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Celebrating God, Constitutionally

Cass R. Sunstein

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CASS R. SUNSTEIN*

In recent years, the Supreme Court has often been confronted with "ceremonial deism." As I understand the term here, ceremonial deism is categorized by the following features. First, it is not coercive; no one is being required to do or to say anything. Second, it involves public displays that refer generally to God, without choosing any particular conception of God. Third, it involves activities that are either specifically honored by tradition or essentially indistinguishable from activities that are specifically honored by tradition.

Ceremonial deism has a core and a periphery.[1] The core might be said to include the use of the words "In God We Trust" on currency and as the national motto, legislative prayers, public oaths that refer to God and that use the Bible, and the use of the phrase "God Save This Honorable Court" to begin judicial proceedings. The periphery includes the words "under God" in the Pledge of Allegiance, prayers at public university ceremonies, and displays of religious symbols on public property. All I mean by ceremonial deism, then, is non-coercive public displays that refer to God in the way that is time honored and fits with our traditions.

That's the topic. In these remarks, I have two goals. The first is to explore how the constitutional law might evaluate ceremonial deism. In the first part of these remarks, I will try to illuminate current constitutional debate by attempting to identify the approaches that are behind the current controversy.

The second goal is to argue that federal courts, including the Supreme Court, should generally permit ceremonial deism. This means that the Supreme Court should get out of the business of attacking references to God, if they are in fact vindicated by tradition or if they are hard to distinguish, in principle, from those references that are vindicated by tradition. The underlying idea is that if a practice is longstanding and if it does not offend existing decisions, then courts should impose a heavy burden on those who strike down the practices. Here is an effort to free up other institutions, including state government, from the heavy hand of

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1. *See* Steven B. Epstein, *Rethinking the Constitutionality of Ceremonial Deism*, 96 COLUM. L. REV. 2083 (1996).

constitutional law insofar as those institutions are engaging in ceremonial deism. The harm done by ceremonial deism, if there is any, is purely symbolic. It involves feelings rather than material effects. Note in this regard that we have a diverse country, most of whose citizens are religious believers. Public inferences to God should not be struck down by federal courts in light of the kind of diversity we have.

That's the basic argument. What I'm going to do now is to begin by exploring theories of constitutional interpretation first. After that, I will explore ceremonial deism in particular. The theories are going to be a bit abstract and I will be exploring four of them. Each has been with us for about 200 years now, and they often have been in the background. We ought to bring them to the foreground.[2]

The first approach to constitutional interpretation might be called *bipartisan restraint.* It is associated with Oliver Wendell Holmes, who practiced it, and to a large extent Chief Justice John Marshall, who usually practiced it also. There is no practitioner of bipartisan restraint on the current Supreme Court – though members of the Senate Judiciary Committee have shown some interest in bipartisan restraint at least for the last year.

What bipartisan means is that the Court should strike laws down only if the violation of the Constitution is clear and unambiguous. People who believe in bipartisan restraint emphasize that the Court is composed not by sages but by lawyers. The Court consists of people who are educated in the law. Advocates of bipartisan restraint think that the Constitution is ambiguous, as it certainly is, and they insist that laws should not be struck down unless they're unambiguously in violation of the Constitution of the United States.

At the turn of the century a law professor named James Bradley Thayer argued for bipartisan restraint.[3] Thayer argued that because the American Constitution is often ambiguous, those who decide on its meaning must inevitably exercise discretion. Laws that "will seem unconstitutional to one man, or body of men, may reasonably not seem so to another; . . . the constitution often admits of different interpretations; . . . there is often a range of choice and judgment."[4] In Thayer's view, "whatever choice is rational is constitutional."[5] Thayer's argument, in brief, was that courts should strike down laws only "when those who have the right to make laws have not merely made a mistake, but have made a

2. The approaches are explored in detail, with references, in CASS R. SUNSTEIN, RADICALS IN ROBES: WHY EXTREME RIGHT-WING JUDGES ARE WRONG FOR AMERICA (Basic Books 2005).

3. *See* James Bradley Thayer, *The Origin and Scope of the American Doctrine of Constitutional Law*, 7 HARV. L. REV. 129 (1893).

4. *Id.* at 144.

5. *Id.*

very clear one—so clear that it is not open to rational question."[6] The question for courts "is not one of the mere and simple preponderance of reasons for or against, but of what is very plain and clear, clear beyond a reasonable doubt."[7]

I said that Oliver Wendell Holmes was a practitioner of bipartisan restraint. As he once said, "If my fellow citizens want to go to Hell, I'll help them. It's my job."[8] Holmes has no followers on the current Court; there's no one who is consistently willing to uphold legislation, including in the area of separation of church and state, against constitutional attack. So that's one approach and some of my remarks will be an effort to cover it a little bit.

The second approach that has got a lot of attention in recent years: originalism. Originalists believe, not that the Supreme Court should uphold every law that is not clearly unconstitutional, but instead that the Court should go in a time machine. The Court should recover the original understanding of the document. Hence originalists insist that the Constitution means what it meant at the time it was ratified. For evaluating the idea of ceremonial deism, or separation of church and State, the task is to recover the original understanding of those who gave us the Constitution of the United States. This might be said to be a "time travel" conception of the constitutional law.

There's a lot to be said on behalf of originalism. It attempts to vindicate the rule of law by reducing the discretion of federal judges. It insists that, instead of allowing federal judges to make their own decisions about what religious freedom requires in a diverse society, judges ought to figure out what We the People thought was meant by the Establishment Clause at the time the Constitution was ratified. Here there is a democratic, as well as a rule of law reason, for originalism.

But there are two large problems with the originalist project. The first is it may be somewhat contradictory. If the original understanding is to be binding, it must be because the original understanding was that the original understanding would be binding. If the original understanding was not that the original understanding would be binding, then the originalist project defeats itself. For the idea of this theory to work, it has to be a case that the people who gave us the free exercise clause and the establishment clause and other clauses of the Constitution specifically meant their specific understandings to bind prosperity.

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6. *Id.*

7. *Id.* at 151.

8. Oliver W. Holmes, *Letter from Holmes to Harold J. Laski (Mar. 4, 1920), in* 1 HOLMES-LASKI LETTERS: THE CORRESPONDENCE OF MR. JUSTICE HOLMES AND HAROLD J. LASKI, 1916-1935, 248-49 (Mark DeWolfe Howe ed., 1953).

Unfortunately, there's a lot of reason historically to think they did not mean to entrench their specific views.[9] In that case, the originalist approach defeats itself, because the approach was not that of those who originally ratified the Constitution.

There is a further problem. The originalist approach for the Constitution would cause serious problems for our system of rights and with our present institutions. I'll give you just one example from the area I'm focusing on in this set of remarks. Justice Thomas has argued that the separation of church and state does not apply to state government.[10] It follows, from this view, that if people wanted to establish a state church for California or Massachusetts or Michigan that would be fine as far as the national Constitution is concerned. And if the state wants to favor a particular religion through funds or through any other approach, the state government runs into no constitutional problem because the Establishment Clause doesn't apply to state government—only to national government.

The real problem with Thomas' approach, in my view, is he's probably right on history. It may well be a stretch to say that, as a matter of history, the establishment clause is incorporated in the Fourteenth Amendment according to the original understanding. He may well have the history right, I think. But if his approach were accepted, we would so alter our current understandings at the level of state government as to make our system essentially unrecognizable. If we were to unleash religious struggle on state legislature, unconstrained by the Establishment Clause, then we would turn the United States into a very different country than it's been for fifty years or more.

So my suggestion with respect to originalism is, first, that it may embed a theory of interpretation that is not the theory of the original ratifiers of the Constitution. And second, it would transform our document in ways that would alter radically and for the worse the system of government by which we have long lived. We have now explored two theories of interpretation, bipartisan restraint by Justice Holmes on the one hand, originalism of Justice Thomas on the other.

Now let me turn to the third approach which I'm going to call perfectionism. This is an approach that has played a dominant role in the area of religion in the last forty or fifty years. We might treat William Brennan as the leading perfectionist in the last half-century. The perfectionists believe that the Constitution sets out strong aspirations for freedom in general and for religious freedom in particular.[11] Under their view, the particular meaning of these aspirations is transformed from one

9. H. Jefferson Powell, *The Original Understanding of Original Intent*, 98 HARV. L. REV. 885 (1985).

10. *See* Elk Grove Unified School Dist. v. Newdow, 542 U.S. 1, 49-50 (2004), *reh'g denied*, 542 U.S. 961 (2004).

11. For an example of perfectionism, see RONALD DWORKIN, JUSTICE IN ROBES (Belknap Press 2006).

generation to another. Justice Breyer has defended a kind of perfectionist approach to the Constitution, saying the document is not static and it changes over time.[12] Certainly Americans have learned more about how to live with one another, and as we do, perhaps our understanding of the requirements of religious liberty are being altered.

Many of the dominant ideas for last thirty years or so in the area of religious liberty hold their source to this approach to constitutional interpretation. For example, the wall of separation between church and state is a metaphor that is the result of the perfectionist approach, trying to make our system of religious liberty as good as it possibly can be. (I do not mean to endorse the metaphor, which seems to me misleading, and damaging; I mean simply to note that it is a perfectionist idea.)

Also perfectionist is the idea of "neutrality" between religion and nonreligion or neutrality across religious. That idea is less dangerous and damaging—indeed it has considerable appeal—but it has an unmistakable perfectionist feature. The ratifiers of the First Amendment did not believe in neutrality in a strong sense. The notion of neutrality between religion and nonreligion and across religions is more a development of the last fifty years of than in the founding period.

In my view, there is a lot of nobility to the perfectionist approach to the Constitution, but let me outline some problems with it. The first is if our judges are trying to perfect our constitutional ideas by trying to figure out what free exercise means or respecting what establishment means, they may blunder. Judges have no special access to moral or political truth. If judges are trying to figure out how best to understand our constitutional aspirations, it is possible that they will make our constitutional system less perfect and not more so. If judges have no privileged access to political or moral truth, then to entrust them with the task of putting our aspirations in the best light is risky just because of the inevitable fallibility of judges. Even if judges were not fallible in this way, democracy and self government have their claims, do they not? Perfectionism threatens to unsettle our ability to rule ourselves. If we entrust our judges with the task of figuring out what free exercise of religion means or what respecting establishment of religion really means, we might compromise self-government. If we entrust judges with the task of figuring out our deepest aspirations, we might be asking them to do something better done by our citizens and ordinary people, not just judges.

The fourth approach, which is the final one, would be written in small letters. It's call minimalism. Minimalists believe in little constitutional law rather than in big heroic constitutional law. They believe that constitutional law should be little in the two different ways. First, suppose that the Supreme Court is confronting a problem like the use of the word, Under God, in the Pledge of Allegiance. Minimalists want judges to take a

12. *See* STEPHEN BREYER, ACTIVE LIBERTY (Knopf 2005).

small step and focus on the use of the words "under God" in the Pledge of Allegiance, not a large step that resolves all sorts of questions of religious liberty and establishment.

Hence minimalists like incremental rather than earth-shaking decisions. They prefer nudges over earthquakes. In addition, minimalists like shallowness rather than depth. That is very different from what you would want in a romantic relationship or in a teacher! In constitutional law, minimalists want shallowness for the following reason: They think that theoretical depth, in the constitutional domain, forces judges to take stands on issues that most deeply divide us. They want to avoid that. They like shallowness in the form of rulings and rationale that we can all agree on, notwithstanding our diversity and our plurality. So by shallowness, I mean an outcome and an argument that we can accept notwithstanding our disagreements on foundational issues. For example, people can agree right now in the United States that government cannot censor speech unless there is a clear and present danger. And we agree on that despite our disagreement on theological issues and political issues. Across many differences, we support freedom of speech against censorship. What minimalists want to do is to achieve a big goal for a diverse nation, which is to make it possible for people to agree where agreement is necessary, while also making it unnecessary for people to agree where agreement is not possible.

Justice O'Connor, recent retiree from the Supreme Court, was a practitioner of minimalism.[13] There are two objections to the minimalist approach that one might make. One is that it is unpredictable. Justice O'Connor could not easily be pigeon-holed; people didn't know how she would vote in hard cases. And so the narrowness that she prized might be a problem for those who want to know what the law is. Narrow decisions leave a great deal of uncertainty. Shallowness is also a problem if the deep theory would be right. If there is an excellent deep theory, then we should opt for depth. But often we can't find one. And even if some people think they have the right theory, some of our fellow citizens will not agree to it, and it is respectful for our fellow citizens not to insist on that theory if we can't get them to agree to it.

I am done with these abstract remarks about constitutional theory. Now it is time to talk about ceremonial deism in particular. In terms of the approaches I have described, it's clear that if you believe in bipartisan restraint, as Oliver Wendell Holmes, then the answer is clear: There is absolutely nothing wrong with the public ceremony that refers to God, that mentions the Ten Commandments, or that uses the Bible. Indeed, there is nothing wrong with public displays of the Ten Commandments, or with the inclusion of the words "under God" in the Pledge of Allegiance. Those

13. *See* Cass R. Sunstein, *Problems with Minimalism*, 58 STAN. L. REV. 1899, 1901-02 (2006).

who believe in bipartisan restraint find ceremonial deism easy and fine. The Constitution does not clearly or unambiguously forbid references, in public, to God. For those who believe in bipartisan restraint, these cases do not present serious challenges; judges should simply back off.

Something similar is probably true if you are an originalist and if you accept the originalist approach of Justices Scalia and Thomas. Under that approach, ceremonial deism is constitutionally acceptable. Justice Thomas' view, if you will recall, is that the Establishment Clause does not apply to states at all. If a university or state wants to recognize the existence of God, there is no problem. Justice Scalia does not take that view but he is able to point to a great deal of history suggesting that ceremonial deism is legitimate.[14] For originalists, as for advocates of bipartisan restraint, these questions are easy.

Many perfectionists reach a very different conclusion. They believe that the state must be neutral as between religion and non-religion, and also neutral as between some religions other religions.[15] They ask: What is neutral in state recognition of the existence of God? After all, millions of Americans are agnostic or atheist, and many others do not accept monotheism. For perfectionists who insist on genuine neutrality, it is clear that ceremonial deism is in constitutional trouble, hence, for example, the view that the pledge of the allegiance cannot constitutionally contain the words "under God." Under this view, it is not possible to celebrate God constitutionally.

The minimalists are split. Some of them, such as Justice Breyer, want to go case by case,[16] making fine decisions amongst different kinds of religious displays. For such minimalists, it is important to pay close attention to context, which will make some forms of ceremonial deism constitutionally valid and other forms invalid. I want to identify here the intellectual parent of minimalism and explore how his views might bear on the problem.

I mean to refer here to the English social theorist Edmund Burke, who believed that each of us has a private stock of wisdom.[17] Each person in this room has such a private stock. But what each of us knows, as an individual, is pitiful really compared to what tradition knows. This is not because the individuals who constitute traditions were smarter or wiser than each of us; it is because traditions contain the knowledge of so many—not of dozens or hundreds or thousands but of millions of

14. *See* Scalia opinions in the Ten Commandments cases (Van Orden v. Perry, 125 S. Ct. 2854, 2864 (2005) (Scalia, J., concurring); McCreary Cty., KY, v. ACLU, 125 S. Ct. 2722, 2748 (2005) (Scalia, J., dissenting and joining in Part II and III of the majority opinion)).

15. *See* Epstein, *supra* note 1, for citations and careful elaboration.

16. *See Van Orden,* 125 S. Ct. at 2868 (Breyer, J., dissenting).

17. For elaboration and citations, see Cass R. Sunstein, *Burkean Minimalism,* 105 MICH. L. REV. 353 (2006).

individual minds. Burke rejected the revolutionary temperament because of its theoretical ambition.[18] Burke's key claim is that the "science of constructing a commonwealth, or reforming it, is, like every other experimental science, not to be taught a priori."[19] To make this argument, Burke opposes theories and abstractions, developed by individual minds, to traditions, built up by many minds over long periods. In his most vivid passage, Burke writes:

> We wished at the period of the Revolution, and do now wish, to derive all we possess as *an inheritance from our forefathers*. . . . The science of government being therefore so practical in itself, and intended for such practical purposes, a matter which requires experience, and even more experience than any person can gain in his whole life, however sagacious and observing he may be, it is with infinite caution that any man ought to venture upon pulling down an edifice which has answered in any tolerable degree, for ages the common purposes of society, or on building it up again, without having models and patterns of approved utility before his eyes.[20]

Thus Burke stresses the need to rely on experience, and in particular the experience of generations; and he objects to "pulling down an edifice," a metaphor capturing the understanding of social practices as reflecting the judgments of numerous people extending over time. It is for this reason that Burke describes the "spirit of innovation" as "the result of a selfish temper and confined views,"[21] and offers the term "prejudice" as one of enthusiastic approval, noting that "instead of casting away all our old prejudices, we cherish them to a very considerable degree."[22] Emphasizing the critical importance of stability, Burke adds a reference to "the evils of inconstancy and versatility, ten thousand times worse than those of obstinacy and the blindest prejudice."[23]

In short, Burke thought that legal structures and individual rights should be built up with careful reference to longstanding practice. In the domain of religion, this was, in many ways, Chief Justice Rehnquist's approach to constitutional questions. Chief Justice Rehnquist analyzed hard questions by reference to our traditions. Strikingly, Chief Justice Rehnquist's defense of the use of the words "under God" in the Pledge of Allegiance is an almost entirely Burkean exercise, stressing practices rather

18. Edmund Burke, *Reflections on the Revolution in France, in* THE PORTABLE EDMUND BURKE, 416-51 (Isaac Kramnick ed. 1999) (1790).

19. *Id.* at 442.

20. *Id.* at 451.

21. *Id.* at 428.

22. *Id.* at 451.

23. *Id.*

than reasons for practices.[24] Indeed, Chief Justice Rehnquist's view of the Establishment Clause has a persistent Burkean feature, at least insofar as he would permit public recognition of God by reference not to theories or principle, but by reference to history alone.[25]

At least for ceremonial deism, I think that Chief Justice Rehnquist was right. The Burkean approach that bases constitutional law on longstanding traditions, rather than on theories and abstractions, has a lot to recommend it.

What I've just done is to suggest that minimalists who are inspired by Burke have no problem with ceremonial deism. So too for the originalists and for those who believe in bipartisan restraint. It is only the perfectionists who have trouble. I think the Burkean minimalists are right, and I want to clarify that judgment in the remarks that remain.

One objection of ceremonial deism is that if we allow it, we are on a slippery slope to invocation specifically of religious values in a way that would undermine rather than support our constitutional tradition of respect for diversity. I want to address that objection by building up cases now with minimalist fashion. And I'm going to start with the cases in which the argument for striking down legislation is strongest. I will end with cases in which the argument for striking down legislation is weakest. And there is going to be a specific point in which we switch from the imposition of particular religious convictions, which is not legitimate, to ceremonial deism, which is legitimate. I hope that by virtue of the specificity of the cases, the slippery slope problem will dissipate.

First, the strongest case for invalidating legislation involves mandatory school prayer. The prohibition of school prayer has been with us for a long, long time and it's very hard when you're dealing with children to speak of ceremonial deism rather than inculcation of the state's preferred religious beliefs. I do not mean to suggest that it is entirely clear that the Supreme Court was *originally* right to strike down school prayer; the issues were hard. But the Court's decisions are well engrained and my defense of ceremonial deism does not support mandatory school prayers.

A somewhat harder case but also a good one for Supreme Court invalidation was a case from a few years ago when a state legislature said that the Ten Commandments had to be posted on a wall of every public school classroom.[26] That's not the easiest case in the world but it's not so

24. *See* Elk Grove Unified School Dist. v. Newdow, 542 U.S. 1, 26-32 (Rehnquist, C.J., concurring). What is striking about Chief Justice Rehnquist's opinion is its nearly exclusive reliance on historical practices, treated as closely analogous to the use of the words "under God" in the Pledge of Allegiance. Emphasizing those practices, Chief Justice Rehnquist makes almost no effort to defend them in principle, in a way that fits well with one understanding of Burke.

25. *See, e.g.*, Van Orden v. Perry, 125 S. Ct. 2854 (2005) (plurality opinion of Rehnquist, C.J.).

26. *See* Stone v. Graham, 449 U.S. 39 (1980).

far from school prayer. This case involved children, not adults. It's not purely ceremonial; it's the educational setting. To display the Ten Commandments on every public school classroom seems to be an effort to inculcate in children a set of religious convictions, and it is not the states' business to do that.

The third case is a little harder for an aggressive Supreme Court role. The third case is also a case from a few years ago, in which the state legislature didn't mandate any prayers, but said one minute would be set aside for voluntary prayer or meditation.[27] This is harder for the Supreme Court to strike down, because there is no reference to any particular set of religious conviction. But in my view, this case did not involve ceremonial deism, for it was an effect to enlist public schools in the process of religious practice, and the Supreme Court knew that. The Court was probably right to strike the legislation down.

Thus far, I have given three cases in which the Supreme Court properly validated the legislation; but now we're going to ceremonial deism. Last year the Supreme Court was confronted with two cases in which the Ten Commandments were put on public property. If the argument thus far is correct, the Supreme Court was right, in one of those cases, to accept the display of the Ten Commandments on public property, as part of a general celebration of our history. But the Supreme Court was wrong to strike down the posting of the Ten Commandments on the courthouse. After all, the courthouse had many other historical influences displayed, including secular ones. This was not a case in which religious symbols were the only ones. I suggest that a display of the Ten Commandments, if it is part of a series of displays that are not solely religious, is part of legitimate ceremonial deism. The state is entitled to recognize that the Ten Commandments helped to give rise to the legal system in which we now live. To recognize that role is not to commit yourself, as the state did not, to a particular set of religious convictions.

It follows that the Supreme Court was wrong to set its face against the Ten Commandments in the courthouses as part of the historical display. Now let's consider cases that are easier for the government, and whose facts make it harder and harder for the Supreme Court to play an aggressive role. In what seems on reflection to be a surprising decision, the Court struck down a public prayer at a graduation ceremony.[28] Why is it invalid for graduation ceremonies to include prayers, if those ceremonies contain a great deal more than prayers? The relevant ceremony did not require anyone to do anything. It did not use public funds. It did not mandate or coerce any behavior. It simply recognized the existence of religious convictions in the relevant community. From the standpoint of Burkean minimalism, the Court's decision was a blunder.

27. Wallace v. Jaffree, 472 U.S. 38 (1985).

28. Lee v. Weisman, 505 U.S. 577 (1992).

Let's now pause over the Pledge of Allegiance which we began. In my view, the ceremonial deism that is involved here is not illegitimate, and the Supreme Court ought to find the use of the words "under God" to be constitutional and not problematic. The Pledge of Allegiance, which many of us said in school, is not a religious ceremony. It is not itself a prayer. There are two words in the Pledge, and these two words are a recognition of what 90% or so of Americans believe, in a context in which no one is forced to say those words if they don't want to do so. The use of the words "under God" in the Pledge of Allegiance might offend some people, but it hardly establishes an official religion. In context, these two words are not the sort of thing the Supreme Court should concern itself with invalidating.

Here is the last case: a Christmas display in which a badly divided Supreme Court rejected a constitutional attack.[29] The Court said that the Christmas display served a secular purpose, which was to celebrate the holiday. At first glance, the Court's idea that a Christmas display has a secular purpose seems quite odd. It is Christmas, after all, not Holiday-ness. But on reflection, there is a lot to be said for the Court's reasoning. What the locality was essentially doing in this case was recognizing that a number of citizens celebrate Christmas; the locality was acknowledging that practice. This was not by the way a Christmas display to the exclusion of a Hanukkah display or other displays; they were there too. The locality was going beyond ceremonial deism, to be sure. It was not simply recognizing the existence of God. But its Christmas display was part of a general holiday celebration, not an effort to inculcate a particular set of religious convictions.

By way of summary: I have had two goals here. The first is to try to sketch some theories of constitutional interpretation and to bring them to bear on religious liberty and the Establishment Clause in particular. The theories, to recapitulate, are bipartisan restraint, originalism, perfectionism, and minimalism.

My second goal is to defend ceremonial deism. I have argued in favor of an approach that recognizes our history and respect for religious practices and beliefs in a way that doesn't force anyone to do anything, but that acknowledges widespread commitments. Such acknowledgement is not an offense to the Constitution of the United States. Those are my two goals but I actually have a broader goal that I haven't yet identified. In our society today, we have real issues of justice and liberty and equality that constitutional law might help to address. Some of those issues involve the war on terror—the uses and limits of presidential power in the context of national security and the place of civil liberties too. In addition, we have continuing free speech issues on university campuses and state legislatures. In the religious context, we have very serious constitutional issues emerging that have to do with the teaching of intelligent design in public

29. *See* Lynch v. Donnelly, 465 U.S. 668 (1984).

schools. Mandatory teaching of intelligent design raises serious constitutional problems going well beyond what I've described here.

The attack on ceremonial deism, I suggest, is a diversion from the serious issues. That attack insults religious believers and simultaneously insults American citizens more generally. The insult does not do a lot of good for nonbelievers and members of religious minorities. Ours is a secular Constitution; there is no doubt about that. But under that secular Constitution, it is nonetheless possible to celebrate God constitutionally.