THE BARRETT NOMINATION BLITZ, PART 2

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[NOTE: This Blitz proposes four "Action Axioms" – principles of action needed to secure the Supreme Court nomination of Judge Amy Coney Barrett, with explanations and arguments supporting each Axiom included in the analysis]

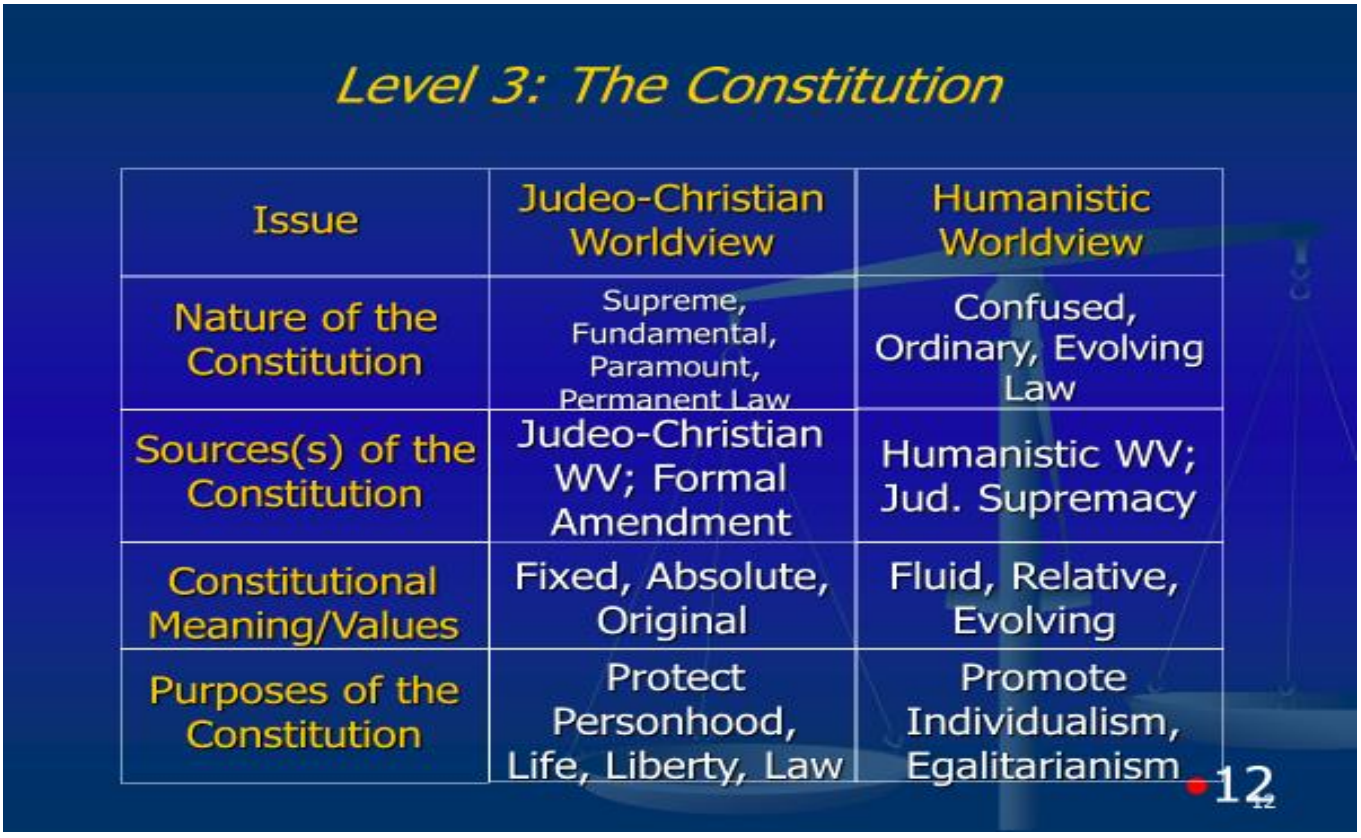
AXIOM #2: BARRETT: A TRUE CONSTITUTIONALIST

Action Axiom #2: We can advance the confirmation efforts of Judge Amy Coney Barrett most effectively and efficiently by demonstrating that her Senate hearings strengthened the picture of her as brilliant and articulate constitutionalist.

Judge Amy Coney Barrett's recent marathon interrogation by the Senate judiciary Committee **consistently revealed her as a brilliant and articulate constitutionalist.** Simultaneously, her Democrat opponents gave a sad performance as "Reconstructionists" (Humanists), whose questions and pontifications wandered all over the field of public policy – seldom focusing on issues truly relevant to a Supreme Justice's confirmation hearings.

"Constitutionalist" and "reconstructionist" are terms applicable to one's view of the Constitution, understood within the entire worldview of that individual (i.e., Judeo-Christian worldview v. Humanistic worldview). As we suggested in our recent discussion of Axiom #1, "the Constitution" occupies Level 3 of our Worldview Chart. According to that illustration, what, then, are the positions of Amy Coney Barrett as a scholar and judge so far in her career that characterize her as a constitutionalist?

Figure 2: The Worldview Chart, Level 3



Taken from "Blackstone's Worldview Blitz,"

In the Committee hearings, **the Democrats' main questions that even remotely related to Barrett's views of the Constitution relentlessly pounded her to reveal her views on "precedent," but with the blatantly obvious underlying purpose of eliciting her answers on reversing *Roe v. Wade*.** The term most frequently used was "precedent"- the label for Anglo-American law's adherence to "stare decisis" ("let the decision stand") – which requires that cases today be decided in accordance with past cases of a similar nature (such past cases constituting "precedents" for today). But what does "precedent" REALLY mean? Several truths are central.

- **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 constitutionalist 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 was *Roe.* Indeed, a "precedent" (court decision) 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). And SCOTUSblog reports that between the 2007 and 2019 terms of the Court (The Roberts Court) there were opinions released in 993 case, with 696 reversals of lower courts (70.1%). **"Precedent" obviously has been no barrier** to modern Supreme Court decision-making, especially when applying precedent 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."

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**. Judge Amy Coney Barrett's past record and Senate hearings strongly indicate that she clearly understands these facts and is committed to the Constitutionalist/Judeo-Christian position – the worldview foundation upon which the Constitution was built and the only one from which it can continue to guide our nation's legal system and culture to health and prosperity.