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Saving Grace: Terrorism as a Deterrent to the Secularization of American Law

Carolyn Deverich†

In the past century, American law has been characterized by the trend towards secularization. A recent ideological shift, instigated in part by the September 11 terrorist attacks, has potentially halted this loss of God in the American community.

They march in thousands along the Mall on an icy February morning, their haunting chant filling the air—"We're here! We're godless! America, get used to it!"1 Oversized, homemade banners wave wildly, emblazoned with maxims proclaiming "Atheists Bless America" and "God is a Fairy Tale." A roar of whistles and cheers erupts as the crowd is raucously led in a "godless" pledge of allegiance.2 The American Atheists' "Godless Americans March" in Washington, D.C., speaks volumes about what this country has come to. It makes one worry where the country is headed. America, a land established upon principles of religion, a nation once dedicated to the Almighty, is losing its religious footing. Our nation has declared an all-out war on God, and few, if any, seem to notice.

The trend is not necessarily a recent one. Speaking of a period hauntingly similar to our own, William McLoughlin commented in 1983, "This country is in more than an economic crisis. It is in a deep cultural crisis. The beliefs and values that our institutions have taught us to respect and obey are no longer congruent with the behavior we

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see around us."³ Like the cultural crisis McLoughlin observed over twenty years ago, America has of late been plagued with a debilitating movement towards immorality, skepticism, and godlessness in the community. It is rapidly becoming a nation without unity, a country without patriotism, and a people without faith. In observing the origins of this distinct trend towards secularism in America, it appears that the major catalyst is not located amidst fringe-group fanatics or dispassionate, agnostic scholars. Frighteningly, the destructive forces that are wearing away American principles are emanating from the American system itself.

Paul Blanshard, an outspoken critic of organized religion and writer for The Humanist, noted the government’s role in the move towards secularism, naming the United States Supreme Court as his “primary hero” in the destruction of American faith.⁴ Although overly disapproving of religion’s role in society, Blanshard’s observations are astoundingly astute. The twentieth-century court system has perceptibly furthered America’s descent into a moral wasteland devoid of values, ethics, and most importantly, God. Remarkably, however, the past year has manifested ideological shifts in the court systems, which appear to have temporarily slowed the secularization of American law. The ironic source of this dramatic ideological transformation? Terrorism. In an unprecedented revolution, America’s seemingly inevitable march towards heterodoxy has been halted by a resurgence of American unity, patriotism, and faith, instigated by the devastating September 11 attacks. Al Qaeda terrorists’ attempts to destroy a people they label as godless “infidels” may have actually reversed the dwindling religiosity among Americans.⁵ Through loss, we seem to have rediscovered religion.

This outcome is indeed an intriguing one and deserves careful consideration. Before examining the role that terrorism has recently played in arresting the secularization of American law, it is necessary to begin a look at the secularization of the nation itself.

⁵ William J. Bennett, Why We Fight (New York: Doubleday, 2002), 78.
A Loss of Unity: The Right to Privacy

Writing in 1835, Alexis de Tocqueville observed that Americans had a propensity toward a kind of isolated individualism, in which a man "living apart, is a stranger to the fate of all the rest . . . exist[ing] only in himself and for himself alone."\(^6\) This threat of self-consuming individualism was mere speculation, of course. America was a reasonably cohesive establishment at the time, optimistically imbued with the dogmas of national unity and the duty of the citizen to his country. A sense of moral and civic responsibility prevailed, in which, as the Federalist Papers declared, "it [was] the design of Providence, that . . . [the people be] united to each other by the strongest ties, . . . never [to] be split into a number of unsocial, jealous, and alien sovereignties."\(^7\) The early aim of America was not to focus solely on the individual independent from a social setting, but to encourage the development of a harmonious populace in which the rights of each citizen were upheld by the general consensus of the people.

Lamentably, Tocqueville's speculative prophecy of American self-centered solitude has been realized in recent years, and contemporary society now focuses more upon the "right to privacy" than "the value and blessings of union."\(^8\) The nation has ideologically moved from a vision of the individual as it relates to God and society, to an outlook which narrowly focuses upon the self alone.\(^9\) Tocqueville again sagely noted this devastating effect of individualism, observing, "The idea of the unity of mankind constantly leads them back to the idea of the unity of the Creator; while on the contrary in a state of society where men are broken up . . . they are apt to devise . . . a thousand private roads to heaven."\(^10\) Thus, Americans

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\(^8\) Ibid.
\(^10\) Tocqueville, 2:23.
ultimately reject all but the self in their defiantly independent journey through life.

The legal impact upon the trend towards individualism, and in consequence, trend towards godlessness, is especially apparent in the Supreme Court’s interpretation of the Fourteenth Amendment. The court-created “right to privacy” has justified the repeal of numerous pornography and abortion laws in the past few decades. In the landmark case, *Roe v. Wade*, a claim of this implied “right to privacy” was used to legalize abortion. *Griswold v. Connecticut* similarly upheld such individual rights, striking down a state’s ability to define a set of moral standards with justification in the “personal rights” of litigants. Cases involving pornography are particularly controversial in the contemporary world of individual liberties, with the 1969 U.S. Supreme Court decision, *Stanley v. Georgia*, allowing that private possession of obscenity was protected by the First Amendment.

William A. Galston commented on the dilemma presented by this morally passive court system, observing, “In the past generation . . . the delicate balance between juridical liberalism and its social preconditions was disrupted . . . [and it is now] argued that the essence of liberalism [is] public neutrality on the widest possible range of moral issues.” In the courts, God has been replaced by the self, and “legal responsibility” has become detached from “full moral responsibility.”

**A Loss of Patriotism: The Wall of Separation**

Disturbingly, the secularization of American law does not stop at the disappearance of collective responsibility. What has also been lost in the legal dismissal of God is a sense of common destiny among

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Americans, a demise of the love of the country and its future. In the rejection of God and the elimination of societal accountability, Americans have renounced their patriotism to the nation.

At its founding, America was far from the apathetic, secularized society it is today. Patriotism was a fundamental element of the infant nation, uniting colony-states that seemed to have little in common beyond a genuine love of the country. In his farewell address, George Washington highlighted the importance of nationalism, declaring, “The name of American, which belongs to you in your national capacity, must always exalt the just pride of patriotism.” Indeed, Washington’s vision prescribed that a nation needs not cultural, geographical, and ideological similarities to hold itself together, but rather a united vision of the country’s potential for greatness.

Until the mid-twentieth century, a patriotic vision of America’s “divine destiny” prevailed, which maintained that “providence [was] with [America] . . . in the fulfillment of [its] mission . . . the development of . . . freedom and equality. This was [America’s] high destiny and . . . blessed mission.” The belief in America’s association with the Almighty was an inseparable component of the patriotism of its people. Accordingly, as the country moved away from the vision of God’s place in society, a fundamental element of patriotism was lost. Without this vision, America has changed from “one nation, under God” to “one nation, two cultures.” The two cultures that were pulling the nation apart?—church and state.

The court system once again has played a major role in the secularizing division of the country, upholding an inflexible interpretation of the First Amendment’s Establishment Clause, which provides that “Congress shall make no law respecting an establishment of religion.”

16 Delblanco, 97.
20 Bennett, Why We Fight, 140.
In its most simple interpretation, this clause erects a figurative “wall of separation between church and state,” establishing the neutrality of the government towards organized religion. However, recent rulings have not reflected a neutrality. Instead, the American legal system has begun to rule in favor of secularized, even anti-religious views, essentially discriminating against religion. The benchmark “secular objective test,” applied first in the verdict of Everson v. Board of Education, has often been applied in “justify[ing] encroachments on religious practice . . . [which are] cloaked in the guise of some non-religious purpose.” In seeking to institute secular parameters to the Establishment Clause, the courts have extracted God from the state, dealing a severe blow to the patriotically linked religious foundations of America.

Separation of God from the state has gone so far as to remove even the mention of His name from the public sphere. The state of New Jersey recently prohibited referral to the Almighty in oaths of office and legal proceedings, which state “so help me God.” Bibles have been similarly banned from courts “because you-know-Who [is] mentioned inside.” The Boy Scouts of America was accused of participating in an unconstitutional promotion of religion due to mention of God in their Scout Oath, which declares, “On my honor, I will do my best, to do my duty to God, and my country.” The most recent attack on patriotism in conjunction with religion is the suit Newdow v. U.S. Congress, in which the plaintiff “sued President Clinton, Congress, the Broward County School District, and Florida’s congressional delegation to have ‘under God’ removed from the pledge [of allegiance], claiming that the wording

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26 Ibid.
27 Ibid.
violated... the free exercise clause and the Establishment Clause of the First Amendment." 29

Clearly, America has moved from a time when religion and the state worked parallel to one another to an age when they work against each other. In the secularization of the Establishment Clause, "we have come to accept the standard that where government increases, religion must decrease. We have also come to accept the presumption that government and religion mix like oil and water, that where government treads, religion must flee." 30 This distorted segregation of church and state has not just led to a rejection of God in America, but also to a rejection of part of America itself. For as the poet Walt Whitman stated, "At the core of democracy... is the religious element." 31

A LOSS OF FAITH: THE FREE EXERCISE CLAUSE

The dangerous attacks of American law against religion lie not just in the court system's restrictive influence. A great part of the attack on any mention of God comes from a liberal court system that not only fails to protect the rights of mainstream religion, but in actuality, protects and promotes the atheistic views of those with no religious beliefs.

Certainly, the American judiciary system has made it easier for Americans to worship how they wish. In the crusade to free persecuted "marginal religious groups," the Free Exercise Clause of the First Amendment has been employed with increasing frequency. 32 The decade between 1970 and 1980 exhibited a 500 percent increase in Free Exercise cases argued before the Supreme Court. 33 Though these numbers illustrate a clear escalation in religious representation

30 Staver, 19.
33 Ibid, 652–53.
in the courts, one must question if the rulings have led to a more religious society. Evidence shows just the reverse to be true.

In the last half-century America has moved further from its spiritual origins. While recent polls indicated that nine out of ten Americans “believe in God or a universal spirit,” further questioning revealed that only 44 percent of those polled accept a literal, creationist Deity.34 Church attendance has fallen drastically in the past fifty years, shifting from a period when approximately half of the American population attended church regularly to a time when less than 30 percent attend on a regular basis.35 Organized religion itself has recently suffered numerous scandals which expose a gritty underworld of corruption and sexual exploits that rival the vices of similarly debauched politicians. While America claims to be a religious and upright society, it has in actuality forsaken the God of its forefathers.

A contributing cause of this rejection of God has been the courts’ particular interpretation of the First Amendment’s Free Exercise Clause in which “Congress shall make no law . . . prohibiting the free exercise [of religion].”36 While the law was ostensibly created to allow the free practice of differing sects of religion, it is often used by the courts to justify the complete extraction of God from the community. Religious citizens have been ordered by the courts to avoid any mention or study of God at work to prevent discriminating against “marginal religious sects” who participate in practices that diverge from mainstream Christianity. Public school teachers are forbidden to teach students that God may have helped create the Universe for fear of neglecting Universalists, Humanists, and Atheists. Children are denied the opportunity to pray and thank God during their school day to avoid offending Islamics, Buddhists, and Hare Krishnas. Religious texts are prohibited in a school setting due to the impossibility of selecting scripture

36 Constitutional Amendments.
acceptable to all churches. Cases such as *Tudor v. Board of Education*, 37 *Abington School District v. Schempp*, 38 and *Metsz v. Leininger* 39 have effectively removed God from school curriculum in response to many "smaller sects" which claim to "suffer commensurate discrimination" when mainstream Christian religions are represented in public environments. 40 While trying to defend the marginal religious groups of a pluralistic America, the courts have in actuality prohibited, not promoted God in the community.

**A Loss of Life: Our Saving Grace**

At the turn of the twentieth century, America was undoubtedly headed towards a complete rejection of God in society. The disturbing trend towards secularization raised questions addressed by Jefferson when he inquired, "Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God?" 41 Frighteningly, a complete secularization of the nation seemed America's inescapable destiny—until the events of a fateful fall morning.

On 11 September 2001, two passenger planes struck the Twin Towers in New York City and, with sickening precision, completely demolished both edifices. A third plane careened into military headquarters in Arlington, VA, damaging a wing of the Pentagon. A fourth crashed in a Pennsylvania field, brought down by passengers who thwarted hijackers from reaching a potential target in Washington, D.C. These acts of terrorism were the worst ever executed on American soil. The economic repercussions were disastrous. The loss of life was incredible. The change in the American people was phenomenal.

As America pulled itself from the wreckage of September 11 terrorist attacks, a renewed spirit of pride, patriotism, and religiosity overwhelmed the people. William Bennett observed, “Partisan political issues seemed to fade in urgency, racial divisions to be set at nought [sic]. Cynicism and irony were declared out, simple love of country in.” Although the terrorists may have weakened structures of American industry, they had unknowingly strengthened the nation. America’s deteriorating unity, loyalty, and faith were radically bolstered as the country rallied against its adversaries.

Shortly after the attacks, changes in national sentiment began to manifest themselves. American flags fluttered from cars and homes, members of Congress broke into an impromptu version of “God Bless America” on the steps of the Capitol, and citizens throughout the nation joined together in religious ceremonies and memorials to those who lost their lives in the terrorist attacks. This swing in national outlook has exerted a noticeable impact on the judiciary system, indicating a decline in the trend towards godlessness in American law. Beyond its dramatic bearing upon America’s political and economic world, the events of September 11 impacted the three distinct forces in the move towards secularization—unity, patriotism, and faith. A review of recent decisions suggests that judicial secularization in America may have been halted in its tracks.

In the weeks following September 11, court rulings clearly reflected an arrest in religious discrimination. In *Harris v. City of Chicago*, the plaintiff, Clint Harris, protested against a planned reading of a prayer during the Chicago’s commemoration ceremony of 11 September 2001. Harris claimed that the religious ceremony violated the Establishment Clause of the Constitution of the United States, placing religion in too close contact with an affair of the state. The courts unexpectedly delivered a verdict which denied Harris' motion for a preliminary injunction, asserting that the government is obligated “not to discriminate against religious speech in circumstances in which secular speech would be allowed.”

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42 Bennett, 133.
43 *Harris v. City of Chicago*, 266 F.3d 750 (2002).
York similarly ruled in favor of religious institutions, upholding that “excluding the [religious organization] would be discrimination against religion, not the ‘neutrality towards religion’ mandated by the Establishment Clause.” This ruling, as well as others (see Steele v. Industrial Development Board of Metropolitan Government of Nashville, Daily v. New York City Housing Authority) appears to have reversed the courts’ previously secularized interpretation of the Establishment Clause.

The courts’ interpretation of the Free Exercise Clause also seems to have been affected in the aftermath of September 11. Prince v. Jacoby overturned prior secular interpretations of the Exercise Clause and allowed a Bible Study group access to school subsidies, thus allowing the expression of all religion rather than prohibiting religion in the fear of excluding a particular sect. In Prince v. Jacoby’s post-September 11 decision, the appellate court declared, “discrimination includes the denial of permission for students to engage in voluntary extracurricular activities that include prayer or religious speech when a school permits students to meet for non-religious extracurricular speech.” Under this ruling, the courts recognized the demarcation between discrimination and toleration, and began to set standards which would extinguish the Exercise Clause’s power to remove God in the name of constitutionality.

In issues such as Internet pornography, recent rulings are less clear demonstrations of a reversal of secularization due to limitations in screening software and technological issues. Significantly, in May 2002, the United States Supreme Court struck portions of the Child Pornography Protection Act of 1996 as unconstitutional. The case Ashcroft v. Free Speech Coalition involved the issue of computer-generated images which appeared to be child pornography. The Court ruled that the statute was unconstitutionally overbroad,

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asserting that the Child Pornography Protection Act not only prohibited actual and simulated acts of “hard core” child pornography, but it also could be construed to restrict protected speech such as the movie American Beauty. Although the case seems detrimental to the protection of longstanding values and moral standards, Justice O’Connor’s concurring opinion noted that “we have held that requiring a speaker disseminating material to a national audience to observe varying community standards does not violate the First Amendment,” and that if the wording of the law were changed, “adoption of a national standard [would be] necessary . . . for any reasonable regulation of Internet obscenity. Our precedents do not forbid adoption of a national standard.” Such a ruling leaves the door open for the establishment of rules which will screen pornography in an exacting, efficacious manner.

Undoubtedly, rulings following the terrorist attacks reflect a new trend towards religiosity in America. It is necessary to consider, however, whether these changes are permanent, or are merely a temporary consequence of devastating social crisis. One such verdict leaves this uncertainty open to question. The previously discussed case, Newdow v. U.S. Congress, in which Michael Newdow filed suit to have “under God” removed from the pledge of allegiance, was decided after the September 11 attacks. The courts disappointingly ruled in favor of Newdow, making the pledge unconstitutional under American law. It would seem that America is yet again treading a course toward secularization. In analyzing the results of the case, however, it is necessary to observe the particulars of the ruling as well as the distinctive public reaction to the decision. Currently, the presiding judge has issued a stay on the ruling, pending appeals, thus deeming the pledge unconstitutional in theory only. The decision itself is not even final, and requests for reconsideration from the Attorney General as well as appeals to the Supreme Court may yield a different verdict.10

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The fierce reaction following the court's Newdow v. U.S. Congress verdict is also noteworthy in an analysis of the religious implications of the decision. The U.S. Senate unanimously passed a resolution denouncing the ruling. Politicians from George W. Bush to Al Gore condemned the verdict. Religious preacher Jerry Falwell defied the courts, calling for civil disobedience through classroom allegiance pledges across the nation. Opposition to the decision in the pledge case even surfaced in the Anti-Defamation League, which usually backs an inflexible separation of church and state, as they uncharacteristically asserted that the ruling "goes against the culture and traditions of this country." Commenting on the fervor over the circuit court's decision, Charles Haynes observed that "during a time when 'God Bless America' has become the de facto national anthem, feelings about being a nation 'under God' run deep— even among Americans who are only nominally religious." Recent legislation such as Utah's February "Pledge of Allegiance" bill directly counteracts the Newdow case, requiring all public school children to recite the pledge—God included—every week. Despite the court's staunch insistence that the pledge is unconstitutional due to the mention of God, it seems that a majority of Americans feel otherwise.

Undeniably, America's unity, patriotism, and faith have been profoundly affected by the 11 September 2001 terrorist attacks. A reversal in the court system's trend of secularization is one of the positive results of this tragic event. What remains to be seen, however, is whether the American people will continue the fight against secularization, moving forward in the religious and patriotic footsteps of their forefathers, seeking to establish "one nation, under God, indivisible, with liberty and justice for all."