IT'S TIME FOR A NEW U.S. CONSTITUTION

Jeremy M. Miller*

I. INTRODUCTION

In late 1985, two United States Supreme Court Justices took the unprecedented step of publicly stating that the intent of the Framers of the Constitution was of decreasing importance in interpreting that document. Justice Brennan limned, it is "[a]rrogance clothed as humility . . . to pretend . . . we can gauge accurately, the intent of the Framers."[1] Perhaps the celebration surrounding the bicentennial of the Constitution should be tempered with a re-evaluation.

Since the adoption of the Constitution in 1787, there has been no Constitutional Convention other than the one which created the document, though there have been several amendments. A convention "shall" be called by Congress if it is requested via application of the legislatures of two-thirds of the states, pursuant to Article V of the present Constitution.[2] Although approximately thirty states, four short of two-thirds, have presently petitioned Congress for a Convention on a balanced budget *amendment*,[3] it is truly time for stronger medicine than the continuing piecemeal amendment process.

The states should begin petitioning Congress for an unrestricted Convention designed to bring the Constitution in line with the desires of the people on a host of issues to be discussed in this article.

* Professor, Western State University College of Law; B.A. Yale; J.D. Tulane; L.L.M. University of Pennsylvania.

1. L.A. Daily Journal, Oct. 21, 1985, § 1, at 4, col. 3 (address given at Georgetown University).

2. U.S. CONST. art. V, reads:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress. . . .

3. Malloy, *Confusion and a Constitutional Convention*, 12 W. ST. U. L. REV. 793, 794 (1985).

As Thomas Jefferson,[4] Alexander Hamilton[5] and others have stated, no legislated law can be required to be perpetual. When U.S. Supreme Court justices tell us the notions of the drafters of our Supreme Law are indiscernible, it is well past time for a Convention. Without such, we are now no longer a government of law, but rather are a government at the mercy of the changing emotions of men.

A new U.S. Constitution will require ratification by three-fourths of the legislatures or committees of the states to become the Supreme Law of the land.[6] The ratification process is enough of a safeguard against abuse that we need not fear this step. For those now afraid of the people's ability to gauge worth, the first line of the Preamble of the Constitution[7] and the entire Declaration of Independence should be taken to heart.[8]

When Thomas Jefferson took the presidency in 1800, he joked that

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4. T. JEFFERSON, *The Declaration of Independence*, in THE PORTABLE THOMAS JEFFERSON 235 (M. Peterson ed. 1979).

5. THE FEDERALIST No. 78, at 469 (A. Hamilton) (C. Rossiter ed. 1961).

6. U.S. CONST. art. V. *See supra* note 2.

7. The Preamble begins: "We the People of the United States. . . ."

8. The Declaration of Independence (U.S. 1776), reads:

> When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.
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> We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. 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, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. 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. — Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.
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> He has refused his Assent to Laws, the most wholesome and necessary for the public good.
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> 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.
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> 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 inestimable to them and formidable to tyrants only.
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> He has called together legislative bodies at places unusual, uncomfortable, and distant

from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

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 meantime exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our Legislature.

He has affected to render the Military independent of and superior to the Civil Power.

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:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offenses:

For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Government:

For suspending our own Legislature, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity,

his election signaled a new "revolution."[9] This may not have been so far from the truth; his was the first non-federalist regime in the country's then one-score history.

But there had been, even before Jefferson, two other revolutions. The first revolution occurred in 1776. The second was what we now call the Constitution, adopted in 1787. This was, truly, a revolutionary change in the workings of U.S. government.

The Constitution was revolutionary because it repealed the country's initial mode of government, one favored by Jefferson and his party. That initial mode of government was, of course, the Articles of Confederation — now a relic of history.

The Articles of Confederation gave more autonomy to the individual states than the present Constitution does, although many of the Articles' clauses seem to have formed the core of the Constitution. The Articles were superseded for a fundamental reason: the loose partnership between the states was proving to be too loose. Trade was suffering, little was being accomplished, and the country's defenses were vulnerable.[10] So a meeting was called to try to revise the Articles, with General George Washington presiding. Instead of a revision of the Articles, a new Constitution was born.

Through 200 years of this Constitution's survival, it would be ridiculous and naive to think the letter of the first document has been adhered to. The growing powers of the judiciary, the socialization of many heretofore solely private activities, taxation, and the burgeoning federal government size and debt are hardly within the scope of this Constitution.

Many have written that President Franklin D. Roosevelt himself caused a revolution in American government by his stewardship of the country to the left; and President Ronald Reagan has referred to his own policies as the "Reagan Revolution."

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which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent states may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred honor.

9. S. PRESSER & J. ZAINALDIN, LAW AND AMERICAN HISTORY 260 (1980).

10. *See generally* M. FARRAND, THE FRAMING OF THE CONSTITUTION OF THE UNITED STATES 1-12 (1913).

What, then, is there truly to fear in a Constitutional Convention, with the honest motive being the honing of the rule of law of the greatest democracy in the world? The same can be and is done by our leaders' actions, but not always with our consent, and certainly not always with the support needed for the success of the changes. If we fear a loss of our treasured rights of freedom, equality, dignity, et cetera, then it must be remembered that these rights were not even protected by the Constitution as originally written, but rather, had to be added later in the first ten amendments known as the Bill of Rights.[11] This is a weakness that can be corrected. Certainly, any Constitutional Revision Committee acting in good faith and with reason will leave these intact, to serve as the core of the new document.

Our government, great though it is, is not functioning correctly. One need only look at the virtually incomprehensible federal deficit, and the inability of the government to balance this deficit, to see the depth of the mismanagement. The incredible obesity and bureaucracy now inherent in our government cannot be cured by itself.

Court decisions, legislation, and administrative actions in the areas of abortion, school prayer, firearms, the economy, and countless other issues have created academic and popular controversy.[12]

Each government official, regardless of that official's branch, has a duty to follow the Constitution. Too many do not. Some do not because the Constitution is silent, some because the Constitution is ambiguous, some because the Constitution is misunderstood, some because they disagree with the Constitution, and some because the requirements of that document are impossible to meet 200 years after its inception in a dramatically different society.

We should and must have a Constitutional Convention. Although the proposal will be in the hands of that future committee, and ultimately in the hands of the people to ratify or reject, this author offers a beginning.

The first ten amendments, which in the last fifty years have both been strangely magnified and perversely eroded, should be given great focus and ultimately strengthened. The rights set out in these amendments should be the cornerstone of the new document.

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11. *Id.* at 185-86. *See also* J. NOWAK, R. ROTUNDA, J. YOUNG, CONSTITUTIONAL LAW 315 (3rd ed. 1986).

12. Rightly or wrongly, the High Court is often perceived as "runaway." Articles critical of Supreme Court activism are too numerous to list. For two scholarly pieces compare Hardy, *Armed Citizens, Citizen Armies: Toward a Jurisprudence of the Second Amendment*, 9 HARV. J.L. & PUB. POL'Y 559 (1986) with Bork, *Styles in Constitutional Theory*, 26 S. TEX. L.J. 383 (1985).

Further, drastically smaller limits should be set on the size of the federal government and houses, investigatory and other powers of administrative agencies should be structurally limited, a balanced budget must be mandated, human genetic and fetal alteration should be severely limited, and individual rights of self-expression, religion, and self-protection must be strengthened. We must again become a government of and by the people, worshipping freedom and freedom's spirit.

Revisions are from time to time necessary to continue even the great traditions. It is the immodest object of this article to take the first step and present a draft of the new Constitution. In rewriting the Constitution, the goal must not be to change its purpose, but rather to reintegrate the noble and workable premises of the Framers into the modern world — and into the modern vocabulary.

My own motive for writing is a severe disdain felt for the perversion of the Framers' fundamental conceptions of government, law, and humanity. This work is not historical — but it is based on the philosophical and jurisprudential lessons gained from history.

Before presenting the new Constitution, this article will commence with an exposition of those philosophical and jurisprudential lessons; in short, an exposition of the Framers' view of law. This exposition will be followed by a discussion of paternalistic legislation.

Paternalistic legislation is that law enacted primarily to protect the individual from himself — even when his actions affect no one else. It was the intent of the Framers to abolish paternalistic legislation.

In order to read the new document, an understanding of the key valuation concepts in the present Constitution is necessary. The Framers envisioned a utopia, based on certain values of law and government. This utopia will be briefly described, before attempting to reintegrate it into the supreme law.

II. NATURAL LAW PHILOSOPHY IN REVOLUTIONARY AMERICA

Natural Law is an ancient jurisprudential standpoint espoused by the great classical Greek,[13] Roman,[14] Medieval,[15] and Enlightenment[16] thinkers. Plato theorized that human action and law was based on eternal unchanging forms which embodied the concepts of goodness, truth, and beauty.[17] Aristotle theorized that human ethics and law was based

13. *See, e.g.*, PLATO, *Minos*, in CLASSICS OF WESTERN THOUGHT 391 (n.d.).
14. *See, e.g.*, M. AURELIUS, MEDITATIONS (M. Staniforth trans. 1964).
15. *See, e.g.*, T. AQUINAS, *Summa Theologica*, in THE POCKET AQUINAS (V. Borke ed. 1960).
16. *See, e.g.*, C. MONTESQUIEU, THE SPIRIT OF LAWS (T. Nugent trans. 1878).
17. *See generally* J. WRIGHT, PLATO'S DIALOGUES (A.L. Burt ed. n.d.). Plato was a Greek

on the intrinsic fundamental nature of the human animal.[18] Roman theorists added little substance to Natural Law theory, but did refine a method to discover Natural Law. According to Emperor Marcus Aurelius[19] and Prime Minister Seneca,[20] that method is the use of human *reason*.[21] The medieval theorists, such as Saint Thomas Aquinas, linked the Natural Law with divinity and the Bible's religious teachings.[22]

In short, before the American Revolution there was a whole body of literature indicating a philosophy of law. The law was not merely the ruler's command. It was not essentially power. Nor was the law a vary-

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who lived from the mid-fifth century B.C. to 347 B.C. He founded the Academy, the Athenian school where the "dialectic," or "Socratic," method of learning was developed. This method is well documented in Plato's nearly two dozen works, known as the "Dialogues." Perhaps Plato's best known contribution to philosophical theory is his theory of forms. First outlined in the *Symposium*, and later fleshed out in the *Phaedro*, it is most fully discussed in the *Republic*. The theory of forms is an ontology of concepts. In this ontology, there exist forms that are the ideal and eternal realization of concepts such as "justice" and "good." Though these forms are not knowable through sense perception of our everyday world, they can be discovered through intellect and reason. Ryle, *Plato* in 6 THE ENCYCLOPEDIA OF PHILOSOPHY 314-332 (P. Edwards ed. 1962).

18. ARISTOTLE, THE POLITICS 25-30 (Penguin 1975); C. CONWAY, JURISPRUDENCE 22 (1971). Aristotle, who lived from 384 B.C. to 322 B.C., studied at Plato's Academy for twenty years. Shortly after leaving the Academy, he supervised the education of the adolescent Alexander the Great. Upon returning to Athens, Aristotle founded his own school, known as the Lyceum. Aristotle's writings cover a wide range of scientific and philosophical material. Among his best known works are *Metaphysics*, *Nicomachean Ethics*, and *Politics*. Although greatly influenced by Plato, Aristotle modified Plato's approach. Aristotle proposes a teleology whereby "justice" and "good" are the results of humans seeking actualization and harmonization of their true natures. Kerferd, *Aristotle* in 1 THE ENCYCLOPEDIA OF PHILOSOPHY 151-162 (P. Edwards ed. 1962).

19. AURELIUS, *supra* note 13, at 88. Marcus Aurelius Antoninus lived from 121 to 180. Both a soldier-statesman and Stoic philosopher, his only extant work, *Meditations*, was written during the last five years of his life. Staniforth, *Marcus Aurelius Antoninus* in 5 THE ENCYCLOPEDIA OF PHILOSOPHY 156-157 (P. Edwards ed. 1962).

20. *See generally* L. SENECA, LETTERS FROM A STOIC (Penguin 1969). Lucius Annaeus Seneca was born in Spain near the beginning of the Christian era. He served as Prime Minister to his former pupil, Emperor Nero. In 65 A.D., Seneca was accused of conspiring against Nero, and, following both Nero's imperial command and his own Stoic philosophy, Seneca took his own life. Seneca's works deal with ethics and ethical behavior from primarily a Stoic perspective. His survivng works include *Moral Essays* and *Moral Letters*, as well as several poetic dramas. Wright, *Seneca* in 7 THE ENCYCLOPEDIA OF PHILOSOPHY 406-407 (P. Edwards ed. 1962).

21. *See supra* notes 18-19.

22. AQUINAS, *supra* note 14, at 181. St Thomas Aquinas was born in Italy near the year 1224. He studied at the Universities of Naples and Paris, and eventually taught at both schools. He spent his life as an academic theologian, travelling between the two schools until his death in 1274. Though he was a theologian by profession, Aquinas was heavily influenced by Aristotle, and wrote a great deal about philosophy. Thus, "Thomism" has come to be a leading school of Christian philosophy. As with Aristotle, Aquinas' ethics are teleologically driven. However, under the Thomist view, ethics is derived from the divine nature of God and human participation in that divine nature rather than actualization of the human's own nature. Of course, this phrasing of the difference between Aquinas' and Aristotle's thought may be more a matter of approach than a disagreement as to substance. Bourke, *Thomas Aquinas* in 8 THE ENCYCLOPEDIA OF PHILOSOPHY 105-116 (P. Edwards ed. 1962).

ing or whimsical human creation. Rather, human law was a value-based system. If a particular law were immoral or evil, such "law" (whatever contrary thing the ruler might say) would *not* be law.[23]

There were three great Enlightenment period thinkers who refined Natural Law theory and gave it more substance: John Locke[24] of England, Baron de Montesquieu,[25] and Jean-Jacques Rousseau,[26] both of France.

In the structuring of the United States laws, the principal Framers were certainly Thomas Jefferson and James Madison. Jefferson drafted the Declaration of Independence and Madison was the principle architect of the Constitution. The Declaration of Independence[27] holds the cornerstone position of our government, and the Constitution is obviously still at center stage.

The theories of Locke, Montesquieu, and Rousseau will now be cross-referenced to the writings of Jefferson and Madison. The principal

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23. *Id.*

24. *See generally* J. LOCKE, TWO TREATISES OF GOVERNMENT (Mentor 1965). John Locke, an English philosopher, lived from 1632 to 1704. The son of an attorney, Locke was raised in a liberal Puritan family. He studied philosophy at Oxford, where he earned a B.A. Locke became involved in politics and government affairs, holding several different posts at home and abroad. These experiences formed the education and background for Locke's great works, *Essay Concerning Human Understanding* and *Two Treatises of Government*. It is interesting to note that Locke acknowledged authorship of *Two Treatises of Government* only in his will, perhaps fearing political repercussions. Although Locke's theories are not anti-monarchist, his contentions that ultimate sovereignty lies with the *people*, and that rebellion against a tyrant who violates the Natural Law is justified, were revolutionary considering the tenor of the time. Clapp, *John Locke* in 4 THE ENCYCLOPEDIA OF PHILOSOPHY 487-503 (P. Edwards ed. 1962).

25. *See generally* MONTESQUIEU, *supra* note 15. Baron Charles de Montesquieu, an aristocratic French philosopher and political theorist, lived from 1689 to 1755. Montesquieu was honored and respected in both the French and English speaking worlds. Montesquieu's theory that the powers of the State should be divided into three separate entities to balance and check each other was especially influential on the founders of the United States of America. Montesquieu's magnum opus, seventeen years in the making, was *The Spirit of Laws*. In this work, Locke's influence is evident. Montesquieu's empiricist tendencies make this work a seminal explication of the sociological methodology of studying legal and political institutions, but his natural law beliefs are clearly the foundation of this work. Cranston, *Montesquieu* in 5 THE ENCYCLOPEDIA OF PHILOSOPHY 368-371 (P. Edwards ed. 1962).

26. *See generally* J. ROUSSEAU, THE SOCIAL CONTRACT (Penguin 1978). Jean-Jacques Rousseau was born in Geneva in 1712. He had little formal education, acquiring most of his training through practical experience. Rousseau spent most of his life in Paris, dying there in 1778. Rousseau's most influential works, *Emile* and *The Social Contract*, were both published in the same year, at the height of his literary career. Although *Emile* was written as a novel and *The Social Contract* was a philosophical treatise, both illustrate Rousseau's thesis that morality exists as a tension between the "natural" human and the "social" human. Heavily influenced by Aristotle and Locke, Rousseau concluded that because of this tension, morality and politics are inextricably intertwined. Grimsley, *Rousseau*, in 7 THE ENCYCLOPEDIA OF PHILOSOPHY 218-225 (P. Edwards ed. 1962).

27. *See supra* note 8.

intellectual Framers were most influenced by these three philosophers.[28] As a result, the Declaration and the Constitution are embodiments of the Enlightenment Natural Law philosophy of these three individuals.

A. Locke, Montesquieu, and Rousseau

John Locke placed super-eminent importance on the maximization of human *liberty*. Even the dazzling, highly polished human chains are evil, in and of themselves.[29] Although government was the usual destroyer of human liberty, in Locke's utopia, government was made, instead, the protector of liberty. In other words, the primary function of government was to foster individual freedom. Government was necessary only for this purpose.[30] To fulfill this purpose, government was delegated the power to punish those who impinge on others' freedoms.[31]

In traditional Natural Law manner, Locke held the use of human *reason* to be the measure of all laws' validity.[32] In one summary phrase, Locke set out the function of society: to protect the exercise of freedom. Because rulers can err, it was the law, not the ruler, which was supreme.[33] Tyrannical rulers had no "legal" claim to their position.[34] Similarly, unjust laws, like ex post facto laws, were not laws at all.[35]

To prevent government usurpation of individual liberty, Locke suggested that power be separated into its functional branches: executive and legislative.[36] Baron de Montesquieu, in his timeless classic, *The Spirit of Laws*, wrote that men with power have the tendency to abuse it.[37] Therefore, expanding and refining on Locke, he suggested that government be divided into three branches: legislative, executive, and judicial.[38] The purpose of this division was to prevent the suppression of human liberty.[39] Each branch was to check the other.[40]

Of particular importance to Montesquieu was the allowance for so-

28. *See, e.g.*, THE FEDERALIST No. 47, at 301-03 (J. Madison); *Id.* No. 78, at 466 (A. Hamilton); T. JEFFERSON, *1789 Letter to John Trumbull*, in THE PORTABLE THOMAS JEFFERSON 435 (M. Peterson ed. 1979).

29. *See* LOCKE, *supra* note 23, at 175.

30. *Id.* at 312.

31. *Id.* at 313.

32. *Id.* at 347, 350.

33. *Id.* at 307, 361-62, 371.

34. *Id.* 395, 404, 448.

35. *Id.* at 404, 448.

36. *Id.* at 408-17.

37. 1 MONTESQUIEU, *supra* note 15, at 161.

38. *Id.* at 163.

39. *Id.* at 161.

40. *Id.*

cietal diversity. Diversity, he wrote, was good for society. Montesquieu went on to say that the specifics of the written laws of different cultures were inherently varied. This was the case because law was in part based on geography and climate.[41] What was "natural" and right law for one people, was not necessarily such for another.

Montesquieu, no doubt influenced by the earlier writing of Thomas Aquinas, added another wrinkle to Natural Law theory: different laws controlled different realms of creation.[42] Thus, imposing angelic-religious law on humans would neither be workable nor natural. The government should ensure toleration between religions.

Montesquieu was not radical in his theories. Although perceiving liberty as the paramount intrinsic legal value, he realized that some barbaric peoples could not survive with unbridled liberty.[43] However, written laws[44] and the previously mentioned separation of governmental powers were great safeguards. Further, all human law was always subject to reversal by fundamental legal values, i.e., by Natural Law.[45]

Jean-Jacques Rousseau eloquently preached the following immortal words of revolution: "[m]an was born free, and he is everywhere in chains."[46] As the title of his famous book, *The Social Contract*, implies, the individual's existence in society is no more than a reciprocal legal agreement. Since the individual needs society for survival and a better existence, the individual joins others.[47] However, society itself depends upon the individual for its existence.[48] Therefore, only that governmental authority which is both individually and collectively beneficial is valid.[49] The sovereign must act for the good of the people.[50] More truly, sovereignty is indivisibly placed eternally in the people.[51]

Governments, wrote Rousseau, are not good in themselves.[52] All rulers are but servants of the people.[53] They and the laws must foster intellectual and religious tolerance.[54] In addition, far more important

41. II MONTESQUIEU, *supra* note 15, at 143.
42. I MONTESQUIEU, *supra* note 15, at 1, 3.
43. *Id.* at 8, 160-61.
44. *Id.* at xxviii, 165.
45. II MONTESQUIEU, *supra* note 15, at 145-46.
46. ROUSSEAU, *supra* note 25, at 49.
47. *Id.* at 59.
48. *Id.* at 62.
49. *Id.* at 53.
50. *Id.* at 63.
51. *Id.* at 69.
52. *Id.* at 134.
53. *Id.* at 146.
54. *Id.* at 187.

than any written law are the morals and customs of the people.[55]

In summary, the philosophy of law espoused by Locke, Montesquieu, and Rousseau required that the law be based not on whim, but on reason, that law foster human liberty particularly in intellectual and religious matters, that government's legitimacy depends on popular support, that government should be limited so as to protect individual liberty, and that deviation from the above values makes the enacted governmental law *per se* invalid. The next section will tie these theories to those of Jefferson and Madison.

B. Jefferson and Madison

In an 1819 letter to William Short, Thomas Jefferson distinguished between the records and interpretations of great thinkers and what they *actually* said. He wrote that to discover truth, we must use our own, internal reason.[56] Jefferson made similar appeals to Natural Law and Reason often, as can be evidenced by his 1787 letter to Peter Carr,[57] the influential Virginia *Bill for Religious Liberty*,[58] his first inaugural address,[59] and his second inaugural address.[60] In both his private and public life, Jefferson's belief in Natural Law, and reason as the method by which we can know Natural Law, was evident.

The *Bill for Religious Liberty* stated at its closing that although this bill itself can be repealed, the purport of the bill (religious freedom) is among the "natural rights of mankind," and thus cannot be repealed.[61] One can hardly imagine a clearer statement of Natural Law theory. This bill influenced not only the drafting of the first amendment of the U.S. Constitution,[62] but has remained influential in modern times. It continues to be cited in Supreme Court cases.[63]

In his *Notes on the State of Virginia*, Jefferson wrote of natural rights, this time in the context of an argument for the allowance of the free exercise of religion.[64] The *Draft Constitution for Virginia*, which Jef-

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55. *Id.* at 99, 106.

56. T. JEFFERSON, THE PORTABLE THOMAS JEFFERSON 564-65 (M. Peterson ed. 1979).

57. *Id.* at 425.

58. *Id.* at 251.

59. *Id.* at 292.

60. *Id.* at 320.

61. *Id.* at 251-53.

62. L.W. LEVY, THE ESTABLISHMENT CLAUSE: RELIGION AND THE FIRST AMENDMENT 53-60 (1986).

63. *See, e.g., Everson v. Board of Education*, 330 U.S. 1 (1946).

64. JEFFERSON, *supra* note 54, at 209. The *Bill for Religious Liberty* provided "[t]hat no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened [sic] in his body or goods, nor shall otherwise

ferson authored, stated the need for law to have the consent of the people, a reflection of the thinking of Locke and Rousseau, and the need for the separation of powers to insure individual liberty, also a reflection of Locke and Rousseau, as well as Montesquieu. Jefferson also cited the belief that there are such things as "fundamental laws and principles," which is a standard Natural Law tenet.[65]

Other writings by Jefferson evidenced his agreement with and influence by Locke, Rousseau, and Montesquieu. Jefferson wrote that the laws of a nation should be stable (Montesquieu); that the more tyrannical a government is, the more right there is for revolution (Locke); and that as many as possible should be educated.[66] Showing his agreement with Rousseau, he suggested majority rule by elections.[67]

The 1776 Declaration of Independence cited as *authority* such concepts as "laws of nature," "self-evident truth," and "inalienable rights."[68] These concepts were detailed by Locke, Montesquieu, and Rousseau. The unedited version of the Declaration also made it a strong point to admonish King George III for his war against "human nature itself" — a phrase reminiscent of Rousseau.[69]

In a 1787 letter to James Madison, Jefferson commented to his friend on the newly drafted U.S. Constitution. He wrote that he liked it overall, particularly its separation of powers in the government. However, he suggested there be a clause protecting religious freedom and other individual liberties.[70] Jefferson was not merely using Natural Law to give reason for a revolution. As the next few paragraphs indicate, this was also the case with James Madison.

The Federalist Papers[71] were the arguments by Madison, Hamilton, and Jay regarding the virtues of the proposed U.S. Constitution. These papers relate directly to actual clauses in the Constitution.

The Federalist No. 43, written by Madison, cited Natural Law and defined society's sole purpose as promoting the "safety and happiness" of its individual members.[72] The roots of this sentiment spring from the

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suffer on account of his religious opinions or belief . . ." 12 Henning, Statutes of Va. (1823) 84, *cited in Everson*, 330 U.S. at 13.

65. *Id.* at 242-43, 250.

66. *Id.* at 432.

67. *Id.* at 293-94.

68. *See supra* note 8.

69. JEFFERSON, *supra* note 54, at 238.

70. *Id.* at 428-33.

71. What is now known as *The Federalist Papers* was originally published as a series of letters to various newspapers in New York between October, 1787 and August, 1788 over the pseudonym "Publius."

72. THE FEDERALIST No. 43, at 279 (J. Madison) (C. Rossiter ed. 1961).

jurisprudence of Rousseau.

Other *Federalist Papers* also evidenced Madison's Natural Law basis. In *The Federalist* No. 10, Madison extolled the virtues of liberty.[73] *The Federalist* No. 51 argued that justice is the only proper end to government.[74] In *The Federalist* No. 49, Madison showed his affinity with the Natural Law doctrines of Locke, Rousseau, and Jefferson by writing that the people are the fountain of power in government.[75]

Furthermore, in *The Federalist* No. 43, Madison made direct citation to Montesquieu regarding confederation.[76] More importantly, in *The Federalist* No. 47, Madison adopted Montesquieu's version of separation of governmental powers, and thus established the United States federal government in three branches (executive, legislative, and judiciary), each to check the other.[77] In the following paper, Madison again argued the virtue in separation of power and noted Jefferson's approval.[78] Other examples of the philosophers' influence on Madison and Jefferson were present, and in fact, the new government took the shape of a Natural Law thesis put into practice.

A brief look at some of the provisions in the Constitution will illustrate how these Natural Law ideas were put into practice. Article I, Section 1 indicates that the governing power is to be separated, with the legislative power resting in a bifurcated Congress.[79] Article I, Section 2 indicates that office in the House of Representatives is to be gained by popular election.[80] Article I, Section 9 outlaws ex post facto laws and bills of attainder, and guarantees the continued viability of the writ of habeas corpus — all great protectors of individual liberty.[81] Article III provides for an independent judiciary.[82] Article IV further separates

73. *Id.* No. 10, at 78 (J. Madison).

74. *Id.* No. 51, at 324 (J. Madison).

75. *Id.* No. 49, at 313 (J. Madison).

76. *Id.* No. 43, at 277 (J. Madison).

77. *Id.* No. 47, at 301-03 (J. Madison).

78. *Id.* No. 48, at 310-11 (J. Madison).

79. "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatves." U.S. CONST. art. I, § 1.

80. "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States. . . ." *Id.* § 2.

81. "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it. No Bill of Attainder or ex post facto Law shall be passed." *Id.* § 9.

82. "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." *Id.* art. III, § 1.

powers by insuring that the several states retain their autonomy.[83]

The first ten amendments were enacted shortly after the ratification of the Constitution, as a condition for its ratification.[84] The first amendment protects freedom of religion, speech, the press, and assembly. The second amendment protects the individual's right to be armed. The fourth amendment protects against unreasonable governmental search and seizure. The fifth amendment requires grand jury indictment for serious crimes, prohibits multiple criminal prosecutions, prohibits forced confession, and also prohibits governmental eminent domain without just compensation.

The sixth amendment guarantees speedy, public criminal trials by jury; and further guarantees the right of confrontation and cross-examination of adverse witnesses. Moreover, this amendment guarantees the right to counsel. The seventh amendment extends the jury right to most civil trials.

The eighth amendment prohibits excessive bail, excessive fines, and all cruel and unusual punishment. The ninth and tenth amendments indicate that the people's rights are not limited because of the enumeration of certain rights.

The current system of government, though still intact, showed some signs of dissolution even in Jacksonian America. As was chronicled by

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83.

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Id. art. IV.

84. *See* M. FERRAND, *supra* note 10, at 1-12.

Alexis de Tocqueville, the federal government in the United States had become centralized, powerful, and more encroaching on individual liberty than Jefferson and Madison had likely intended.[85]

III. PATERNALISTIC LEGISLATION

Above all else, the Framers wished to abolish paternalistic legislation. Paternalistic legislation is that enacted to aid primarily the private individual from his own "bad" tendencies. As John Stuart Mill wrote in his classic, *On Liberty*, people should refrain "from molesting others in what concerns them" and "should be allowed, without molestation, to carry . . . their opinions into practice at . . . their own cost."[86] Choice-making and individuality are to be maximized by government.[87] The worth of a country is solely the sum worth of its individual members.[88]

Mill's statement on paternalism gave a philosophical expression to the jurisprudential standpoint of the Framers. Many of the dilutions of the founding constitutional principles are traceable to the converse belief — that paternalistic legislation is a good thing.[89]

If a choice is voluntary and if it does not burden another, then no matter how reprehensible another may feel it is, it should be allowed.[90] Thus, for example, Mill wrote that the voluntary polygamy of the Mormons should not have been persecuted by the United States federal government.[91] Further, although charity is certainly a good thing, massive social programs — which necessarily entail the redistribution of individual wealth — are not good things. They tread too deeply into individual liberty.

This libertarian outlook accepts the individual as a free being who, in the last analysis, is responsible for himself. It is not for government to intrude on that autonomy. Human knowledge, *truth*, is gained by a process of open-ended reasoning, and by allowing individuals to pursue truth, *as they see fit*.[92] Paternalistic legislation hinders the discovery of truth.

Further, Mill reasoned that liberty and choice-making are the essen-

85. *See* A. DE TOCQUEVILLE, I DEMOCRACY IN AMERICA 279-80 (1945).

86. J. MILL, ON LIBERTY 81 (n.d.).

87. *Id.* at 84, 97.

88. *Id.* at 172.

89. Examples of paternalism are the "welfare state," redistribution of wealth as a kind of "justice," nonsecular prayer in schools, anti-gun laws, seat-belt laws, and massive business licensing laws.

90. MILL, *supra* note 84, at 137.

91. *Id.* at 135-38.

92. *Id.* at 48-49.

tial aspects of being human and thus they should not be hindered.[93] If the individual's acts concern only that one individual,[94] then only when the individual is deranged or not developed, as in the case of a child,[95] can society justly intrude.

As Mill argued, the major exception to this judicial stance occurs when an individual wishes to end his future autonomy, as when he wishes to sell himself as a slave.[96] This can be and should be prohibited.

This viewpoint not only relies on a belief in human autonomy, dignity, and liberty but also takes counsel from history. Many, if not most, of the great thinkers of the past were persecuted for their ideas, in the name of paternalism and in the name of protecting the society from intellectual contamination. A short list includes Socrates, Pythagoras, Jesus, Galileo, and Moore.

Moreover, practically, most private actions cannot be prohibited. For example, a person can commit suicide regardless of whether there is a law prohibiting suicide. The real effects of a law prohibiting suicide are to punish a person after a failed attempt and to punish any heirs for the action of a third party. Paternalistic legislation is not only wrong in itself, but also impotent because it is extremely difficult to enforce such laws.

A non-radical statement of this philosophy would prohibit only those essentially private human actions which reduce not only the individual's liberty, but also dignity, as when he sells himself as a slave.

IV. CONSTITUTIONAL VALUES

The Framers of the U.S. Constitution envisioned a limited government whose primary purpose was the protection of individual values. The word values has been construed to mean traditional moral qualities which promote individual autonomy.

Most important to the Framers was the preservation of individual liberty. This was accomplished by separating governmental power into three distinct branches;[97] by the right to bear arms;[98] by the guaranteed freedoms of speech, press, religion, and assembly;[99] by the right to peti-

93. *Id.* at 84.
94. *Id.* at 81.
95. *Id.* at 151.
96. *Id.* at 81, 108, 113, 151.
97. *See* U.S. CONST. art. I, § 1; *Id.* art. II, § 1; *Id.* art. III, § 1.
98. *Id.* amend. II.
99. *Id.* amend. I.

tion the government for redress of grievances;[100] by the prohibition of ex post facto laws;[101] and by the requirement that the government justify holding any citizen.[102]

The Framers perceived government as a method by which the human species could be allowed to evolve, to better itself, and most importantly, to discover *truth*. The Founders were neither moral skeptics, moral nihilists, areligious, nor dogmatists. Instead they embodied the only correct attitude for learning: tolerance, curiosity, and belief in science. The first amendment, which protected freedoms of religion, speech, and the press, served a two-fold purpose. First, it protected the fundamental value of liberty. However, just as importantly, it also promoted the search for truth. Only when there existed a free market of ideas could truer conceptions of the physical world be discovered. The Framers were aware of the persecutions of great thinkers such as Galileo and Copernicus. By allowing freedom, great advances would not be squelched at their inception.

Truth was also integral in the court process. The right to jury trial, incorporated in both the sixth and seventh amendments, has been one of the traditional legal devices to promote truth. Generally, a jury will perceive the facts correctly. Further, the sixth amendment rights to counsel and confrontation and cross-examination of relevant witnesses were enacted to maximize this truth-finding function, as were the speedy and public trial rights.

Dignity is likely the most fundamental of all human values. It was protected by the Framers in several ways. By keeping the people,[103] not the government, sovereign, individual dignity was maximized. Most importantly, the sanctity of the home, the freedom from unreasonable search and seizure, and the preferred procedure of obtaining a warrant prior to intrusion — as made law by the fourth amendment, maximized this dignity value.

Equality, the great legal value promoting order and demanding that similarly situated individuals be treated in a similar manner, i.e., that there be equal opportunity, was given strong reference in the Declaration of Independence. However, it was only implicit in the Constitution until

100. *Id.*

101. *Id.* art. I § 9. An ex post facto law is one which changes the punishment for a crime from that which attached at the time it was committed, or which creates a punishment for an act which was not a crime at the time done.

102. *Id.* amends. IV, V.

103. *See id.* preamble.

after the Civil War. The fourteenth amendment, enacted in 1868, made this value explicit by requiring "equal protection of the laws."

The framework of the Founders was essentially value-based. This was evidenced by the requirement of the fifth amendment that government takings be justly compensated; by the ban on cruel and unusual punishment via the eighth amendment; by reserving non-enumerated power to the people in the ninth amendment; and by the fifth amendment "due process" clause.

Due process requires, in essence, fundamental fairness.[104] It was the central guarantee of the earlier great legal document, the Magna Charta.[105] When, after the Civil War, the state powers were limited so as to insure that the newly gained freedoms of the blacks be preserved, the limitation was accomplished by requiring not only that the federal government not deny to any citizen due process of law[106] but also that no *state* government be allowed to deny it as well.[107]

Due process is a general moral, or equity-based legal standpoint. It requires that the system be judged fundamentally on its *fairness*. In fact, the United States Supreme Court has made great use and reference to due process as fundamental fairness,[108] and has also included the other four fundamental legal values, liberty, truth, dignity and equality, in Constitutional adjudication.[109] Nevertheless, when the Court indicates, as it has, that there is no legal guarantee precluding the government from flying over and inspecting a residential fenced backyard when there is *no* indication of criminality,[110] or when they preclude private consensual sexual behavior;[111] or when they allow killing of healthy human fetuses when there is no danger to the mother,[112] it is clear that, in the last

104. *See, e.g.*, California v. Trombetta, 467 U.S. 479 (1984); Snyder v. Massachusetts, 291 U.S. 97 (1934).

105. The Magna Charta included a notion of general justice. *See generally* T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 22-25 (5th ed. 1956).

106. U.S. CONST. amend. V.

107. *Id.* amend. XIV.

108. The process of selectively incorporating most of the guarantees of the Bill of Rights into state applicable fourteenth amendment due process used this definition. *See, e.g.*, Benton v. Maryland, 395 U.S. 784 (1969) (double jeopardy clause of fifth amendment included in fourteenth amendment due process).

109. *See, e.g.*, United States v. Leon, 468 U.S. 897 (1984) (where the values of truth and liberty clearly surfaced); Gideon v. Wainwright, 372 U.S. 335 (1963) (where the value of equality was responsible for the decision); Rochin v. California, 342 U.S. 165 (1951) (where the value of dignity was clearly manifested). This listing is typical of Constitutional adjudication, which is intrinsically value-laden.

110. California v. Ciraolo, 106 S. Ct. 1809 (1986).

111. Bowers v. Hardwick, 106 S. Ct. 2841 (1986).

112. *See, e.g.*, Roe v. Wade, 410 U.S. 113 (1973).

analysis, the U.S. Supreme Court is rudderless.

U.S. Supreme Court analysis is value-oriented, but it is also bias-oriented,[113] whim-oriented,[114] capricious,[115] economics-oriented,[116] Christian-oriented,[117] and inconsistent.[118] Too much time has elapsed since the value-oriented vision of America was enacted. The High Court has too much power -- or, at least, they have gone astray.

There are major undreamed of crises in tricentennial America. The government is over 1 trillion dollars in debt. Each state, each city, and the federal government itself have massive standing armies whose apparent purpose is vehicular traffic control, but whose real purpose is control of the public. A plethora of classically undignified experiments on humans are daily transacted and the government merely watches. Civil litigation threatens to choke off free thought and enterprise — and it, too, is patiently allowed. Business, on the one hand persecuted when it is small, is, on the other hand, allowed too much power when it is large.

The Jeffersonian vision of an agrarian America is a dead letter. But the other Jeffersonian and Madisonian vision of a free society with a small government, the purpose of which is maximization of individual values, is still possible. The next section proposes a new constitution which should be compared to the extant law.

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113. *See, e.g.*, *Bowers*, 106 S. Ct. at 2841 (prohibition on only homosexual sodomy).

114. *See, e.g.*, *Roe* 410 U.S. at 113 (finding a Constitutional right to abortion).

115. *See, e.g.*, Immigration and Naturalization Service v. Delgado, 466 U.S. 210 (1984) (regarding "consent" to search).

116. *See, e.g.*, United States v. Leon, 468 U.S. 897 (1984) (diluting the exclusionary rule for economic "cost" reasons).

117. *See, e.g.*, Lynch v. Donnelly, 465 U.S. 668 (1984) (regarding public nativity scenes).

118. *See, e.g.*, New York v. Quarles, 467 U.S. 649 (1984) (regarding exceptions to the *Miranda* case).

THE SUPREME LAW OF THE UNITED STATES

Preamble

We the people of the United States of America, in order to strengthen our status as a great and free people, to promote justice and peace at home and throughout the world, to insure domestic well-being and safety, and to make manifest in society the basic rights of all mankind, do ordain and establish this Supreme Law. Herein is expressly repealed The Constitution of the United States and its Amendments. The several branches of government have power to enforce this Supreme Law.

There are fundamental human values which transcend the status of ruler or governed. These values must be included, and are here included, as the essential legal structure of this land. We hold these truths to be self-evident: that all humans are endowed by their Creator with a certain status which includes the right to be treated fairly and with dignity, the right to seek truth as each sees fit, the right to liberty except as such grossly infringes on others' liberties, and the right to equality in the face of the law. These rights are inherent and inalienable. Governments which have abrogated these rights have abrogated with it human happiness.

Governments are created only to better the individual human condition. Governments are instituted deriving their just powers from the consent of the governed. Whenever a government becomes destructive of individual evolution, it is the right and more fundamentally the duty of the people to change the government so that government fulfill again its only function.

Prudence dictates that governments not be changed for light and transient causes, and that when change is necessary, a deep respect for the traditions of the past be remembered; but when the government has lost its basic purpose, change is necessary. The accomplishments of collective mankind are accomplishments of individuals, not governments.

We appeal to the Supreme Judge of the World for the rectitude of our intentions and pray that His blessings ever shine upon us. We pray this document not outlive its integrity, and we pray that sacred honor be everywhere and ever among us.

Article I

The federal, state, and municipal governments are bound by the following:

Section 1 No law shall be made nor policy promoted which inhibits

the free exercise of religion. No government monies shall be used for religion and there shall be no government endorsement of any religion.
a) Religion is indefinable. Therefore, a group's statement that it either is or is not a religion shall be accepted unless the contrary is shown beyond a reasonable doubt.
b) Religious belief cannot be regulated. Religious conduct can be regulated only after the conduct has been shown beyond a reasonable doubt to physically endanger non-consenting individuals.
c) A statement as to God's Supremacy, or a short prayer to God, as "God," is not a government endorsement of religion.
d) Municipal or state laws which make available to all students textbooks and food regardless of the school (be it public, private, or religious) is not a state endorsement of religion.

Section 2 No law shall be made nor policy promoted which inhibits the free exercise of philosophical belief or practice. Conduct based on belief can be regulated only after the conduct has been shown beyond a reasonable doubt to physically endanger non-consenting individuals.

Section 3 No law shall be made nor policy promoted which abridges the freedom of speech.
a) A requirement of prior licensing is such an abridgment; time, place, and manner restrictions, provided they are reasonable, are not such an abridgment.

Section 4 No law shall be made nor policy promoted which abrogates the freedom of the press to publish uncensored works.
a) A requirement of prior licensing is such an abridgment.
b) Punishment of the press in the form of fine, incarceration, or death is not such an abrogation when it is proven beyond a reasonable doubt that the publication was treasonous to the interests of the general public and had a specific intent to injure by this false report.

Section 5 No law shall be made nor policy promoted which infringes on the right of the people to peaceably assemble.
a) Prior licensing can be required, but such license must be given unless the government shows beyond a reasonable doubt that there is a significant and real danger to life if the permit is given. Time, place, and manner restrictions are acceptable.

Section 6 No law shall be made nor policy promoted which denies to each individual the right to petition the government for redress from grievances, or which denies to any individual the writ of habeas corpus.

Section 7 No law shall be made nor policy promoted which means to apply a new law, be it criminal or civil, retroactively, unless that law be for the benefit of the particular individual.

Section 8 No law shall be made nor policy promoted which infringes on the right of law-abiding adults to keep and bear arms.

a) Adulthood is defined as 21 years of age.

b) Arms are defined as knives, swords, non-automatic pistols and non-automatic rifles.

c) Bear is defined as in the home or visible on the person in public.

d) Law-abiding is defined as not having committed a felony or misdemeanor for 10 years, and is to be determined by the municipality.

e) The right can be denied only by a showing of a violation by clear and convincing evidence.

f) Prior licensing of guns, for use outside the home, is acceptable.

Section 9 No soldier shall, in time of peace, be lodged in any house without the consent of the owner; nor in time of war, except in a manner to be prescribed by law.

Section 10 Police and military forces have no place in communities absent the function of bringing felons or misdemeanants to justice.

a) The traffic regulation function is not to be handled by armed personnel nor by unarmed police; but may be handled by other civil servants.

Section 11 The following surgical or medical procedures are outlawed:

1) Termination of pregnancy absent a showing by a preponderance of the evidence that the mother's life is in danger, that the fetus has no chance of survival, or that the pregnancy was caused by rape. In the latter instance of rape, the pregnancy, if to be so terminated, must be terminated within three months of conception.

2) The dissection of dead human beings absent their express written consent; or absent criminal homicide investigation (when this procedure is necessary for the investigation); or when there is clear and convincing evidence that there is a real public danger of spread of disease and such dissection has a reasonable possibility of hampering the spread of that disease.

3) Mechanical organ transplants.

4) Human organ transplants absent prior express consent by the donor as shown beyond a reasonable doubt; prior express consent by the donee as shown beyond a reasonable doubt; and clear and convincing evidence indicating that the procedure will extend life for a period of at least three years and will allow a meaningful quality of life.

5) All other human experimentation requires a prior showing of consent beyond a reasonable doubt, or a showing by a preponderance of the evidence that the procedure will not produce long-term damage.

Section 12 No law shall be made nor policy promoted allowing unreasonable search and seizure of individuals.

a) Warrantless searches are presumptively invalid; searches pursuant to warrant are presumptively valid.

b) Evidence which is the product of unlawful search or seizure cannot be used in court process in any way, unless it aids in the prosecution of an inherently dangerous felony.

c) Warrants are required, upon a specific showing of probable cause, except when there is a real emergency which endangers life; when the crime is done in public; when the crime is done in the presence of the officer or when the accused consents to the search or seizure.

d) All intrusions are considered to be searches and seizures. The test is subjective, based on the actual belief of the accused.

Section 13 No individual can be arraigned absent a sworn proceeding where clear and convincing evidence is offered showing that this individual committed the specified crime.

Section 14 No law shall be made nor policy promoted wherein an individual can be arraigned more than once for the same criminal conduct.

a) A dismissal of an arraignment because of defense error does not manifest this protection; a dismissal based on prosecutorial error does.

b) If more than one crime has been implicated by one transaction of criminal conduct, all of the crimes must be charged at once — unless the prosecution establishes by a preponderance that the evidence to so charge each was not then reasonably available.

c) Municipal, state, and federal prosecution for the same conduct is precluded. Prosecution by one jurisdiction precludes prosecution by the others.

d) When one act constitutes multiple crimes, the maximum number of crimes charged can be no greater than the number of victims.

Section 15

a) A finding of reasonable suspicion of criminality is necessary to stop a person. A stop cannot exceed 10 minutes.

b) A finding of probable cause of criminality is necessary to arrest a person. An arrest cannot exceed 12 hours.

c) A judicial finding of clear and convincing evidence that the accused will either flee or is a present danger to the public is required to hold a person over 12 hours. An accused can be held up to 3 months while awaiting trial on a showing of either of these factors.

d) A finding of guilt of each element of the charged crime, beyond a reasonable doubt, is necessary to convict.

e) A showing of clear and convincing evidence of non-factual guilt, by the convicted, after exhaustion of appeal, is necessary to re-open a case.

Section 16 No law shall be made nor policy promoted which allows torture of citizens either to gain confession, or as punishment. Involuntary admissions cannot be used at trial.

a) There is a rebuttable presumption that any statements given by the accused, absent a warning as to the right of silence, are involuntary. When such warning is given, there is a presumption of voluntariness.

Section 17 There shall be no criminal punishment without formal trial.

a) Trials must occur within three months of the arraignment.

b) All prosecutions shall be open to the public. Electronic recording is at the option of the defendant.

c) A jury trial is at the option of the defendant. Selection of the jurors shall be as follows: Each jury trial requires 7 jurors. A finding of guilt requires 6 of 7 so agreeing. A list of 25 jurors shall be chosen by the judge. Of those, the defense may strike 10; the prosecution may strike 5. Of the remaining, 2 shall be retained as alternates, and 7 shall be chosen by the judge.

d) The trial must take place in the state in which the crime was charged.

e) The defendant shall be given subpoena powers so as to gain the in-court testimony of all witnesses relevant to the case.

1. In exceptional circumstances, this clause is satisfied by reliable records.

2. In the case of minor witnesses, the examination is to be via judicial, not attorney, questioning.

3. Hearsay evidence is admissible provided it is relevant and so labeled as hearsay.

f) A duly licensed and competent attorney shall be allowed for the defense. For those who cannot afford an attorney, one shall be appointed when there is a complex legal issue involved and when jail time is possible.

Section 18 All law, policy, and court processes, must manifest fundamental fairness. Any law, policy, or conviction can be challenged on this basis.

a) Law, policies, or convictions lacking in procedural equality, truth, and dignity are particularly susceptible to this claim.

b) No private property shall be taken for public use without just compensation.

c) The enumeration in the Supreme Law of certain rights shall not be construed to deny or limit others retained by the individual.
d) The powers not delegated to the government are retained by the individual. The government serves the individual, and is thus always subject to change when it diverges from that service.
e) Civil and criminal punishments must not impinge on human dignity, and must be proportional to the culpable action.

Article II — Reciprocal Duties of the Individual

Section 1 Each individual citizen, having gained the blessings of liberty, in turn owes certain set and enumerated duties to fellow citizens. Those duties not here enumerated are deemed non-existent.

Section 2 All male individuals of sound mind and body at the age of 17 are subject to military draft. The draft shall be accomplished by fair procedures.

Section 3 No individual shall be permitted to commit a crime. A crime is defined as that prohibited by the state of domicile or residence or that prohibited by the federal government.
a) Abortion except when the mother's life is in real and substantial danger, or when the pregnancy is caused by rape is federally criminal. The abortion privilege of this clause is forfeited if the pregnancy is not terminated within the first trimester, unless, by clear and convincing evidence, this is shown by the woman not to have been reasonably possible.
b) Absent a showing by the medical personnel involved, by clear and convincing evidence, that an unusual procedure is reasonably likely to substantially extend and enhance the length and quality of the human life, such procedure is prohibited. Thus, radical human experimentation is made federally criminal. Particular scrutiny is to be given to organ removal, transplant, machine transplant, and animal transplant. Medical science must only be concerned with improving the quality and health of the natural organs. Dissection of human corpses is expressly made criminal absent a pre-death signed waiver. In the case of criminal homicide, dissection is permitted if clear and convincing evidence is given which proves that such procedure is necessary for detection and prosecution of the perpetrator or perpetrators.
c) Human and animal genetic alteration, by means of gene-splicing, surrogate parenting, or otherwise creating artificial life forms is expressly made a felony under federal criminal law.

Section 4 A free business market is necessary for a prosperous economy. However, bad faith business techniques such as intentional predatory pricing, intentional monopolizing, or intentional profiteering from

insider information, are expressly made federally criminal, and shall be punished as any other crime.

a) Although isolated instances of individual greed are not particularly damaging to society, widespread greed is highly damaging, and can cause widespread economic depression.

b) Each family is responsible for finding gainful employment and is thus responsible for supporting itself.

Section 5 Criminal court process is for the purpose of punishing those who affront society's well-being by disobeying written laws. All citizens of the United States of America, all of those present within this country, and all of those who performed the questioned act who are now within this country, are subject to the criminal laws. There is no diplomatic immunity.

Section 6 Civil court process is the last resort by which individuals rectify wrongs between themselves. There is federal court jurisdiction over all United States citizens, residents, and visitors. Each state also has jurisdiction over its citizens, over those present in the state, and over those whose questioned act directly affects the plaintiff individual of the state.

a) No individual or attorney may intentionally use the court process to harass another.

b) In order to keep court dockets reasonably efficient, the following rules are required, without exception, in all civil courts federally and in the several states:

1. Losing plaintiffs must pay the defendant twice his attorney fees, and whatever other damages there may be.

2. No civil suits shall be allowed which have a reasonable possibility of impinging on any protection enumerated or implied by Article I. Thus, suits based on allegations of the falsity of religious, philosophical, or intellectual teachings have no place in a civil court.

3. Civil juries are at the option of the defendant and are limited to three individuals.

4. All punitive, consequential, or otherwise indirect damages are to be awarded solely by the judge, and only where there is evidence supporting such action beyond a reasonable doubt.

Section 7 Although the values such as human liberty, dignity, fairness, procedural equality, and truth cannot be amended or overruled since they are inherent in the human and human social condition, specific enumerations of these values may, over time, become misinterpreted, confused, or anachronistic. Therefore, all law forever requires amend-

ment. Amendment of the Supreme Law can be by no other means than as follows:

a) Amendment of the Supreme Law is to be by petition of 2/3 of the several states. It is within the province of each state to decide what majority of its own state Legislature is required to petition. The petition is to be directed to the U.S. Senate leader.

b) One delegate is to be chosen by each state to attend a convention to be held within nine months of 2/3 of the states having petitioned.

c) After the delegates have reached majority agreement on amendments to the Supreme Law, within six months, such amendments are to be put before the voters of each state.

d) If a majority of those voting in 2/3 of the states ratify the amendments, that law becomes Supreme.

No other method of changing the Supreme Law is permissible, and is herein deemed criminal and treasonous.

Article III — The Governmental Functions, Branches, and Offices

Section 1 Government is to perform its functions justly and with moderation. Its powers are solely delegated from the individual.

Section 2 There shall be three distinct branches of government: executive, parliamentary, and judicial.

a) The executive branch is to execute the law, aid in creation of law, and head the military.

b) The parliament branch is to serve as a check on the power of the executive, and is to create law, as below enumerated.

c) The judiciary is to interpret the law when real cases or controversies come before it, to settle disputes between the other two branches, and is to serve as interpretor of the Supreme Law.

Section 3 The executive power shall be vested in a President. The president shall hold office initially for a term of three years, and may be elected subsequently for a term of six years. The President may stand for reelection thereafter every two years.

a) The presidential candidate shall stand for election with a vice presidential candidate of the candidate's own choosing.

b) There are to be at least two named political parties in each election.

c) The Presidential election is to be by popular vote. A majority of those voting is required for election. A run-off between the top two candidates is required when only a plurality is present.

d) Only natural born citizens, those 35 or older, and those who have been a resident in the United States for 25 years, can stand for election.

e) In the case of resignation, permanent disability, or death, the office of

President is to be filled by the Vice President, leader of the Senate, or leader of the House, in that order. A Presidential election is to be held nine months from the date of change.

f) The President shall be Commander in Chief of the military forces, shall have the power to declare war, shall have the power to pardon for all federal offenses, and shall have the power to make treaties, subject to ratification by over one-half of each house of the Parliament.

g) The President shall rotate with the Senate, House, and Constitutional Court in the filling of federal court vacancies. Rotation is to be with reference to each federal level. [Thus, there shall be, for example, for every 4 Constitutional Court vacancies, 1 pick by each of the 4 named branches. A pick is rejected when two of the other branches reject the pick. A rejection occurs when a majority so rejects. The offeror then proceeds by making a second choice.]

h) The President or Vice President shall be removed from office when a majority of the Constitutional Court, a majority of the House, and 2/3 of the Senate so vote. In such instance, the office shall be filled as stated in subsection e), and an election shall be held within nine months. If the former President has been convicted in this interim of a felony, he shall not be allowed to run again for election.

i) The President shall, as necessary in the President's judgment, create certain agencies to aid in the enforcement of the law and the functioning of government. These agencies can create rules, subject to Presidential and Parliamentary approval. The agencies cannot decide cases or controversies. All judicial functions rest in the judicial branch.

j) The President is mandated to limit the nation's budget to revenue received. In order to accomplish this, line items veto power rests in the President. This power can be used whenever Parliamentary budget proposals exceed available revenues.

k) The President shall insure that a national lottery be held whenever the nation's budget is imbalanced or when there is a threat of national bankruptcy.

l) The President shall insure that no more than 15% of an individual's gross income be taken in taxes and that no less than 2% of an individual's gross income be taken (except in cases of poverty). The President must also insure that, as a rule, tax be approximately 10% of the gross income of the individual, and 5% of the gross income of a corporation.

m) In the event of disagreement by the Parliament with the Executive's proffered tax, a majority of the Senate and a majority of the House can veto that particular law.

Section 4 The Parliamentary branch shall include a Senate and a House of Representatives.

a) The Parliament's purpose is to set a check on unbridled Executive or Judicial power, and to serve as the principal creator of the country's laws.

b) Law becomes law by majority vote of both houses, except in the area of tax. In the event of executive veto, the law is retained when there is 2/3 vote of each house. An executive tax law can be overturned by 3/4 vote of each house. Laws deemed contradictory to this Supreme Law, by the Constitutional Court in a real case or controversy, are overturned, except when 4/5 of each house deems the law not contradictory to this Supreme Law.

c) It is entirely proper for the Executive branch to offer law and law programs to the Parliament. With such Executive-initiated law, it is incumbent on the Parliament to vote within 6 months, or the Executive-proffered law becomes law.

d) The federal government is the principal government of the United States. However, as a practical matter, state and local governments must continue to exist to administer the day-to-day requirements of society. Further, the state governments, themselves, serve as a check on unbridled tyrannical power. Therefore, the policy of the Parliament is to allow the continued viability of state governments.

e) The Senate shall be composed of one Senator from each state, territory, and the District of Columbia. The Senator shall be chosen by majority vote of the people in that state, territory, or district. The Senator shall serve for a term of six years, and can stand for reelection every six years. The Senator shall have one vote in the Senate.

f) No person shall be a Senator who shall not have attained to the age of thirty years, have been 20 years a citizen of the United States, and who shall not, when elected, be a resident of that state for which such senator shall be chosen. The Senate shall elect its own leader.

g) In the event of a tie in Senate voting, the Vice President shall vote to break the tie.

h) The Senate shall have the sole power to impeach federal public office holders. The impeachment indictment must be by clear and convincing evidence of serious crime, incompetency, or breach of the public trust. A 2/3 vote is required for this public indictment (impeachment).

i) The House of Representatives shall be composed of members chosen every three years by the people of the several states. A representative may serve only two terms.

j) No person shall be a representative who shall not have attained to the

age of 25 years, been 20 years a citizen of the United States, and who shall not, when elected, be a resident for 10 years of the state in which such representative shall be chosen.

k) Representatives shall be apportioned from the several states as follows:

1. each state shall have at least one representative;
2. no state shall have more than three;
3. a representative shall be allowed for every seven million citizens in that state (with the above two limitations).

[These figures must be amended, from time to time, so that the states with the largest population have 3 representatives, those with the smallest 1, and those with medium population 2.]

l) The House of Representatives shall try all impeachments. A verdict of guilty expels the office-holder from office. Such verdict requires 2/3 of the voting members.

m) All votes in both chambers of Parliament require a quorum. A quorum occurs when 2/3 of those elected are present. Significant absence from Parliamentary proceedings is a cause for impeachment.

n) Each house shall determine the particular rules of its proceedings.

o) Committee meetings of the houses can be closed, but full meetings must be open to the press and public.

p) Each Senator or representative shall receive a salary of $100,000 yearly and shall be allotted a maximum of $300,000 yearly to pay for *all* other expenses.

q) Except in the area of taxation, which is primarily an executive function, the Parliament shall, with the Executive, insure that the following functions are fulfilled: post office, interstate roadways, and protection of individual scientific and artistic creation.

r) The Parliament must insure that interstate commerce not be limited and thus that no barriers to interstate travel, such as interstate duty taxes, be imposed.

Section 5 The judicial power of the United States shall be vested in one Constitutional Court, of nine members, in twelve Circuit Courts, and in such other district courts as Parliament sees fit. The judges shall hold their offices for terms of twelve years. National election shall be held when the term expires. The election shall not be contested. Rather, a vote of "no confidence" removes the judge from office.

a) The federal judicial power shall extend to all cases arising under this Supreme Law, any federal law, to all cases affecting ambassadors, to all cases in admiralty, to controversies where the United States is a party, to controversies between 2 or more states, and to foreign citizens or states.

b) Full faith and credit shall be given in each state to the public acts, records, and proceedings of every other state.
c) A person charged in any state with a crime who flees from Justice, and is found in another state, shall on demand of the executive authority of the state from which such person fled, be delivered up, to be removed to the state having jurisdiction of the crime.
d) The Constitutional Court as interpretor of this Supreme Law is bound by its letter and by its spirit.