

The Basic Blackstone:
Constitutionalist Manifesto
and
Constitutionalist Papers
Second Edition

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The Basic Blackstone: **An Overview**

“Knowledge will forever govern ignorance: And a people who mean to be their own governors must arm themselves with the power that knowledge gives” (James Madison, “Father of the Constitution”; U.S. President, 1809-1817). Madison’s wisdom has never been more relevant than today, when America is engulfed in the flames of a Culture War. It is the bitterest kind of war: a war between diametrically opposed worldviews. The Judeo-Christian worldview is under assault by the Humanistic worldview. And a white-hot center of this war is the constitutional/judicial front. Federal judges, who took an oath of office requiring them to support the Constitution, are now among its greatest enemies.

We Americans must, therefore, empower ourselves with an arsenal of knowledge about the courts, the Constitution, and the Culture War. Helping to arm you for the Culture War is the purpose of the Blackstone Institute and this publication, *The Basic Blackstone*. *The Basic Blackstone* merges into one document two publications previously published separately: the *Constitutionalist Manifesto* and the *Constitutionalist Papers*.

The first editions of both documents were published several years ago, and usage since then has demonstrated that they are highly complementary - hence, the publication of the second edition of these two in one volume. The *Manifesto* spells out the principles for which we are fighting and the weapons we must use. The *Constitutionalist Papers* reveal, in a manner understandable by layman or lawyer, the disastrous consequences resulting from our nation’s violating the principles set forth in the *Manifesto*.

Both publications have been undated, expanded, and edited for this Second Edition. It is our prayer that as you study them, you will indeed become more “empowered with knowledge” to fight for the Judeo-Christian worldview and Constitutionalist principles in America’s Culture War.

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CONSTITUTIONALIST MANIFESTO

A Declaration of Independence from Judicial Supremacy

Second Edition

by

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I. Preamble

America is engulfed in the fires of a Culture War, and for more than fifty years federal judges have been whipping the flames to a white-hot heat. Federal courts have usurped the power to define whether we and our loved ones are truly “persons” deserving of the constitutional protections of life and liberty, even to the point of determining whether our religious beliefs are “acceptable” to the I.R.S. (thus being constitutionally sheltered from destructive taxation). This “imperial judiciary” has also approved the exclusivistic evolutionary teaching that all of us are nothing more than animals, and has ruled that when we oppose gay rights activism and marriage, our only possible motive is hatred for homosexuals.

These “Reconstructionist” judges (popularly labeled “liberals” and “judicial activists”) reject the United States Constitution and advocate rule by judges. This deadly Reconstructionism is rooted in the Humanistic worldview and must be repelled! In contrast, Constitutionalist thought is rooted in the Judeo-Christian worldview. The responsibility for a counter-attack against Reconstructionism falls on us Constitutionalist (popularly known as “conservatives” and “judicial restraintists”). We respect the Constitution and advocate restraint by judges to protect our God-given rights.

This *Manifesto* is not an attack on judicial independence. Quite to the contrary, this *Manifesto* calls for a radical reorientation of the federal judiciary’s focus from *dependence* on the forces of power politics and the judges’ own personal values to proper *dependence* on the U.S. Constitution. Only if this occurs will America once again be blessed with constitutional supremacy rather than be cursed with judicial supremacy. And only then will we have a truly “independent judiciary.”

This *Manifesto* is a declaration of the fundamental Constitutionalist principles which made America great and for which we must fight in today’s Culture War. This declaration consists of four sections : I. [This] Preamble II. Principles [central to Constitutionalist theory] III. A Plan of Action [to return America to these Principles] IV. Proclamation [calling American patriots to act]. These are the standards by which we must evaluate judicial decisions, select federal judges, elect other officials, and promulgate all other constitutional/judicial policy. All the principles set forth here are inseparably related to one another and are indispensable to a comprehensive and consistent body of Constitutionalist theory. The “Father of the Constitution,” James Madison, asserted that “knowledge is power.” Understanding clearly and supporting completely this body of principles will unite and empower us as Constitutionlists to fight effectively to reclaim our Constitution, our culture, our country and our courts.

I. Principles

A. The Necessity and Nature of the Constitution

1. The American legal system must be anchored in a supreme, fundamental, permanent law to give the system the stability and direction necessary for it to be a mature, enduring legal system.
2. Legal stability and direction are possible only if our fundamental law is characterized by certainty (the law can be objectively and clearly understood); consistency (a judicial decision contains no internally-conflicting portions, nor do judicial decisions existing at a particular point in time conflict with one another); and continuity (current court decisions are consistent with past court decisions unless there is a legitimate, compelling reason for change in the law).
3. The U.S. Constitution is the supreme, fundamental, permanent law of the land. It imparts certainty, consistency, and continuity to our legal system.
4. The Constitution is, and must by its very nature be, the supreme, fundamental, permanent law of the American legal system. No court decision, statutory law, or other form of “law” is either equal to, or superior to, the Constitution.
5. The Constitution, properly interpreted, is the ultimate “precedent” in American law and is the standard against which other “precedents” (previous court decisions) in constitutional law (decisions of the courts interpreting the Constitution) must be evaluated. No case “precedent,” regardless of its age, is “settled law” deserving of enforcement if it violates the Constitution, properly interpreted.
6. “Autonomous judicial restraint” is a recently created perversion of “judicial restraint” which must be rejected. “Autonomous judicial restraint” attempts to separate “judicial restraint” from the Constitution and places excessive emphasis on prior court decisions, rather than the Constitution, as the precedent to be followed. This approach leaves standing such egregious decisions as those described here in this *Manifesto*. These decisions are activist and anti-Constitutional, and adherence to them renders a judge a judicial activist rather than a genuine restraintist. “Authentic judicial restraint,” which is the correct, original form of judicial restraint, must be employed because it correctly subordinates court decisions to the Constitution, evaluating decisions according to this supreme law of the land.
7. The Constitution is controlling in all areas of law about which it speaks and should be effectively enforced within those limits. The Constitution does not control every area of life much authority and responsibility are reserved to the control of other societal institutions - individual, family, and church - and to state governments.

B. Interpretation of the Constitution

8. The Constitution will remain the supreme law of the land only so long as it is properly interpreted according to its fixed meaning.
9. The words of the Constitution do have a fixed meaning which can and must be determined by careful, objective study of the express language of the text; the context of the provision as well as the specific words of the entire document; the intent of the Framers; and the worldview upon which our Constitution was based.
10. The meanings of the Constitution's provisions are not "indeterminate," conflicting, and obsolete, constantly needing change through an "evolutionary process," as advocated by Reconstructionists. The meaning of the Constitution's words cannot, and should not, be derived from the cultural/political environment of a particular time and/or a particular power group, such as federal judges.
11. The basic meaning of the Constitution's provisions can be altered only by the people, who are the ultimate human source of the Constitution. There are, however, limits to the people's power. We must follow the formal amendment process specified in Article V of the Constitution, and we can alter the document only within the limits allowed by the worldview in which the Constitution is embedded.
12. No foreign or "international" law is to be employed in interpreting our Constitution, except the English Common Law system as it existed when our Constitution was framed, and the values of the Judeo-Christian worldview in which it was crafted.

C. Sources of the Constitution

13. The Constitution is embedded in one all-encompassing worldview and, properly interpreted, can express the values of only this one worldview. The Constitution, properly interpreted, is not, and cannot be, a document reflecting more than one worldview. A "pluralism" or "diversity" of worldviews cannot provide a solid, workable foundation for our Constitution.
14. Religious/theological/philosophical views and values are foundational to any worldview. Therefore, religious/theological/philosophical views are inseparably related to legal/constitutional/judicial values and actions. There is not, and cannot be, a complete "wall of separation" between religious/theological/philosophical values and legal/constitutional/political values.
15. The worldview in which the Constitution is moored is the Judeo-Christian worldview. Therefore, the ultimate foundation of the Constitution consists of Judeo-Christian religious/theological/philosophical values and views, revolving around a theistic God. The ultimate foundation of the Constitution is not the Humanistic

worldview, revolving around a human agent or group of human agents (i.e., judicial elite) who ravage the Constitution with Humanistic perspectives, purposes, and values. Indeed, our constitutional republic will increasingly malfunction and eventually collapse if it is severed from its Judeo-Christian foundation.

D. Purposes of the Constitution

16. The Constitution is designed to accomplish both general and specific purposes. Its general purposes are described above (#s1.-3.)
17. The specific purposes of the Constitution are listed clearly in its Preamble: "...to form a more perfect union, establish Justice, insure domestic Tranquility, provide for the common defence [sic], promote the general Welfare, and secure the Blessings of liberty to ourselves and our Posterity..." These are consistent with the Constitution's general purposes and the Judeo-Christian worldview.
18. The focus of these goals is the common good, not the self-perceived benefits of an individual or minority group in society, keeping in mind that history has shown the rights of individuals to be protected best when the Constitution is properly interpreted and applied by the courts.

E. Principles of the Constitution: Justice

19. The Constitution guarantees two omnibus principles – justice and jurisdiction. "Justice" in its most general sense involves "that which is right in a moral sense" and "that which is equitable" (as defined by the Judeo-Christian value system).
20. The Constitution's omnibus principle of justice encompasses two primary principles – substantive justice and procedural justice. The Constitution's Bill of Rights and Fourteenth Amendment are major guarantors of justice in America.
21. Substantive justice refers to the content of laws, their essence or "substance," and embraces a number of God-given rights and principles, including:
 - The right to life from the moment of conception to the point of natural death;
 - The right to liberty of worship, of expression and association, of personal security, of freedom of movement, and of making one's personal decisions;
 - The sanctity of marriage as Biblically defined throughout Western and American history;
 - The right to fair and honest treatment by civil law;
 - The right to freedom from defamation of one's character;
 - The right to a moral life ;
 - The right to property – to obtain and own property and enjoy the fruits of one's own labor.

22. All of these rights must be exercised responsibly, within the limits of the Judeo-Christian worldview and in a manner which conforms to the Constitution and the interests of others. Violations of these standards of accountability may legitimately result in limitation on, or even deprivation of, certain rights.
23. In order to secure these rights, substantive justice under the U.S. Constitution includes the principles of:
 - Popular sovereignty/self-government;
 - Limited government;
 - Majority rule with minority rights;
 - The division of governmental powers between national and state governments (“federalism”); the separation of governmental powers among branches of government on the same level – legislative, executive, and judicial;
 - Checks and balances among the three branches of government.
24. Procedural justice involves the enactment and enforcement of law. Procedural justice includes the requirements of:
 - Equal protection of the law when no legal distinctions are justified;
 - Fair disclosure of charges and/or other relevant information to the parties in a dispute;
 - Fair hearings or trials;
 - Strict rules of evidence;
 - Scrupulous honesty and integrity on the part of officials;
 - Different grades of punishment, including the death sentence, for different offenses;
 - The use of restitution in all appropriate circumstances.

F. Principles of the Constitution: Jurisdiction

25. The omnibus principle of jurisdiction recognizes that there are different societal institutions, with family, church, and civil law/government being the primary ones. There are also multiple authorities within government. Each of these agents has its own sphere of responsibility and power and must not intrude on the sphere of any other agent in order to be maximally effective.
26. The principle of jurisdiction is especially critical in today’s Culture War to appropriately limit judicial officials:
 - Federal judges have neither the authority nor the competence to rewrite the Constitution by changing its basic meaning;
 - Federal judges must recognize their inherent duty and responsibility to interpret the law as written, not to write new law or interpret existing law in accordance with judges’ personal values, views, or political beliefs;
 - Federal judges must recognize fully the principle of majority rule with minority rights;

- The federal judiciary must recognize fully the validity of the principles of separation of powers and checks and balances;
- The federal judiciary must recognize fully the validity of the principle of federalism;
- Federal judges must recognize fully that civil law/government is only one societal institution among several and that there are multiple legal/governmental agencies and spheres which the judiciary must respect;
- The national courts are empowered and equipped to handle only cases involving clearly identifiable parties who are arguing over specific issues and rights which are recognized by the Constitution, and for which the Constitution provides narrow and direct relief. Massive class action suits involving vague parties and issues are beyond court power. Once a national court has resolved such a dispute, the court has no power to try and extend its control over the problem for long and/or indefinite time periods. Likewise, judges lack the power to try enforcing their decisions through unconstitutional actions such as forcing local governments to raise taxes.

The Rule of Law prevails in America when there is certain, consistent, and continuous correct interpretation of the Constitution by:

- Acknowledgement of the Constitution as the supreme law of the land;
- Application of the proper standards of Constitutional interpretation;
- Implementation of the Judeo-Christian worldview as the Constitution's ultimate source, whether or not it agrees with a judge's own views or values;
- Promotion of the above-stated purposes of the Constitution;
- Protection of the omnibus principles of justice and jurisdiction.

III. Plan of Action

"...the Supreme Court, as currently constituted [is] a lawless, rogue institution capable of the most monstrous of injustices in the name of law, with a smugness and arrogance worthy of the worst totalitarian dictatorships of all time." So declared law professor Michael Paulsen in his 2003 article in the *Notre Dame Law Review*.

Paulsen's description fits not only the U.S. Supreme Court, but an increasing number of lower federal and state courts as well. Reconstructionist judges have consistently and egregiously violated the truths outlined above, but Americans have been tragically slow and reluctant to fight back. Together, we can change this situation! Four fundamental facts now characterize the constitutional/judicial front in today's Culture War:

1. The judiciary as an institution is the polar opposite to that which our Constitutional framers intended;
2. This morphing of the courts is due, to a substantial degree, to the courts themselves;
3. This metamorphosis of the judiciary is also due to us, the people;

4. The courts have neither the constitutional authority nor the ability to seize the legislative and executive powers which they now exercise;
5. The courts must be restrained now by external forces – an educated and motivated corps of laymen and leaders.

We are encouraged to curb the courts by one of the U.S. Supreme Court's most prominent members: Justice Felix Frankfurter (not a conservative), who assured us in 1941 that "Judges as persons or courts as institutions... are entitled to no greater immunity from criticism than other persons or institutions.... Judges must be kept mindful of their limitations and their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt."

The number and types of court curbing devices available to us are extensive. Some of the most significant measures we must employ as concerned citizens include:

A. Court Curbing by the Executive Branch

1. The President should carefully investigate all potential judicial nominees and name only those who evidence a strong commitment to Constitutionalist principles;
2. The President and Congress should institute a system for the nomination, consideration, and Senatorial votes on judicial nominees so that every nominee receives a well-informed vote by the Senate in a reasonable time period;
3. The President should exercise his full political and persuasive powers to inform and involve both leaders and laymen in court curbing efforts;
4. The executive branch should refuse to spend federal money for the enforcement of any court decisions violative of this *Manifesto*;
5. The executive branch should deny all federal agents the power to enforce court decisions violative of this *Manifesto*.

B. Court Curbing by Congress

Article III of the Constitution grants Congress massive powers to keep the courts within their constitutional limits. Constitutionalist judges have always recognized this congressional power. The U.S. Supreme Court wrote in 1845 that "...the judicial power of the United States, although it has its origin in the Constitution is, except in [a tiny few] instances dependent for its distribution and organization, and for the modes of its exercise, *entirely upon the action of Congress...*" (emphasis added). Among the actions that Congress can and should take are the following:

6. Hold extensive, fair, and open investigations of the federal judiciary with particular emphasis on the reforms listed here and on educating both politicians and the public;

7. Deny federal courts the power to hear challenges to acknowledgements of God on public property and in official utterances such as the Pledge of Allegiance;
8. Deny federal courts the power to hear challenges to federal and state actions that protect marriage as traditionally defined;
9. Refuse to recognize, fund, or otherwise enforce federal court decisions that are based totally or in part on foreign or international law, except the English Common Law system as it existed when our Constitution was framed, and the Judeo-Christian worldview;
10. Require, in challenges to voter initiatives, that all non-judicial remedies be exhausted before appealing to a federal court, and that a minimum of three judges on a court must find the referendum unconstitutional;
11. Prohibit federal courts from any actions that are, in effect, judicial dictates to raise taxes;
12. Require a “supermajority” (at least six or seven Justices) of the Supreme Court to strike down laws;
13. Require that at least five Supreme Court Justices (not the current four) must vote to hear a case in which a lower federal court has already found a state law constitutional;
14. Clarify and limit federal court power by amending current congressional statutes pertaining to “standing,” “cases and controversies,” and other requirements that an issue must satisfy to be heard by a court;
15. Prohibit federal funding of legal services to challenge court decisions that violate this *Manifesto*;
16. Refrain from passing so many federal criminal laws, and defederalize much existing criminal law, returning it to the states (e.g., “hate crimes” laws and gun control laws);
17. Prohibit judicial micromanagement of institutions such as prisons, mental hospitals, and public schools;
18. Reduce the size of the federal judiciary, including judgeships, staffs and special masters – a reduction which will promote justice when the other reforms of this *Manifesto* are instituted;
19. Prohibit any procedures – such as the Senatorial filibuster of judicial nominees – that impede the well-informed, fair, orderly, and prompt consideration of judicial

nominees;

20. Clarify the grounds for impeaching judges, including violations of the principles stated in this *Manifesto*, utilizing historical and congressional documents which already exist to guide this process;
21. Be willing to utilize its impeachment powers to remove a judge whose decision-making conduct is an egregious model of violations of this *Manifesto*;
22. Use Section 5 of Amendment XIV to overrule Supreme Court decisions that are inconsistent with the original meaning of Section 1 of the Amendment.

C. Court Curbing through the Political Processes

23. Voters should carefully question candidates about their views on the Constitution and the courts through methods such as the thorough “Candidate Questionnaire” available from the Blackstone Institute; voters should also clearly inform candidates that their actions, if they are elected to public office, will be carefully watched;
24. Fully utilize the media – talk shows, opinion and editorial pages, programs for leader and laymen groups, etc. to educate and activate others;
25. Utilize congressional hearings on the constitutional/judicial crisis to educate the public as well as politicians;
26. Develop massive educational programs about our constitutional/judicial crisis and the means of resolving it.

D. Court Curbing by Constitutional Amendment

We should amend the Constitution to:

27. Empower Congress to overturn federal court decisions violative of this *Manifesto*;
28. Empower the people in a national election to overturn federal court decisions violative of this *Manifesto*;
29. Establish term limits for federal judges and a retention system requiring a judge to be continued in office by popular vote.

IV. Proclamation

We, America’s Twenty-First Century Constitutionalists, affirm these principles as both our foundation and the objects for which we are fighting in our Culture War. We call

upon all Americans who love our constitutional republic to understand clearly and support completely this *Manifesto*. May we do so in the spirit of the Continental Congress on July 4, 1776, which declared that “with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.” Like our forefathers in 1776, may we Constitutionals today fight to reclaim our courts, our Constitution.

CONSTITUTIONALIST PAPERS

Commentaries on Court Cases and the Constitution

Second Edition

by

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Constitutionalist Papers: **An Overview**

If American patriots today are to be armed adequately with the power of knowledge demanded by James Madison, contemporary patriots must understand our Humanist/Reconstructionist foe and one of his most lethal weapons – court decisions and doctrines. The egregious and deadly errors contained in Reconstructionist court decisions and doctrines *can* be understood by both laymen and lawyers who will commit just a small portion of their time and energy to gaining that understanding. These *Constitutionalist Papers* rip away the shrouds of almost cultic mystery with which Reconstructionists try to hide their errors, exposing these errors and dangers in a way that any “reasonable person” (a popular legal term) can understand.

The cases and issues of constitutional law discussed here are included for at least three reasons: (1) They expose the unfortunate victory of judicial supremacy over constitutional supremacy in many areas of our national law and life; (2) They address the deadly myth that the Constitution has no fixed meaning, freeing judges to read into the document *their* views and values; (3) They reveal the Humanistic nature of the judicial supremacists and their stealthy but relentless erosion of the Judeo-Christian foundations of our Constitution and our culture.

This edition of the *Constitutionalist Papers* contains some material which has been previously published in other venues. But the content has been updated, edited, and expanded for this edition. Most of the cases come from the U.S. Supreme Court, but a few are decisions of lower federal courts and a state supreme court. The cases discussed cover the time period from January 1973 through the Ten Commandments cases decided at the end of the Court’s 2004 term. William Penn wrote, “Those who will not be governed by God will be ruled by tyrants.” It is our fervent hope and prayer that these *Papers* will empower you with the knowledge to fight effectively for an America governed according to God’s law, rather than one tyrannized by Humanistic law advanced by unelected federal judges.

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#1

The Constitutionalist Manifesto: A Declaration of Independence from Judicial Supremacy (Summary)

America is engulfed in the fires of a Culture War, and federal judges have been whipping the flames to a white-hot heat. Their objective? The aim of “The crusading and coercing roles of **the Supreme Court and the federal judiciary is the wholesale reconstruction of American society . . .**” (Robert Nisbet, 1982). **Judicial supremacy has replaced Constitutional supremacy.** The Reconstructionists responsible for this constitutional and cultural tragedy must be repelled. The **responsibility for freeing America from judicial supremacy falls on us Constitutionals**, who revere the Constitution and its foundations. The *Constitutionalist Manifesto* draws our line in the sand and is a Twenty-First Century Declaration of Independence for our constitutional republic. **The principles of the *Manifesto* are summarized below.**

1. **The Constitution is**, and must be, by definition, the “**supreme, fundamental, paramount, permanent**” law of the land. No court decision, statutory law, or other form of “law” is either equal to, or superior to, the Constitution.
2. **The basic purpose of our Constitution, as of all constitutions, is to provide the certainty, consistency, and continuity** necessary for our legal system to survive and prosper. Additionally, the Preamble lists six specific Constitutional purposes, which balance liberty with the common good.
3. **The provisions of our Constitution have a fixed meaning.** This meaning can, and must, be determined by careful, objective study of the express language of the text, the context of the provision being interpreted and of the entire document, the intent of the Framers, and the worldview in which the Constitution was embedded by its Framers.
4. **The Constitution, properly interpreted, can express the values of only one worldview.** It cannot reflect a “pluralism” or “diversity” of worldviews.
5. **The worldview in which the Constitution is embedded is the Judeo-Christian worldview.** The Constitution’s principles and purposes are defined and prioritized by the Judeo-Christian value system. The Constitution cannot survive if it is ripped from its Judeo-Christian moorings.
6. **The Constitution embodies a multiplicity of distinct principles which must be enforced to protect and guide our legal system and our culture.** These principles include representative government, the sanctity of life, liberty, the rule of law, due

process of law, equal protection of the laws, and private property/free enterprise. These principles are to be secured by structural principles, including federalism and the separation of powers.

7. **Federal judges have neither the authority nor the ability to rewrite the Constitution** by altering its basic meaning. Federal judges are governed by the Constitution. Judges are required to observe their boundaries and respect fully the legitimate range of powers residing in the individual, the other branches of the national government, the state governments, and the other institutions of society (e.g., the family and religion).

We, America's Twenty-First Century Constitutionalists, **affirm these principles** as both our foundation and the objects for which we are fighting in America's Culture War. **We call upon all Americans who love our constitutional republic** to understand clearly, and support completely, these principles. Thus may we fight together **to reclaim our culture, our Constitution, and our courts!**

#2

“Precedent” and the Warren Court’s Legacy in the Twenty-First Century

In 1953, newly-elected President Dwight Eisenhower **appointed Earl Warren to be the Chief Justice** of the United States. This nomination proved to be the **first shot fired in a judicial/constitutional revolution** which continues today. As Robert Bork has stated, “[The Warren Court] stands first and alone as a legislator of policy, whether the document it purported to apply was the Constitution or a statute. Other Courts had certainly made policy that was not theirs to make, but the Warren Court so far surpassed the others as to be different in kind.”

The Warren Court (1953-1969) fueled the Culture War into an inferno and then placed the federal judiciary squarely in the white-hot center of the conflagration. “Impeach Earl Warren” signs exploded like rockets across the nation as Americans began to realize what was happening. But **the courts and the Constitution have remained at the center of our culture conflict**, and much of the Warren Court’s legacy remains intact.

The year of 2003 was the **Fiftieth Anniversary of the Warren Court revolution**. In observance of that history-changing event, Twenty-First Century patriots must launch a more effective counter-revolution than in the past to reclaim America’s courts and the Constitution from the constitutional black hole into which the Warren Court first plunged us.

James Madison, the Father of the Constitution, exhorted us to **“arm ourselves with the power that knowledge gives.”** Thus, **an effective counter-revolution** must begin with a correct understanding of the courts, the Constitution, and the Culture War. The *Constitutionalist Papers* were written with that intent in mind.

The War today is most visible in the furious debates over various federal court decisions (e.g., the Pledge of Allegiance decision of 2004) and the judicial nominations debates sparked by liberal/activist Democrats. These battles are fueled by **three fundamental, interrelated constitutional/judicial issues**. If all three of these issues are not given proper weight or are not properly related to one another in constitutional debates and policy decisions, pernicious results can follow. These three issues are:

- Issue #1: The Constitution:** its nature, sources, and interpretation (“interpretivists v. noninterpretivists”);
- Issue #2: The courts:** their powers, competence, and relationships to other agencies in government and society (“restraintists v. activists”);
- Issue #3: The consequences** that court actions generate for public policy (“conservatives v. liberals”).

To the **Warren Court, radically liberal policy consequences (Issue #3) were most important**, rendering the Court, as a result, radically activist. **In the current war** over the courts and the Constitution, all three issues are being bitterly debated.

Supporters of current judicial nominees often assert that an individual is, or should be, a “restraintist judge.” And they seem to define “restraint” as a commitment to uphold existing U.S. Supreme Court rulings and to be deferential to the actions of other governmental authorities (e.g., Congressional statutes). But **much more needs to be understood about the restraint v. activism question (Issue #2),** starting with the relationship of this issue to the Constitution and the **principle of “precedent” (Issue #1).** This principle – also referred to as “stare decisis” (“let the decision stand”) – requires that cases today be decided in accordance with past cases of a similar nature (such past cases constituting “precedents” for today).

- **The principle of precedent is moored in the English Common Law tradition.** But there are some **vital differences between the American and British systems.** England does not have, and never has had, a single supreme document as its “Constitution.” The U.S. has always had such an organic law. And it is **our Constitution which is the ultimate precedent in America** – the ultimate standard against which all law must be measured, including decisions of the Supreme Court and other federal courts. **A genuine judicial restraintist understands this fundamental fact** and the necessity of evaluating current court decisions, even ones of long-standing (“settled law”), in the light of the Constitution properly interpreted – not wrongly interpreted as in the Warren Court’s constitutional jurisprudence. As a matter of fact, a “precedent” violative of the Constitution can be argued to not be truly “law” in the first place.
- **The age of a court decision is not necessarily an indicator of** its constitutional quality (its legitimacy) any more than the age of a human being is an indicator of the quality of that person’s life. An often-cited example of this fact is *Plessy v. Ferguson* (1896), which created the “separate but equal doctrine” of race relations. Fifty-eight years later, *Plessy* was overturned by the Court in *Brown v. Topeka Board of Education* (1954), which threw out school segregation. **However long a “precedent” has existed, it should be eliminated if it violates the Constitution.**
- Indeed, **numerous court decisions/doctrines and other governmental actions have been overturned** by recent Courts. Constitutional scholar, Prof. David O’Brien, reports the following: The Warren Court overturned 236 acts (including 45 Supreme Court decisions); The Burger Court overturned 293 acts (including 52 high court rulings), and the Rehnquist Court overturned 134 actions between 1986 and 1998 (including 30 decisions of the Supremes).

“Precedent” obviously has been no barrier to recent Supreme Court decision-making, especially when it has produced liberal policies as a consequence.

- **Even British jurists recognize the limits of precedent in their system.** The high-ranking British judge, Alfred Lord Denning, argued in 1959 that, “If lawyers hold to their precedents too closely, forgetful of the fundamental principles of truth and justice which they should serve, they may find the whole edifice comes tumbling around them.” In America, the “fundamental principles of truth and justice” which bind our judges are found in the correct interpretation of the Constitution. Court decisions to the contrary are illegitimate.

Constitutional/judicial policies which are not based on these facts move America farther in the dangerous direction of becoming **a system of judicial supremacy, not constitutional supremacy.**

#3

Why *Roe* Must Go: The Continuing Carnage of *Roe v. Wade* and *McCorvey v. Hill*

“The abortion business is an inherently dehumanizing one. A person has to let her heart and soul die or goes numb to stay in practice. The clinic workers suffer, the women suffer, and the babies die.” This is the concluding statement made by Norma McCorvey (a. k. a. “Jane Roe”) in her 2003 Affidavit asking the federal courts to overturn the infamous *Roe v. Wade* decision in which she had been the plaintiff in 1973. During the thirty-year interim, McCorvey learned the *truth* about abortion and how fraudulent and deceptive had been her 1973 attorneys’ treatment of her and of abortion. Many other women were similarly duped into abortions which caused them and others untold physical and psychological trauma. **Some of this damage to women is chronicled in the 5,347 pages of evidence from McCorvey and more than 1,000 other post-abortive women** whose affidavits were filed with the federal courts in 2003.

McCorvey lost her battle to turn back the tide of death unleashed by the U. S. Supreme Court in 1973 – all federal courts to whom she petitioned rejected her petition. The only opinion in the case was from the Fifth Circuit Court of Appeals (*McCorvey v. Hill*, 385 F. 3d 846, 2004). **But her effort ripped away the shrouds that had shielded America from knowledge of the true nature of abortion and its effect on both the persons directly involved and the nation in general.** An examination of *Roe* today would occupy countless numbers of pages if all the errors of the Supremes’ decision were detailed.

As one of the two or three most disastrous decisions in all of American history, *Roe* ruled that a woman has a “fundamental constitutional right to an abortion,” with states’ regulatory powers increasing as a pregnancy moved from the first to the second and then to the third trimester. The Texas abortion regulation law, and the laws of thirty-one other states, were effectively struck down by *Roe*. **The decision contains a litany of violations of our nation’s most cherished cultural and constitutional values.** Four such values are specifically recognized as legal/constitutional standards by the U S. Constitution, and it is some of *Roe*’s most egregious violations of these standards that are discussed below. **These four Constitutional standards are expressed most prominently in the Fifth and Fourteenth Amendments: personhood, life, liberty, and law.** Much of the information below is taken from the official documents filed with the courts in 2003 and 2004.

1. “Person”: The Court Destroys the Concept

Perhaps the best known quote from the *Roe* majority opinion is the Court’s Machiavellian declaration that “[the evidence we have examined] persuades us that **the word ‘person’ as used in the Fourteenth Amendment does not include the unborn.**”

This is one of the Court's earlier exercises in the "define and destroy" tactic it has used increasingly since the mid-Twentieth Century. The Court has recently wielded this weapon to define out of existence the original meanings of such basic concepts as "religion," "law," "marriage," and "normal behavior."

The evidence available today refutes more overwhelmingly than in 1973 the argument that the unborn is "not a person." As the McCorvey briefs pointed out, the humanness of the unborn child is proven by such scientific advancements as ultrasound, in-utero surgery, DNA technology, and neo-natal care advancements.

The belief of the American people in the personhood of the unborn child is also clearly attested by the "personhood law" movement sweeping the nation. Many states have already passed, or are considering, measures that declare that the unborn is a person. Problems such as court challenges face these laws, but the movement leaves no doubt as to the strength of America's belief in the "personhood" of the unborn.

How, then, can courts – and the nation's other pro-abortion advocates – continue to fight so frantically against the scientific and moral fact of the unborn's personhood? The *Roe* Court goes far in answering that question. The pro-abortion Seven baldly admitted that "If this suggestion of personhood is established, the appellant's case [for abortion], of course, collapses, for the fetus's right to life is then guaranteed specifically by the [Fourteenth] amendment. The appellant [Roe] conceded as such on re-argument." **Thus, rejecting the personhood of the unborn is not based on a constitutional or cultural fact. Rather, the maintenance of this diabolical lie is a tactical and policy position necessary to keep the pro-abortion movement alive.**

"Personhood" is the cornerstone of our Constitution and our culture. Therefore, when the concept of "personhood" is corrupted or destroyed, society in totality is corrupted or destroyed. "We the *People* [i.e., 'persons'] of the United States" is the opening statement of the Constitution, and constitutional rights are guaranteed to "persons" only – not to anything else. Indeed, the individual "person" is the building block of society. *Webster's Universal College Dictionary* (2001) makes this clear: a "society" is "an organized group of *persons* associated together [for a variety of purposes]," "a body of individual human beings [i.e., *persons*] living together as members of a community." The wanton destruction of society as a whole is the damage inflicted by Reconstructionists judges in *Roe* and its progeny.

Wanton destruction of the individual himself/herself is also inflicted by *Roe* and its progeny. *Webster* makes the meaning of "person" clear: a "person" is "a human being, a man, woman, or child," "a human being, *as distinguished from an animal or thing.*" But if the unborn child is not a "person," what is he/she? According to *Webster's* definition quoted above, a "non-person" must be either an "animal" or a "thing." Since the child is alive, he/she cannot be just a "thing." The child must, therefore, be an animal. This belief is a primary tenet of evolutionism and the Court's

1987 decision in *Edwards v. Aguillard*. Reconstructionist decisions in one policy area – evolutionism – thus support Reconstructionist decisions in another policy area – abortion.

2. “Life”: The Court Debates Itself

In *Roe*, after defining “person,” (or at least who/what is NOT a “person”), the Court humbly declares on the next page of its opinion that “We need not resolve the difficult question of when life begins.” **The Court thus creates a debate with itself and contradicts itself because what it denies doing – “resolving when life begins” - it does when it defines the “unborn” as “non-persons.”** The Court’s self-contradiction is clear:

- The “unborn” is not a “person”; (the Court)
- A “person” is a “human being, human life”; (*Webster’s*)
- Therefore, the unborn – not a “person” – is *ipso facto* not a “human being,” not a “human life”; (logic)
- AND therefore, a “person” (i.e., a “human being/human life”) exists only after birth – comes into existence only at birth. (logic)

Clearly then, the Court has given its answer to “the difficult question of when life begins.” **Human life begins at birth, according to the *Roe* majority. Abortion is therefore not the taking of a human life.**

3. “Liberty”: The Court Defies the Facts

Pro-abortionists depend heavily on their definition of another Constitutional fundamental – the woman’s right to “liberty” – which abortionists, including the *Roe* majority, contend includes the right to have an abortion. Associated with this argument is the assertion that abortion may be necessary for the health of the mother, and a woman certainly must have the “liberty” to make decisions that protect and promote her health. **However, the facts - data available in 1973 - did not even then support the Court’s sweeping legalization of abortion.** And the massive factual data now available militates in the opposite direction – data including a number of facts that demolish the “liberty to have an abortion” position. An extremely cursory summary of these data yields the following conclusions (quotes are from motions and briefs presented to the courts in the *McCorvey* case).

- “. . . abortion is inherently unlike any other medical procedure and the long-term physical and mental effects are devastating to women.”;
 - The physical consequences of abortion include increased likelihood of a huge range of disorders ranging from breast cancer to pregnancy complications;
 - The mental/emotional consequences of abortion include a huge range of increased risks – from chemical abuse to suicide.

- “. . . abortion is often not a voluntary decision but is the result of pressure and coercion from one or more individuals or outside circumstances (peers, relatives, etc.).” Such coercion severely violates, rather than protects, a woman’s “liberty.”
- “. . . the normal protections of a physician-patient relationship are absent in the context of abortion”; this absence reduces – or even destroys – the woman’s ability to make a knowledgeable abortion decision – a requirement of protecting her “health and liberty.”
- “. . . abortion is usually performed with a lack of informed consent from the patient.” Again, a woman subjected to an abortion without her informed consent is suffering a severe violation – not protection – of her “liberty.”

Abortionists argue that a woman must have the “liberty” to protect herself by choosing to have an abortion. The real facts of the dark world of abortion clearly demonstrate the opposite.

4. “Law”: The Court Denies the Constitution

The Roe Court denied the Constitution – the clear standards of constitutional interpretation and constitutional principles – in several assertions of law made by the Justices.

- **The Nature of the Constitution.** At the beginning of its opinion, the Court made this startling declaration, “[**The Constitution**] **is made for people of fundamentally differing views. . . .**” **This is startling because it states the impossible.** By definition, a Constitution must set forth the “fundamental structure of a thing (i.e., American law and government).” (*Webster’s*) It is an oxymoron to assert that there can be “opposing fundamentals” incorporated into the same Constitution.

As to the issue of WHICH “fundamental view” the Constitution reflects, the truth is cogently stated by President John Adams. Adams declared, “Our Constitution was made only for a moral and religious people. It is wholly inadequate to the governance of any other.” A study of this text and other authoritative sources makes it clear that “moral and religious” refer to the values of only the Judeo-Christian worldview.

- **The Source(s) of the “Right to an Abortion.”** In another startling paragraph, the Court reveals more of the illegitimate basis for its invalidation of the Texas criminal abortion statutes. The Court discusses where “we feel” (not “where the Constitution states”) a right to an abortion is rooted. This is obvious arrogant activism. We might ask, “Who cares what the judges feel?” The problem is that JUDGES care what they feel, and have usurped the power to morph their “feelings” into constitutional “truths.”

What the Constitution or other American law consistent with the Constitution actually state is denied due attention and weight because the Court admitted that abortion is a non-textual right. The Justices argue that abortion is covered by the “right to privacy” (admittedly “not explicitly mention[ed]” by the Constitution). But the Court apparently doesn’t know where the “right to privacy” is rooted - “whether [the “right to privacy”] is founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, OR as the District Court determined, in the Ninth Amendment’s reservation of rights to the people. . .” the Court cannot decide here.

But WHEREVER this mysterious right lurks in the “penumbra of Constitutional rights,” it is “broad enough to encompass a woman’s ‘right to an abortion.’” **The Court knows the right exists, but the Supremes are not sure WHERE the right is to be found.** This is small comfort for champions of law and liberty.

- **The Nature of the “Right to an Abortion.”** Yet another fatal weakness in *Roe* is the **Court’s conclusion that abortion is not only a “constitutional right of women,” but is a “FUNDAMENTAL” right.** The Constitution text recognizes no such classification of rights, and later Court decisions have destroyed the notion that abortion is a “fundamental” right. In *Washington v. Glucksberg* (1997), the Court specifically defined a “fundamental” right and did so in a manner that **unarguably eliminates abortion from that category.**

Governments’ power to regulate “non-fundamental” rights is greater than when “fundamental” rights are involved. Furthermore, in *Glucksberg*, the Court upheld the Washington state law against assisted suicide, AND noted that **“The analogies between the abortion cases [*Roe* and *Casey*] and this one [*Glucksberg*] are several.”** Upholding the state law in the latter case militates in the direction of reversing the anti-regulation decisions of the two former cases.

Flying in the face of these legal facts is the Reconstructionists’ continuing frenetic adherence to *Roe* as untouchable “precedent” (a past decision binding on the present). These pro-abortionists sanctify *Roe* as the most hallowed of all “precedents” and beyond overturning, or even reconsideration. Ironically, however, ***Roe* itself had no precedent to which the Court could legitimately point – not even one single past decision justified the *Roe* ruling.**

In American case law today, there is overwhelming evidence of the egregious legal/constitutional errors of *Roe* – evidence in the form of substantial changes in abortion law. These changes significantly undermine *Roe*. In addition to fundamental legal changes already cited, post-1973 court decisions have abandoned *Roe*’s central

trimester scheme and have expanded the constitutionally-protected interests of the unborn child.

Post-1973 changes in statutory law – law enacted by Congress or state legislatures – also strongly support the overturning of *Roe*. Increased protections for unborn children and newborns not wanted by their parents (“Baby Moses” laws across the nation now provide state care for these children) are examples, as is the Congressional Unborn Victims of Violence act of 1997 with its excellent definition of “unborn child.”

The U. S. Supreme Court in *Roe v. Wade* clearly violated four of our most revered cultural values and constitutional standards – personhood, life, liberty, and law. In the process, the most vulnerable members of our society – unborn children and, very often, their unprotected mothers – will continue to be abandoned by our justice system. **We should America’s courts and citizens reflect on the fact that pregnancy is for nine months; abortion is forever.**

#4

The Curse of Casey:
Planned Parenthood of Southeastern Pennsylvania v. Casey

Nineteen years after the *Roe* decision, it appeared to many observers that the Court was beginning to erode the foundations of “abortion rights” in its ruling in *Planned Parenthood of Southeastern Pennsylvania v. Casey*. Quite the opposite has been true, and *Casey* deserves far more attention than it typically receives because of the nature and ferocity of its attack on our Constitution and our culture. **Law professor Michael Stokes Paulsen has labeled *Casey* “the worst constitutional decision of all time”** and has written extensively on this subject to prove his point.

In *Casey*, the Court generated one of the most splintered decisions in its history, upholding five specific abortion regulations in Pennsylvania, and throwing out a sixth. But the horrible heart of *Casey* lies in its upholding of *Roe* and in the opinions various *Casey* Justices wrote attempting to justify a thoroughly unjustifiable ruling. The case generated five opinions. Four were separate opinions in which each author (or set of authors) “concurred in part and dissented in part.” There was no majority opinion because no more than three Justices could agree as to the justifications for upholding *Roe*. The fifth opinion is, therefore, a “plurality opinion” authored by Justices O’Connor, Kennedy and Souter. The pro-life Justices were Rehnquist, Scalia and White.

No Court decision in history more clearly illustrates the damage that five radical, Reconstructionist Justices can inflict on our Constitution and culture. Let us consider two fundamental reasons why this is true.

1. **Cultural Damage.** The most basic value of any society—without which no other value has meaning—is the value of “life.” ***Casey* sounds a ringing affirmation of the dastardly determination by the *Roe* Court that “the word ‘person,’ as used in the Fourteenth Amendment does not include the unborn.”** And the Court acknowledges that “if this suggestion of personhood [of the unborn] is established, the appellant’s case [the pro-abortion case], of course, collapses, for the fetus’ right to life is then guaranteed specifically by the Amendment.”

In *Casey*, the pro-abortion Justices actually acknowledge that this central holding of *Roe* may be “in error;” but the Justices nevertheless refuse to review the possibility of error because of other factors they consider weightier. Such radically irrational judicial intransigence is deadly to our culture.

2. **Constitutional Damage.** One of the greatest ironies of these abortion cases is that the *Casey* Court justifies its dogmatic refusal to consider error in *Roe* on the grounds of the “rule of law.”

- a. One problem with the *Casey* Court's handling of the "rule of law" is that the ruling and accompanying smorgasbord of **conflicting opinions create law that is the precise opposite of that which the "rule of law requires."** The latter requires that the law, especially the supreme law, be **certain** (objectively and clearly understood), **consistent** (a judicial decision should contain no internal inconsistencies, nor should decisions existing at a particular point in time be inconsistent with one another), and **continuous** (current and past decisions should be consistent with one another).

Few, if any, court decisions in American history violate these three standards more flagrantly than does *Casey*. Paying no attention to precedent, other than to reaffirm *Roe*'s holding that a woman does have a constitutional "right" to an abortion, the Court pulled out of judicial thin air four standards for determining when a precedent might be over-ruled. The four standards are: (1) whether the precedent has proved to be practically "unworkable;" (2) whether there has developed such "reliance" on the precedent that over-turning it would do "significant damage to the stability of society," (3) whether there have been such substantial changes in legal doctrine since the precedent was set that the legal foundation of the precedent has been seriously undermined; and (4) whether there have been such factual changes relevant to the precedent as to seriously undermine the precedent. The pro-abortion Justices promise to apply all these standards with "reasoned judgment."

In a stunning repudiation of logic, law, and life experiences, the *Casey* Five held that *Roe* had proven to be "workable" and was too heavily "relied on" to be overturned. Furthermore, there had been since *Roe* no changes in law or fact sufficient to justify over-turning *Roe*. But neither constitutional text nor tradition gives any foundation whatsoever for any of these euphemistic phrases and words. Thus, federal judges are given even further license to tramp across our constitutional and cultural landscape, morphing America into a Humanistic nation even if it means killing over 40 million of our unborn.

- b. Another problem with the *Casey* Court's handling of "the rule of law" is that **the ultimate touchstone of certainty, consistency, and continuity in American law—the ultimate expression of the "rule of law"—is the U.S. Constitution.** But the *Casey* Justices replace the rule of law with the rule of judges by making the "rule of law" require an implacable adherence to precedent (court decisions)—at least to *Roe* as precedent. The pro-abortion Justices make the remarkable declaration that the American people's belief in the rule of law is not "readily separable from their understanding of the Court" as the supreme authority in constitutional cases, empowered to "speak before all others for their constitutional ideals." Maintaining popular belief in the Court's legitimacy is therefore essential to the rule of law. And

the Court's changing its mind about *Roe* and over-turning *Roe* would undermine the Court's legitimacy—undermine the country's “very ability to see itself through its constitutional ideals.” **Stare decisis, not the Constitution, becomes the supreme law of the land.**

No American court decision illustrates more forcefully than does *Casey* the necessity of curbing the courts—in all areas where they have exceeded their constitutional limits. The disaster of *Casey*—and of Reconstructionist judging in general—is summarized by Justice Scalia in his dissenting opinion describing the pro-abortion Justices' opinions in *Casey*: “The Imperial Judiciary lives.” [The *Casey* Court gives us a] . . . vision of unelected, life-tenured judges—leading a Volk (us, the American people) who will be ‘tested by following [the Court]’ and whose very ‘belief in [ourselves] is mystically bound up in [our] understanding of a Court’ that ‘speak[s] before all others for [our] constitutional ideals. . . .’”

#5

The Inevitability of Inseparability: Separation of Church and State

“Congress shall make no law respecting an establishment of religion. . . .”

– United States Constitution, Amendment 1

During the last two years, **America’s federal courts have rendered a spate of unprecedented, unconstitutional decisions.** Courts have rejected the Pledge of Allegiance, the public display of the Ten Commandments, state sodomy laws, and petitions to rehear and overturn the abortion abominations of “*Roe*” and “*Doe*.”

At the heart of all these controversies is the clash between the Judeo-Christian and Humanistic worldviews, each of which rests on a set of religious principles. This fundamental clash has, however, been obscured by the deceptive argument of Humanists that Judeo-Christian values must be excised from public policy in order to avoid violation of the “separation of church and state” requirement. **Major truths about this separation myth are summarized here.**

1. **The Constitution contains no phrases requiring “a wall of separation between church and state.”** This phrase was read into the Constitution by the U.S. Supreme Court in 1947 in its decision in *Everson v. Board of Education*. The Court quoted from a letter written in 1802 by Thomas Jefferson to the Danbury Baptist Association, which had experienced persecution for its faith. This letter has no legal force whatsoever and is an invalid source of constitutional law. Furthermore, Jefferson himself also recognized that the purpose of the “Establishment Clause” was jurisdictional – prohibiting *national* government power over any religious issues and reserving such power to the *state* government “as far as it can be in any human authority.” Today’s courts, in reading the Establishment Clause to invalidate *state* laws, thus go opposite to both the constitutional document and Jefferson’s views.
2. **The Framers of the Constitution (both the original document and the First Amendment) did not intend for religious views and values to be separated from constitutional/political values.** “The general principles on which the [Founding] fathers achieved independence were . . . the general principles of Christianity” (John Adams, 1813). “A Christian world and life view furnished the basis for [the] early political thought which guided the American people . . . and whose crowning lay in the writing of the Constitution of 1787” (Phi Beta Kappa historian, Dr. Gregg Singer, 1964). Early American documents were clearly Christianized: Columbus’ commission, the colonial grant to Sir Walter Raleigh, the Charter of Virginia, the Mayflower Compact, the Fundamental Orders of Connecticut, William Penn’s Charter of Privileges for Pennsylvania, and the Northwest Ordinance, to name a few.
3. **The English Common Law in which American law is rooted was Christianized.** This is apparent in centuries of Common Law writings, and certainly in Sir William

Blackstone's *Commentaries on the Laws of England*: "Blackstone's faith, a faith that served as the foundation of law in America for a century and a quarter after its birth as a nation, rested upon God's revelation of law in the Holy Bible."

4. **The U.S. Supreme Court does not require a "total separation" between "church and state."** In 1931, the Court declared that "[w]e are a Christian people. . . ." (*United States v. Macintosh*). The Court ruled in 1971 that "Our prior holdings [concerning the Establishment Clause] do not call for total separation between church and state; total separation is not possible in an absolute sense. . . . The line of separation far from being a 'wall,' is a blurred, indistinct, and variable barrier. . . ." (*Lemon v. Kurtzman*).
5. **A total separation of church and state is impossible.** The Supreme Court recognized this truth in its *Lemon* decision (see point #4. above). Legal scholars agree. "The extent to which a government can be neutral and equally tolerant of all deeply held values, including religious beliefs, has very definite limits. . . . Increasingly, government will be compelled to make choices between conflicting values, including religious values" (Law professor Carl Esbeck, 1982).
6. **Any effort to separate totally religious values from political/legal values is extremely dangerous.** First, the Constitution would fail. "Our Constitution is made only for a moral and religious people. It is wholly inadequate for the governance of any other" (John Adams, 1789). Second, our precious liberties would have no protection. "God who gave us life gave us liberty. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are a Gift from God? That they are not to be violated but with his wrath? Indeed, I tremble for my country when I reflect that God is just; that his justice cannot sleep forever" (Thomas Jefferson, 1785).

#6

**The Courts v. the Constitution and the Commandments:
*Glassroth v. Moore***

The U.S. Constitution’s guarantee against an “Establishment of Religion” is not violated by the placement in the Alabama State Judicial Building’s rotunda of a 2½-ton monument inscribed with the Ten Commandments and a variety of other quotes. To the contrary, interpretations of the Constitution by a U.S. District Court in Alabama and a three-judge panel of the Eleventh Circuit Court of Appeals **do violate** the Constitution in declaring the monument to be an “establishment of religion.” The U.S. Supreme Court refused to hear the case. The monument was designed and commissioned by Alabama Chief Justice Roy Moore in recognition of the moral foundation of the law.

1. **This suit should never have gone to court.** The plaintiffs complained that they found the monument “offensive,” that it made each of them feel like an “outsider;” that Moore was “using religion to further his political career;” that Moore was guilty of a “shameless political use of religion,” etc. None of these highly personal, subjective feelings qualifies as a “case or controversy” – the only type of action that Article III of the Constitution allows federal courts to hear.
2. **There is no “law” involved in this case.** A “law,” by definition, *commands, prohibits, or permits* a specific action. Chief Justice Moore’s installation of the monument does not command, prohibit, or permit any action by any party.
3. **There is no unconstitutional “establishment of a religion” involved in the monument’s creation and placement.**
 - a. **The Ten Commandments as displayed in the Judicial Building are memorialized as a fundamental source** of American and English law and Western civilization. A “law” and its “source” are not the same thing. The Ten Commandments as the moral foundation of our law are supported by a variety of large, influential religious groups – evangelical Protestants, conservative Catholics, orthodox Jews, and Mormons, for example. If the Ten Commandments *per se* constitute a “religion,” which of these specific “religions” is “established”?
 - b. **Interrelationships between law and non-legal values, reflected in the Ten Commandments, are inevitable.** “Without religion, there can be no morality; and without morality there can be no law” (top-ranking British judge Alfred Lord Denning, 1977). Reflecting this truth, the U.S. Supreme Court has correctly ruled that “This is a Christian nation” (*Church of the Holy Trinity v. U.S.*, 1892; *Macintosh v. U.S.*, 1931).
 - c. **A “pluralism” of fundamental religious and legal values can extend only so far.** Both federal courts ruling against Chief Justice Moore argue for religious “pluralism” – asserting a “history of religious diversity” in America (the Court of

Appeals) and branding any effort by law to recognize a single definition of “religion” as “unwise, and even dangerous” and as “tending towards a ‘theocracy’” (the District Court). But the courts call for the impossible. “Values are necessary for the functioning of any society, and if they are not consciously adopted and publicly acknowledged, they will be smuggled in surreptitiously and often unconsciously. Values are always in real or potential conflict. And the state inevitably favors some values over others” (American historian James Hitchcock, 1981). Thus, American law can be based on the Ten Commandments or on a non-theistic value foundation. There is no alternative. And if public acknowledgement of the former constitutes “establishment of religion,” so does the latter.

- d. **All of the Ten Commandments have a secular significance to the law.** Even the first four Commandments, most directly involving Deity, reveal that there are a Higher Authority and Higher Law to which human law must be submissive – the only sure safeguard against tyranny by human government.
4. **There is an unconstitutional establishment of religion created by the two federal court decisions.**
- a. **The District Court’s assertion** that the state “draws its powers . . . from the people and not God” **is a religious position (an anti-theistic one).** This assertion throws the power of the court behind a religious view, which violates the Establishment Clause . . . if basing government on God also is “religious.”
 - b. **Both federal courts base their conclusions on the mythical “wall of separation” doctrine.** This concept is not in the Constitution’s text, is not supported by American history and tradition, and calls for the impossible (see #3b. and #3c. above). Because the mythical “separation” doctrine was created by the Supreme Court in 1947 – 156 years after the Establishment Clause was written, and therefore has no fixed content – federal courts have had to constantly re-define and create “tests” of “establishment.” The most notable is the *Lemon* three-pronged test (*Lemon v. Kurtzman*, 1971). Since 1971, various Supreme Court Justices have exposed the true nature of this myth and the “tests” it has spawned, describing them as “all but useless,” “mercurial in application,” “unhistorical,” “non-textual,” and productive of a body of Establishment Clause law that is plagued with “insoluble paradoxes” and “unprincipled, conflicting litigation.” Despite these fatal flaws in the “separation” myth and *Lemon* test, both federal courts utilize them as the basic standards for finding against the Chief Justice and the monument.

Chief Justice Roy Moore’s installation of the Ten Commandments monument in the Alabama Judicial Building recognized these truths. Chief Justice Moore did not violate the U.S. Constitution. The federal courts who have ruled against him did.

#7

**The Courts v. the Commandments, Round 2:
*Van Orden v. Perry: McCreary County v. ACLU of Kentucky***

The U.S. Supreme Court has recently decided two cases involving challenges to Ten Commandments monuments on the Texas Capitol grounds and in two county courthouses in Kentucky. The Texas case is *Van Orden v. Perry*. The Kentucky case is *McCreary County v. American Civil Liberties Union of Kentucky*. The Court upheld the Texas display. It struck down the Kentucky display. These cases, plus the Roy Moore Ten Commandments monument controversy, provide us in the Judeo-Christian community with an arsenal of truths for repelling the Humanistic attacks on America's cultural and constitutional foundations.

1. **The Ten Commandments displays do not “establish” a specific “religion.”** The Ten Commandments are central to at least three different religious communities – Protestants, Catholics, and Jews – no one of which would support the establishment of either of the other two as an official government “religion.” Indeed, eradicating Ten Commandments monuments from public life amounts to government favoritism for Secular Humanism, defined by the U.S. Supreme Court in 1961 as a “religion” (*Torcaso v. Watkins*).
2. **Sensible judges have consistently recognized that a monument can be both religious and secular.** The Ten Commandments were understood until relatively recently in American law as having not just two dimensions – secular and religious – but three dimensions – religious, moral, and civic (public/political/legal) aspects. The Seventeenth Century philosophers Thomas Hobbes (a strong secularist) and John Locke (an advocate of mixed secular and Christian views) cited the Commandments for their moral and civic aspects.
3. **The Second Table of the Decalogue (Commandments 5-10) promulgates standards essential to a just, ordered society.** The Second Table protects the sanctity of human life, marriage, the family, and private property; and prohibits murder, stealing, and perjury. The First Table (Commandments 1-4) is also essential in the moral and civic realm. These Commandments establish the vital principle that there is an authority higher than man to which man and his law must be accountable. Without such accountability, human law will deteriorate into anarchy or autocracy – or both disasters simultaneously.
4. **Without Commandments 1-4, there is no adequate foundation for Commandments 5-10.** Commandments 5-10 are personal, and they must therefore have a personal source – the God revealed to us in Commandments 1-4. Additionally, Commandments 5-10 are all-powerful, absolute rules for man's life. They must therefore have an all-powerful, absolute Source – the God of

Commandments 1-4. Genuine human laws, those consistent with the last six Commandments, reflect the elements of power, absoluteness, righteousness, mercy, and judgment – the qualities of the God of Commandments 1-4. The God of Commandments 1-4 is the **only** adequate source in all of history for the standards set forth in Commandments 5-10.

5. **Ten Commandments monuments do not erode beneficial pluralism/diversity in America.**
 - a. **A limitless pluralism is impossible in any society.** Without a single worldview foundation, a nation will be jerked apart by so many competing value claims that it will destroy itself. Ultimately, one – and only one – worldview must guide America.
 - b. **“Pluralism” is a disingenuous term employed by Humanists bent on scouring from American public life every vestige of Judeo-Christian values and inserting their worldview as America’s foundation.** As English scholar E.R. Norman noted, “‘Pluralism’ is a word society uses as it is moving from one orthodoxy to another.”
6. **Ten Commandments monuments do not undermine genuine tolerance, but rather contribute to it.** If Humanists in America genuinely want tolerance, they should begin by being tolerant of America’s Judeo-Christian foundations, without which the Humanists would have no freedom to expound **their** ideas. Humanists may claim to be “offended” by the monuments. But being offended or isolated or even angry at some display or statement does not automatically amount to unconstitutionality. And certainly the personal irritation of some individual or groups cannot be allowed to govern the nation.
7. **Non-Christians in America may cry that they are being “discriminated against”** by Ten Commandments monuments. But what kind of America would we have if we were dominated by the Muslim religion as in the Near East, or the Hindu religion as in India, or the Buddhist religion as in China? These non-Christian societies are textbook examples of war, poverty, oppression, and grisly violations of human rights. America under the Judeo-Christian influence has enjoyed the opposite – personal dignity, progress, prosperity, and peace. Non-Christians living in Christian America can enjoy a far better life here than they could in their non-Christian homelands.

The French author, Alexis de Tocqueville, after traveling America, wrote in the 1830s that “. . . there is no country in the world where the Christian religion retains a greater influence over the souls of men than in America, and there can be no greater proof of [Christianity’s] utility and conformity to human nature than that its influence is powerfully felt over the most enlightened and free nation of the earth.” The Ten Commandments monuments must stay – for all the reasons stated above.

#8

Plundering the Pledge:
Elk Grove Unified School District v. Newdow

Phyllis Schlafly has written that **the atheists’ “attempt to eliminate ‘under God’ from the Pledge of Allegiance now looks like a legal boomerang.”** Will the boomerang hit atheist parent Michael Newdow, who challenged the Pledge in the U.S. District Court (he lost), the Ninth Circuit Court of appeals (he won), and the Supreme Court (he lost)? Newdow filed on behalf of his daughter who was living with her mother, Sandra Banning. Newdow was especially allergic to the words “under God” in the Pledge. Five Supremes refused to hear the case on the ground that Newdow lacked “standing to sue.” But the other four Supremes argued that the case should have been heard on the merits – whether the Pledge violates the Religion Clauses of the Constitution. The Circuit Judges and Supreme Court Justices who supported the Pledge made several compelling arguments which have application in virtually every area of social policy debate today.

1. **This case should never have been heard by the Circuit Court** because plaintiff Michael Newdow had no true “case or controversy,” which Article III of the Constitution requires before a court hears an issue. **Newdow claimed that he was offended by** “under God” in the Pledge. Said the jurists, “[in] a society as diverse as ours . . . **almost every cultural practice is bound to offend someone’s sensibilities.**” The original two pro-Pledge judges afforded Newdow “the right to impose his view on others . . . [and gave him] a right to be fastidiously intolerant and self-indulgent.” His alleged feelings of “discomfort and isolation” are therefore “simply shifted . . . from one group [i.e., atheists] to another [i.e., the 87% of Americans who support the phrase ‘under God’].”
2. **The Pledge is an act of *patriotism*, not of *prayer*.** Several U.S. Supreme Court decisions explicitly refer to the Pledge as constitutional. The rejection of “under God” “precipitates ‘a war with our national tradition,’” argued the jurists. Indeed, judicial invalidation of the Pledge would foster – perhaps require – the invalidation of the Constitution and National Anthem, as well as numerous other documents and civic statements acknowledging God in our national life.
3. **There was no coercion or compulsion involved in this case.** But coercion or compulsion were at the heart of the prohibitions intended by the Framers of the Establishment Clause. The possible argument that *psychological coercion* was present here is void. This concept was invented out of judicial thin air by Justice O’Connor in the 1992 case of *Lee v. Weisman*. What the concept really means, and how it would be demonstrated in court, has never been addressed. The concept is anti-constitutional and unprovable in this case.
4. **Acknowledgements of God do not *per se* violate the Constitution.** In a 1992

Seventh Circuit opinion upholding the Pledge with “under God” in it, Judge Manion wrote that “a civic reference to God does not become permissible . . . only when . . . it is sapped of religious significance.” “[W]e need not drain the meaning from the reference [to God in the Pledge] to reach this conclusion.”

5. **The Ninth Circuit’s voiding of the Pledge is itself a violation of the Establishment Clause.** As the jurists observed, the anti-Pledge ruling of their colleagues, “confer[red] a favored status on atheism in our public life. . . . The silence the majority commands is *not* neutral. . . . The absolute prohibition on any mention of God in our schools creates a bias *against* religion. . . . One wonders, then, does atheism become the default religion protected by the Establishment Clause?”
6. **The continued inclusion of “under God” in the Pledge in no way suppresses anyone’s religious beliefs or threatens the “pluralism”** to which the Newdows of America profess such fervent allegiance. The phrase “under God” was added to the Pledge in 1954. During these 50 years that Americans have been reciting “under God,” America has simultaneously experienced the greatest explosion of “diversity” and “pluralism” in its history. Attacks on the Pledge will undoubtedly continue. We, the people, must be prepared to utilize the political processes to protect it if future judicial decisions do indeed “plunder the Pledge.”

The U.S. Supreme Court decision against Newdow was right – he should have lost. But concurring Justices Rehnquist and Thomas (Scalia did not take part in the case) gave us the best *reasons* for the decision – the Pledge *is* constitutional.

#9

Sodomy, Survival, and the Supremes: *Lawrence v. Texas*

I have taught college students for most of my life. **If any of my graduating seniors had written a paper as poor as the U.S. Supreme Court's opinion invalidating the Texas sodomy law in *Lawrence v. Texas*, that student would have received a grade of "F" – only because there is no lower grade available.** Along with *Roe v. Wade*, *Lawrence* is surely the worst decision the Supremes have ever made – the two cases indeed deserving Rick Scarborough's description of them as the **"twin sisters of Hell."**

The case began in September 1998, when police responding to a neighbor's call about an unruly gunman entered a Houston apartment, finding Tyron Garner and John Lawrence engaging in sexual acts prohibited by the Texas sodomy law. They were convicted of a misdemeanor by the Harris County Criminal Court, each man paying a fine of \$200 and court costs. The Texas Fourteenth Court of Appeals upheld the conviction, finding that there was no violation of the men's right to "liberty" guaranteed by the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

The U.S. Supreme Court reversed 6-3, with five members finding that the U.S. Constitution's Fourteenth Amendment Due Process Clause was violated and that the earlier Court decision in *Bowers v. Hardwick* (1986) was invalid (*Bowers* upheld a sodomy law in Georgia). The decision was far more sweeping than was needed to void only the Texas law that was actually before the Court. *Lawrence* additionally invalidated laws in 12 other states (three of which outlawed same-sex sodomy and nine of which outlawed all sodomy). This indicates how badly the "Sodomy Six" (Joseph Farah's term) wanted to eliminate all state sodomy laws.

Justice O'Connor wrote a concurring opinion, arguing that the Fourteenth Amendment's Equal Protection Clause was violated because Texas homosexuals were "discriminated" against (perhaps a good reason for O'Connor to indeed retire and go home to the ranch). The five other majority Justices did not address the equal protection issue, which they had decided in favor of homosexual activists in *Romer v. Evans* (1996). The *Romer* 6-3 vote voided a Colorado state constitutional amendment that prohibited special treatment of homosexuals over heterosexuals.

The horror of both *Roe* and *Lawrence* lies in their results as well as their "reasoning." As to their **results**, these cases, more than any other two cases in American history, call into question the ability of America's culture and constitutional system to survive. Law professor Harold J. Berman, in the excellent "Introduction" to his ABA award-winning book *Law and Revolution*, rightly concludes that the Western legal tradition [including America] is in a crisis. This "is a crisis of the Western legal tradition [which] is not merely a crisis in legal philosophy but . . . in law itself. . . ." "[T]he historical soil of the Western [and American] legal tradition is being washed away in the

twentieth century, and the tradition itself is threatened with collapse.”

As to their “reasoning” (a charitable description of the Court’s opinions in both cases), the opinions fail every legitimate standard of constitutional decision-making. Only a portion of the egregious errors in the *Lawrence* majority’s position can be enumerated here:

1. **This case should never have gone to court because the factual record was so sparse.** The Court has ruled in the past that **“Factual records are essential to constitutional deliberation”** and “[i]t is the typical, not the rare, case in which constitutional claims turn upon the resolution of contested factual issues.” The *Lawrence* case illustrates why a complete, accurate record is necessary. The Supremes ruled that the two homosexual plaintiffs in this case had a constitutional right to private, consensual sodomy. Yet several amicus curiae (“friend of the court” briefs) filed with the Court pointed out that the factual record presented to the Court provided no proof that the men’s conduct was “private” (other people could have been observing), or that it was consensual (it could have been coerced). Additionally, the record gives no assurance that the conduct was not incestuous or performed for pay. Only if all these facts were indubitably established by the record could anyone even be sure that the conduct in which the two plaintiffs engaged was actually the conduct over which the Court extends protection. **This may well have been a contrived case** – an action that the Constitution does not allow the federal courts to hear.
2. **The attorney who presented the Texas case in oral arguments before the Supremes offered an unbelievably poor defense.** Harris County District Attorney Charles A. Rosenthal, Jr., chose to present oral arguments rather than enlist the assistance of any one of numerous attorneys (including his own staff members) with appellate training, experience, and expertise. One attorney observed of Rosenthal’s “defense” that “It was a stunning day, not because of what was said, but because of what was not said.” And the *New York Times* opined that “The argument [between Rosenthal and the highly skilled Lambda Legal Defense and Education Fund attorney] proved to be **a mismatch of advocates to a degree rarely seen at the court.**” So the Supreme Court fashioned a constitutional right on a virtually barren factual record elucidated little to none by an inept Texas district attorney.
3. **The *Lawrence* decision pays virtually no attention to the state’s constitutionally-protected obligation to protect public health, safety, welfare and morality** from the dangers of homosexual conduct.
 - a. **Public Health and Safety:** “Friend of the court” briefs offered **extensive evidence that homosexual conduct is strongly associated with vile diseases** such as AIDS (for which the death rate is 100%), hepatitis B, syphilis, and a group of intestinal tract diseases known as “gay bowel syndrome.” The CDC reports that more than 65 million Americans are now living with incurable sexually transmitted diseases, and homosexuals “are most vulnerable to STDs and their consequences.” Lesbian conduct has become a focus of research more

recently, but data already gathered show significant correlation between this behavior and a variety of STDs and infections. A few examples of the extraordinary dangers of homosexual conduct among the 2% of the U.S. population who are homosexual men include the following:

- i. 60% of gays in Texas have HIV/AIDS;
- ii. 63% of the cumulative AIDS cases in the U.S. have occurred among gays; Texas is fourth in the nation in the number of cumulative AIDS cases;
- iii. Same sex sodomy in the U.S. has accounted for approximately 370,000 AIDS cases; heterosexual contact has accounted for approximately 33,000 AIDS cases.

- b. **Public Morality: The Court also irrationally rejects the states' power/obligation to protect the public morality. The argument that "you can't legislate morality" is ridiculous.** The truth is cogently expressed by a Kentucky Supreme Court Justice in the 1993 state case of *Kentucky v. Wasson*: "It is foolish and fruitless to ignore morality in our society and in our governmental function. Every political decision of consequence reflects a moral judgment. In response to the oft-heard claim that you can't legislate morality, it needs to be said that **legislation is always based on someone's morality**. It is based on someone's notion of what is right or wrong, just or unjust, fair or unfair. The claim that we cannot legislate morality is a deception intended to exclude from the democratic process those citizens [i.e., we Constitutionalists] who frankly acknowledge that their motivation is moral in nature."

The *Lawrence* court also argues the hackneyed oxymoron that "Our obligation is . . . not to mandate our own moral code." But this entire decision reeks with the message that homosexual conduct is, at the least, acceptable and that the Texas law is "bad" – a "**moral judgment**," if there ever were one.

- c. **Public Welfare: Closely related is the state's power/obligation to educate the populace concerning health, safety, and morality.** In briefs before the Court, several state Attorneys-General argued that "Even legislation that is largely symbolic and infrequently enforced (due to other salutary checks on government power, like the Fourth Amendment) has significant pedagogical value. **Laws teach people what they should and should not do**, based on the experiences of their elders."

Prof. Erik Luna asserted in a 2000 symposium on penal codes that "**Laws can also serve a symbolic or educational function** separated from direct behavioral modification. In this respect, the lack of enforcement of section 21.06 [the sodomy prohibition of the Texas Penal Code] is not significant. The legislature enacts a criminal law for its symbolic message. . . ."

This fact was recognized by the great secular political philosopher, **Aristotle**, 2,500 years ago. The Christian recognition of this same truth was expressed in the Third Century A.D. by one of the greatest Church Fathers, **Augustine**, and is clearly expressed in both the Old and New Testaments. As attorney Stephen Crampton explains to the Court (which obviously was unable, unwilling, or both, to hear the truth), **law can play a "powerful role" in**

reinforcing the teachings of parents and other leaders in the community. **It can play an equally powerful role in destroying the moral health of a society** when it usurps the parents' and cultural leaders' place and sets itself up as the primary moral tutor [which is precisely what the Supreme Court has been doing for half a century]. Attorney and professor Dr. Robert George expresses the same fundamental truth to a deaf and blind Court majority: **If “public authorities fail to combat certain vices, the impact of widespread immorality on the community’s moral environment** is likely to make the task of parents who rightly forbid their own children from, say, indulging in pornography, extremely difficult.”

4. **The radical “Sodomy Six” contradict themselves on several fundamental points:**
 - a. **The radical position on the rule of precedent pertaining to *Roe* and *Lawrence*** is irreconcilably contradictory. Liberals express horror at overturning *Roe*, which they described as “settled law” (ignoring the fact that substantial portions have already been overturned), but are ecstatic at overturning *Bowers*.
 - b. **The Court ruling and the Court’s opinion in *Lawrence* contradict each other.** The ruling is that the Texas sodomy law is unconstitutional and that the Court’s 1986 opposite decision in *Bowers v. Hardwick* is being overturned. But *Bowers* held that there was no “fundamental constitutional right” to engage in sodomy. In the Court’s **reasoning (opinion) in *Lawrence*, the majority does not even mention “fundamental rights.”** (This is a sick reminder of the Court’s illogic in *Roe*, where the majority admitted that it was not sure whether the constitutional right to kill unborn children was rooted in the Ninth Amendment or Fourteenth Amendment, but the Court knew that the right was somewhere in the document.)
5. **The Court in *Lawrence* relies heavily on a generalized, non-specific “right to privacy” as the foundation of a “constitutional right to homosexual conduct.”** This non-constitutional right was, by the Court’s own admission, **created by the Court in 1965 in *Griswold v. Connecticut*.** Such Court creation of rights is the stuff of which tyranny is made. *Griswold* was a protection of marriage case, the polar opposite of *Lawrence*, which is a destruction of marriage case. As dissenting Justice Scalia points out, “Today’s decision [in *Lawrence*] dismantles the structure of constitutional law that has permitted a distinction to be made between heterosexual and homosexual unions.” Additionally, *Griswold* based the “right to privacy” on a “penumbra” (another extremely generalized, court-created concept) of constitutional provisions. The *Griswold* Court specifically rejected resting “privacy” on the “liberty” rights of the Due Process clause, which is where *Lawrence* is rooted. Thus, in both fact and law, ***Griswold* is fundamentally different from *Lawrence* and provides no foundation for homosexual rights.**
6. **The “Sodomy Six” ignore a host of federal and state court decisions and legislation** that have distinguished between homosexual and heterosexual conduct. Justice Scalia in his dissent argues that **“Countless judicial decisions and legislative**

enactments have relied on the ancient proposition” that morality-based laws are a rational exercise of government power. And Scalia cites a number of specific examples, including the Court’s 2000 decision that rightly concluded that the Boy Scouts of America have a constitutional right to differentiate between homosexuals and heterosexuals in their leadership policies.

Indeed, *Lawrence* leaves little or no grounds for governments to outlaw a smorgasbord of moral evils. Laws against bestiality, incest, sibling intermarriage, polygamy, prostitution, spousal abuse, drug use, etc., are likely to be buried in the Supremes’ hurry to legitimize conduct which Sir William Blackstone referred to as “a still deeper malignity [than rape or abduction], the very mention of which is a disgrace to human nature.”

The door is now also opened to the bulldozing of laws based on the concept of marriage as heterosexual only, a bulldozing that will produce chaos in current laws such as property laws and evidentiary rights. An explosion of homosexual “rights” to employment benefits, employment rights, adoption, changed military discharge policy, etc. – even at the expense of private organizations such as churches – appears inevitable.

7. **The “Sodomy Six” are no better at reading and understanding history than at applying other standards of constitutional interpretation. The Court itself began creating the “fundamental rights” category of rights c. 1937.** These rights were those which are “deeply rooted in this Nation’s history and tradition” and which are “essential to ordered liberty” (another “standard” created by the Supremes and therefore definable and destructible by them). **History reveals that sodomy is the antithesis of “fundamental” [or even “non-fundamental”] rights.** English Common Law punished sodomy at least as early as 1533. Sodomy was criminalized by all 13 States when they ratified the Bill of Rights and by 31 of the 37 states when they ratified the Fourteenth Amendment in 1868. By 1961, all 50 states outlawed sodomy. A “constitutional right to sodomy” is thus a preposterous claim, as such conduct will continue to decrease “ordered liberty” and is obviously of recent, not “historical and traditional,” origin.
8. **The *Lawrence* decision is a treacherous expansion of federal judicial power which further elevates the U.S. Supreme Court (or a five-person majority thereof) above all other governments and institutions in America.** State governments, private organizations, the family, and religion are further subjugated by this tiny elite. Apparently this elite is taking very seriously law professor Arthur S. Miller’s description of **the Court as a “de facto council of elders [who] may be likened to the oracles of ancient Greece” and “the High Priests [of the Constitution] who keep it current with each generation of Americans.”** Such judicial power is deadly to the Court, deadly to the Constitution, and deadly to the country.

As Justice White pointed out in his majority opinion in *Bowers*, “Th[is] 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.” The bottom line is that in these cases “the Judiciary necessarily takes to itself further authority to govern the country without express constitutional authority.” **Thus, the Court, in the name of “liberty,” tramples the very constitutional scheme designed by the Framers to protect liberty** – an allocation of powers between different branches of the national government, between the national government and state governments, and between government as a societal institution and other primary, equally important, societal institutions (e.g., family and religion).

9. What reasons does the *Lawrence* majority offer for propelling America at blinding speed down the slippery slope of moral decadence and national disaster?
 - a. Justice Kennedy declared in a concurring opinion in 1998 that, “[H]istory and tradition are the starting point but not in all cases the ending point of the substantive due process inquiry.” Argued the *Lawrence* majority, “. . . we think that our **laws and traditions in the past half century are of most relevance here.**” **TRANSLATION:** Forget almost 600 years of English Common Law history and 200 years of American history and look at only the last 50 years in American law. **This is precisely the time period which began with radical liberal/activist Earl Warren’s ascension to the Chief Justiceship (1953).** And this is also the period of the rapid “secularization of America” so celebrated by Humanist leader Paul Blanshard in a 1976 article entitled “Three Cheers for Our Secular State.”
 - b. The Court majority opines that “The sweeping references [in *Bowers*] to the history of Western civilization and to Judeo-Christian moral and ethical standards [opposing sodomy] **did not take account of other authorities** pointing in an opposite direction.” **TRANSLATION:** “Other authorities” are non-American sources, whose inclusion in *Lawrence* is an **unprecedented and frightening intrusion of globalism into the American constitutional system.** These global “authorities” include the highly controversial 1957 Wolfenden Report published in **England**, and a decision made in the early 1980s by the **European Court of Human Rights.** The “**Universal Declaration of Human Rights**” promulgated by the United Nations in 1948 also specifically guarantees a person against “arbitrary interference with his privacy” (Article 12).
 This judicial incursion into globalism in *Lawrence* reflects the Court’s apparent agreement with a **brief filed by Mary Robinson, former U.N. High Commissioner for Human Rights.** Robinson argued that such concepts as “liberty” and “privacy” are not U.S. property, but have global meaning. Robinson also warned that a Court ruling favorable to sodomy laws “will generate controversies with the United State’s global allies.”
 - c. The Court majority argues that Texas has no legitimate state interest in its sodomy law. In its 1996 opinion in *Romer v. Evans* (also authored by Justice Kennedy), the six-person majority held that “**animus**” toward **homosexuals**

was the only reason for the Colorado constitutional restraint on homosexual conduct. Said the *Romer* court, equal protection guarantees “mean that *a bare desire to harm a politically unpopular group* [the homosexual rights movement hardly fits this description] cannot constitute a legitimate state interest [italics added].” This incredible generalization is repeated in *Lawrence*: “We concluded that the provision [restricting homosexual conduct in *Romer*] was ‘born of animosity toward the class of persons affected.’” But **in neither *Romer* nor *Lawrence* did the Court offer a single shred of evidence that** hatred alone motivates restrictions on homosexual conduct or that homosexuals are a “politically unpopular group.” Rather, the **two opinions are a classic example of circular reasoning** (i.e., there is nothing but hatred for homosexuals behind this law, therefore the law has no rational basis because the law is based on hatred for homosexuals.)

10. **The equal protection argument accepted by the *Romer* majority and pressed by Justice O'Connor in *Lawrence*, is groundless.** Texas outlawed specific conduct, not a class of people. Equal Protection guarantees apply only to classes of people. Further-more, to “distinguish” between classes of people is not *ipso facto* to “discriminate.” Law is always based on distinctions between groups (e.g., murderers v. non-murderers). The central question is whether the distinction has a valid foundation, as the Texas law certainly did.

The gay community exulted over *Lawrence*, seeing it as a landmark blow for unbridled licentiousness in America. Homosexual rights attorney Paul M. Smith, who argued to the Court on behalf of the homosexuals and the Lambda Legal Defense fund, declared “This is a new day for gay Americans.” And Baltimore homosexual rights leader, Anthony McCarthy, eagerly described *Lawrence* as “probably the most significant civil rights case handed down in my lifetime” (McCarthy is 35). But **America’s condition is more accurately described** by the Supreme Court’s wordmeister, Antonin Scalia, who foresees “a massive disruption of the current social order.” This disruption results from “a Court, which is the product of a law-profession culture that has largely signed on to the so-called homosexual agenda. . . .” Clearly, **“the Court has taken sides in the culture war”** and is “seemingly unaware that the attitudes of [the law profession] culture are not obviously ‘mainstream’. . . .” Indeed, in a USA TODAY/CNN/Gallup poll in late July 2003, the percentage of Americans opposing “homosexual unions” rose to 57% from an early May response of 51%.

In the wake of this latest judicial assault on our Constitution and culture, we would do well to reflect on the words of the great foreign observer of American affairs, Alexis de Tocqueville. In his brilliant work of the 1830s, *Democracy in America*, he observed,

In the United States the sovereign authority is religious, . . . there is no country in the world where the Christian religion retains a greater influence over the souls of men than in America, and there can be no greater proof of its utility and of

its conformity to human nature than that its influence is powerfully felt over the most enlightened and free nation of the earth. **America is great because America is good, and if America ever ceases to be good, America will cease to be great.**

#10

Massachusetts Mauls Marriage: *Goodridge v. Department of Public Health*

In the Fall of 2004, the **U.S. Supreme Court refused to hear a challenge by pro-family groups** to the Massachusetts Supreme Judicial Court's order that Massachusetts legalize homosexual marriages. The U.S. Supremes did not explain why they refused to consider ***Goodridge & Others v. Department of Public Health & Another***. The *Goodridge* decision strikes another judicial blow at morality, marriage, and reasonableness. The Massachusetts Supremes wrote an opinion containing several egregious errors:

1. **The *Goodridge* opinion shares several fatal flaws with *Lawrence v. Texas* (the 2003 U.S. Supreme Court decision throwing out state sodomy laws). Both cases:**
 - a. Virtually **ignored public health, safety, and welfare** and repudiated **public morality** as any grounds for a judicial decision;
 - b. Refused to recognize the **future damage** they will cause;
 - c. Anchored their rulings in **illegitimate and unreliable "factual" sources**. To foreign law, referred to in *Lawrence* as a source of American law, the *Goodridge* court adds "contemporary values, societal consensus, scientists, and a prolonged period of observation of this new family structure (i.e., the same-sex marriage structure)";
 - d. **Reduced centuries of Judeo-Christian moral opposition to homosexuality** to mere "hate" and "persistent prejudice" – such a reduction being the real hate in these cases.
2. In addition to these fatal flaws, **the *Goodridge* majority totally misconstrued the nature of "marriage."**
 - a. **The Court defined marriage** as "the voluntary union of two persons as spouses, to the exclusion of all others." The Court agreed with the plaintiffs (homosexual "couples") that "they seek only to be married, not to undermine the institution of civil marriage. They do not want marriage abolished." But the meaning of a word (i.e., "marriage") can be so transmogrified that what the original word represented is destroyed. The elder Oliver Wendell Holmes wrote that a word can be deprived of its essential meaning – which is its "life – so that it is killed." This crime he labeled "verbicide." The Massachusetts Supremes have committed verbicide against "marriage."
 - b. **The Court described marriage** as "an evolving paradigm." But Anglo-American law, based on the Judeo-Christian value system, understands that marriage is one of the permanent primary social institutions which God ordained for human society.
 - c. The Massachusetts Supremes held that "the government creates civil marriage." ". . . civil **marriage is**, and since pre-Colonial days has been, . . . **a wholly**

secular institution.” This repudiation of the religious origins of marriage is blatant and deadly.

3. The *Goodridge* opinion effectively demolished the U.S. Supreme Court’s **arguments** that homosexual conduct and marriage are “private” matters. The state Supremes wrote that “there are three partners to every civil marriage: two willing spouses and an approving state.” They also described civil marriage as “a highly public celebration.” A matter can hardly be described as “private” when the government and the public are parties to it.

The Massachusetts Supremes have joined the U.S. Supremes in yet another nasty slap at the foundations of our Constitution and our culture. We Constitutionlists must be keenly alert to this newer danger from state supreme courts and be prepared to fight yet another enemy in America’s Culture War.

#11

On Men and Monkeys: *Edwards v. Aguillard*

A recent Associated Press article carried the headline **“Culture wars now being fought in classroom curriculum in U.S.”** (Matt Crenson, “Culture wars now being fought in classroom curriculum in U.S.,” Associated Press, 2/6/05). The article noted that “the argument over the teaching of evolution, which has been raging . . . [for 80 years], shows no sign of abating.” President Bush in August of 2005 reiterated his opinion that public schools should teach “intelligent design” alongside evolution. The majority of Americans agree with Bush. A Harris Poll of June 2005 revealed that 64% of us believe that God created man; only 22% say that we evolved from earlier species; and 55% want creationism, evolutionism, and intelligent design all to be taught in the public schools.

But evolutionists who can’t win in the democratic way are resorting to their favorite refuge – the federal courts. The ACLU and other Humanists are asking the federal courts to find against the Dover, Pennsylvania school district, arguing that teaching “intelligent design” is “teaching religion.” Many of us Constitutionlists find this to be hardly “new news.” But only a few of us realize how much the U.S. Supreme Court has influenced this battle.

America’s Humanist/Reconstructionist Supreme Court in 1987 voted 7-2 in favor of evolution in the landmark case of *Edwards v. Aguillard*. The Court threw out Louisiana’s “dual model” law which required that both evolutionism and creation–science be taught if either was taught in the state’s public schools. This decision is a textbook example of fact v. fiction in constitutional law.

Fact v. Fiction #1: Many “theistic evolutionists” argue that **God could have created the universe by using the Darwinist evolutionary process** which portrays man as an animal. But the same evolutionists agree that man is created in the image of God. If man is created in the image of God, and man is an animal, what does that make God?

Fact v. Fiction #2: Evolutionists argue that the Constitution protects the **“academic freedom” of evolutionists** to teach only their theories. But our marvelous Constitution protects only “persons.” If men are only animals, they have no academic freedom – or any other “freedom” – and the Constitution is a sham. Furthermore, how can teaching only one model of origins (evolutionism) be *more* “academic freedom” than the teaching of both models?

Fact v. Fiction #3: The *Aguillard* majority concluded that **the Louisiana Legislature enacted the dual model law for solely religious purposes** – without a “secular purpose,” which the Court has said the Constitution’s Establishment Clause

requires. The “secular purpose” test is one of three “Establishment Clause tests” which the Court created out of thin air in 1971 (*Lemon v. Kurtzman*). Even if the test were constitutionally and historically sound (which it is not), the Court was calling the Legislature a lair of liars. The Legislature specifically declared that the purpose of the act was to “assure academic freedom.” And properly-functioning courts are supposed to accept the Legislature’s assertions (unless there is clear evidence to the contrary, which there is not in *Aguillard*).

Fact v. Fiction #4: The courts have repeatedly held that the Establishment Clause prohibits government action that “inhibits” as well as “advances” religion. *If* creation-science is as “religious” as the Court claimed, then allowing a government to prohibit the teaching of creation-science is an unconstitutional inhibition of “religion” in violation of the Establishment Clause. On the other hand, evolutionism is a central tenet of Humanism (see any copy of “The Humanist Manifestoes, I. and II.”). And the Supreme Court has declared that Secular Humanism is a “religion” (*Torcaso v. Watkins*, 1961). For the Court to allow state teaching of evolution only is therefore an establishment of the Secular Humanist religion, in violation of the Constitution’s Establishment Clause. Humanists on and off the Court cannot have it both ways.

Fact v. Fiction #5: The Seven Supremes in *Aguillard* ignored the Court’s own precedents which have declared that a law is not unconstitutional because it is supported strongly by religious groups or openly religious people. Earlier courts have declared that a law is not to be presumed unconstitutional because it “happens to coincide or harmonize with the tenets of some or all religions” (*Harris v. McRae*, 1980). To rule otherwise is to deny creationists their constitutional rights to participate in the political process and to violate their First Amendment rights to free exercise of their religion and freedom of expression.

Fact v. Fiction #6: The Humanist Court argued that creationism was all religion and evolutionism was all science. Nothing is farther from fact. In dissent, Chief Justice Rehnquist and Justice Scalia wrote the truth: “The body of scientific evidence supporting creation science is as strong as that supporting evolution. In fact, it may be stronger. . . . Evolution is, in turn, represented as an absolute truth.”

The U.S. Supreme Court decision in *Edwards v. Aguillard* is rife with fiction rather than fact. It is dangerous to the Constitution, the culture, and Christianity. It should therefore be much more widely publicized by us Constitutionals and included in our war to revive the Constitution.

#12

**“We the People of *What*”?
Foreign/International Law v. Our Constitution**

“The assault by judicial supremacists (activist/liberal or “Reconstructionist” judges) against the Constitution and the rule of law is the most serious issue facing our political system today. If unchecked, judicial supremacy will continue to grow like a cancer and destroy our republic.” So wrote the “Mother of American Conservatism,” Eagle Forum’s Phyllis Schlafly, in her 2004 book, *The Supremacists*.

Mrs. Schlafly’s assertion is even truer today - if possible - than when it was first written. And no weapon of Reconstructionist judges is more deadly than their invocation of foreign and international law to interpret the U.S. Constitution. This fact is starkly evident in a **U.S. judicial decision rendered just a week ago - *Al-Bihani v. Obama***. Here a 2-1 panel of the District of Columbia Court of Appeals (sometimes called “the nation’s second most powerful court”) ruled that Al-Bihani’s detention at Guantanamo Bay, Cuba since 2002 was constitutional.

Both the majority opinion and a concurring opinion in this case were written by Judge Janice Rogers Brown, whose nomination to this D.C. Circuit Court was vigorously supported by Constitutionalists in 2005. These *Al-Bihani* opinions provide **an excellent summary of some of the most forceful arguments against the implementation of foreign/international law in the U.S.**, specifically in cases involving military/war issues. Al-Bihani relied heavily on the “international laws of war” in arguing that his Gitmo detention was unconstitutional. But Judge Brown rightly rejected this approach, stating that, “The international laws of war as a whole have not been implemented by Congress and are therefore not a source of authority for U.S. courts.” Al-Bihani’s case – and Reconstructionists’ case for America’s implementation of foreign/international law in general – are further attacked by Brown. She declared that “...the international laws of war [indeed “international laws” in general] are not a fixed code. Their dictates and application to actual events are by nature contestable and fluid....” She explains further that, “(...there is ‘no precise formula’ to identify a [an international] practice as custom and that ‘[i]t is often difficult to determine when [a custom’s] transformation into law has taken place’).”

The accuracy of Brown’s characterization of international law is obvious, as are the other fatal flaws of efforts by Reconstructionist American judges to inject foreign/international law into American law. Two recent U.S. Supreme Court decisions make this especially clear. **These two are *Lawrence v. Texas* (2003), which threw out the Texas sodomy law, and *Roper v. Simmons* (2005)**, which forbade states to impose the death sentence on offenders who were under the age of 18 when they committed their crime. (Christopher Simmons, at age 17, clearly committed murder, bragging in “chilling, callous terms” about the crime both before and after its commission.)

One cogent summary of the dangers of American judges' invoking foreign/international law can be found by careful analysis of an assertion made by the six pro-sodomy Justices in their majority opinion in *Lawrence*.

. . . we think that our laws and traditions in the past half century are of most relevance here....[S]weeping references [in past cases upholding sodomy laws] to the history of Western civilization and to Judeo-Christian moral and ethical standards [opposing sodomy] did not take account of other authorities pointing in an opposite direction [i.e., the 1963 Wolfenden Report in England], early 1980s decision by the European Court of Human Rights, the Universal Declaration of Human Rights, a *Lawrence* brief by Mary Robinson, former UN High Commissioner for Human Rights, etc. (It was asserted that “a court ruling favorable to sodomy laws will generate controversies with the United States’ global allies.”)

From this quote, as well as other Court comments in *Lawrence* and *Roper*, we uncover egregious attacks on America’s constitutional system. Among the worst of these attacks are the following.

1. In order to inject the virus of foreign/international law into the lifeblood of America’s constitutional system, **the Reconstructionist Supreme Court Justices continue their practice (observable in numerous recent decisions) of usurping authority over the Constitution.** They admit this in *Roper*. “. . . the Constitution contemplates that in the end our own judgment will be brought to bear on the question of the acceptability of the death sentence.” (The Constitution contemplates no such thing, nor did American jurists through most of American history contemplate such.) This is likewise clear in *Lawrence*, where the Court baldly admits that “*we think*” (not “*the Constitution provides*”) that recent law is supreme over earlier law.

Of course, **it is impossible for foreign/international law to play a significant role in U.S. constitutional interpretation unless the judges make themselves supreme over the Constitution because nothing in the Constitution’s text or our American and classical English traditions allow for foreign/international law to influence the meaning and application our fundamental law.** Millennia of America’s foundations are erased with this one judicial act by six Supreme Court Justices who occupy their seats for, at the most, thirty to forty years.

2. **The foreign/international law cited by the U.S. Supremes is squarely opposed to our Constitution’s text and constitutional/jurisprudential traditions.** This is clear in the comment quoted above from *Lawrence*. The “history of Western civilization and Judeo-Christian and moral and ethical standards” point “in an opposite direction” from current foreign/international law, some of which legalizes sodomy. Our American system and the classical British system are founded squarely on a Judeo-Christian foundation. Current foreign/international laws are

infused with Humanistic worldview arguments, upholding homosexual rights. These two legal systems are polemic and irreconcilable.

3. **The Court errs egregiously in asserting that its injection of foreign/international law into American jurisprudence is based on “certain fundamental rights” held by other nations which are central to “our own heritage.”** What rights? The Court just told us in *Lawrence* that our Judeo-Christian and Western traditions are “opposite” the current positions of much of the rest of the world on homosexual conduct. When two legal systems disagree on an issue as basic as the nature of man and human sexuality, one wonders how “the rest of the world” and America can agree on much of *anything* in our system of fundamental constitutional principles.

The impossibility of finding fundamental agreements on basic principles between America and “the rest of the world” becomes clearer when we view the list of foreign nations and international agencies that the Court cites as sources for its interpreting our Constitution. This list includes India, Zimbabwe, Jamaica, the European Court of Human Rights, the European Convention on Human Rights, Canadian courts, the United Nations Convention on the Rights of the Child, the European Union, etc. Even the United Kingdom can no longer be cited (although the Court does so) as a legitimate source for understanding the U.S. Constitution. As Justice Scalia points out in his *Roper* dissent (joined by Chief Justice Rehnquist and Justice Thomas), “. . . with increasing speed, the United Kingdom [has submitted] to the jurisprudence of European courts dominated by continental jurists – a legal, political, and social culture quite different from our own.”

4. **If the U.S. Constitution’s standards regarding sodomy and the use of capital punishment are to be shaped at least partially by foreign/international laws, shall we then adopt non-American legal standards in other areas where there is current disagreement?** These current “discrepancies” between American and non-American law include law related to America’s exclusionary rule, separation of church and state, and abortion. Scalia’s *Roper* dissent highlights some of the irreconcilable conflicts between current American and non-American law. For example, “The Court-pronounced exclusionary rule...is distinctively American.” Since this rule is considered to work generally to the advantage of the Humanistic worldview’s tenets, would Reconstructionists support the elimination of this rule because it is not common to “foreign and international law”?

Similarly, “most other countries – including those committed to religious neutrality – do not insist on the degree of separation between church and state that this Court requires.” But American Reconstructionists insist on radical “separation of church and state” – in total opposition to foreign/international law in general. Are the Americans willing and eager to therefore abandon their

insistence on “separation of church and state” in the U.S. in order to conform to foreign/international law?

Looking further in differentiating between American and foreign/international law, we encounter an issue we cannot ignore – abortion. Unbelievably to some of us, the U.S. Court’s abortion law is extraordinarily pro-abortion – which “makes us one of only six countries that allow abortion on demand until the point of viability.” As with separation of church and state jurisprudence, the American Court’s Reconstructionist-created law is out of line with foreign/international law. Are the U.S. Reconstructionists eager to toughen constitutional protections for the unborn child in order to bring American law more in line with foreign/international law?

5. **Our Supremes’ invocation of foreign/international law in interpreting our matchless Constitution destroys “law” as a basic concept.** As Scalia observed in his *Roper* dissent, “the concept of ‘Law’ ordinarily signifies that particular words have a fixed meaning.” But an even cursory view of the law of other nations reveals that they include – or are even based on – concepts and values nonexistent in American law. American constitutional concepts of “life, liberty, and due process of law” are not found in many legal systems, or bear quite different meanings from ours if such concepts do exist. There is no fixed list of basic principles among the world’s legal systems, and no universal fixity in the priority or meaning assigned by various nations to the legal phrases they do use in common with one another.

As for “international law, there is no such thing. “Law” requires an agency with sufficient authority and ability to enact and enforce its mandates on the entire jurisdiction it purports to cover. There is simply no such authoritative agency existing in today’s world. Furthermore, there is no genuine “world community” over which an international government could rule. Therefore, “international law” is an oxymoron.

The conclusion of the matter is that Justice Scalia was absolutely right in arguing in *Roper* that **“To invoke alien law when it agrees with one’s own thinking [i.e., the thinking of a tiny group of Justices on our Supreme Court], and ignore it otherwise, is not reasoned decision-making, but sophistry.”** So long as our Supremes persist in invoking, even some foreign/international law, our legal system and culture cannot rely on America’s courts to provide the certainty, consistency, and continuity. Yet these qualities are what British scholar H.L.A. Hart asserted are necessary if any legal system is to be healthy and mature. **To argue otherwise (i.e., in favor of foreign/international law) is to severely threaten our Constitution and our entire culture.**

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