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Under God?
Religious Faith and Liberal Democracy

The proper role of religious faith in the public life of a liberal democracy is one of the most important and controversial issues in the United States today. In this new book, Michael J. Perry argues that political reliance on religious faith violates neither the Establishment Clause of the United States Constitution nor, more broadly, the morality of liberal democracy. Nonetheless, Perry argues, religious believers sometimes have good reasons to be wary about relying on religious beliefs in making political decisions. Along the way, Perry thoughtfully addresses three subjects at the center of fierce contemporary political debate: school vouchers, same-sex marriage, and abortion.

Michael J. Perry has held the University Distinguished Chair in Law at Wake Forest University since 1997. Before that, he held the Howard J. Trienens Chair in Law at Northwestern University, where he taught for fifteen years. Perry is the author of eight books, including *Love and Power: The Role of Religion and Morality in American Politics* (1991) and *The Idea of Human Rights: Four Inquiries* (1998).

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For Dean Robert K. Walsh and the faculty
of the Wake Forest University School of Law,
where, from 1997 to 2003, I was privileged to teach.

And for Errol Rohr,
dear friend and brother,
godfather to my children.

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MICHAEL J. PERRY
Wake Forest University
School of Law

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Introduction

The Controversy over Religion in Politics

As politically alert Americans are well aware, the proper role of religious faith in the public life of the nation is one of the most controversial issues in the United States today. The controversy erupted anew when, on August 27, 2000, Senator Joseph Lieberman of Connecticut – at the time, the Democratic candidate for vice president of the United States – addressed the congregation of the Fellowship Chapel, one of Detroit's largest African-American churches. In his speech, Senator Lieberman called for a larger role for religious faith in American politics. "As a people," said Lieberman, "we need to reaffirm our faith and renew the dedication of our nation and ourselves to God and God's purpose." The next day, on the front page, under the headline "Lieberman Seeks Greater Role for Religion in Public Life," the *New York Times* reported that Lieberman "bluntly made the case for allowing faith into politics." The *Times* then quoted some key passages from Senator Lieberman's speech:

> "I want to talk to you this morning about another barrier that may fall . . . as a result of my nomination," he said. "I hope it will enable people, all people who are moved, to feel more free to talk about their faith and about their religion. And I hope that it will reinforce the belief that I feel as strongly as anything else, that there must be a place for faith in America's public life." He added that "we know that the Constitution wisely separates church from state, but remember: the Constitution guarantees freedom *of* religion, not freedom *from* religion." Without biblical traditions from the Ten Commandments to "the compassion and love and inspiration of Jesus of Nazareth," he said, "it could never have been written, and wouldn't have been written, in our Declaration of Independence, 'We hold these truths to be self-evident, that all men are created equal.' "[1]

Senator Lieberman, as is well known, is an Orthodox Jew, but many Christians applauded what Lieberman said. Indeed, Lieberman had an ally in no less a Christian than the Roman Catholic pontiff,

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John Paul II. Almost three years before Lieberman addressed the congregation of the Fellowship Chapel, John Paul II had spoken in much the same spirit, and said much the same thing, on the occasion of the presentation by Lindy Boggs of her credentials as U.S. ambassador to the Vatican:[2]

> It would truly be a sad thing if the religious and moral convictions upon which the American experiment was founded could now somehow be considered a danger to free society, such that those who would bring these convictions to bear upon your nation's public life would be denied a voice in debating and resolving issues of public policy. The original separation of church and state in the United States was certainly not an effort to ban all religious conviction from the public sphere, a kind of banishment of God from civil society. Indeed, the vast majority of Americans, regardless of their religious persuasion, are convinced that religious conviction and religiously informed moral argument have a vital role in public life.[3]

Reaction to Lieberman's speech was swift and, from some quarters, harsh. Perhaps the most noteworthy criticism – most noteworthy because of who said it – came from the Anti-Defamation League, which in its own description is "the world's largest organization fighting anti-Semitism through programs and services that counteract hatred, prejudice and bigotry." In a letter dated August 28, 2000, the ADL national chairman, Howard P. Berkowitz, and the group's national director, Abraham H. Foxman, asked Senator Lieberman, the first Jew nominated for national office by a major political party, "to refrain from overt expressions of religious values and beliefs." Berkowitz and Foxman stated:

> Candidates should feel comfortable explaining their religious convictions to voters. At the same time, however, we believe there is a point at which an emphasis on religion in a political campaign becomes inappropriate and even unsettling in a religiously diverse society such as ours. . . . Language such as [that which you used yesterday in speaking to the congregation of the Fellowship Chapel] risks alienating the American people. . . . We feel very strongly, and we hope you would agree, that appealing to voters along religious lines . . . is contrary to the American ideal.[4]

For a few weeks after Senator Lieberman's speech, many editorial writers, op-ed columnists, and political pundits weighed in on the issue.[5] The commentary, however, was generally predictable and uninspired. The furor soon died down; as the presidential election neared, other issues, issues of more immediate practical concern – such as

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health care for poor children and prescription drug benefits for the elderly – understandably dominated political debate.[6] But it wasn't long before the controversy over religion in politics erupted again: Soon after moving into the White House, George Bush proposed (as during the campaign he had promised he would) that the federal government spend money to support the efforts of nongovernmental organizations, even those that are "faith-based," to ameliorate various pressing social problems, such as poverty, homelessness, drug abuse, and unemployment. Bush's proposal ignited a firestorm of controversy, with many critics insisting that government aid to faith-based social service providers would violate the constitutionally mandated separation of church and state.

Because the proper role of religion in politics is a complex issue, one cannot adequately address it without carefully disentangling, and addressing, all the various questions that the issue comprises. Such an effort, which I undertake in this book, is well beyond the scope of an editorial or op-ed piece, much less a sound bite or bumper sticker. Although I am principally concerned in this book with religion in the politics of the United States, much of what I say here is applicable to other, kindred liberal democracies.

The questions I address in this book have engaged me since the mid-1980s; I have addressed many of them before, principally in two books: *Love and Power: The Role of Religion and Morality in American Politics* (1991) and *Religion in Politics: Constitutional and Moral Perspectives* (1997). I revisit the questions here, because my views have continued to develop and even, in some important respects, to change. Although some of what I say in this book is continuous with, and amplifies, my previous writings on religion in politics, much of what I say here represents a break, sometimes a sharp break, with my previous work.

By way of introduction, and to provide the reader with an overview, I want to sketch the agenda of each of the six chapters in this book. (In doing so, I oversimplify a bit; I must defer a more precise delineation of the several issues and various positions to the chapters that follow.) Let me begin by dividing those to whom my arguments in this book are addressed into three groups. The *agnostics* are those who have no firm convictions about the proper role of religion in politics. (That one is agnostic about the proper role of religion in politics does not entail that one is an agnostic in the more conventional sense

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of the term – that is, agnostic about the existence of God. One can be agnostic about the proper role of religion in politics without being agnostic about the existence of God, just as one can be agnostic about the existence of God without being agnostic about the proper role of religion in politics.) The *inclusionists* and the *exclusionists*, by contrast, do have firm convictions about the proper role of religion in politics. While the inclusionists believe that religious faith may be included in the public life of the nation, the exclusionists believe that religious faith should be excluded, as much as possible, from it. The inclusionists affirm, and the exclusionists deny, that religion may play a significant role in politics. It bears emphasis that the distinction between inclusionists and exclusionists does not track the distinction between religious believers and religious nonbelievers: Although some religious believers are inclusionists, some others are exclusionists; and although some religious nonbelievers are exclusionists, some others are inclusionists.

While I hope that the arguments I make in every chapter of this book will be of interest to all three groups, my arguments in Part One – Chapters 1–3 – are addressed mainly to the agnostics and the exclusionists. I begin, in Chapter 1, by articulating a general understanding of what it means to say, as American constitutional law does, that government may not "establish" religion – a general understanding, that is, of what the "nonestablishment norm" (as I prefer to call it) does and does not forbid government to do. I then turn to the question of whether the nonestablishment norm leaves any room for government to spend money in support of religiously affiliated schools. Government aid to religiously affiliated schools, in the form of vouchers that parents may use to make tuition payments to such schools, is a flash point in contemporary American politics. In my judgment, the nonestablishment norm *does* leave room for government to spend money in support of religiously affiliated schools. Moreover, although I focus, in Chapter 1, on government aid to religiously affiliated schools (in the form of vouchers), the logic of my argument extends to government aid to "faith-based" social service providers. Such aid is another flash point in contemporary American politics. The argument I make in Chapter 1, in support of the proposition that government does not *necessarily* violate the nonestablishment norm by including religiously affiliated schools in a program of aid to nonpublic schools, also supports the further proposition that government does

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not necessarily violate the norm by including faith-based social service providers in a program of aid to nongovernmental social service providers.

In Chapter 2, I address a second large question about the meaning of the imperative that government not "establish" religion: Does government violate the nonestablishment norm by outlawing conduct, or otherwise disfavoring it, on the basis of a religiously grounded belief that the conduct is immoral – a religiously grounded belief, for example, that same-sex unions are immoral? This question is obviously relevant to citizens of the United States, because the nonestablishment norm is an important part of the fundamental law – the constitutional law – of the United States. In Chapter 3, I move beyond the nonestablishment norm to address a question that, though closely related to the question I address in Chapter 2, is relevant not just to citizens of the United States but to those of any liberal democracy, even one whose fundamental law does not forbid government to establish religion: Does government contravene the morality of liberal democracy by outlawing (or otherwise disfavoring) conduct on the basis of religiously grounded moral belief? Even if government does not violate the nonestablishment norm by outlawing conduct on the basis of religiously grounded moral belief, it may nonetheless be the case that government betrays the morality of liberal democracy by doing so. I conclude in Chapters 2 and 3, however, that by outlawing conduct on the basis of religiously grounded moral belief, government runs afoul *neither* of the nonestablishment norm *nor* even of the morality of liberal democracy. (In Chapter 2, I clarify what I mean by a "religiously grounded" moral belief and by making a political choice "on the basis of" a belief.)

I said that my arguments in Part One are addressed mainly to the agnostics and the exclusionists. In Part Two – Chapters 4–6 – my arguments are addressed mainly to the agnostics and the inclusionists; they are addressed especially to those who, because they are both inclusionists and religious believers, are not at all shy about bringing their religion to bear on their politics. Although I defended an exclusionist position in my two previous books on religion in politics,[7] in this book – in particular, in Chapters 2 and 3 – I defend an inclusionist position. Perhaps I am better situated than many who have always been exclusionists or inclusionists to understand sympathetically – from the inside, as it were – the concerns of *both* sides. Whereas in

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Part One I speak as an inclusionist to agnostics and exclusionists, in Part Two I speak to agnostics and inclusionists from the perspective of one who, though no longer an exclusionist, nonetheless shares some exclusionist concerns.

In Chapter 4, I argue that some religious believers – Christians – have good reason to be wary about relying on one kind of religiously grounded morality – biblically grounded morality – in deciding whether to oppose laws or other public policies that grant official recognition to same-sex unions. In Chapter 4, I speak (mainly) to Christians generally, and I speak to them about the Bible, which is authoritative for Christians generally; in Chapter 5, by contrast, I speak (mainly) to Roman Catholics, and I speak to them about the magisterium of the Roman Catholic Church, which is authoritative for Roman Catholics. It is sometimes observed that for Roman Catholics, it is not the Bible that is supremely authoritative but the "magisterium" of the Church: the bishops and, ultimately, the Pope.[8] (It would be misleading to reply that for Roman Catholics, as for other Christians, the Bible is supremely authoritative, because is it the Bible *as interpreted by the magisterium of the Church* that is authoritative for Roman Catholics.) Whereas in Chapter 4, I contend against uncritical political reliance on what one imagines the Bible to say about the morality of same-sex unions, in Chapter 5, I contend against uncritical political reliance on what the magisterium of the Church says about the morality of same-sex unions; in particular, I argue that Catholic citizens and legislators have good reason to make independent judgments about some moral controversies – including the controversy over the morality of same-sex unions – rather than simply yield to whatever happens to be the official position of the magisterium on the contested matter. I have chosen to address, among all Christians, Roman Catholics in particular, because Roman Catholicism, which is the religious tradition that has been formative for me, is such a formidable presence in American politics. There are now more than sixty-two million Catholics in the United States; in the context of American politics, "moral arguments within Catholicism about [homosexuality] will be very significant."[9]

For many religious believers and others, the contemporary American debate about religion in politics is animated and shaped, in part, by two large controversies that are at once moral and political in character: the controversies over same-sex unions and abortion.

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Addressing the issue of religion in politics without addressing those two controversies would be like staging *Hamlet* without the prince. As I've just indicated, in Chapter 4 I discuss same-sex unions as a political issue for Christians, and in Chapter 5 I use the controversy over the morality of same-sex unions to frame my argument about the responsibility of Catholic citizens and legislators. In Chapter 6, still speaking mainly to religious believers who hold (as I do) that political reliance on religiously grounded morality is neither illegitimate in a liberal democracy nor unconstitutional in the United States, I turn to the moral/political controversy that, in the last generation, has been the most difficult and divisive of all: abortion. Indeed, "many consider [abortion] to be the most divisive American issue since slavery. . . ."[10] To an even greater extent than the controversy over same-sex unions, the abortion controversy looms large in the background, it looms large as a subtext, of the debate about the proper role of religion in the politics of the United States. More than any other American political controversy in the second half of the twentieth century, the abortion controversy has been a principal, if sometimes unspoken, occasion of the debate about religion in politics.[11] My overarching aim in Chapter 6 is to address the abortion controversy in a way that is true to each of two propositions. The first proposition, which I defend in Chapters 2 and 3, is that a citizen's religious faith has a legitimate, important role to play in her politics. The second proposition, which is at least as well illustrated by the moral/political controversy over abortion as by any other such controversy in our time, is that "political issues deal with complex problems of justice, every solution for which contains morally ambiguous elements."[12]

That neither the American constitutional ideal of nonestablishment nor the morality of liberal democracy calls for marginalizing the role of religious faith in, much less excluding it from, American politics does not mean that religious participation in politics is unproblematic. To bring one's religion to bear as one participates in politics – to rely on religiously grounded moral belief in the course of deliberating about or making political choices – is not necessarily to do so in an appropriate way. In my brief conclusion to this book, I point to the challenge of relating religion to politics in an appropriate way, given that the United States may now be the most religiously diverse nation on earth.[13]

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Although I have from the beginning conceived of the chapters in this book as intimately related parts of a single, overarching inquiry, each chapter, in an earlier version, has been published separately over the past two years. Chapter 1 (in an earlier version) was my contribution to a conference, on the moral and legal aspects of the "school choice" controversy, sponsored by and held at the Boston College Center for Religion and American Public Life on March 9–10, 2001. Chapter 1 also served as the basis of a lecture I was privileged to deliver – the Roger Aaron Lecture – at the Rockefeller Center of Dartmouth College on April 30, 2001. An earlier version of Chapter 1 was published in the book that grew out of the Boston College conference: Alan Wolfe, ed., *School Choice: The Moral Debate* (2003). I am grateful to Princeton University Press for permission to republish here material that appeared in that earlier version.

Chapter 2 was my contribution to the conference on Religion in the Public Square at the Marshall-Wythe School of Law, College of William and Mary, on March 24, 2000, and was published (in an earlier version) at 42 William & Mary Law Review 663 (2001). I was honored to present Chapter 2 in three venues in addition to the William and Mary conference: on March 1, 2000, as the Calvin W. Corman Lecture at the Rutgers University (Camden) School of Law; on March 2, 2000, as a lecture at Lafayette College (Easton, Pennsylvania); and on November 3, 2000, as an address to the conference on Law, Religion, and the Public Good at the St. John's University School of Law.

Chapter 3 was one of my two contributions to the symposium on Religiously Grounded Morality: Its Proper Role in American Law and Public Policy? at the Wake Forest University School of Law on October 20–21, 2000, and was published (in an earlier version) at 36 Wake Forest Law Review 217 (2001). I am grateful to the *DePaul Law Review* and to Oxford University Press for permission to use here

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material that originally appeared elsewhere: Michael J. Perry, "Liberal Democracy and Religious Morality," 48 DePaul L. Rev. 1 (1998) (the 1998 Church/State Lecture, Center for Church/State Studies, DePaul University); and Michael J. Perry, *Religion in Politics: Constitutional and Moral Perspectives* (1997).

Chapter 4 was the second of my two contributions to the symposium on Religiously Grounded Morality: Its Proper Role in American Law and Public Policy? at the Wake Forest University School of Law on October 20–21, 2000, and was published (in an earlier version) at 36 Wake Forest Law Review 449 (2001). Chapter 4 was also published (in a still earlier version) in a collection of essays: R. Bruce Douglass and Joshua Mitchell, eds., *A Nation Under God? Essays on the Fate of Religion in American Public Life* (2000). I am grateful to Rowman and Littlefield for permission to republish here material that appeared in *A Nation Under God?*

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Chapter 6 was the basis of a lecture I was privileged to deliver – the Philip J. McElroy Lecture – at the University of Detroit Mercy School of Law on April 5, 2001, and was published (in an earlier version) at 79 University of Detroit Mercy Law Review 1 (2001).

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