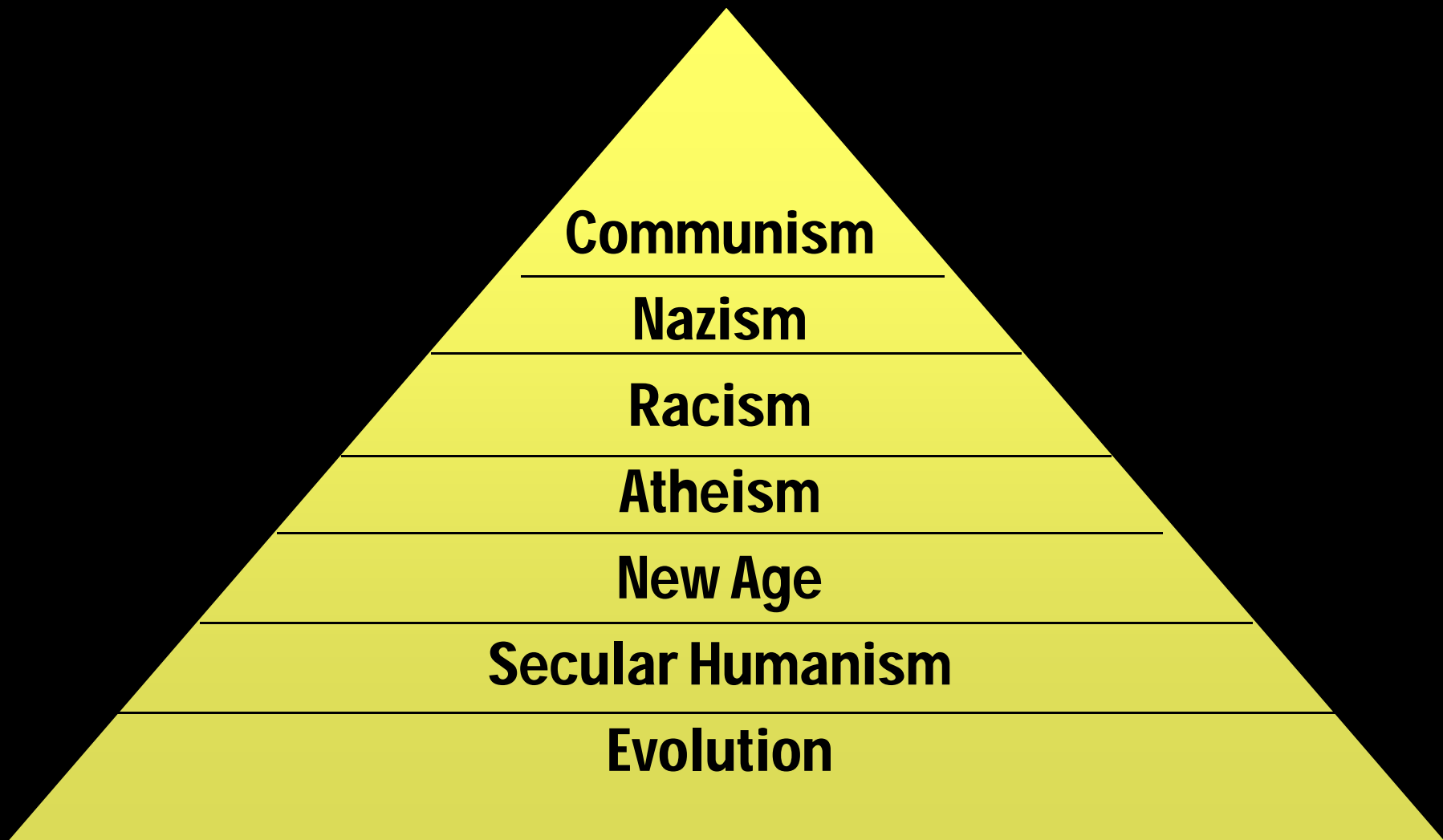


# The Legal And Social Aspects of Evolution

by

Andrew M. Woods, Th.M., Ph.D., J.D.



*Source: Henry Morris, The Long War Against God*



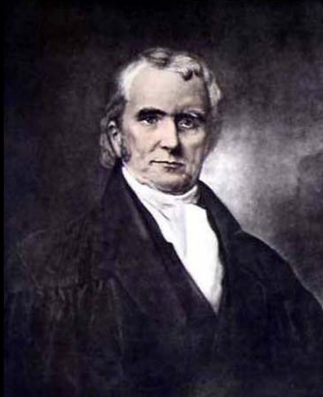
*Fred Cahill, 1952, Yale University Political Science professor; quoted in John Whitehead, The Second American Revolution (IL: Crossway, 1982), 46.*

“The appearance in the mid-nineteenth century of the concept of evolution was an event of transcending importance to the development of American Jurisprudence...This involved...a shift...from the rationalistic deductive pattern, characteristic of the pre Darwinian period, to the empirical, evolutionary approach...that is followed...today.”



*Thomas Jefferson, Writings of Thomas Jefferson, Albert Bergh, ed. (Washington D.C.: Thomas Jefferson Memorial Association, 1904), Vol. XV, p. 449, in a letter from Jefferson to Justice William Johnson on June 12, 1823.*

“Carry ourselves back to the time when the Constitution was adopted, recollect the spirit in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed.”



Chief Justice John Marshall in *Ogden v. Saunders*, 6 L. Ed. 606, 647 (1827).

“To say that the intention of the instrument must prevail; that this intention must be collected from its words; that its words are to be understood in that sense in which they are generally used by those for whom the instrument was intended; that its provisions are neither to be restricted into insignificance nor extended to objects not comprehended in them nor contemplated by its framers, is to repeat what has been already said more at large, and is all that can be necessary.”



*G. Edward White, "Reflections on the Role of the Supreme Court," 63 Judicature 162, 163 (1979).*

“The only power that judges had, under Marshall’s view, was their professional power; their technical expertise enabled them to be better ‘finders of the law’ than other persons.”



Joseph Story, *Commentaries on the Constitution of the United States*, 3rd ed. (Boston, 1858), vii

“The reader must not expect to find in these pages any novel views and novel constructions of the Constitution. I have not the ambition to be the author of any new plan of interpreting the theory of the Constitution, or of enlarging or narrowing its powers, by ingenious subtleties and learned doubts... Upon subjects of government, it has always appeared to me that metaphysical refinements are out of place. A constitution of government is addressed to the common sense of the people, and never was designed for trials of logical skill, or visionary speculation.”



George Washington quoted in John Eidsmoe, *Christianity and the Constitution* (Grand Rapids, Baker, 1987), 392-93.

“If, in the opinion of the people, the distribution or modification of the Constitutional powers be at any particular wrong, let it be corrected by an amendment the way the Constitution designates. But let there be no change by usurpation; though this may in one instance be the instrument of good, it is the customary weapon by which free governments are destroyed.”





David Barton, *The Myth of Separation*, 5th ed. (Aledo, TX: Wallbuilder Press, 1992), 221

“As in many documents, the Constitution lists the most important aspects first, progressing to those of lesser consequence; following the preamble, Article I describes the Congress, Article II the Presidency, and Article III the Judiciary. Not only does the order of listing reveal their relative position of importance, the amount of detail provided by each branch also reflects its relative importance. The Legislature (Article I) received 255 lines of print while the Presidency (Article II) required only 114 lines. The judiciary (Article III) merited a mere 44 lines.”



Justice Brennan, Teaching Symposium, Georgetown University,  
Washington, D.C., October 12, 1985, p. 51.

In a 1985 address to the American Bar Association  
Justice William Brennan contended that this  
“evolutionary process is inevitable and is...the  
true interpretive genius of the text.”



Laurence Tribe, *American Constitutional Law*, p.iii.

“The Constitution is an intentionally incomplete, often deliberately indeterminate structure for the participatory evolution of political ideas and governmental practices.”



Laurence Tribe, *American Constitutional Law*, p.iv.

“The highest mission of the Supreme Court, in my view, is not to conserve judicial credibility, but in the Constitution’s own phrase, ‘to form a more perfect union’ between right and rights within that charter’s necessarily evolutionary design.”



John Eidsmoe, "Creation, Evolution and Constitutional Interpretation," *Concerned Women for America* 9 (September 1987): 7

“Underlying the disagreement over interpretation of the Constitution-is a confrontation between the two world views-the creationists, absolutist, Newtonian views of the framers, versus the evolutionist, relativist, Darwinian views of most legal scholars today.”



Edwin Meese, III, Address to American Bar Association, 1985;  
adapted in “Toward a Jurisprudence of Original Understanding,”  
*Benchmark* Vol. II, no. 1, (January-February 1986): 6.

“Under the old system the question was *how* to read the Constitution; under the new approach, the question is *whether* to read the Constitution.”

Felix Frankfurter in *Graves v. New York ex rel. O'Keefe*, 306 U.S. 466, 491-492 (1939).

“The ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it.”



Charles Evans Hughes; quoted by Craig R. Ducat and Harold W. Chase, *Constitutional Interpretation* (St. Paul: West Publishing Co., 1974, 1983), 3.

“We are under a Constitution, but the Constitution is what the judge says it is.”





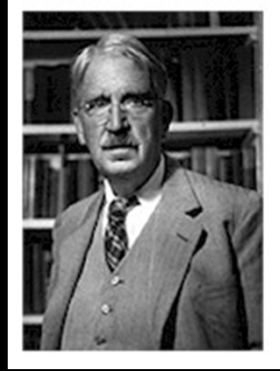
Oliver Wendell Holmes cited in Richard Hertz, *Chance and Symbol* (Chicago: University of Chicago Press, 1948),  
107.

“I see no reason for attributing to man a significance different in kind from that which belongs to a baboon or a grain of sand.”



Speech by Attorney General Janet Reno, Newark, New Jersey, May 5, 1995. Quoted in James Bovard, “Waco Must Get a Hearing,” *Wall Street Journal*, May 15, 1995.

“You are part of a government that has given its people more freedom...than any other government in the history of the world.”



John Dewey;  
quoted in Barton, *Original Intent*, 228.

“The belief in political fixity, of the sanctity of some form of state consecrated by the efforts of our fathers and hallowed by tradition, is one of the stumbling blocks in the way of orderly and direct change.”



Wayne Grudem, *Systematic Theology*, p. 287.

“...if human beings are continually evolving for the better, then the wisdom of earlier generations...is not likely to be as valuable as modern thought.”



Justice Iredell; quoted in Barton, *Original Intent*, 217.

“For nearly thirty years it [Blackstone’s Commentaries] has been the manual of almost every law student in the United States, and its uncommon excellence has also introduced it into the libraries, and often to the favorite reading of private gentlemen.”



Blackstone, *Commentaries on the Laws of England* (Wendell's Ed. 1847), p. 38-39, n. 10; p. 42.

“Thus, when the Supreme Being formed the universe, and created matter out of nothing, he imposed certain principles upon that matter, from which it can never depart, and without which it would cease to be...If we farther advance, from mere inactive matter to vegetable and animal life, we shall find them still governed by laws, more numerous indeed, but equally fixed and invariable...Man, considered as a creature, must necessarily be subject to the laws of his creator, for he is entirely a dependent being.

...no human laws should be suffered to contradict the laws of nature and the law of revelation.”



Pat Robertson, *America's Dates With Destiny* (Nashville: Thomas Nelson Publishers, 1986), 95.

“I spent three years getting my law degree at Yale Law School. From the moment I enrolled, I was assigned huge, leather-bound editions of legal cases to study and discuss. I read what lawyers and judges, professors, and historians said about the Constitution. But never once was I assigned the task of reading the Constitution itself...”



William J. Brennan, Jr.; quoted in Eidesmoe,  
*Christianity and the Constitution*, 397-98.

“It is arrogant to pretend that from our vantage we can gauge accurately the intent of the framers on application of principle to specific contemporary questions. All too often sources of potential enlightenment such as records of the ratification debates provide sparse or ambiguous evidence of the original intention...And apart from the problematic nature of the sources, our distance of two centuries cannot but work as a prism refracting all we perceive.”





Eidesmoe, *Christianity and the Constitution*, 397.

“that the Constitution is more than the written document signed in 1787; rather, the various decisions of the Supreme Court are part of the Constitution, and these along with the written document are the true ‘Constitution’ of the land. It has even been said that the Supreme Court sitting in session is a ‘continuous constitutional convention.’”



Thomas Jefferson, *Writings of Thomas Jefferson*, Albert Bergh, ed.  
(Washington D.C.: Thomas Jefferson Memorial Association, 1904),  
Vol. XV, p. 277, September 28, 1820.

“You seem...to consider judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men, and not more so...and their power the more dangerous as they are in office for life, and not responsible, as the other functionaries are to the elective control. The Constitution has erected no such single tribunal...”

Lino A. Graglia, "Judicial Review on the Basis of 'Regime Principles': A Prescription for Government by Judges,  
*South Texas Law Journal*, Vol. 26, No. 3 (Fall 1985), pp. 435-52, at 441.

...judicial usurpation of legislative power has become common and so complete that the Supreme Court has become our most powerful and important instrument of government in terms of determining the nature and power of American life. Questions literally of life and death (abortion and capital punishment), of public morality (control of pornography, prayer in the schools, and government aid to religious schools), and of the public safety (criminal procedure and street demonstrations), are all, now, in the hands of judges under the guise of constitutional law. The fact that the Constitution says nothing of...abortion...has made no difference. The result is that the central truth of constitutional law today is that it has nothing to do with the Constitution except that the words 'due process' or 'equal protection' are almost always used by the judges in stating their conclusions...constitutional law has become a fraud, a cover for a system of government by the majority vote of a nine-person committee of lawyers, unelected and holding office for life.

**“Evolving standard of decency.”**

**Furman v. Georgia, 408 U.S. 238, 269-70 (1972).**

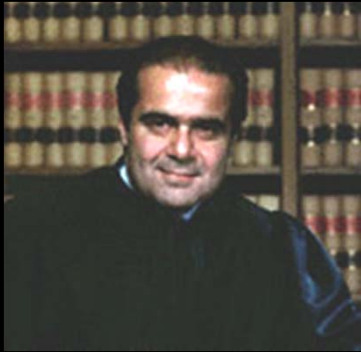
*Documents of American History*, Henry S. Commager, ed., 5<sup>th</sup> ed. (NY: Appleton-Century-Crofts, Inc., 1949), 131.

Article III of the Northwest Ordinance says,  
“Religion, morality, and knowledge being  
necessary to good government and the happiness  
of mankind, schools and the means of education  
shall forever be encouraged.”



*School District of Abington Township v. Schempp*, 374 U.S. 203, 220-21 (1963).

“Finally, in *Engel v. Vitale*, only last year, these principles were so universally recognized that the court, *without the citation of a single case*...reaffirmed them.”



Justice Anthony Scalia's dissenting opinion  
in *Board of County Commissioners v.*  
*Umbehr*, 518 U.S. 668, 711.

“What secret knowledge, one must wonder, is breathed into lawyers when they become members of this court, that enables them to discern that a practice which the text of the Constitution does not clearly proscribe, and which our people have regarded as constitutional for 200 years, is in fact unconstitutional?...Day by day, case by case, [the Court] is busy designing a Constitution for a country I do not recognize.”



Benjamin Ferencez and Ken Keyes, *PlanetHood* (Coos Bay, OR: Vision Books, 1988), 33; quoted in and David A. Noebel, *Understanding the Times* (Manitou Springs, CO: Summit Press, 1991), 864-65.

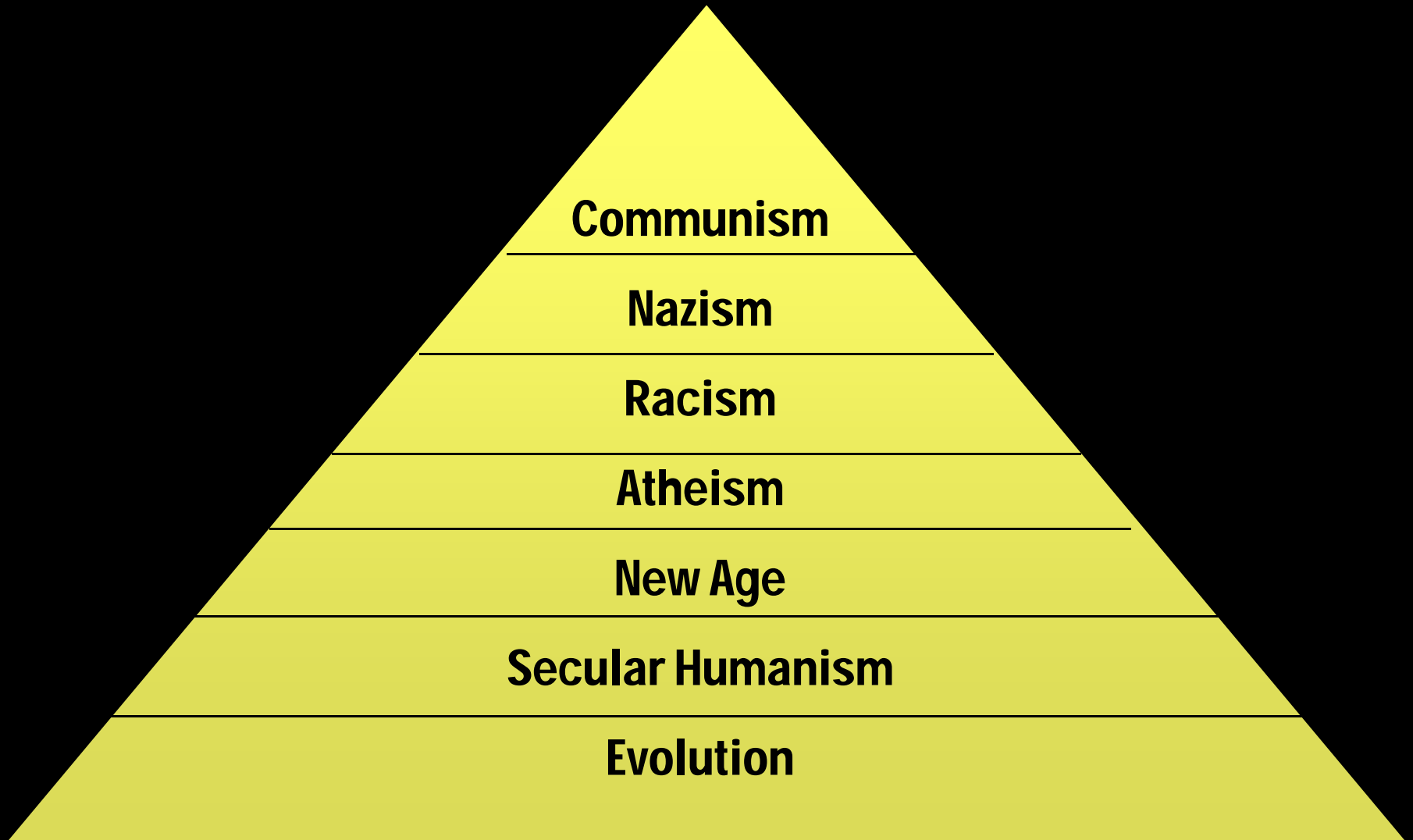
“Despite all of the contemporary stresses and strife, an objective analysis of the historical record will show that humankind is experiencing a continuous-though wobbly-movement toward a more cooperative world order.”





Benjamin Ferencez and Ken Keyes, *PlanetHood* (Coos Bay, OR: Vision Books, 1988), 141; quoted in and David A. Noebel, *Understanding the Times* (Manitou Springs, CO: Summit Press, 1991), 869.

“We have seen that humankind is not simply moving in a vicious killing circle; it is on an upward climb toward completing the governmental structure of the world. We are inspired by our great progress toward planet hood.”



*Source: Henry Morris, The Long War Against God*