

# FINDING SHARED VALUES IN A DIVERSE SOCIETY: LESSONS FROM THE INTELLIGENT DESIGN CONTROVERSY

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If we are to be as a shining city upon a hill, it will be because of our ceaseless pursuit of the constitutional ideal of human dignity.<sup>1</sup>

## INTRODUCTION

American society is destined to become dramatically more diverse over the course of this century. The Census Bureau estimates that non-Hispanic Whites will constitute less than half the population by mid-century<sup>2</sup> and that foreign-born residents already outnumber the entire population of Canada.<sup>3</sup> Although the Census Bureau does not track people's religious affiliation,<sup>4</sup> other surveys indicate that America is also

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1. Justice William J. Brennan, Jr., Address at the Georgetown University Text and Teaching Symposium (Oct. 12, 1985), in *THE GREAT DEBATE: INTERPRETING OUR WRITTEN CONSTITUTION* 11, 25 (2005 ed.), available at <http://www.fed-soc.org/resources/id.50/default.asp>.

2. Press Release, U.S. Census Bureau, An Older and More Diverse Nation by Midcentury (Aug. 14, 2008), available at <http://www.census.gov/Press-Release/www/releases/archives/population/012496.html>.

3. Robert Longley, *U.S. Foreign-Born Population Hits 33 Million*, available at <http://usgovinfo.about.com/cs/censusstatistic/a/foreignborn.htm> (last visited Dec. 2, 2008). See Sam Roberts, *Study Foresees the Fall of an Immigration Record That Has Lasted a Century*, N.Y. TIMES, Feb. 12, 2008, at A12, available at 2008 WLNR 2676810 (noting that “within two decades the nation’s foreign-born population will surpass the historic 19th-century peak of nearly 15 percent of all residents”). Compare U.S. CENSUS BUREAU, 2005 AMERICAN COMMUNITY SURVEY, SELECTED SOCIAL CHARACTERISTICS: UNITED STATES (2006) available at [http://www.censusbureau.biz/acs/www/2005\\_acs\\_data\\_briefs.htm](http://www.censusbureau.biz/acs/www/2005_acs_data_briefs.htm) (follow “United States” hyperlink) (estimating U.S. foreign-born population at 35.6 million), with Cent. Intelligence Agency, *Canada: People*, in *THE WORLD FACTBOOK* 108 (2007), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ca.html> (estimating Canadian population as of July 2007 at 33.4 million, and 33.2 million as of July 2008). A recent Pew Research Center study predicts that within two decades, the percentage of foreign-born American residents will be at its highest point in the nation’s history. JEFFREY S. PASSEL & D’VERA COHN, PEW RESEARCH CTR., U.S. POPULATION PROJECTIONS: 2005–2050, at 13 (2008), available at <http://pewhispanic.org/files/reports/85.pdf>.

4. The Census Bureau is barred from collecting information about people’s religious affiliation on a mandatory basis, but other research organizations do collect this information. See U.S. Census Bureau, Religion, <http://www.census.gov/prod/www/religion.htm> (last visited Dec. 2, 2008) (explaining prohibition of religious affiliation questions and offering links to organizations that collect that data). See also 13 U.S.C. § 221(c) (2000) (“[N]o person shall be compelled to disclose information relative to his religious beliefs or to membership in a religious body.”).

becoming more religiously diverse.<sup>5</sup> The percentage of Americans who self-identify as Protestants will soon drop below a majority of the population for the first time in American history.<sup>6</sup> By comparison, between 1993 and 2002, the number of Americans who self-identify as Muslim, Orthodox Christian, Buddhist, and Hindu rose from 3% to 7% of the population.<sup>7</sup>

This increase in diversity is especially apparent in the nation's most-populous areas. In fact, non-Whites are already the majority in almost one-third of the most-populous counties.<sup>8</sup> In New York City, the nation's most-populous city,<sup>9</sup> there are now "more baby girls named Fatoumata than Lisa, more Aaliyahs than Melissas, more Chayas than Christinas."<sup>10</sup> In Los Angeles, the nation's second most-populous city,<sup>11</sup> 53% of households speak a language other than English at home.<sup>12</sup>

America's small towns have likewise been transforming, albeit at a slower pace. A Population Reference Bureau report notes that the Hispanic population in small towns and rural areas increased by 22% between 2000 and 2006 even as the overall population increased by only 3%.<sup>13</sup> This growing diversification has led to a rash of local anti-immigration

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5. See Deborah Jones Merritt & Daniel C. Merritt, *The Future of Religious Pluralism: Justice O'Connor and the Establishment Clause*, 39 ARIZ. ST. L. J. 895, 918–20 (2007) (reviewing statistics of increased religious diversity in the United States).

6. See Cathy Lynn Grossman, *Survey: USA's Protestant Majority Might Soon Be No More*, USA TODAY, July 21, 2004, at 6D, available at 2004 WLNR 6675092 (stating that the percentage of Americans self-identifying as Protestant may soon shrink below 50% of the population for the first time in American history); THE PEW FORUM ON RELIGION & PUB. LIFE, U.S. RELIGIOUS LANDSCAPE SURVEY 8 (2008), available at <http://religions.pewforum.org/pdf/report2-religious-landscape-study-full.pdf> [hereinafter RELIGIOUS LANDSCAPE SURVEY] (reporting that 51.3% of Americans self-identified as Protestant in 2007); Neela Banerjee, *A Fluid Religious Life is Seen Among Americans*, N.Y. TIMES, Feb. 26, 2008, at A12, available at 2008 WLNR 3723167 (noting that two-thirds of the population self-identified as Protestant in the 1970s).

7. Grossman, *supra* note 6, at 6D (noting that smaller groups "including Muslims, Orthodox Christians, Buddhists and Hindus, rose from 3% [of the population] in 1993 to 7% in 2002"). See also Banerjee, *supra* note 6, at A12 (indicating that a recent survey found that 8% of the population identifies as either Mormon, Jewish, Jehovah's Witnesses, Orthodox, Buddhist, or Muslim).

8. Sam Roberts, *Minorities Now Form Majority in One-Third of Most-Populous Counties*, N.Y. TIMES, Aug. 9, 2007, at A14, available at 2007 WLNR 15323262.

9. See Press Release, U.S. Census Bureau, *Census Bureau Announces Most Populous Cities* (June 28, 2007), available at <http://www.census.gov/Press-Release/www/releases/archives/population/010315.html> (reporting that New York continues to be the most-populous city).

10. Jennifer S. Lee, *In New York Cribs, Jeff and Lisa Give Way to Ahmed and Chaya*, N.Y. TIMES, Sept. 17, 2005, at A1, available at 2005 WLNR 14667424.

11. See Press Release, U.S. Census Bureau, *supra* note 9 (noting that Los Angeles is the second-most-populous city).

12. Anna Gorman, *The State; Not at Home with English; A New Census Report Says 43% in the State and 53% in L.A. Speak a Different Language in Their Private Lives*, L.A. TIMES, Sept. 13, 2007, at A1, available at 2007 WLNR 17843702.

13. Roberts, *supra* note 8, at A14.

ordinances.<sup>14</sup> These ordinances purportedly target only illegal aliens, but many reflect a larger backlash against immigrants generally.<sup>15</sup>

The country's rapid diversification raises the question of what values can unite this vastly diverse group of people. Although many Americans may succumb to the values of America's overpowering consumer culture, such shared marketplace values are unlikely to ensure that Americans will continue to coexist amicably or be prepared to confront collectively the nation's challenges. Recent immigrant-led riots in France and the 2005 terrorist bombings in London by British-born Muslims provide a cautionary tale about the threat to domestic tranquility when there is an absence of shared values.<sup>16</sup> As the *New York Times* pointed out after the London bombings, this incident highlighted not only issues of economic inequality and discrimination, but also challenges presented by diverse values in an increasingly multicultural society:

[T]he lethal London bombings . . . carried out by British-born Muslims, confronted the nation with a stark question of identity: if this multicultural society is to embrace all its disparate strands after decades of immigration from the Caribbean, Africa, Asia and most recently Eastern Europe, what common values should bind a new Britishness transcending faith, race or origin?<sup>17</sup>

This same question is becoming increasingly relevant for Americans. Yet, as important as it might be for Americans to identify their shared values, it seems increasingly unlikely that they will be able to so. The

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14. See *Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, 555 (M.D. Pa. 2007) (finding Hazleton's anti-immigration ordinance unconstitutional). Judges recently upheld local immigration ordinances in Arizona, Missouri, and Oklahoma. See Julia Preston, *In Reversal, Courts Uphold Local Immigration Laws*, N.Y. TIMES, Feb. 10, 2008, at A22, available at 2008 WLNR 2574286 (discussing upheld immigration ordinances).

15. See Am. Civil Liberties Union, *Federal Court Strikes Down Discriminatory Anti-Immigrant Law in Hazleton, Pennsylvania* (July 26, 2007), <http://www.aclu.org/immigrants/discrim/31057prs20070726.html> (quoting the Pennsylvania ACLU's legal director, who stated that Hazleton-type ordinances "promote distrust of all foreigners, including those here legally, and fuel discrimination and xenophobia, especially against Latinos").

16. See Elaine Sciolino, *Immigrants' Dreams Mix with Fury in a Gray Place Near Paris*, N.Y. TIMES, Dec. 12, 2005, at A1, available at 2005 WLNR 19924119 (discussing tensions produced by "France's failure to successfully integrate millions of . . . immigrants"). See also Alan Cowell, *Letter from Britain: Under a Big Umbrella, But What Else Do They Share?*, N.Y. TIMES, Feb. 1, 2006, at A4, available at 2006 WLNR 1742624 (discussing the relation between the London bombings and questions of cultural and national identity).

17. Cowell, *supra* note 16, at A4.

nation is so sharply divided along ideological lines that common ground often seems unattainable.<sup>18</sup>

One of the nation's more profound and volatile ideological divides is between fundamentalist religious adherents and secular members of society.<sup>19</sup> This divide has been particularly salient in recent years as issues challenging traditional religious morality—abortion, gay marriage, and stem-cell research—have been exploited as wedge issues for political gain.<sup>20</sup> In their biography of Karl Rove, James Moore and Wayne Slater note how Rove, with the help of Christian Coalition founder Ralph Reed, adeptly exploited this division as George W. Bush's closest advisor.<sup>21</sup> Reed taught Rove that the real division in society was not between people of different denominations but between believers in absolutist traditional values and believers in post-modernist liberal values.<sup>22</sup> Future political battles, Reed recognized, did not pit Protestants against Catholics or Jews but rather “conservative Protestants, traditional Catholics, and Orthodox Jews against moderate Protestants, Catholics, and Jews.”<sup>23</sup>

The political impact of this divide was most evident during the 2004 presidential election, when an overwhelming percentage of people who self-identified as “religious” voted for President Bush.<sup>24</sup> This religious bloc has since lost much of its cohesion, in part because of a perception that the Bush administration failed to deliver on some of the constituency's key issues, and in part because of disillusionment over the Iraq war.<sup>25</sup>

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18. See David Von Drehle, *Political Split is Pervasive: Clash of Cultures is Driven by Targeted Appeals and Reinforced by Geography*, WASH. POST, Apr. 25, 2004, at A1 (discussing the nation's ideological divisions). See also ALAN WOLFE, RETURN TO GREATNESS: HOW AMERICA LOST ITS SENSE OF PURPOSE AND WHAT IT NEEDS TO DO TO RECOVER IT 172 (2005) (describing how “[p]artisanship tops patriotism in the priorities of most politicians”).

19. See NOAH FELDMAN, DIVIDED BY GOD 5 (2005) (noting that “no question divides Americans more fundamentally than that of the relation between religion and government”).

20. See *id.* at 6 (describing prominently debated issues such as gay marriage, stem-cell research, abortion, euthanasia, and the death penalty).

21. JAMES MOORE & WAYNE SLATER, THE ARCHITECT: KARL ROVE AND THE MASTER PLAN FOR ABSOLUTE POWER 30 (2006).

22. *Id.* at 29–30.

23. *Id.* at 30.

24. See Todd S. Purdum, *The 2004 Elections: A Look Back—News Analysis; An Electoral Affirmation of Shared Values*, N.Y. TIMES, Nov. 4, 2004, at A1, available at 2004 WLNR 6562486 (“[I]n surveys of voters leaving polls, one-fifth of them say they care most about ‘moral values,’ and 8 in 10 of those voters choose Bush.”); cf. David Brooks, Op. Ed., *The Values-Vote Myth*, N.Y. TIMES, Nov. 6, 2004, at A19, available at 2004 WLNR 6562955 (suggesting that role of “moral values” in the 2004 election was overemphasized and did not “come close to telling the whole story”); Steven Waldman, Op. Ed., *On a Word and a Prayer*, N.Y. TIMES, Nov. 6, 2004, at A19, available at 2004 WLNR 6562963 (suggesting that religious voters supported President Bush for a broad array of reasons).

25. See David D. Kirkpatrick, *The Evangelical Crackup*, N.Y. TIMES, Oct. 28, 2007, § 6 (Magazine), at 38, available at 2007 WLNR 21230044 (describing the increasing lack of cohesion in the

Still, the religious–secular divide remains an important source of friction and a minefield for politicians trying to appeal to both sides. Consider the hoop jumping performed by Republican presidential candidates when asked at a debate whether they believed in evolution.<sup>26</sup> Senator John McCain answered that he did believe in evolution, but quickly qualified his position: “But I also believe, when I hike the Grand Canyon and see the sunset that the hand of God is there also.”<sup>27</sup> Senator Sam Brownback of Kansas stated that he did not believe in evolution, but promptly qualified his position in a *New York Times* Op-Ed stating that he did believe in evolution if “evolution” means only “microevolution, small changes over time within a species.”<sup>28</sup>

One gets a sense of the widening religious–secular divide when comparing John F. Kennedy’s 1960 speech responding to concerns about his Catholicism with Mitt Romney’s recent speech addressing concerns about his Mormonism.<sup>29</sup> Kennedy began by noting that the real issues of the day were the threat of Communism and the persistence of poverty and noted that these “are not religious issues—for war and hunger and ignorance and despair know no religious barriers.”<sup>30</sup> Kennedy emphasized that he believed “in an America where the separation of church and state is absolute,” and “where every man has the same right to attend *or not attend* the church of his choice.”<sup>31</sup>

Romney similarly began with contemporary challenges, such as the rise of violent Islam and the dependence on foreign oil, but then chastised those “who may feel that religion is not a matter to be seriously considered” when addressing these issues.<sup>32</sup> Quoting Samuel Adams’ comment that “[o]ur Constitution was made for a moral and religious people,” Romney observed that “freedom requires religion just as religion requires freedom.”<sup>33</sup> Instead of calling for an absolute separation of church and state,

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evangelical Christian voting bloc).

26. Katherine Q. Seelye, *At G.O.P. Debate, Candidates Played to Conservatives*, N.Y. TIMES, May 5, 2007, at A10, available at 2007 WLNR 8525365.

27. *Id.*

28. Sam Brownback, Op. Ed., *What I Think About Evolution*, N.Y. TIMES, May 31, 2007, at A19, available at 2007 WLNR 10147296.

29. Compare John F. Kennedy, Address to the Greater Houston Ministerial Association (Sept. 12, 1960), in LET THE WORLD GO FORTH: THE SPEECHES, STATEMENTS, AND WRITINGS OF JOHN F. KENNEDY 1947 TO 1962, at 130 (Theodore C. Sorenson et al eds., 1988) (emphasizing issues that are “far more critical” than religion), with Governor Mitt Romney, Faith in America: Address at the George Bush Presidential Library (Dec. 6, 2007), available at [http://www.mittromney.com/Faith\\_In\\_America](http://www.mittromney.com/Faith_In_America) (emphasizing importance of religion).

30. Kennedy, *supra* note 29.

31. *Id.* (emphasis added).

32. Romney, *supra* note 29.

33. *Id.*

Romney decried those who “seek to remove from the public domain any acknowledgment of God” and openly welcomed “nativity scenes and menorahs” in public spaces.<sup>34</sup>

Surveys of Americans confirm the growing religious–secular divide. A *Washington Post* poll found that 48% of respondents felt that the “government should take special steps to protect America’s religious heritage,” whereas 47% of respondents felt that “[t]here should be a high degree of separation between church and state.”<sup>35</sup> Further exacerbating this divide is the fact that many Americans seem to be drifting toward religious and secular extremes.<sup>36</sup> Although the rise of conservative evangelical voters has been well chronicled, the rise of secular Americans has been reported with much less frequency. Yet, the General Social Survey reports that those Americans who identify with “no religion” almost doubled between 1975 and 2004, from 7.6% of the population to 14.3%.<sup>37</sup> Deborah and Daniel Merritt predict that this rising extremism will lead to even greater polarization:

The increasing visibility of conservative religious groups . . . pushes some religious moderates to distance themselves from religion. That movement intensifies the secular nature of society, prompting a further reaction from fundamentalists. Religious diversity, in sum, establishes a dynamic that seems to lead inevitably to polarization . . . .<sup>38</sup>

Bridging the domestic religious–secular divide has taken on increasing salience in the post-9/11 era. World tensions have highlighted the potentially lethal consequences of religious–secular antagonisms. The 9/11 attacks themselves seemed to confirm Samuel Huntington’s prediction that post-Cold War conflicts would emanate from religious rather than ideological or economic differences.<sup>39</sup> As globalization disrupted “[l]ong-

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34. *Id.*

35. Washington Post/Kaiser/Harvard Survey Project, *American Values: 1998 National Survey of Americans on Values*, at 13, question 22, available at <http://www.kff.org/kaiserpolls/1441-index.cfm> (follow “Toplines/Survey” hyperlink). See also Mariana Servin-Gonzales & Oscar Torres-Reyna, *The Poll-Trends: Religion and Politics*, 63 PUB. OPINION Q. 592, 603 (1999) (reviewing the 1998 *Washington Post* survey).

36. See Merritt & Merritt, *supra* note 5, at 929 (describing movement of both religious and secular Americans toward extreme ends of the spectrum).

37. See *id.* at 920–21 (noting rise in percentage of the population identifying with no religion); THE PEW FORUM ON RELIGION & PUB. LIFE, *supra* note 6, at 6, 8 (finding that 16.1% of the population identifies as “unaffiliated” with a major religious tradition, but noting that “a large portion (41%) of the unaffiliated population says religion is at least somewhat important in their lives”).

38. Merritt & Merritt, *supra* note 5, at 931.

39. See SAMUEL P. HUNTINGTON, CLASH OF CIVILIZATIONS AND THE REMAKING OF THE WORLD ORDER 95–101 (1996) (describing competing religious revivals as a primary source of

standing sources of identity,” religion, often in the form of fundamentalism, has filled the gap.<sup>40</sup> Even before 9/11, social scientist George Weigel observed that the “unsecularization of the world” was “one of the dominant social facts in the late 20th century.”<sup>41</sup>

The volatile nature of fundamentalist religion has elicited a flood of new books by authors seeking to ease tensions between members of different faiths and between believers and nonbelievers.<sup>42</sup> These authors share a common objective, but their solutions run a wide gamut and are often at loggerheads.<sup>43</sup>

One group seeks to resolve religious–secular tensions by convincing believers to abandon faith. These atheist authors—Richard Dawkins, Sam Harris, Daniel Dennett, Victor Stenger, and Christopher Hitchens—associate religion with ignorance and divisiveness.<sup>44</sup> Their strident attacks on religion are reminiscent of the contempt displayed by popular secularists in the late nineteenth century when the movement’s leader, Robert G. Ingersoll, proclaimed that “patent medicines will cure more diseases than all the prayers uttered since the beginning of the world.”<sup>45</sup>

Another group of authors tries to convince secularists to accept faith. Geneticist Francis Collins, biologist Joan Roughgarden, and astronomer

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fundamental cultural conflicts in the post-Cold War era).

40. *Id.* at 97.

41. *Id.* at 96.

42. *See, e.g.*, DANIEL C. DENNETT, *BREAKING THE SPELL* 16 (2006) (“Many people think that the best hope for humankind is that we can bring together all of the religions of the world in a mutually respectful conversation and ultimate agreement of how to treat one another.”); JOAN ROUGHGARDEN, *EVOLUTION AND THE CHRISTIAN FAITH: REFLECTIONS OF AN EVOLUTIONARY BIOLOGIST* 3 (2006) (opining that biology and Christianity are not mutually exclusive world views).

43. *Compare* FRANCIS S. COLLINS, *THE LANGUAGE OF GOD: A SCIENTIST PRESENTS EVIDENCE FOR BELIEF* 3 (2006) (noting that the principles of faith and science are “complementary”), with CHRISTOPHER HITCHENS, *GOD IS NOT GREAT: HOW RELIGION POISONS EVERYTHING* 6 (2007) (noting the author’s belief that an ethical life should be lived without religion).

44. RICHARD DAWKINS, *THE GOD DELUSION* 1 (2006) (stating that his book “is intended to . . . raise consciousness to the fact that to be an atheist is a realistic aspiration, and a brave and splendid one”); DENNETT, *supra* note 42, at 16 (noting that nobody, not even passionately religious people, know the real answer to the mystery of God); SAM HARRIS, *THE END OF FAITH: RELIGION, TERROR, AND THE FUTURE OF REASON* 171 (2004) (commenting that reliance on religion for ethical behavior is absurd); HITCHENS, *supra* note 43, at 4 (claiming the four “irreducible objections” to religion are that “it misrepresents the origins of man and the cosmos, that . . . it manages to combine the maximum of servility with the maximum of solipsism, that it is both the result and the cause of dangerous sexual repression, and that it is ultimately grounded on wish-thinking”); VICTOR J. STENGER, *GOD: THE FAILED HYPOTHESIS* 11 (2007) (arguing “that by this moment in time science has advanced sufficiently to be able to make a definitive statement on the existence or nonexistence of a God having the attributes that are traditionally associated with the Judeo-Christian-Islamic God”). *See also* JOHN ALLEN PAULOS, *IRRELIGION: A MATHEMATICIAN EXPLAINS WHY ARGUMENTS FOR GOD JUST DON’T ADD UP*, at xi (2008) (stating that “[t]here is an inherent illogic to all of the arguments” for the existence of God).

45. NOAH FELDMAN, *DIVIDED BY GOD* 125 (2005).

Owen Gingerich have all produced books explaining why they, as scientists, continue to be believers.<sup>46</sup> Law professor Bruce Ledewitz wrote a book encouraging secular liberals to find common ground with people of faith by acknowledging that their liberal values are consonant with a more expansive notion of Godliness.<sup>47</sup>

Other authors accept the inevitability of the religious–secular divide and focus instead on the structural and legal means of ensuring peaceful coexistence in a religiously diverse society.<sup>48</sup> Their solutions typically focus on recalibrating the balance between church and state to promote greater harmony.<sup>49</sup> In his book *Divided by God*, law professor Noah Feldman argues for a new formulation of Establishment Clause principles that would allow greater public acknowledgement of religion, but less financial support.<sup>50</sup> *Newsweek* editor Jon Meacham, in his book *American Gospel*, contends that the Framers sought to avoid religious divisiveness by creating an American “public religion”—one that willingly acknowledges the existence of a unifying nonsectarian God, but also forbids the state from favoring any particular faith.<sup>51</sup>

In this Article, I join these efforts to unite Americans across the religious–secular divide. But, rather than approaching this topic from a global perspective, I focus instead on one particularly contentious front in the religious–secular wars: the teaching of intelligent design. By peeling away the layers of the intelligent-design debate—first considering the surface legal issues decided by courts, then looking underneath for the motivations of the parties, and finally, unearthing the core ideological split that drives the intelligent-design debate—I extract larger lessons about common values that can unite both religious and secular Americans.

What I discover is that the evolution–intelligent design debate is driven as much by each side’s harsh characterization of the other as it is by true ideological differences. I contend that this demonization prevents both sides from recognizing their common core values, and suggest that this mutual

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46. See, e.g., COLLINS, *supra* note 43, at 3 (arguing “that belief in God can be an entirely rational choice, and that the principles of faith are . . . complementary with the principles of science”); ROUGHGARDEN, *supra* note 42, at 3 (2006) (“I’m an evolutionary biologist and a Christian.”); OWEN GINGERICH, *GOD’S UNIVERSE* 3 (2006) (“I became increasingly curious about the fundamental way that science worked, its claims to truth, and the relation of those claims to religious belief.”).

47. BRUCE LEDEWITZ, *AMERICAN RELIGIOUS DEMOCRACY: COMING TO TERMS WITH THE END OF SECULAR POLITICS* 189–90 (2007).

48. See, e.g., Feldman, *supra* note 19, at 237 (arguing for an interpretation of the Establishment Clause that would permit public acknowledgment of religion but restrict financial support).

49. *Id.*

50. *Id.*

51. JON MEACHAM, *AMERICAN GOSPEL* 22–23, 161 (2006).



incomprehension is a legacy of the landmark battle over evolution: the widely publicized Scopes trial of 1925.<sup>52</sup>

I draw on a page of history from the Scopes trial to illustrate how the ideological differences separating Americans on the evolution controversy are less extreme than the rhetoric suggests. I believe that both sides are generally committed to the sanctity of human dignity. I argue, however, that tensions arise only because each side has a very different understanding of the source of this commitment.

Fundamentalists believe that any societal commitment to respecting human dignity must be anchored in a shared belief in God.<sup>53</sup> In their minds, it is only this belief in God, with its concomitant belief that people are divinely created, that can explain a societal commitment to human dignity.<sup>54</sup> Consequently, fundamentalists bristle at attempts to remove references to God in public places such as courthouses and schools.<sup>55</sup>

Secularists, by contrast, believe our societal commitment to human dignity can exist even in the absence of religious faith.<sup>56</sup> They are confident that our society will have values even if religion is relegated to the private sphere.<sup>57</sup> They think that government acknowledgment of religion is not only unnecessary but also conflicts with our commitment to human dignity by making non-believers and members of minority faiths feel like disfavored members of the community.<sup>58</sup>

52. *Timeline: Remembering the Scopes Monkey Trial* (NPR radio broadcast July 5, 2005), available at <http://www.npr.org/templates/story/story.php?storyId=4723956>. The State of Tennessee prosecuted John Scopes for teaching evolution in violation of the Butler Act, a statute that made it illegal “to teach any theory that denies the Divine Creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animals.” *Id.* The Tennessee Supreme Court subsequently overturned the conviction on a technicality. *Id.* See also Butler Act, H.R. 185, 64th Gen. Assem., Reg. Sess. (Tenn. 1925) (repealed 1967), available at <http://www.law.umkc.edu/faculty/projects/ftrials/scopes/tenstat.htm>; EDWARD LARSON, *SUMMER OF THE GODS* 3 (2006) (giving a Pulitzer Prize-winning account of the Scopes trial).

53. See, e.g., CTR. FOR THE RENEWAL OF SCIENCE AND CULTURE, *THE WEDGE STRATEGY* 6, available at <http://www.antievolution.org/features/wedge.pdf> [hereinafter *THE WEDGE STRATEGY*] (arguing that implementing a “science consonant with Christian and theistic convictions” will reverse the dehumanizing effect of “scientific materialism”).

54. *Id.*

55. See, e.g., *McCreary County, Ky. v. Am. Civil Liberties Union*, 545 U.S. 844, 869 n.16 (2005) (describing repeated attempts by two counties to display the Ten Commandments in their respective courthouses, despite court-ordered injunctions prohibiting the displays).

56. See DENNETT, *supra* note 42, at 16 (noting that some atheists believe that “the world would be a much better place if all religion went extinct”).

57. *Id.*

58. See, e.g., *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring) (“[G]overnment endorsement . . . of religion . . . sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community . . . [d]isapproval sends the opposite message”).

In this Article, I argue that there is a neutral vehicle—one that is acceptable to both religious and secular Americans—through which Americans can express their shared commitment to human dignity: the widely revered United States Constitution. I do not say this because of the Constitution’s inherent perfection. On the contrary, commentators have rightly observed that the Constitution is deeply flawed.<sup>59</sup> Rather, I say this because of what this imperfect document symbolizes for Americans. This secular document—one that never mentions God—symbolizes our nation’s religious-like commitment to the sanctity of human dignity.<sup>60</sup> I believe that the Constitution embodies a brazen decision by “We the People” to treat people as sacred, even though we may never agree on whether God exists, whether people are divinely created, or whether our commitment to human dignity is part of a larger divine plan. This principle can be shared by both fundamentalists and moderate secular Americans and can be a source of common values that transcends faith, race, and origin.

Before we get to that point, however, we must begin with the basic facts of the intelligent-design controversy.

#### I. THE OUTER LAYER: THE LEGAL ISSUES RAISED BY INTELLIGENT DESIGN

Evolution continues to polarize Americans eighty years after the Scopes trial.<sup>61</sup> Every school board criticism of evolution or adoption of intelligent design (“ID”) elicits a new flood of dueling Op-Eds, the butting of talking heads, and the waffling of politicians eager to appear equally committed to science and faith.<sup>62</sup>

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59. See, e.g., SANFORD LEVINSON, OUR UNDEMOCRATIC CONSTITUTION: WHERE THE CONSTITUTION GOES WRONG (AND HOW WE THE PEOPLE CAN CORRECT IT) 172 (2006) (noting the author’s belief that “what most of us regard as our beloved Constitution is an abusive one in important respects”).

60. U.S. CONST. art. VII (referencing God only in the year when the Constitution was signed).

61. See, e.g., Elizabeth Bumiller, *Bush Remarks Roil Debate over Teaching of Evolution*, N. Y. TIMES, Aug. 3, 2005, at A14, available at 2005 WLNR 12179852 (quoting President George W. Bush (discussing outcry prompted by President George W. Bush’s remark that “both sides” of the evolution debate “ought to be properly taught”); Seelye, *supra* note 26, at A10 (discussing waffling by Republican presidential candidates regarding their belief in evolution).

62. See *Teaching Evolution: A State-by-State Debate* (NPR broadcast Dec. 20, 2005), available at <http://www.npr.org/templates/story/story.php?storyID=4630737> (providing an overview of the evolution controversy in sixteen different states). The *New York Times* ran a three-part series on the evolution-ID dispute. See Jodi Wilgorn, et al., *Politicized Scholars Put Evolution on the Defensive*, N. Y. TIMES, Aug. 21, 2005, at 11, available at 2005 WLNR 13154371 (explaining the origin and growth of the Discovery Institute, whose “Center for Science and Culture has emerged in recent months as the ideological and strategic backbone behind the eruption of skirmishes over science in school districts and state capitals across the country”); Kenneth Chang, *In Explaining Life’s Complexity, Darwinists and Doubters Clash*, N. Y. TIMES, Aug. 22, 2005, at A1, available at 2005 WLNR 13183652 (discussing

The epicenter of the most recent evolution controversy was Dover, Pennsylvania, a small town twenty miles south of Harrisburg.<sup>63</sup> The battle there occurred when parents sued the Dover school board after it adopted a resolution requiring the reading of a brief statement to the district's ninth-grade biology students.<sup>64</sup> The statement read in part:

Because Darwin's Theory is a theory, it continues to be tested as new evidence is discovered. The Theory is not a fact. Gaps in the Theory exist for which there is no evidence . . . Intelligent Design is an explanation of the origin of life that differs from Darwin's view. The reference book, *Of Pandas and People*, is available for students who might be interested in gaining an understanding of what Intelligent Design actually involves. With respect to any theory, students are encouraged to keep an open mind.<sup>65</sup>

The legal issue presented was whether the school board's policy violated the Establishment Clause.<sup>66</sup> Although Supreme Court precedent is somewhat murky on how courts should make this determination, it essentially instructs judges to focus on whether a government action has either an unacceptable purpose (i.e., the government action was taken for religious reasons) or an unacceptable impact (i.e., the action advances or endorses religion).<sup>67</sup>

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whether "a scientific explanation of the history of life [can] include the actions of an unseen higher being"); Cornelia Dean, *Scientists Speak Up on Mix of God and Science*, N.Y. TIMES, Aug. 23, 2005, at A1, available at 2005 WLNR 13235194 (addressing whether an individual can "be a good scientist and believe in God"). That same year, *TIME* magazine featured the controversy on its cover. Claudia Wallis, *The Evolution Wars*, TIME, Aug. 15, 2005, available at 2005 WLNR 12430761. A recent flare-up over the evolution-ID issue occurred in Texas when the state's director of science curriculum was abruptly forced to resign after she circulated an e-mail message about a presentation to be given by a critic of ID. Ralph Blumenthal, *Official Leaves Post as Texas Prepares to Debate Science Education Standards*, N.Y. TIMES, Dec. 3, 2007, at A16, available at 2007 WLNR 23822584. The *New York Times* quickly followed up with an editorial criticizing the director's ouster. Editorial, *Evolution and Texas*, N.Y. TIMES, Dec. 4, 2007, at A34, available at 2007 WLNR 23893245.

63. See generally Laurie Goodstein, *A Web of Faith, Law and Science in Evolution Suit*, N.Y. TIMES, Sept. 26, 2005, at A1, available at 2005 WLNR 15140614 (discussing the Dover controversy).

64. *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707, 708–09 (M.D. Pa. 2005).

65. *Id.*

66. *Id.* at 709.

67. See, e.g., *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971) (articulating the *Lemon* test, which requires the following: (1) the law must have a "secular legislative purpose"; (2) the law's "principal or primary effect must be one that neither advances nor inhibits religion"; and (3) the law "must not foster an excessive entanglement between government and religion") (citations and internal quotation marks omitted); *Lynch v. Donnelly*, 465 U.S. 668, 687–88 (1984) (O'Connor, J., concurring) (articulating the "endorsement test," which finds an Establishment Clause violation whenever the government endorses one religion over another, or religion over non-religion).

In many ways, the *Dover* case was easy for district court judge, John E. Jones III, to decide because it was rich with evidence of an illicit purpose.<sup>68</sup> Indeed, this case is a warning to school board members in other districts that if they ever want to adopt an ID curriculum, they should refrain from making public statements like those made by the Dover school board members. Remarks such as school board member William Buckingham's comment that "2,000 years ago someone died on a cross. Can't someone take a stand for him?" are sure to give plaintiffs' lawyers cause for handsprings and high fives.<sup>69</sup>

Yet, a decision grounded solely on an illicit purpose would suggest that teaching ID might be constitutional if a school board merely articulated a legitimate secular purpose, such as a sincere belief in ID as an appropriate subject of scientific inquiry. A more thorough decision, therefore, would have to consider whether teaching ID also had an unlawful impact under the Establishment Clause. This additional analysis, however, would require a court to consider the more interesting, but controversial, issue of whether ID is truly science.

To his credit, Judge Jones wrestled with that question too.<sup>70</sup> After an extensive review of the expert testimony, he concluded that ID is not science but theology.<sup>71</sup> His conclusion was hardly surprising since every major scientific association that has considered the issue has reached the same conclusion.<sup>72</sup> Still, it was a crushing defeat for the ID movement.

Judge Jones explained why ID is actually the antithesis of science.<sup>73</sup> Whereas science focuses on natural causes that can be observed, tested, and replicated,<sup>74</sup> ID focuses on supernatural causes.<sup>75</sup> Intelligent design thus uses the fact that something cannot easily be explained to assume that an unknowable intelligent designer must have caused it.<sup>76</sup> The problem, however, is that science does not resort to metaphysical assumptions.<sup>77</sup>

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68. *Kitzmiller*, 400 F. Supp. 2d at 763 ("[T]he secular purposes claimed by the Board amount to a pretext for the Board's real purpose, which was to promote religion in the public school classroom . . .").

69. *Id.* at 752. Buckingham also expressed dismay that "liberals in black robes" were "taking away the rights of Christians." *Id.*

70. *Id.* at 735-46.

71. *Id.* at 745-46 (reaching the "inescapable conclusion that ID is an interesting theological argument, but that it is not science").

72. *Id.* at 737 (noting conclusions of scientific associations that ID is not science).

73. *Id.* at 735.

74. *Id.* at 735 ("Methodological naturalism is a 'ground rule' of science today which requires scientists to seek explanations in the world around us based upon what we can observe, test, replicate, and verify.").

75. *Id.* at 736 ("ID is predicated on supernatural causation.").

76. *Id.* at 738 ("ID is at bottom premised upon a false dichotomy, namely, that to the extent evolutionary theory is discredited, ID is confirmed.").

77. Chang, *supra* note 62, at A1 (quoting Douglas H. Erwin, a paleobiologist at the

Once Judge Jones identified ID as theology and not science, his decision was a foregone conclusion.<sup>78</sup> If ID is theology, teaching it must inevitably have an unlawful impact since ID advances religion by endorsing the theological notion that there is a supreme being behind creation.<sup>79</sup>

## II. BENEATH THE SURFACE: THE UNDERLYING MOTIVATION FOR TEACHING INTELLIGENT DESIGN

ID proponents seem to sincerely believe that ID is a legitimate science, and have gone to great lengths to demonstrate their sincerity.<sup>80</sup> The nation's leading ID think tank, the Discovery Institute's Center for Science and Culture, has an extensive network of scientists who have produced a small library of books using principles of math, chemistry, biology, paleontology, and physics to argue for the existence of an intelligent designer.<sup>81</sup>

Yet, there is reason to think that the ID movement's secular-scientific image is a façade and that ID proponents know that ID actually promotes religion.<sup>82</sup> The evidence, in fact, suggests that ID is nothing more than a new name for the earlier and more overtly religious creationism theory.<sup>83</sup> Judge Jones observed that ID arose only after the Supreme Court's *Edwards v. Aguillard* decision prohibited creationism instruction in public schools.<sup>84</sup> In *Edwards*, Justice Brennan found that creationism only "advance[s] the

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Smithsonian Institution) ("One of the rules of science is, no miracles allowed.").

78. *Kitzmiller*, 400 F. Supp. 2d at 764.

79. *Id.* (finding the effect of the Dover school board's action was "to impose a religious view of biological origins into the biology course in violation of the Establishment Clause").

80. See Francis J. Beckwith, *Science and Religion Twenty Years After McCreary v. Arkansas: Evolution, Public Education, and the New Challenges of Intelligent Design*, 26 HARV J.L. & PUB. POL'Y 455, 471 (2003) (noting that ID scholars at the Center for Science and Culture pioneered scientific research regarding ID and that "the works of these and other ID scholars have been published by prestigious academic presses and respected academic journals").

81. See generally *id.* at 470–71 (listing ID scholars); John H. Calvert & William S. Harris, *Intelligent Design: The Scientific Alternative to Evolution*, 3 NAT'L CATHOLIC BIOETHICS Q. 549–54 (2003) (providing overview of scientific arguments supporting ID).

82. See, e.g., *Kitzmiller*, 400 F. Supp. 2d at 763 (noting that although "[d]efendants have consistently asserted that the ID Policy was enacted for the secular purposes of improving science education and encouraging students to exercise critical thinking skills, the Board took none of the steps that school officials would take if these stated goals had truly been their objective").

83. See William Safire, *On Language; Neo-Creo*, N.Y. TIMES, Aug. 21, 2005, § 6 (Magazine), at 16 (quoting John Morris, President, Inst. for Creation Research) (noting that "traditional creationists" have adopted the phrase "intelligent design" and "use the term to refer to the Christian God"), available at 2005 WLNR 13153798.

84. *Kitzmiller*, 400 F. Supp. 2d, at 718 (citing *Edwards v. Aguillard*, 482 U.S. 578, 596–97 (1987) (holding the Louisiana Creationism Act unconstitutional because it either banned evolutionary theory from public schools or presented religious views that completely rejected evolution)) (noting that ID in its current form only "came into existence after the *Edwards* case was decided in 1987").

religious viewpoint that a supernatural being created humankind.”<sup>85</sup> When ID appeared in *Edwards*’ wake, critics naturally assumed, as University of Kansas professor Leonard Krishtalka put it, that ID was “nothing more than creationism in a cheap tuxedo.”<sup>86</sup>

Perhaps the most telling evidence of ID’s creationism roots is the ID textbook, *Of Pandas and People*, which the Dover students were referred to for information on ID.<sup>87</sup> Judge Jones noted that drafts of this text were originally prepared before *Edwards* and referred explicitly to creationism.<sup>88</sup> After *Edwards*, the authors merely substituted the words “intelligent design” for “creationism.”<sup>89</sup> Even the book’s definition of ID was unchanged from its previous definition of creation science.<sup>90</sup>

Given this history, the critics’ claim that ID is nothing more than an “underhanded rebranding” of creationism is hardly surprising.<sup>91</sup> Even ID proponents sometimes acknowledge that ID is in tension with accepted scientific principles.<sup>92</sup> Professor Scott Minnich, one of the primary experts who testified on behalf of the Dover school board, admitted that ID would require science’s ground rules to be changed to accommodate supernatural forces.<sup>93</sup> While it is true that the ID movement shrewdly refuses to take an official position on who the intelligent designer is, it is hard to imagine a supernatural creator in any nonreligious sense.<sup>94</sup> Judge Jones did note that ID proponents “occasionally suggest that the designer could be a space alien or a time-traveling cell biologist,” but they have not yet proposed any “serious alternative to God as the designer.”<sup>95</sup>

Of course, one can hardly fault ID proponents for dressing up their theology in scientific garb. After all, that is the only way ID could withstand an Establishment Clause attack. If a government action must have

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85. *Edwards*, 482 U.S. at 591.

86. Safire, *supra* note 83, at 16.

87. *Kitzmiller*, 400 F. Supp. 2d at 708–09.

88. *Id.* at 721.

89. *Id.* (“[C]ognates of the word creation (creationism and creationist), which appeared approximately 150 times[,] were deliberately and systematically replaced with the phrase ID . . .”).

90. *Id.* (“[T]he definition for creation science in early drafts is identical to the definition of ID . . .”).

91. HITCHENS, *supra* note 43, at 86.

92. See, e.g., *Kitzmiller*, 400 F. Supp. 2d at 736 (quoting ID movement leader’s testimony that “entire fields of inquiry, including especially in the human sciences, will need to be rethought from the ground up in terms of intelligent design”).

93. *Id.*

94. Discovery Institute’s Center for Science & Culture, *CSC Top Questions*, <http://www.discovery.org/csc/topQuestions.php> (last visited Dec. 3, 2008) (stating that “intelligent design is agnostic regarding the source of design”).

95. *Kitzmiller*, 400 F. Supp. 2d at 718.

a secular purpose and impact to survive judicial scrutiny, then ID will pass constitutional muster only if it is presented as legitimate science.<sup>96</sup>

However, the irony is that the whole purpose of ID is to promote religion.<sup>97</sup> Indeed, the reason ID proponents are so anxious to present an alternative to evolution is precisely that they believe evolution negates faith.<sup>98</sup> As Phillip Johnson, considered the father of the modern Intelligent Design movement, explained: “evolution contradicts the idea that we are here because a creator brought about our existence for a purpose.”<sup>99</sup>

Still, for litigation purposes, ID proponents must refrain from this religious rhetoric. Thus, Dover school board’s ID experts Scott Minnich and Michael Behe stuck to their pseudo-scientific explanations for ID.<sup>100</sup> They claimed that some biological systems are so “irreducibly complex” that natural selection could not have produced them and that nature evinces a “purposeful arrangement of parts” from which one can only infer conscious design.<sup>101</sup> Yet the whole point of these theories is to introduce the religious notion of a supernatural creator into the classroom.

By suppressing their religious motivation, ID proponents mimic the strategy employed by supporters of public Ten Commandments monuments. For instance, in *Van Orden v. Perry*, the Texas Attorney General argued that one such display served the secular purpose of recognizing the Ten Commandments’ influence on American law.<sup>102</sup> Struck by the ironic strategy of proffering a secular purpose for an obviously religious symbol, Justice Scalia wryly retorted: “I would consider it a Pyrrhic victory for you to win on the grounds you are arguing.”<sup>103</sup>

Of course, Scalia probably realized the parties were denying a religious motivation because they knew it would undermine their Establishment Clause argument.<sup>104</sup> Yet, this same charade occurs in the ID context. ID

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96. See *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971) (requiring that a law have both secular purpose and impact in order to pass constitutional muster).

97. See Safire, *supra* note 83, at 16 (arguing that the use of ID has helped advance creationism as a legitimate theory).

98. See COLLINS, *supra* note 46, at 183 (suggesting that religious believers must reject evolution because it “promotes an atheistic worldview”).

99. *Kitzmiller*, 400 F. Supp. 2d at 719.

100. *Id.* at 738–43.

101. *Id.*

102. Linda Greenhouse, *Justices Consider Religious Displays*, N.Y. TIMES, Mar. 3, 2005, at A18, available at 2005 WLNR 3213257.

103. *Id.*

104. Those who advocate for Ten Commandments displays on government property usually do so for religious purposes; however, the precise motivation of a party in any given case will vary with the facts. For instance, the Ten Commandments displays at issue in two recent Supreme Court cases, one in Kentucky and one in Texas, had very different histories. The Kentucky case involved a contemporary attempt by two Kentucky counties to prominently display the King James’ version of the Ten

proponents staunchly defend Intelligent Design as legitimate secular science even though their real intent is to counter the perceived atheistic teachings of evolution with a theory that presents the world as planned and people as created for a purpose. The Wedge Document, the strategic plan of the Discovery Institute's Center for Renewal of Science and Culture, makes this point explicitly. It states that the Center's goal is to "defeat scientific materialism and . . . to replace materialistic explanations with the theistic understanding that nature and human beings are created by God."<sup>105</sup>

### III. THE INNER CORE: THE IDEOLOGICAL DEBATE BEHIND THE INTELLIGENT DESIGN CONTROVERSY

What is driving this fierce debate over evolution and ID? Why, eighty years after the Scopes trial, do these topics still generate such strong

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Commandments in county courthouses. *McCreary County v. Am. Civil Liberties Union of Ky*, 545 U.S. 844, 851 (2005). There was little doubt in that case that the real intent of the counties was to promote religion. *Id.* at 851.

By contrast, the monument in the Texas case had been on the Texas State Capitol grounds for over forty years. *Van Orden v. Perry*, 545 U.S. 677, 682 (2005). The Fraternal Order of the Eagles, an association of civic-minded groups founded by theater owners, donated the monument. Frank Rich, *The God Racket, from DeMille to DeLay*, N.Y. TIMES, Mar. 27, 2005, § 2, at 1. The Eagles had dedicated numerous such monuments around the country in what some have called a publicity stunt to help promote the Cecil B. DeMille blockbuster film, *The Ten Commandments*. *Id.*

Perhaps the most candid description of the motivation of those who push for Ten Commandments displays can be found in the words of former Alabama Chief Justice Roy Moore who famously snuck a Ten Commandments monument into the Alabama Supreme Court under cover of night. At the monument's unveiling, Justice Moore expressed the sentiment of those who fight to keep religious monuments in the public square:

[M]any judges and other government officials across our land deny that there's a higher law. They forbid teaching your children that they're created in the image of Almighty God, and . . . they purport all the while that it is government and not God who gave us our rights. Not only have they turned away from those absolute standards which form the basis of our morality and the moral foundation of our law, but they have divorced the Constitution and the Bill of Rights from these principles. As they have sown the wind, so we have reaped the whirlwind, in our homes, in our schools and in our workplaces.

Judge Ray Moore, Speech at Monument Dedication (Aug. 1, 2001), available at <http://www.wsfa.com/global/story.asp?s=1056322>. See also Jeffrey Gehleman, *Alabama's Top Judge Defiant on Commandments' Display*, N.Y. TIMES, Aug. 21, 2003, at A1, available at 2003 WLNR 5252852 (describing Chief Justice Moore's secret Ten Commandments installation).

105. *Kitzmiller*, 400 F. Supp. 2d at 720 (quoting THE WEDGE STRATEGY, *supra* note 53, at 4) (internal quotation marks omitted). The Wedge Strategy, a Discovery Center internal document, was leaked to the internet in 1999. Am. Civil Liberties Union, *Frequently Asked Questions About "Intelligent Design,"* Sept. 16, 2005, <http://www.aclu.org/religion/schools/16371res20050916.html>. ID opponents refer to it as the "Wedge Document" because the document describes "materialistic science as a giant tree" and recommends that the Center's strategy act "as a 'wedge' that, while relatively small, can split the trunk when applied at its weakest points." THE WEDGE STRATEGY, *supra* note 53, at 6.



passions? Why do most Americans favor teaching ID even when the vast majority of scientists oppose it?<sup>106</sup>

To fully appreciate the passion brought to the evolution–ID debate, it is necessary to understand each side’s underlying ideological assumptions. These assumptions explain why both groups believe the stakes are so high and why they are so unyielding in their positions.

*A. The Assumptions of ID Proponents:  
Saving Society from Moral Relativism*

ID proponents wisely withhold their real motivations in legal briefs, but they often reveal them in comments aimed at the general public. Their statements have common themes whether the proponents are politicians, religious figures, popular commentators, or scholars. One hears the same litany of assumptions from ID supporters time and time again: (1) evolution negates the existence of God;<sup>107</sup> (2) without God, people are nothing but animals with no meaning or purpose;<sup>108</sup> and (3) life without meaning offers no basis for a system of morality.<sup>109</sup>

1. Evolution Negates the Existence of God

The first assumption—that evolution undermines faith in God—is the linchpin of the ID proponents’ critique.<sup>110</sup> They believe that without God the remaining assumptions—that people are not sacred and that there is no basis for morality—inevitably follow. The Wedge Strategy concisely captures this logic:

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106. See Laurie Goodstein, *Teaching of Creationism is Endorsed in New Survey*, N.Y. TIMES, Aug. 31, 2005, at A9 (finding that 64% of those polled “were open to idea of teaching creation in addition to evolution”), available at 2005 WLNR 13671100; Claudia Wallis, *The Evolution Wars*, TIME, Aug. 15, 2005, at 27, 28 (citing Harris poll finding 55% of adults favor teaching of creationism and ID in addition to evolution in public schools), available at 2005 WLNR 12430761. However, in 2002, the Board of Directors of the Association for the Advancement of Science unanimously adopted a resolution that stated that the “lack of scientific warrant for so-called ‘intelligent design theory’ makes it improper as a part of science education.” *Kitzmiller*, 400 F. Supp. 2d at 737 (citing Am. Ass’n for the Advancement of Science, Board Resolution on Intelligent Design Theory, Oct. 18, 2002, <http://www.aaas.org/news/releases/2002/1106id2.shtml>).

107. See COLLINS, *supra* note 43, at 183 (stating that the ID movement equates a belief in evolution with an atheistic worldview).

108. THE WEDGE STRATEGY, *supra* note 53, at 2 (noting that Darwinist thinkers have “portrayed humans not as moral and spiritual beings, but as animals or machines”).

109. *Id.* (asserting that a “materialistic conception of reality” denies “the existence of objective moral standards”).

110. See COLLINS, *supra* note 43, at 183 (stating that the ID movement rests on three propositions, the first of which is that “[e]volution promotes an atheistic worldview and therefore must be resisted by believers in God”).

The proposition that human beings are created in the image of God is one of the bedrock principles on which Western civilization was built. Its influence can be detected in most, if not all, of the West's greatest achievements, including representative democracy, human rights, free enterprise, and progress in the arts and sciences.

Yet a little over a century ago, this cardinal idea came under wholesale attack by intellectuals drawing on the discoveries of modern science. Debunking the traditional conceptions of both God and man, thinkers such as Charles Darwin, Karl Marx, and Sigmund Freud portrayed humans not as moral and spiritual beings, but as animals or machines who inhabited a universe ruled by purely impersonal forces and whose behavior and very thoughts were dictated by the unbending forces of biology, chemistry, and environment. This materialistic conception of reality eventually infected virtually every area of our culture, from politics and economics to literature and art.<sup>111</sup>

Evolution proponents have often tried to refute this claim that modern science and faith are in conflict. Their standard refrain is that religion and science, to use the famous words of the late paleontologist Stephen Jay Gould, occupy two “Non-Overlapping Magisteria.”<sup>112</sup> Science focuses only on the question of “how” things came to be; religion focuses on the question of “why” they exist.<sup>113</sup>

For many religious believers, this notion of distinct roles is enough to justify a truce with evolution.<sup>114</sup> But, ardent ID proponents continue to see

111. THE WEDGE STRATEGY, *supra* note 53, at 2.

112. STEPHEN JAY GOULD, ROCKS OF AGES: SCIENCE AND RELIGION IN THE FULLNESS OF LIFE 4–5 (1999).

113. *See id.* at 6. (“[T]he net, or magisterium, of science covers the empirical realm: what is the universe made of (fact) and why does it work this way (theory). The magisterium of religion extends over questions of ultimate meaning and moral value.”) *Id.* The National Academy of Sciences has similarly declared that there is no conflict between evolution and religion:

At the root of the apparent conflict between some religions and evolution is a misunderstanding of the critical difference between religious and scientific ways of knowing. Religions and science answer different questions about the world. Whether there is a purpose to the universe or a purpose for human existence are not questions for science. Religious and scientific ways of knowing have played, and will continue to play, significant roles in human history . . . Science is a way of knowing about the natural world. It is limited to explaining the natural world through natural causes. Science can say nothing about the supernatural. Whether God exists or not is a question about which science is neutral.

SAM HARRIS, LETTER TO A CHRISTIAN NATION 62–63 (2006) [hereinafter HARRIS, CHRISTIAN NATION] (quoting statement from the National Academy of Sciences).

114. *See, e.g.*, Editorial, *Intelligent Ruling: Judge Jones Brings Wisdom to the Dover Case*, PITTSBURGH POST-GAZETTE, Dec. 23, 2005, at B6, available at 2005 WLNR 20839752 (noting that

an inherent conflict between evolution and religion. They believe evolution portrays the world in entirely “materialist” terms—that all of creation is a product of random physical forces operating without purpose or meaning.<sup>115</sup> Even if evolutionists concede that a divine power could have set this process in motion, ID proponents still fear that this conception reduces God’s role to an irrelevancy. William Jennings Bryan explained this objection more than eighty years ago: “It *permits* one to believe in a God, but puts the creative act so far away that reverence for the Creator—even belief in Him—is likely to be lost.”<sup>116</sup>

For ID proponents, the stumbling block of evolution is its implicit assumption that life is a product of random forces. While they may willingly accept that species evolve over time or that the earth is much older than the Bible suggests,<sup>117</sup> they cannot accept the implication that there is no ongoing divine force behind creation and consequently no divine purpose for human existence.<sup>118</sup> It is at this point that even the most evolution-sympathetic ID proponents must draw a line in the sand.<sup>119</sup>

Of course, one could hardly expect religious believers to concede that God plays an insignificant role in creation. Still, evolution supporters sometimes seem dumbstruck when ID proponents make this point explicitly. That is what happened when the Roman Catholic Archbishop of Vienna, Christoph Schönborn published an Op-Ed in the *New York Times* claiming that Catholicism did not fully accept evolution.<sup>120</sup> Admittedly, evolution supporters previously had reason to believe that the Catholic Church had largely accepted evolution. In 1996, Pope John Paul II declared that evolution was “more than a hypothesis,” and in 2004 Cardinal

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millions of Christians “see evolution as the means by which God’s creation proceeds,” and that those who see the decision in the Dover case “as a victory for godless materialism” should consider the words of Gould “who called science and religion ‘non-overlapping magisteria’”).

115. Senator Sam Brownback, for instance, wrote in a *New York Times* Op-Ed that he rejected evolution to the extent it “means assenting to an exclusively materialistic, deterministic vision of the world that holds no place for a guiding intelligence . . . .” Brownback, *supra* note 28, at A19.

116. WILLIAM JENNINGS BRYAN, IN HIS IMAGE 90 (1922).

117. *See, e.g.*, Brownback, *supra* note 28, at A19 (stating that “if belief in evolution means simply assenting to microevolution, small changes over time within a species, I am happy to say . . . that I believe it to be true”).

118. *See, e.g., id.* (stating that “passionate advocates of evolutionary theory offer a vision of man as a kind of historical accident,” but that the author personally rejected these arguments because they “dismiss the possibility of divine causality”).

119. *See, e.g., id.*

120. Christoph Schönborn, Op-Ed., *Finding Design in Nature*, N.Y. TIMES, July 7, 2005, at A23, available at 2005 WLNR 10629430 [hereinafter Schönborn, *Finding Design*]. *See also* CHRISTOPH SCHÖNBORN, CHANCE OR PURPOSE?: CREATION, EVOLUTION AND A RATIONAL FAITH 56 (Hubert Philip Weber ed., Henry Taylor trans., Ignatius Press 2007) [hereinafter SCHÖNBORN, CHANCE OR PURPOSE] (“[N]atural science’s way of looking at the origin of species is not the only approach to reality.”).

Ratzinger, who is now Pope Benedict XVI, endorsed the scientific view that the earth is several billion years old and that species evolve over time.<sup>121</sup> But it hardly should have been surprising when Archbishop Schönborn categorically denied that the Catholic Church accepted the neo-Darwinian sense of evolution as an “unguided, unplanned process,” or when he bolstered his argument with Pope Benedict’s observation that “[w]e are not some casual and meaningless product of evolution. Each of us is the result of a thought of God. Each of us is willed, each of us is loved, each of us is necessary.”<sup>122</sup>

The *Times* reported that “scientists and science teachers reacted with confusion, dismay and even anger” to the Archbishop’s essay.<sup>123</sup> Some read the essay as “abandoning longstanding church support for evolutionary biology.”<sup>124</sup> But how could they have expected a religious leader to agree that the world is “unguided” and “unplanned”? How could they be surprised that the Catholic Church, even if accepting of important aspects of evolution, still draws “a thick bottom line that God is the ultimate creator”?<sup>125</sup>

ID proponents’ assumption that evolution and religion are irreconcilable has found support in an unlikely place: the recent spate of books by atheist authors. These authors readily agree with ID proponents that evolution and faith are incompatible,<sup>126</sup> however, they use this assumed incompatibility to justify their rejection of religion.<sup>127</sup>

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121. Ian Fisher, *Professor-Turned-Pope Leads a Seminar on Evolution*, N.Y. TIMES, Sept. 2, 2006, at A3, available at 2006 WLNR 15215704.

122. Schönborn, *Finding Design*, *supra* note 120, at A23 (quoting Pope Benedict XVI).

123. Cornelia Dean & Laurie Goodstein, *Leading Cardinal Redefines Church’s Views on Evolution*, N.Y. TIMES, July 9, 2005, at A1.

124. *Id.*

125. Fisher, *supra* note 121, at A3.

126. See, e.g., STENGER, *supra* note 44, at 70 (“[T]he whole realm of scientific observations lead to the same conclusion: the universe does not look designed.”).

127. Francis S. Collins, an eminent scientist, head of the Human Genome Project, and a man of faith, wrote a book in response to these atheist authors, which claims to show how religion and evolution are compatible. COLLINS, *supra* note 43, at 3. Critical of the ID movement’s rejection of evolution, Collins argues that the theories espoused by ID experts, such as the “irreducible complexity” argument of Michael Behe, are scientifically unsound. *Id.* at 188. Collins instead advocates a philosophy called “theistic evolution,” which both accepts the current scientific knowledge of evolution and continues to believe in a divine creator. *Id.* at 201. Collins’ solution to the theological problems raised by evolution’s seeming randomness is to suggest that there is a divine plan behind the evolutionary process, but that people simply cannot understand it. *Id.* at 205. Collins writes: “God could be completely and intimately involved in the creation of all species, while from our perspective, limited as it is by the tyranny of linear time, this would appear a random and undirected process.” *Id.* Collins ultimately seems to have a fairly traditional religious perspective and describes the conclusion of his religious exploration during a hike through the Cascade Mountains: “As I rounded a corner and saw a beautiful and unexpected frozen waterfall, hundreds of feet high, I knew the search was over. The next morning, I knelt in the dewy grass as the sun rose and surrendered to Jesus Christ.” *Id.* at 225.

Dawkins, for instance, describes Gould's non-overlapping magisteria as hokum concocted by scientists to appease the people who give them government grants.<sup>128</sup> Dawkins believes that most scientists—including Gould<sup>129</sup>—are fully aware that evolution and faith in God are inherently contradictory:

[A] universe in which we are alone except for other slowly evolved intelligences is a very different universe from one with an original guiding agent whose intelligent design is responsible for its very existence. I accept that it may not be so easy in practice to distinguish one kind of universe from the other. Nevertheless, there is something utterly special about the hypothesis of ultimate design, and equally special about the only known alternative: gradual evolution in the broad sense. *They are close to being irreconcilably different.*<sup>130</sup>

Christopher Hitchens is less delicate in his critique of ID. He calls it a “stupid notion,” attributable to “our miserly endowment of cranial matter” which makes it difficult for us to imagine that “[o]ur place in the cosmos is so unimaginably small.”<sup>131</sup> Sam Harris similarly dismisses the notion that evolution and religion are compatible. He notes that “[e]xamples of unintelligent design in nature are so numerous that an entire book could be written simply listing them.”<sup>132</sup> Harris claims that “the conflict between religion and science is unavoidable. The success of science often comes at the expense of religious dogma; the maintenance of religious dogma *always* comes at the expense of science.”<sup>133</sup>

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128. See DAWKINS, *supra* note 44, at 55 (describing Gould's articulation of non-overlapping magisteria as carrying “the art of bending over backwards to positively supine lengths”); HARRIS, CHRISTIAN NATION, *supra* note 113, at 63 (explaining a National Academy of Sciences statement that science and religion are not in conflict by noting that “scientists live in perpetual fear of losing public funds, so the NAS may have merely been expressing raw terror of the taxpaying mob”).

129. DAWKINS, *supra* note 44, at 58 (“Gould, by the way, was not an impartial agnostic but strongly inclined towards *de facto* atheism.”).

130. *Id.* at 61 (emphasis added).

131. HITCHENS, *supra* note 43, at 85, 91. Hitchens does see a silver lining for religious believers willing to concede the error of their ways. He states:

Thoughtful believers can take some consolation, too. Skepticism and discovery have freed them from the burden of having to defend their god as a footling, clumsy, straws-in-the-hair mad scientist, and also from having to answer distressing questions about who inflicted the syphilis bacillus or mandated the leper or the idiot child, or devised the torments of Job. The faithful stand acquitted on that charge: we no longer have any need of a god to explain what is no longer mysterious.

*Id.* at 96.

132. HARRIS, CHRISTIAN NATION, *supra* note 113, at 78.

133. *Id.* at 63.

ID proponents readily agree with these skeptics that evolution and a designed world are irreconcilable. Indeed, it is for this reason that they find the teaching of evolution so unsettling.

## 2. Evolution Negates that People are Sacred

For ID proponents, the consequences of eliminating God from creation are devastating. To begin with, it means that people are no longer sacred. People are not created in the image of God, and their existence is not part of some grand divine plan. Instead, people are merely highly evolved organisms whose actions are dictated by instinct and biology.

As noted previously, the Wedge Document laments how intellectuals have “portrayed humans not as moral and spiritual beings, but as animals or machines . . . whose behavior and very thoughts were dictated by the unbending forces of biology, chemistry, and environment.”<sup>134</sup>

ID proponents see this materialist ideology as robbing humanity of its dignity. If people merely “evolved from slime,” then nothing remains of humanity’s sacredness.<sup>135</sup> No wonder Tom DeLay lamented that “[o]ur school systems teach the children that they are nothing but glorified apes who are evolutionized out of some primordial soup.”<sup>136</sup>

If people are indistinguishable from animals (let alone from other lower life forms), what reason exists for treating them any better? What basis is there for laws that accord special respect for human dignity? Ann Coulter drives this point home in her characteristically over-the-top style:

If, as Darwin says, humans are just an accident of nature with no greater moral significance than a horsefly, it’s perfectly logical to equate owning a pet with slavery and eating a hamburger with murder. And why not treat humans like beasts? Why not cannibalism? Humans: The New White Meat! Abortion, euthanasia, infanticide, assisted suicide—humans are just animals, so who cares?<sup>137</sup>

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134. THE WEDGE STRATEGY, *supra* note 53, at 2.

135. See RAY SUAREZ, THE HOLY VOTE: THE POLITICS OF FAITH IN AMERICA 151 (2006) (observing that ID proponents frequently characterize evolution as portraying people as “evolved from slime”).

136. *Id.*

137. ANN COULTER, GODLESS: THE CHURCH OF LIBERALISM 278 (2006).

### 3. Evolution Negates Morality

This denial of human sanctity leads ID proponents to their final, and in their minds, devastating conclusion. If people are merely evolved slime—if they were not created in God’s image and put on Earth for a purpose—then what basis is there for morality? If people are merely creatures of instinct, controlled by impersonal forces of biology and chemistry, how can their actions ever be judged as “right” or “wrong”? For ID proponents, this is the inevitable last stop of the evolution train.

The Wedge Document decries the way that this philosophy of moral relativism has permeated every corner of Western society:

The cultural consequences of this triumph of materialism were devastating. Materialists denied the existence of objective moral standards, claiming that environment dictates our behavior and beliefs. Such moral relativism was uncritically adopted by much of the social sciences, and it still undergirds much of modern economics, political science, psychology and sociology.<sup>138</sup>

For ID proponents, the nightmare produced by evolution is a world of moral relativism.<sup>139</sup> Lacking any source for absolute values and any reason for treating humans more favorably than the lower organisms from which they evolved, ID proponents fear that we are left with the law of the jungle.<sup>140</sup> They imagine a world in which the only principle is the brutish rule of survival of the fittest.<sup>141</sup> It is a Nietzschean world in which the strong rule over the weak, their actions restrained only by the limits of their power.<sup>142</sup>

This line of reasoning has allowed ID proponents to blame Darwin for two of the most pernicious ideologies of the 20<sup>th</sup> century: Nazism and Communism. Both of these ideologies, they claim, were a direct outgrowth of the spread of Darwinist philosophy.<sup>143</sup> Richard Weikart, for instance, a

138. THE WEDGE STRATEGY, *supra* note 53, at 2.

139. See COULTER, *supra* note 137, at 269 (“Instead of transcendent moral values, the Darwinian ethic said all morals are relative. Instead of sanctifying life, the Darwinian ethic sanctified death.”).

140. See SUAREZ, *supra* note 135, at 151 (describing ID opponents’ assumption that teaching children evolution “will reduce them to nihilist, materialist, self-seeking beasts”).

141. See, e.g., LARSON, *supra* note 52, at 39 (quoting William Jennings Bryan) (“The Darwinian theory represents man as reaching his present perfection by the operation of the law of hate—the merciless law by which the strong crowd out and kill off the weak.”).

142. *Id.* at 40 (quoting William Jennings Bryan) (stating a belief that Germany’s World War I militarism was traceable to Friedrich Nietzsche’s philosophy that “carried Darwinism to its logical conclusion” by denouncing “democracy as the refuge of the weakling” and “eulogiz[ing] war as necessary to man’s development”).

143. See COULTER, *supra* note 137, at 268–69 (contending that Darwinist theory influenced both Marx and Hitler: “While Marx saw the ‘struggle’ as among classes, Hitler conceived of the struggle as

historian associated with the Discovery Institute, lays out the connection between Darwinism and Nazism in his book, *From Darwin to Hitler*:

Hitler's ethical views do not comport well with traditional morality, since he based his morality on an entirely different foundation than did most conservatives. Hitler's morality was not based on traditional Judeo-Christian ethics nor Kant's categorical imperative, but was rather a complete repudiation of them. Instead, Hitler embraced an evolutionary ethic that made Darwinian fitness and health the only criteria for moral standards. The Darwinian struggle for existence, especially the struggle between different races, became the sole arbiter for morality.<sup>144</sup>

In his book *The Enemy at Home*, Dinesh D'Souza contemporizes this indictment of moral relativism.<sup>145</sup> He claims that it is America's wholesale adoption of moral relativism that has generated such widespread hatred in the Muslim world.<sup>146</sup> He dismisses arguments that Muslims hate Americans because of U.S. foreign policy decisions or contemporary human rights abuses in Abu Ghraib or Guantanamo.<sup>147</sup> Instead, it is our "anything goes" culture—which our media broadcast to the rest of the world—that generates this anger.<sup>148</sup>

The secular left, D'Souza claims, is united by its "denial of an external or transcendent moral order."<sup>149</sup> Its efforts to export this moral relativism have produced the backlash that plagues our country: "The real culprits . . . are the Secular Warriors. Both in America and abroad, they are the ones who are trying to eradicate every public trace of the religious and moral values that most of the world lives by."<sup>150</sup>

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among the races").

144. RICHARD WEIKART, *FROM DARWIN TO HITLER: EVOLUTIONARY ETHICS, EUGENICS, AND RACISM IN GERMANY* 210 (2004).

145. DINESH D'SOUZA, *THE ENEMY AT HOME: THE CULTURAL LEFT AND ITS RESPONSIBILITY FOR 9/11* 14–15 (2007).

146. *See id.* ("The radical Muslims are convinced that America and Europe have become sick, demented societies that destroy religious belief, [and] undermine traditional morality . . .").

147. *See id.* at 76 (rejecting liberal arguments that the Muslim world hates America because of "the sins of Western history and American foreign policy"). D'Souza credits historian Bernard Lewis for pointing out that "compared to prisons throughout the Arab world, Guantanamo Bay and Abu Ghraib are like Disneyland." *Id.* at 84.

148. *See id.* at 15 ("Moreover, Muslims realize that it is American culture and values that are penetrating the far corners of the globe, corroding ancient orthodoxies, and transforming customs and institutions.").

149. *Id.* at 192.

150. *Id.* at 203.



*B. The Assumptions of ID Opponents:  
Saving Society from Religious Fundamentalism*

ID opponents believe that ID is simply a veiled attempt to sneak religion into the public schools. The ID movement's effort to override the teaching of evolution is particularly galling for those ID opponents who see no conflict between evolution and religion. After all, if there is nothing for believers to fear from evolution, why do they persist in attacking it?

As noted above, hard-core atheists can better appreciate the ID movement's intransigence because they too believe that evolution and religion are incompatible. Consequently, they understand why ID proponents think the stakes in the debate are so high. But for ID opponents who subscribe to the notion of non-overlapping magisteria, it seems unfathomable that ID supporters cannot be satisfied with having evolution taught in public schools while leaving religious education to spiritual leaders and parents.<sup>151</sup>

The concern that ID proponents are trying to foist religion on others manifests itself in two lines of argument against including ID in science curricula. The first is the classic First Amendment separation-of-church-and-state concern that the power of government should not be used to favor religion over non-religion or one religion over another.<sup>152</sup> Were the government to do so, it would send a message to either non-believers or members of minority religions that they are disfavored members of the political community.<sup>153</sup>

The second concern is pedagogical. Introduction of ID into our already-struggling science classrooms will further undermine the quality of our education.<sup>154</sup> Worse yet, ID instruction will teach children to ignore the

151. See, e.g., Am. Civil Liberties Union, *supra* note 105 (“Since the question of God’s existence is outside the realm of science, the theory of evolution is silent on it.”); Americans United for Separation of Church & State, *Intelligent Design: Some Questions and Answers*, <http://www.au.org/site/News2?page=NewsArticle&id=9123> (follow “Isn’t the teaching of evolution anti-religious?” hyperlink) (last visited Dec. 3, 2008) (“Evolution is neutral on the question of religion . . . . It does not address the question of the universe and says nothing about personal morality.”).

152. See *McCreary County, Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 875 (2005) (“The government may not favor one religion over another, or religion over irreligion, religious choice being the prerogative of individuals . . . .”).

153. See *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring) (“Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.”).

154. See HARRIS, CHRISTIAN NATION, *supra* note 113, at 70 (arguing that teaching ID in schools hampers scientific understanding and promotes a “civilization of ignorance”); Andrew Jacobs, *Georgia Takes on ‘Evolution’ as ‘Monkeys to Man’ Idea*, N.Y. TIMES, Jan. 30, 2004, at A13, available at 2004 WLNR 5472690 (quoting David Bechler, head of the Biology Department at

lessons of science whenever it conflicts with their faith. The latter, ID opponents fear, leads to a citizenry that blithely ignores the warnings of scientists on the false assumption that whatever happens is inevitably part of some larger unknowable divine plan.<sup>155</sup>

Let us consider each of these concerns separately.

### 1. Intelligent Design Impermissibly Injects Religion into the Classroom

ID opponents view the efforts to include ID in public school curriculums as nothing more than a crass attempt to slip religion back into public education. The Americans United for Separation of Church and State's website captures this cynical view of the ID movement:

Religious Right leaders view intelligent design as a stepping stone to the introduction of full-blown creationism and religion into public schools. Phillip Johnson, one of the main proponents of intelligent design, pioneered a strategy called "the Wedge" in which ID is a vehicle to get people thinking about religion. He argues that by moving the debate from evolution vs. creationism to the question of God's existence, people will be ready to be introduced to "the truth" of the Bible, "the question of sin," and ultimately Jesus. Proponents of intelligent design are no different than other creationists who want to preach a religious message to students.<sup>156</sup>

From the perspective of ID opponents, the ID movement is a threat to Americans' religious liberty. It is an insidious attempt to harness the State's educational system for purposes of religious proselytization. As the ACLU explains, ID proponents are "trying to use governments to give the prestigious label of 'science' to their controversial theories."<sup>157</sup> By doing so, "they are misleading children and parents" and "endangering the religious freedom of all Americans."<sup>158</sup>

Seen in this light, the fight against ID is a fight for civil liberties. It is a battle to protect Americans from having religion foisted on them by their

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Valdosta State University, who believes that students will be "shortchanged of the knowledge they should have" if evolution is not taught).

155. HARRIS, CHRISTIAN NATION, *supra* note 113, at xi-xii (describing this phenomenon as doing "little to help us create a durable future for ourselves").

156. Americans United for Separation of Church & State, *supra* note 151 (follow "Why is the Religious Right pushing for the teaching of intelligent design in public schools?" hyperlink).

157. Am. Civil Liberties Union, *supra* note 105.

158. *Id.*

own government. ID opponents believe ID is merely the latest effort by religious fundamentalists to tear down the wall separating church and state.

Some ID opponents find this creeping fundamentalism terrifying. Their reading of history tells them that intemperate religious faith has produced centuries of intolerance and warfare.<sup>159</sup> They reject the ID proponents' charge that atheism bred Nazism and Communism, and instead invert it. Sam Harris, for instance, insists that Auschwitz and the Soviet gulags "are not examples of what happens to people when they become too reasonable," but are products of irrational religious-like dogmas.<sup>160</sup> The Holocaust, he contends, was merely the culmination of a hatred bred by centuries of Christian anti-Semitism:

[T]he anti-Semitism that built the Nazi death camps was a direct inheritance from medieval Christianity. For centuries, Christian Europeans had viewed the Jews as the worst species of heretics and attributed every societal ill to their continued presence among the faithful. While the hatred of Jews in Germany expressed itself in a predominantly secular way, its roots were religious, and the explicitly religious demonization of the Jews of Europe continued throughout the period.<sup>161</sup>

A similar fear of fundamentalism motivated Clarence Darrow to defend John Scopes. The ACLU, which funded the defense, wanted to focus on free speech and academic freedom, whereas Darrow wanted to put faith on trial.<sup>162</sup> As Darrow put it, "[t]he origin of what we call civilization is not due to religion but to skepticism . . . . The modern world is the child of doubt and inquiry, as the ancient world was the child of fear and faith."<sup>163</sup> Darrow captured his fear of fundamentalism in a statement he made to a group of convicts: "It is not the bad people I fear so much as the good people. When a person is sure that he is good, he is nearly hopeless; he gets cruel—he believes in punishment."<sup>164</sup>

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159. See, e.g., HARRIS, *CHRISTIAN NATION*, *supra* note 113, at 79–82 (discussing religious intolerance as a "continual source of human conflict").

160. *Id.* at 42.

161. *Id.* at 41–42. See also HITCHENS, *supra* note 43, at 242 ("[T]hose who invoke 'secular' tyranny in contrast to religion are hoping that we will forget two things: the connection between the Christian churches and fascism, and the capitulation of the churches to National Socialism.").

162. See LARSON, *supra* note 52, at 73 ("Darrow . . . [saw] a chance to grab the limelight and debunk Christianity . . . [n]either Scopes in particular nor free speech in general mattered much to Darrow . . .").

163. *Id.* at 71–72.

164. *Id.* at 71.

## 2. Intelligent Design Undermines Science Education

The civil-liberties objections would be reason enough for ID opponents to reject ID instruction. But ID opponents also have serious pedagogical objections to the teaching of ID.

To begin with, ID opponents fear that including ID in a science curriculum irreparably damages the quality of a student's education. After all, how can students come to appreciate the scientific method if they are simultaneously taught that science can include unprovable assumptions about supernatural causation?<sup>165</sup> Students are also unlikely to become successful scientists if they are taught to discount the importance of evolutionary theory, one of the primary building blocks of modern scientific inquiry.<sup>166</sup> Commentators repeatedly lament the poor state of America's science education compared to other countries.<sup>167</sup> How can we possibly begin to close this gap if we deliberately dilute the value of our science education with religious dogma?<sup>168</sup>

ID opponents are also concerned about the political ramifications of including ID in a science curriculum. Time and again, they voice the concern that such a curriculum will teach students—and future voters—that they may ignore the lessons of scientists whenever these lessons conflict with their faith.<sup>169</sup> A science curriculum incorporating ID only leads, as

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165. See Jacobs, *supra* note 154, at A13 (quoting Dr. Francisco J. Ayala) (“Creation is not science, so it should not be taught in science class.”). Dr. Ayala further noted that “[w]e don't teach astrology instead of astronomy or witchcraft practices instead of medicine.” *Id.*

166. See Am. Ass'n for the Advancement of Science, Board Resolution on Intelligent Design Theory, Oct. 18, 2002, <http://www.aaas.org/news/releases/2002/1106id2.shtml> (“[B]iological evolution is one of the most robust products of scientific inquiry.”).

167. HARRIS, CHRISTIAN NATION, *supra* note 113, at 70 (“[H]igh school students in the United States test below those of every European and Asian nation in their understanding of science and math.”).

168. See Jodi Wilgoren, *Kansas Fight on Evolution Escalates*, N.Y. TIMES, Oct. 28, 2005, at A11, available at 2005 WLNR 17434325 (reporting wide criticism of the Kansas Board of Education's proposed science standards that discounted evolution). The National Academy of Sciences and the National Science Teachers Association responded to the proposed standards with a joint statement:

Kansas students will not be well prepared for the rigors of higher education or the demands of an increasingly complex and technologically driven world if their science education is based on these standards. Instead, they will put the students of Kansas at a competitive disadvantage as they take their place in the world.

*Id.* See also Jacobs, *supra* note 154, at A13 (quoting Sarah L. Pallas, Ga. State Univ. Associate Professor) (“By removing the benchmarks that deal with evolutionary life, we don't have a chance of catching up to the rest of the world.”).

169. See, e.g., BARBARA FORREST & PAUL R. GROSS, CREATIONISM'S TROJAN HORSE: THE WEDGE OF INTELLIGENT DESIGN 9–10 (2004) (claiming that the strategy of ID proponents to substitute “theistic science” for natural science constitutes “a threat to the integrity of education and in the end the ability of the public to judge scientific and technological claims,” and is aimed “at a vast, mostly science-innocent populace and at public officials and lawmakers who depend on it for votes”).

journalist Bill Moyers has argued, to a politics of delusion—a politics in which the citizenry cavalierly ignores the warnings of scientists because they are confident that whatever happens is all part of a larger divine plan.<sup>170</sup> Such faith-based complacency can have devastating consequences when warnings about global warming or other long-term and potentially devastating problems go unheeded. Moyers decried the perversity of this complacency when he accepted the “Global Environmental Citizen Award” from Harvard University:

Why care about the earth when the droughts, floods, famine and pestilence brought by ecological collapse are signs of the apocalypse foretold in the Bible? Why care about global climate change when you and yours will be rescued in the rapture? And why care about converting from oil to solar when the same God who performed the miracle of the loaves and fishes can whip up a few billion barrels of light crude with a word?<sup>171</sup>

#### IV. FINDING COMMON GROUND: A PAGE OF HISTORY FROM THE SCOPES TRIAL

As the prior discussion suggests, the ideological divide reflected in the evolution–ID debate is vast. ID proponents, typically from the right of the political spectrum, see their adversaries as secular extremists eager to push a valueless moral relativism on the rest of the country. ID opponents, typically from the left, see their adversaries as religious fundamentalists bent on foisting religion on all Americans.

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170. See Bill Moyers, Acceptance Remarks for the Global Environmental Citizen Award of Harvard University’s Center for Health and the Global Environment (Dec. 1, 2004), *available at* <http://www.commondreams.org/views04/1206-10.htm> (describing the Christian Right’s influence in politics and its consequences for the environment).

171. *Id.* Sam Harris similarly warns of the complacency that occurs when faith trumps science. He states:

Forty-four percent of the American population is convinced that Jesus will return to judge the living and the dead *sometime in the next fifty years*. According to the most common interpretation of biblical prophecy, Jesus will return only after things have gone horribly awry here on earth. It is, therefore, not an exaggeration to say that if the city of New York were suddenly replaced by a ball of fire, some significant percentage of the American population would see a silver lining in the subsequent mushroom cloud, as it would suggest to them that the best thing that is ever going to happen was about to happen: the return of Christ. *It should be blindingly obvious that beliefs of this sort will do little to help us create a durable future for ourselves—socially, economically, environmentally, or geopolitically.*

HARRIS, CHRISTIAN NATION, *supra* note 113, at xi–xii (emphasis added).

Given each side's harsh view of the other, it is little wonder that the two find it difficult to identify any common ground. One might wonder whether the groups are so ideologically incompatible that any collaboration is impossible.

Nevertheless, I suggest in this Part that the ideological divide between these groups is narrower than it seems. I contend that both sides share important core values, but that this commonality is obscured by each side's efforts to demonize the other for political gain. As I illustrate below, part of this mutual misunderstanding has its roots in the first epic battle over the teaching of evolution: the Scopes trial of 1925.

Many Americans have undoubtedly heard of the Scopes trial of 1925, wherein two titans in American society—William Jennings Bryan and Clarence Darrow—battled over whether the Tennessee Legislature could ban evolution from public classrooms.<sup>172</sup> Few people are likely to have more than a passing familiarity with the actual facts. After all, most Americans are not historians.

For many Americans, including those in the educated elite, knowledge of the Scopes trial is more likely to come from the play *Inherit the Wind*<sup>173</sup> than the pages of history books. Yet, historians of the Scopes trial claim that the play and its subsequent movie version have distorted public perception of the trial.<sup>174</sup> They observe that for many Americans the Scopes trial is not about Clarence Darrow squaring off with William Jennings Bryan but about the play's Henry Drummond (played by Spencer Tracy in the movie) verbally jousting with Matthew Harrison Brady (played by Frederic March).<sup>175</sup>

These historians point out the danger of viewing the Scopes trial through the lens of *Inherit the Wind*.<sup>176</sup> Even the playwrights, Jerome Lawrence and Robert E. Lee, candidly admitted that they had not intended the play to be an accurate depiction of the trial.<sup>177</sup> A note in the play

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172. *Scopes v. State*, 278 S.W. 57 (Tenn. 1925).

173. JEROME LAWRENCE & ROBERT E. LEE, *INHERIT THE WIND* (1955).

174. See, e.g., MICHAEL KAZIN, *A GODLY HERO: THE LIFE OF WILLIAM JENNINGS BRYAN* 263 (2006) (noting that the scriptwriter of *Inherit the Wind* exaggerated Bryan's character as a metaphor for McCarthyism); LARSON, *supra* note 52, at 239–46 (describing how the play distorted the facts of the Scopes trial but still helped shape the public's perception of it).

175. See, e.g., LARSON, *supra* note 52, at 243–44 (conceding that a correspondent from the Scopes trial was right to comment that by 1967, “[m]ost people who have any notions about the trial get them from the play, *Inherit the Wind*, or from the movie”).

176. See, e.g., COULTER, *supra* note 137, at 262 (“[T]his fantasy of brave liberals standing up to fascist Christians has permeated the entire debate over evolution.”).

177. LAWRENCE & LEE, *supra* note 173, at v. “*Inherit the Wind* does not pretend to be journalism. It is theatre.” *Id.*

informs the reader that “*Inherit the Wind* is not history.”<sup>178</sup> Instead of trying to accurately recreate the 1925 trial, Lawrence and Lee intended for the play to be a commentary on the McCarthy-era persecutions occurring at the time they wrote the play.<sup>179</sup> Like Arthur Miller’s *The Crucible*, *Inherit the Wind* took liberties with a historical incident to communicate a message about the danger of a contemporary witch hunt.<sup>180</sup>

To convey their message, the playwrights added a “fire-breathing fundamentalist pastor” to the town of Dayton, Tennessee and transformed John Scopes into an “innocent victim of a mob-enforced anti-evolution law.”<sup>181</sup> This depiction was a far cry from the truth. Scopes was actually a well-liked teacher whom the Dayton town leaders recruited to serve as a defendant in this test case of the Tennessee anti-evolution law.<sup>182</sup> The leaders wanted Dayton to host the trial because they thought it would boost the town’s ailing economy.<sup>183</sup> Scopes never served a day in prison for violating the Tennessee law; in fact, the law did not even provide for jail time.<sup>184</sup> After the warrant for his arrest was issued during the meeting with town leaders, Scopes left to play tennis.<sup>185</sup>

Despite the playwrights’ poetic license, the public came to view *Inherit the Wind* as historically accurate.<sup>186</sup> The play helped cement the left’s perception of evolution opponents as intolerant fundamentalists.<sup>187</sup> By the 1960s, the play had secured its place in the liberal canon.<sup>188</sup>

178. *Id.*

179. KAZIN, *supra* note 174, at 263 (noting that the playwrights chose the Scopes trial “as a metaphor for McCarthyism and were not much concerned about the teaching of evolution”).

180. LARSON, *supra* note 52, at 240 (quoting Tony Randall’s observation that, “[l]ike *The Crucible*, *Inherit the Wind* was a response to and a product of McCarthyism”).

181. *Id.* at 240–41. The playwrights also created a fiancée for the Scopes character, the daughter of the fire-breathing minister. *Id.* at 241.

182. *Id.* at 89–91 (describing how Scopes, who was “[s]ingle, easygoing” and “well-liked” was summoned by the Dayton town boosters to Robinson’s drugstore, given a fountain drink, and asked if he was willing to serve as the defendant).

183. *Id.* at 88–93 (describing how the Dayton town leaders arranged for the trial).

184. The Tennessee anti-evolution law provided only for a fine and not jail time. Butler Act, H.R. 185, 64th Gen. Assem., Reg. Sess. (Tenn. 1925) (repealed 1967), available at <http://www.law.umkc.edu/faculty/projects/ftrials/scopes/tenstat.htm>.

185. LARSON, *supra* note 52, at 91.

186. *See Id.* at 239–46 (describing how the play distorted the facts of the Scopes trial but still helped shape the public’s perception of it); KAZIN, *supra* note 174, at 263 (noting the attention that Bryan’s fans and critics give to the play, *Inherit the Wind*, even though the playwrights really intended his character to be a metaphor for McCarthyism).

187. *See, e.g.,* COULTER, *supra* note 137, at 261–62 (contending that “the movie *Inherit the Wind* portrays the Scopes trial about as accurately as *The Flintstones* portrays prehistoric man,” but also claiming that “this fantasy of brave liberals standing up to fascistic Christians has permeated the entire debate over evolution”).

188. *See, e.g.,* KAZIN, *supra* note 174, at 302 (“[D]istaste among liberals for evangelicals and their beliefs helped make *Inherit the Wind* a favorite of high school drama teachers . . .”).

From the left's perspective, each new school battle over evolution is *Inherit the Wind* redux. The left sees evolution critics as religious bigots seeking to impose their faith on all Americans, and evolution supporters as virtuous defenders of tolerance and scientific truth.<sup>189</sup> The left, presumably, is happy to cast itself in the latter role. After all, who wouldn't want to be the successor to the Henry Drummond character who uses his cool-headed reason to save the world from returning to the benighted ignorance of the middle ages?

The problem, however, is that this fairy-tale version of the Scopes trial only reinforces the ideological divide that separates Americans over evolution. It gives the left no reason to cooperate with evolution critics, whom they see, through *Inherit the Wind's* lens, as dangerous ideologues. But the truth is that the ideological divisions over evolution are more nuanced than this morality tale suggests. A closer look at the actual facts of the Scopes trial, particularly the role played by William Jennings Bryan, helps to elucidate these nuances.

In his Pulitzer Prize-winning history of the Scopes Trial, *Summer for the Gods*, Edward Larson notes that the *Inherit the Wind* playwrights transformed the Bryan character into "a mindless, reactionary creature of the mob."<sup>190</sup> The Bryan character "assails evolution solely on narrow biblical grounds" and "denounces all science as 'Godless.'"<sup>191</sup>

But, as one of the preeminent progressive figures of his era, the real William Jennings Bryan was a much more complex figure.<sup>192</sup> He had run for President three times,<sup>193</sup> and was a leader in fighting for many of the causes the left continues to hold dear: worker protection, women's rights, regulation of big business, campaign finance reform, progressive taxation, and anti-militarism.<sup>194</sup> He was a moving force behind the Sixteenth Amendment (allowing for the federal income tax), the Seventeenth Amendment (providing for the popular election of Senators), and the

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189. *Id.*

190. LARSON, *supra* note 52, at 241. Larson quotes constitutional law scholar Gerald Gunther who walked out of a production of *Inherit the Wind* "in disgust" because he was disturbed by the play's portrayal of Bryan: "I ended up actually sympathizing with Bryan, even though I was and continue to be opposed to his ideas in the case, simply because the playwrights had drawn the character in such comic strip terms." *Id.* at 242.

191. *Id.* at 241.

192. *See, e.g., id.* at 37 (discussing how Bryan's varied interests, such as his commitment to the "power of reform to make life better," influenced him); KAZIN, *supra* note 174, at 204 (noting that Bryan was not a fundamentalist, but rather a defender of Christianity concerned about the effects of Darwinism).

193. LARSON, *supra* note 52, at 37–38.

194. KAZIN, *supra* note 174, at 302.



Nineteenth Amendment (giving women the right to vote).<sup>195</sup> Bryan also resigned as President Wilson's Secretary of State to protest the country's entrance into World War I.<sup>196</sup>

Bryan was also not a biblical literalist.<sup>197</sup> He did not object to the theory of evolution as it applied to plants and lower animals.<sup>198</sup> Instead, Bryan was troubled by the theory's tendency to erode the notion of human sanctity.<sup>199</sup> Rather than portraying humans as being created in the image of God, evolution instead portrayed man as having a "brute origin" in which he "reach[ed] his present perfection by the operation of the law of hate—the merciless law by which the strong crowd out and kill off the weak."<sup>200</sup> For someone who had dedicated his life to creating a society that cared for the weak and the poor, it was critical to fight a theory that undermined the sanctity of human dignity. Bryan's biographer Michael Kazin explains Bryan's reasoning for finding the theory of evolution instruction so "appalling":

Students who learned that humans were nothing but animals and that animals survived only through violence and hatred had little reason to care for "the weak and the helpless" among them . . . . A society run by Darwinists could justify a law barring the feebleminded and poor from having babies and could engage in endless wars of conquest. It was time to call a halt to the propagation of this malignant philosophy.<sup>201</sup>

Nor were Bryan's fears about evolution wholly unfounded. In the years leading up to the Scopes trial, Bryan had witnessed proponents of Social Darwinism and eugenics, two popular ideologies of the time, employing the

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195. LARSON, *supra* note 52, at 38.

196. *Id.*

197. *See, e.g.*, KAZIN, *supra* note 174, at 264 (noting that "few commentators appreciate how firmly Bryan had always stuck to a pragmatic view of religion" and that Bryan "spent little time defending the 'truth' of the Bible and a good deal hailing its power to correct human flaws and solve social problems").

198. *See, e.g.*, LARSON, *supra* note 52, at 47. Larson discussed Bryan's *Menace of Darwinism* speech:

[Bryan] stressed that "our chief concern is in protecting man from the demoralization involved in accepting a brute ancestry," and conceded that "evolution in plant life and animal life *up to highest form of animal* might, if there were proof of it, be admitted without raising a presumption that would compel us to give a brute origin to man."

*Id.*

199. *Id.*

200. *Id.* at 39, 47.

201. KAZIN, *supra* note 174, at 274–75.

theory of evolution to justify their causes.<sup>202</sup> Even the Supreme Court used a Social Darwinist-like philosophy to invalidate Progressive-era legislation protecting workers and women.<sup>203</sup> Of course, today we celebrate Justice Oliver Wendell Holmes' famous proclamation in *Lochner v. New York* that the "Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics."<sup>204</sup> But Holmes was writing in dissent.<sup>205</sup> The Court's prevailing view at the time is better reflected in a Holmes majority opinion, *Buck v. Bell*, upholding the eugenic-like sterilization of the mentally retarded because "[t]hree generations of imbeciles are enough."<sup>206</sup>

Seen in this light, one can understand how *Inherit the Wind* has misled the public into drawing a stark dichotomy between evolution supporters and opponents. In particular, it has reinforced the left's stereotypes of evolution opponents as ignorant and intolerant and evolution defenders as intelligent and inclusive.<sup>207</sup> However, both Bryan and Darrow may have been fighting

202. See LARSON, *supra* note 52, at 26–27 (describing the rise in popularity of both ideologies). Michael Kazin notes that historians have "increasingly warmed to Bryan's motives" as they gain a better understanding of the context in which he was acting. KAZIN, *supra* note 174, at 263.

203. See KATHLEEN M. SULLIVAN & GERALD GUNTHER, CONSTITUTIONAL LAW 490 (15th ed. 2004) (describing the receptivity of Supreme Court Justices during the *Lochner* era to Social Darwinist arguments). *But see* David E. Bernstein, *Lochner v. New York: A Centennial Retrospective*, 83 WASH. U. L.Q. 1469, 1511 (2005) (claiming that scholars have wrongly concluded that the *Lochner* era Court was motivated by "Spencerian Social Darwinism").

204. *Lochner v. New York*, 198 U.S. 45, 75 (1905) (Holmes, J., dissenting). Herbert Spencer's essay *Social Statics* reflects a Social Darwinist ideology in its discussion of how humans adapt to society. See HERBERT SPENCER, SOCIAL STATICS: OR, THE CONDITIONS ESSENTIAL TO HUMAN HAPPINESS SPECIFIED, AND THE FIRST OF THEM DEVELOPED 282 (John Chapman 1851), available at [http://files.libertyfund.org/files/273/0331\\_Bk.pdf](http://files.libertyfund.org/files/273/0331_Bk.pdf). "[I]t is clear that man can become adapted to the social state, only by being retained in the social state . . . Only by the process of adaptation itself can be produced that character which makes social equilibrium spontaneous." *Id.*

205. *Lochner*, 198 U.S. at 75 (Holmes, J., dissenting).

206. *Buck v. Bell*, 274 U.S. 200, 207 (1927).

207. See KAZIN, *supra* note 174, at 302 ("[D]istaste among liberals for evangelicals and their beliefs helped make *Inherit the Wind* a favorite of . . . teachers."). Kazin notes that the authors of *Inherit the Wind* based their Matthew Harrison Brady character on the William Jennings Bryan depicted by H.L. Mencken. *Id.* at 299. Mencken had gone to Dayton to cover the Scopes trial and was deeply disturbed by the "raw enthusiasm" people expressed for the Bible. *Id.* at 298. Mencken wrote loathingly of Bryan, a loathing that Kazin suggests "was driven by fear." *Id.* Kazin notes that Mencken "predicted that Bryan would quickly become a saint to millions of 'yokels' outside the big cities who were intent on turning America over to the KKK and like-minded regiments of Bible-spouting youths." *Id.* at 298–99. Kazin notes that this "specter of a theocratic state run by idiots has haunted secular intellectuals ever since." *Id.* at 299. But then he continues:

Few noted the irony. As his correspondence makes clear, Mencken was a lifelong anti-Semite with a reverence for German culture so strong it blinded him to the menace of Nazism. He also hurled acid opinions at Franklin D. Roosevelt throughout the 1930s. Thus, the writer most responsible for shaping Bryan's postmortem image for liberals hated the president they adored and only reluctantly backed a world war against their mortal enemy. Yet progressive intellectuals continue to repeat Mencken's great slur.

for the same thing, each in his own way. Both were deeply committed to protecting human dignity. For Bryan, that meant preserving the notion that people are created in God's image because that was his basis for championing the rights of the weak and the poor.<sup>208</sup> For Darrow, it meant protecting the right of people to study and teach evolution even if it conflicted with the majority's religious faith.<sup>209</sup> Bryan used religion to further his progressive agenda; Darrow fought to protect Americans from having religion foisted upon them. Yet, both evinced a common commitment to protecting human dignity.

Indeed, prior to the Scopes trial, Darrow had worked on one of Bryan's presidential campaigns.<sup>210</sup> As Larson notes, "[g]ood intentions underlay Darrow's efforts to undermine popular religious faith" in the Scopes case.<sup>211</sup> Darrow believed that the biblical concept of original sin was "a very dangerous doctrine,"<sup>212</sup> and feared that Christianity encouraged "acquiescence in injustice, a willingness to make do with the mediocre, and complacency in the face of the intolerable."<sup>213</sup> For Darrow, the theory of evolution, which linked all life to a common ancestry, was more likely to produce a moral society than Christian concepts of salvation and damnation: "No one can feel this universal [evolutionary] relationship without being gentler, kindlier, and more humane toward all the infinite forms of beings that live with us, and must die with us."<sup>214</sup>

Yet, any commonality that may have existed between Darrow and Bryan has been erased from public memory. As Garry Wills has plaintively observed, "[t]he Scopes trial, comic in its circus aspects, left behind it something tragic."<sup>215</sup> Bryan's career had been "a sign of the possible

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*Id.* See also COULTER, *supra* note 137, at 262 ("Liberals act as if they have to maintain a constant vigil against the coming theocracy in America because of what happened in *Inherit the Wind*.").

208. See LARSON, *supra* note 52, at 47 (noting Bryan's belief that giving humans a "brute origin" was demoralizing); KAZIN, *supra* note 174, at 274 (noting that Bryan felt that humans were nothing but brute animals if humans were not created in the image of God).

209. Darrow's personal motivations in defending Scopes were somewhat more complicated. The ACLU, which hired Darrow and was funding the defense, wanted the focus to be on free speech and academic freedom. See LARSON, *supra* note 52, at 73. Darrow, however, was a devout atheist and was intent on using the trial to undermine religious faith. *Id.* at 71. He feared the rise of fundamentalism and thought that evolution provided a better source for morality than traditional religion. *Id.* at 72.

210. See LARSON, *supra* note 52, at 69.

211. *Id.* at 71.

212. *Id.*

213. *Id.* (quoting KEVIN TIERNEY, *DARROW: A BIOGRAPHY* 85 (1979)) (internal quotation marks omitted).

214. *Id.* at 72 (quoting CLARENCE DARROW, *THE STORY OF MY LIFE* 413 (1932)) (internal quotation marks omitted).

215. GARRY WILLS, *UNDER GOD: RELIGION AND AMERICAN POLITICS* 106 (1990).

integration of progressive politics and evangelical moralism.”<sup>216</sup> But the trial “sealed off from each other, in mutual incomprehension,” these two forces “that had hitherto worked together in American history.”<sup>217</sup>

Michael Kazin expresses a similar lament in his biography of Bryan. He explains that his interest in Bryan was sparked by Bryan’s ability to bridge the divide between progressives and religious evangelicals.<sup>218</sup> But he seems doubtful that the left is still capable of working with Americans of faith:

The obvious problem for liberals is that most Americans don’t share their mistrust of public piety. Time and again, secular reformers defeat themselves by assuming that this difference doesn’t matter, that they can appeal solely to the economic self-interest of working-class Americans and ignore moral issues grounded in religious conviction. But more than 80 percent of Americans believe in a God and an afterlife. Like Bryan, millions derive their political views from their faith and prefer that others do the same.<sup>219</sup>

#### V. THE CONSTITUTION AS A SYMBOL OF SHARED VALUES

The commitment to respecting human dignity—the value that united Bryan and Darrow—is the foundation upon which a shared American ideology can be built. Although this value is undoubtedly vague—it is stated at such a high level of generality that it can mean vastly different things to different people—it still has substantive import. It is an acknowledgement that Americans, notwithstanding the secular nature of their society, have made the moral choice to treat human dignity as sacred.

What can be the source of this shared American value? What symbol can both stand for this collective principle and garner the respect of all Americans, whether they are secular or religious, conservative or liberal?

Some commentators maintain that the answer must invariably lie in a shared belief in God.<sup>220</sup> These commentators realize, of course, that any particular sectarian faith in God, such as a belief in Jesus, cannot unite religiously diverse Americans.<sup>221</sup> They know that insisting on such a belief

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216. *Id.*

217. *Id.*

218. KAZIN, *supra* note 174, at xiv.

219. *Id.* at 303.

220. *See, e.g.*, MEACHAM, *supra* note 51, at 22–23 (arguing that the framers sought to avoid religious divisiveness by creating an American public religion).

221. *See, e.g., id.* at 22 (noting that “the God of public religion is not the God of Abraham or the God of the Father of the Holy Trinity”).

would have all the presumptuousness of *The Simpsons'* Reverend Lovejoy declaring that the “one true religion” is “The Western Branch of American Reformed Presbyteranism.”<sup>222</sup> But they still contend that America’s core values should be grounded in a nonsectarian faith in God. The commentators readily concede that it is inappropriate to call America a “Christian nation” or to add a reference to Jesus to the Constitution’s Preamble, but they think it is appropriate and even desirable for the Pledge of Allegiance to refer to “one nation under God” and for American money to recite “In God We Trust.”<sup>223</sup> Two explanations underlie their argument.

For some commentators, it is vital to hold on to a generic belief in God for the same reason that ID proponents oppose evolution. They believe that any basis for morality depends upon the existence of a supreme being and that the linchpin for accepting human sanctity is the belief that a divine power created people for a divine purpose. Justice Antonin Scalia captured this sentiment while dissenting in one of the recent Ten Commandments cases:

Those who wrote the Constitution believed that morality was essential to the well-being of society and that encouragement of religion was the best way to foster morality. The “fact that the Founding Fathers believed devotedly that there was a God and that the inalienable rights of man were rooted in Him is clearly evidenced in their writings, from the Mayflower Compact to the Constitution itself.”<sup>224</sup>

Other commentators support a nonsectarian faith in God for more pragmatic reasons. They contend that people are inherently religious and that it is impossible to construct a system of shared values except on religious terms. Jon Meacham, for instance, contends that people are “*homo religiosus*”—that by their very nature they need to believe in a divine power.<sup>225</sup> Like Homer, he asserts that “[a]ll men . . . need the gods.”<sup>226</sup>

Meacham claims that the Framers recognized that people need faith in God to unite them and to generate a shared sense of reverence and

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222. *The Simpsons: The Father, the Son and the Holy Guest Star* (FOX television broadcast May 8, 2005), available at <http://watchthesimpsonsonline.com>.

223. See, e.g., MEACHAM, *supra* note 51, at 14, 22 (calling God “an essential character in the American drama,” but recognizing that each American may define that God differently).

224. *McCreary County Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 887 (Scalia, J., dissenting) (quoting *School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 213 (1963)).

225. MEACHAM, *supra* note 51, at 14 (explaining that humans, by nature, are inclined to believe in supernatural forces).

226. *Id.* (internal quotation marks omitted).

tolerance.<sup>227</sup> Their solution, he suggests, was to create a “public religion” that was distinct from the “private religion” of each individual citizen:

Properly understood, the God of public religion is not the God of Abraham or God the Father of the Holy Trinity. The Founding Fathers had ample opportunity to use Christian imagery and language in the Declaration of Independence and Constitution, but did not. At the same time, they were not absolute secularists. They wanted God in American public life, but, given the memory of religious warfare that could engulf and destroy whole governments, they saw the wisdom of distinguishing between private and public religion. In churches and in homes, anyone could believe and practice what he wished. In the public business of the nation, however, it was important to the Founders to speak of God in a way that was unifying, not divisive. “Nature’s God” was the path they chose, and it has served the nation admirably.<sup>228</sup>

Noah Feldman similarly describes how a nonsectarian faith in God has played a unifying role in the nation’s history.<sup>229</sup> He notes that when political elites first started promoting public schools in the 1820s, it was inconceivable that values could be taught except through religion.<sup>230</sup> But even then religion was a divisive force. While the population was largely Protestant, it was divided into various competing sects.<sup>231</sup> The solution, Feldman says, was not to abandon religion as a source of shared values but rather to adopt a form of nonsectarianism that emphasizes the core principles shared by all Christian sects.<sup>232</sup> Feldman contends that over time this notion of nonsectarian religion expanded to become a core unifying principle for Americans:

Nonsectarianism would turn out to be among the most powerful—and controversial—ideas in American public life in the nineteenth century and beyond, an idea whose resonances are still felt in our own contemporary debates over religion and values. *It promised to unite Americans behind common, identifiable moral commitments, transcending their religious differences and engendering unity of purpose.*<sup>233</sup>

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227. *Id.* at 22–23.

228. *Id.*

229. FELDMAN, *supra* note 19, at 5.

230. *Id.* at 59–60.

231. *Id.* at 60.

232. *Id.* at 61.

233. *Id.* (emphasis added).

Nonsectarianism reached its apex in the decade following World War II. In the aftermath of the Holocaust, the concept was expanded to include America's small Jewish population by recognizing America's common "Judeo-Christian" heritage.<sup>234</sup> President Eisenhower candidly acknowledged the philosophy in his almost-comic observation that "[o]ur government makes no sense unless it is founded in a deeply felt religious faith—and I don't care what it is."<sup>235</sup> The Supreme Court echoed his sentiment in *Zorach v. Clauson*: "We are a religious people whose institutions presuppose a Supreme Being."<sup>236</sup>

Yet, for the reasons explained below, nonsectarianism is an unlikely source of shared values for Americans. A belief in a generic God is certainly more inclusive than a commitment to a sectarian deity, but it is still likely to be divisive. Indeed, it is doubtful whether nonsectarianism ever successfully united Americans. As Noah Feldman recounts, even when nonsectarianism reached its apex in the 1950s, a new movement was arising that pushed for greater separation of church and state, including the prohibition of nonsectarian government acknowledgments of religion.<sup>237</sup> The Supreme Court largely accepted this group's Establishment Clause arguments, and over the next few decades, the Court banned nonsectarian prayers from public-school classrooms and graduations.<sup>238</sup>

This movement, which Feldman calls "legal secularism," was largely driven by religious minorities.<sup>239</sup> Its creation suggests that these groups never felt fully included by nonsectarianism. They may have thought that the only way for minorities to be full members of the political community was to keep religion and the state completely distinct.<sup>240</sup>

Even if nonsectarianism did initially succeed in uniting Americans, it seems doubtful that it could continue to fulfill this function in the future. As

234. *Id.* at 166.

235. *Id.* at 165.

236. *Zorach v. Clauson*, 343 U.S. 306, 313 (1952).

237. FELDMAN, *supra* note 19, at 169–70.

238. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 315 (2000) (invalidating student-led prayers before football games); *Lee v. Weisman*, 505 U.S. 577, 581, 599 (1992) (finding nonsectarian prayer by a rabbi at middle-school graduation unconstitutional); *Wallace v. Jaffree*, 472 U.S. 38, 60–61 (1985) (invalidating Alabama state law setting aside one minute in schools for meditation or prayer); *Stone v. Graham*, 449 U.S. 39, 39–40, 42–43 (1980) (forbidding posting of Ten Commandments in public-school classrooms); *School Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 205–06 (1963) (holding recitation of the Lord's Prayer and Bible readings in public schools unconstitutional); *Engel v. Vitale*, 370 U.S. 421, 424, 430 (1962) (invalidating use of "non-denominational" prayer in New York public schools).

239. *See* FELDMAN, *supra* note 19, at 170–85 (providing examples of Supreme Court cases in which religious minorities sought to advance legal secularism).

240. *See id.* at 184 (noting that legal secularism sought to make America inclusive by making the government secular).

Americans become vastly more religiously diverse, the concept of nonsectarianism could easily be stretched past the breaking point. Minority religious groups would likely view government references to a generic God as references to the majority's Christian God, and such references would certainly not make polytheists feel included. And there is little chance that a government-endorsed, nonsectarian faith in God would make the sizable portion of nonbelieving Americans feel included.

One need only look to the recent battles over displays of the Ten Commandments for a cautionary tale of how difficult it is to send a message of an inclusive, nonsectarian religion. Supporters of these monuments sometimes portray them as merely a nonsectarian acknowledgement of a higher authority.<sup>241</sup> But it is impossible for a Ten Commandments display to fulfill this function. Indeed, there is no such thing as a nonsectarian version of the Ten Commandments—there is a Jewish version, a Catholic version, a Lutheran version, and a Protestant version.<sup>242</sup> And of course, none of these versions would make Buddhists or Hindus feel included.<sup>243</sup>

Admittedly, a nonsectarian faith in God is in many ways a logical means of communicating a societal commitment to human dignity. The belief that there is a divine power behind the universe and, implicitly, that people are divinely created, supports the notion that people are sacred and consequently entitled to dignity and respect.

But nonsectarianism is also at loggerheads with the very principle it is intended to symbolize. For if recognition of an American public religion makes certain segments of society feel excluded, it conflicts with our commitment to respecting the dignity of all people.

Rather than looking to nonsectarianism, Americans are better off looking to the Constitution as the source of their shared values. Of course, this is not because the Constitution is a model of perfection. To the contrary, the Constitution is in many ways deeply flawed. As originally drafted, the Constitution went to great lengths to protect the institution of slavery,<sup>244</sup> and even the amended version fails to provide for some

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241. See, e.g., Brief of Amicus Curiae Foundation for Moral Law, Inc., Suggesting Affirmance at 22, *Van Orden v. Perry*, 545 U.S. 677 (2005) (No. 03-1500), 2005 WL 263787 (stating that a Texas Ten Commandments monument “is not religion; rather by displaying the Ten Commandments Texas is acknowledging God as the moral and historical foundation of the country’s legal system”).

242. Paul Finkelman, *The Ten Commandments on the Courthouse Lawn and Elsewhere*, 73 *FORDHAM L. REV.* 1477, 1488–92 (2005) (describing the different versions of the Ten Commandments).

243. *Id.* at 1498–1500.

244. Paul Finkelman, *Affirmative Action for the Master Class: The Creation of the Proslavery Constitution*, 32 *AKRON L. REV.* 423, 427–33 (1999) (describing how the Constitution protected the institution of slavery). The Constitution forbade Congress to outlaw the slave trade until 1808. U.S. CONST. art. I, § 9, cl. 1 (amended 1865) (containing a provision that protected the slave trade until 1808). It further required fugitive slaves to be returned to their owners. U.S. CONST. art. IV, § 2, cl. 3



basic human rights. The Constitution, for instance, has no express provision for a right of privacy; it fails to provide District of Columbia residents with a voting representative in Congress; and it has no explicit ban on government torture.

Nor are the Constitution's structural provisions beyond reproach. In his recent book, *Our Undemocratic Constitution*, Sanford Levinson reviews the Constitution's structural provisions and concludes that "what most of us regard as our beloved Constitution is an abusive one in important respects."<sup>245</sup> He laments that the Constitution gives a small percentage of the nation's population far too much power in the Senate, that it makes it exceedingly difficult to replace an incompetent executive mid-term, and that the Constitution's provision of life tenure for Supreme Court Justices gives individual justices tremendous power for an inordinate amount of time.<sup>246</sup>

Given the Constitution's defects, one might wonder if it could ever serve as an appropriate source for Americans' shared values. However, the Constitution's importance comes not only from what it actually says but also from what it symbolizes. Indeed, most Americans are blissfully ignorant of the Constitution's actual contents. For instance, a survey taken during the Constitution's bicentennial found that half of the respondents agreed that the Constitution included Karl Marx's famous adage "from each according to his ability, to each according to his need."<sup>247</sup>

Yet, despite their ignorance, Americans of all stripes still revere the Constitution. As Isaac Kramnick and R. Laurence Moore point out, there is little else in America to compete with the Constitution as a unifying symbol for Americans:

Drafted in Philadelphia in the summer of 1787, the Constitution stands with the flag as a symbol of national unity. America has no royal family, no heritage of timeless and integrative state institutions and symbols, no national church. Add to that America's history of being peopled by diverse religious, national, and racial stocks, many of whom came, or were brought here, long after the founding, and one can see how the Constitution

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(amended 1865). Additionally, slaves were counted as three-fifths of a person for purposes of apportioning seats in the House of Representatives. U.S. CONST. art. I, § 2, cl. 3 (amended 1865).

245. SANFORD LEVINSON, *OUR UNDEMOCRATIC CONSTITUTION* 172 (2006).

246. *Id.* at 50–62 (discussing the disproportionate influence of sparsely populated states in the Senate); *id.* at 115 (describing the difficulty of removing an incompetent Executive); *id.* at 125–28 (lamenting the life-tenure system for Supreme Court Justices).

247. Arthur M. Schlesinger, Jr., *The Constitution and Presidential Leadership*, 47 MD. L. REV. 54, 54 (1987).

could become such a focus of national identity and loyalty. There is precious little else to compete with it as a unifying and symbolic evocation of America.<sup>248</sup>

But, if Americans revere their Constitution, yet know frightfully little about it, what exactly are they admiring? Almost certainly, what they are admiring is that the Constitution symbolizes the principle that united Darrow and Bryan—our nation's commitment to the sanctity of human dignity.

Where does this notion come from? In part, it comes from the public's vague knowledge that the Constitution contains many lofty rights provisions, particularly in the Bill of Rights. But it also undoubtedly comes from many aspects of American history and culture that the Constitution does not directly reflect: our history as a refuge for immigrants fleeing religious persecution in Europe; our history of declaring independence from Britain and creating a nation based upon popular sovereignty; our tradition of welcoming immigrants; our leadership in defeating fascism in the twentieth century; and our open-market system in which countless people have risen from rags to riches.

The Constitution is a better symbol for unifying Americans than nonsectarian religion precisely because it is secular. The document, which never mentions God in its operative provisions, leaves no lingering question of whose God is being referred to and in no way disenfranchises non-believers.<sup>249</sup> Indeed, even before the adoption of the First Amendment's religion clauses, the Constitution already prohibited the use of religious tests for holding public office.<sup>250</sup>

But, even though the Constitution may be a secular document, it stands for a religious-like principle: "We the People" have chosen to respect the sanctity of human dignity. Of course, the word sanctity carries a religious connotation, but it properly conveys the message that our nation's commitment to human dignity, like a religious principle, is absolute and incontrovertible. In other words, it does not matter what we may learn from scientists about the origins of life or what neuroscientists may teach us about the chemistry of our brains. "We the People" will remain committed to the proposition that each individual is sacred, deserving of respect, and worthy of basic human rights. This commitment is the "leap of faith" that

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248. ISAAC KRAMNICK & R. LAURENCE MOORE, *THE GODLESS CONSTITUTION: THE CASE AGAINST RELIGIOUS CORRECTNESS* 26 (1996).

249. The only reference to God in the Constitution is the statement of the year in which the Constitution was signed—"in the Year of Our Lord one thousand seven hundred and Eighty seven." U.S. CONST. art. VII, cl. 2.

250. U.S. CONST. art. VI, cl. 3 (containing the No Religious Test Clause).

our secular society has made. It is what defines us. It is the reason Americans choose to work together.

This commitment to human dignity is a principle that all Americans, whether religious or not, can adhere to. At a minimum, it suggests that all people have certain inalienable rights. Of course, religious people may believe this principle is true because God gave people these rights. But even secular Americans, who do not subscribe to this divine provenance, can still accept the principle. Similarly, it stands for the proposition that all people are entitled to basic equality. Once again, religious people may say this proposition is true because every individual is created in “God’s image.”<sup>251</sup> But secularists can still agree with the principle, even those who are convinced that people are “evolved from slime.”<sup>252</sup>

These principles are, in many ways, more reminiscent of the Declaration of Independence than the Constitution. The Declaration’s Preamble eloquently captures the notion of human sanctity with its statement that “all men are created equal, that they are endowed by their Creator with certain inalienable Rights.”<sup>253</sup> But, just as many Americans know little about the Constitution, they presumably also make little distinction between the Declaration and the Constitution. In their minds, the two documents blur together. But together, these documents symbolize our national commitment to respecting human dignity.

Of course, some could argue that the Declaration’s express reference to the “Creator” is what gives the document its power and credibility. Accordingly, they could argue that a nonsectarian public religion is in fact the best source of shared values for Americans. But, for the reasons expressed above, the nation is more likely to find unity in emphasizing the Constitution as a symbol of our secular society’s commitment to human dignity than in going down the inherently divisive road of mixing faith with national values. The Constitution can certainly symbolize this public commitment. As Justice William J. Brennan, Jr. eloquently put it, the Constitution “is a bold commitment by a *people* to the ideal of dignity protected through law.”<sup>254</sup>

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251. *Genesis* 1:27 (“So God created man in his own image, in the image of God he created him.”).

252. SUAREZ, *supra* note 135, at 151.

253. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

254. William J. Brennan, Jr., *My Life on the Court*, in REASON AND PASSION: JUSTICE BRENNAN’S ENDURING INFLUENCE 17, 18 (E. Joshua Rosenkranz & Bernard Schwartz eds., 1997) (emphasis added).

## VI. MAKING THE SYMBOL MEANINGFUL

It is hardly earth shattering to suggest that diverse groups of people use symbols to promote a sense of unity or that the Constitution has performed such a role for Americans. Both phenomena have long been identified and studied, by sociologists in the former case<sup>255</sup> and by legal scholars in the latter.<sup>256</sup>

Yet, the constitutional symbolism described in this Article differs from the symbolism described elsewhere. The differences are apparent both in the way it describes the source of the collective value—emphasizing the *secular* nature of the Constitution—and in the way it describes the value itself—emphasizing the religious-like nature of the societal commitment to human dignity. It is these subtle distinctions that make the proposal particularly promising as a vehicle for uniting Americans.

This Part will describe the advantages of the proposed constitutional symbolism. It will then show how effective use of this symbolism can alter the ways in which Americans discuss divisive issues, such as the teaching of ID. These changes will not make divisive issues disappear, nor would we want them to. But this symbolism can remind Americans that there are common core values uniting them, notwithstanding their differences. Although effective use of this symbolism may not lessen the ferocity of extremists, it will provide a safe haven for moderate Americans who are inclined to see the forest of unity through the trees of discrete disagreement.

To illustrate this point, I will show how this unique brand of constitutional symbolism can reframe the evolution–ID debate in a way that could help lessen the rancor. I will then show how this symbolism can reshape the way in which politicians discuss their religious beliefs, for these discussions have gotten far out of kilter with the principle of separating church and state.<sup>257</sup>

*A. The Advantages of the Proposed Model*

Observers of human society have long recognized that diverse societies need to cultivate shared values to unite their heterogeneous populations. Jean-Jacques Rousseau, for instance, famously claimed that diverse societies need to cultivate a common “civil religion” that would coexist

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255. See, e.g., Max Lerner, *Constitution and Court as Symbols*, 46 YALE L.J. 1290, 1292 n.9 (1937) (noting the powerful nature of symbolism, dating back to “Platonic myths”).

256. See, e.g., *id.* at 1299 (analyzing the symbolic importance of the Constitution).

257. See RANDALL BALMER, *GOD IN THE WHITE HOUSE: A HISTORY 1* (2008) (discussing the influence of religion in presidential politics).

along with the personal religious faiths of the individual citizens.<sup>258</sup> The dogmas of this civil religion would be relatively few: “[t]he existence of an omnipotent, intelligent, benevolent divinity that foresees and provides; the life to come; the happiness of the just; the punishment of sinners; the sanctity of the social contract and the law . . . [and] no intolerance.”<sup>259</sup> Believing that allegiance to this civil religion was necessary to ensure citizens were law abiding and faithful, Rousseau argued for the banishment of those who refused to adhere to this creed.<sup>260</sup>

In his seminal 1967 article, *Civil Religion in America*, sociologist Robert Bellah observed that America had created its own form of civil religion.<sup>261</sup> While not suggesting that the Framers were followers of Rousseau, Bellah nevertheless maintained that they consciously cultivated a type of nonsectarian civil religion to instill a sense of common purpose and respect for the rule of law.<sup>262</sup> Bellah described this civil religion as “a set of beliefs, symbols, and rituals” which gave religious legitimacy to our secular government.<sup>263</sup> In support of his contention, Bellah includes a wealth of quotes from American political leaders that are interlaced with references to God and Judeo-Christian beliefs.<sup>264</sup>

Like the public religion described by Meacham<sup>265</sup> or the nonsectarianism described by Feldman,<sup>266</sup> Bellah’s civil religion implies that the government’s legitimacy depends upon people viewing the government as somehow divinely ordained.<sup>267</sup> For instance, Bellah writes that “[i]n American political theory, sovereignty rests . . . with the people, but implicitly, and often explicitly, *the ultimate sovereignty has been attributed to God.*”<sup>268</sup> Bellah maintains that this linkage lifts the American mission beyond mere secular politics and vests the country with the noble obligation “to carry out God’s will on earth.”<sup>269</sup> “This was the motivating spirit of those who founded America,” he claims, “and it has been present in every generation since.”<sup>270</sup>

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258. JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT* 185–86 (Maurice Cranston trans., Penguin Books 1968) (1762).

259. *Id.* at 186.

260. *Id.*

261. Robert Bellah, *Civil Religion in America*, 96 *DAEDALUS* 1 (1967).

262. *Id.* at 5.

263. *Id.* at 3–4.

264. *Id.* at 4–7, 9–10 (discussing the use made by former presidents such as Washington, Lincoln, and Kennedy of religious metaphors).

265. MEACHAM, *supra* note 51, at 22.

266. FELDMAN, *supra* note 19, at 61.

267. BELLAH, *supra* note 261, at 4.

268. *Id.* at 4 (emphasis added).

269. *Id.* at 5.

270. *Id.*

Bellah's observation that American leaders frequently use religious metaphors is undoubtedly correct. Empirical work done by social scientists also indicates that many Americans do in fact attribute religious qualities to the government.<sup>271</sup> Thus, studies have found a sizable number of Americans agreeing with statements such as: "America is God's chosen nation today;" "A president's authority . . . is from God"; or "Social justice cannot only be based on laws; it must also come from religion."<sup>272</sup> Given the high percentage of Americans who self-identify as religious,<sup>273</sup> it is probably inevitable that a large number will ascribe religious attributes to their government.

Still, cultivating the notion that the government is divinely ordained can be a double-edged sword. Although the notion may be a source of unity for many Americans, it can be off-putting for others. This argument was put forth in Part V, which explained how even a nonsectarian public religion can: (1) lead to unsettling questions about whose "God" is being referred to; (2) make polytheists and atheists feel excluded; and (3) suggest that actions that undermine a belief in God, such as the teaching of evolution, undermine the foundations of our society.<sup>274</sup> Indeed, social-science research about which religious groups in America consider themselves "civil religious" reflects the potentially divisive nature of a "civil religion."<sup>275</sup> Whereas some groups, particularly those having denominational roots in America, such as Mormons, Adventists, and Pentecostals, scored very high on measures of civil religiosity, other groups, such as Jews and Unitarians, scored lower.<sup>276</sup> Likewise, college graduates and religious and political liberals had disproportionately lower scores for civil religiosity.<sup>277</sup>

None of this is meant to imply that courts should forbid government leaders from invoking the name of God or enjoin long-established religious references such as "In God We Trust" on our coins or "one nation under

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271. See Ronald C. Wimberley & William H. Swatos, Jr., *Civil Religion*, in *ENCYCLOPEDIA OF RELIGION AND SOCIETY* 94, 94–95 (William H. Swatos, Jr., ed. 1998), available at <http://hrr.hartsem.edu/ency/civilrel.htm> (indicating that the findings of these studies showed that "people do affirm civil religious beliefs").

272. *Id.* at 95.

273. See Merritt & Merritt, *supra* note 5, at 918–20 (reviewing statistics of Americans' religious affiliations).

274. See *supra* Part V. See also Paul Finkelman, *The Ten Commandments on the Courthouse Lawn and Elsewhere*, 73 *FORDHAM L. REV.* 1477, 1498–1500 (2005) (describing how government displays of the Ten Commandments can alienate atheists as well as Buddhists and Hindus); SUAREZ, *supra* note 135, at 151 (describing ID proponents' assumption that teaching children evolution "will reduce them to nihilist, materialist, self-seeking beasts").

275. See Wimberley & Swatos, *supra* note 271, at 95 (describing which religious groups consider themselves "civil religious").

276. *Id.*

277. *Id.*

God” in the Pledge. Although it may be true that these ceremonial deisms could reinforce the notion that the government is divinely sanctioned and thus make some Americans feel excluded, purging the public sphere of every religious reference would probably do more harm than good. As Justice Breyer wisely observed in the recent Texas Ten Commandments case, the Establishment Clause’s goal of avoiding religiously based divisiveness is sometimes best served by tolerating longstanding religious references.<sup>278</sup> One could reasonably expect, for instance, that a court order to remove “under God” from the Pledge of Allegiance would be far more divisive than any feelings of exclusion generated by this rote religious reference.

At the same time, this Article does suggest that American political leaders should use the constitutional symbolism discussed above to affirmatively talk about the Constitution and the American government in inclusive secular terms. They should openly acknowledge that America consists of both non-believers and people with a wide variety of faiths. They should emphasize that the common value that unites this diverse group is the commitment that “We the People” made to create a society based on respect for human dignity. This narrative of the Constitution’s legitimacy arising from the consent of the governed is perfectly consistent with the Constitution’s Preamble. But, more importantly, it is a narrative that can make all Americans, regardless of their faith, feel like equal participants. It sends the message that we do not need to agree upon a particular religion or even a belief in God to agree upon creating a society that is committed to respecting human sanctity.

While emphasizing the secular nature of the source of this commitment, political leaders should also emphasize the religious-like absolutism of the commitment itself. An emphasis on the religious-like absolutism of the commitment will be beneficial for two reasons. First, it communicates to the vast majority of Americans of faith that our nation, despite its secular origins, is committed to the inviolable principle that people are sacred. Thus, even though we cannot agree on the “one true religion” or even on a belief in God, we can readily agree to abide by a religious-like morality. Emphasizing religious-like morality can help assuage the concerns of those who fear that our nation will be thrown into a valueless moral relativism unless we anchor it in a belief in God.

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278. See *Van Orden v. Perry*, 545 U.S. 677, 704 (2005) (Breyer, J., concurring) (citing *Zelman v. Simmons-Harris*, 536 U.S. 639, 717–29 (2002) (Breyer, J., dissenting)) (“Such a holding might well encourage disputes concerning the removal of longstanding depictions of the Ten Commandments from public buildings across the Nation.”). Justice Breyer continued by stating that the holding “could thereby create the very kind of religiously based divisiveness that the Establishment Clause seeks to avoid.” *Id.*

Second, the message of a religious-like commitment to human sanctity is also beneficial for limiting abusive uses of constitutional symbolism. After all, the Constitution, like any symbol, can be manipulated to stand for almost anything. Before the Civil War, for instance, leaders from both the North and South used the Constitution to justify their positions on slavery.<sup>279</sup> And, as Max Lerner observed in his landmark 1937 article, *Constitution and Court as Symbols*, the “propertied groups” invoked the Constitution to legitimize the Supreme Court’s *Lochner*-era jurisprudence invalidating progressive labor laws.<sup>280</sup>

Although manipulation of constitutional symbolism cannot be prevented, emphasizing our societal commitment to human dignity can deter some particularly dubious kinds of manipulation. The concept of human dignity is highly malleable, but there are limits on how far it can be stretched. Thus, although people may suggest that the concept supports the rights of slaveholders or the rights of corporate interests to be immune from regulation, these arguments are so foreign to most people’s conception of human dignity that they are unlikely to be sustained in the long run. Acknowledging and celebrating our societal commitment to human dignity thus can help ensure that our actions in fulfilling this commitment do not veer too far off course. After all, most people will find it hard to swallow arguments that our societal commitment to human dignity is best fulfilled by promoting racial segregation, engaging in torture, or incarcerating people without due process of law.

Certainly some issues, like abortion, which involves an unavoidable collision of a mother’s rights with those of a fetus, will not be made any less contentious by a collective commitment to human dignity. But, a commitment to a society based on human dignity does not mean that we will always agree on what that commitment entails. At most, it means that we will agree to strive collectively toward that goal and to resolve disputes peaceably when we cannot agree on what the goal requires.

Let us now return to the ID dispute to see how the constitutional symbolism discussed in this Article can subtly reshape the debate.

### *B. Reconsidering How We Talk About the Intelligent Design Controversy*

As detailed in Part III, the ID controversy is often characterized as an ideological zero-sum game in which only one side can emerge victorious.<sup>281</sup>

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279. Lerner, *supra* note 255, at 1300–03.

280. *See id.* at 1306–07 (analyzing the Supreme Court’s use of the Constitution to promote American capitalism).

281. *See supra* Part III.B (detailing the key arguments on both sides of the ID debate).



Opponents of ID view their adversaries as crazy religious zealots bent on foisting their religion on all Americans.<sup>282</sup> Proponents of ID see their adversaries as wanton materialists determined to rid society of absolute values and cast us adrift in a sea of meaningless moral relativism.<sup>283</sup>

Yet, as the Part on the Scopes trial revealed, there may be more commonality between these two groups than either would ordinarily acknowledge.<sup>284</sup> Most ID opponents would probably agree with ID supporters that our society is committed to certain absolute values, particularly with regard to the sanctity of human dignity.<sup>285</sup> Furthermore, most ID proponents would probably acknowledge that it is inappropriate to foist religion on all Americans.<sup>286</sup>

If our discussions of ID began with these two points of agreement—that our society is committed to the notion of human sanctity and that this notion includes freedom from government-imposed religion—both sides might realize that they have much in common notwithstanding their disagreements. In turn, these two points of agreement might help both sides to be more respectful of one another’s concerns and thus avoid falling into a

282. *Id.* See also Americans United for Separation of Church & State, *supra* note 151 (asserting that like creationists, proponents of ID “want to preach a religious message to students”).

283. See *supra* Part III.A (discussing ID proponents’ rejection of evolution because they believe it is at odds with their central belief that people are sacred). See also COULTER, *supra* note 137, at 269 (noting that Darwinists see all morals as relative instead of transcendent); SCHÖNBORN, CHANCE OR PURPOSE, *supra* note 120, at 169 (“The ‘Darwinian version’ of things . . . has also influenced our life in society and attitudes to the main moral questions in bioethics, in education, and in science . . .”); THE WEDGE STRATEGY, *supra* note 53 (illustrating ID proponents’ view that materialism causes moral relativism); WEIKART, *supra* note 144, at 22 (“[Darwinists] regarded ethics and morality as products of evolution, they considered all morality relative to the evolutionary stage of development and also relative to its ability to preserve the species.”); Brownback, *supra* note 28, at A19 (“If . . . [evolution] means assenting to an exclusively materialistic, deterministic vision of the world that holds no place for a guiding intelligence, then I reject it.”).

284. See *supra* Part IV (discussing how the misperceptions of the Scopes trial reinforced the divide between religious and secular Americans).

285. All of the “atheist” authors, for instance, strongly reject the assumption that morality cannot exist in the absence of religion, and instead are deeply committed to a society grounded upon basic moral values, whether those values derive from evolution itself or from reason. See, e.g., DAWKINS, *supra* note 44, at 226 (stating that “we do not need God in order to be good—or evil”); HARRIS, *supra* note 44, at 87 (noting that respect for religious faith is an obstacle to “public discourse” on ethics and “intellectual honesty”); HITCHENS, *supra* note 43, at 6 (“[R]eligion has caused innumerable people not just to conduct themselves no better than others, but to award themselves permission to behave in ways that would make a brothel-keeper or ethnic cleanser raise an eyebrow.”).

286. See L.A. TIMES, *Study #514: National Poll*, at 16 question 23, 17 question 26 (2005), available at <http://latimes.image2.trb.com/lanews/media/acrobat/2006-01/21312324.pdf> (reporting that 44% of survey participants responded that separation of church and state is important and 24% responded that separation of church and state is somewhat important); Pew Research Ctr. for the People & the Press, *Millennium Survey*, at 16 question 16(j) (1999), available at <http://people-press.org/reports/questionnaires/51.pdf> (noting that 41% and 33% of respondents stated that separation of church and state is a major and minor reason, respectively, for American success).

whirlpool of acrimonious allegations of either crazy religious zealotry or valueless moral relativism.

ID opponents, for instance, are usually so incensed by what they perceive as ID advocates' efforts to foist religion on all Americans that they ignore ID proponents' concern that evolution undermines human sanctity. Because most ID opponents reject the contention that evolution and religion are in conflict—usually based on some notion of non-overlapping magisteria—they fail to appreciate ID proponents' deeply felt anxiety that teaching evolution undermines faith in God and the notion that people are divinely created.

Even Judge Jones, who fastidiously explained why ID is not science, gave scant attention to the larger ideological objections of ID proponents. In just one paragraph at the end of his lengthy decision, he brushed aside ID proponents' concern that science and religion are in tension:

Both Defendants and many of the leading proponents of ID make a bedrock assumption which is utterly false. Their presupposition is that evolutionary theory is antithetical to a belief in the existence of a supreme being and to religion in general. Repeatedly in this trial, Plaintiffs' scientific experts testified that the theory of evolution represents good science, is overwhelmingly accepted by the scientific community, and that it in no way conflicts with, nor does it deny, the existence of a divine creator.<sup>287</sup>

This brusque dismissal would be reassuring only if ID proponents could accept the premise that evolution and religion are not in conflict. But, as noted in Part III, rejection of that premise is at the very core of their opposition to evolution.<sup>288</sup> Moreover, ID proponents' assumption that evolution and religion are in conflict is not so outlandish as to warrant it being labeled "utterly false."<sup>289</sup> Indeed, many of the atheist authors, including prominent scholars such as Richard Dawkins, the Charles Simonyi Professor of the Public Understanding of Science at Oxford University, readily agree with this assumption.<sup>290</sup>

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287. *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707, 765 (M.D. Pa. 2005).

288. See COLLINS, *supra* note 43, at 183 (noting that the ID movement is founded on the proposition that "[e]volution promotes an atheistic worldview and therefore must be resisted by believers in God").

289. *Kitzmiller*, 400 F. Supp. 2d at 765.

290. DAWKINS, *supra* note 44, at 61 (arguing that ID and evolution are "close to being irreconcilably different").

Of course, I am not suggesting that we should allay the concerns of ID proponents by allowing ID to be taught in public-school science classes. Such a concession would violate the Establishment Clause and impugn the integrity of our science education.<sup>291</sup> But, even though judges cannot allow for the teaching of ID, they can explain their reasons for doing so in a way that is more sensitive to the ideological concerns of ID proponents. Although there might be nothing a judge could say to appease the concerns of religious fundamentalists who read the scripture literally and think evolution is apostasy, there may be many moderate Americans who would appreciate having their views treated more respectfully. Indeed, if as polls suggest, most Americans favor the teaching of ID, it is politically and strategically foolish to ignore their concerns.<sup>292</sup>

As noted in Part III, many of these moderates are primarily concerned that instruction in evolution leaves children with the impression that there is nothing special, or sacred, about people that warrants giving them special treatment.<sup>293</sup> This group might be particularly troubled by a perception that the school curriculum is unfairly balanced toward a materialistic conception of the world because it allows for the teaching of evolution but forbids any religious education because of the Establishment Clause.

But how can judges respectfully respond to this concern? If the Constitution obligates them to forbid the teaching of ID, is there anything they could say that would be even moderately comforting to ID proponents? The way to respectfully respond to this concern—without allowing ID into the science curriculum—is to acknowledge that ID proponents are right to think that public schools should teach children about the sanctity of human dignity and the obligation of people to treat every individual with dignity and respect. A judge could also acknowledge that, even though many find no conflict between evolution and religion, it is understandable that some

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291. See HARRIS, CHRISTIAN NATION, *supra* note 113, at 70 (suggesting that religious influences are adversely affecting American high school students' scientific understanding and education); Jacobs, *supra* note 154, at A13 (quoting genetics professor that only science should be taught in science class); Wilgoren, *supra* note 170, at A11 (highlighting national science and teacher associations' response to Kansas's proposed elimination of evolution theory); Am. Civil Liberties Union, *supra* note 105 (warning that teaching ID in schools would endanger Americans' religious freedoms); Americans United for Separation of Church & State, *supra* note 151 (follow "What about equal time?" hyperlink) ("[ID] is a religious teaching that has no place in public school science classes.").

292. See Goodstein, *supra* note 106, at A9 (finding that 64% of those polled "were open to idea of teaching creation in addition to evolution").

293. See COULTER, *supra* note 137, at 278 (contending that the theory of evolution "logically" means that humans and animals are morally indistinguishable from one and another); THE WEDGE STRATEGY, *supra* note 53, at 2 (describing "cultural consequences" of a Darwin's "materialistic conception of reality"); WEIKART, *supra* note 144, at 230 ("[V]iews on human inequality [and] the primacy of evolutionary progress . . . produced a world-view that devalued human life.").

people do. Indeed, the judge could acknowledge that evolution and religion have been sparring partners ever since Darwin's *Origin of Species* was first published in 1859.<sup>294</sup> Darwin himself acknowledged his book's troubling theological implications: "I had no intention to write atheistically . . . [b]ut I own that I cannot see as plainly as others do, and as I should wish to do, evidence of design and beneficence on all sides of us."<sup>295</sup>

Of course, a judge should explain why schools cannot fulfill their responsibility of teaching about human sanctity by injecting religion into science classrooms. Teaching religion in public schools would violate our commitment to human dignity because it would foist religion upon students who may have very different religious beliefs or may be nonbelievers. At the same time, the judge should explain that schools should teach about our nation's commitment to the sanctity of human dignity in civics and history classes. History and civics teachers can fairly educate American children about the societal commitment that "We the People" made to respect the dignity of every individual. There are certainly numerous opportunities for teachers to convey this message, whether it is from a study of the rights in the Constitution itself or from the many historical battles that have led to the expansion of these rights.

None of this is meant to suggest that students should be taught to blindly revere the Constitution. Indeed, it is important for students to understand that the original Constitution was far from perfect and that it is still flawed. But, as important as it is for students to be able to critically evaluate the Constitution, they can fairly be taught that the Constitution has come to symbolize a commitment that all Americans have made to create a society based on human dignity. This symbol can exist despite whatever defects the Constitution may have. Moreover, this commitment can still be viable even if we acknowledge that the precise meaning of human dignity is something we will forever be debating and discussing.

It is doubtful that such a response would fully alleviate the anxiety of parents concerned about evolution education. However, it could be a way of reassuring those parents that all sides in the evolution-ID debate have common core values and want those values communicated to children in public schools. This subtle difference in the way we discuss the evolution-ID conflict might not make the conflict disappear, but it might reduce the rancor in a debate that has otherwise remained unabated even eighty years after the Scopes trial.<sup>296</sup>

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294. See LARSON, *supra* note 52, at 16 (noting the hostility between naturalists and the church after Darwin's publication).

295. *Id.* at 17 (quoting Charles Darwin).

296. See *supra* Part III (discussing ideological divide between ID proponents and ID opponents).

*C. How Politicians Talk About Religion*

Richard Balmer, in his book, *God in the White House*, questions how we went from a nation that in 1960 accepted John F. Kennedy's claim that religion should play no part in elections to a nation that accepted George W. Bush's "public declarations about religion."<sup>297</sup> As Balmer notes, we were somehow "content to disregard religion as a criterion for voting in 1960," yet now expect candidates to "fully . . . disclose their religious views and to expound on their personal relationship to the Almighty."<sup>298</sup>

Part of this transition undoubtedly occurred because of the heightened influence of religiously conservative voters starting in the 1970s. This group, whom Noah Feldman refers to as "values evangelicals," rose to prominence as evangelical Protestants and conservative Catholics joined forces for the first time around controversial topics like abortion and public displays of religion.<sup>299</sup> The transition was also ushered in by Democratic leaders such as Jimmy Carter, the first president to openly declare himself as being born again in Christ.<sup>300</sup>

Whatever the reasons for this transition, the consequences of it have been regrettable. It has led to politicians speaking in increasingly sectarian religious terms and thereby further polarizing religious fundamentalists and secular Americans. Perhaps the pinnacle of this new religious vernacular was candidate George W. Bush's proclamation on the eve of the 2000 Iowa caucuses that his favorite philosopher was Jesus.<sup>301</sup> Notwithstanding the strength of his own personal religious beliefs, this declaration hardly seems like an appropriate response for someone desiring to represent all Americans, regardless of their faith or lack thereof. It is certainly worlds apart from the sensitivity reflected in President Thomas Jefferson's refusal to even acknowledge a day of Thanksgiving because he thought it would violate the separation of church and state.<sup>302</sup>

Perhaps most regrettable is that many religiously moderate and secular politicians responded to the success of conservative candidates by infusing their own campaigns with religious rhetoric. After President Bush's

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297. BALMER, *supra* note 257, at 1–5. See also Richard Land, *Letter to the Editor, Bush and Religion: What God Wants*, N.Y. TIMES, Oct. 17, 2004, § 2 (Magazine), at 6, available at 2004 WLNR 5579701 (discussing President Bush's statement, "I believe that God wants me to be President").

298. BALMER, *supra* note 257, at 3.

299. FELDMAN, *supra* note 19, at 186, 197.

300. *Id.* at 190.

301. BALMER, *supra* note 257, at 1.

302. *Lee v. Weisman*, 505 U.S. 577, 623 (1992) (Souter, J., concurring) (noting that President Jefferson "steadfastly refused to issue Thanksgiving proclamations" because he thought they would violate the Establishment Clause).

reelection in 2004, leaders in the Democratic Party interpreted a “vaguely worded exit-poll” as indicating that the Democrats lost because they were not perceived to be a party of “moral values.”<sup>303</sup> Frank Rich notes that the “immediate response” of the Party leaders “was to seek out faith-based consultants . . . and practice dropping the word ‘values’ and biblical quotations into their public pronouncements.”<sup>304</sup> Democrats in the House of Representatives formed the Democratic Faith Working Group, and Senator Harry Reid, the minority leader in the Senate, set up a website called “Word to the Faithful.”<sup>305</sup>

A religious political consultant, Mara Vanderslice, emerged as a “rising star” in the Democratic Party after the 2004 election.<sup>306</sup> Ms. Vanderslice, who consulted with a number of successful candidates during the 2006 elections, encouraged those candidates to “speak publicly, early and in detail about the religious underpinnings of their policy views” and advised them not to use the phrase “separation of church and state.”<sup>307</sup> She also helped the Michigan Democratic Party to incorporate “recognizably biblical language” into its party platform.<sup>308</sup>

Of course, it is hard to fault either Democrats or Republicans for wanting to exploit religion’s role in the decision-making process of many Americans. Manipulation of religious beliefs has been a time-honored practice throughout American history, from the Federalists branding Jefferson a “howling atheist”<sup>309</sup> to Mike Huckabee’s recent claim that the Constitution should be amended to bring it in line with “God’s standards.”<sup>310</sup> Indeed, in the presidential campaign of 1908, William Jennings Bryan’s commitment to human dignity did not stop his political operatives from impugning William Taft, Bryan’s opponent, for being a Unitarian who supposedly did not believe in the divinity of Christ.<sup>311</sup>

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303. Frank Rich, *The Rove Da Vinci Code*, N.Y. TIMES, May 21, 2006, § 4 (Magazine), at 14, available at 2006 WLNR 8714158.

304. *Id.*

305. Joseph Loconte, *Nearer, My God, to the G.O.P.*, N.Y. TIMES, Jan. 2, 2006, at A13, available at 2006 WLNR 40780.

306. David D. Kirkpatrick, *Consultants Help Democrats Embrace Faith, and Some in Party Are Not Pleased*, N.Y. TIMES, Dec. 26, 2006, at A22, available at 2006 WLNR 22488508 (describing Mara Vanderslice as a “novice evangelical political operative” and a “rising star”).

307. *Id.*

308. *Id.*

309. JOHN FERLING, *ADAMS VS. JEFFERSON: THE TUMULTUOUS ELECTION OF 1800* 154 (2004).

310. David D. Kirkpatrick & Michael Powell, *Between Pulpit and Podium, Huckabee Straddles Fine Line*, N.Y. TIMES, Jan. 19, 2008, at A1, available at 2008 WLNR 1086669 (quoting Mike Huckabee).

311. Edgar Albert Hornig, *The Religious Issue in the Taft-Bryan Duel of 1908*, 105 PROC. OF THE AM. PHIL. SOC’Y 530, 530 (1961) (citing Letter from George A. Pearre to William Howard Taft (June 26, 1908) (on file with the Library of Congress)).

It is certainly possible that the recent fracturing of the evangelical voting bloc might lessen the need for candidates to appeal so crassly to religious voters, but it is doubtful that this pressure will disappear. For instance, Hillary Clinton sought to bolster her appeal to religious voters by hiring Burns Strider, the evangelical Christian “who headed religious outreach for Democrats in the House.”<sup>312</sup> Similarly, John McCain stated “[w]e are a Judeo-Christian values nation,”<sup>313</sup> and in a controversial interview with Beliefnet, agreed that “the Constitution established the United States of America as a Christian nation.”<sup>314</sup>

Barack Obama gave perhaps the most thoughtful exposition on the issue of religion and politics in a keynote address he delivered at a “Call to Renewal” conference.<sup>315</sup> He spoke openly about the need to “tackle head-on the mutual suspicion that sometimes exists between religious America and secular America,”<sup>316</sup> and he appealed directly to secular Americans by stating that he did “not believe that religious people have a monopoly on morality.”<sup>317</sup> Obama underscored that “[d]emocracy demands that the religiously motivated translate their concerns to universal, rather than religion-specific values.”<sup>318</sup> Still, like the other candidates, he seemed compelled to establish his own religious credentials. Thus, he talked about his experience of finding faith while working as a community organizer in Chicago and how that led him to eventually walk down the aisle of the South Side’s Trinity Church to affirm his Christian faith: “[K]neeling beneath that cross on the South Side, I felt that I heard God’s spirit beckoning me. I submitted myself to His will, and dedicated myself to discovering His truth.”<sup>319</sup>

Of course, it is unrealistic to think that religion will be removed from American politics. However, the discourse of political campaigns would be considerably improved if candidates effectively used the type of constitutional symbolism described in this Article. Too often candidates

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312. Michael Luo, *For Clinton, Faith Intertwines with Political Life*, N.Y. TIMES, Jul. 7, 2007, at A1, available at 2007 WLNR 12861553.

313. Elisabeth Bumiller & John M. Broder, *McCain and Romney Tangle over Job Losses in Michigan*, N.Y. TIMES, Jan. 13, 2008, § 1 (Magazine), at 20 (quoting Senator John McCain), available at 2008 WLNR 705544.

314. Interview by Dan Gilgoff with John McCain, U.S. Senator (2007) (transcript available at [http://www.beliefnet.com/story/220/story\\_22001\\_1.html](http://www.beliefnet.com/story/220/story_22001_1.html)).

315. Barack Obama, U.S. Senator, Keynote Address at Call to Renewal’s Building a Covenant of a New America Conference (June 28, 2006) (transcript available at [http://obama.senate.gov/speech/060628-call\\_to\\_renewal/](http://obama.senate.gov/speech/060628-call_to_renewal/)).

316. *Id.*

317. *Id.*

318. *Id.*

319. *Id.*

assume that it is impossible for them to be standard bearers of American values unless they anchor those values in religious faith. But, each time they go down that road, they reinforce the divisions separating Americans by suggesting that we can have no collective values unless we have a collective faith.

Instead of exacerbating the religious–secular divide, politicians should use their leadership positions to convey the message that American values derive from the commitment that “We the People” made in the Constitution’s Preamble. They should talk openly about how America consists of and welcomes people of all faiths as well as nonbelievers; indeed, our country’s foundational stories are about immigrants fleeing religious persecution in Europe. They should explain that the great innovation of the American experiment is that this secular society, which lacks any established religion, has nonetheless committed itself to honoring the sanctity of human dignity.

Using this language, politicians could go head-to-head with any politician who claims that a candidate must be openly religious to be the standard bearer of moral values. Candidates who use the symbolism of the Constitution can claim the higher ground by explaining that our nation’s commitment to human dignity requires them not to infuse religion into secular elections because it would offend the dignity of Americans of different faiths and nonbelievers. At the same time, they can fervently claim that America is solidly anchored in the absolutist moral value of respecting human dignity. Moreover, they can anchor this value in the Constitution, which has an almost sacred status for most Americans even though it is a secular document.

#### CONCLUSION

Ever since the dawn of the scientific age, philosophers have wrestled with whether religion can be reconciled with the discoveries of science.<sup>320</sup> That people continue to wrestle with this tension is evidenced by the tremendous controversy produced by a 159-word statement read to ninth grade biology students in Dover, Pennsylvania.<sup>321</sup>

What is often forgotten, however, is that the battle between religion and science need not threaten our nation’s values. The genius of the American experiment is that the citizens of this secular society have made a religious-like commitment to respect the sanctity of human dignity. This absolute value

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320. BRYAN MAGEE, *THE STORY OF PHILOSOPHY* 71 (1998).

321. *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707, 708–09 (M.D. Pa. 2005) (referring to statement to be read to biology students).



defines us as a community and provides the bond that gives us a common purpose and mission. Moreover, it is a commitment that can unite all Americans regardless of their race, religion, or ethnicity and that can endure regardless of how diverse the country is or may eventually become.

We may never agree whether there is a supreme intelligent designer, but “We the People” have chosen to create an intelligent society. It is a society committed to the sanctity of human dignity. This commitment defines us as Americans. It is the common value that transcends our faith, race, and origin. It is the reason we work together to make our national endeavor a success.