LIBERTY UNIVERSITY

Liberty University Law Review

Volume 11 | Issue 3 Article 5

July 2017

The Role of Worldview in the Judicial Decisions of Justice Paul Stevens

James A. Davids J.D., Ph.D.

ARTICLE

THE ROLE OF WORLDVIEW IN THE JUDICIAL DECISIONS OF JUSTICE JOHN PAUL STEVENS

James A. Davids, J.D., Ph.D.[†]

ABSTRACT

This Article explores whether determining a judicial nominee's worldview will provide insight on how he or she will rule in specific cases. The Article introduces the reader to the concept of worldview, and presents the three major worldviews currently in the United States. This Article then explores the life and jurisprudence of Justice John Paul Stevens, and shows that if President Ford and the Senate had examined Justice Stevens' worldview, they would have likely known how he would rule in certain categories of cases.

I. INTRODUCTION

One of the major issues in the 2016 election campaign was the candidates' respective positions on abortion rights. In September, candidate Donald Trump, in a letter to pro-life leaders, wrote that he was committed to "nominating pro-life justices to the U.S. Supreme Court."[1] Hillary Clinton in the second presidential debate, on October 9, 2016, when asked what she would prioritize when selecting a Supreme Court justice, responded that she "want[s] a Supreme Court that will stick with Roe v. Wade and a woman's right to choose . . . ."[2] She repeated her strong support for *Roe v. Wade* in the third presidential debate, in which Mr. Trump repeated his pledge to appoint pro-life justices.[3]Secretary Clinton called the

---

† Associate Professor, Regent University School of Law, Virginia Beach, Virginia, USA. B.A. Calvin College; J.D. Duke University School of Law; Ph.D. in Higher Education Administration, Regent University. The author gratefully acknowledges the work and help of Sherena Arrington, Abigail Skeans, and Sharla Mylar on this Article.

1. Letter from Donald J. Trump to Pro-Life Leaders, Candidate for President (Sept. 2016), https://www.sba-list.org/wp-content/uploads/2016/09/Trump-Letter-on-ProLife-Coalition.pdf.

2. *Hillary Clinton on Abortion*, ON THE ISSUES, (Nov. 6, 2016) http://www.onthe issues.org/2016/Hillary_Clinton_Abortion.htm.

3. *Full Transcript: Third 2016 Presidential Debate*, POLITICO (Oct. 20, 2016), http://www.politico.com/story/2016/10/full-transcript-third-2016-presidential-debate-230063.

Supreme Court "the central issue in the election," and Mr. Trump said, less articulately, that "the Supreme Court, it is what it is all about."[4]

The voters agreed with the candidates. Seven in 10 voters cited the Supreme Court as an important factor in their vote, with both Republicans and Democrats evenly split.[5] White evangelicals voted for Trump by a wide margin (81% vs. 16%) because of the abortion issue and the future of the Supreme Court, among other issues.[6] This issue was so central for the Republicans that in an unprecedented move, Mr. Trump identified 21 individuals he considered eligible for nomination to the Supreme Court.[7] Judge Neil Gorsuch of the United States Court of Appeals for the Tenth Circuit was on that list.[8]

Nominee Gorsuch, during questioning by the Senate Judiciary Committee, refused to answer directly questions regarding his perspective on highly debated Supreme Court decisions like *Roe v. Wade*.[9] During questioning by Committee Chair Chuck Grassley, Judge Gorsuch simply recognized that these highly debated decisions were important precedents that every good judge must consider in rendering a decision.[10] Mr. Gorsuch assured Mr. Grassley that he had "offered no promises on how I would rule in any cases to anyone [in the nomination process] and I don't think it'd be appropriate for a judge to do so."[11] Ranking Member Senator Dianne Feinstein also asked about *Roe v. Wade*, as did Senator Lindsey Graham, who asked Nominee Gorsuch whether he gave President Trump any

---

4. *Id.*

5. Laura Meckler, *Exit Polls 2016: Voters Show a Deep Hunger for Change,* WALL ST. J. (Nov. 9, 2016), https://www.wsj.com/articles/exit-polls-2016-voters-back-more-liberal-immigration-policy-oppose-border-wall-1478646147?tesla=y.

6. Carol Kuruvilla, *After Trump's Win, White Evangelical Christians Face A Reckoning*, HUFFINGTON POST (Nov. 9, 2016), http://www.huffingtonpost.com/entry/evangelicals-election_us_5820d931e4b0e80b02cbc86e.

7. Press Release, Donald J. Trump, Candidate for President, Donald J. Trump Finalizes List of Potential Supreme Court Justice Picks (Sept. 23, 2016), https://www.donaldj trump.com/press-releases/donald-j.-trump-adds-to-list-of-potential-supreme-court-justice-picks.

8. *Id.*

9. Jessica Taylor, *Gorsuch Won't Tip Hand On Abortion, Campaign Finance*, NPR (Mar. 21, 2017, 10:51 AM) http://www.npr.org/2017/03/21/520828113/watch-live-neil-gorsuch-testifies-in-supreme-court-confirmation-hearing?post=gorsuch-dodges-on-abortion-campaign-6.

10. *Id.*

11. Jessica Taylor, *Gorsuch: "I Don't Believe in Litmus Tests for Judges"*, NPR (Mar. 21, 2017, 10:30 AM) http://www.npr.org/2017/03/21/520828113/watch-live-neil-gorsuch-testifies-in-supreme-court-confirmation-hearing?post=gorsuch-i-dont-believe-in-litmus-tests-5.

assurances on how he would rule on abortion rights.[12] Judge Gorsuch responded that if the President had broached this topic with him during their interview, he "would have walked out the door."[13]

Now that Nominee Gorsuch is Justice Gorsuch, how can the President, and millions of Americans who supported him because of his pledge to appoint pro-life justices, be assured that Justice Gorsuch is, in fact, pro-life? This Article suggests that an examination of a potential judicial nominee's worldview should provide evidence of the candidate's likely position on controversial issues.

More specifically, this Article in Section I considers the current state of affairs in the United States, where the President nominates a person for a judgeship, the confirming body (the U.S. Senate) tries its best to ascertain the qualifications and judicial leanings of the nominee, and the nominee tries his best to avoid answering the Senate for fear of generating negative votes and thereby failing confirmation. Recognizing that this pattern for the past 30 years will likely continue indefinitely, Section II examines a way to determine a nominee's judicial philosophy by evaluating his worldview. Section II introduces the reader to the concept of worldview, and presents the three major worldviews currently in the United States. Section III then explores the life and jurisprudence of Justice John Paul Stevens, and shows that if President Ford and the Senate had examined Justice Stevens' worldview, they would have likely known how he would rule in certain categories of cases.

II. LACK OF TRANSPARENCY IN THE CONFIRMATION OF FEDERAL JUDGES

One of the wonderful aspects of a republic is that elections give voters an opportunity to fire the people's representatives. Not all public officials are elected, of course, and of particular concern are officials who enjoy lifetime tenure, since there is little check on their conduct and therefore little accountability for their character. In the American constitutional system, there are few positions with lifelong tenure; but a federal judgeship is one of them.[14]

---

12. Jessica Taylor, *If Trump Had Asked About Roe V. Wade, Gorsuch Says He Would Have Walked Out*, NPR (Mar. 21, 2017, 12:07 PM), http://www.npr.org/2017/03/21/520828113/watch-live-neil-gorsuch-testifies-in-supreme-court-confirmation-hearing?post=if-trump-had-asked-about-roe-v-wade-9.

13. *Id.*

14. The Framers of the American Constitution wanted judicial independence and therefore designed a separate branch of government and provided lifetime appointments for federal judges, subject to "good behavior," bribery, treason, and "high crimes and

Given the longevity of lifetime judicial appointments, and the power of judges to transform society by finding substantive rights, it is imperative for both the person selecting the nominee for federal judge (the President in the case of the U.S.) as well as others involved in the appointment approval process (the Senate for the U.S.) to learn in depth the ideology of the perspective judicial appointee. Does the person being considered for a federal judgeship have the same political ideology as the President? Will she retain this ideology over time? To what degree is the potential nominee being considered for her ideology? Can this person be persuaded over time to abandon her present ideology and accept some or all of the ideology of the opposition?[15]

---

misdemeanors." U.S. CONST., art. II, § 4; U.S. CONST., art. III, § 1. Pursuant to these exceptions, judges have been impeached, convicted, and removed from office, but this is rare. *See* Federal Judicial Center, *History of the Federal Judiciary: Impeachments of Federal Judges*, FEDERAL JUDICIAL CTR. (Jan. 18, 2014), http://www.fjc.gov/history/home.nsf/page/judges_impeachments. html. In fact, the House of Representatives, which is responsible for impeaching public officials in the federal government, see U.S. CONST., art. I, § 2, has impeached only one Supreme Court Justice, and the U.S. Senate failed to convict Samuel Chase in 1805. *Id.*

15. Ideological change of Supreme Court Justices has vexed several Presidents over the past fifty years. John Fund, *Miers Remorse*, WALL ST. J. (Oct. 10, 2005), https://www.wsj.com/news/articles/SB122514113766273423. After President Eisenhower left office, a reporter asked him whether he had made any mistakes as President. He tersely replied: "Two . . . . They are both on the Supreme Court." *Id.* Eisenhower's selections of Earl Warren and William Brennan led to the abolition of school prayer and the explosion of criminal rights. *See, e.g.*, Katz v. United States, 389 U.S. 347 (1967); Engel v. Vitale, 370 U.S. 421 (1962); Mapp v. Ohio, 367 U.S. 643 (1961). Similarly, on behalf of Anthony Kennedy, the Reagan White House reportedly put his priest on the phone with conservative leaders to assure them that nominee Kennedy was "solid" on the social issues important to conservatives. John Fund, *Miers Remorse*, WALL ST. J. (Oct. 10, 2005), https://www.wsj.com/news/articles/SB122514113766273423. Justice Kennedy has since disappointed conservatives on term limits, sodomy laws, gay marriage, and federalism, including a decision that overturned a *voter approved state constitutional* referendum that limited gay rights, a subsequent decision finding unconstitutional the federal Defense of Marriage Act that limited marriage to the union of one man and one woman, and ultimately a decision legalizing gay marriage that invalidated dozens of state constitutional provisions limiting marriage to one man and one woman. *See* Obergefell v. Hodges, 135 S. Ct. 2584 (2015); United States v. Windsor, 133 S. Ct. 2675 (2013); Romer v. Evans, 517 U.S. 620 (1996). The *coup de grace*, of course, is David Souter. At the press conference announcing the Souter nomination, President George H.W. Bush said five times that the future Justice Souter was "committed to interpreting, not making the law." John Fund, *Miers Remorse*, WALL ST. J. (Oct. 10, 2005), https://www.wsj.com/news/articles/SB122514113766273423. Justice Souter during his 18 years on the Court moved from conservative to liberal. Carol J. Williams, *Key Souter Cases on Supreme Court*, L.A. TIMES (May 2, 2009), http://articles.latimes.com/2009/may/02/nation/na-souter-cases2.

The value of knowing a nominee's judicial philosophy is recognized not only by the President and the Senate, but also by Justices, constitutional scholars, and bloggers.[16] The late Chief Justice William Rehnquist stated that questioning a nominee's "judicial philosophy . . . has always seemed . . . entirely consistent with our Constitution and serves as a way of reconciling judicial independence with majority rule."[17] Constitutional scholar Charles Black argued that a nominee's judicial philosophy is just as important to the Senate as it is the President:

> The Constitution certainly permits, if it does not compel, the taking of a second opinion on this crucial question [of judicial philosophy], from a body just as responsible to the electorate, and just as close to the electorate, as is the President. Is it not wisdom to take that second opinion in all fullness of scope?[18]

Seth Rosenthal underscored the importance of understanding a nominee's judicial philosophy when he wrote:

> [I]t is the nominee's jurisprudential beliefs, more than anything else, that will affect our rights and make its mark on American life. If an independent, unaccountable government actor is going to wield such authority legitimately in a democratic society like ours, the public and its elected representatives have a basic right to know how and what he or she thinks . . . . [P]residents invariably pick their nominees based on the belief that the

---

16. Former U.S. District Judge H. Lee Sarokin blogged:

> It is totally unrealistic to believe that [J]ustices of the Supreme Court view their duty as some robotic application of the law or Constitution to the facts before them. If they do not consider what impact corporate money will have upon elections or the presence of guns will have upon personal safety, they should not be sitting on the Supreme Court. If personal philosophy and policy does not play a part in the decision-making process, how else does one explain the consistency and predictability of the court split. What is true of both political parties is that they want [J]ustices whom they hope will decide cases in the manner they wish.

Judge H. Lee Sarokin, *The Hypocrisy of Senate Judicial Confirmation Hearings*, HUFFINGTON POST: BLOG (June 28, 2010, 7:32 PM), http://www.huffingtonpost.com/judge-h-lee-sarokin/the-hypocrisy-of-senate-j_b_628612.html.

17. William H. Rehnquist, Remarks of the Chief Justice, Address at Columbia University School of Law (Nov. 19, 1987), *in* Ruth Bader Ginsburg, *Confirming Supreme Court Justices: Thoughts on the Second Opinion Rendered by the Senate*, U. ILL. L. REV. 101, 111-12 (1988).

18. Charles L. Black, *A Note on Senatorial Consideration of Supreme Court Nominations*, 79 YALE L. J. 657, 660 (1970).

> nominees share their preferred vision of the law. If the Senate were to fail to consider a nominee's legal views in the face of this reality, it would effectively abdicate its independent advise-and-consent role.[19]

Inevitably in a republic, the ideology of the nominating person (the President) will differ from some members of the approving body (the Senate). The President will, of course, want to leave a legacy of strong adherents to his political/judicial ideology, and his ideological opponents in the Senate will want to block this appointment.[20] If the President's ideology dominates the Senate, he need not fear the Senate's rejection of the nominee. But when the President's ideological opponents constitute the Senate's majority, the success of the nomination becomes questionable, leading the President and his advisers to hide the true strength of the nominee's ideology.

Ever since the honesty and candor of Robert Bork led to his Senate rejection in 1987, presidential nominees for judgeships have been coached to follow a script, which typically includes promises to follow precedent, keep an open mind on matters, not follow an ideological agenda, and recite current law without giving a hint as to the nominee's own views.[21] Both left and right, conservative or liberal, all follow the same script, giving the "illusion of providing meaningful responses but in reality say[ing] little of substance."[22]

---

19. Seth Rosenthal, *Tired of Kabuki? Time to Tango: The Case for Litigator-Led Questioning of Supreme Court Nominees*, 2 ADVANCE 25 (2008), https://www.acslaw.org/sites/default/files/Advance_Volume_2_Number_1_Spring_2008.pdf.

20. During a less politically contentious time in U.S. history, a former member of the Senate Judiciary Committee wrote the following concerning the President's right to nominate a person with the same political/judicial philosophy:

> A [P]resident is entitled to reflect his judicial and political philosophy in his judicial nominations. If a nominee is an intelligent and capable individual, and is qualified by reason of temperament, training in the law, experience at the bar, and commitment to community service, no senator will object to the nomination simply because the nominee shares the [P]resident's political orientation.

Charles McC. Mathias, Jr., *Advice and Consent: The Role of the United States Senate in the Judicial Selection Process*, 54 U. CHI. L. REV. 200, 204 (1987).

21. Rosenthal, *supra* note 19, at 21-22.

22. *Id.* at 21. The author reports that Senator Charles Schumer stated that these hearings are "often meaningless . . . produc[ing] a lot of sound and fury, often signifying nothing." *Id.* at 22 (quoting Senator Charles Schumer, Address at Am. Const. Soc'y (ACS) Nat'l Convention (July 29, 2007) (transcript available at http://acslaw.org/pdf/Schumer%20speech.pdf)).

Given the partisanship that appears to be ubiquitous in a constitutional republic, is this problem of deception and lack of transparency in a confirmation process fixable? That is, if this deception is unavoidable in the process, should the American people amend the process to simply prevent the opportunity to deceive? Some scholars have recommended such alternatives, one scholar urging the Senate no longer to schedule hearings for the nominee to testify.[23] Another scholar suggested that the Senate permit the nominee to testify, but limit the questioning to the nominee's qualifications.[24] Yet another scholar stated that the Senate should establish specific criteria for confirming judges, with ideology not being one of the criteria.[25] Still others thought that the best way to curtail the defective confirmation process was to require the President and the opposing party to discuss the nominee prior to nomination,[26] while another thought the best way to decrease the importance of truth and transparency in the confirmation process was to decrease the power and importance of the federal courts.[27]

Each of these suggestions has varying degrees of merit,[28] and at least one of these measures was used by one President.[29] If Justices on both sides of

---

23. JUDICIAL ROULETTE: REPORT OF THE TWENTIETH CENTURY FUND TASK FORCE ON JUDICIAL SELECTION 10 (David O'Brien ed., 1988).

24. Michael M. Gallagher, *Disarming the Confirmation Process*, 50 CLEV. ST. L. REV. 513, 589 (2003). *But see* Stephen Carter, *The Confirmation Mess*, 101 HARV. L. REV. 1185, 1195-96 (1988) (criticizing this reform and inquiries into the nominee's judicial philosophy).

25. William G. Ross, *The Supreme Court Appointment Process: A Search for Synthesis*, 57 ALB. L. REV. 993, 1019-21 (1994); *see also* Bruce Fein, *A Circumscribed Senate Confirmation Role*, 102 HARV. L. REV. 672, 687 (1989) (arguing that the Founders, in particular Hamilton, would limit the Senate Judiciary Committee to the following inquiries: whether the President had obtained pledges from the nominee to vote a certain way on specific issues; whether the President selected the nominee because of cronyism, financial association, or allegiance to a political party; and whether the President had chosen the nominee solely to appease a narrow partisan constituency).

26. David A. Strauss & Cass R. Sunstein, *The Senate, the Constitution, and the Confirmation Process*, 101 YALE L.J. 1491, 1494 (1992).

27. John C. Yoo, *Choosing Justices: A Political Appointments Process and the Wages of Judicial Supremacy*, 98 MICH. L. REV. 1436, 1457 (1999).

28. *See* Rosenthal, *supra* note 19, at 22-23. Rosenthal cites with approval the opinions of Yale Professors Robert Post and Reva Siegel, and U.S. Senator John Cornyn, all of whom approve asking judicial nominees of their opinions on previously decided cases, but disapproving any questions on cases that may appear before the judicial nominee someday. *Id.* at 25 n.27. Obviously, the cases chosen should have vigorous (and perhaps multiple) dissents, with a concurrence or two as a bonus. Sharp contrasts between the Justices would place the nominee in the position of choosing one opinion over another, accepting one legal rationale and rejecting others for specific reasons.

the ideological landscape constantly drive cases to the left and right on 5-4 decisions, perhaps a majority of Senators will think it in their and the nation's collective best interest to limit the power of the Court. Yet, the temptation to control the judiciary and create (or rescind) rights like homosexual marriage, abortion, gender equality, and other "hot" issues without direct electoral repercussions on Congress seems to be too powerful of a tool for Congress to suppress by curtailing judicial power.

Assuming that Congress is unwilling to limit the power of the judiciary, the status quo will remain in effect, and therefore the focus should be on improving the present system. This Article argues that a key component to a person's thinking is his worldview, and that determining a judicial candidate's worldview will to a considerable extent identify his judicial philosophy.[30]

III. WORLDVIEW: WHAT IT IS AND ITS USEFULNESS IN PREDICTING JURISPRUDENCE

The term "worldview" can be traced to the German word *Weltanschauung* (translated as "a way of looking at the world").[31] Immanuel Kant introduced this word to the world, and other German philosophers like Hegel, Kierkegaard, Dilthey, and Nietzche also used it.[32] The concept of worldview was not limited to philosophy and theology, but extended to psychology (Freud), sociology (Mannheim, Marx and Engels), and cultural anthropology (Michael Kearney).[33]

In simple terms, a worldview is a framework or pattern of fundamental beliefs about the world.[34] Stated a little differently, but much more expansively,

---

29. President Clinton consulted with the Senate prior to nominating a Supreme Court Justice. *Id.* at 23.

30. For the purposes of this Article, "judicial philosophy" and "ideology" are synonymous terms.

31. DAVID K. NAUGLE, WORLDVIEW: THE HISTORY OF A CONCEPT 55–67 (2002); NANCY R. PEARCEY, TOTAL TRUTH: LIBERATING CHRISTIANITY FROM ITS CULTURAL CAPTIVITY 23 (2004).

32. NAUGLE, *supra* note 31, at 58, 68-105.

33. *Id.* at 211–44.

34. ALBERT M. WOLTERS, CREATION REGAINED: BIBLICAL BASICS FOR A REFORMATIONAL WORLDVIEW 2 (1985). Wolters defines worldview as "the comprehensive framework of one's basic beliefs about the world." *See also* CHARLES COLSON & NANCY PEARCEY, HOW NOW SHALL WE LIVE? 14 (1999) ("[Worldview] is simply the sum total of our beliefs about the world, the 'big picture' that directs our daily decisions and actions." It is like "a mental map that tells us how to navigate the world effectively."). *See also* PEARCEY, *supra* note 31, at 23.

> [W]orld view . . . is composed of a complex and interlocking set of deeply held and cherished beliefs about the nature and structure of the universe and one's place in it. Among its elements are deep convictions about the nature and purpose of human existence; conceptions of knowledge and our capacity to acquire it; the nature of human beings (our capacity, for example, to exercise free will, goodness, selflessness, and compassion); best ways to structure human relationships; and definitions of morality.[35]

Each person has a way of making sense of things; a way of viewing reality.[36] A person's worldview is the product of several aspects of his being: it springs from a person's psychological make-up, intellectual cognition of reality, emotional appraisal of the world around him, and volitional performance of the will.[37] People generally act consistently with their worldview, whether they do so consciously or unconsciously,[38] because worldview generally drives the individual, and not the reverse. Worldview is, in other words, a "system of values."[39] It is a little like a default setting on the computer; you can override it, but it takes effort.

As will be seen shortly, worldviews are categorized by reference to a belief (or non-belief) in a deity. This focus, of course, may lead one to

---

35. T. J. SERGIOVANNI, MORAL LEADERSHIP: GETTING TO THE HEART OF SCHOOL IMPROVEMENT 108-09 (1992). More simply, each worldview answers questions like: Who am I? Where did the universe and I originate? Where am I going (is there life after death)? What is the nature of man (what is wrong with man)? What can be done to redeem man? COLSON & PEARCEY, *supra* note 34, at xiii, 25.

36. *See* NAUGLE, *supra* note 31, at 10 ("*Practically*, human beings are motivated from within to find answers to the 'why, whence, and whither' questions of life. Worldviews are generated by the mind's quest for a framework to orient people to the world around them and to the ultimate issues of life."); *see also* PEARCEY, *supra* note 31, at 23 (quoting WOLTERS, *supra* note 34, at 4) (noting that "[everyone has] a set of convictions about how reality functions and how they should live . . . . [W]e all seek to make sense of life. Some convictions are conscious, while others are unconscious, but together they form a more or less consistent picture of reality . . . . Because we are by nature rational and responsible beings, we sense that 'we need some creed to live by, some map by which to chart our course.'").

37. WOLTERS, *supra* note 34, at 88.

38. JAMES W. SIRE, THE UNIVERSE NEXT DOOR: A BASIC WORLDVIEW CATALOG 16 (3d ed. 1997) ("A worldview is a set of presuppositions [or] (assumptions . . .) which we hold (consciously or subconsciously . . .) about the basic makeup of our world."). Sometimes the presuppositions are true, and sometimes not. For a worldview to endure, it must be true and have explanatory power. That is, it must be internally consistent, and it must adequately explain data. *Id.* at 198.

39. WOLTERS, *supra* note 34, at 3.

conclude that worldview is little more than one's religion,[40] and therefore that any focus on the worldview of Justices would simply look at the Justices' religious beliefs, and the sincerity and strength of those beliefs. Such focus would be too limiting, and quite frankly, speculative if we were to draw inferences from one's religion alone and a Justice's jurisprudence.[41] Other factors, like politics, social class, education, family and even geographical background may have just as much influence (if not more) on a Justice's ideology.[42]

There are essentially three main worldviews in the West.[43] All of them can be categorized with reference to God.[44] The first main worldview, which

---

40. Theology is the study of God, and Christian theology is essentially the study of God as revealed in the Bible. Theology and worldview differ. "[Theology] looks within, whereas a Christian worldview looks without, at life and thought in other departments and disciplines, in order to see these other things from the standpoint of revelation and an interrelated whole." ARTHUR F. HOLMES, THE IDEA OF A CHRISTIAN COLLEGE 59 (rev. ed. 1987).

41. *See* Thomas C. Berg & William G. Ross, *Some Religiously Devout Justices: Historical Notes and Comments*, 81 MARQ. L. REV. 383, 383-84 (1997) (noting that few Court decisions make use of religious arguments, the religious views of Justices are often difficult to ascertain, and that even denominational differences do not explain much concerning a Justice's individual religious views).

42. *Id.* at 384. Berg and Ross argue persuasively that the era of a Justice's service also affects his/her openness about religion. During the Gilded Age and its *de facto* Christian establishment, it was far more common to be open about one's Christian beliefs than during our religious pluralistic times. *Id.* at 386.

43. There are variations of the three main worldviews that are known by different names. Marxism, for instance, is sometimes classified as a separate worldview. *See generally* DAVID A. NOEBEL, UNDERSTANDING THE TIMES: THE STORY OF THE BIBLICAL CHRISTIAN, MARXIST/LENINIST, AND SECULAR HUMANIST WORLDVIEWS 440, 507, 732 (1991). Marxism is, however, just a form of naturalism. SIRE, *supra* note 38, at 65-71. Moreover, "[m]odern pluralistic society provides a smorgasbord of worldviews and belief systems, all clamoring for our allegiance. And whether their trappings are secular or religious, all are in essence offering means of salvation—attempts to solve the human dilemma and give hope for renewing the world." COLSON & PEARCEY, *supra* note 34, at 273.

44. In addition to Naturalism, Deism, and Theism mentioned in the text, another worldview is Pantheism, which is primarily eastern in origin, but is making in roads through its western version known as New Age. In this worldview, man is God. SIRE, *supra* note 38, at 122. This deity for man, however, should not result in particular pride, since everything else is also god. In other words, God is the cosmos, God is all that exists, and nothing exists which is not God. *Id.*

The interest in Eastern religions, primarily Eastern Pantheistic Monism, started in the 1960s as young people rejected modern values that led to warfare and Western economic inequities. In rejecting both scientific naturalism (which led to nihilism) and Christian theism (which lacked compassion and was hypocritical), young people in the 1960s looked to a different set of presuppositions. *Id.* at 119-20. According to Sire, Eastern Pantheistic Monism rests on the following foundational principles: (1) "[T]he soul of each and every

currently dominates the policy-making elite of Western Civilization, is *Naturalism*.[45] James Sire, who is one of the leading authors on the subject of worldview and has cataloged competing worldviews, provided the following presuppositions that provide the foundation for Naturalism: (1) "Matter exists eternally and is all there is. God does not exist."[46] With no Creator of the universe, one must assume that the cosmos always existed and will always exist in some form, but certainly not in its present form because of evolution.[47] (2) "The cosmos exists as a uniformity of cause and effect in a closed system."[48] If a creator does not exist and matter is eternal, then the

---

human being is the Soul of the cosmos." *Id.* at 121. That is, each person is God, but that should not lead to any chest-thumping conclusions, since "God is all that exists; nothing exists that is not God." *Id.* at 122. This is difficult for the Western mind to grasp, since the Western mind understands reality by distinguishing one thing from another, and recognizing its relation to other objects in the cosmos. "In the East to 'know' realities is to pass beyond distinction, to 'realize' the oneness of all by being one with the all." *Id.* (2) "Some things are more one than others." There are different grades to reality, with simple matter (such as minerals) being the least, then vegetable life, then animal life and finally humans. Even humanity is hierarchical, with gurus being the human beings closest to pure reality. SIRE, *supra* note 38, at 123. (3) "Many (if not all) roads lead to the One." *Id.* Yet, even here there are some paths, such as meditation, which lead to silent consciousness that in turn brings one closer to the One. *Id.* at 124-25. (4) "To realize one's oneness with the cosmos is to pass beyond personality." *Id.* at 126. (5) "To realize one's oneness with the cosmos is to pass beyond knowledge. The principle of non-contradiction does not apply where ultimate reality is concerned." *Id.* at 127. (6) "To realize one's oneness with the cosmos is to pass beyond good and evil; the cosmos is perfect at every moment." *Id.* at 128. (7) "Death is the end of the individual, personal existence, but it changes nothing essential in an individual's nature." SIRE, *supra* note 38, at 130. (8) "To realize one's oneness with the One is to pass beyond time. Time is unreal. History is cyclical." *Id.*

Eastern and Western minds think, quite obviously, very differently, and there is little in common between the three Western worldviews described in the text and Eastern Pantheistic Monism. If a Westerner points to the irrationality of the Eastern religion, the Easterner simply says that he rejects reason as a category. If the Westerner notes that the Eastern religion has no morality, the Easterner simply states that Westerners believe in a duality that simply does not exist. Because of these significant differences, no Supreme Court Justice, to this author's knowledge, has ever held a pantheistic worldview.

45. Naturalism is known by various names, such as "Scientific Naturalism," "Secular Humanism," and sometimes just "Humanism" since, as will be seen, man or matter is the measure of all things under Naturalism, and God is not. There are also many variations of naturalism, such as nihilism, existentialism and, in certain ways, post-modernism. Common in all is the absence of God. *See generally* SIRE, *supra* note 38, at 52-117.

46. *Id.* at 54.

47. *Id.* Carl Sagan, who popularized science in the 1970s and 1980s on the PBS show *Cosmos*, made this point clearly: "The Cosmos is all that is or ever was or ever will be." *Id.* (quoting CARL SAGAN, *Cosmos* 4 (1980)).

48. SIRE, *supra* note 38, at 55.

various laws of nature are also eternal and there is no supernatural cause or effect (no miracles).[49] (3) "Human beings are complex 'machines'; personality is an interrelation of chemical and physical properties we do not yet fully understand."[50] As seen below, one of the tenets of Christian theism is that God made Man in God's image.[51] If God does not exist and did not create, then man is just a form of matter and operates accordingly. (4) "Death is extinction of personality and individuality."[52] If God does not exist, and only matter is real and eternal, then logically there is no heaven or hell. Upon death, a person's body simply returns to a different form of matter. (5) "History is a linear stream of events linked by cause and effect but without an overarching purpose."[53] Unlike pantheists who believe in cyclical history, naturalists and theists believe in linear history.[54] (6) "Ethics is related only to human beings."[55] If God does not exist, or if God never revealed himself through sacred writings, then there is no divine decree to follow. Without any divine law, man is free to create positive law that best serves mankind in general, or one powerful man (or group of men) in particular. Without God, there can be no "natural rights" that transcend human laws; rights are given (and taken away) by the State.

Halfway between Naturalism and Theism is Deism, the West's second worldview. Deists believe that God at one time existed and created the world, but now either voluntarily or involuntarily is removed from the world.[56] Sire lists the following six components of Deism: (1) "A

---

49. As noted in these various presuppositions, they all are "reasonable" in that they flow logically from the original presupposition that there is no God (or at least one that is immanent and relevant). There was a time when reason and faith were closely linked. *See* PEARCEY, *supra* note 31, at 100-01. This link grew more tenuous as the Middle Ages progressed, and by the time of the Enlightenment, faith and reason were no longer linked, with the secular humanists focusing on reason alone for truth (theists believed that although God gave man reason, like everything else, reason became flawed when man rejected God and sinned). *Id.* Naturalists do, of course, have faith, it is simply not faith in God. A person certainly must have faith simply to believe that matter always existed, since there is no way to prove this presupposition. Similarly, an empiricist, who believes that nothing exists beyond what senses can perceive, has faith that this proposition is true, since he cannot test this by the Scientific Method. *See generally* NORMAN L. GEISLER & FRANK TUREK, I DON'T HAVE ENOUGH FAITH TO BE AN ATHEIST 25-27 (2004).

50. SIRE, *supra* note 38, at 56.

51. *See infra* notes 75-78.

52. SIRE, *supra* note 38, at 58.

53. *Id.* at 59.

54. *Id.* at 37.

55. *Id.* at 61.

56. *Id.* at 44.

transcendent God, as a First Cause, created the universe but then left it to run on its own. God is thus not immanent, not fully personal, not sovereign over human affairs, not providential."[57] That is, God created but did not reveal himself by any sacred writings, and therefore did not give man any laws to follow other than those found in the created order. (2) "The cosmos God created is determined because it is created as a uniformity of cause and effect in a closed system; no miracle is possible."[58] Since God is no longer in the created universe (assuming God was when He created the universe), God does not intervene supernaturally by way of miracles or revelation. (3) "Human beings, though personal, are a part of a clockwork of the universe."[59] God, although having made man, has no special plan or purpose for man. Just like other created beings, man will live and die without an eternal life. (4) "The cosmos, this world, is understood to be in its normal state; it is not fallen or abnormal. We can know the universe, and we can determine what God is like by studying it."[60] The God "discovered" by the deists was an architect, a builder. God was not, however, a lover, a friend, a judge, or personal in any way.[61] This fourth presupposition, incidentally, is a key distinctive between Naturalism and Deism, on the one hand, and Christian Theism on the other. Since the Deists and Naturalists deny the historicity of Adam and Eve,[62] and therefore do not believe man is sinful by nature,[63] estranged eternally from God by this sinfulness, and therefore in need of divine redemption, the Deists and Naturalists deny the divinity of Jesus Christ and Jesus' atoning sacrifice for those who believe.[64] Perhaps as importantly, because man is not sinful by nature, man is

57. *Id.*

58. SIRE, *supra* note 38, at 44.

59. *Id.* at 45.

60. *Id.* at 45-46.

61. *Id.* at 46.

62. *See generally* David Bunch, *A Deistic Satirical Take on the Garden of Eden*, WORLD UNION OF DEISTS, http://www.deism. com/adamandeve.htm (last visited Apr. 23, 2017). *See also* Eric Bermingham, *Intelligent Design vs. Naturalism*, KOLBE CTR. (Mar. 2006), http://kolbecenter.org/intelligent-design-vs-naturalism.

63. *Welcome to Deism!*, WORLD UNION OF DEISTS, http://www.deism.com/deism_ defined.htm (last visited Apr. 23, 2017) (providing original sin as an example of unreasonable claims). *See also* Bermingham, *supra* note 62.

64. Alexander M. Cohen, *The Clockmaker: A God of Reason*, WORLD UNION OF DEISTS, http://www.deism.com/aword.htm (last visited Apr. 23, 2017); *Deism—What Is It? What Do Deists Believe?*, COMPELLING TRUTH, https://www.compellingtruth .org/deism.html (last visited Apr. 23, 2017). *See generally* Bermingham, *supra* note 62.

perfectible, given the right environment.[65] This gives to man, typically through the state, the opportunity to create utopia, a "heaven on earth."

Finishing off the presuppositions of Deists, Deists believe that (5) "Ethics is limited to general revelation; because the universe is normal, it reveals what is right."[66] Similar to the Naturalists, the Deists reject the proposition that God reveals himself through any sacred writings. Without this special revelation, Deists look to the created order to determine any natural laws to which man must submit. (6) "History is linear, for the course of the cosmos was determined at creation."[67] Like the Theists, Deists believe that God created, and therefore there is a beginning to history. Since the Deists accept no sacred writing that discusses an end to the created universe, however, Deists have no position on eternal life or death. Nature simply does not reveal that information.

Sire noted,

> [H]istorically deism is a transitional worldview, and yet it is not dead in either popular or sophisticated forms. On a popular level, many people today believe that God exists, but, when asked what God is like, they limit their description to words like *Energy*, *Force*, *First Cause*, something to get the universe running and often capitalized to give it the aura of divinity.[68]

In American society today, there are many people who are essentially Deists, whether they consciously know or claim it or not.[69]

The third worldview is *Theism*.[70] Using the same propositional analysis for Theists as Sire did for Naturalists and Deists, Sire determined that

---

65. Bermingham, *supra* note 62; ERIC FONER, TOM PAINE & REVOLUTIONARY AMERICA 117 (2005) (noting the deistic belief that man is perfectible).

66. SIRE, *supra* note 38, at 47.

67. *Id.* at 49.

68. *Id.* at 50.

69. *Id.* at 49.

70. Theism (in particular, Christianity) was the dominant worldview through the 17th century. *Id.* at 21. There were squabbles between Christians, of course, but these were "family arguments." *Id.*

> Dominicans might disagree with Jesuits, Jesuits with Anglicans, Anglicans with Presbyterians, ad infinitum, but all these parties subscribed to the same set of basic presuppositions. The Triune personal God of the Bible existed; he had revealed himself to us and could be known; the universe was his creation; human beings were his special creation. If battles were fought, the lines were drawn within the circle of theism.

SIRE, *supra* note 38, at 21. Although the Reformation focused on some doctrinal differences, the basic themes of creation by God, the fallen (sinful) nature of man, and the redemption of

Theists believe the following: (1) "God is infinite and personal (triune), transcendent and immanent, omniscient, sovereign and good."[71] God is in the world and above the world, infinitely powerful and sovereign, but also personal and loving. Perhaps most importantly, the Theists believe that God is good. "God's goodness means then, first, that there is an absolute standard of righteousness (it is found in God's character) and, second, that there is hope for humanity (because God is love and will not abandon his creation)."[72] (2) "God created the cosmos *ex nihilo* to operate with a uniformity of cause and effect in an open system."[73] Unlike Naturalists who believe that matter always existed, Theists believe that God created the universe out of nothing. Moreover, because the universe is "open" to a sovereign, immanent, and personal God, God can intervene in the universe both naturally and supernaturally. God, as Creator and sustainer of all creation, establishes reality, including laws that implement reality.[74] (3) "Human beings are created in the image of God and thus possess personality, self-transcendence, intelligence, morality, gregariousness and creativity."[75] Theists believe that man has the characteristics of God, but in an imperfect way (we have the ability to know, for instance, but we are not omniscient like God; God gives us "sovereignty" over "little realms," whereas God is sovereign overall). Theists believe that because man is an image bearer of God, man's rights come not from the State but from God.

---

man through the atoning sacrifice of Jesus Christ, the Son of God, are the same for Protestants and Catholics. *Compare* NAUGLE, *supra* note 31, at 37 (Catholic worldview) *with* PEARCEY, *supra* note 31, at 43-44 (Protestant worldview).

71. SIRE, *supra* note 38, at 23.

72. *Id.* at 25-26.

73. *Id.* at 26.

> Christian theism offers a comprehensive alternative rooted in the transcendent God who is the Creator of the universe and consequently the ultimate source of all facts and values, or even better, of all valued facts and all factual values. This outlook on reality is nonreductionistic or holistic in scope, integrating the visible and invisible and embracing both reason and faith.

NAUGLE, *supra* note 31, at 249. "'Worldview' in Christian perspective implies the objective existence of the trinitarian God whose essential character establishes the moral order of the universe and whose word, wisdom, and law define and govern all aspects of created existence." *Id.* at 260.

74. The Christian's authoritative book, the Bible, has various precepts God has given that govern life. "The Bible explicitly teaches that such diverse areas as art (Exod. 35:30-35), farming (Isa. 28:23-29), marriage (Matt. 19:1-12), work (Col. 3:22-4:1), and government (Rom. 13:1-7) are ordered by God's precepts. By simple extension, other domains such as education, politics, family life, business, diplomacy, sports, and so on would be as well." *Id.* at 266.

75. SIRE, *supra* note 38, at 27.

The State cannot take away God-given rights, and God's higher law demands allegiance over man's law. In summary,

> like God, we have *personality*, *self-transcendence*, *intelligence* (the capacity for reason and knowledge), *morality* (the capacity for recognizing and understanding good and evil), *gregariousness* . . . (our characteristic and fundamental desire and need for human companionship—community—especially represented by the 'male' and 'female' aspect) and *creativity* . . . .[76]

Sire's fourth proposition regarding a Theistic worldview is (4) "Human beings can know both the world around them and God himself because God has built into them the capacity to do so and because he takes an active role in communicating with them."[77] God has given man not only the capacity to reason and therefore investigate God's creation, but God also has given man special revelation (sacred texts) that teaches man about God's creatures. (5) "Human beings were created good, but through the Fall the image of God became defaced, though not so ruined as not to be capable of restoration: through the work of Christ, God redeemed humanity and began the process of restoring people to goodness, though any given person may choose to reject that redemption."[78] This proposition is perhaps the key

---

76. *Id.* at 29.

77. *Id.* at 30.

78. *Id.* at 32. Theists believe that God gave man the ability to choose between obeying and disobeying God, and man chose to disobey, creating a disunion between God and man. As the result of sin, human hearts and minds have fabricated idolatrous belief systems in place of God, and have worshipped the "creature" rather than the Creator. NAUGLE, *supra* note 31, at 274. Moreover, because of the Fall, the God-given attributes that man possesses are now imperfect. That is, we lost our ability to know ourselves (or the ability to "self-transcend") accurately, our intelligence became impaired, and we began to exploit each other in society. SIRE, *supra* note 38, at 33. But, as Sire notes,

> [H]umanity is redeemable and has been redeemed . . . . God, in unmerited favor and great grace, has granted us the possibility of a new life, a life involving substantial healing of our alienations and restoration to fellowship with God . . . . In short, in theism human beings are seen as significant because they are essentially godlike and though fallen can be restored to original dignity.

Id. at 34; *see also* WOLTERS, *supra* note 34, at 10-11.

> 'Worldview' in Christian perspective implies the gracious inbreaking of the kingdom of God into human history in the person and work of Jesus Christ, who atones for sin, defeats the principalities and powers, and enables those who believe in him to obtain a knowledge of the true God and proper understanding of the world as his creation.

NAUGLE, *supra* note 31, at 284.

distinctive between Naturalistic/Deistic and Theistic worldviews in terms of how mankind should govern itself.[79]

Although God made man perfect in God's own image, with the incredible traits chronicled above,[80] man's disobedience marred that image, causing man now to be by nature sinful. Man, therefore, is generally untrustworthy and will seek self-aggrandizement, whether in riches or power.[81] Therefore, that government is best that diffuses power, that provides checks and balances from one or more men who otherwise might exercise unfettered power.

The sixth proposition that Sire makes regarding Theism is: (6) "For each person death is either the gate to life with God and his people or the gate to eternal separation from the only thing that will ultimately fulfill human aspiration."[82] Theists believe that eternal life follows death, and that actions taken on earth have eternal consequences. (7) "Ethics is transcendent and is based on the character of God as Good (holy and loving)."[83] Theists believe that God created not only matter, but also order of all kinds, including morality. God, through sacred writings, reveals to man the essence of God's character, and the moral principles God ordains for his creatures.[84] "Theism . . . teaches that not only is there a moral universe, but there is an absolute standard by which all moral judgments are measured. God himself—his character of goodness (holiness and love)—is the standard."[85]

Sire's eighth and last proposition about Theism is: (8) "History is linear, a meaningful sequence of events leading to the fulfillment of God's purposes for humanity."[86] Theists believe that history has a beginning (God's creation), a middle (the time in which we are now living) and an end (Judgment Day and eternal life thereafter in heaven or hell).[87] This is in direct contrast to the Eastern worldview that believes in reincarnation and a cyclical history.[88]

---

79. *See infra* notes 70-75.

80. *See infra* notes 86-87.

81. Theists believe that God through *common grace*, for the benefit of all mankind, restrains evil from consuming all actions of mankind. COLSON & PEARCEY, *supra* note 34, at 33.

82. SIRE, *supra* note 38, at 34.

83. *Id.* at 35.

84. *Id.*

85. *Id.* at 36.

86. *Id.*

87. SIRE, *supra* note 38.

88. *Id.* at 37.

All of us have a worldview, and act generally according to that worldview, whether we do so consciously or subconsciously.[89] The worldview by which we act is not necessarily the same one we profess.

> Every one of us has a worldview, and our worldview governs our thinking when—or especially when—we are unaware of it. Thus, it is not uncommon to find well-meaning evildoers, as it were, who are quite sincerely convinced that they are Christians, and attend church faithfully, and may even hold a position of leadership, but who have absorbed a worldview that makes it easy for them to ignore their Christian principles when it comes time to do the practical business of daily living. Their sincerely held Christian principles are in one mental category for them, and practical decision making is in another. Such person can believe that Jesus is coming again to judge the world and yet live as if the standards of this world are the only thing that needs to be taken into account.[90]

None of us lives a value-free life; all of us possess a framework of presuppositions and convictions that shape our view of life and human society. Therefore, every judicial nominee has an outlook on life, values, and beliefs relevant to how he or she views issues which will come before the Court.

The importance of judicial worldviews is not lost on anyone, least of all the Senate Judiciary Committee members. Selection of federal judges has become a popular election issue,[91] and will remain so because judges do not

---

89. Philip E. Johnson, *Foreword* to NANCY R. PEARCEY, TOTAL TRUTH: LIBERATING CHRISTIANITY FROM ITS CULTURAL CAPTIVITY 11 (2004) ("Understanding worldview is a bit like trying to see the lens of one's own eye. We do not ordinarily see our own worldview, but we see everything else by looking through it. Put simply, our worldview is the window by which we view the world, and decide, often subconsciously, what is real and important, or unreal and unimportant.").

90. *Id.* at 12. One scholar has criticized Christians for succumbing to secularism, accepting standards constructed by secular minds. HARRY BLAMIRES, THE CHRISTIAN MIND: HOW SHOULD A CHRISTIAN THINK? 3-4 (1963). Another author criticized Christians for duality, having a private sphere for "personal preferences" (like religious values) and a second "public sphere" for "real life" (like scientific knowledge, "objective truth," and public policies). *See generally* PEARCEY, *supra* note 31, at 17-22. Under this duality, a politician can support abortion rights while being personally opposed to it. Finally, Christian Theists are not, of course, the only persons who fail to live consistently with their professed worldview. "Death bed conversions" are only one example.

91. *E.g.*, Frank Matt, *Why the Supreme Court is a US Election Issue*, ALJAZEERA (Oct. 19, 2016), http://www.aljazeera.com/news/2016/10/supreme-court-election-issue-161019160931685.html; Alfred Regnery, *The Sleeper Issue: Judicial Appointments*, NAT'L REV. (Sept. 9, 2016),

mechanically apply law to facts. Rather, like many aspects of life, facts and law are often nuanced, requiring judgment and discretion. Judges face situations where precedents are unclear and the relevant legal standards less than obvious. In such situations, judges rely on their understanding of the law, legal precedents, and the facts in the case. This understanding, in turn, is shaped by the judges' values, their sense of a good society and just order. All judges are, therefore, undoubtedly influenced by their past, and their individual faith in God, or their faith that there is no God.[92] Justice Stevens is no exception.[93] A devoutly religious judge will, therefore, be no more or no less influenced by his belief system than any irreligious or areligious judge.

In this Article, we examine the worldview of a Justice who led the *liberal* faction of the Supreme Court for decades, even though he was nominated by a Republican President from a *conservative* district in Michigan.[94] President Ford could have avoided any misunderstanding of the judicial philosophy of Justice Stevens by examining Justice Stevens' worldview. An examination of Justice Stevens' life experiences would have revealed Justice Stevens' presuppositions, his moral framework and values. President Ford and his staff could have performed the following study, which reveals a moral framework and worldview very consistent with Justice Stevens' judicial views.

IV. THE WORLDVIEW OF JOHN PAUL STEVENS AS SHAPED BY HIS LIFE AND DEMONSTRATED IN HIS JUDICIAL OPINIONS

A. John Paul Stevens' Early Life Experiences

Born to wealth and privilege in 1920, young John Paul Stevens grew up in the Hyde Park area of Chicago,[95] the youngest of four sons born to Ernest

---

http://www.nationalreview.com/article/439858/2016-election-judicial-appointments-should-be-key-issue.

92. As Professor Laurence Tribe observed, "Substantive perspective, reflecting the observer's past and context, is inescapable; its influence on perception and description is pervasive." LAURENCE H. TRIBE, CONSTITUTIONAL CHOICES 7-8 (1985).

93. Justice Stevens, like every other judge, engages in balancing of interests (e.g., individual rights vs. community order). Like all judges, "Stevens necessarily favors some values and slights others . . . . There is always a thumb on the scales." ROBERT J. SICKELS, JOHN PAUL STEVENS AND THE CONSTITUTION: THE SEARCH FOR BALANCE 151 (1988).

94. David G. Savage, *John Paul Stevens' Unexpectedly Liberal Legacy*, L.A. TIMES (Apr. 9, 2010), http://articles.latimes.com/2010/apr/09/nation/la-na-stevens-legacy10-2010apr10.

95. BARBARA A. PERRY, "THE SUPREMES": ESSAYS ON THE CURRENT JUSTICES OF THE SUPREME COURT OF THE UNITED STATES 27 (1999).

James Stevens and Elizabeth Street Stevens.[96] John Paul's grandfather, James W. Stevens, was the founder of the Illinois Life Insurance Company.[97] John Paul's father was a lawyer and the manager of the large family-owned hotel in Chicago, the LaSalle.[98] At the time of John Paul's birth, Ernest Stevens was planning to build the largest hotel in the world.[99] He finished the Stevens Hotel, now known as the Chicago Hilton,[100] by the time John Paul turned seven.

Young John Paul may have met prominent guests at his family's hotel, including aviators Charles Lindbergh or Amelia Earhart, or he may have enjoyed the eighteen-hole chip-and-putt golf course on the hotel's roof designed by golf legend Chick Evans.[101] Consistent with this air of privilege, John Paul's parents undoubtedly wanted their boys to excel and take their rightful places in the world, and the first step on this path was an excellent education.

Conveniently located near their Hyde Park residence, the Chicago Laboratory Schools offered the most progressive education of the day.[102] Originally founded in 1896 by John Dewey, the father of the progressive education movement and a subsequent signer of the first *Humanist Manifesto*, the school was a research and demonstration project for his Department of Pedagogy at the University of Chicago.[103]

Though Dewey had long since departed for Columbia University when young John Paul enrolled in the Chicago Laboratory Schools in the mid-1920s, Dewey's humanistic method of education known as "Pragmatic

---

96. *Id.*

97. KENNETH A. MANASTER, ILLINOIS JUSTICE: THE SCANDAL OF 1969 AND THE RISE OF JOHN PAUL STEVENS 37 (2001).

98. *Id.*

99. *Hilton Chicago*, HISTORIC HOTELS OF AMERICA, http://www.historichotels.org/hotels-resorts/hilton-chicago/history.php (last visited Feb. 19, 2017).

100. *See* Ric Garrido, *Hilton Chicago and Its Stevens Hotel Scandalous History*, LOYALTY TRAVELER (Apr. 16, 2014), http://loyaltytraveler.boardingarea.com/2014/04/16/hilton-chicago-and-its-stevens-hotel-scandalous-history/.

101. BILL BARNHART & GENE SCHLICKMAN, JOHN PAUL STEVENS: AN INDEPENDENT LIFE 27 (2010).

102. Michael Knoll, *Laboratory School: Univ. of Chicago*, ENCYCLOPEDIA OF EDUCATIONAL THEORY AND PHILOSOPHY 455–58 (D.C. Phillips, 2014).

103. AM. HUMANIST ASS'N, HUMANIST MANIFESTO I, http://americanhumanist.org/humanism/humanist_manifesto_ii, https://americanhumanist.org/what-is-humanism/manifesto (last visited Apr. 8, 2017); *Secular Humanism*, ALL ABOUT PHILOSOPHY, http://www.allaboutphilosophy.org/secular-humanism.htm (last visited Apr. 8, 2017).

Instrumentalism" was well established.[104] This method of social and pedagogical experimentation applied educational theories and practices in a laboratory setting that was learner-centered.[105] The role of teacher was not to instruct, but to identify the child's interest and organize learning activities around that interest.[106] Rather than supplying fixed answers, the teachers were to ask questions.[107] According to Dewey's philosophy of education, schools were not limited to a place of learning, but rather "had an essential political role as an instrument for social change, and that each school should be conceived as an embryonic democratic community in which all children had full membership."[108]

Dewey's child-centered model for instruction recognized no absolute truths; there was no "regimentation and memorization."[109] Dewey focused on a rational process of inquiry tested by experience, believing "that children learn best through virtually unfettered experimentation and socialization."[110] Applying Darwin's theory of evolution to education, Dewey believed that "[e]ducation should be an unending process of discovery and adapting, of continuous trial and error . . . ."[111] Dewey believed that "[i]deals and values must be evaluated with respect to their social consequences, either as inhibitors or as valuable instruments of social progress . . . ."[112] He avoided "general rules that legislate[d] universal standards of conduct,"[113] and he believed any item of knowledge had such status "provisionally, contingent upon its adequacy in providing a coherent understanding of the world as the basis for human action."[114] Stevens excelled at Dewey's Laboratory Schools.[115]

---

104. Daniel Schugurensky, Dewey Leaves the Chicago Laboratory School and Goes to Columbia University (June 2002) (unpublished working paper in progress) (on file with the Ontario Institute for Studies in Education of the University of Toronto), *available at* http://schugurensky.faculty.asu.edu/moments/1904dewey_laboratory.html.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. BARNHART & SCHLICKMAN, *supra* note 101, at 27.

110. *Id.*

111. *Id.*

112. *John Dewey (1859-1952)*, INTERNET ENCYCLOPEDIA OF PHILOSOPHY, http://www.iep.utm.edu/dewey/ (last visited Apr. 23, 2017).

113. *Id.*

114. INTERNET ENCYCLOPEDIA OF PHILOSOPHY, *supra* note 112.

115. BARNHART & SCHLICKMAN, *supra* note 101, at 27.

During John Paul's formative years at the Chicago Laboratory Schools, a change of fortune descended upon the Stevens family. In the late 1920s, John Paul's family struggled to keep the Stevens Hotel financially afloat.[116] But, by 1934, the Great Depression had finally taken its toll. Not only did they have to declare the Stevens Hotel insolvent, John Paul's father, grandfather, and uncle were indicted for diverting money from the Illinois Life Insurance Company to the Stevens Hotel to keep it running through the first part of the Depression.[117] John Paul's uncle committed suicide, his grandfather had a stroke so severe he was excused from trial, and his father was found guilty, a conviction that was later overturned by the Illinois Supreme Court.[118]

In spite of the financial turmoil these events caused on the Stevens family, education remained a priority. In the late 1930s, John Paul entered the University of Chicago, following in the footsteps of his father, and even joined the same fraternity.[119] John Paul considered becoming an English teacher like his mother,[120] but after graduating as valedictorian and Phi Beta Kappa from the University of Chicago with his Bachelors in English, he enlisted in the Navy.[121] John Paul accepted a commission as a Navy intelligence officer hours before the attack on Pearl Harbor.[122] Not long after his enlistment, he married Elizabeth Jane Sheeren.[123]

John Paul's marriage to Betty Sheeren was undoubtedly controversial in both the Stevens and Sheeren families.[124] Betty was Catholic,[125] and the Stevens were a family of "casual Protestants,"[126] at a time when inter-marriage between Protestants and Catholics was shamed. After returning to Chicago after the war, John, Betty, and their four children eventually settled

---

116. *Id.* at 31.

117. *Id.* at 32.

118. *Id.* at 33-34.

119. PERRY, *supra* note 95, at 27; *John Paul Stevens*, OYEZ, https://www.oyez.org/justices/john_paul_stevens (last visited Apr. 23, 2017).

120. PERRY, *supra* note 95, at 28.

121. Jeffrey Rosen, *The Dissenter, Justice John Paul Stevens*, N.Y. TIMES MAGAZINE (Sept. 23, 2007), http://www.nytimes.com/2007/09/23/magazine/23stevens-t.html.

122. *Id.*

123. *Id.*; *Justice John Paul Stevens*, SUPREME COURT HISTORICAL SOCIETY, http://www.supremecourthistory.org/timeline_stevens.ht ml (last visited Jan. 22, 2014).

124. BARNHART & SCHLICKMAN, *supra* note 101, at 44.

125. *Id.* at 43.

126. *Id.* at 28. The only member of the Stevens family who "espouse[d] much of a religious viewpoint" was John Paul's mother, who was a practicing Christian Scientist. *Id.*

in the North Beverly area on the southwest side of Chicago.[127] While in North Beverly, John and Betty sent their children to the local Catholic school.[128] "Betty attended church regularly; John did not."[129]

John Paul excelled as a member of the Navy's code-breaking team and received a Bronze Star.[130] After returning home from the war, he took his brother's advice and followed in his footsteps, as well as in those of his father, and attended law school.[131] At Northwestern Law Stevens again excelled, graduating first in his class, *magna cum laude*, and editor of the school's law review.[132]

B. Northwestern Law School During Stevens' Attendance

At Northwestern, Leon Green, the Dean of the Law School, greatly influenced John Paul. In later years, Stevens would credit Leon Green with having a "special influence on my understanding of the law."[133] To understand his influence, a brief look into the history of Northwestern is helpful for context.

Prior to Green's arrival, Northwestern had already seized upon the humanistic path set by Roscoe Pound who taught law there in the early

---

127. *Id.* at 138.

128. *Id.*

129. *Id.* John and Betty's marriage lasted until 1979. *Id.* at 220. Three weeks after Justice Stevens' mother died, Justice Stevens divorced his wife of 37 years and within a month of the divorce, he married Maryan Mulholland Simon. *Id.*

> The Stevens and Simon couples had been neighbors and bridge partners in Chicago's Beverly neighborhood for many years. In 1973, the couples moved into adjacent homes in Burr Ridge, an upscale suburb west of Chicago. The oldest Stevens daughter, Kathryn, was away at college during this period, but she remembered, 'There was a thing going on with a neighbor. [John and Betty] were going to separate, and then he got appointed to the Court.'

Id.

130. Terry Stephan, *A Justice for All*, NORTHWESTERN, http://www.northwestern.edu/magazine/spring2009/cover/stevens.html (last visited Feb. 16, 2017).

131. MANASTER, *supra* note 97, at 38; PERRY, *supra* note 95, at 28. Jim Stevens attended the University of Chicago Law School, which had implemented a four year curriculum before World War II. BARNHART & SCHLICKMAN, *supra* note 101, at 53. John Paul chose to attend Northwestern University Law School, the same law school his father had attended, and which had compressed the time required for completing law school to 29 months by adding courses to summer schedules. *Id.*

132. PERRY, *supra* note 95, at 28.

133. John Paul Stevens, *Some Thoughts About a General Rule*, 21 ARIZ. L. REV. 599, 604 n.25 (1979).

1900s.[134] Pound had worked to transform law at Northwestern into the positivist, case method approach made popular at Harvard University by Darwin enthusiast Christopher Langdell[135] and later by Oliver Wendell Holmes.[136]

Teaching what became known as Legal Pragmatism, Holmes "influenced legal thought more than anyone else in the twentieth century."[137] In the positivist tradition, Holmes taught students "to put aside notions of morality and look instead at law as a science."[138] Embracing Hegel's historicism, he treated law as the mere "product of evolving cultures and traditions."[139] He also taught that law's purpose was its "social utility," determined by its "practical consequences."[140]

When Leon Green arrived at Northwestern in 1929, humanistic Legal Pragmatism was well entrenched, and Green continued the tradition. By the time John Paul Stevens entered law school in 1945, Leon Green was a leading figure in the legal world, having published over 39 articles by 1945 and having been Dean at Northwestern Law since 1929.[141] He was at the very end of his work at Northwestern and had become a pioneer in tort law by, among other things, persistently attacking the "legal theology" of objective causation by insisting that proximate cause should be decided by a jury and not a judge.[142] As a result of this revisionist work, Green was a recognized leader in the American Legal Realism movement.[143]

---

134. NOEBEL, *supra* note 43, at 507.

135. *Id.* at 558.

136. Thomas C. Grey, *Holmes & Legal Pragmatism*, 41 STANFORD L. REV. 787, 787 (1989).

137. PEARCEY, *supra* note 31, at 237.

138. COLSON & PEARCEY, *supra* note 34, at 404. Leon Green shared the view that science should be applied to problems of law. SICKELS, *supra* note 93, at 38.

139. PEARCEY, *supra* note 31, at 237.

140. *Id.*

141. *Green, Leon (Edit Author Profile)*, http://heinonline.org/HOL/AuthorProfile?search_name=Green%2C+Leon&collection=journals&base=js; *History of Northwestern Pritzker School of Law*, NORTHWESTERN PRITZKER SCHOOL OF LAW, http://www.law.northwestern.edu/about/history/ (last visited Apr. 23, 2017). Dean Green authored more than 100 law review articles in his career. *Green, Leon (Edit Author Profile)*, http://heinonline.org/HOL/AuthorProfile?search_name=Green%2C+Leon&collection=journals&base=js.

142. MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW 1870-1960: THE CRISIS OF LEGAL ORTHODOXY 61 (1992) (stating "objective causation" is limited an injured party's tort recovery to those defendants who objectively caused the injury). "Without objective causation, a court might be free to choose among a variety of possible defendants in order to vindicate the plaintiff's claim." *Id.* at 52.

143. *Id.* at 183, 317 n.104. *See also* SICKELS, *supra* note 93, at 37.

American Legal Realism is also known as Pragmatic Instrumentalism.[144] Robert S. Summers of Cornell Law School states with respect to Pragmatic Instrumentalism:

> This philosophy is "instrumentalist" in that it conceives of law not as means-goal complexes but merely as means to external goals. It is "pragmatic" in several ways. It focuses on law in action and on the practical differences that law makes. It stresses the roles of legal actions and their technological "know-how." It is experimentalist. It is pragmatic, too, in its professed contextualism—its reliance on time, place, circumstance, interests, wants, and the assumed malleability of reality rather than on theories, general principles, and the "nature of things" as sources of ends and means.[145]

Thus, law, as taught at Northwestern, was decided in a pragmatic instrumentalist fashion, case-by-case, dependent upon the circumstances and facts.[146] It was indeterminate, open to constant change, even experimental and denied any general, universal standards.[147] Such methods were familiar to John Paul Stevens. It mirrored his education under the Dewey system of Pragmatic Instrumentalism.[148]

---

144. James S. Gouinlock, *John Dewey: American Philosopher and Educator*, ENCYCLOPEDIA BRITANNICA, https://www.britannica.com/biography/John-Dewey (last visited Feb. 16, 2007).

145. Randy E. Barnett, *Contract Scholarship and the Reemergence of Legal Philosophy*, 97 HARV. L. REV. 1223, 1225-26 n.13 (1984) (reviewing ALLAN FARNSWORTH, CONTRACTS (1982)) (emphasis omitted).

146. By focusing heavily on facts, the pragmatists/realists could avoid the application of *stare decisis* and prior legal doctrine by distinguishing fact situations. SICKELS, *supra* note 93, at 38.

147. Sickels reports that Dean Leon Green

> considered legal rules greatly overrated. Rules, particularly simple formulas he said are likely to strangle rather than guide the thought of judges and to confuse juries—though he conceded there might be some reason to allow jurors to be fooled into thinking they worked. Green believed that a judge is on his own, by and large, deciding cases according to good policy as he conceives it, assembling precedent as needed to justify his decisions. His opinions are unlikely to show how decisions are actually made, Green said. Judges judge, inevitably, but they write opinions that give an impression of passivity in deference to rules and precedent.

Id. at 37-38.

148. *But see id.* at 39 (arguing that Justice Stevens did not fully accept legal realism, since he did not apply science to law, he was not as nearly skeptical of rules as other realists, and he did not view the Court as a political co-equal with the President and Congress). According to

Legal Realism was interdisciplinary in its approach, using social goals as criteria for judicial decisions. Again, this approach to law was nothing new to Stevens. Dewey had integrated curriculum in an interdisciplinary approach to be more conducive to democratic outcomes. In his book, *My Pedagogical Creed*, Dewey had argued that education had "an essential political role as an instrument for social change."[149] The classroom was "an 'embryonic community' that would provide a model for a more democratic larger society."[150]

Under Dean Leon Green at Northwestern, American Legal Realism was therefore the familiar application of Pragmatic Instrumentalism to Stevens' chosen field of law. In addition, the social engineering aspect of American Legal Realism fit perfectly on the Secular Humanistic foundation of Dewey's democratic idealism.

C. Clerkship and Judicial Appointments

After graduating law school first in his class, John Paul Stevens clerked for United States Supreme Court Justice Wiley Rutledge.[151] Justice Rutledge was known for his progressive approach to the law, one of the important reasons he was chosen by President Roosevelt to join the Court.[152] In support of his views "[h]e began with the record and his legal hunch, backed by the belief that the *Constitution* was a living (and basically unconstraining) document . . . ."[153] Justice Rutledge shared his belief in a

---

Sickels, Justice Stevens settled for "half a loaf" of radical realism. *Id.* Yet as will be seen, Justice Stevens' views on law and his voting pattern in cases are much more similar to realism than classism, and its focus on principles. *See infra* note 165 *et seq.*

149. Schugurensky, *supra* note 104.

150. *Progressive Education*, ENCYCLOPEDIA OF CHICAGO, http://www.encyclopedia.chicagohistory.org/pages/1012.html (last visited Jan. 22, 2014).

151. PERRY, *supra* note 95, at 28; SUPREME COURT HISTORICAL SOCIETY, *supra* note 123.

152. Craig Green, *Wiley Rutledge and Executive Detention: A Judicial Conscience for His Time and Ours*, *in* BEPRESS LEGAL SERIES 337-344 (Sept. 9, 2005), http://law.bepress.com/expresso/eps/767. Professor Robert Sickels described Justice Rutledge as "one of the most liberal justices ever to sit on the Court, of whose work Justice Stevens had written admiringly in later years." SICKELS, *supra* note 93, at 1 (1998).

153. L. A. Powe, Jr., *(Re)introducing Wiley Rutledge*, 3 J. OF SUP. CT. HISTORY 339 (2004) (emphasis added). Justice Rutledge's belief in "living" law was strong, as evidenced by his own words:

> Justice . . . cannot be embalmed in the mores of any day or age. Nor can the law . . . . [J]ustice is part of life itself, subject to the law of growth without which all is death . . . . [Justice] is alive and must reach new levels and horizons, as man does in all his higher aspirations . . . . Justice then, in the legally relevant sense, is not abstract, universal, eternally fixed and immutable, perfect and complete,

living Constitution with other American Legal Realists.[154] Although a son of a Baptist minister, Justice Rutledge moved away from the literal interpretation of the Bible and eventually joined the All Souls Unitarian Church in Washington, D.C.[155]

The influence of Justice Rutledge was considerable on the youthful Stevens, fresh out of law school. Justice Rutledge, for instance, "sharpened [Stevens'] concern for the rights of individuals."[156] Rutledge also "reinforce[d] Stevens' pragmatic tendencies and increase[d] his sensitivity to liberal values."[157] Cliff Sloan, who clerked for Stevens stated: "Stevens speaks and writes reverentially of the little-known Wiley Rutledge more than five decades after his clerkship."[158]

Once Stevens returned to Chicago, he joined the law firm of Poppenhusen, Johnston, Thompson & Raymond to pursue a career in antitrust law.[159] He also served briefly as Associate Counsel to the House Judiciary Subcommittee for the Study of Monopoly Power.[160] He eventually began his own law firm as a founding partner in Rothschild, Stevens, & Barry.[161] He lectured at the University of Chicago Law School and at Northwestern Law School.[162] He became a member of the Attorney General's National Committee to Study Antitrust Law.[163]

> or dead. It is concrete, finite, ever-changing, imperfect and incomplete, alive. And so with the law, which is not at end in itself but simply the means for achieving justice.

WILEY A. RUTLEDGE, DECLARATION OF FAITH 16 (1970).

154. Dean Leon Green adhered to the position, for instance, that

> [J]udges should keep the Constitution in tune with the development of the nation. The Court is and should be a political branch of government, whose members interpret the Constitution in the light of the desires and interests of the people. He regarded the gradual growth of the Constitution via interpretation as both logically and practically superior to formal amendment, which is difficult, slow and results in a 'highly crystallized formula' that itself requires interpretation to individual cases before it can be understood.

SICKELS, *supra* note 93, at 38.

155. Powe, *supra* note 153, at 337

156. SICKELS, *supra* note 93, at 39.

157. *Id.*

158. Cliff Sloan, *The Mourning After*, SLATE (Sept. 7, 2005), at http://www.slate.com/id/2125848.

159. BARNHART & SCHLICKMAN, *supra* note 101, at 81.

160. MANASTER, *supra* note 97, at 39.

161. BARNHART & SCHLICKMAN, *supra* note 101, at 93.

162. *Nomination of John Paul Stevens to be a Justice of the Supreme Court: Hearing Before the S. Comm. on the Judiciary*, 94th Cong. 4-5 (1975), https://www.loc.gov/law/find/

Then, in precipitous events leading up to his selection for the federal bench, he became General Counsel to a state commission investigating possible judicial misconduct by Illinois Supreme Court Justices.[164] His work led to two justices resigning from office for improprieties that may have influenced them in a case pending before the court.[165] This propelled Stevens to national attention.[166] Shortly thereafter, he was appointed to the United States Court of Appeals for the Seventh Circuit.[167] Five years later, President Gerald Ford looked for a nominee to replace the retiring William O. Douglas.[168] Because Chief Justice Burger wanted quickly to replace Douglas who had suffered a long illness, and therefore absence from the Court, and because the White House wanted a smooth confirmation before the 1976 election, President Ford sought a non-controversial nominee.[169] Stevens met this major criterion, in part because he was non-political.[170]

At his Senate Judiciary Committee confirmation hearing, Stevens vowed to follow a policy of "judicial restraint" and "to decide cases on the narrowest grounds possible."[171] He maintained at the hearing that judges do not have the freedom to substitute their views for the law, and that he would be "most reluctant" to deviate from precedent.[172] Stevens won unanimous approval from both the Judiciary Committee and the Senate, the Senate confirmation vote occurring within sixteen days of President Ford's submission of Stevens' nomination.[173]

The press declared upon Stevens' nomination that he was neither a partisan nor an ideologue.[174] Yet on the bench he voted with civil

---

nominations/stevens/hearing.pdf; MANASTER, *supra* note 97, at 39; PERRY, *supra* note 95, at 28.

163. BARNHART & SCHLICKMAN, *supra* note 101, at 93; PERRY, *supra* note 95, at 28; SUPREME COURT HISTORICAL SOCIETY, *supra* note 123.

164. PERRY, *supra* note 95, at 28.

165. MANASTER, *supra* note 97, at 239.

166. Justice Stevens attributes his work on the Commission as giving him the opportunity to serve eventually on the Supreme Court. *Id.* at xiv.

167. *Id.* at 267.

168. PERRY, *supra* note 95, at 29-30.

169. *Id.* at 30.

170. *Id.* at 29.

171. *Id.* at 31.

172. *Id.*

173. *Id.*

174. PERRY, *supra* note 95, at 32.

libertarians, advocates for women's rights, and sided with the Court's staunchest liberals almost 60 percent of the time.[175]

D. John Paul Stevens' Judicial Opinions[176]

In their biography of Justice John Paul Stevens, Barnhart and Schlickman describe well the ideological friction on the Court during the 1991-1992 term when the Court considered the very controversial subjects of abortion, school prayer, and free speech.[177] One side of this ideological debate was led by Justice Scalia, who "champion[ed] . . . tradition in law—meaning 'what is.'"[178] The other side was led by Justice Stevens, who "advocate[d] for pragmatism in law—meaning 'what may be.'"[179] "Either approach to the law can spawn activist judges intent on pulling back the law or pushing it forward."[180] Barnhart and Schlickman note that this division between traditionalists and pragmatists, much more than labels like Republican and Democrat, or conservative and liberal, explains much of Supreme Court politics during Justice Stevens' service.[181]

Barnhart and Schlickman correctly state that tradition is an important part of Supreme Court practice and procedure, from the black robes the Justices wear, to barring television cameras, to following precedent.[182]

> But one school of interpreting statutes and the [C]onstitution takes the idea of tradition much further. Justice Scalia and other adherents to this theory see the nation's legal, cultural, moral, and institutional traditions as the essential building blocks of democracy. Simply put, the American majority established these traditions and, therefore, the status quo merits great deference by unelected judges. In this view, novel interpretations of law by activist judges (as in *PGA v. Martin*) and the opinions of non-U.S. Courts (as in *Atkins v. Virginia*) corrupt tradition.[183]

---

175. *Id.*

176. Because of this Article's focus on worldview, the cases selected concentrate on social issues. These issues most clearly show the worldviews of the justices, and are the issues in which the Senate is often interested.

177. BARNHART & SCHLICKMAN, *supra* note 101, at 232-43.

178. *Id.* at 234.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. BARNHART & SCHLICKMAN, *supra* note 101, at 234-35.

Barnhart and Schlickman continue:

> Seen in the context of abortion, homosexual activity, atheism, assisted suicide, and a host of other personal choices at odds with traditional public norms, Scalia's reliance on tradition as the touchstone for Supreme Court review represents a major threat to anyone who believes that law must evolve with society, sometimes with the aid of judges.[184]

If this statement is true of the leader of the "traditionalists," then the flipside must also be true for the leader of the "pragmatics." Sometimes pragmatic judges aid the development of the law with respect to abortion,[185] homosexual activity,[186] assisted suicide,[187] and other personal choices so that law evolves as society changes.[188]

Justice Stevens did not start his career on the Court as the leader of the pragmatics. In fact, he told the Senate Judiciary Committee under oath that he believed in "judicial restraint," which is generally means that judges should not be policy makers in interpreting statutes and the Constitution, but should defer to the political branches elected by the people.[189] In his early years on the Court, Justice Stevens was known for his creative

---

184. *Id.* at 235.

185. PLANNED PARENTHOOD OF S. PA. V. CASEY, 505 U.S. 833 (1992) (STEVENS, J., CONCURRING IN PART AND DISSENTING IN PART).

186. Lawrence v. Texas, 539 U.S. 558 (2003).

187. Washington v. Glucksberg, 521 U.S. 702 (1997) (Stevens, J., concurring).

188. A. E. Dick Howard, *The Supreme Court Then and Now*, GILDER LEHRMAN INST. OF AM. HISTORY, https://www.gilderlehrman.org/history-by-era/government-and-civics/essays/supreme-court-then-and-now (last visited Feb. 16, 2017).

189. Paul M. Johnson, Dep't of Political Science, Auburn University, *A Glossary of Political Economy Terms: "Judicial Restraint"* (2004), http://www.auburn.edu/~johnspm/gloss/judicial_restraint.

> Judicial Restraint: The view that the Supreme Court (and other lesser courts) should not read the judges' own philosophies or policy preferences into the constitution and laws and should whenever reasonably possible construe the law so as to avoid second guessing the policy decisions made by other governmental institutions such as Congress, the President and state governments within their constitutional spheres of authority. On such a view, judges have no popular mandate to act as policy makers and should defer to the decisions of the elected "political" branches of the Federal government and of the states in matters of policy making so long as these policymakers stay within the limits of their powers as defined by the US Constitution and the constitutions of the several states.

Id.

reinterpretations of precedent and fresh insights,[190] but this did not necessarily conflict with his reputation as a good moderate-to-conservative Republican.[191] This judicial philosophy of deferring to elected public officials for policy initiatives, however, changed over the decades.

> [T]he time line of Stevens' opinions for the Court majority reveals two overlapping trends in the growth of his judicial philosophy. Both are direct consequences—payoffs, his admirers would say—of his elevation to the bench as a political and judicial independent. *He became more liberal, and he became more pragmatic. In both aspects of judging, he changed, aided by an absence of political or doctrinal anchors.* As Stevens put it in a 2005 speech to the Fordham [University] Law School, "Learning on the job is essential to the process of judging." Many justices, secure in their lifetime appointments, have altered their views of law during their years on the bench. But Stevens is one of the few who openly designate a willingness to change as a critical element of the job.[192]

A longtime friend and admirer, Abner J. Mikva, who served as a Democratic member of Congress from Illinois, a federal appeals judge, and a White House counsel, added the following:

> In more than three decades as an able practitioner of judicial craft on the Supreme Court, Stevens has made a transition from solitary puzzle master to intellectual leader. Stevens has begun to embrace the Constitution as "aspirational" in its service to American progress, . . . "The Court has a role in helping push the ball when it stalls," Mikva said. "I think John came to that discovery later in life."[193]

---

190. Justice Stevens "was, in shorthand used inside the Court and in the press, a wild card, a loner, a maverick. His name, John, was converted to Jack, as in 'jacks are wild.' He was called 'even Stevens' for writing liberal *and* conservative opinions." BARNHART & SCHLICKMAN, *supra* note 101, at 201. He was in many cases prepared to reinterpret precedents, and have his own individual theory on the subject. *Id.*

191. *Id.* at 244.

192. *Id.* at 222-23 (emphasis added). The authors note that during the first ten years of his tenure on the Bench, Justice Stevens was substantially to the left of the Court on the issue of individual rights. Later, he was even further to the left of the remainder of the Court. *Id.* at 20-21.

193. *Id.* at 21 (quoting Interview by Bill Barnhart with Abner J. Mikva, Former White House Counsel (Feb. 23, 2009)).

These observations by Judge Mikva and Barnhart and Schlickman are well supported by voting patterns[194] and a few cases decided in the second half of Justice Stevens' career on the Court. During this period of time, when Justice Stevens was a leader of the pragmatics, Justice Stevens had a prominent role in cases from select areas in which traditionalists and pragmatics sometimes differ.

Leading this brief survey is the Eighth Amendment case of *Atkins v. Virginia*, in which the Court eliminated the death penalty for mentally retarded persons convicted of capital murder.[195] Writing for the Court, Justice Stevens quoted with approval former Chief Justice Warren's statement that the Eighth Amendment must be interpreted according to "the evolving standards of decency that mark the progress of a maturing society."[196] "Evolving standards of decency" are, by their nature, not fixed like a divine moral code specifying what behavior is moral and good, and what behavior is evil.

Of equal interest is the method Justice Stevens used to determine how far these "standards of decency" had evolved. Justice Stevens first looked to state legislation, which he acknowledged was the "clearest and most reliable objective evidence of contemporary values."[197] Yet, the evolutionary standard was not limited to contemporary state legislation, since Justice Stevens recognized that the Court's own judgment could disagree with the judgment reached by state citizens and their legislators.[198] Therefore, after examining state legislative enactments prohibiting the execution of mentally retarded adults,[199] Justice Stevens looked for support to over a dozen

---

194. Justice Stevens' votes in the 2008 term were most closely aligned with Justice Ruth Bader Ginsburg. These two justices voted similarly eighty-one percent of the time, almost equal to the similarity between Justices Scalia and Thomas. Justice Stevens agreed with conservative Justices Clarence Thomas and Samuel A. Alito, Jr., however, just thirty-six percent of the time. This pairing was the most dissimilar of all justices. *Id.* at 229.

195. Atkins v. Virginia, 536 U.S. 304 (2002).

196. *Id.* at 311-12 (quoting Trop v. Dulles, 356 U.S. 86, 100-01 (1958)). Justice Stevens repeated and expanded the "evolving standards of decency" rationale for Eighth Amendment jurisprudence in Roper v. Simmons, where he wrote: "In the best tradition of the common law, the pace of that evolution is a matter for continuing debate; but that our understanding of the *Constitution* does change from time to time has been settled since John Marshall breathed life into its text." Roper v. Simmons, 543 U.S. 551, 561 (2005) (Stevens, J., concurring).

197. *Atkins*, 536 U.S. at 312 (quoting Penry v. Lynaugh, 492 U.S. 302, 331 (1989)).

198. *Id.* at 313.

199. *Id.* at 314-15. In his dissent, Chief Justice Rehnquist noted that although eighteen states had passed laws limiting the eligibility for the death penalty to mentally retarded adults, twenty states still allowed judges or juries to determine whether the mentally retarded

opinion polls showing the lack of popular support for the death penalty in the case of mentally retarded adults.[200] From this data, Justice Stevens concluded that "it is fair to say that a national consensus has developed against [imposing the death penalty on mentally retarded defendants]."[201]

Justice Scalia in dissent not only disagreed with Justice Stevens' conclusion, but also his premises. In contrast to Justice Stevens' criteria for determining "evolving standards of decency," Justice Scalia adhered to history and tradition. Justice Scalia acknowledged that a punishment is "cruel and unusual" for purposes of the Eighth Amendment if it either: (1) was inconsistent with modern standards of decency, as demonstrated by objective criteria, the most important of which is state legislation; or (2) was considered cruel and unusual at the time the Bill of Rights was adopted.[202] Justice Scalia in great detail showed that the death penalty was not prohibited for the mildly mentally retarded at the creation of the Bill of Rights.[203] He further argued that since more states permit the death penalty for capital crimes committed by mentally retarded adults than those that have abolished this penalty, there certainly was no "national consensus" against the death penalty in these instances.[204]

Justice Scalia's primary criticism in *Atkins v. Virginia*, however, was the majority's assertion that the Court could exercise its own subjective judgment to determine the proper standard of decency.[205] Rather than using the objective standard of state legislative action to determine public sentiment, the Court had, in Justice Scalia's words, arrogantly presumed that it had moral sentiments superior to the "common herd, whether in 1791 or today."[206] This assumption of power was, in the words of Justice

---

could be put to death. *Id.* at 322. Justice Scalia similarly questioned how forty-seven percent (eighteen out of thirty-eight states) could constitute a "national consensus." *Id.* at 342.

200. *Id.* at 316 n.21. Chief Justice Rehnquist criticized this use of opinion polling, noting that the Court had insufficient information to determine whether the surveys were done properly or were capable of supporting empirical inferences. *Id.* at 322.

201. *Id.* at 316.

202. *Id.* at 339-40.

203. Justice Scalia wrote that in 1791, there was a legal distinction made between "idiots" (those profoundly retarded individuals who were incapable of taking care of themselves and could hurt others because they lacked the ability to distinguish right from wrong) and "imbeciles" (those less profoundly retarded individuals who knew generally right from wrong, although in a diminished capacity). *Atkins*, 536 U.S. at 340-41.

204. *Id.* at 342-43.

205. *Id.* at 348.

206. *Id.*

Scalia, breath-taking, and demonstrated that in the end, it was "the *feelings* and *intuition* of a majority of the Justices that count."[207]

"Evolving standards of decency" and an evolving Constitution are key differences between theists and naturalists. Although theists and humanists, a large subset of Naturalism, both believe in the dignity of man,[208] they differ on "evolving standards of decency" and whether man is capable of governing himself without God. Theists believe that God set standards of decency and ethics when God created the universe[209] and provided sacred writings to guide man.[210] These standards are absolute; they do not change over time (e.g., adultery and stealing are always wrong).[211] Naturalists believe that man, indeed all of life, is ever-changing, ever-evolving to an improved state.[212] Therefore, a flexible system of laws is desirable, since man and society's changing nature demand flexibility to best suit their every need.[213] Those Justices adhering to Chief Justice Warren's statement, including Justice Stevens, clearly display their naturalistic worldview.

"Evolving standards of decency" are, of course, not limited to death penalty situations. In fact, there is perhaps no greater social revolution over the past fifty years than the acceptance of homosexuality. The Supreme Court has played a large role in this process, and it is a prime example of the difference between naturalistic and theistic worldviews, as once again demonstrated in the opinions of Justices Stevens and Scalia.

---

207. *Id.*

208. Eugene Thomas Long, *Christianity and Humanism*, 5 THE PERSONALIST FORUM 119, 120 (1989). Theists believe that God made man in God's image, and although Humanists reject this teaching, Humanists still highly value man. *Id.*

209. *See generally The Kantian Moral Argument*, PHILOSOPHY OF RELIGION, http://www.philosophyofreligion.info/theistic-proofs/the-moral-argument/the-kantian-moral-argument (last visited Feb. 16, 2017).

210. *See, e.g.*, MISREADING AMERICA: SCRIPTURES & DIFFERENCE 148 (Vincent L. Wimbush ed., 2013).

211. *See Christianity and Law*, ALL ABOUT WORLDVIEW, http://www.allabout worldview.org/christianity-and-law.htm (last visited Apr. 7, 2017) ("Christians believe this *fixity* [fixed or absolute nature of law] exists in the moral order in the form of divine law, which is grounded in the immutable nature of God, a firm foundation that does not flex or evolve . . . . The Christian view of law produces a legal system that does not fluctuate according to our whims and preferences; rather, it remains constant and therefore just. This perspective provides law grounded on the absolute foundation of God as the ultimate Lawgiver.").

212. James S. Gouinlock, *John Dewey: American Philosopher and Educator*, ENCYCLOPEDIA BRITANNICA, https://www.britannica.com/biography/John-Dewey (last visited Feb. 16, 2007).

213. *Christianity and Law*, *supra* note 211.

Although the Supreme Court's majority opinions expanding gay rights have all been written by Justice Kennedy with Justice Stevens joining in the opinions, Justice Stevens played a major role in the process in his dissent in *Bowers v. Hardwick*.[214] In the 1986 case of *Bowers*, the issue presented was whether the federal Constitution granted homosexuals a fundamental right to engage in sodomy.[215] The Court, in a 5-4 decision, ruled that there was no such right under the Due Process Clause.[216] The Court also ruled that the moral laws of most Georgia voters provided a rational basis sufficient to uphold the law.[217]

Justice Stevens dissented in *Bowers* and advanced several reasons why he thought the Georgia statute was unconstitutional.[218] The most important reason for purposes of this article is his assertion that neither history, tradition, nor the moral views of the governing majority in a State are a sufficient reason to uphold a law prohibiting sodomy.[219] This reason was specifically adopted by the Court in *Lawrence v. Texas*, which not only overruled *Bowers v. Hardwick* but also stated that Justice Stevens' analysis in *Bowers* should have been the controlling opinion.[220]

Justice Scalia, in a dissenting opinion in *Lawrence*, noted that the Texas statute at issue undeniably was designed to further the belief of its citizens that certain forms of sexual behavior were immoral.[221] He noted that this same belief drove a variety of similar criminal laws against adultery, bigamy, adult incest, and bestiality.[222] Justice Scalia concluded that if the promotion of majoritarian sexual morality was not even a legitimate state interest, all

---

214. Bowers v. Hardwick, 478 U.S. 186, 199 (1986), *rev'd* Lawrence v. Texas, 539 U.S. 558 (2003).

215. *Id.* at 190.

216. *Id.* at 190-95. The Court stated that it was not inclined to discover new fundamental rights based on the Due Process Clause. *Id.* The Court noted that "[t]he Court is most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution." *Id.* at 194.

217. *Id.* at 196.

218. *Id.* at 214-20 (Stevens, J., dissenting). One reason Justice Stevens thought the statute unconstitutional was because it was not limited to same sex couples; i.e., heterosexual married couples could also be prosecuted for sodomy under the statute, and Justice Stevens argued that such a prosecution would violate the fundamental right to privacy afforded married couples. *Id.* at 214-18.

219. *Id.* at 216.

220. Lawrence v. Texas, 539 U.S. 558, 578 (2003).

221. *Id.* at 599 (Scalia, J., dissenting).

222. *Id.*

moral legislation (including those mentioned in the previous sentence) was unconstitutional.[223]

Categorizing the worldview of Justice Stevens is, again, easy in this instance. Naturalists deny that God exists[224] and therefore logically deny that God revealed himself and his will through sacred writings. Accordingly, there is no divine will to follow. Without divine will to follow, man is on his own to create positive law that best serves mankind in general, or persons in particular.[225] Certainly the rejection of divine law as a legitimate reason to create a law is indicative of a naturalistic worldview.

Religion cases are final examples that reveal Justice Stevens' worldview. Justice Stevens' decisions on school vouchers[226] and student-led prayer at public school events[227] reveal his unwillingness to support the expression of religious values in the public arena.[228]

In the Ohio school voucher case, Justice Stevens dissented from the majority decision that approved the use of tax-funded vouchers at parochial schools.[229] In his short five paragraphs, he referred four times to religious education as "indoctrination."[230] He suggested that only an emergency could motivate parents to "accept religious indoctrination that they otherwise would have avoided."[231] He ended his dissent by stating: "Whenever we remove a brick from the wall that was designed to separate religion and government, we increase the risk of religious strife and weaken the foundation of our democracy." [232]

In *Santa Fe Independent School District v. Doe*, Justice Stevens delivered the majority opinion that found unconstitutional a policy permitting student-led, student-initiated prayer at football games.[233] In part, he claimed that the District's policy was invalid because it established "an improper majoritarian election on religion" and effectively silenced the minority

---

223. *Id.*

224. *See supra* notes 46-49 and accompanying text.

225. *See supra* note 55 and accompanying text; *see also Christianity and Law*, *supra* note 211.

226. Zelman v. Simmons-Harris, 536 U.S. 639, 684-86 (2002) (Stevens, J., dissenting).

227. Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000) (Stevens, J., writing for the majority).

228. *Id.*

229. *Zelman*, 536 U.S. at 684-86.

230. Robert F. Nagel, *Justice Stevens' Religion Problem*, FIRST THINGS (June 2003), https://www.firstthings.com/article/2003/06/justice-stevens-religion-problem.

231. *Id.* (quoting *Zelman*, 536 U.S. at 685 (Stevens, J., dissenting)).

232. *Zelman*, 536 U.S. at 686.

233. Sante Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000).

view.[234] The disdain for religion was so apparent in the majority opinion that Chief Justice Rehnquist commented in his dissent that the Court's opinion "bristle[d] with hostility" against religion in public life.[235]

Chief Justice Rehnquist's comment on Justice Stevens' apparent hostility toward religion is not the first time such an accusation has been made. Respected First Amendment expert Douglas Laycock in 1990 wrote a law review article focusing on the meaning of "neutrality" for purposes of the Religion Clauses.[236] In trying to understand the various uses of "neutrality" in Religion Clause jurisprudence, Professor Laycock looked at the voting patterns of then current Supreme Court Justices on the issues of public aid to religious organizations (either weak or strong Establishment Clause position), and government regulation of religion (either weak or strong Free Exercise position).[237] Professor Laycock concluded that three Justices (Justices Brennan, Marshall, and Blackmun) would restrict public support of religion, but would also restrict governmental regulation of religion (strong Establishment Clause and Free Exercise Clause enforcement). Four Justices (Rehnquist, White, Scalia and Kennedy) generally supported public aid of religion, but permitted government regulation of religion (weak Establishment and Free Exercise Clause enforcement). Professor Laycock described Justice O'Connor as a "swing vote" and then described Justice Stevens as follows:

> Justice Stevens . . . votes with the judicial activists [Brennan, Marshall, and Blackmun] on most issues, including the establishment clause [denying public aid to religious organizations], but he joins the judicial minimalists [Rehnquist, et al.] in free exercise cases [permitting government restriction of religious exercise, like wearing a yarmulke]. The apparent explanation for his voting pattern is hostility to religion. Religion in his view is subject to all the burdens of government, but entitled to few of the benefits.[238]

234. *Id.* at 317.

235. *Id.* at 318 (Rehnquist, J., dissenting).

236. Douglas Laycock, *Formal, Substantive, and Disaggregated Neutrality Toward Religion*, 39 DEPAUL L. REV. 993 (1990).

237. *Id.* at 1010.

238. *Id.*

Professor Laycock's opinion is shared by other scholars.[239] One scholar described Justice Stevens' dissent in *Boy Scouts v. Dale* to be "stunningly bigoted . . . one of the most intolerant-of-religion opinions ever to appear in the U.S. reports."[240] Justice Stevens does have his apologists on this issue, however, including one scholar who claimed that Justice Stevens' view of religion was the result of his respect for "religion as a powerful motivator of human action" that made religion "singularly divisive" and "a uniquely seductive temptation that the conscientious legislator (and judge) must carefully avoid."[241] Similarly, a second scholar supported Justice Stevens' fear of religious strife, claiming that the wide variety of religious groups in the U.S., "often well organized and intense in their convictions . . . . ensure that religiously infected political conflict will remain part of the American political landscape."[242] The best way to dampen religious strife, according to this scholar of Justice Stevens' Religious Clause jurisprudence, was "to avoid sending tax dollars to religious institutions."[243] A third and final scholar argued that Justice Stevens' Religion Clause jurisprudence was motivated by his concern to protect religion from corruption by the state.[244]

The first two apologists for Justice Stevens were his former law clerks when he served on the Court, and therefore were in a good position to know Justice Stevens well, including his motivation.[245] The third apologist is the John Paul Stevens Professor of Law at Northwestern, who shared the article with the Justice and said that Mr. Stevens "laughed" at the title of his article, "Justice Stevens, Religious Enthusiast."[246] This certainly rings true, since the title is far-fetched, if not preposterous, because it is inconsistent with Justice Stevens' life and reported lack of religious convictions. The fear of religious strife also seems consistent with Justice Stevens' opinions, yet, is this fear well founded? During the last 100 years, have there been pitched

---

239. *See* Robert F. Nagel, *Six Opinions by Mr. Justice Stevens: A New Methodology for Constitutional Cases?*, 78 CHICAGO-KENT L. REV. 509, 528 n.87 ("Stevens appears to be hostile to religious belief.").

240. Michael Stokes Paulsen, *Scouts, Families, and Schools*, 85 MINN. L. REV. 1917, 1917 (2001).

241. Eduardo Moises Penalver, *Treating Religion as Speech: Justice Stevens's Religion Clause Jurisprudence*, 74 FORDHAM L. REV. 2241, 2241 (2006).

242. Christopher L. Eisgruber, *Justice Stevens, Religious Freedom and the Value of Equal Membership*, 74 FORDHAM L. REV. 2177, 2182 (2006).

243. *Id.* at 2183.

244. *See* Andrew Koppelman, *Justice Stevens, Religious Enthusiast*, 106 N.W.U. L. REV. 567 (2012).

245. Eisgruber, *supra* note 242, at 2177; Penalver, *supra* note 241, at 2241.

246. Koppelman, *supra* note 244, at 567.

battles in the United States between Episcopalians and Pentecostals, between Presbyterians and Roman Catholics? Has blood been shed between liberal Protestants and conservative Protestants, who differ on many things theologically, but have never allowed these differences to develop into violence? If there is no evidence in the U.S. for religious strife for the last 100 years, is Justice Stevens' fear just an excuse to discriminate against religious organizations that simply seek to benefit in a partnership with government to the same extent as secular organizations? In short, is not this excuse merely a way for Justice Stevens to avoid allowing something of benefit to flow to organizations whose mission does not comport with Justice Stevens' worldview?

V. CONCLUSION

"The claim that any human is able to remain unaffected by their background or have a purely objective view of any case [appearing before him or her as a Supreme Court Justice] is to claim a quality that belongs only to God: omniscience."[247] No person is purely objective, according to Jim Wallis. Justice Stevens is no exception. In their extensive biography of Justice Stevens, Barnhart and Schlickman make few references to Justice Stevens' religious beliefs. They note that John Paul's mother was a Christian Scientist, that John Paul's father was a "casual Protestant," and that Justice Stevens' first wife was a practicing Catholic who went to church regularly and her husband did not.[248] They also record that Stevens' brother Jim, "unlike John . . . was a popular stalwart of his church, the First Unitarian Church of Chicago in Hyde Park."[249] There is not one single reference in the extensive biography to Justice Stevens attending a church or being actively involved in any religious activity or organization.

This lack of evidence regarding any transformational religious experience or affiliation is quite telling regarding Justice Stevens' worldview. Without any indication that Justice Stevens adheres to any of the Christian

---

247. Jim Wallis, *Umpires, Perspective, and the Supreme Court*, HUFFINGTON POST (May 25, 2011), http://www.huffingtonpost.com/jim-wallis/umpires-perspective-and-t_b_236348.html.

248. *See supra* notes 114-15.

249. BARNHART & SCHLICKMAN, *supra* note 101, at 53. Also, members of the Unitarian Church were Justice Stevens' mentors, Justice Wiley Rutledge and Dean Leon Green. *Id.* According to the American Humanist Association, Unitarian-Universalist congregations are Humanist. Fred Edwords, *What is Humanism*, AM. HUMANIST ASS'N, https://americanhumanist.org/what-is-humanism/ edwords-what-is-humanism/ (last visited Mar. 1, 2017). "Those who see it as a philosophy are the Secular Humanists while those who see it as religion are Religious Humanists." *Id.*

Theistic propositions set forth by James Sire,[250] one can safely assume that Justice Stevens does not have a Theistic worldview. Moreover, although Justice Stevens may believe in God and therefore have a Deistic worldview,[251] again, there is no evidence in any of Justice Stevens' speeches, writings, or biographies that indicate his belief that God created the world and established natural laws that men must follow. Without evidence that Justice Stevens purposely adhered to one or more Deistic propositions presented by James Sire, one must conclude that Justice Stevens follows the dominant worldview in America today, Naturalism.

This conclusion is inevitable when considering Justice Stevens' upbringing, education, and mentoring. Justice Stevens, the son of a "casual Protestant" who apparently did not take his religious convictions as seriously as his mother's Christian Scientism and his first wife's Catholicism,[252] was educated in perhaps the most progressive elementary and high school in Chicago, the Laboratory Schools.[253] The founder of the Laboratory Schools, John Dewey, purposely eschewed regimentation and memorization of proven principles in order to allow student freedom and experimentation.[254] This educational philosophy certainly encouraged the creativity of an excellent student like the future Justice Stevens, and further taught him that trial and error could determine what works, and what does not, and therefore what social policy should be promoted because it works.[255]

This pragmatism taught at the Lab Schools was reinforced at Northwestern Law. Pragmatic Instrumentalism in law focuses on law not as something ordained by God either through special revelation (sacred writings) or general revelation (natural law), but as (1) "practical tools for serving specific substantive goals," (2) "a means to achieve external goals that are derived from sources outside the law" (such as democratic processes); (3) not self-justifying (they need not be followed because they are intrinsically good by themselves); and (4) "democratically expressed

---

250. *See supra* notes 70-80 and accompanying text.

251. *See supra* notes 43-50 and accompanying text.

252. *See supra* notes 126-27.

253. For more information concerning the Laboratory Schools, see *The Lab Experience*, UNIV. OF CHICAGO LAB. SCH., https://www.ucls.uchicago.edu/admissions/the-lab-experience (last visited Mar. 1, 2017).

254. Henry T. Edmondson, *John Dewey Revisited in an Age of Educational Decline*, POL. SCI. REVIEWER 121, 124–25, 138–39, 212, http://www.mmisi.org/pr/28_01/edmondson.pdf (last visited Mar. 1, 2017).

255. For Dewey's educational philosophy, see generally JOHN DEWEY, EXPERIENCE & EDUCATION (1938).

wants and interests."[256] Such a view of law permits a certain amount of experimentation but, more importantly for adherents, it allows use of the law to achieve social goals. It permits the "living law" to either follow the evolving norms of society, or to nudge the norms in a desired direction.

A proper inquiry into the worldview of John Paul Stevens would have revealed his naturalistic tendency.[257] Naturalists believe that God is irrelevant or never existed,[258] and therefore that sacred texts attributed to God are immaterial or mere superstition.[259] Reason guides proper behavior, with humanity valued.[260] Since man is by nature not sinful,[261] a better society can be achieved through proper education and societal incentives.[262] Law is a proper tool to incentivize citizens in this regard, and to guard their individual liberties from needless state intrusion.[263]

Worldview matters. President Ford, the White House Counsel's office, the Office of Legal Policy of the Department of Justice, the Attorney General, and all others who participated in the selection and screening of John Paul Stevens either knew, or should have known, that John Paul Stevens had a Naturalist worldview. They should have also known the jurisprudential implications of such a worldview. There is no indication that Justice Stevens deceived in any way either the White House or Department of Justice personnel involved in the selection process, or the Senate Judiciary Committee that confirmed Stevens' nomination.[264] Unless

---

256. Robert S. Summers, *Pragmatic Instrumentalism in Twentieth Century American Legal Thought—A Synthesis and Critique of Our Dominant General Theory About Law and Its Use*, 66 CORNELL L. REV. 861, 863 (1981).

257. After his nomination, when asked at a press conference about Justice Stevens' religion, White House Press Secretary Ron Nessen stated that he did not know, since Justice Stevens' religion was not considered in the vetting process. BARNHART & SCHLICKMAN, *supra* note 101, at 194-95.

258. *Atheist, Secular, Naturalist—What's in a Name?*, RELIGIOUS NATURALISM, https://religiousnaturalism.org/2013/08/24/whats-in-a-name (last visited Mar. 2, 2017).

259. *Worldview Naturalism in a Nutshell*, NATURALISM, http://www.naturalism.org/worldview-naturalism/naturalism-in-a-nutshell (last visited Mar. 2, 2017).

260. *Id.*

261. *Naturalism*, STAN. ENCYCLOPEDIA OF PHIL., https://plato.stanford.edu/entries/naturalism/#MorFac (last visited Mar. 3, 2017) (discussing Moore's theory of moral facts, that they can be neither good nor bad).

262. *Q & A on Naturalism, CTR. FOR NATURALISM,* http://www.centerfornaturalism.org/faqs.htm#Q8 (last visited Mar. 3, 2017).

263. *Naturalism in Legal Philosophy*, STAN. ENCYCLOPEDIA OF PHIL., https://plato.stanford.edu/entries/lawphil-naturalism (last visited Mar. 3, 2017).

264. President Ford's appointment of Justice Stevens (December 19, 1975) predated, of course, the contentious confirmation hearing of Robert Bork (September 15, 1987), and the

the Ford administration purposely wanted the remarkable intellectual capacity of Justice Stevens to eventually lead the pragmatic wing of the Court, the administration did a poor job ascertaining Justice Stevens' worldview.

---

subsequent effort by nominees to hide either their worldview or the strength of their worldview.