

Identifying the Spirit of the Constitution

David Barton

As a result of the two distinctly differing philosophies of constitutional interpretation, there have now been two distinct eras of judicial decisions. The fundamental difference between these two was summed up by a U.S. Attorney General:

[U]nder the old system the question was **how** to read the Constitution; under the new approach, the question is **whether** to read the Constitution. (emphasis added)

The second era, which began with the slow accumulation of positivistic Justices on the Court throughout the 1930s and 1940s, was not fully actuated until the Court's 1962-63 decisions. Those decisions openly repudiated the transcendent, Biblical, natural-law standards which had prevailed—or had at least not been set aside—since the time of the Founders, and instituted legal positivism as the replacement.

Today, there are avid proponents of both systems; yet does either really make a difference? Does either actually affect our lifestyle? The answer to the question rests in this ancient proverb:

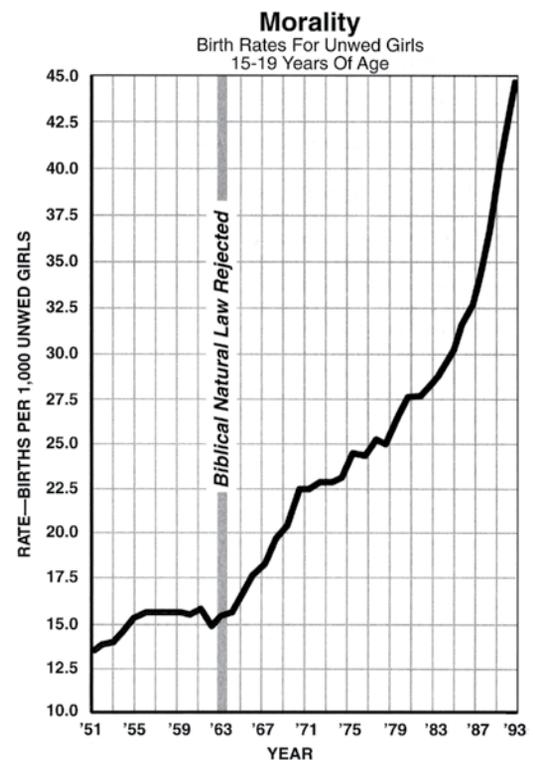
*Every good tree bears good fruit,
but a bad tree bears bad fruit.
Thus, by their fruit you will recognize them.* (Matthew 7:17,20 NIV)

Very simply, to determine if either philosophy had any substantial impact, compare the societal results from early

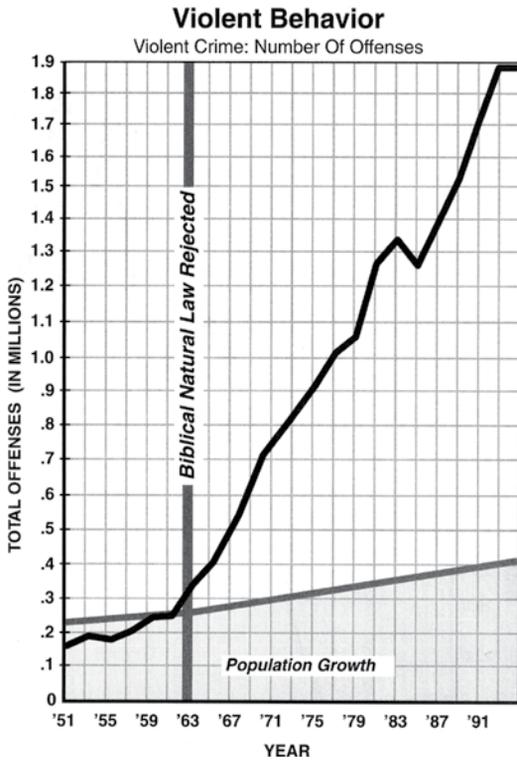
years against those of more recent years—simply examine the “fruits.” In support of this approach, signer of the Declaration John Witherspoon affirmed:

[T]his rule of trying every principle ... by its fruits ... is certain and infallible. ... There seems, indeed, to be exact analogy between this rule in religious matters, and reason in our common and civil concerns. Reason is the best guide and director of human life.

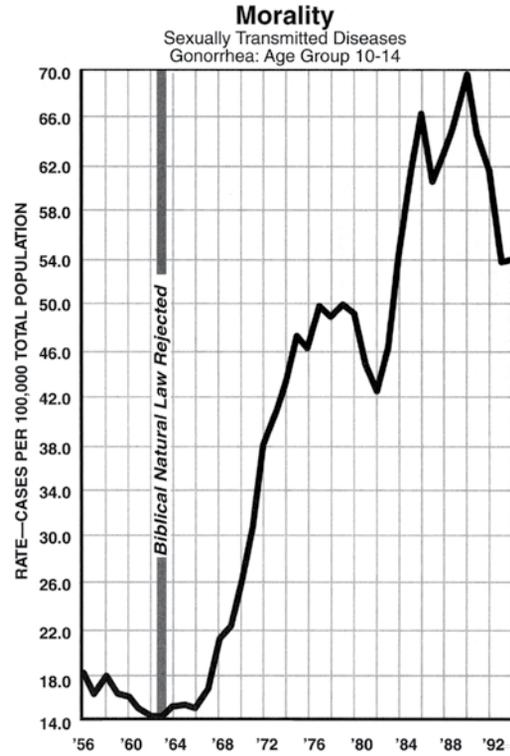
The following charts are representative of several areas in which the Court



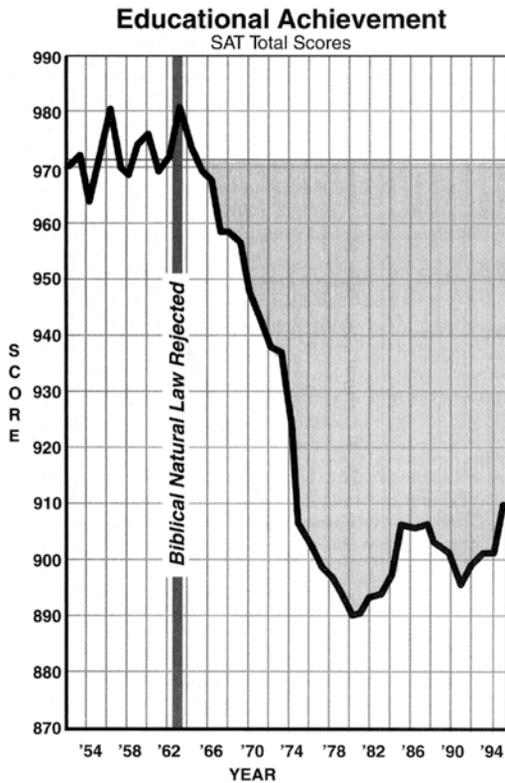
Basic data from Dept. of Health and Human Services and *Statistical Abstract of the United States*.



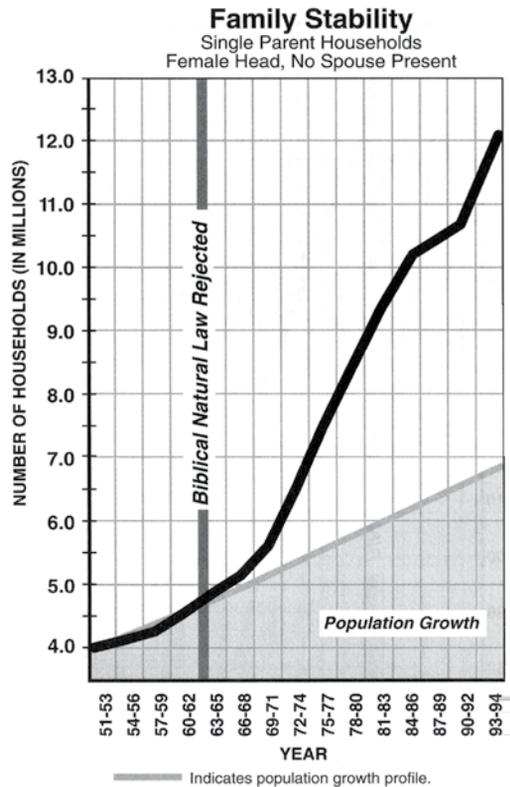
Basic data from *Statistical Abstract of the United States*, and the Dept. of Commerce, Census Bureau.



Basic data from the Center of Disease Control and Dept. of Health and Human Resources.



Basic data from the College Entrance Exam Board, New York,



Basic data from *Statistical Abstract of the United States*, and the Dept. of Commerce, Censes Bureau.

has implemented its new approach and each accentuates the year in which positivism became the enforced standard. The correlations are striking.

The changes suggest that the new positivistic policies have resulted in drastic and unacceptable changes in morality, criminal behavior, education, and family stability—and these are but a few examples. Nevertheless, these are sufficient to suggest strongly that the institutionalization of positivism and the abandonment of the transcendent Biblical natural law principles have not produced national improvement or prosperity but have worked in the opposite direction.

While the Court's change of standards has perhaps been a display of poor judgment, the Court's actions have actually been illegal under the standards of original intent. Furthermore, they have violated the value system of "the laws of nature and nature's God" established in the Declaration of Independence.

Even though contemporary courts now regularly violate that legal standard, few today consider such violations significant for they believe the Constitution to be independent of the Declaration. This incorrect belief is of recent origin; in fact, it was rejected by earlier generations. As Samuel Adams pointed out:

Before the formation of this Constitution ... [t]his Declaration of Independence was received and ratified by all the States in the Union and has never been disannulled.

For generations after the ratification of the Constitution, the Declaration was considered a primary guiding document in

American constitutional government. In fact, well into the twentieth century, the Declaration and the Constitution were viewed as inseparable and **interdependent**—not independent—documents.

Perhaps the proper relationship between the Declaration and the Constitution is best understood by a comparison with the relationship between a corporation's Articles of Incorporation and its By-Laws—the two documents vital to its legal existence. The Articles of Incorporation call the entity into legal existence, and the By-Laws then explain how it will be governed. However, the governing of the corporation under its By-Laws must always be within the framework and purposes set forth in its Articles; the By-Laws may neither nullify nor supersede the Articles.

Such is the relationship between the Declaration and the Constitution; the Declaration is America's articles of incorporation and the Constitution is its bylaws. The Constitution neither abolished nor replaced what the Declaration had established; it only provided the specific details of how American government would operate under the principles set forth in the Declaration.

Today, as the knowledge of this interdependent relationship has been widely lost or ignored, many individuals complain of the difficulties arising from the fact that the Founders placed no explicit moral values or rights and wrongs into the Constitution. However, the Founders needed to place no values in the Constitution (the bylaws) for they had already done so in the Declaration (the articles of incorporation).

Is there proof that the Founders

believed that the Declaration was **the** foundational document in our Constitutional form of government? The answer is an emphatic, “Yes!” Notice, for example, that in Article VII, the Constitution attaches itself to the Declaration:

Done in convention by the unanimous consent of the States present the seventeenth day of September in the Year of our Lord one thousand seven hundred and eighty seven, and of the independence of the United States of America the twelfth. (emphasis added)

Furthermore, under the Constitution, the Founders dated their government acts from the year of the Declaration rather than the Constitution. Notice a few examples (emphasis added in each quote):

Given under my hand and the seal of the United States, in the city of New York, the 14th day of August, A.D. 1790, and in the fifteenth year of the Sovereignty and Independence of the United States. By the President: GEORGE WASHINGTON

In testimony whereof I have caused the seal of the United States to be affixed to these presents, and signed the same with my hand. Done at Philadelphia, the 22nd day of July, A.D. 1797, and of the Independence of the United States the twenty-second. By the President: JOHN ADAMS

In testimony whereof I have caused the seal of the United States to be hereunto affixed, and signed the same with my hand.

Done at the city of Washington, the 16th day of July, A.D. 1803, and in the twenty-eighth year of the Independence of the United States. By the President: THOMAS JEFFERSON

Given under my hand and the seal of the United States at the city of Washington, the 9th day of August, A.D. 1809, and of the Independence of the said United States the thirty-fourth. By the President: JAMES MADISON

Given under my hand, at the city of Washington, this 28th day of April, A.D. 1818, and of the Independence of the United States the forty-second. By the President: JAMES MONROE

Given under my hand, at the city of Washington, this 17th day of March, A.D. 1827, and the fifty-first year of the Independence of the United States. By the President: JOHN QUINCY ADAMS

Given under my hand, at the city of Washington, this 11th day of May, A.D. 1829, and the fifty-third of the Independence of the United States. By the President: ANDREW JACKSON &c.

Additional evidence of the importance of the Declaration in our constitutional government is provided by the fact that the admission of territories as States into the United States was often predicated on an assurance by the State that its constitution would violate neither the Constitu-

tion nor the principles (i.e., the value system) of the Declaration. For example, notice these enabling acts granted by Congress for various States:

*[T]he constitution, when formed, shall be republican, and not repugnant to the Constitution of the United States and **the principles of the Declaration of Independence.*** COLORADO

*[T]he constitution, when formed, shall be republican, and not repugnant to the Constitution of the United States and **the principles of the Declaration of Independence.*** NEVADA

*The constitution, when formed, shall be republican, and not repugnant to the Constitution of the United States and **the principles of the Declaration of Independence.*** NEBRASKA

*The constitution, when formed, shall be republican, and not repugnant to the Constitution of the United States and **the principles of the Declaration of Independence.*** OKLAHOMA

In the Declaration, the Founders established the foundation and the core values on which the Constitution was to operate; it was never to be interpreted apart from those values. This was made clear by John Quincy Adams in his famous oration, “The Jubilee of the Constitution.” Adams explained:

[T]he virtue which had been infused into the Constitution of the United States ...was no other than the concretion of those abstract principles which had been first proclaimed in the Declaration of Independence ...This was the

platform upon which the Constitution of the United States had been erected. Its virtues, its republican character, consisted in its conformity to the principles proclaimed in the Declaration of Independence and as its administration ...was to depend upon the ... virtue, or in other words, of those principles proclaimed in the Declaration of Independence and embodied in the Constitution of the United States.

Generations later, President Abraham Lincoln reminded the nation of that same truth:

These communities, by their representatives in old Independence Hall, said to the whole world of men: “We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.” ... They erected a beacon to guide their children, and their children’s children, and the countless myriads who should inhabit the earth in other ages. ... [T]hey established these great self-evident truths that ... their posterity might look up again to the Declaration of Independence and take courage to renew that battle which their fathers began, so that truth and justice and mercy and all the humane and Christian virtues might not be extinguished from the land. ... Now, my countrymen, if you have been taught doctrines conflicting with the great landmarks of the

*Declaration of Independence ...
let me entreat you to come back.
...[C]ome back to the truths that
are in the Declaration of Independence.*

The interdependent relationship between these two documents was clear, and even the U.S. Supreme Court openly affirmed it. At the turn of the century (1897), the Court declared:

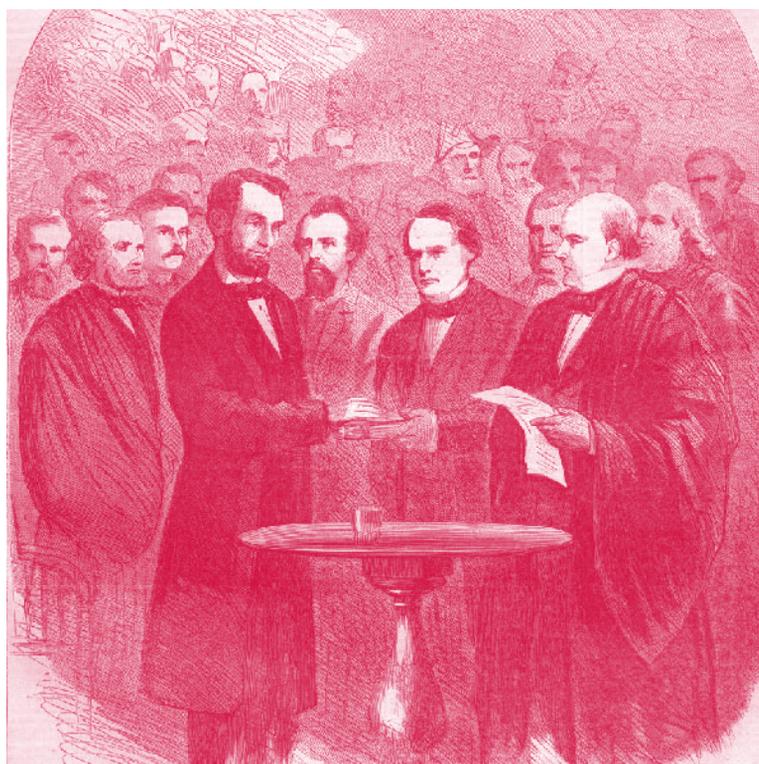
The latter (Constitution) is but the body and the letter of which the former [Declaration of Independence] is the thought and the spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence.

The Constitution cannot be properly interpreted nor correctly applied apart from the principles set forth in the Declaration; the two documents must be used

together. Furthermore, under America's government as originally established, a violation of the principles of the Declaration was just as serious as a violation of the provisions of the Constitution.

Nonetheless, Courts over the past half-century have steadily divorced the Constitution from the transcendent values of the Declaration, replacing them instead with their own contrivances. The results have been reprehensible—a series of vacillating and unpredictable standards incapable of providing national stability.

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President Abraham Lincoln's Second Inauguration

