An Apple of Gold In a Silver Frame:

The Inseparable Tie Between The Declaration of Independence & The United States Constitution

By Dr. William B. Allen

The following speech was delivered as the keynote address before the New Hampshire Center for Constitutional Studies at its 2004 Constitution Day Celebration, Concord, New Hampshire, September 21, 2004.

Dr. Allen is a Professor of Political Science at Michigan State University.

On this occasion I beat an old horse, just to prove that he is not dead. In this task I am not unlike the rhapsode, Ion, who kept Homer alive by memorizing Homer’s entire poems and reciting them at every opportunity. Unlike Ion, however, I trust that I do not mistake the wisdom of the authors for the wisdom of the rhapsode.

The relation between the Declaration and the Constitution has a different affect today than it did in 1860, when enemies of the perfect union could find no pillar bearing more weight – and thus to be dislodged – that what they called the “self-evident lie” that “all men are created equal.” Those critics insisted that men indeed are not by nature made equal, nor should be. Today’s enemies of the more perfect union believe that “all men” in 1776 only meant all white males and, moreover, that not even they were by nature made equal though they should be. These critics insist, however, that what nature and history refused to human kind law can create (and they would indeed have all men equalized, the Constitution notwithstanding).

In 1860 nothing and no one so stoutly resisted the enemies of the Declaration than the Defender of the Constitution. Today nothing and no one so stoutly resists the enemies of the Constitution than the Defender of the Declaration. Abraham Lincoln established at Gettysburg that the nation “conceived in liberty” and confirmed “in the proposition that all men are created equal” must conduct its affairs through limited, constitutional union. Today we require to learn that limited, constitutional union can only be justified on the basis of the Declaration of Independence. What we mean, then, when we say that the Declaration of Independence and the Constitution are best friends, is that they are necessary and reciprocal supports for each other.

Two proofs are necessary to complete this argument: first, that the Declaration requires limited, constitutional union and, second, that the Constitution requires the principle of equality founded in laws of nature and creation.

The First Proof: Limited Constitutional Union Is Required

We may restate the first inquiry in the following form: is it true that the rebellion against British monarchy would have been unjustified on any grounds other than the grounds of natural rights, and that natural rights must disclose not only people’s claims to justice but their capacities to realize those claims?

When stated thus, the first proof becomes, I believe, easily realizable. Let’s start with the negative argument. The British constitution and laws in no way recognized a right of revolution. Accordingly, the act of revolution could not have been found on any positive authority to give rise to a new religion commonly referred to as Secular Humanism; however, Comte’s effort to explain change in terms of successive stages of development turns out to be the heart and lungs of Positivism. The Many Faces of Evolution...

Enter the stage of evolution, an idea whose application was not limited to biology alone but “applied in every direction, for many thinkers came to see everything through evolutionary lenses, so to speak.” From here we proceed to pass through a series of isms to include: rela-

What Would They Say...

“The voice of the people has been said to be the voice of God and however generally this maxim has been quoted and believed it is not true to fact. The people are turbulent and changing; they seldom judge or determine right.”

Alexander Hamilton
## Abbreviated List of Grievances of The Declaration of Independence Cross-Referenced with The Constitution

By Dr. William B. Allen

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<th>Declaration of Independence</th>
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<td>He has refused his assent to Laws the most wholesome and necessary for the public good.</td>
<td>Article I, Section 1: All legislative Powers herein granted shall be vested in a Congress of the United States...</td>
<td>He has kept among us, in times of peace, Standing Armies without the Consent of our Legislatures.</td>
<td>Article I Section 8: The Congress shall have Power...To declare war... To provide and maintain a Navy...</td>
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<td>He has forbidden his Governors to pass Laws of immediate and pressing importance unless suspended in their operation till his Assent should be obtained; and when so suspended he has utterly neglected to attend to them.</td>
<td>Article I Section 7: Every Bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a Law, be presented to the President of the United States...</td>
<td>He has affected to render the Military independent of and superior to the Civil power.</td>
<td>Article 2 Section 1 The President shall be Commander in Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual Service...</td>
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<td>He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inseparable to them and formidable to tyrants only.</td>
<td>Article I Section 2: The House of Representatives shall be composed of Members chosen every second Year by the People of the several States...</td>
<td>He has combined with others to subject us to a jurisdiction foreign to our Constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation.</td>
<td>Article 6: This Constitution, and the Laws of the United States which shall be made in pursuance thereof... shall be the supreme Law of the Land.</td>
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<td>He has called together legislative bodies at places unusual, uncomfortable and distant from the depository of the public Records, for the sole purpose of fatiguing them into compliance with his measures.</td>
<td>Article I Section 4: The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.</td>
<td>For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlisting its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies.</td>
<td>Article 6: no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. [Counters the Quebec Act]</td>
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<td>He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.</td>
<td>Article I Section 5: Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, not to any other Place than that in which the two Houses shall be sitting...</td>
<td>For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments.</td>
<td>Article 4 Section 4: The United States shall guarantee to every State in this Union a Republican Form of Government,...</td>
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<td>He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and consolations within.</td>
<td>Article I Section 6: The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.</td>
<td>He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing J udiciary powers.</td>
<td>Article 3 Section 2 The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.</td>
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<td>He has madejudges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.</td>
<td>Article III, Section 1: The Judges shall hold their Offices during good Behaviour, and shall... receive for their Services a Compensation, which shall not be diminished during their Continuance in Office</td>
<td>He has abdicated Government here, by declaring us out of his Protection and waging War against us.</td>
<td>Preamble: We the People of the United States, in Order to form a more perfect Union,...</td>
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<td>He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.</td>
<td>Article 2 Section 2: [The President]...shall nominate, and by and with the advice and consent of the Senate, shall appoint ... J udges of the Supreme Court...</td>
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beef against the Crown. Although non tallagio non concedendo ("no taxation without consent") was an early principle of absolute right in Britain, it was honored more in the breach than in practice (given the pervasive- ness of rotten borough representation). Ameri- cans were no less well represented than many a Briton. Nor could America make any seces- sion claim, since the colonies could not affect an autonomous status conditioning their place in the empire. To have a right to secede, they would have had to begin the voluntary assimila- tion into the empire. Political forms, which are themselves artifacts, cannot derive princi- ples of their conduct from nature as opposed to their architecture.

If the Americans were justified at all, in other words, their justification had to be extra- judicial, extra-political, extra-historical. What we read the Declaration of Independ- ence, we notice not only the broad language of the exordium ("When in the Course of Human Events...") and the universal principle of the environment that these truths to be self- evident...”), but we can especially notice the particular charges ("the long train of abuses and usurpations") leveled against the King. It has been frequently noted that the very form of the Declaration's indictment identifies the King rather than the Parliament as the enemy to America's liberty. Sometimes this is thought to be a ruse to avoid acknowledging Parliament’s authority (the Americans claimed an interpretation of the British constitution that made them directly subject to the mon- arch without intervention of the Parliament). A careful reading, however, discloses a sub- stantive and not merely rhetorical argument that highlights the Declaration as an initial charter of government.

**Government for the Good of the People...**

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**Else Legislative Powers Return to the People**

Either Legislative Powers Return to the People

Each of the remaining charges against the King reinforces this same principle, each as a particular proof of the universal truth con- tained in the Declaration's enunciation. Per- haps none does so, however, so centrally as that in which they accuse him of neglecting the necessary exercise of legislative powers in such a manner as to cause that "the Legis- lative powers, incapable of Annihilation, have returned to the People at large for their exercise." But this very observation is fol- lowed with the particular notice that the re- sult is to expose the people, inadequately provided, "to all the dangers of invasion without, and convulsions within." This observation, then, makes the necessary argu- ment that although in general the purpose of government is to provide for the public wel- fare, in particular it is to accomplish such acts as the people, otherwise unprovided, cannot so well provide for themselves. And where the constitution is government — limited by this purpose — fails, it falls to the people speedyly to provide such a government as can respect these limits and accomplish these results.

Each of the charges against the King can be converted into a positive affirmation of the obligations of government. For example, government must be "immediate and efficient...pressing needs," relying upon local necessi- ties and judgments wherever delays in execu- tion would be a necessary part of reserv- ing judgment to the highest authority. The needs of people must be accommodated without the cost of them relinquishing "the right of Representation in the Legislature." Legislatures must operate in such a manner as to remain readily accessible to the people and the recourse to public records. Dissent must be respected within the assemblies that conduct the public business. Free movement of persons into and out of the country is a fundamental part of the liberty of citizens. Judicial powers must be independent of execu- tive will and be empowered to render jus- tice to persons. Citizens should not be bur- dened with excessive requirements to sup- port public officers. A military administra- tion is incompatible with public liberty, and the military must be subordinate to and de- pendent upon the civil power.

**Architecture of Government Founded in Universal Principles.**

The architecture of government sought in these affirmations is founded in universal principles and not the English constitution. If there were any doubt about this, the doubt would be resolved not merely by comparing this to the actual English constitution of the day, but also by considering the weighty charge against the King concerning his ac- tivities in Canada. For there, the revolution- aries held, he abolished "the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary govern- ment, and enlarging its Boundaries so as to render it at once an example and fit instru- ment for introducing the same absolute rule into these Colonies." Note that this pro- duces a different picture of English laws op- erating in Canada. If Canada, previously French, were being Anglicized along lines different from what obtained in the thirteen colonies, the thirteen colonies were not an- glicized. Moreover, the demand for a clear- cut demarcation among the powers of govern- ment — executive, legislative, judicial — derived not from English practice but from a universal principle.

This design of limited constitutionalism, further, was nothing less than imitating in hu- man artifacts the order of nature reflected in the powers of God affirmed in the Declaration. God held the three powers of effective order, legislative, executive and judicial. He legis- lated "the Laws of Nature and of Nature's God"; regarding humans he was the executor, for "they are endowed by their Creator with certain unalienable Rights;" and he was ap- pealed to as "the Supreme Judge of the world for the rectitude of our intentions." God, in other words, united the three powers of effec- tive order in his own person. He could do so precisely because he exists in an order above man and respecting which no "consent" to his rule could be demanded. No man is God’s equal, while every man is any king’s moral equal.

Therefore, no rule by men could assemble the three powers of effective order in the same man or body of men, without creating the presence of a power superior to man. The ne- cessity of consent derives from the truth that "all men are by nature the rulers of any other," and that in that circumstance, just rule among men can eventuate only from consent. To be effective, however, such consent must be limited by pru- dential separations of power that will prevent god-like domination. Men will fail to obtain such good as God has ordained for them unless they gather together in effective politi- cal union, but effective political union requires limited, constitutional government.

The Declaration needs limited, constitu- tional union in order to realize its promise of goods ordained by God for men. The Consti- tution responds to that need. The most evi- dent forms of Constitutional response are visi- ble in the architecture itself. The powers of government are divided into legislative, ex- ecutive, and judicial branches. Among these, the legislative takes pride of place, being elaborated in Article I and bearing the most careful delineation of powers and principles of representation. This satisfies the concerns of the Declaration, in which the particular emu- lation of tyrannical oppressions lists four- teen specific legislative power violations, ten executive power violations, and one judicial power violation. The list of legislative powers in Article I, Section 8 serves as a template by which we may assess the charges against the King as mainly of one or the other tendency. The Constitution established bulwarks where the experience recorded in the Declaration identified dangers. This same pattern is evinced in the Bill of Rights, which opens with the powerful stricture, "Congress shall make no law..."

**The Second Proof: The Principle of Equality**

The most telling evidence of the Constitu- tion’s principles is provided in its architecture. Nevertheless, further, significant dimensions are contained in the language and tenor of the document. The Preamble has oft been noted as keynoting the document in its identification of “we the People” as the authorizing power of the government established under the Con- stitution. This responds, of course, to the Declaration’s insistence that the goal is the aim of limited, constitutional union. Moreover, it furthers the claim that not artifi- (Continued from page 1 - William B. Allen)
Judicial Supremacy
By Myles Robinson

Editor's Note: Myles Robinson is a senior at the New Testament Christian School, Plymouth, MA. The following is a transcript of his oral presentation delivered before the New Hampshire Center for Constitutional Studies (NHCCS) at its 2004 Constitution Day Celebration, in Concord, New Hampshire, September 21, 2004. Myles has spoken several times before Constitution Day audiences and has led several service projects on behalf of NHCCS at its annual event. Perhaps the most misunderstood area of our nation's government has to do with the authority that is resident in the judicial branch of the government. When the founders composed the Constitution, they gave each branch of government certain powers. The legislative branch received many powers ranging from the declarations of war, punishment of terrorism and the implementation of taxes on the populace of the nation. From the judicial branch, the power to write law. The executive branch was given the powers of action, being the branch that would execute, for lack of a better word, the laws that the legislative branch had constructed. Finally, we come to the subject of our discussion tonight. The judicial branch was given only the powers of interpreting the laws and applying them to specific cases. The powers that each governing branch were given were relevant to their significance in the outworking of the power flow of our government.

Today, many problems in our nation stem from a grossly incorrect concept called judicial supremacy. Many people, even Christians and so-called constitutionaltists are ignorant of the discrepancies that are present in this philosophy. These people, if asked, would most likely say that the courts have the power to write law. However, this is the major problem with the concept of judicial supremacy. As clearly stated in the Constitution of the United States, Article I, Section 8, Paragraph 18, Congress has the power to "...make all Laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the United States, To or in any department thereof." This clearly delineates the fact that the power of writing law resides solely in the Congress, comprised of the Senate and the House of Representatives. The Supreme Court of the United States, is not a member of Congress. Therefore, the power to write law does not even remotely reside in that branch. The Judiciary branch has its own set of powers and area of jurisdiction. According to Article 3, Section 2, Paragraph 3, "the Supreme Court shall have appellate jurisdiction, both as to Law and to Fact, with such exceptions and under such regulations as the Congress shall make." Even in the Supreme Court's area of jurisdiction, they are still under the same ruling as well. However, if we take the principles and even the actual text of the Constitution and apply it to the matter of abortion, those who propagate the idea have no ground to stand on, legally. It is like this in many areas. If we as Christians and constitutionaltists would only apply the true meaning of the Constitution to the issues that we struggle with and are confronted with every day, we would have a much better platform. While some judges choose to ignore and misinterpret even the very words of the Constitution, we can, as Judge Roy Moore did, stand on the truths of the Constitution and take faith in what the "Father of Lights illuminating their paths" taught us. Their blood, sweat and tears have been poured into this nation, and the lives of thousands of men and women have been laid down in the obtaining and defense of liberty. Will we allow a common misconception to make a mockery and a waste of all that these men and women stood and died for? As Patrick Henry so aptly stated, "Forbid it Almighty God! I know not what course others may take, but as for me, give me liberty or give me death!"

Original Intent

How's Your Constitutional IQ?

1. Which state had the most signers of the Constitution: a) New York, b) Pennsylvania, c) Massachusetts?
2. The Constitution contains the rules of our government. What official document contains the philosophical underpinnings of that government?
3. The Declaration of Independence set forth a long list of complaints against a specific person. Who was that person?
4. Who has the responsibility to govern the District of Columbia, the seat of government?
5. What did the Constitutional Convention do with the new Constitution after it was approved and signed by the Delegates?
6. Which one of the signers of the Constitution had been born in the West Indies?

Answers:
1. New York
2. U.S. Constitution
3. George Washington
4. Congress
5. Ratify
6. Alexander Hamilton

Constitutional Minute
Donald Conkey

“The belief in a God All Powerful wise and good, is so essential to the moral order of the World and to the happiness of man, that arguments which enforce it cannot be drawn from too many sources nor adapted with too much solicitude to the different characters and capacities to be impressed with it.”

James Madison 1825

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Original Intent

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...political entities create the United States of America, but the people, exercising a native, God-given right do so. Not less important, however, is the fact that the authorizing people are recognized within the document as fully entitled to serve in the government and to benefit from its mispristutions. Those who are eligible to hold office on the Constitution’s own terms are distinguished no further than by reasonable age and citizenship restrictions. No religious test is admitted. No race or gender is excluded. In short, in the vision of the Constitution, “all men are created equal.”

Perhaps the most important affirmation of the Declaration’s constitutionalism is the careful provision for re-balancing, re-forming, and re-directing the government that is contained within the Constitution. The amending provision is evidently the leading, though not the sole, source of this understanding. The constitution is careful to keep the door open to the formation of new political subdivisions within the Union, at the same time as providing guarantees against repeated and unwanted re-constitutions of the political subdivisions. In the vision of the Constitution the states are both permanent members of the Union and autonomous members of the Union. The sovereigns without their consent may not alter them. Further, political decision making is constrained by a careful regard to establish broad consensus among the people; it was rather a practical measure of the Constitution itself. The studious avoidance of the word, “slave” – thus to avoid staining the Declaration charter – testifies volubly. Moreover, the tendency of the slave-provisions is to provide di
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tant challenge, for it is certainly correct to say that, if the Constitution were a slave-holding Constitution, then it could not have been a Declaration Constitution. Benjamin Banneker argued as much when he appealed, in 1792, to the author of the Declaration to take up the work of vindicating that document by using his office (as Secretary of State) and reputation (as author of liberty’s charter) to end the abuse that slavery was. Banneker believed that only by eliminating slavery could the Constitution be a true Declaration charter.

I would readily embrace Banneker’s impressed plea on behalf of the slaves, if I were not already persuaded that the reciprocal influences of the Declaration and the Constitution alone provided in this world any hope for the eventual renunciation of slavery as a lawful practice among men. Although Christianity long before the founding of the United States insecinated moral consciousness with repugnance for slavery, it is doubtless correct to observe that it was only when Christianity combined with the political architecture of liberty that any real opportunity arose to sustain that moral consciousness throughout the abolition of slavery. The Constitution, then, compromised with slavery. But in what did the compromise consist? Could it be fairly said that the Constitution purchased its ratification at the cost of approving slavery? Or, was it rather that slave-holding purchased an extended lease at the cost of approving a Declaration charter? I believe the answer to this question is that the latter is nearer the truth than the former. We have not only the testimony of James Madison in the first Congress, who interpreted the slavery clauses in the Constitution as revealing an opposition to slavery albeit in consciousness of the inability to eliminate it at once. We also have the very language of the Constitution itself. The studious avoidance of the word, “slave” – thus to avoid staining the Declaration charter – testifies volubly. Moreover, the tendency of each of the slave-provisions is to provide direct testimony against slavery. At least some proportion of the slaves should be regarded as human beings, for purposes of representation and direct taxation (based on population numbers). That language, the three-fifths clause, was borrowed from a 1783 measure that dealt only with taxation (and therefore led slave-holders to resist the formula rather than support it) and also made plain that all free persons included black persons not slaves. This meant that it was not a comment on the human value of black persons; it was rather a practical measure of the degree of influence the respective sides of the controversy exercised in making the decision. The slave-trading language (“the migration or importation of such persons”) again affirmed the personhood of the slaves. And it did more; it identified the trade as a thing eventually to be ended rather than an option for the future. And the last compromise, the fugitive slave clause, conceded that general laws regarding property should be enforced without exception (thus preserving comity among the states) while yet speaking of “persons held to service,” which included a class larger than slaves.

The slave compromises passed the Constitution, to be sure. But the slave power took the greater risk in doing so. For the other provisions of the Constitution constantly fostering and even encouraging a democratic sentiment could fairly have been expected to deepen the modulated criticism of slavery contained with the compromise language itself. The fact that changing economic and demographic facts in subsequent decades rendered this a more problematic expectation cannot be employed to discount the initial prospects. Nor can it be fairly denied that Lincoln’s valiant and successful effort to re-capture the original perspective owed everything to the prior existence of the Declaration charter. When Lincoln and Douglas debated whether the Constitution could apply to black people, and Lincoln reverted to the “standard maxim of a free society” (“that all men are created equal”) to explain the nature of the constitutional principles, we beheld in purest form the sustained, reciprocal interplay of the Declaration and the Constitution. Such a view should persuade us that they are friends never to be separated, best friends in the cause of liberty.

Now it will be reasonable for anyone to insist that the compromises of the Constitution be brought within the compass of these reflections – most notably, the compromises with slavery. Is not slavery the very denial of the Declaration that the Constitution is otherwise said to echoed? No, we cannot duck this important challenge, for it is certainly correct to say that, if the Constitution were a slave-holding Constitution, then it could not have been a Declaration Constitution. Benjamin Banneker argued as much when he appealed, in 1792, to the author of the Declaration to take up the work of vindicating that document by using his office (as Secretary of State) and reputation (as author of liberty’s charter) to end the abuse that slavery was. Banneker believed that only by eliminating slavery could the Constitution be a true Declaration charter.

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Judicial tyranny and judges run amuck? Or perhaps, evenhanded interpretation of historical law and its proper application to today’s circumstances? These are often the justifying cries heard throughout society as one surprising, and sometimes shocking, judicial edict after another flows from judicial benches across our land.

The Judicial branch was originally meant to be one of the weaker branches of our federal government, but that seems to have drastically changed throughout the years. A majority of judges act like kings or monarchs, ruling over their courtroom as a kingdom and think they can do as they please. It was never meant to be so. The Judicial branch was originally bestowed with four basic powers. These powers were 1.) First, to use appellate jurisdiction, 2.) Secondly, to rule in cases of law and equity, 3.) Thirdly, to rule upon the law and the facts of a case, and 4.) Lastly, to insure the power of the jury. Using these powers correctly, we should expect the courts would rule according to the Constitution and give their opinion of what the law says, and that their opinion is binding only on the cases brought before it. We should expect that judges’ verdicts would not become the law of the land.

Unfortunately, the ignorance of our culture has led to the predominant belief that what the judges say affects legislation rather than the legislation effectively limiting what judges can say. The founders of our nation predominately based the civil government they formed on the governing principles God gave to Israel in the Old Testament. The overwhelming majority of our founders and the framers of the Constitution believed the God of the Bible is the ultimate Judge, and that He allowed earthly judges to be appointed for a time and a season. Common law, the British system that all law is common to all people regardless of who or what they are, is rooted in the Ten Commandments. Common law is common sense and should appeal to our instincts and conscience. The government cannot change common law as it is instinctively put into our conscience as evidenced by our desire for fair and equal treatment. If common law is in us, we should be ruled and judged by it. In 1772, George Mason said, “The laws of nature are the laws of God, Whose authority can be superseded by no power on earth.” Judges should rule according to civil law as well as by what civil law is based upon. The clear basis for all of our laws was, is, and must remain, revealed law, such as the Ten Commandments.

The Judicial branch is one of our three major governmental branches, of which the other two are the legislative branch (the Congress), and the executive branch (the President, his cabinet and their departments). In the Constitution of the United States, the judicial branch is explained in Article III. In this article, the basic four powers granted to the judiciary are explained in more detail. The judicial branch, as well as the other two branches of the federal government, has built-in checks and balances. However, today we often see these checks and balances ignored or misused. Many people hold the false belief that judges are in their position for life. However, a judge’s term of office can technically be held only while they exhibit good behavior or as long as they rule constitutionally. Judicial power was further limited on February 7th, 1795, when Amendment 11 was added to the Constitution.

Judicial tyranny is currently allowing unconstitutional practices to be carried out in our land. For example, Amendment 6 says that criminal and civil cases are to be speedy, public, economical, and impartial. However, trials are now slow, overly sensationalized or often particularly secretive, costly, and stacked or excessively influenced. The average person cannot easily have a trial because of how our courts do business despite Amendment 6. The not-so-average person has their case tried in the court of public opinion before they receive a jury trial. Another example is the use of case law. Case law, the precedent set by prior rulings, is very prominent and crucial to the judicial branch. The practice of case law, however, must apply common law standards to ensure stability of future rulings. Civil law, and the common law that supports civil law, must always be used as the foundation of our judicial rulings. Many case laws of history are being loosened or restricted by current rulings that make neither judicial nor common sense. Presently, we are not making sure our judges rule correctly; and, when they don’t, we often do nothing except to allow them to continue. Once there is movement away from a law’s original intent, much like the proverbial hole in the dyke that grows larger and larger, a cascading flood follows that is very difficult to correct. In order to correct tyranny within the judicial branch we must fully relearn and restate the checks and balances that were given to Congress. We must take measures to enforce these checks and balances. The Constitution clearly states, “The Judges, both of the supreme and inferior Courts, shall hold their Offices during good behavior.” If we remove or impeach judges for their unconstitutional rulings or poor personal or professional behavior, we could take a huge step in the right direction; that is, having a judicial branch that maintains the content of and operates under the United States Constitution.

We must teach our children about the Constitution, its principles and from where those principles come. A big difference would take place if the change in government started from the bottom up because leaders would be held accountable or would be removed from office. We must also teach personal self-government and restrain, individual responsibility, and stewardship; so that once the proper form of government is restored, it may be safeguarded and maintained.
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ernment until the turn of this century [20th]. At that
time, a different philosophy was beginning to gain
strength among judges and educators. By the mid-
twentieth century, this competing philosophy, often
termed "relativism" (or "pragmatism"), had become
mainstream in a number of academic disciplines. 4

At this point, the reader is reminded of the
basic tenets of relativism and its propriety to
positivism. According to the Encyclopaedia
Religion, relativism requires that all views or
so-called cultural norms ... be evaluated relative
to the societies or cultures in which they appear
and are not to be judged true or false, or
good or bad, based on some overall criterion but
are to be assessed within the context in which they occur.
Thus, what is right or good or true to one
person or group may not be considered so by oth-
ers... [there] are no absolute standards... Man in
the measure of all things,' and... each man [can]
be his own measure... [C]annibalism, incest, and other
practices considered taboo are just variant kinds of
behavior, to be appreciated as acceptable in some
cultures and not in others...[Relativism] urge[s]
suspension of judgment about right or wrong. 5

The Cart Before The Horse

Eventually, legal positivists would make their way onto the High Bench, some as early as the turn of the 20th century; and thus, Court deci-
sions began to reflect the views of these judi-
cal evolutionists even if limited to dissenting
behavior. In reality, they were a bellwether of
things to come, for as more legal positivists
came to occupy a seat on the Court, its deci-
sions would be rooted less and less frequently in
the plain text of the Constitution, as its au-
thors intended, and more and more in the ide-
ology of positivism. The prevailing will of the
Court, the makeup of its political ideology,
would now become the basis upon which mat-
ters of constitutional question would be de-
cided. To deliver the positivist’s coup de
grace, America’s educational institutions, pub-
lic and private with few exceptions, would be
used to propagate the lie that the Constitution
is dynamically amended by Supreme Court
decisions. In this way, the Constitution could
be made to align with the changing and felt
needs of society, a clear case of the tail wag-
ging the dog.

Although legal positivism was not practiced in
Jefferson’s day, he predicted this turn of
events with prophetic accuracy: “It has long...
been my opinion, and I have never shrunk from its
expression (although I do not choose to put it into a
newspaper, nor like a Priest in armor [to] offer my
self [as] its champion), that the term of dissolution
power of our federal government is in the constitu-
tion of the federal judiciary, an irresponsible body (for im-
peachment is scarcely a scarecrow), working like
gravity by night and by day, gaining a little today
and a little tomorrow, and advancing its noiseless
step like a thief over the field of jurisdiction...” 6

That was in 1821; two years later, Jefferson
went on to say this: “At the establishment of our
constitutions, the judiciary bodies were supposed to be
the most helpless and harmless members of the
government. Experience... soon showed in what
way they were to become the most dangerous; that
the insufficiency of the means provided for their
judges removal gave them a freehold and irre-
 sponsibility in office; that their decisions, seeming
 to concern individual suitors only, pass silent and
unheeded by the public at large; that these deci-
sions nevertheless become law by precedent, sap-
ping...the foundations of the Constitution, and
working its change by construction, before anyone
has perceived that the invisible and helpless worm
has been busily employed in consuming its sub-
stance.” 7

The Court Says...

Some two hundred years would pass before
Jefferson’s greatest fears would fully material-
ize. But, we are long past the point where the
judiciary’s assault upon the Constitution can be
ignored: “Jefferson was exactly right. It took a
while before the Supreme Court assumed the
power he feared it would, but it finally happened,
and on a scale that would have astonished even
Jefferson.8 Our personal liberties, once se-
cured “in the possession of a written Constitution,”
are now secured by little more, in Jefferson’s
parlance, than a Constitution made “a blank pap-
er through construction.” 9

For judges today, especially those of the legal-positivist ilk, held
no reservations whatsoever as to whether they
have the authority to impress their own mind
upon the meaning of America’s founding
documents in order to accommodate what one
early positivist, Supreme Court Justice Oliver
Wendell Holmes, 8 characterized as “the felt
necessities of the times.”

In Justice Holmes’ view, the Court is
obliged to jettison well-established precedent if
it gets in the way of achieving a preferred
social agenda: “[t]he justification of a law for us
cannot be found in the fact that our [fore] fathers
always have followed it.” No, Holmes said, the
justification of a law “must be found in some
help which the law brings toward reaching a social
development...” 10

Activist judges... The Onslaught of the Positivists

Justice Holmes served on the Court for
some twenty-nine years before stepping down
at age 91 in the face of failing health. But
he left behind a legacy of close to 1000 opinions
for others of his political ideology to pick up
and advance. As Holmes ascended the High
Bench in 1902, the Court held to a laissez-
faire 11 interpretation of the law. But Holmes’
opposing opinions towards the justices and opin-
ions of his legal contemporary, Justice Louis
Brandeis, a 1916 Woodrow Wilson appointment to
the Supreme Court. “Many of the positivistic
concepts in use by courts today were introduced or
popularized by Justice Brandeis, including the ap-
pllication of the Sill of Rights to the States via the Four-
thirteenth Amendment, a constitutional right to privacy,
and the evolution of legal standards and principles. 12

Among the Brandeis claims to fame are the
celebrated Brandeis Brief, and his fact-emphasis
philosophy of laisser-faire to the welfare state:
“The Brandeis method on the bench was used for a
particular purpose: to reject the prevailing notion
that the laws were to be ‘equated with theories of laissez-
faire...’ Instead, the law had come to believe... that [t]he regu-
lation...is necessary to the preservation and best
development of liberty.” 13

Enter Benjamin Cardozo, a positivist ap-
pointed to the Supreme Court in 1912. Cardo-
zzo’s major contribution... was his use of tradi-
tional judicial techniques to adapt the law to society’s
changing requirements... It was Cardozo who, next
to Holmes, contributed the most to legal positivism;
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tional judicial techniques to adapt the law to society’s
changing requirements... It was Cardozo who, next
to Holmes, contributed the most to legal positivism; 14
indicative of Cardozo’s jurisprudence is his
approval of the opinion rendered in Home
Building & Loan Association v. Blaisdell, a
1934 case dealing with the impairment of con-
tracts. In an undelivered concurrence regarding
mortgage law, Cardozo said that while the law
may be inconsistent with the Framers’ intent,
their belief to be significant must be adjusted to the
world they knew. It is not...consistent with what
they would say today.” 15

At bottom, Cardozo “openly refused to be bound
by any concept of transcendental laws or fixed rights and
wrongs...[he] also encouraged the Court to
eliminate the use of its foundational precedents...[and] combined the prospect of the Court departing
from its traditional role and instead assuming the
role of lawmaker: ‘I take judge-made law as one of the
existing realities of life.’” 16

“Like a Thief In The Night...”

By no means was the assault upon the Consti-
tution limited to the work of these judicial evo-
lutionists. Others would come and go through-
out the 20th century; to wit, Supreme Court his-
tory for that period is replete with many exam-
3

ples such as Chief Justice Charles Evan Hughes
who is said to have pre-
sided over two very differ-
cent Courts in his eleven
year tenure (1930-1941) on
the Bench. Herein we refer
to the New Deal judicial
coalition, which came into
being by popular mandate in
1932 and would remain as
such to dominate American

(Continued on page 8 - Chairman’s Corner)
politics for the next three and a half decades culminating in what has been called a constitution of revolution resulting in the change that occurred in Supreme Court jurisprudence.

On March 29, 1937 the conversion became evident: ""The spectacle of the Court that day frankly and completely reversing itself and straining down its opinion but few a few months old was a moment never to be forgotten."" New Dealers could hardly contain themselves: "Well could a leading New Dealer chortle, 'What a day!' To labor, minimum wage law and collective bargaining, to farmers, relief in bankruptcy, to law enforcement, the firearms control. The Court was on the march!"

Still, for the positivists, the best was yet to come: "Although prominent educators and individual Justices faithfully endeavored to advance this philosophy in the first half of the 20th century, it was not until the late 1940's that their movement had gained the sufficiently widespread number of adherents to produce radical societal change." President Dwight D. Eisenhower would play a major role in reversing the positivist assault upon constitutional government in his appointment of two radical judges to the High Bench: Chief Justice Earl Warren in 1953, thought to be an Eisenhower appointee, and William J. Brennan Jr. in 1956, a re-election year political appointment, who "believed that the Constitution's meaning should evolve to fit the changing standards of society; he struck down school prayer, upheld flag desecration, and upheld abortion." After a brief introductory spell, the Warren Court would begin by dropping one bombshell after another on an already moribund Constitution. Their tortured farewell address to the nation: "Stand in the old ways, view the anachronisms of the Framing with the discernment of the Framers." Warren cited "four alarming weaknesses" of the Constitution: the Bill of Rights, federalism, the Commerce Clause, and the qualification that the Constitution needs to evolve to fit the times: "We have been living for nearly four decades under the premise of evolution to jurisprudence. [He] reason that since man evolved, then his laws must also evolve; and judges should guide both the evolution of law and the Constitution. Consequently, Langdell introduced the case-law study method under which students would study judges' decisions rather than the Constitution itself. Now the only stumbling block between an outright hijacking of the Framers' beliefs and the Constitution itself was the need to raise up a generation or so of judges fully immersed in the new philosophy.

David Barton explains: "Under the case-law approach, history, precedent, and the views and beliefs of the Founders not only became irrelevant, they were even considered hindrances to the successful evolution of a society. As explained by a leading relativist (John Dewey) in 1927: 'The belief in political liberty, of the sanctity of some form of state consecrated by the efforts of our fathers and hallowed by tradition, is one of the stumbling-blocks in the way of orderly and directed change.'" As Langdell's case-law approach was gradually embraced by other law schools ... the result was a diminishing belief in absolutes. In fact, within a few short years (by the 1930's), Blackstone's Commentaries on the Law had been widely discarded. Blackstone was deemed to present an outdated approach to law since [he] taught that certain rights and wrongs—particularly those related to human behavior—did not change.

The Spirit of Innovation

The men of the truly great generation produced what has often been called the most perfect political document ever struck by the hand of man, our nation’s Constitution. They rested the protection of our personal liberty in its written text and made We The People its final keeper. Out of self-interest, we were to remain vigilant as to any innovations upon it from any source; we were to find every violation or encroachment upon it reprehensible; we were to defend, protect and uphold it to prevent its being reduced to a mere “parchment barrier.” President Washington advised the people accordingly in his farewell address to the nation: “Towards the preservation of your government and the permanency of your present happy state, it is requisite, not only that you steadily discernment irregular oppositions to [the Constitution's] acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretenses.” Few students over the last half-century have seen or read Washington's Farewell Address much less read or study the nation’s founding documents. Today, it is all too common for young Americans to become adults who are totally ignorant of their roots. We shouldn’t wonder than that today our juvenile, originally designed as the weakest branch of government, operates like “a beast without a head” and whose decisions blatantly usurp our constitutionally protected rights and weaken the power of the philosophical pillars upon which the Constitution rests. Their tortured interpretations of the Constitution must not stand; or, the American Republic will cease to be.

Ben Franklin also warned against replacing proven fundamental principles with new political theories. He said, “take the advice of the prophet: ‘Stand in the old ways, view the ancient path, consider them well, and be not among those that are given to change.’ It is imperative that we return to the old paths such that the ideas and philosophies of the Framers’ be made dominant once again. _Dianne Gilbert_