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How Free is the Land of the Free?
By Dr. Andy Woods

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Genesis 8:21

The Lord smelled the soothing aroma; and the Lord said to Himself, "I will never again curse the ground on account of man, for **the intent of man's heart is evil from his youth**; and I will never again destroy every living thing, as I have done. [emphasis mine]."

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Lord Acton

"All power tends to corrupt and absolute power corrupts absolutely."


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How Free is the Land of the Free?

1. The Way it Was
2. What Went Wrong?
3. The Way It Is
4. What Can Be Done?




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

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


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

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


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

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

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

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

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George Washington

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



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

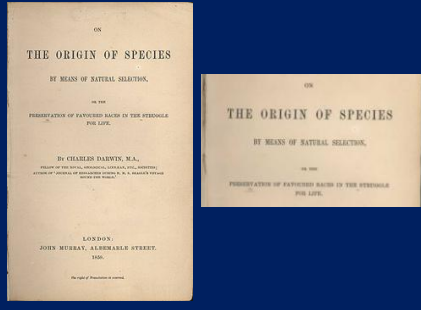
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Cited in Mark A. Beliles and Stephen K. McDowell, *America's Providential History* (Charlottesville, VA: Providence, 1989), 95.

“The philosophy of the school room in one generation will be the philosophy of government in the next.”

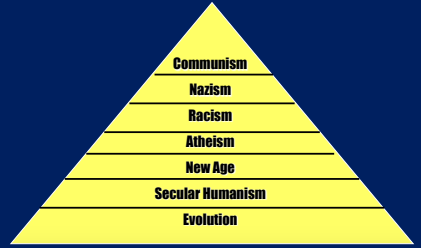
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ON THE ORIGIN OF SPECIES BY MEANS OF NATURAL SELECTION. OR THE PRESERVATION OF FAVORABLE SPECIES IN THE STRUGGLE FOR LIFE. BY CHARLES DARWIN, M.A. LONDON: JOHN MURRAY, ALBEMARLE STREET, 1908.

ON THE ORIGIN OF SPECIES BY MEANS OF NATURAL SELECTION. OR THE PRESERVATION OF FAVORABLE SPECIES IN THE STRUGGLE FOR LIFE.


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Communism
Nazism
Racism
Atheism
New Age
Secular Humanism
Evolution

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


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

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


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

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


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

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


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

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


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

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

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

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How Free is the Land of the Free?

1. The Way it Was
2. What Went Wrong?
3. The Way It Is
4. What Can Be Done?



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3. The Way It Is

- a. Shift in education
- b. Transfer in authority
- c. Threat to unalienable rights
- d. Threat to Democracy
- e. Illustrations




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3. The Way It Is

- a. Shift in education
- b. Transfer in authority
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John Dewey; quoted in Barton, *Original Intent*, 228.

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


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

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


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

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


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

“Thus, when the Supreme Being formed the universe, and created matter out of nothing, he imposed certain principles upon that matter, from which it can never depart, and without which it would cease to be...If we farther advance, from mere inactive matter to vegetable and animal life, we shall find them still governed by laws, more numerous indeed, but equally fixed and invariable...Man, considered as a creature, must necessarily be subject to the laws of his creator, for he is entirely a dependent being...no human laws should be suffered to contradict the laws of nature and the law of revelation.”


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

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

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

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

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An Unknowable Constitution?



According to staff writer for The Washington Post and MSNBC Contributor Ezra Klein, “The issue with the Constitution is that the text is confusing because it was written more than 100 years ago and what people believe it says differs from person to person and differs depending upon what they want to get done.”

<http://www.youtube.com/watch?v=bc4qHHIRcJw&feature=related>.

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3. The Way It Is




- a. Shift in education
- b. **Transfer in authority**
- c. Threat to unalienable rights
- d. Threat to Democracy
- e. Illustrations


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

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




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

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

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

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


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3. The Way It Is 


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
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Declaration of Independence

 "the Laws of Nature and of Nature's God,"

 "we hold these truths to be self evident, that all men are created equal,"


 "they are endowed by their Creator with certain unalienable Rights,"

 "appealing to the Supreme Judge of the world for the rectitude of our intentions,"

 "with firm reliance on the protection of Divine Providence."


Church of the Holy Trinity v. U.S., 343 U.S. 457, 467-68 (1952)

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

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

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

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

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Infamous Warren Court Quip Attributed to Justice William O. Douglas



“With five votes we can do anything”




Owen M. Fiss, "Objectivity and Interpretation," in *Interpreting Law and Literature: A Hermeneutic Reader*, ed. Stanford Levinson and Steven Mallick (Evanston, IL: Northwestern University Press, 1988), 244.

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Thomas Jefferson

“...a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please.”



Jefferson, *The Writings of Thomas Jefferson*, 15:213, in a letter from Jefferson to Judge Spencer Roane on September 6, 1819.

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

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

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

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

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The Supreme Court Justices



Roberts	Ginsburg	Breyer	Scalia	
Thomas	Alito	Kennedy	Sotomayor	Kagan

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3. The Way It Is


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e. Illustrations


1. Engle v. Vitale (1962)
2. Roe. Wade (1973)
3. Lawrence v. Texas (2003)
4. Obergefell v. Hodges (2015)





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e. Illustrations

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 **Old Satan Deluder Law** 

"It being one chief project of that old deluder, Satan, to keep men from the knowledge of the Scriptures, as in former time...It is therefore ordered...that after the Lord hath increased the settlement...they shall...appoint one within their town, to teach all such children to read...they shall set up a grammar school to instruct youths..."

Church of the Holy Trinity v. U.S., 143 U.S. 457, 467 (1892)

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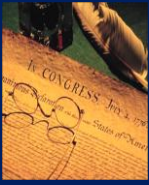
Engle v. Vitale, 370 U.S. 421-22 (1962).

"Almighty God, we acknowledge our dependence upon Thee, and we beg thy blessings upon us, our parents, our teachers, and our country."



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Article III of the Northwest Ordinance


 "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

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

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No Precedent

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



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


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First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" (italics added).



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

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

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U.S. SUPREME COURT

- BOWERS V. HARDWICK (1986)
- LAWRENCE V. TEXAS (2003)



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4. **Obergefell v. Hodges (2015)**



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How Free is the Land of the Free?



1. The Way it Was
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4. **What Can Be Done?**



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So What? Seven Points of Application!

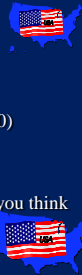
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- Give yourself to prayer (1 Tim. 2:1-4)
- Don't lose hope (Titus 2:13)
- Educate the next generation (Judges 2:10)
- Greater civic involvement (1 Cor. 4:2)
- Support common sense legislation
- Realize that you have more power than you think



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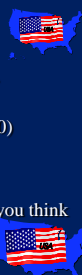
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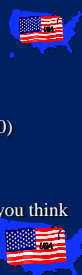
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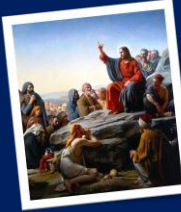
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A City Set Upon a Hill



Matt 5:13, 16:
"You are the light of the world. A city set on a hill cannot be hidden...Let your light shine before men in such a way that they may see your good works, and glorify your Father who is in heaven."

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"I will protect the German people. You take care of the church. You pastors should worry about getting people to heaven and leave this world to me."

Adolf Hitler to Martin Niemoller, cited in Charles Colson, *Kingdoms in Conflict: An Insider's Challenging View of the Politics, Power, and the Pulpit* (Grand Rapids: Zondervan, 1987), 140.

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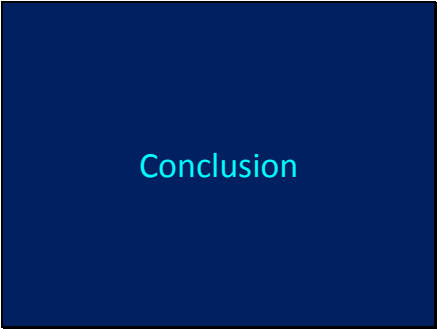
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When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another...a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation...That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government...But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

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34-year-old **James Wilson** signed the Declaration. He later signed the Constitution and was appointed to Supreme Court by George Washington. James Wilson stated in 1787:

"After a period of 6,000 years since creation, the United States exhibit to the world THE FIRST INSTANCE of a nation...assembling voluntarily...and deciding...that system of government under which they and their posterity should live."

Scalia—"Every tin horn dictator in the world today, every president for life, has a Bill of Rights. "That's not what makes us free; if it did, you would rather live in Zimbabwe. But you wouldn't want to live in most countries in the world that have a Bill of Rights. What has made us free is our Constitution. Think of the word 'constitution'; it means structure." "The genius of the American constitutional system is the dispersal of power." "Once power is centralized in one person, or one part [of government], a Bill of Rights is just words on paper." ... "In...the republic of America, the power surrendered by the people is first divided between two distinct governments [federal and state], and then the portion allotted to each subdivided among distinct and separate departments [legislative, executive, judicial]. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself." "What a difference that makes."

John Jay, who became the court's first Chief Justice "refused a second nomination as chief justice because he thought the office

lacked prestige.”¹ Thus, Jay looked upon the role of Chief Justice of the United States Supreme Court as a virtual dead end job.

Prior to 1935, the Supreme Court never even had its own building independent of the building that housed the legislative branch. The court instead met in either “a committee room of the new Capitol building,” “the Senate’s former chambers on the ground floor,” or “upstairs in the newly vacated Senate chambers.”²

The Senate’s former chambers on the ground floor where the court met “...was so dark and dank that the *New York Tribune* referred to it as a ‘potato hole.’”³

Historians Marshall and Manuel comment that during these years, “An idle passerby might wander in and find two or three onlookers and a court clerk and several men who had given up trying to find work and felt grateful for a warm place to sit on a cold day...one could not tell that he had entered the highest courtroom in the land.”⁴

The United States Supreme Court never even met on a full time basis until the Eisenhower administration.

¹ Monk, *The Words We Live By*, 94.

² Ibid. See also Newt Gingrich, *Rediscovering God in America: Reflections on the Role of Faith in Our Nation's History* (Nashville, TN: Integrity, 2006), 86-87.

³ Monk, *The Words We Live By*, 94.

⁴ Peter Marshall and David Manuel, *From Sea to Shining Sea* (NJ, Fleming H. Revell Co., 1986), 197-

Kennedy- The ancient origins of marriage confirm its centrality, but it has not stood in isolation from developments in law and society. The history of marriage is one of both continuity and change. That institution—even as confined to opposite-sex relations—has **evolved** over time.

Thomas- Along the way, it rejects the idea—captured in our Declaration of Independence—that human dignity is innate and suggests instead that it comes from the Government. This distortion of our Constitution not only ignores the text, it inverts the relationship between the individual and the state in our Republic. I cannot agree with it.

Scalia-I join THE CHIEF JUSTICE's opinion in full. I write separately to call attention to this Court's threat to American democracy.

Scalia- Not surprisingly then, the Federal Judiciary is hardly a cross-section of America. Take, for example, this Court, which consists of only nine men and women, all of them successful lawyers who studied at Harvard or Yale Law School. Four of the nine are natives of New York City. Eight of them grew up in east- and west-coast States. Only one hails from the vast expanse in-between. Not a single South-westerner or even, to tell the truth, a genuine Westerner (California does not count). Not a single evangelical Christian (a group that comprises about one quarter of Americans), or even a Protestant of any denomination. The strikingly unrepresentative character of the body voting on today's social upheaval would be irrelevant if they were functioning as *judges*, answering the legal question whether the American people had ever ratified a constitutional provision that was understood to proscribe the traditional

definition of marriage. But of course the Justices in today's majority are not voting on that basis; *they say they are not*. And to allow the policy question of same-sex marriage to be considered and resolved by a select, patrician, highly unrepresentative panel of nine is to violate a principle even more fundamental than no taxation without representation: no social transformation without representation.

Bickel-The function of justices...is to immerse themselves in the tradition of our society and of kindred societies that have gone before, in the history and in the sediment of history which is law, and...in the thought and the vision of the philosophers and poets. The justices will then be fit to extract "fundamental presuppositions" from their deepest selves, but in fact from the *evolving* morality of our tradition (italics added).

Hos. 4:6- My people are destroyed for lack of knowledge.

1 Tim. 2:1-2- First of all, then, I urge that entreaties *and* prayers, petitions *and* thanksgivings, be made on behalf of all men, ² for kings and all who are in ^[a]authority, so that we may lead a tranquil and quiet life in all godliness and ^[b]dignity.

Prov. 21:1- The king's heart is *like* channels of water in the hand of the LORD; He turns it wherever He wishes.

Titus 2:13- looking for the blessed hope and the appearing of the glory of ^[a]our great God and Savior, Christ Jesus

Prov. 22:6- Train up a child ^[d]in the way he should go, Even when he is old he will not depart from it.

Heb. 13:20-21- Now the God of peace, who brought up from the dead the great Shepherd of the sheep ^[a]through the blood of the eternal covenant, *even* Jesus our Lord, ²¹ equip you in every good thing to do His will, working in us that which is pleasing in His sight, through Jesus Christ, to whom *be* the glory forever and ever. Amen.

When in the Course of human events, it becomes necessary for one **people** to dissolve the political bands which have connected them with another...a decent respect to the opinions of **mankind** requires that **they** should declare the causes which impel them to the separation...That to secure these rights, Governments are instituted among Men, deriving their just powers **from the consent of the governed**, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the **People** to alter or to abolish it, and to institute new Government...But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is **their** right, it is **their** duty, to throw off such Government, and to provide new Guards for their future security.