no other place to turn to as a center of free speech, the Black

¹¹⁴ *Id.* at 171. In a 1968 speech he gave to the Voice of America, broadcast all over the world, Joseph Kennedy, younger brother of President John F. Kennedy and his attorney general, said things are "moving so fast in race relations a Negro could be president in 40 years." "There's no question about it," the attorney general continued. "In the next 40 years a Negro can achieve the same position that my brother ha[d]." He conceded that prejudice exists and probably will continue to exist. "But we have tried to make progress and we are making progress. We are not going to accept the status quo." Gary Younge, *Obama's Inauguration Carries Symbolic Resonance on Martin Luther King Day*, THE GUARDIAN (Jan. 20, 2013), <http://www.theguardian.com/world/2013/jan/20/obama-inauguration-martin-luther-king>. Those fast changes in race relations were the result of the Civil Rights Movement that Dr. King and others spearheaded.

¹¹⁵ See generally FREDERICK HARRIS, SOMETHING WITHIN: RELIGION IN AFRICAN-AMERICAN POLITICAL ACTIVISM (2001) (exploring the influence of Afro-Christian religion as a political resource for the members of a "civic culture in opposition.").

¹¹⁶ West & Glaude, Jr., *supra* note 4, at xxii.

¹¹⁷ ST. CLAIR DRAKE & HORACE R. CAYTON, BLACK METROPOLIS: A STUDY OF NEGRO LIFE IN A NORTHERN CITY 398-429 (1993).

¹¹⁸ See *id.* at 418.

¹¹⁹ *Id.* at 416.

¹²⁰ See WALTON, JR. & SMITH, *supra* note 17, at 68.

Church offered itself as a location where black people could deliberate “about their circumstances without public humiliation from white America.”¹²¹ Crowning the role of the Black Church as an organ of public engagement is its function as an agent of political socialization. “[I]n the black community, in sharp contrast to the white, the church plays the dominant role in the socialization process,” followed by “the family, the school, and peer groups, in that order,” as “the next significant agents.”¹²²

The second sense in which black churches serve mankind is by offering themselves as a forum for the provision of a wide range of activities, with little tie to theology, that “lend a certain rhythm to existence.”¹²³ These purely secular services include campaigning for equal economic opportunities, improved access to education, and social welfare projects. Even putatively religious activities incorporate a secular dimension. For example, during Sunday schools, students are taught current affairs, issues relating to race, and self-improvement techniques, designed to promote their personal adjustment, and enrich their lives within the black community. Black churches offer a wide variety of religious and secular services, with an equally broad range of choices, including concerts, plays, movies, and musical extravaganza, as well as pageants, dinners, horse shows, and fashion events.¹²⁴ Some of these programs are organized in lieu of, or complementary to preaching.¹²⁵ These services can be entertaining enough to appeal to audiences beyond the church membership. Unsurprisingly, in public opinion surveys, some members of black churches give reasons with little connection to religion for attending church services—reasons, such as good singing, good speaking, or that they find the services to be beautiful and relaxing.¹²⁶

Individual Blacks “advance the race” through the accomplishments that reflect positively on black people, or through their social activities to raise the status of Blacks.¹²⁷ Many Blacks

¹²¹ DRAKE & CAYTON, *supra* note 117, at xxii. *See also* FAUSET, *supra* note 89 (contending that black churches afforded the locale or context where Blacks could express themselves in diverse fields of human endeavors, including business, politics, and social reform, without hindrance from Whites).

¹²² HANES WALTON JR., *INVISIBLE POLITICS: BLACK POLITICAL BEHAVIOR* 48 (1985).

¹²³ DRAKE & CAYTON, *supra* note 117, at 423.

¹²⁴ *Id.*

¹²⁵ *Id.* at 417.

¹²⁶ *Id.* at 423.

¹²⁷ *See id.* at 390-395.

expect their churches to play a visible role in this effort and they judge the effectiveness of these institutions based on this yardstick.¹²⁸ Indeed, for some Blacks, “the real importance of the church can be understood only by relating it to the economic and social status” of African Americans.¹²⁹ In this world view, the real value of the church is “the opportunity it” affords “for large masses of people to function in an organized group, to compete for prestige, to be elected [in]to office, to exercise power and control, [and] to win applause and acclaim.”¹³⁰

In sum, historically, the Black Church is “the central arena of the political activities of [B]lacks, the place where the struggle for power and the thirst for power could be satisfied.”¹³¹ The only time in recent memory when this did not appear to be the case was during the Civil Rights Movement, when one part of the Church was led by a conservative clergy, The Rev. J. H. Jackson of the National Baptist Convention (the largest denomination in the Black Church).¹³² His leadership was quickly and successfully challenged by Dr. Martin Luther King Jr. and a band of other progressive ministers.¹³³ Ever since that time, “the [B]lack [C]hurch became the principal base of the [C]ivil [R]ights [M]ovement[,]” such that “[t]oday, it is a principal base of political organizing and electoral campaigning[,]”¹³⁴ all the while retaining its status as a necessary staging ground for “oppositional politics”¹³⁵ in a white-dominant society.

C. Race, Freedom, and Equality as Key Concepts in African American Religious Tradition

Race, freedom, and equality are key concepts in the African American religious tradition that are so interconnected sometimes to the point it is hard to tell them apart.¹³⁶ The starting point in

¹²⁸ DRAKE & CAYTON, *supra* note 117, at 412, 424.

¹²⁹ *Id.* at 385.

¹³⁰ *Id.* at 423-424.

¹³¹ E. FRANKLIN FRAZIER, *THE NEGRO CHURCH IN AMERICA* 43 (1963) (internal quotation marks omitted).

¹³² WALTON, JR. & SMITH, *supra* note 17, at 69.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ HANES WALTON, JR. & ROBERT C. SMITH, *AMERICAN POLITICS AND THE AFRICAN AMERICAN QUEST FOR UNIVERSAL FREEDOM* 55 (5th ed. 2010).

¹³⁶ Professors Walton and Smith based their whole text, various editions of which I have used for this work, on these three interlinked concepts. See WALTON JR. & SMITH, *supra* note 17, *passim*.

this Article is *race*, a major factor in American society and politics,¹³⁷ as well as a critical influence that shapes religions in the U.S.¹³⁸ Black religious expression is “ambivalently connected to white America.”¹³⁹ An independent Black Church evolved in this country in the eighteenth century as a reaction to the negative treatment of Blacks in white-dominated churches. To this day, “encounter of black and white” ranks among the central themes of American religious history.¹⁴⁰ Race remains salient in American politics. In their 1996 work, poignantly titled *Divided by Color*, Professors Kinder and Sanders noted, “Compared with opinion on other matters, opinions on race are coherent, more tenaciously held and more difficult to alter,” adding: white Americans “know what they think on matters of race.”¹⁴¹ Midway into his second term in office, Obama’s presidency has yet to usher in the post-racial order some analysts mused the election of a black president might trigger.¹⁴²

Next to *race*, and building on that immutable characteristic, are *freedom* and *equality*. In American government and politics, the last two terms constitute “the modern dilemma” of government;¹⁴³ the “original dilemma” being the internal contradiction between *freedom* and *order*.¹⁴⁴ For U.S. political scientists, the dilemma that afflicts the two concepts arises from

¹³⁷ WALTON, JR. & SMITH, *supra* note 17, at 1-23; West & Glaude, Jr., *supra* note 4, at xxii.

¹³⁸ C. Eric Lincoln, *The Racial Factor in the Shaping of Religion in America*, in West & Glaude, Jr., *supra* note 4, at 156-86.

¹³⁹ West & Glaude, Jr., *supra* note 4, at xxii.

¹⁴⁰ David W. Wills, *The Central Themes of American Religious History: Pluralism, Puritanism, and the Encounter of Black and White*, in West & Glaude, Jr., *supra* note 4, at 209-220.

¹⁴¹ DONALD R. KINDER & LYNN M. SANDERS, *DIVIDED BY COLOR: RACIAL POLITICS AND AMERICAN DEMOCRACY* 14 (1996).

¹⁴² See, e.g., Victor Davis Hanson, *What Happened to Obama’s Post-Racial Era*, REAL CLEAR POLITICS (Dec. 20, 2012) ;www.realclearpolitics.com/articles/2012/12/20/what_happened_to_obamas_post-racial_era_116485.html; Judith Weisenfeld, *Post-Racial America? The Tangle of Race, Religion, and Citizenship*, RELIGION & POLITICS (Oct. 24, 2012), religionandpolitics.org/2012/10/24/post-racial-america-the-tangle-of-race-religion-and-citizenship/; Olivier Richomme, *The Post-Racial Illusion: Racial Politics and Inequality in the Age of Obama*, REVENUE DE RECHERCHE EN CIVILISATION AMERICAINE, <http://rrca.revues.org/464> (last visited Jan. 10, 2015).

¹⁴³ KENNETH JANDA ET AL., *THE CHALLENGE OF DEMOCRACY: AMERICAN GOVERNMENT IN GLOBAL POLITICS* 21-22 (11th ed. 2012). See the various instances of contradiction between the two ideals that the authors provided on pp. 21-22.

¹⁴⁴ *Id.* at 20-21.

the fact that although the two values “go hand in hand,” in reality, they can “clash when governments enact policies to promote social equality.”¹⁴⁵ However, from a historical standpoint, the story is much less complicated. Freedom is “the absence of constraints on behavior” or a term synonymous with *liberty*.¹⁴⁶ Black presence in the U.S., and specifically the “peculiar institution” of slavery, was an important factor in the genesis of the idea of freedom in this country and the rest of the Western world.¹⁴⁷ Put differently, for African Americans, oppression based on race impelled the quest for freedom.¹⁴⁸

Freedom forms a major aspect of black religion,¹⁴⁹ to the point that the two are arguably inextricably linked.¹⁵⁰ Throughout their history, *freedom* and the pursuit of it, have “found deep religious resonance,” as well as been “a superlative value” “in the lives and hopes of African Americans.”¹⁵¹ Deep-seated faith in God, ensconced in the belief that “God will deliver us some day” is a single common theme in African American culture.¹⁵² From about the mid-eighteenth century, many Blacks converted to the Christian faith. Christianity was one of the tools that Blacks used to make sense of their condition as slaves. The Christian gospel gave black converts “a way of interpreting their situation,” and afforded “liberating possibilities,” signified in the “hope that one day they would be free.”¹⁵³ Christianity offered a “vocabulary” that helped black slaves escape some of the worst “psychic effects of slavery” and gain a measure of control over their own lives, outside

¹⁴⁵ *Id.* at 21.

¹⁴⁶ *Id.* at 14. For Professors Janda and his colleagues, this is freedom *of*, in contradistinction to freedom *from*, which, in the modern political context, “often symbolizes the fight against exploitation and oppression.” *Id.* at 15.

¹⁴⁷ WALTON, JR. & SMITH, *supra* note 17, at 2. The expression, *peculiar institution*, comes from Professors Franklin and Higginbotham. See FRANKLIN & HIGGINBOTHAM, *supra* note 76, at 130-58 (discussing “southern slavery.”).

¹⁴⁸ See generally WALTON, JR. & SMITH, *supra* note 17; see also WALTON, JR. & SMITH, *supra* note 17, at 1-23.

¹⁴⁹ LINCOLN & MAMIYA, *supra* note 79, at 34.

¹⁵⁰ See West & Glaude, Jr., *supra* note 4, at xx (maintaining that religion is central to a conception of the identity of Blacks “forged in the struggle for freedom in the New World.”).

¹⁵¹ LINCOLN & MAMIYA, *supra* note 79, at 3-4.

¹⁵² See MATTHEW HOLDEN, JR., THE POLITICS OF THE BLACK “NATION” 17 (1973) (highlighting the characteristics that render Black politics distinctive, but also making suggestions for bridging the racial gaps between Blacks and Whites, given the “inevitabl[e] interdependen[ce]” of the two groups).

¹⁵³ West & Glaude, Jr., *supra* note 4, at xx.

the suffocating intrusiveness of the white masters.¹⁵⁴ Black slaves found the evangelical traditions of Baptists and Methodists particularly appealing. This is because of the distinctive signature features of these denominations, such as an emphasis on individual experience, and the belief that all persons, irrespective of race or class, are equal before God.¹⁵⁵ Coming much later, Islam held a similar appeal for Blacks who adhered to the faith.¹⁵⁶ Devotees included the civil rights icon, Malcolm X, who advised that “America needs to understand Islam, because this is the one religion that erases the race problem from its society.”¹⁵⁷

Equality is a value that mandates similar treatment for similarly-situated persons, although much debate surrounds how to enforce this principle. Disagreement in our time is indicated in the distinction between equal legal opportunity and equality of result.¹⁵⁸ Much of the statement above related to *freedom* applies similarly to *equality*, but the latter emerged as a separate issue when nominal freedom, not facilitated by any government action in a severely free-market system, proved inadequate to deal with the intractable problem of inequality—legacies of slavery, segregation, and racism—that African Americans faced¹⁵⁹ and still

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ During his pilgrimage to Mecca in April of 1964, Malcolm X said he witnessed a brotherhood and equality he found lacking in the U.S. First in Cairo, Egypt, and later in Jeddah, Saudi Arabia, Malcolm indicated he experienced people of all color and nationalities treating each other equally. “The feeling hit me that there really wasn’t any color problem here. The effect was as though I had just stepped out of a prison.” Pierre Tristram, *Malcolm X in Mecca: When Malcolm Embraced True Islam and Abandoned Racial Separatism*, ABOUT.COM MIDDLE EAST ISSUES, middleeast.about.com/od/religionsectarianism/a/me080220b_2.htm (last visited Nov. 13, 2014). He subsequently wrote in his autobiography that “In my thirty-nine years on this earth, the Holy City of Mecca had been the first time I had ever stood before the Creator of All and felt like a *complete human being*.” *Id.* (emphasis added).

¹⁵⁷ *Id.* This is contained in one of his three famed “Letters from Abroad,” this one from Saudi Arabia on April 20, 1964. The others were from Nigeria and from Ghana. Malcolm left the Nation of Islam, in search of a deeper and more authentic Islamic experience, to become a Sunni Muslim. He said of Elijah Muhammad, then leader of the group. “Imagine, being a Muslim minister, a leader in Elijah Muhammad’s Nation of Islam and not knowing the prayer ritual.” *Id.*

¹⁵⁸ JANDA ET AL., *supra* note 143, at 17, 19-20; LARRY BERMAN & BRUCE ALLEN MURPHY, *APPROACHING DEMOCRACY* 8-9 (8th ed. 2013).

¹⁵⁹ *See, e.g.*, GILLIAM JR., *supra* note 77 at 45-55, 65-120 (covering two periods associated with the Civil Rights Movement: the era of “legalism” from 1950 to 1958; and the era of “non-violent direct action” from 1955-1965).

face today.¹⁶⁰ The Civil Rights Movement was a robust and gigantic struggle aimed more toward equal rights than to “freedom” as such.¹⁶¹

VI. SERVING THE NEEDY WHILE PRESERVING THE FIGURATIVE
“WALL” SEPARATING CHURCH AND STATE: PRESIDENT OBAMA’S
FAITH-BASED PROGRAM AND ITS ANTECEDENTS

Faith-based programs are governing tools designed to strengthen the ability of religion-based and secular institutions to deliver effective social services to needy communities—in partnership with public and private-sector organizations at all levels of the U.S. system (federal, state, and local)—while guaranteeing equal protection of the laws, free exercise of religion, and prohibiting laws that establish religion.¹⁶² As will become

¹⁶⁰ Barbara R. Arnwine, *Still Grappling with Racism “in the Age of Obama,”* LAWYERSCOMMITTEE.ORG, <http://www.lawyerscommittee.org/about/letter?id=0002> (last visited Jan. 28, 2015) (spotlighting barriers to voting, inequitable housing and lending practices, unemployment, environmental injustice, limited access to educational opportunities, mass incarceration, and healthcare disparities, to name these problems, among the areas of unfinished business). *See also* Richomme, *supra* note 142 (adjudging prospects for racial equality in the short run as “illusion”); and Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines since End of Great Recession*, FACTTANK (Dec. 12, 2014), <http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/> (reporting that in 2013, the wealth in assets of white households was 13 times the median wealth of black households, a jump from 8 times in 2010; in actual U.S. dollars, the median net worth of white households was \$141,900 in 2013 and \$138,600 in 2010, compared to \$11,000 in 2013 and \$16,600 in 2010 for black households). The Great Recession began in December 2007 and ended in June 2009. *Id.* Factors contributing to the wide gaps in assets between Blacks and Whites include the plunges in the real estate and stock markets. *Id.*

¹⁶¹ For example, in addition to indicating in his “I Have a Dream” speech that 100 years after the Emancipation Proclamation of 1863, “the Negro still is not free,” Dr. King also poignantly added: “one hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination; one hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity; one hundred years later, the Negro is still languished in the corners of American society and finds himself in exile in his own land. So we’ve come here today to dramatize a shameful condition.” Martin Luther King Jr., *I Have a Dream*, reprinted in WALTON, JR. & SMITH, *supra* note 17, at 337.

¹⁶² This definition is developed from President Obama’s first faith-based executive order of Feb. 5, 2009, (unnumbered) which amended George W. Bush’s Executive Order 13199 of Jan. 29, 2001 (establishing the White House Office of Faith-Based and Community Initiatives). *See* White House, *Amendments to*

clear shortly, different administrations emphasize different aspects of this cooperation. For example, George W. Bush put more stress on the religious aspect of this relationship,¹⁶³ compared with Barack Obama, whose program embraced both religious and secular elements.¹⁶⁴

Justification for the choice of President Obama's faith-based program for analysis over other programs in his domestic arsenal¹⁶⁵ is because of its more overt religious texture, even if the emphasis is less so pervasive, as indicated before, compared to former President Bush's. My intent in this section is not a full-scale exploration of President Obama's faith-based program; instead, the more modest goal is to develop material enough to facilitate discussion on the influence of religion in African American politics which forms the focus of this study. A rule of thumb for assessment is that the activity under review be completed, or that time elapse enough since the completion of the activity, to make for dispassionate or detached evaluation. None of these conditions exists here, since as I write these words, President Obama has two more years to complete his second term in office. Accordingly, the following comment is a proverbial mid-term analysis tailored specifically to the influence of religion on African American politics.

A. Charitable Choice

Every story needs a starting point. For President Obama's Faith-Based and Neighborhood Partnerships, that starting point would be *charitable choice*, an event that took place during the presidency of fellow Democrat William J. Clinton, and twelve years before Obama came to office in 2009. *Charitable choice* refers

Executive Order 13199 and Establishment of the President's Advisory Council for Faith-Based and Neighborhood Partnerships, WHITEHOUSE (Feb. 5, 2009), www.whitehouse.gov/the-press-office/amendments-executive-order-13199-and-establishment-presidents-advisory-council-faith [hereinafter Obama's 2009 Exec. Order].

¹⁶³ See *infra* Part V. B. (dealing with the Bush program).

¹⁶⁴ See *infra* Part V. C. (focusing on the Obama program).

¹⁶⁵ One that comes to mind here is No Child Left Behind. After taking office, the Obama administration revamped the program under the Elementary and Secondary Education Act (ESEA), enacted on March 13, 2010. See *ESEA Reauthorization: A Blueprint for Reform*, U.S. DEP'T. OF EDUC., www2.ed.gov/policy/elsec/leg/blueprint/index.html (last visited Nov. 15, 2014).

to the provision under the Federal Welfare Reform Act (1996),¹⁶⁶ designed “to allow states to contract with religious organizations” to disburse welfare assistance “without impairing the religious character of such organizations.”¹⁶⁷ Back to the beginning of the country, governments at all levels of the U.S. political system have depended on nonprofits, including religious organizations, to deliver a variety of government-funded social services, most notably in healthcare, education, and childcare services.¹⁶⁸ The Supreme Court regularly upheld the flow of money to religious entities until in the 1970s and 1980s when it began to take a more critical and restrictive view of these transfers.¹⁶⁹ But this era soon ran its course, and by the late 1980s, the high court loosened its interpretation of the First Amendment.

This was the setting when, by the mid-1990s, individuals and groups who sought a larger role for religion in the public

¹⁶⁶ See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, § 104. The law is also known as the Temporary Assistance to Needy Families Act (TANF), or, more simply, the Welfare Reform Act. It replaced the Aid to Families with Dependent Children (AFDC) program that, since the 1930s, had provided a federal guarantee of cash assistance for millions of Americans going through periods of economic hardship. See Stephen B. Page & Mary B. Larner, *Introduction to the AFDC Program*, available at https://www.princeton.edu/futureofchildren/publications/docs/07_01_01.pdf (last visited Nov. 21, 2014).

¹⁶⁷ 42 U.S.C. §§ 603-04.

¹⁶⁸ E.J. Dionne Jr. & Melissa Rogers, *Serving People in Need, Safeguarding Religious Freedom: Recommendations for the New Administration on Partnerships with Faith-Based Organizations, Executive Summary* (Dec. 2008), available at http://www.brookings.edu/~media/research/files/papers/2008/12/religion%20dionne/12_religion_dionne.pdf. As Rogers laconically put it in a 2010 article, “The government works with a wide range of nongovernmental organizations to achieve secular ends in the social service arena.” Melissa Rogers, *Continuity and Change: Faith-Based Partnerships under Obama and Bush*, WASH. POST (Dec. 13, 2010), <http://www.brookings.edu/research/opinions/2010/12/13-faith-based-rogers>.

¹⁶⁹ See Dionne, Jr. & Rogers, *supra* note 168. The Court distinguished between “pervasively sectarian organizations” in which case it took a negative view of a program and merely religiously affiliated, in which case it was more likely to approve a program under challenge. A pervasively sectarian institution is one where “the religious activities so pervade the institution’s operation that religious and secular functions cannot be separated.” STEVEN G. GEY, RELIGION AND THE STATE 595 (2001). The problem with this definition, though, is that “[t]he criteria for assessing whether an institution is pervasively sectarian are complex, elusive, and heavily fact-intensive.” *Id.* at 596.

square seized the opportunity to advocate for charitable choice.¹⁷⁰ Capitalizing on the changes in the Supreme Court's First Amendment interpretation, these advocates strove "to replace a patchwork of church-state rules that applied to partnerships supported by federal funds with one standard set of rules," specifically, "a declaration that all religious organizations are eligible to seek government aid," and that the government should dispense with certain restrictions imposed on government assistance to religious organizations, most notably the prohibition forbidding discrimination in employment when these entities use government grants.¹⁷¹ The term itself was coined by then-Senator John Ashcroft (Republican from Missouri), a champion of this measure in the Senate, who went on to serve as U.S. Attorney-General under George W. Bush.¹⁷² One of Ashcroft's goals in proposing charitable choice was "to encourage faith-based organizations to expand their involvement in the welfare reform effort by providing assurances that their religious integrity would be protected."¹⁷³

Clinton signed this provision into law as part of the Welfare Reform Act—much to the chagrin of Blacks, who as a group formed his staunchest supporters,¹⁷⁴ and many of whom

¹⁷⁰ Dionne, Jr. & Rogers, *supra* note 168. *See also* *Bradfield v. Roberts*, 175 U.S. 291 (1899) (upholding a payment of funds from the District of Columbia to a hospital that was under the auspices of the Catholic Church).

¹⁷¹ Dionne, Jr. & Rogers, *supra* note 168.

¹⁷² GEY, *supra* note 169, at 708-9. During his period in the Senate, Ashcroft attempted to attach charitable choice provisions to a wide range of federal legislation. *Id.* at 709. George W. Bush appointed Ashcroft as Attorney-General following Ashcroft's failure to win re-election into the Senate in 2000.

¹⁷³ JO RENEE FORMICOLA ET. AL., *FAITH-BASED INITIATIVES AND THE BUSH ADMINISTRATION: THE GOOD, THE BAD, AND THE UGLY 6* (2003).

¹⁷⁴ Clinton was wedded to welfare reform because of its electoral attractiveness. Although in absolute number, there are more Whites than Blacks on welfare (colloquially called the handout or the dole), welfare is considered by many Whites as a Black issue because of the higher proportion of Blacks who receive this benefit, compared to Whites. This occurrence is then compounded by the perception in public opinion polls that poor Blacks on welfare are lazy and prefer welfare over work—whereas Whites on welfare do so because of circumstances beyond their control and really need help. Worse still, a 1984 Democratic Party poll concluded that the Democrats had lost the support of many Whites because the party was viewed as the "giveaway party, giving white tax money to [B]lacks and poor people." WALTON, JR. & SMITH, *supra* note 17, at 300-304. This was the context in which Bill Clinton was advised by a strategist that to win back so-called Reagan Democrats (members of the Democratic Party who left their own party to vote for Ronald Reagan of the Republican Party during his two campaigns for the presidency) in the key battleground states of the Midwest,

affectionately adorned him with the moniker “first black President.”¹⁷⁵ The narrative in some of the literature is that Clinton was antipathetic toward charitable choice, and that his disinclinations lingered even after his signature of the bill into

namely, Illinois, Michigan, Ohio, and Pennsylvania, he would have to take a tough anti-welfare stance. Faced with the struggle for reelection in 1996, Clinton followed the advice by signing a draconian welfare bill authored by the Republican Party-controlled Congress. *See id.* To get a sense of the draconian character of this “reform” measure, major provisions of the law include: welfare recipients will be required to work after two years; cash payments will be provided for no more than 5 years during a recipient’s lifetime; and states may deny cash payments to children born into families already receiving assistance. Pub. L. No. 104-193, 110 Stat. 2105 § 104.

¹⁷⁵ The writer Toni Morrison first used the term “our first Black President” positively, if not affectionately, for the characteristics of Bill Clinton that identify him intimately with Blacks for which features his political opponents, especially within the Republican Party, supposedly persecuted him. “Years ago, in the middle of the Whitewater [real-estate scandal] investigation, one heard the first murmur: white skin notwithstanding, this is *our first black President*. Blacker than any actual black person who could ever be elected in our children’s lifetime. After all, Clinton displays almost every trope of blackness: single-parent household, born poor, working class, saxophone-playing, McDonald’s-and-junk-food-loving boy from Arkansas.” Toni Morrison, *Talk of the Town: Comment*, NEW YORKER (Oct. 5, 1998), www.newyorker.com/archive/1998/10/05/1998_10_05_031_TNY_LIBR000016504 (emphasis added). For all its apt representation of identification with Blacks, the quote is sorely lacking in prescience judged by the phrase “blacker than any actual black person who could ever be elected in our children’s lifetime”! Subsequently, another operationalization of the term arguably better than Morrison’s evolved. This was by Rep. Eddie Bernice Johnson (Democrat from Texas) who posited during a dinner for Bill Clinton in 2001, organized by the Congressional Black Caucus (CBC), after Clinton had completed his tenure as president, that Clinton “took so many initiatives he made us think for a while we had elected the first black president.” Marc Morano, *Clinton Honored as “First Black President” at Black Caucus Dinner*, THE NATION (Oct. 1, 2001) <http://www.cnsnews.com/ViewNation.asp?Page=/Nation/archive/200110/NAT20011001e.html>. The civil rights lion, John Lewis (Democrat from GA), echoed the same sentiment by stating that Clinton “has the rare capacity of connecting with African Americans. He understands the hopes and dreams and the frustration of African Americans. We identify with him and he can identify with us.” *Id.* Clinton, who sited his post-presidency office in black-dominated Harlem, stated, “I am happy in Harlem and I am honored to be thought of as the first black president.” *Id.* Most recently, in an appearance on an ABC late-night TV show, Clinton embraced both the moniker as the nation’s first black president—and the actual first black president. “I loved being called the first black president, but Barack Obama really is,” he told the audience. Seema Mehta, *Bill Clinton Being the First Black President, and Aliens Too*, L.A. TIMES (April 3, 2014), articles.latimes.com/2014/apr/03/news/la-pn-bill-clinton-jimmy-kimmel-20140403.

law.¹⁷⁶ Actually, the matter is more complicated or “mixed.”¹⁷⁷ Dionne and Rogers conveyed that Clinton signed charitable choice “several times,” even as he sought “to soften some of its more controversial elements.”¹⁷⁸

B. Former President George W. Bush’s Faith-Based and Community Initiatives

Bush’s resort to and experimentation with faith-based approaches to governance predated his presidency. He adopted a faith-based approach to social service delivery while he was governor of Texas,¹⁷⁹ and the brochure for his presidential campaign distinctively featured a promise to “Help Charities and

¹⁷⁶ All of these oppositions, occurring following his signature of the welfare reform bill, include: a proposal that Congress delete charitable choice from the law as “technical corrections”; when this failed, a guidance letter to federal administrators prohibiting “pervasively sectarian” religious organizations from eligibility to compete for federal funding; and signature of signing statements, indicating his own construction of the Constitution to the effect that the government may not allow direct funding of “pervasively sectarian” religious organizations. Philip C. Aka, *Assessing the Constitutionality of President George W. Bush’s Faith-Based Initiatives*, 9 J. L. SOC’Y 53, 86 (2008); *Faith-Based Initiative*, CONGRESSMAN BOBBY SCOTT, bobbyscott.house.gov/issues/faith-based-initiative (last visited Jan. 10, 2015). For the definition of a “pervasively sectarian” institution, see *supra* note 169.

¹⁷⁷ Dionne, Jr. & Rogers, *supra* note 168.

¹⁷⁸ *Id.* They elaborated that “[t]he Clinton administration also took a number of actions that were not connected to charitable choice but linked to the long tradition of social service partnerships between the government and religious groups, such as promoting nonfinancial partnerships between public schools and religious communities and encouraging religious organizations to play a key role in advocating for affordable and adequate housing.” *Id.*

¹⁷⁹ As governor of Texas, Bush used the charitable choice provisions of the Welfare Reform Act of 1996 to support the work of faith-based groups in that state. Coming to Washington, D.C., his faith-based office was briefly headed by Don Willet, an aide from his period in office as governor who was later appointed a justice on the Texas Supreme Court. Back to these faith-based days in Texas, Bush stated in a 1996 speech instructively titled, “We Need a Renewal of Spirit in this Country,” that “there is no overcoming anything without faith—be it drugs or alcohol or poverty or selfishness or flawed social policy.” Aka, *supra* note 176, at 57 (2008) (quoting Benjamin Soskis, *Act of Faith*, THE NEW REPUBLIC, Feb. 26, 2001, at 20). The belief is consistent with the philosophy of “compassionate conservatism,” a political doctrine which advocates the application of traditionally conservative techniques in society to promote the general welfare. See Aka, *supra* note 176, at 57.

Faith-Based Groups Serve Those in Need.”¹⁸⁰ Coming into office in January of 2001, Bush attempted to expand charitable choice to any federal social service program he could lay his “compassionate conservatism” hand on, strong in the belief that “faith-based charities should be able to compete on an equal basis for public dollars to provide public services[,]”¹⁸¹ and determined to reverse what he perceived as “the federal government’s previous bias against small groups that do great works.”¹⁸² In short, he would use his faith-based initiative to “[d]eliver[] help and hope to millions at home and around the world.”¹⁸³

When the effort failed, Bush fell back on non-statutory measures. By the end of his two terms in office as president, he

¹⁸⁰ See *George W. Bush for President 2000 Campaign Brochure: ‘Opportunity, Security[,] and Responsibility—A Fresh Start for America, 4PRESIDENT.ORG*, http://www.4president.org/brochures/georgewbush2000_brochure.htm (last visited Jan. 13, 2015). Among other things, Bush promised to “reform laws and remove regulations that discourage and hamper charities and faith-based groups from delivering social services,” “start a new program to mentor and assist the 1.3 million children with parents in prison,” “encourage and expand the role of charities in after-school programs and remove obstacles to faith-based groups being more involved in drug treatment and maternity group homes,” and increase the ability of private and religious groups “to compete to provide services in federal, state, and local social programs.” *Id.* Elsewhere, Bush indicated: “In every instance where my administration sees a responsibility to help people, we will look first to faith-based organizations, charities, and community groups that have shown their ability to save and change lives. We will make a determined attack on need, by promoting the compassionate acts of others.” *President Bush Attends Office of Faith-Based and Community Initiatives’ National Conference*, WHITEHOUSE (June 26, 2008, 12:59 PM), georgewbush-whitehouse.archives.gov/news/releases/2008/06/print/20080626-20.html [hereinafter *Bush Attends OFBCI National Conference*].

¹⁸¹ Exec. Order 13279, *Equal Protection of the Laws for Faith-Based and Community Organizations*, 67 Fed. Reg. 77141, (Dec. 12, 2002), available at <http://www.whitehouse.gov/news/releases/2002/12/20021212-6.html>; see also *Unlevel Playing Field: Barriers to Participation by Faith-Based and Community Organizations in Federal Social Service Programs*, WHITE HOUSE (Aug. 2001), <http://www.whitehouse.gov/news/releases/2001/08/print/unlevelfield.html> (audit of federal programs by the newly-created OFBCI, designed to uncover barriers to participation of faith-based organizations in social service delivery).

¹⁸² See *Aka supra* note 176, at 62, quoting Jim Towey, *The Faith-Based Initiative: Compassion in Action*, 33 HUM. RTS. 6 (2006). Jim Towey was the second director of the White House Office of Faith-Based and Community Initiatives from 2002-2006, following founding director John DiIulio Jr., political science professor at the University of Pennsylvania, from January to August 2001.

¹⁸³ *Fact Sheet: Faith-Based and Community Initiatives: Delivering Help and Hope to Millions at Home and Around the World*, WHITEHOUSE (June 26, 2008), georgewbush-whitehouse.archives.gov/news/releases/2008/06/20080626-3.html.

signed and unveiled six executive orders on faith-based initiatives¹⁸⁴ that in turn generated dozens of federal government regulations and policies, including a 2007 memo from the Department of Justice¹⁸⁵ that faith-based critics have complained about ever since. Using these non-statutory devices, President Bush established a faith-based office inside the White House, the first U.S. president in recent memory to do so.¹⁸⁶ He also created faith-based centers in eleven federal agencies,¹⁸⁷ and instigated

¹⁸⁴ These, in order of signature, are:

- Exec. Order 13199, *Establishment of White House Office of Faith-Based and Community Initiatives*, 66 Fed. Reg. 8499 (Jan. 29, 2001), available at <http://www.whitehouse.gov/news/releases/2001/01/20010129-2.html> (establishing the Office of Faith-Based and Community Initiatives, OFBCI),
- Exec. Order 13198, *Agency Responsibilities with Respect to Faith-Based and Community Initiatives*, 66 Fed. Reg. 8497 (Jan. 29, 2001), available at <http://www.whitehouse.gov/news/releases/2001/01/20010129-3.html> (setting out organizational guidelines for the OFBCI),
- Exec. Order 13279, *Equal Protection of the Laws for Faith-Based and Community Organizations*, 67 Fed. Reg. 77141,
- Exec. Order 13280, *Responsibilities of the Department of Agriculture and the Agency for International Development with Respect to Faith-based and Community Initiatives*, 67 Fed. Reg. 77145 (Dec. 12, 2002), available at <http://www.whitehouse.gov/news/releases/2002/12/20021212-5.html>,
- Exec. Order 13342, *Responsibilities of the Department of Commerce and Veterans Affairs and the Small Business Administration with Respect to Faith-Based and Community Initiatives*, 69 Fed. Reg. 31509 (June 1, 2004), available at <http://whitehouse.gov/news/releases/2004/06/20040601-1.html>, and
- Exec. Order 13397, *Responsibilities of the Department of Homeland Security with Respect to Faith-Based and Community Initiatives*, 71 Fed. Reg. 12275 (Mar. 7, 2006), available at <http://222.whitehouse.gov/news/releases/2006/03/20060307-5.html>.

¹⁸⁵ *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act, Memorandum Opinion for the General Counsel*, UNITED STATES DEPARTMENT OF JUSTICE (June 29, 2007), <http://www.usdoj.gov/olc/2007/worldvision.pdf> [hereinafter Office of Justice Programs Memo].

¹⁸⁶ See 66 Fed. Reg. 8499. Under Bush, as now under Obama, the executive director of the faith-based program in the White House also holds the rank of special assistant to the president.

¹⁸⁷ There are three orders here involved: Exec. Order 13280, 67 Fed. Reg. 77145; Exec. Order 13342, 69 Fed. Reg. 31509; and Exec. Order 13397, 71 Fed. Reg. 12275. Altogether, there are eleven faith-based agency centers: Agriculture, Commerce, Education, Health and Human Services, Homeland Security, Housing and Urban Development, Justice, Labor, Small Business Administration, Veterans Affairs, and U.S. Agency for International Development.

creation of numerous similar offices at the state and local levels.¹⁸⁸ The net result was a “quiet revolution”¹⁸⁹ that trained over “100,000 social entrepreneurs, [and] hosted 34 regional conferences that promoted practical capacity-building skills for over 30,000 leaders from every state.”¹⁹⁰ In 2006 alone, the initiative “provided \$14 billion in direct funding to faith and community groups.”¹⁹¹ Whether by design or default, Bush built a program that future presidents will have a hard time in abolishing: “[a] subsequent president who does not share Bush’s passion for this issue will have few options: make a media splash by abolishing the Faith-Based office, or maintain the office while limiting or changing the focus of its work.”¹⁹²

Expanding relationships between religious groups and the government, in the manner Bush did, raised question under the First Amendment to the U.S. Constitution, which forbids the

¹⁸⁸ See Bush Attends OFBCI National Conference, *supra* note 180. In this speech, Bush claimed that “35 governors have faith-based offices—19 of them Democrats, 16 of them Republicans. Seventy mayors of both parties have similar programs at the municipal level.” *Id.* He also stated, “This is not a political convention. This is a compassion convention. (Applause). This is ‘we don’t care about politics’ convention. (Applause). We care about saving lives.” *Id.* See also *Important Contact Information—State Liaisons*, WHITEHOUSE (Dec. 15, 2006), <http://www.whitehouse.gov/government/fbci/contact-states.html> (identifying 33 of these offices). These state offices take one of three organizational formats: they are located in the governor’s office, a state agency, or a governor-appointed foundation.

¹⁸⁹ See *Quiet Revolution: The President’s Faith-Based and Community Initiative: A Seven-Year Progress Report*, WHITEHOUSE (Feb. 2008), <http://www.whitehouse.gov/government/fbci/reports.html>. See also JAY F. HEIN, *THE QUIET REVOLUTION: AN ACTIVE FAITH THAT TRANSFORMS LIVES AND COMMUNITIES 2* (2014) (contending that the “only remedies” to many social ills that grip communities are “stronger families, churches, neighborhoods, and voluntary associations;” and that strong private charities are a “force that lifts people and communities.”). Hein was executive director of the White House Office of Faith-Based and Community Initiatives from 2006-2008.

¹⁹⁰ Josh Good, *Assessing Four Years of Obama’s Faith-Based Initiatives*, NAT’L REV. (Feb. 8, 2013), www.nationalreview.com/corner/340229/assessing-four-years-obamas-faith-based-initiatives-josh-good/; Bush Attends OFBCI National Conference, *supra* note 180.

¹⁹¹ *Id.* Majority of the grants awarded under the faith-based initiative were distributed through state agencies to local organizations in the form of formula grants. See FAITH-BASED AND COMMUNITY INITIATIVE: IMPROVEMENTS IN MONITORING GRANTEES AND MEASURING PERFORMANCE COULD ENHANCE ACCOUNTABILITY (June 2006), available at www.gao.gov/new.items/d06616.pdf.

¹⁹² AMY E. BLACK ET AL., *OF LITTLE FAITH: THE POLITICS OF GEORGE W. BUSH’S FAITH-BASED INITIATIVES 202* (2004).

government from “establishing” religion,¹⁹³ a provision the Supreme Court once famously interpreted as erecting a “wall” between church and state.¹⁹⁴ As Dionne and Rogers observed in their report to the new President in December 2008 as Obama was poised to assume office, “by pushing against certain church-state boundaries, the [Bush] administration reduced the opportunity for finding common ground and raised genuine serious constitutional issues.”¹⁹⁵ Equally troubling, the expanded cooperation militated against non-discrimination provisions under existing U.S. law, including Title VII of the Civil Rights Act of 1964, Title VI of the same statute, nondiscrimination clauses in federal statutes authorizing funding for social service programs, and Executive Order No. 11246 signed by President Lyndon Johnson.¹⁹⁶

Title VII of the Civil Rights Act of 1964,¹⁹⁷ the federal law dealing with employment discrimination, forbids organizations

¹⁹³ See U.S. CONST. amend. I (ratified in 1791) (stating “Congress shall make no law respecting an establishment of religion . . .”). The Establishment Clause encompasses issues, such as the legality of state and local government aid to religious organizations and schools, school prayers, teaching of evolution and fundamentalist theories of creation, posting of the Ten Commandments in schools or public places, and the involvement of religious organizations in the delivery of social services, the matter directly involved in this Article. The other provision which both complements and contradicts this provision is free exercise. *Id.* (forbidding Congress from making laws “prohibiting the free exercise” of religion). The Supreme Court held the Free Exercise Clause applicable to the states in *Cantwell v. State of Connecticut*, 310 U.S. 296 (1940). The same judicial tribunal held the Establishment Clause applicable to the states, seven years later, in *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947).

¹⁹⁴ See *Everson*, 330 U.S. 1 (upholding a New Jersey statute that authorized local school districts to make rules and contracts for transporting children to and from school). The Court reasoned that “[t]he First Amendment has erected a wall between church and state” that “must be kept high and impregnable” with no allowance for “the slightest breach.” *Id.* at 18. Going further, the Court stated that the Establishment Clause means partly that “[n]either a state nor the federal government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.” *Id.* at 16. In retrospect, given these strong separationist averments, it is surprising that the Court upheld the program under challenge in the case.

¹⁹⁵ Dionne, Jr. & Rogers, *supra* note 168, at 2.

¹⁹⁶ Melissa Rogers, *Serving People in Need, Safeguarding Religious Freedom: Legal and Policy Backgrounders* (Dec. 2008), http://www.brookings.edu/~media/research/files/papers/2008/12/religion%20dionne/12_religion_dionne.pdf [hereinafter Rogers, Legal and Policy Backgrounders].

¹⁹⁷ Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (enacted July 2, 1964). The law was upheld as constitutional in *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964) (using the interstate commerce clause as basis). In a concurring opinion, Justice William O. Douglas indicated he would

with fifteen or more employees in an industry that affects interstate commerce from discriminating in employment based on “race, color, *religion*, sex, or national origin.”¹⁹⁸ But a special exemption under this title allows religious organizations to hire and fire employees, including those engaged in non-religious work, based solely on whether, or how well, such employees adhere to the employers’ tenets of faith.¹⁹⁹

Title VI of the Civil Rights Act stipulates, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”²⁰⁰ The distinction between this title and Title VII of the Civil Rights Act is two-fold: first, whereas Title VII’s nondiscrimination obligations apply to entities that affect interstate commerce, Title VI’s nondiscrimination obligations are conditions attached to receipt of federal dollars; and second, Title VI does not prohibit discrimination based on religion.²⁰¹

In addition to these two laws, some federal statutes authorizing funding for social service programs incorporate nondiscrimination clauses on a number of grounds, including religion. These laws are: the Omnibus Crime Control and Safe Street Act, the Workforce Investment Act, Head Start, and the

prefer if the high court had hinged its decision on §5 of the Fourteenth Amendment to the U.S. Constitution, giving Congress the power to enforce the provisions of the amendment “by appropriate means.” His reluctance, he indicated, is not based on any conviction that Congress lacks power to regulate commerce in the interests of human rights. To the contrary, the reluctance is borne out of his belief that the right of people to be free of state action that discriminates against them on ground of race, “occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel, and coal across state lines.” *Heart of Atlanta Motel*, 379 U.S. at 280 (Douglas, J., concurring).

¹⁹⁸ 42 U.S.C. §§ 2000e(b) and 2000e(a)(2) (emphasis added).

¹⁹⁹ Pub. L. 88-352, 78 Stat. 241, § 702. Parenthetically here, for our purpose, another portion of the title *specifically* exempts certain religious educational institutions. 42 U.S.C. § 2000e-2(e). The initial exemption is confined to religious activities of the organization and did not apply to job positions “connected with the carrying on by such [religious] corporation[s], association[s] or societ[ies] of [their] religious activities.” Pub. L. 88-352, 78 Stat. 241 (1964), § 702. Accordingly, in 1972, Congress broadened this exemption to allow religious organizations to hire based on religion in all employee positions. Pub. L. 92-261, 86 Stat. 103 (1972).

²⁰⁰ 42 U.S.C. § 2000d *et seq.*

²⁰¹ Rogers, Legal and Policy Backgrounders, *supra* note 196, at 14.

Child Care Development Block Grant Act.²⁰² Finally, Executive Order No. 11246 signed by President Johnson in 1965²⁰³ mandated *all* government contracting agencies to include a promise that the contractor would not discriminate against any employee based on “race, *creed*, color or national origin.”²⁰⁴ The order changed the prior practice, consistent with Executive Order 8802 of 1941, issued by President Franklin D. Roosevelt limiting the prohibition to defense contractors.²⁰⁵

Besides allegedly threatening the boundary separating church and state, President Bush’s faith-based initiative was also criticized for allowing faith-based recipients of federal monies to proselytize or evangelize during a secular, government-funded program, and for permitting employment discrimination with federal funds. One typical such criticism was by the advocacy group Americans United for the Separation of Church and State (more famously known as Americans United or AU), which took the position that the program “has blurred the line between public and private,” such that religious groups “no longer need to choose between religious programming and public funding.”²⁰⁶ The rule should be that “[n]o American citizen should have to pass someone else’s religious test to qualify for a federally funded job.”²⁰⁷ However, “[t]he Bush administration has extended [Title VII’s special exemption for religious groups] to all faith-based organizations—even those supported entirely by public money—thus giving them license to require applicants to pass religious tests or sign religious oaths to hold government-funded jobs.”²⁰⁸

²⁰² See *id.* at 18-19 for detailed discussion on these statutes.

²⁰³ Exec. Order 11246, 30 Fed. Reg. 12319 (Sept. 24, 1965), *available at* www.eeoc.gov/eeoc/history/35th/thelaw/eo-11246.html (emphasis added).

²⁰⁴ *Id.*

²⁰⁵ Exec. Order 8802, 6 Fed. Reg. 3109 (June 25, 1941), *available at* docs.fdrlibrary.marist.edu/od8802t.html (stipulating, “I do hereby reaffirm the policy of the United States that there shall be no discrimination in the employment of workers in defense industries or government because of race, creed, color, or national origin.”).

²⁰⁶ Richard B. Katskee, *Paying for Praying: What’s Wrong with the Faith-Based Initiative?* 33 HUM. RTS. 4,(2006).

²⁰⁷ Rep. Chet Edwards (Democrat from Texas), quoted in BLACK ET AL., *supra* note 192, at 6.

²⁰⁸ Katskee, *supra* note 206, at 4. The organization accused the administration of deficiency in “public oversight of faith-based organizations.” *Id.* at 5. To buttress its point, it cited a Government Accountability Office study that, among other findings, showed that the program “offer federally funded benefits to the needy on a pray-for-pay basis.” *Id.* at 5 (AU’s own language). The report in

While the administration unveiled safeguards supposedly designed to respect the line separating church and state,²⁰⁹ some of its actions suggested otherwise. One of these actions was Executive Order 13279 issued in 2002, which amended the Johnson order of 1965 to allow faith-based organizations to hire and fire employees, including those engaged in non-religious work, based on whether, or how well, they adhere to the employers' tenets of faith—in order words, hire only co-religionists.²¹⁰ Another, late in the Bush presidency, was a 2007 memo from the Department of Justice that overrode a statutory nondiscrimination provision that permitted World Vision, a conservative Christian charity, to receive a federal grant.²¹¹ Not surprisingly, these two events rank among the most controversial aspects of the Bush initiative critics point out. Finally, the program is criticized for its role as a ready and handy tool of political patronage: millions in government grants have gone to charities operated by Bush supporters, including black ministers who exchanged their support for faith-based grants.²¹²

In sum, for the example it affords and the advance it represents in the partnership between faith-based organizations and the government in the delivery of social services,²¹³ Bush's

question is FAITH-BASED AND COMMUNITY INITIATIVE: IMPROVEMENTS IN MONITORING GRANTEEES AND MEASURING PERFORMANCE COULD ENHANCE ACCOUNTABILITY, *supra* note 191, at 30-39, 53.

²⁰⁹ See, e.g., White House Office of Faith-Based and Community Initiatives, *Guidance to Faith-Based and Community Organizations on Partnering with the Federal Government* (2001); see also, most interestingly, given the next footnote, Section 2 of Exec. Order 13279, titled *Equal Protection of the Laws for Faith-Based and Community Organizations*, 67 Fed. Reg. 77141 (setting forth six such “fundamental principles.”).

²¹⁰ 67 Fed. Reg. 77141. For an order distinctly exempting religious organizations from federal non-discrimination requirements, the term “equal protection” rings doublespeak.

²¹¹ See Office of Justice Programs Memo, *supra* note 185.

²¹² See, e.g., Bill Berkowitz, *Cash and Carry: Bush, Blacks, and the Faith-Based Initiative*, MEDIATRANSPARENCY.ORG (Feb. 11, 2005), cursor.org/stories/cashandcarry.html. See also MICHAEL LEO OWENS, *GOD AND GOVERNMENT IN THE GHETTO: THE POLITICS OF CHURCH-STATE COLLABORATION IN BLACK AMERICA* (2007) (study based on survey data and fieldwork in New York showing how, at the urging of government agencies, many black churches have received grants to provide services to their neighborhoods' poorest residents and how, for activist churches, the collaboration is a way to enact their faith while helping their neighborhoods).

²¹³ See Dionne, Jr. & Rogers, *supra* note 168, at 2 (stating that the Bush program “was hailed by some as a healthy step forward in the relationship

faith-based program was afflicted with several problems on constitutional, legal, and other fronts begging for resolution by the time Barack Obama took office as president on January 20, 2009. The most serious, tied to church and state concerns and complicated by political patronage, is the circumvention of nondiscrimination provisions that press coverage on faith base lengthening into the Obama period characterized laconically as “taxpayer-funded employment discrimination”²¹⁴—more colloquially, as “help wanted, but only Christians need apply”²¹⁵ or help wanted, but “non-Christians need not apply.”²¹⁶ If serving the needy while maintaining the line separating church and state, including safeguard of religious freedom, is a difficult proposition, no policy illustrates this difficulty more than Bush’s faith-based initiative.

C. President Obama’s Faith-Based and Neighborhood Partnerships

Few recent candidates running for president have as much knowledge of a policy as Barack Obama did with faith base when he took office on January 20, 2009. As a U.S. Senator²¹⁷ Obama criticized those “who dismiss religion in the public square as inherently irrational or intolerant” and urged respect for believers and nonbelievers alike.²¹⁸ Senator Obama was also among hundreds of black leaders (clergy, veterans, business leaders, and members of Congress) whom Bush met in the White House on

between religion and government as well as an example of compassionate governance.”).

²¹⁴ Kerry Eleveld, *Losing Faith in Obama’s Pledge to End Taxpayer-Funded Employment Discrimination*, EQUALITY MATTERS BLOG (July 26, 2011), equalitymatters.org/201107260004.

²¹⁵ Manya A. Brachear, *Help Wanted, but Only Christians Need Apply*, CHIC. TRIBUNE (March 29, 2010), articles.chicagotribune.com/2010-03-29/news/et-met-world-relief-20100531_1_refuge-settlement-policy-hiring.

²¹⁶ Krista J. Kapralos, *Non-Christians Need Not Apply*, GLOBAL POST (Jan. 11, 2010), www.globalpost.com/passport/foreign-desk/100105/toeing-the-line-us-sponsored-religious-discrimination.

²¹⁷ Obama served in the U.S. Senate from Illinois from January 4, 2005 to November 16, 2008, for a period of nearly four years. *Obama, Barack (1961-)*, DIRECTORY OF THE UNITED STATES CONGRESS, 1774-PRESENT, bioguide.congress.gov/scripts/biodisplay.pl?index=o000167 (last visited Jan. 10, 2015).

²¹⁸ Quoted in Dionne, Jr. & Rogers, *supra* note 168, at 1.

February 8, 2005, where he solicited support for his programs and pledged that his policies “would help black America.”²¹⁹

During his campaign for president from 2007 to 2008, Obama made faith base a prominent part of his platform. In addition to releasing a “plan to engage faith-based and community organizations,”²²⁰ Obama made several promises on the campaign trail on how he would fix the Bush program that, coming into office, supporters and critics alike have urged him to redeem. An oft-quoted one was his pledge during a speech on July 1, 2008, in Zanesville, Ohio that, with the reader’s indulgence, I quote in full:

²¹⁹ Bill Sammon, *Bush Continues Outreach to Blacks*, WASH. TIMES (Feb. 9, 2005), www.freerepublic.com/focus/f-news/1339206/posts.

²²⁰ See generally *Partnering with Communities of Faith*, OBAMA '08, available at obama.3cdn.net/c2c74198bb57fc007c_e906mvlj.pdf (last visited Nov. 10, 2014) (presidential campaign brochure). The plan criticized the Bush administration’s faith-based program for being underfunded and for being used to promote partisan interests. *Id.* at 1-2. It also enumerated some guiding principles designed to address the constitutional and prudential concerns regarding “the role and scope of faith-based initiatives,” lessons from the Bush program, that Obama will later recite on the campaign trail: faith-based organizations who receive federal funds to provide social services cannot use those funds to proselytize or provide religious sectarian instructions, they cannot discriminate against nonmembers in providing services, and they must prove their efficacy or else lose continued funding. *Id.* at 2-3. There were also some innovative features. The first is the establishment of an advisory council of experts to provide recommendations on faith-based matters. Second, signal that some of those matters will be secular rather than sacred, these responsibilities will include closing the summer learning gap between middle-class and non-middle class (i.e. minority and poor) children that the future president expects to cost about \$500 million a year, which money he said he plans to finance “without increasing the deficit by cutting wasteful spending in government procurement and management.” *Id.* at 2-4. The plan carried a bit on this summer learning issue, indicating: “Differences in summer learning opportunities contribute to the achievement gaps that separate struggling minority and poor students from their middle-class peers. Studies show that the achievement gap widens during the summer for far too many children, with most losing about two months worth of grade level math skills. And while middle-class students make small gains in their reading skills over the summer, low-income students lose more than two months. Over the years, this summer learning loss accumulates to the point where poor and minority students frequently are 2.5 grade levels in reading behind their peers.” *Id.* at 4. A news story on the program outside the Obama plan explains that the program is designed to strengthen reading and math skills for children from low-income families every year. Deborah White, *Barack Obama’s Faith-Based Community Service Plan*, LIBERAL POLITICS, usliberals.about.com/od/faithinpubliclife/a/ObamaFthBsd.htm (last visited Jan. 11, 2015).

Make no mistake: As someone who used to teach constitutional law, I believe deeply in separation of church and state, but I don't believe this partnership will endanger that idea, so long as we follow a few basic principles. First, if you get a federal grant, you can't use that grant money to proselytize to the people you help and you can't discriminate against them—or against the people you hire—on the basis of their religion. Second, federal dollars that go directly to churches, temples, and mosques can only be used on secular programs. And we'll also ensure that taxpayer dollars only go to those programs that actually work.²²¹

For Obama, no less than for Bush but for a different reason, faith-based programs were a child of political necessity. Given his record in the U.S. Senate as a liberal,²²² Obama needed the vote of Evangelicals, one of the key religious groups that routinely vote for the Republican Party, to shore up his electoral chances.²²³ But he also seemed to embrace faith-based initiatives for genuine reasons.

²²¹ Quoted in Meckler, *supra* note 103. In this same speech, Obama promised that “with these principles as a guide,” his projected advisory council on faith-based initiative “will strengthen faith-based groups by making sure they know the opportunities open to them to build on their good works.” *Id.*

²²² See, e.g., Alexander Mooney, *Study: Obama Most Liberal Senator Last Year*, CNN (Jan. 31, 2008), politicalticker.blogs.cnn.com/2008/01/31/study-obama-most-liberal-senator-last-year/.

²²³ See Peter Wallsten, *Keeping Faith, Courting Conservatives*, WALL STREET J. (Feb. 4, 2010) (stating that his policy on faith-based initiatives “is part of a broader strategy by Mr. Obama and fellow Democrats to regain credibility with centrist and conservative voters who tend to be more religious and have supported the [Republican Party] in recent polls and elections.”). This news report contains the results of a poll by the Pew Forum on Religion and Public Life that tracked the support of various religious groups to the two major political parties. *Id.* (chart). Based on the diagram, Evangelicals have a history of support for the Republican Party that is bested only by Mormons. *Id.* The other groups, all of which have a history of substantial support for the Democratic Party, are mainline churches (about equal percentage of support for the two political parties), historically black churches (overwhelming support), Catholics, Orthodox, Other Christians, Jews (second only to historically black churches), and Muslims (third after historically black churches and Jews). *Id.* Similarly, see Susan Jacoby, Op-Ed, *Keeping the Faith, Ignoring the History*, N.Y. TIMES (Feb. 28, 2009), www.nytimes.com/2009/03/01/opinion/01jacoby.html?pagewanted=all&_r=0 (pointing out, “[t]hroughout Mr. Bush’s second term, the Democratic Party’s ‘religious left’ maintained that the party needed to shed its secular image to attract more religious voters.”).

During his speech in Ohio, Obama pled for “an all-hands-on-deck approach” for a solution to the many challenges the U.S. confronts:

As I’ve said many times, I believe that change comes not from the top down, but from the bottom up, and few are closer to the people than our churches, our synagogues, our temples, and our mosques. And that’s why Washington needs to draw on them. The fact is, the challenges we face today—from saving our planet to ending poverty—are simply too big for government to solve alone. We need an all-hands-on-deck approach.²²⁴

²²⁴ Quoted in Meckler, *supra* note 103. Obama also claimed in his campaign documents that his work as a community organizer in the south side of Chicago “not only solidified his personal faith, but instilled a deep understanding of the good works done by faith-based organizations in communities each and every day.” *Partnering with Communities of Faith*, *supra* note 220. For all the persuasiveness of these words, there are still individuals and groups who wonder whether faith-based initiatives of every formula, Bush or Obama, and by whatever name they go, are not a privatization mechanism that allows the government to conveniently abdicate its responsibility in the delivery of social services at a time of declining resources. To borrow the language of the advocacy group, Americans United for the Separation of Church and State:

It really gets down to politicians saying, “You know, we don’t really know how to fix most of these social problems,” so we’ll dump the poor, or people in gangs, or whatever category of people they can’t figure out a way to deal with, on the church steps one day. Then we’ll dump a bag of money there the next day, and we’ll pray that the two get together. That’s no way to run a government. That’s no way that we ought to be dealing with these social problems.

Quoted in Aka, *supra* note 176, at 104. Apparently consistent with this logic, one commentator posited that Obama’s “coopt[ation]” of Bush’s faith based program “makes a bad idea on a bipartisan basis,” and advised that “Budget hawks, advocates of religious freedom, and the faith-based community itself should join together and get government out of the charity business.” Michael D. Tanner, Op-Ed, *Obama’s Faith-Based Boondoggle*, WASH. TIMES (Jan. 28, 2010), www.washingtontimes.com/news/2010/jan/28/obamas-faith-based-boondoggle/. Tanner indicated “[t]he Obama administration has enough bad ideas of its own” to hold onto faith-based programs, which he assessed as “one of the more ill-conceived programs from” the Bush years. *Id.* Obama appears to anticipate this line of criticism. During his campaign for president, Obama allowed, “I’m not saying that faith-based groups are an alternative to government And I’m not saying that they’re somehow better at lifting people up. What I’m saying is that we all have to work together—Christian and Jew, Hindu and Muslim, believer and non-believer alike—to meet the challenges of the 21st century.” Dionne, Jr. & Rogers, *supra* note 168, at 4.

Since assuming office, Obama has signed two executive orders, compared to the six under George W. Bush, each designed to fix the problems from the Bush era. These are the order of February 5, 2009, which amended Bush's Executive Order 13199 of Jan. 29, 2001, setting up the Office of Faith-Based and Community Initiatives;²²⁵ and the order of November 17, 2010, amending Bush's Executive Order No. 13279 of December 12, 2002, intriguingly dealing with "equal protection of the laws,"²²⁶ which in turn amended Executive Order 11246, issued in 1965 by President Lyndon Johnson. Departing from the usual practice before now, none of Obama's executive orders carried a number.

The first order renamed the office "faith-based and neighborhood partnerships,"²²⁷ and created the advisory council for the program that Obama promised during his presidential campaign.²²⁸ The council shall be composed of no more than 25 members, not officers or employees of the national government, that the President appoints. These members shall be persons with experience and expertise in fields related to the provision of social services by faith-based and neighborhood organizations, and who shall serve without compensation, among other details.²²⁹ Consistent with the concept of a "team of rivals," borrowed from Abraham Lincoln, that marks his administration,²³⁰ Obama has

²²⁵ Obama's 2009 Exec. Order, *supra* note 162.

²²⁶ *Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations*, Exec. Order 13559, 75 Fed. Reg. 71319 (Nov. 17, 2010), available at www.whitehouse.gov/the-press-office/2010/11/17/executive-order-fundamental-principles-and-policymaking-criteria-partner.

²²⁷ Obama advocates a faith-based program dedicated to a strong partnership with grassroots groups, both faith-based and secular alike, and the new name reflects a new commitment to strengthening the partnership between the government and neighborhood communities. White, *supra* note 220, at 1. But to me this seems like a distinction without a difference, given that the Bush Executive Order establishing the Office of Faith-Based and Community Initiatives, Exec. Order No. 13199, listed "strengthening families and neighborhoods" among the responsibilities of the Office. See Aka, *supra* note 176, at 53, 69 n.60.

²²⁸ Obama's 2009 Exec. Order, *supra* note 162.

²²⁹ *Id.*

²³⁰ See Philip Rucker, *Obama Inspired by, Compared to Lincoln*, WASH. POST (Nov. 19, 2008), www.washingtonpost.com/wp-dyn/content/article/2008/11/18/AR2008111803854.html; James Crabtree, *Obama's Team of Rivals*, THE GUARDIAN (Nov. 18, 2008), www.theguardian.com/commentisfree/cifamerica/2008/nov/18/obama-clinton-team-of-rivals; Michael James, *Obama Proposes "Team of Rivals" Cabinet*, ABC NEWS (May 22, 2008), abcnews.go.com/blogs/politics/2008/

appointed persons of diverse and opposing ideological backgrounds to serve on the council. For example, his first council included several evangelical Christians, the president of Catholic Charities U.S.A., a rabbi, a Muslim community organizer, and the openly gay director of a nonprofit group.²³¹ But on the *implementation* front, President Obama did little to change the policies from Bush, which to the contrary, he left in place, including a vexatious policy embedded in a 2007 memo issued by the Justice Department.²³² In place of a reversal of Bush-era practices, the Obama administration adopted a “case by case” approach²³³ angering critics on the left, including Democratic Party leaders, such as Rep. Bobby Scott of Virginia, while pleasing some religious leaders who wanted those policies kept in place.²³⁴ As Professor John DiIulio, first faith-base czar under Bush elegantly puts it, “[m]any secular liberals are peeved by the former policy and many religious conservatives are riled by the latter policy.”²³⁵

05/Obama-proposes/. See also DORIS KEARNS GOODWIN, *TEAM OF RIVALS: THE POLITICAL GENIUS OF ABRAHAM LINCOLN* (2005) (documenting the genius and magnanimity of President Abraham Lincoln who, in the wake of a keenly contested election in 1860, forged a cabinet team that included his former rivals).

²³¹ Jeff Zeleny & Laurie Goodstein, *White House Faith Office to Expand*, N.Y. TIMES (Feb. 6, 2009), www.nytimes.com/2009/02/06/us/politics/06/obama.html?ref=politics.

The appointment pattern appears consistent with the recommendation of Dionne and Rogers regarding this matter. There they advised that “President-elect Obama should structure his [Council] so people with good-faith disagreements with parts of his initiative may serve on the council. By reaching out to those who have some differences with the administration on these issues, the incoming president will gain a full understanding of the debate and the options and promote greater unity and understanding. This council should also include representatives of a substantial number of secular as well as faith-based organizations.” Dionne, Jr. & Rogers, *supra* note 168, at 11.

²³² See *supra* notes 185 and 211 and corresponding texts.

²³³ See, e.g., Zeleny & Goodstein, *supra* note 231.

²³⁴ See, e.g., Dena Sher, *Obama Promised to Stop Government-Funded Discrimination. Has He?* ACLU (Aug. 1, 2012), <https://www.aclu.org/blog/lgbt-rights-religion-belief-womens-rights/Obama-promised-stop-government-funded-discrimination>; Adelle M. Banks, *Growing Coalition Presses Obama to End Policy on Religious Discrimination in Hiring*, WASH. POST (June 20, 2014), www.washingtonpost.com/national/religion/growing-coalition-presses-obama-to-end-policy-on-religious-discrimination/; Sarah Posner, *Obama’s Faith Based Failure*, SALON (May 4, 2012), www.salon.com/2012/05/04/obamas-faith-based-failure/; Eleveld, *supra* note 214; and *Partnering with Communities of Faith*, *supra* note 220.

²³⁵ John J. DiIulio Jr., *Amen (Again) to Faith-Based Initiatives*, ONFAITH (Jan. 28, 2013), www.faithstreet.com/onfaith/2013/01/28/amen-again-to-faith-based-initiatives/10024. DiIulio added, facetiously, “I may be alone in thinking that both have a legitimate gripe.” *Id.*

The second order modestly expanded the agency centers for faith-based initiative from eleven under George W. Bush to thirteen, introducing new agencies, such as the Environmental Protection Agency, and the Corporation for National Community Services, that pinpoint new areas of priority for the Obama administration, centered around environmental protection and greater volunteerism (especially the first), that, under Bush received muted or little attention.²³⁶ The order also introduced a range of new faith-based changes that includes:

- Mandating government agencies to identify alternative service providers to individuals who object to service because they are put off by the religious nature of an organization;
- Enhancing transparency by requiring government agencies to publish online the list of faith-based groups receiving taxpayer funds;
- Monitoring and enforcing standards regarding the relationship between church and state in manners that avoid excessive entanglement with religion; and
- Reminding groups to keep their religious activities entirely separate in time and location from the services provided with federal funds, although they are not required to remove religious signs and symbols—such as “Jesus Saves”—from their facilities or religious references from their names.²³⁷

These changes are additional to the basic ones going back to the Bush era prohibiting religious organizations that receive

²³⁶ See, e.g., Suzanne Goldenberg, *The Worst of Times: Bush's Environmental Legacy Examined*, THE GUARDIAN (Jan. 16, 2009), www.theguardian.com/politics/2009/jan/16/greenpolitics-georgebush; see also MICHAEL E. KRAFT, ENVIRONMENTAL POLICY AND POLITICS viii (6th ed. 2015) (observing that “[e]nvironmentalists strongly criticized the Bush White House for its reluctance to tackle global climate change, its misuse or disregard of science, and for environmental protection and natural resource policies that strongly favored economic development over public health and resource conservation.”).

²³⁷ Exec. Order 13559, 75 Fed. Reg. 71319. See also *President Obama Signs Executive Order to Implement Reform Recommendations of the President's Advisory Council on Faith-Based and Neighborhood Partnerships*, WHITEHOUSE (Nov. 17, 2010), www.whitehouse.gov/the-press-office/2010/11/17/president-obama-signs-executive-order-implement-reform-recommendations-p; and Devin Dwyer, *Faith-Based Debate: Obama Signs Order on Funds for Churches*, ABC NEWS (Nov. 18, 2010), abcnews.go.com/Politics/president-obama-executive-order-faith-based-initiative-church/story?id=12180146.

federal grants from using the money directly for religious activities, and mandating that they not discriminate based on religion when providing their services.²³⁸ The changes were based on recommendations from the advisory council, many of which, interestingly, parallel recommendations that Dionne and Rogers made to Obama as president-elect as he poised to assume office.²³⁹

The first director of the office was Joshua DuBois, a black pastor from Massachusetts, who was the president's outreach director when Obama ran for the U.S. Senate.²⁴⁰ DuBois resigned the position in 2013 pleading exhaustion after four years on the

²³⁸ Dwyer, *supra* note 237.

²³⁹ See Dionne, Jr. & Rogers, *supra* note 168, at 6-11. There were 16 of them altogether: **first**, welcome religious organizations to partner with government; **second**, increase funding for programs that work; **three**, use the tools of both the Executive Branch and Congress to create a consensus for a durable policy; **four**, clarify restrictions on direct aid and religious activities; **five**, protect the identity of religious providers; **sixth**, provide guidance on separation between religious activities and activities funded by direct government aid; **seventh**, strengthen protections for beneficiaries' religious liberty rights; **eight**, improve monitoring of compliance with church-state safeguards; **nine**, address religion-based decision making in government-funded jobs; **ten**, keep the government out of the church and simplify the process of forming separate 501(c)(3) organizations; **eleven**, avoid cronyism and religious patronage by highlighting peer review, evaluation, and accountability; **twelve**, promote nonfinancial partnerships as much as financial partnerships; **thirteen**, create new incentives for charitable giving; **fourteen**, establish annual hearing to assess progress and problems; **fifteen**, develop new strategies for outreach and training; and **sixteen**, establish a diverse White House Council and integrate efforts into domestic policy agenda. *Id.* The Obama administration has implemented many of these recommendations while also leaving many others unimplemented. The implemented ones include: No. 1; I have no way of determining Nos. 2, 4, 5, and 6; definitely yes for No. 7; arguably yes for No. 8; I have no way of determining No. 10, particularly regarding 501(c) (3) organizations; definitely yes for No. 12; I have no way of determining No. 13; and definitely yes for No. 16. The recommendations that obviously have yet to be implemented include No. 3 regarding consensus for a durable policy, and No. 14 regarding an annual hearing to assess progress and problems. Recommendation No. 3 is so important in a way that makes its absence troubling. My focus is on the call for "legislation to establish the broad lines of policy for the future," and for Obama to "commission a diverse group to seek a consensus for proposed federal legislation on the relevant issues." *Id.* at 7. What makes this matter troubling is the observation of Dionne and Rogers right on point that "[i]t is unfair to expect social service providers to adjust to a new set of policies in this area with each new president. It is also costly for providers and taxpayers." *Id.*

²⁴⁰ See Karen Travers, *Obama Names 26-Year-Old Director of Faith-Based Office*, ABC NEWS (Feb. 5, 2009), abcnews.go.com/Politics/President44/story?id=6806913.

job.²⁴¹ His tenure drew criticism of the Obama program as little more than “a political outreach office,”²⁴² with one commentator going so far as to dub him “Cesar Chavez—with power.”²⁴³ But other commentators view such “community-organizing principles”²⁴⁴ rather positively.²⁴⁵ The criticism, somewhat ironically, is evidence that Obama has complied with the recommendation of faith-based experts advising promotion of nonfinancial partnership as much as financial partnership.²⁴⁶ At

²⁴¹ Laurie Goodstein, *White House Director of Faith-Based Office Is Leaving His Post*, N.Y. TIMES (Feb. 7, 2013), www.nytimes.com/2013/02/08/us/politics/white-house-director-of-faith-based-initiatives-will-step-down.html?_r=0&pagewanted=print. John DiIulio, first faith-based czar under President Bush, was among persons in this news story who assessed Mr. DuBois tenure. DiIulio, Jr., *supra* note 235. DiIulio observed, “Subject to case by case reviews, the Obama administration has let stand rules that permit religious nonprofits that receive government grants to hire only with religionists, but it has also issued new rules that require religious nonprofits that receive federal money to offer employees insurance packages that violate some groups’ religious beliefs and tenets. Many secular liberals are peeved by the former policy, and many religious conservatives are riled by the latter policy. I may be alone in thinking that both have a legitimate gripe.” *Id.*

²⁴² Jim Towey, former faith base czar under Bush, *quoted in* Michelle Boorstein & William Wan, *Religious Leaders Worry that Obama’s Faith Council is for Show*, WASH. POST (Feb. 3, 2010), www.washingtonpost.com/wp-dyn/content/article/2010/02/02/AR2010020203770.html.

²⁴³ Good, *supra* note 190. In U.S. government and politics, Cesar Chavez is immortalized for his civil rights’ role in organizing Hispanic farm workers in California. For a sampling of the numerous works on this labor leader, see FRANK BARDACKE, *TRAMPLING OUT THE VINTAGE: CESAR CHAVEZ AND THE TWO SOULS OF THE UNITED FARM WORKERS* (2011); *THE FIGHT IN THE FIELDS, CESAR CHAVEZ AND THE FARMWORKERS MOVEMENT* (Susan Ferriss & Ricardo Sandoval eds. 1998); Cletus E. Daniel, *Cesar Chavez and the Unionization of California Farm Workers, in LABOR LEADERS IN AMERICA* (Melvyn Dubofsky & Warren Van Tine, eds. 1987); *The Story of Cesar Chavez*, UNITED FARMWORKERS, www.ufw.org/_page.php?menu=research&inc=history/07.html (last visited Jan. 11, 2015). More tied into our theme of religion in this Article, see also MARCO G. PROUTY, *CESAR CHAVEZ, THE CATHOLIC BISHOPS, AND THE FARMWORKERS’ STRUGGLE FOR SOCIAL JUSTICE* (2006).

²⁴⁴ Good, *supra* note 190.

²⁴⁵ See Dionne, Jr. & Rogers, *supra* note 168, at 1 (expressing their belief “that President-elect Obama—himself a former community organizer supported by churches—has an opportunity to remind the nation of the long history of these partnerships and to encourage a richer and more thoughtful understanding of their possibilities.”).

²⁴⁶ See *id.* at 3, 10. Nonfinancial partnerships are those in which the government and religious organizations work together to advance a common cause, but no money is passed from the government to the religious body. *Id.* They are as valuable to the government as the financial cooperation with the

any rate, this is not unlike the criticism of “promot[ing] partisan interests” that candidate Obama leveled against the Bush faith-based program in 2008.²⁴⁷ His successor, Melissa Roger—white woman, former Director of the School of Divinity Center for Religion and Public Affairs at Wake Forest University in North Carolina, an individual who has also seen service on the advisory council,²⁴⁸ and a seasoned expert on faith-based issues whose

additional advantage that they pose “far fewer constitutional difficulties when religious organizations are involved.” *Id.* These nonfinancial collaboration include Benefit Bank programs, where the government works with communities to help people claim federal and state benefits, such as Earned Income Tax Credit, food stamps, medical benefits (including children’s health insurance) and heating/cooling assistance, that would otherwise remain unclaimed; foster and adoptive care; educational reform; and provision of mentors for the children of incarcerated parents. *Id.* In their reports, Dionne & Roger found “it strange that a discussion focused around the word ‘faith’ so frequently devolves into an argument about money. Yet religious groups and congregations have often done their best work in promoting shared objectives without receiving any grants from government.” *Id.* at 3. They advised, “The next president should call attention to the best of these [nonfinancial] partnerships and urge their replication nationwide,” citing the Clinton Department of Education guidelines on nonfinancial partnerships between public schools and religious communities, that they suggest that Obama revisit, update, and adapt for use by other federal agencies. *Id.* at 10. It is fair to conclude, based on assessment of the two faith-based programs, that, more than Bush ever did in his own program, Obama has experimented with these nonfinancial forms of relations.

²⁴⁷ See *Partnering with Communities of Faith*, *supra* note 220, at 2. In their recommendations for the new administration on partnership with faith-based organizations, Dionne and Rogers pointed out that “[d]uring the Bush administration, a former White House official and some civil servants alleged that peer review processes in some cases seemed tilted toward entities with political leanings sympathetic to those of the administration,” instructively adding: “[u]sing this system to reward religious friends and cronies is unacceptable.” Dionne, Jr. & Rogers, *supra* note 168, at 9. They advised, “The next president should direct agency heads to instruct peer reviewers on their legal and ethical obligations. All agency employees must have confidential ways to raise concerns in this area. The peer review panels should not be dominated by religious or secular voices, or by advocates of a particular faith, theology or political ideology—and the members of such panels should have genuine expertise in the program areas being funded. The incoming president should promise that his administration will promptly investigate any allegations of impropriety in this area.” *Id.* Available records appear to suggest that Obama complied with the Dionne and Rogers’s advice “to prevent use of [the faith base device] as a form of political patronage.” *Id.* at 5. Beyond this assertion, I am *not* in a position to verify for the reader whether the Obama administration has implemented this sound recommendation regarding cronyism and religious patronage.

²⁴⁸ See Jaweed Kaleem, *Melissa Rogers Appointed to Lead White House Office of Faith-Based and Neighborhood Partnerships*, HUFFINGTON POST (Mar.

research on these matters I have drawn upon to develop my own argument in this Article—is equally a solid choice. Rogers is “well known for her centrist approach to controversial topics like same-sex marriage and the contraception mandate in” the Affordable Care Act,²⁴⁹ and someone who believes “religious discriminations in jobs subsidized with direct government aid should be prohibited,” where others, for example, would worry that “this rule, if enforced too rigidly, could upset some long-standing partnerships in which very little discrimination actually takes place.”²⁵⁰

Obama’s faith-based initiative has an eclectic broadness that the Bush program lacks: it integrates both secular and religious features, monetary and nonfinancial elements, and connects hand-in-glove to his other policies, domestic and foreign alike.²⁵¹ There are moments when it seems to be the engine driving his other policies, including even his signature healthcare agenda. Thus, for example, a toolkit for the program posted in the faith-based headquarters at the White House cites a statement from the President’s first inaugural address to the effect that “[f]or as much as government can do and must do, it is ultimately the faith and determination of the American people upon which this nation relies. It is the kindness to take in a stranger when the levees break, the selflessness of workers who would rather cut their hours than see a friend lose their job . . . a parent’s willingness to

13, 2013), www.huffingtonpost.com/2013/03/13/melissa-rogers-white-house-faith-based_n_2868413.html.

²⁴⁹ *Id.*

²⁵⁰ Dionne, Jr. & Rogers, *supra* note 168, at 4. The reference is to Eugene J. Dionne Jr. with whom Rogers authored this report.

²⁵¹ The reader should keep in mind that, as the White House and the Obama Administration design it, faith-based initiative is a crossover program tied to numerous other issues that straddle both domestic and foreign policies. A toolkit prepared by the White House Office of Faith-Based and Partnerships with the assistance of the faith-based center at the U.S. Department of Health and Human Services comprised a range of 15 issue-areas: adoption, disaster relief, education, responsible fatherhood (including reentry into society for incarcerated parents), building green, children and family health, housing, hunger relief, international relief and development, job creation, veteran support, and volunteerism. See *Partnership for the Common Good: A Partnership Guide for Faith-Based and Neighborhood Organizations*, available at www.whitehouse.gov/sites/default/files/faithbasedtoolkit.pdf (last visited Jan. 11, 2015). The crossover to other programs sits well with the advice of Dionne and Rogers that “[t]he next president should fully integrate [faith base efforts] into his domestic policy agenda.” Dionne, Jr. & Rogers, *supra* note 168, at 11.

nurture a child that finally decides our fate.”²⁵² Tying all this together is Obama’s rare proclivity for inclusiveness and interminable search for the “middle ground” of a kind not seen in any recent U.S. president, Democrat or Republican.²⁵³

Given the vastness of the Obama faith program extending into many areas, religious and secular, domestic and foreign policies, it is surprising that the program has not extended into a tool for crime control—at least of the scale under Bush, where, by 2005, 18 states and the national government had some type of residential faith-based program, designed to rehabilitate participating inmates by teaching them subjects like ethical decision-making, anger management, victim restitution, substance abuse, and Bible studies.²⁵⁴

²⁵² *Partnership for the Common Good: A Partnership Guide for Faith-Based and Neighborhood Organizations*, *supra* note 251, at 3.

²⁵³ It is a propensity that goes back in time to Obama’s keynote address at the Democratic Convention in 2004. *See Barack Obama: Keynote Address at the 2004 Democratic National Convention*, *supra* note 37. A similar strain is evident in a speech on race presidential candidate Obama gave on March 18, 2008, where he indicated:

I chose to run for president at this moment in history because I believe deeply that we cannot solve the challenges of our time unless we solve them together, unless we perfect our union by understanding that we may have different stories, but we hold common hopes; that we may not look the same and may not have come from the same place, but we all want to move in the same direction: toward a better future for our children and our grandchildren.

Transcript, *Senator Barack Obama’s Address on Race*, Constitution Center, Philadelphia, WASH. POST, (Mar. 18, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/18/AR2008031801081.html>. In contrast, as president, Bush had a more abrasive governing style. Bush, “the decider,” can resist compromise and go it alone, in domestic and foreign policies alike. *See* Ed Henry & Barbara Starr, *Bush: ‘I’m the Decider’ on Rumsfeld*, CNN.COM (April 18, 2006), <http://www.cnn.com/2006/POLITICS/04/18/rumsfeld/> (refusing to fire Defense Secretary Donald Rumsfeld, despite calls for his resignation from six retired military generals over Bush’s failed policy in Iraq because, according to the President, “I’m the decider, and I decide what’s best.”); John Kreiser, *Bush: The Decider-in-Chief*, CBS NEWS (April 20, 2006), www.cbsnews.com/news/bush_the_decider_in_chief (criticizing Bush’s “I’m the decider” assertion in response to calls to relieve Rumsfeld of his position as defense secretary over the failure of U.S. policy in Iraq).

²⁵⁴ *See* Alexander Volokh, *Do Faith-Based Prisons Work?* 63 ALA. L. REV. 43, 44 (2011). The only reference to this element in the entire Obama faith-based literature is in the toolkit in the discussion on “partnering on responsible

The economist Charles E. Lindblom noted in a seminal essay on decision making that, “[a] wise policy-maker ... expects that his policies will achieve only part of what he hopes and at the same time will produce unanticipated consequences he would have preferred to avoid.”²⁵⁵ Unanticipated consequences arising from President Obama’s endorsement of same-sex marriage has swirled the program, provoking controversy on social issues, such as same-sex marriage, that his administration would have loved to avoid.²⁵⁶ Another controversy, which illustrates the cross-over capacity of President Obama’s faith-based initiative, in this case into his signature healthcare program,²⁵⁷ relates to the issuance of new rules mandating religious nonprofit recipients of federal monies to offer their employees insurance packages that may violate the religious beliefs and tenets of these nonprofits.²⁵⁸

fatherhood,” specifically section 4 dealing with “support [of] responsible reentry,” where the White House noted that “[h]undreds of thousands of men and women return to our communities from incarceration each year, and many of them are parents. Community and faith-based organizations play a critical role in helping formally [sic] incarcerated individuals transition back into our communities in a way that is safe, healthy, and responsible.” *Partnership for the Common Good: A Partnership Guide for Faith-Based and Neighborhood Organizations*, *supra* note 251, at 23. It adds that the faith-based center at the Department of Justice works with community and faith-based groups to support responsible reentry, without indicating how, except provision of contact information on how individuals who want to reach this center, learn more about grant opportunities or share their good work, can do so. *Id.* A possible explanation is the need to minimize controversy related to faith base. There is also only so much that just one governance tool, even one centrally vital and elastic like faith-based initiative, can take.

²⁵⁵ Charles E. Lindblom, *The Science of “Muddling Through,”* PUBLIC ADMIN. REV. (1959), *quoted in* RICHARD J. STILLMAN II, PUBLIC ADMINISTRATION: CONCEPTS AND CASES 212 (9th ed. 2010).

²⁵⁶ The feud over same-sex marriage is analyzed next below under Part V.D.

²⁵⁷ See Patient Protection and Affordable Care Act, Pub. L. 111-148, (2010), signed into law on March 23, 2010 by President Obama. The Supreme Court upheld the constitutionality of the law on June 28, 2012, in *National Federation of Independent Business et al. v. Sebelius, Secretary of Health and Human Services et al.*, 567 U.S. ___, 132 S.Ct 2566 (2012).

²⁵⁸ DiIulio, *supra* note 235. See also *Burwell v. Hobby Lobby*, 573 U.S. ___, 134 S.Ct. 2751 (2014). In *Burwell*, five justices ruled in favor and four against that for-profit employers with religious objection(s) can opt out of providing contraception coverage under the Affordable Care Act. *Id.* For a sample of the numerous press reports on the case, see Bill Mears & Tom Cohen, *Supreme Court Rules Against Obama in Contraception Case*, CNN NEWS (June 30, 2014) www.cnn.com/2014/06/30/politics/scotus-obamacare-contraception/; Alex Wayne, *High Court Worsens Pain of Obamacare Birth Control Compromise*, CHIC. TRIB. (July 1, 2014) www.chicagotribune.com/news/sns-wp-blm-news-bc-health-

D. Teachable Lessons from the Case Study Regarding Religion in African American Politics

The first lesson is that a Democratic president is the one peddling and pitching a religion-based program. The Republican Party is the party of cultural conservatives, not the Democratic Party. Specifically, under the strictures of the “culture war” the politician and commentator Patrick J. Buchanan and his supporters declared on America in 1992,²⁵⁹ the Republican Party is supposed to be the purveyor of social-cultural issues or “symbolic politics,” such as abortion, preferential programs, media and the arts, censorship, feminism, and homosexuality, compared to the Democratic Party, which tends to shy away from these “moralizing” concerns.²⁶⁰ But this study revealed something more

contraceptives0120140701,0,3865443.story; Jennifer Haberkorn & Josh Gerstein, *SCOTUS Sides with Hobby Lobby on Birth Control*, POLITICO (June 30, 2014), www.politico.com/story/2014/06/supreme-court-hobby-lobby-decision-contraception-mandate-108429.html; Richard Wolf, *Justices Rule for Hobby Lobby on Contraception Mandate*, USA TODAY (June 30, 2014), www.usatoday.com/story/news/politics/2014/06/30/supreme-court-hobby-lobby-religion-contraception-obama/114731; and Sarah Torre & Jennifer A. Marshall, *RFRA Worked the Way It Was Supposed to in Hobby Lobby*, NAT'L REV. (July 2014), www.nationalreview.com/corner/381619/rfra-worked-way-it-was-supposed-hobby-lobby-jennifer-marshall-sarah-torre.

²⁵⁹ See Patrick J. Buchanan, *The Cultural War for the South of America*, BUCHANAN.ORG (Sept. 14, 1992, 12:00 AM), buchanan.org/blog/the-cultural-war-for-the-soul-of-america-149 (contending that Americans “are locked in a cultural war for the soul of America.”); see also Patrick J. Buchanan, *1992 Republican National Convention Speech*, BUCHANAN.ORG (Aug. 17, 1992, 12:00 AM), <http://buchanan.org/blog/1992-republican-national-convention-speech-148> (slightly different version of speech). Buchanan ascribed or assigned to the war a momentousness that he equated to the just-concluded ideological Cold War between the U.S. and the former Soviet Union. *Id.* He identified the key battlegrounds in the conflict to include abortion, gay rights, religious discrimination, and women in U.S. combat forces. *Id.*

²⁶⁰ See *id.* An industry of works has mushroomed related to the “culture war” debate. See, e.g., JAMES DAVISON HUNTER, *CULTURE WARS: THE STRUGGLE TO DEFINE AMERICA: MAKING SENSE OF THE BATTLES OVER THE FAMILY, ART, EDUCATION, LAW, AND POLITICS* (1991) (depicting the existence of political and social hostilities, beyond the conventional religious-denominational divide, supposedly generated from conflicting systems of moral understanding on a broad range of issues, including abortion, homosexuality, families, education, laws, elections, censorship as well as media and the arts, that has literally eclipsed the moderate voice in public discourse); MORRIS P. FIORINA ET AL., *CULTURE WAR? THE MYTH OF A POLARIZED AMERICA* (3d ed. 2010) (strenuously denying that the polarization Hunter and others perceive exist); ROBERT D. PUTNAM ET AL., *AMERICAN GRACE: HOW RELIGION DIVIDES AND UNITES US* (2012) (arguing

complicated or nuanced. For example, contemporary faith-based politics dates back to President Clinton, only gaining prominence during the term of George W. Bush. Arguably, the timeline harkens even further back to the secular-based privatization program of the Reagan administration in the 1980s.²⁶¹

This observation lends some credence to the claim of Bush's faith staff that the program "will carry on after [Bush] leaves office," not only because "the American people do not fear faith," but also because the poor seek the type of help, including "love and compassion," that the government cannot provide.²⁶² However, it is a claim that glosses over a material fact, namely, whether by design or default, Bush built a program that future presidents will have a hard time abolishing. "[A] subsequent president who does not share Bush's passion for this issue will have few options: make a media splash by abolishing the Faith-Based Office, or maintain the office while limiting or changing the focus of its work."²⁶³ Predictably, Obama chose to maintain the office with a change in the focus of its work, rather than abolish it.

The second teachable lesson is more directly applicable to African Americans. Whether under Bush or Obama, faith programs are resource caches, "real money" for social service

seemingly contradictorily that a deep political polarization transcending denominationalism exists, but that the culture embeds a younger generation that is much more accepting of diversity, minimizing the possibility that the deep polarization will tear the country apart); and JAMES DAVISON HUNTER ET AL., *IS THERE A CULTURE WAR?: A DIALOGUE ON VALUES AND AMERICAN PUBLIC LIFE* (2006) (statements by protagonists and opponents seeking a common ground of anchor in the culture war debate). *See also* MIKE HUCKABEE, *GOD, GUNS, GRITS, AND GRAVY* (2015) (an appeal to cultural conservatives, replete with criticism of power and cultural centers in Washington, New York, and Hollywood, ahead of the 2016 presidential elections).

²⁶¹ *See* Sheila Sues Kennedy, *Privatization and Prayer: The Case of Charitable Choice*, SHEILAKENNEDY.NET (May 3, 2005), <http://sheilakennedy.net/2005/05/privatization-and-prayer-the-case-of-charitable-choice/> (tracing the history of the cooperation between governments and religious charities, including the extent to which such partnerships "are driven by privatization ideology," rather than public policy).

²⁶² Aka, *supra* note 176, at 62, *quoting* Towey. Dionne and Rogers also state that, rather than see faith-base as an obligation to pass judgment on the Bush presidency, "[h]e should regard it as an opportunity to rethink an approach that long predates the Bush administration and will far outlast his own presidency." *Id.* The authors observed regrettably that the discussion on faith-based initiatives "has too often been divorced from history, and in the process has become excessively partisan and ideological." *Id.*

²⁶³ BLACK ET AL., *supra* note 192, at 202.

delivery, itching for allocation to eligible third parties.²⁶⁴ Black institutions, sacred and secular alike, benefit from these resources.²⁶⁵ Because they rank among the neediest of the needy that faith-based money targets, these entities receive(d) assistance that benefit(ed) black communities.²⁶⁶ Similarly, Blacks rank among the beneficiaries of faith services hurt by the jettisoning or disregard of non-discrimination laws initiated by George W. Bush that the Obama administration left in place.²⁶⁷ Rep. Bobby Scott (Democrat from Virginia) observed that “the policy of no discrimination in federal programs is a fundamental element of our civil rights strategy—if we fail to enforce civil rights in federal programs, we lose our moral authority to impose those laws on private employers who may be devoutly religious.”²⁶⁸ He also reminded us that many religious congregations are not racially diverse and faith-based employment decisions by federal grantees can limit job opportunities for minorities.²⁶⁹ Moreover, Scott has indicated that not reversing the Bush policies that illegally exempt religious organizations from non-discrimination laws carries “racial implications” because “most churches are either 100% white or 100% black.”²⁷⁰

It is hard to miss the irony, as some critics point out, that the first black president of the U.S. has kept in place a policy that seems to embrace discrimination.²⁷¹ Many of the problems that African Americans have faced in this country, from the period of the Middle Passage through the struggles of the Abolitionist and

²⁶⁴ “A billion here, a billion there, and pretty soon you’re talking about real money!” Statement attributed to the late U.S. Senator Everett McKinley Dirksen (Republican from IL), cited in the context of government budgeting, quoted in MICHAEL E. MILAKOVICH & GEORGE J. GORDON 327 (11th ed. 2013).

²⁶⁵ Some of the Stimulus Fund to resuscitate the economy that Obama distributed to states went to faith-based entities. See Ben Smith & Byron Tau, *Obama’s Stimulus Pours Millions into Faith-Based Groups*, POLITICO (Dec. 3, 2010), www.politico.com/news/stories/1210/45897.html; Kate Shellnut, *Politico: Religious Groups Got \$140 M from Stimulus*, CHRON. (Dec. 3, 2010), blog.chron.com/believeitornot/2010/12/politico-religious-groups-got-140m-from-stimulus/.

²⁶⁶ See OWENS, *supra* note 212.

²⁶⁷ See *supra* notes 185, 211, and 232 and corresponding texts.

²⁶⁸ *Faith-Based Initiative*, *supra* note 176.

²⁶⁹ Carrie Johnson, *Obama Cautious on Faith-Based Initiatives*, WASH. POST. (Sept. 15, 2009), www.washingtonpost.com/wp-dyn/content/article/2009/09/14/AR2009091403343.html.

²⁷⁰ Peter Wallsten & Duke Helfand, *Obama Upholds Bush Faith Policy*, L.A. TIMES (Feb. 6, 2009), articles.latimes.com/2009/feb/06/nation/na-obama-faith6.

²⁷¹ *Id.*

Civil Rights Movements, revolved around discrimination because of their skin color. The experiences necessitated the “quest for universal freedom” that Professors Walton and Smith eloquently articulate in their text on black politics in America.²⁷² Because of these efforts, in our time, non-discrimination evolved into a fundamental element of U.S. civil rights policy which, as Scott reminds us, the U.S. has a legal and moral obligation to implement fairly among all groups, both secular and religious.²⁷³

It is depressing that religion, the institution which “illustrates the diversity of strategies that African Americans have adopted in attempting to address racism and class inequality,”²⁷⁴ is now a factor either in discrimination against them or discrimination they direct against others. Lingering inequality for Blacks and other minorities, against which secular anti-discrimination laws have proven ineffectual, forms the basis for “equal result” measures like affirmative action which critics label as “reverse discrimination” on the ground that we should live in a colorblind society.²⁷⁵ Discrimination based on religion worsens an already bad situation. It is little wonder that each of the coalitions which on three separate occasions petitioned the Obama administration to withdraw the 2007 memo that waived a statutory nondiscrimination policy for World Vision included Black faith-based organizations.²⁷⁶

²⁷² See WALTON, JR. & SMITH, *supra* note 17, *passim*.

²⁷³ See *supra* notes 267-268 and corresponding texts.

²⁷⁴ Baer, *supra* note 12.

²⁷⁵ See Emmanuel O. Iheukwumere & Philip C. Aka, *Title VII, Affirmative Action, and the March Toward Color-Blind Jurisprudence*, 11 TEMP. POL. & CIV. RTS. L. REV. 1 (2001). See also Aka, *The Supreme Court and Affirmative Action in Public Education*, *supra* note 44.

²⁷⁶ See *supra* notes 185, 211, 232, and 266, and corresponding texts. The petitions were written in September 2009, June 2013, and June 2014. The first and last letters were addressed to the Attorney General, while the one of June 2013 was addressed to the new Director of the White House Office of Faith-Based and Neighborhood Partnerships. Three African American organizations—African American Ministers in Action (AAMIA), the National Association for the Advancement of Colored People (NAACP), and Rainbow PUSH Coalition—were among the 58 groups in the first letter. For the second letter involving 34 groups, the AAMIA and Rainbow PUSH were on the list. For the third, at least six black organizations featured among the 90 groups: the three groups in the previous letters, along with Muslim Advocates (I count this as a black group given that most U.S. Muslims are black), National Black Justice Coalition, and National Congress of Black Women. See Adelle M. Banks, *Growing Coalition Presses Obama to End Policy on Religious Discrimination in Hiring*, WASH. POST (June 20, 2014), www.washingtonpost.com/national/religion/growing-coalition-presses-

The third lesson relates to the Black Church that forms the center of gravity in this study. Some could argue that some of President Obama's policy has impaired the integrity of the institution. One typical issue critics who take this position could use is the Giglio controversy, which some analysts speculate was the real reason for the resignation of James DuBois, the President's first faith-based czar.²⁷⁷ The controversy involved Louie Giglio, pastor of Passion City Church in Atlanta, Georgia, who was invited to give the benediction on January 21, 2013, as part of the inauguration festivities for President Obama's second

obama-to-end-policy-on-religious-discrimination; Gary Cameron, *90 Liberal Groups Renew Call for End to "Damaging" Bush-Era Religious Freedom Ruling*, REUTER (June 10, 2014), www.buzzfed.com/chrisgeidner/90-liberal-groups-renewal-call-for-end-to-damaging-bush-era-re; see also *Request for Review and Withdrawal of June 29, 2007 Office of Legal Counsel Memorandum Re: RFRA*, (Sept. 17, 2009), available at archive.adl.org/civil_rights/coalition-letter-to-ag-holder-on-olc-rfra.pdf (letter by 58 organizations); *Coalition Against Religious Discrimination, letter of June 26, 2013, to Faith-Based and Neighborhood Partnerships director Melissa Rogers*, available at americanhumanist.org/system/storage/63/41/c/4205/2013-06-26-CARD_Letter_to_Melissa-1.pdf (last visited Nov. 26, 2014). Still this is a matter that could use a bit of nuance. As Melissa Rogers, who now heads the White House Faith-Based Office stated in a 2008 background paper, part of the recommendations that she and Professor Dionne prepared for the incoming Obama administration, there are at least six approaches to religion-based employment decisions in government-funded jobs. Rogers, *supra* note 196, at 6-8. Note that Rogers used the expression "religion-based employment decisions in government-funded job," rather than the "funding discrimination" that less-nuanced critics tend to prefer. The six approaches or camps are: **first**, institution-wide (or argument that when an organization receives federal funding, it should be prohibited from discriminating based on religion with regard to all of its jobs, including privately-subsidized positions within the organization); **second**, program-wide (argument that organizations receiving federal funding should be barred from discriminating based on religion for any jobs operating within the government-funded program, either primarily or entirely); **third**, job-specific (argument that religious organizations receiving federal funding should be barred from discriminating based on religion for any jobs whose salaries are subsidized exclusively or partially with government funds); **fourth**, direct aid or indirect aid; **fifth**, distinctions within direct aid, such as percentage of salaries; and **sixth**, distinctions within direct aid, such as overall amount of government funding an organization receives. The point is that the matter is more complicated than appears on the surface, an element often glossed over in the debates.

²⁷⁷ Good, *supra* note 190. The official reason was that DuBois left after four years of White House burnout, and went on to marry and teach part time at New York University, taking a brake from the hectic pace of life in the White House. See Goodstein, *supra* note 241.

term in office.²⁷⁸ Giglio was chosen partly because of his campaign against modern-day slavery which the President has applauded.²⁷⁹ Although he initially accepted the invitation, Giglio later withdrew following uproar over a sermon against homosexuality that he gave in the mid-1990s, where he called upon Christians to fight the “aggressive agenda” of the gay-rights movement.²⁸⁰ Giglio said he did not want his participation and prayer to be “dwarfed by those seeking to make their agenda the focal point of the inauguration.”²⁸¹ The Presidential Inaugural Committee wasted little time in accepting Giglio’s resignation, indicating that it would choose a replacement whose belief “reflects this administration’s vision of inclusion and acceptance for all Americans.”²⁸²

A lead up to the Giglio controversy in early 2013 was President Obama’s announcement in May 2012 of his support for same-sex marriage.²⁸³ The endorsement culminated the administration’s support for a progression of lesbian, gay, bisexual, and transgender (LGBT) issues, including: repeal of “Don’t Ask, Don’t Tell” (DADT),²⁸⁴ a Clinton-promulgated policy that allowed gays and lesbians to serve in the military so long as they did not disclose their sexual orientation and that the military establishment would not inquire; and the decision of the Justice Department to no longer defend the Defense of Marriage Act

²⁷⁸ See Sheryl Gay Stolberg, *Minister Backs Out of Speech at Inaugural*, N.Y. TIMES (Jan. 10, 2013), www.nytimes.com/2013/01/11/us/politics/minister-withdraws-from-inaugural-program-after-controversy-over-comments-on-gay-rights.html?_r=0.

²⁷⁹ Quoted in Lillian Kwon, *Gabe Lyons on Giglio Controversy: Gays Forcing Christians Into Closets?* CHRISTIAN POST (Jan. 14, 2013), www.christianpost.com/news/gabe-lyons-on-giglio-controversy-gays-forcing-christians-into-closets-88256/.

²⁸⁰ Stolberg, *supra* note 278.

²⁸¹ *Id.*

²⁸² Kwon, *supra* note 279.

²⁸³ See *President Obama Supports Same-Sex Marriage*, THE WHITEHOUSE BLOG (May 10, 2012), www.whitehouse.gov/blog/2012/05/10/obama-supports-same-sex-marriage; Jackie Calmes & Peter Baker, *Obama Says Same-Sex Marriage Should be Legal*, N.Y. TIMES (May 9, 2012), www.nytimes.com/2012/05/10/us/politics/obama-says-same-sex-marriage-should-be-legal.html?pagewanted=all&_4=0; Peter Wallsten & Scott Wilson, *Obama Endorses Gay Marriage, Says Same-Sex Couples Should Have Right to Wed*, WASH. POST (May 9, 2012), www.washingtonpost.com/politics/2012/05/09/gIQAivsWDU_story.html.

²⁸⁴ See Amanda Winkler, *Don’t Ask, Don’t Tell Repeal Takes Effect Tuesday*, CHRISTIAN SCI. MONITOR (Sept. 19, 2011), www.christianpost.com/news/dont-ask-dont-tell-repeal-takes-effect-tuesday-55936/.

(DOMA).²⁸⁵ The law defined marriage as a relationship between a man and woman and barred federal recognition of same-sex marriage. Obama's endorsement of same-sex marriage drew the ire of black clergy and ministers.²⁸⁶ The Coalition of African American Pastors (CAAP) bitterly pointed out that such marriage "threatens the stability of the family, especially within the black community."²⁸⁷ It indicated that the endorsement would cost the President its support and that of their followers,²⁸⁸ likening his action to that of Judas Iscariot who betrayed Jesus.²⁸⁹ The black pastors also wrote a letter to Attorney General Eric Holder in which they requested a meeting on the matter.²⁹⁰ In the letter, the CAAP stated:

President Obama is the fulfillment of our dreams for our sons—and he has broken our hearts by using his power and position to endorse as a civil right something that is simply wrong. I would pray you have enough residual respect for this group of clergy, to agree to meet with us and other national leaders to discuss our concerns over your and President Obama's endorsement of gay marriage as a civil rights.²⁹¹

²⁸⁵ See Brian Montopoli, *Obama Administration Will No Longer Defend DOMA*, CBS NEWS (Feb. 24, 2011), www.cbsnews.com/news/obama-administration-will-no-longer-defend-doma/; Charles Savage & Sheryl Gay Stolberg, *In Shift, U.S. Says Marriage Act Blocks Gay Marriage*, N.Y. TIMES (Feb. 23, 2011), www.nytimes.com/2011/02/24/us/24marriage.html?pagewanted=all&r=0.

²⁸⁶ See Billy Hallowell, "Heart-Broken" Black Pastors Plea for Obama to Meet with Them and Change His Mind on Gay Marriage, BLAZE (June 4, 2012), wwwp.theblaze.com/stories/2012/06/04/heart-broken-black-pastors-plea-for-obama-to-meet-with-them-change-his-mind-on-gay-marriage/; *Black Pastors: Obama's Gay Marriage Support a "Disgrace,"* CBN NEWS, www.cc.org/news/black_pastors_obama039s_gay_marriage_support_039disgrace039.

²⁸⁷ *Id.*

²⁸⁸ Rev. William Owens, CAAP leader and founder, intoned, "Mr. President, I'm not going to stand with you, and we have thousands of others across this country that are not going to stand with you in this foolishness." *Id.*

²⁸⁹ Rev. Owens indicated, "For the president to bow to the money, as Judas did for Jesus Christ, is a disgrace, and we're ashamed." *Id.*

²⁹⁰ Hallowell, *supra* note 286.

²⁹¹ *Id.* The group indicated, "[s]ome issues are bigger than the next election," *id.*, implying too, that the president could pay a price for his political-ideological "foolishness." See *supra* note 288.

Press reports indicated the group was not comprised of run-of-the-mill ministers. To the contrary, a number of the clergy and ministers are individuals who, with the Rev. Dr. Martin Luther King Jr., played prominent roles in the Civil Rights Movement.²⁹²

Obama responded to the CAAP's plea for a change of mind by indicating that his endorsement was a denouement of his stance on homosexuality.²⁹³ The group then responded by encouraging more than 1,000 African American clergy to sign an anti-gay marriage pledge.²⁹⁴ The threat by the CAAP to withdraw political support obviously failed to negatively impact Obama since he handily won his reelection in November 2012, defeating Mitt Romney, his Republican opponent.²⁹⁵ As in his first run in 2008,

²⁹² *Id.*

²⁹³ The solicitude dates back to 1996 when Obama, responding to a newspaper questionnaire, indicated, "I favor legalizing same-sex marriages, and would fight efforts to prohibit such marriages." Alex Koppelman, *Revealed: Obama Used to Support Same-Sex Marriage*, SALON (Jan. 13, 2009), www.salon.com/2009/01/14/obama-marriage.

²⁹⁴ Hallowell, *supra* note 286. On a broader note, President Obama's endorsement of same-sex marriage, coupled with the Giglio withdrawal from the President's inaugural event, galvanized individuals on the religious right, some of whom pointed to the incident as evidence that Christian views are increasingly excluded from the public square. Kwon, *supra* note 279. One such individual was Gabe Lyons. Lyons is the founder of Q ideas, a non-profit organization that helps Christians to engage culture through advancement of the common good in society. See GABE LYONS, *THE NEXT CHRISTIANS: SEVEN WAYS YOU CAN LIVE THE GOSPEL AND RESTORE THE WORLD* (2012); see also *Rebekah Lyons*, QIDEAS, qideas.org/contributors/Rebekah-lyons/ (last visited Jan. 11, 2015). Lyons posited that January 21, 2013, the day Giglio was scheduled to give the benediction prayer that did not happen, "may go down in history, as the day Americans lost their most important freedom—their freedom of conscience." *Quoted in* Kwon, *supra* note 279. He wondered aloud whether gays are forcing Christians into closets. "As gays come out of the closet, are Christians meant to swap and go hide back in closets of their own? This zero-sum game is the most un-American of games." *Id.* He calls the occurrence "reverse discrimination at its finest." *Id.* "Now, as the tide of power has turned, some of the [gay] community seem intent on giving back in full measure the injustice and hurt many in their community experienced. It is reverse discrimination at its finest." *Id.* Lyons's larger point is that Americans are losing their freedom of conscience. "January 21, 2013, may go down in history, as the day Americans lost their most important freedom—their freedom of conscience," he contended. He appealed to President Obama "to remind the American public about their first right to freedom of conscience and expression." *Id.* "Please use the bully pulpit to educate Americans on how true liberty ought to play out in a pluralistic society," he pled, adding that "a pastor who once gave a sermon expressing his biblically-based belief that homosexuality isn't condoned does not deserve scorn." *Id.*

²⁹⁵ Obama defeated Romney by winning 51.1% of the popular vote and 332 electoral votes, compared to Romney's 47.2% popular vote and 206 electoral votes.

many of Obama's votes came from African Americans,²⁹⁶ despite a slight decrease in the level of support, especially among men,²⁹⁷ possibly attributable to a range of issues, including the controversy over same-sex marriage.

Many Blacks view Obama as pandering to the gay agenda.²⁹⁸ But many Blacks are also part of the United States' LGBT population.²⁹⁹ The Black Church is a congealment of black religious and secular values in all its variation³⁰⁰—the good, the bad, and the ugly—and a collective device with an elastic capacity to encompass all its membership, both heterosexual and homosexual.³⁰¹ In the aftermath of the controversy over same-sex marriage, some in the media have uncovered what they consider the “complex relationship” between the black gay community and

For a sample of the numerous press reports on Obama's reelection victory, see Greg Giroux, *Final Tally Shows Obama First Since '56 to Win 51% Twice*, BLOOMBERG (Jan. 4, 2013), www.bloomberg.com/news/2013/01-03/final-tally-shows-obama-first-since-56-to-win-51-twice.html; Brian Bakst, *Electoral College Vote Affirms Obama Re-Election*, U.S. NEWS & WORLD REPT. (Dec. 17, 2012), www.usnews.com/news/politics/articles/2012/12/17/electoral-college-set-to-affirm-obama-re-election; John Nichols, *Obama's 3 Million Vote, Electoral College Landslide, Majority of States Mandate*, THE NATION (Nov. 9, 2012), www.thenation.com/blog/171178/obama-has-great-big-mandate-and-he-must-use-it#.

²⁹⁶ 93% of African Americans voted for Obama in 2012, 2 percentage points down from the 95% in 2008. See Rosa Ramirez, *10 Amazing Demographic Percentages of the 2012 Election*, NAT'L J. (Nov. 9, 2012), www.nationaljournal.com/thenextamerica/politics/10-amazing-demographic-percentages-of-the-2012-election-20121109.

²⁹⁷ 96% of Black women voted for Obama in 2012, three percentage points over the overall 93%. *Id.*

²⁹⁸ *Black Pastors: Obama's Gay Marriage Support a "Disgrace," supra* note 286.

²⁹⁹ One of these members is the Rev. Frederick Davie who served on the advisory council of President Obama's Office of Faith-Based and Neighborhood Partnerships. See Lisa Keen, *Gay Man Named to Obama Faith Council*, BAY AREA REPORTER (Feb. 19, 2009), bayareareporter.org/news/article.php?sec=news&article=3738. Davie, president and CEO of Public/Private Ventures (a foundation that helps low-income communities), from 2001 to 2009, is now executive vice president of Union Theological Seminary in New York City. For another example, one of the couples in *Lawrence v. Texas*, 539 U.S. 558 (2003), where the Supreme Court, voting six justices in support and only three against, legalized same-sex sex, was black.

³⁰⁰ See *supra* note 2.

³⁰¹ See, e.g., Sarah Thomas, *To Be Gay, Christian, and Black in Harlem*, ALJAZEERA (June 1, 2014), america.aljazeera.com/features/2014/6/to-be-gay-christianandblackinharlem.html.

the Black Church.³⁰² According to one line of commentary, although African Americans are vehemently opposed to same-sex marriage, “the presence of gays and lesbians in black churches,” some of them in leadership positions, “is common.”³⁰³ The news story continued, “[w]hile many black pastors condemn gays and lesbians from the pulpit, the choir lofts behind them are often filled with gay singers and musicians.”³⁰⁴

To put the hypothesized plasticity of the Black Church in some perspective, we will need to disaggregate the terms *Black* and *Church*. *Black*, the term *African Americans*, has changed in a manner that now goes beyond native Blacks with four grandparents born in the U.S. to individuals supposedly not “politically and culturally black,”³⁰⁵ such as immigrants from Africa and the Caribbean with less than four U.S. grandparents. Similarly, the definition of the term *Church* has expanded beyond its initial preoccupation with Christianity to include Islam and now, in the age of Obama, non-conventional religions like Scientology, and Santería, the syncretic religion of West Africa and the Caribbean, that formed the object of controversy in a 1993 Supreme Court decision.³⁰⁶ Moreover, *Church* has expanded to include openly gay Christians like the Rev. Frederick Davie on Obama’s faith-based advisory council.³⁰⁷ In their work on how religion both divides and unites Americans, Professor Putnam and

³⁰² Corey Dade, *Blacks, Gays, and the Church: A Complex Relationship*, NPR NEWS (May 22, 2012), www.npr.org/2012/05/22/153282066/blacks-gays-and-the-church-a-complex-relationship.

³⁰³ *Id.*

³⁰⁴ *Id.* This news story added that, “Some male pastors themselves have been entangled in scandals involving alleged affairs with men.” *Id.* The statement is a reference to a controversy in 2010 involving Bishop Eddie Long, leader of one of the nation’s largest black churches in suburban Atlanta. Long was sued by three young men who claimed he coerced them into sexual relations. Long denied the accusations and the cases were settled out of court. *Id.*

³⁰⁵ DICKERSON, *supra* note 53.

³⁰⁶ *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993) (holding that an ordinance promulgated by the City of Hialeach forbidding the “unnecessary” killing of “an animal in a public or private ritual or ceremony not for the primary purpose of food consumption” was unconstitutional because it unlawfully targeted the Church of the Lukumi Babalu Aye and its practice of Santería).

³⁰⁷ See Lisa Keen, *Gay Man Named to Obama Faith Council*, BAY AREA REPORTER (Feb. 19, 2009), bayareareporter.org/news/article.php?sec=news&article=3738. Davie, president and CEO of Public/Private Ventures, a foundation that helps low-income communities, from 2001 to 2009, is now executive vice president of Union Theological Seminary in New York City.

his colleagues indicated that, although in their view, a culture war exists in this country, the polarization is not capable of tearing us apart because the culture embeds a younger generation that is becoming much more accepting of diversity.³⁰⁸ Blacks are part of that increasingly tolerant generation. What is the role of the first black president of the U.S. in these developments? The jury is still out; time will tell whether Obama is a charlatan driven distinctively (and instinctively) by the wind of political expediency³⁰⁹ or a leader ahead of his time when it comes to same-sex marriage and the many other vexing issues of our age.

VII. CONCLUSION

True to the observation of Bishop Atticus G. Haygood made in the 19th century, religion is a major influence in the shaping of the character of the black person.³¹⁰ True also to his prediction, the diverse religions and faiths of African Americans have been a major factor in determining “their future development.”³¹¹ In the age of Obama, the influence of religion in politics has changed far beyond the imagination of the founding fathers and mothers of the Black Church. Religion now is an omnibus device combining

³⁰⁸ PUTNAM ET AL., *supra* note 259. Some liberals, somewhat conceitedly, take the position that their side won the culture war Patrick Buchanan and some of his supporters within the Republican Party declared in 1992. See Anthony Zurcher, *Did Liberalism Win the U.S. Culture War?* BBC NEWS (Oct. 20, 2014), <http://www.bbc.com/news/blogs-echochambers-29697169?print=true> (a collection of positions on a variety of key issues in the conflict that suggest conservatives may *not* have won); and Bill Scher, *How Republicans Lost the Culture War*, POLITICO (Oct. 12, 2014), http://www.politico.com/magazine/story/2014/10/how-republicans-lost-the-culture-war-111822.html#.VLbSuCvF_g8 (providing a number of reasons why Republics lost, including lack of savviness on abortion, being “weird about birth control,” and “bet[ting] wrong on gay marriage.”).

³⁰⁹ During his first run for president in 2008, at least two black conservatives indicated they were un-enamored by the Obama phenomenon. WALTON, JR. & SMITH, *supra* note 17, at 154. These public intellectuals who declared themselves unimpressed by Obama were Thomas Sowell, who dismissed him as an “upscale demagogue,” and Adolph Reed Jr., who called him “a vacuous opportunist.” See *id.* at 174.

³¹⁰ See *supra* notes 10-11. Instructively, in his “I Have a Dream” speech, Dr. Martin Luther King Jr. used the character imagery, indicating, “I have a dream my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character. I have a dream today!” Martin Luther King Jr., *I Have a Dream*, reprinted in WALTON, JR. & SMITH, *supra* note 161, at 339.

³¹¹ *Supra* note 11.

sacred and secular functions that include relentless solicitude for black welfare in a white-dominant society. After thousands of words in dozens of pages, two lingering questions remain begging to be addressed in this conclusion. First, why the focus on African Americans, given the important influence of religion on American society as a whole, of which Blacks are part and parcel? Second, why President Obama and his faith-based program? I take these questions in turn.

There are important reasons that justify the focus on African Americans. Blacks are a political subculture in the U.S. and a group that won the right to study their own history through the struggles of the Civil Rights Movement and its aftermaths.³¹² The emergence of Black Studies as a field of study means that Blacks and their many supporters, in numerous fields of human endeavor that include Whites, cannot go back to the days when African Americans and their culture remained invisible in studies on American political behavior.³¹³ The focus on Blacks provides a context, specificity, and richness that is not possible in a study centered blandly on the influence of religion on U.S. society.

Next on Obama, a study of the influence of religion on African American politics without a case study on Obama would still have been an important contribution. However, such a study would have been incomplete and sterile, lacking richness and depth. The inclusion of Obama adds needed concreteness and persuasiveness to the conversation, and demonstrates the dynamic nature of religion. It illustrates the connection of Black politics to broader U.S. politics that only Obama's presidential tenure draws out. Obama ranks among the first set of black leaders not a part of the generation of the Civil Rights Movement that is heavily dominated by the clergy. Yet some aspects of his leadership style, such as his disarming oratory, mimic the Civil Rights generation, such that, as Professors Walton, Jr. and Smith pointed out, his political career now topped by two presidential terms of office

³¹² See, e.g., FABIO ROJAS, *FROM BLACK POWER TO BLACK STUDIES: HOW A RADICAL SOCIAL MOVEMENT BECAME AN ACADEMIC DISCIPLINE* (2007) (tracing the evolution of Black Studies over three decades, beginning with its origins in black nationalist politics); JOHNSON & LYNE, *supra* note 63 at xv (portraying African American Studies programs as "a byproduct of the social and political upheaval surrounding the Civil Rights and Black Power movements.").

³¹³ See WALTON, JR & SMITH, *supra* note 3, at 44; see also WALTON, JR., *supra* note 122 (poignantly characterizing Black political behavior as "invisible politics.").

“embody Dr. King’s dream.”³¹⁴ An analysis focused exclusively on President Obama and his program by itself can shed useful insights on the influence of religion in Black politics—much more so with the wealth of prelude materials, including the crucial historical background account that provide the context for this study.

³¹⁴ WALTON, JR. & SMITH, *supra* note 17, at 171.