Volume I: Issue 5

The BEACON OF LIBERTY

A Structured Curriculum of Constitutional Study

Clause Discussed:
• Article I, Section 2, Clause 2

Concepts Discussed:
• Person, Citizen, Inhabitant

Article I, Section 2, Clause 2 of the Constitution declares:

> "No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen."

This clause uses double negatives. This means that when it declares that "*No* Person shall be a Representative who shall *not*...", the person must meet all the qualifications next listed.

A Representative must therefore be at least 25 years old; at least seven years a Citizen of the United States; and one must also be an inhabitant of the State where elected.

These qualifications are minimal to ensure competent Representatives — all who aspire to the position would likely far surpass them. Having few restrictions laid in stone keeps the field wide open for a broad range of candidates. The lack of extensive qualifications could prove important in instances where the candidate with the most impressive credentials may not be the best person for the job. A ditch digger may prove to be a better Representative than a legal scholar; a clerk, better than an industry mogul. Education and even experience may prove less important than high morals and impeccable integrity.

The age qualification was meant to allow one to reach a modicum of maturity. While any 18 year old feels able to conquer the world, at 25 he may be more humbled.

"Seven Years a Citizen of the United States" has an equivalent meaning of "Seven Years **as** a Citizen of the United States". If a foreigner emigrated from his native land to the United States, the various naturalization laws specified some number of years (mostly five) that the person must reside in the United States before he could hope to become a Citizen. These years would be in addition to their minimum seven years **as** a *Citizen*. This time would allow immigrants a chance to shed more of their homeland culture to further "Americanize" their thoughts.

Personal Status

The Beacon of Liberty takes it as a fundamental premise that each word used within the Constitution has a specific meaning. When different meanings are intended, different words are used to best signify the intent of the framers of the Constitution. An understanding of terms which gives the fullest significance possible for every word within the Constitution is sought.

The Constitution uses the terms *Person, Citizen,* and *Inhabitant* all within Clause 2. Different words which relate to people are used when the circumstances warrant it. They are quite familiar terms, but a deeper examination will likely show an unfamiliar nature about them.

Starting with the first American document is often a good beginning when introducing new concepts. The **Declaration of Independence** uses the terms *human, people, men* and *mankind* predominantly when speaking about man. These words have little or no reference to society or any interrelations between members of society; as such, they can be easily used in a relatively primitive societal setting. The Declaration, in parts, 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…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 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…Prudence, indeed, will dictate that Governments long established Should not be changed for light and transient causes; and accordingly all experience hath Shewn, that **mankind** are more disposed to Suffer, while evils are Sufferable, than to right themselves by abolishing the forms to which they are accustomed…

"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**…We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of **mankind**, Enemies in War, in Peace Friends.

"We…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."

The term *people* is used six more times in the Declaration. *People, Human* (beings) and *man* (or *men*) are words of large import which are generally quite inclusive, meaning that few are excluded from these words. Only when these words are used in conjunction with adjectives do they have any significance as part of a societal group (i.e., as in *American* people, for example) and thereby exclude others.

Man, although certainly capable of being used to pertain only to the male gender, is just as often used without gender connotation, short for either *man*kind or hu*man*.

In scanning through the **Declaration**, one sees very little usage of terms which relate to people in relation to society. *Inhabitant* was used only once in the Declaration, where it was used in regards to (previous) British rule in a listing of the King's usurpations:

"For protecting them (the King's troops), by a mock Trial, from Punishment for any Murders which they should commit on the *Inhabitants* of these States."

The only reference in the **Declaration** to a *Citizen* was near the end of the document. The reference was used to show how Citizens had been treated when they were actually *colonists* and *Subjects* under British rule:

"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."

The Declaration, as the first American document, essentially pre-dates American society in a sense. In the beginning paragraphs of the document, the Citizens no longer considered themselves British colonists, as they were in the process of throwing off their oppressors. At the end of the document, they were declaring themselves "Free and Independent States." In the middle, they were essentially in a state of nature without any governing authority over them. Within the bulk of the Declaration, then, they could almost be considered as a people without a country. The people were therefore referred to mainly in terms which had no correlation with a country — *people, men, human,* and *mankind.*

Inhabitant

The term *inhabitant* gives a general understanding that an individual is from a certain place or locale: it imparts a general governmental relation to man. Strictly speaking, one is an *inhabitant* of a State if one inhabits a place within that State. It may not be obvious, but where one inhabits or makes one's home may be more of a state of mind, rather than location of one's body.

The term *Resident* is used in **Article II, Section I, Clause 5,** dealing with Presidential qualifications. This term is more transitory in nature; whereas *inhabitancy* imparts a greater concept of permanency. Residency can have more to do with the location of one's body.

For example, many people have multiple residences and travel between them. These people may winter in Arizona as temporary residents, but not be Inhabitants there. They (as well as the State where they generally live) consider themselves inhabitants where their vehicles are licensed, where they have their Driver's License, where they may be registered to vote, where they have a bank account, where they pay taxes, where they receive their mail; i.e., where they have their *domicile* (one may have multiple *residences*, but may only have one domicile).

Being an inhabitant of the State where elected is among the most important cornerstone principles within the entire Constitution. This requirement is a necessary and fundamental qualification to maintain State sovereignty within a federal structure. It would be difficult to imagine the federal structure remaining intact without such a qualification, in fact. The entire State and federal relationship rests upon the basis that **each** State sends delegates to meet in a Congress of all the States.

That the person who is elected to Congress is required to be an *inhabitant* of the State is among the most important cornerstone principles within the entire Constitution.

Due to the necessity to maintain the federal arrangement, the Constitution, in **Article I, Section 2, Clause 3**, mandates that **each** State "shall have at Least one Representative".

This is one place where **Article IV, Section 4** and its "guarantee to every State in this Union a *Republican* Form of Government" protections come into play. If a State was part of the Union, then it had to be Republican (representational) in form. Without a voice in government, there is no concept of representation.

In the House of Representatives, the States are *proportionally* represented (according to their State population in proportion to the whole Union's population). The States with greater population numbers have a greater number of Representatives (with each Representative having one vote).

With the representation of each State dependent upon the population, smaller States have less voice, and larger States have more of a voice in this House of Congress. The House of Representatives therefore is structured as if the United States were but a single nation. This House is structured to give equal political voice to every *Citizen* in the United States (with the Senate structured in a partially-confederated manner to give equal political voice to every *State* in the United States).

The House of Representatives is structured to give equal political voice to every *Citizen* in the United States.

Citizen

Citizen is a term which directly relates man to his government. *Citizen* has direct reference to a country; it almost begs the question "Citizen of which country"? *Citizen* could not be used correctly in regards to man in a state of nature where no government exists.

The Constitution takes a different tack than the Declaration and uses the terms *Citizens, persons, inhabitants, residents,* as well as *people*. *Citizens, inhabitants,* and *residents* all relate man to government or a societal group.

The usage in the Constitution of the term *Citizen* gives some evidence of what type of person is this Citizen.

Article I, Section 2, Clause 2, covered earlier, states:

> "No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a *Citizen* of the United States."

Article I, Section 3, Clause 3 states much the same as above:

> "No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a *Citizen* of the United States."

These clauses give evidence of one major factor: Being that a person must be at least **twenty five** years of *age* but only **seven** years as a *Citizen of the United States* to be a Representative means that at least 18 years of this person's life could be as something **other** than a *Citizen of the United States*. A Citizen of the United States necessarily includes persons who were not such Citizens their whole lives.

Article II, Section 1, Clause 5 sheds a bit more light on the subject:

> "No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States."

This Clause states that "No Person except a *natural born Citizen*, **or** a *Citizen of the United States*…shall be eligible to the Office of President."

A **natural born Citizen** is offered within the clause *as an alternative* to a **Citizen of the United States** (by use of the word ***or***; signifying not *conjunction* [equivalence], but *disjunction* [difference]). This wording shows that the terms *natural born Citizen* and *Citizen of the United States* are not synonymous terms.

By clause 5, **Citizens** were either **natural-born** Citizens or they were **naturalized** Citizens of the United States.

A *natural-born Citizen* is one who was born that way — one who has been a Citizen his entire life — **a Citizen by birth**.

A *Citizen of the United States* can be then understood as one who became a Citizen at some point after birth — **a Citizen by the governmental procedure** of ***naturalization*** (to become like a *natural-*born Citizen).

Studying the preceding three clauses, one can deduce that a *Citizen of the United States* was therefore **only** a foreign-born immigrant who became naturalized.

A *Citizen of the United States* does not include *natural-born Citizens* (14th Amendment issues are a far distant discussion).

Article II prevents all foreign-born immigrants except only those who were Citizens of the United States "at the time of the Adoption of the Constitution" from holding the Office of the President (and therefore the Vice-President — see the 12th Amendment).

This time-limited exception was to allow those foreigners who fought for independence and struggled to help create the Constitution itself a chance to reach the highest office. It seemed too harsh that these people should be prevented from being part of that which they directly helped create.

The wording "at the time of the Adoption of this Constitution" applies only to the qualification of "Citizens of the United States". If this were not so, the qualification to be natural-born "at the **time** of the Adoption of this Constitution" would mean that no person born after adoption of the Constitution could be President. The only person who could qualify as President today would then be about 215 years old. That a law could offer such an absurd conclusion gives convincing evidence against this scenario.

Clause 5 states that every Person must be "**fourteen** Years a Resident within the United States" to be eligible to the office of President.

Realize that the Constitution was proposed in the **Twelfth** year of American Independence (See Article VII, Clause 2).

There appears to be a dichotomy in requiring a residency term within the country 3 years longer than the actual legal existence of that country.

There would be no apparent contradiction if the Constitution was first ratified after July 4th, 1790; for the President could have then met the 14-year residency qualification.

The Constitution was ratified within the first nine States on June 21st, 1788 with the ninth ratification of New Hampshire. All 13 of the original States had ratified the Constitution by May 29th, 1790, with Rhode Island's ratification.

In that George Washington was sworn into office as first President of the United States on April 30th, 1789, however, it is apparent that such *United States* wording has meaning other than it may first appear.

Even though the United States were not declared to be free and independent States until July 4th, 1776, it is evident that the *United States*, at least **in sufficient manner for this express purpose**, can be considered as the United States even before their declaration of independence in 1776 (when they were but colonies). This doesn't seem unreasonable, certainly to the extent only necessary for the express purpose of this clause. Given that there is no alternative credible explanation, the *United States* can even refer to the geographical area of the 13 colonies when they were still under British rule.

Article I, Section 2, Clause 2 gives minimum qualifications only for a Representative. It does **not** mandate that one must be a Citizen of the United States; it mandates that one must at least be a Citizen of the United States (for at least seven years). A natural-born Citizen would be a superior qualification which would naturally trump this criterion.

Article III, Section 2, Clause 1 shows more evidence of citizenship:

> "The judicial Power shall extend to all… controversies…between a State, or the *Citizens* thereof, and foreign States, *Citizens* or *Subjects*."

This clause acknowledges that the United States have *Citizens*, while foreign States could have either *Citizens* or *Subjects*. *Citizens* have rights, privileges, and immunities; *Subjects* have but a duty to obey the law. British *Subjects* are those people *subject* to their parliamentary form of government, which essentially passes laws without limit except its own discretion.

Those people who push for more government authority and power routinely compare the United States with Canada, Great Britain, France, Germany and other foreign countries. This is done to down-play the differences between our governments and those, to imply that the various forms of government are interchangeable. The United States have no comparison the world over — our governments are not like those other countries!

Person

The noun *Person* is held for discussion last, since it is the term which deals with people and status which is most obscure.

Strictly speaking, *Person* references the:

> "*part* which a *man plays* in society...**a *person* is a *man* considered according to the *rank* he holds in society**, with all the **rights** to which the **place** he holds entitles him, and the **duties** which it imposes."[1]

Understood in relation to acting, from where the

1. John Bouvier, *Institutes of American Law* (Philadelphia: Robert E. Peterson, 1851), Vol. I, p. 57. (emphasis added).

derivation of this word comes (*persona*), may make more sense. Although an actor **portrays** the *person* or *character* in a movie or play, he is seldom the actual person portrayed (i.e., seldom does the actor portray himself).

Use of terms such as *person* allow for a separation of the *part* from the *man*. Which *person* a *man portrays* determines the *part* he is to *play* in society.

As a *man*, he is free unto himself; he has only one cloak, the same everywhere. In regards to business, he merely extends himself as the *sole proprietor*. Because this is just an extension of himself, he is fully exposed to all liability; when he dies, all that which he owned must be passed on to his heirs.

The concept of *persons* allow men the capability to interact in societies in ways which they couldn't without this concept. If a man was only a man, he could not assume any role outside of his natural role as himself, as the guardian of his family and guardian of his property. He would be able to act in concert with other men, but only in partnership with one another.

A reference may be seen occasionally in law to *natural persons*. This specification brings to light the fact that there are *unnatural* or *artificial* persons. The corporate body, private or public, is the most common artificial person. Corporations, associations, and even governments are routinely referred to as *persons*, as strange as that may seem to the uninitiated.

Man-made entities are created in equity for certain benefit. Corporations are created to remove personal liability from the shareholders, for immortality of the business entity (past the death of its incorporators), the ability to sell stock to capitalize large-scale projects, etc.

Corporate or association officers, public or private, would not exist without the concept of *persons*. Government would not be possible, for in private law, man must expressly contract with his agents. There is no mechanism outside government to bind man without his express consent. Every action would therefore require 100% approval of every man affected.

There is no mechanism outside government to bind man without his express consent.

The concept of *person* of one sort or another allows man to be bound without his express permission if it is the will of the majority operating within confined parameters. The person may be a *citizen*, an *inhabitant*, an association *member,* a corporate *president*, or an unlimited number of possible *persons*.

Old-world Explorers told of examples of meeting native people without societal structure; that no man had the right to speak for any other. A treaty signed by one was only good for that individual and no fellow man felt any obligation whatsoever to be bound by the signature (or "X") of that other man. This may be an anarchist's dream, but this leads to certain technical difficulties as the size and complexity of society grows beyond the most rudimentary of beginnings.

The above example supposedly amounts to a principle that some people are fond of stating: that when men enter into society, they give up certain rights and freedoms. They gain security, economies of scale, specialization, leisure, education, and a whole host of similar notions. The price of this seems to be the forfeiture of certain rights and freedoms, which seem to ever expand, at least to the degree which one fails to understand the mechanisms employed.

This is not necessarily so; especially when one looks deep enough to find that government too often operates as a mere smokescreen for those with political *pull* to hide behind to do indirectly that which they would never even attempt directly.

The mechanism employed to gain political power over others is to consider men, not as men with unalienable *rights*, but as *persons* with varying sorts with *duties*, *limitations* and revocable *privileges*.

Plays and masquerades in the ancient world often had the actors wearing a mask to portray a certain character. Masks are not often used today, but the uniform and a badge of the commissioned police officer or the robe of the judge can take the place of a mask, and let a man take on a role of a government official empowered to perform certain functions (the uniform is unnecessary; this is generally a mere matter of tradition).

The concept of a *person* allows a man to perform multiple functions in society. When he steps beyond that natural role and into the role of artificial entities, he is no longer portrayed in the same manner. A man may own a business, yet he may also function as an elected government official. The hat he wears, so to speak, depends upon which function he is partaking in at any given point in time. The mere fact that he is able to function with government authority on one hand does not mean that he can extend this authority to the other.

The concept of *persons* allows for society to receive the benefit which government and private corporations provide. Using the concept of *persons* in instances where this concept is generally unneeded, however, provides the chance for abuse. With the good, unfortunately, comes the bad. A fuller understanding is necessary to judge between the two; to attempt to increase the good and minimize the bad.

Unfortunately, when and where there is bad, it can be very, very bad. The use of words such as *persons* is the smoke: where there is smoke, there is fire. Where there is

smoke, one may make a smokescreen; behind which one may hide atrocities. The concept of *person* is what allowed the African native to be held as a *slave* yet in America.

If not for the concept of *person*, the African man would have unalienable rights when he arrived in America, according to the Declaration's recognition that "**All** *men*…are endowed…with…unalienable rights". It is obvious that the slave **must** have been considered something other than as a man to be kept in slavery. The slave was considered in the Constitution as a *person* (see Art. I:2:3, Art. I:9:1, Art. IV:2:3).

The *person* which the African was to *portray* in America was the *person* of a *slave* who had few rights. This over-ruled, or at least side-stepped, the concept at law of these persons being men, certainly ones with unalienable rights. The difference between *men* in the Declaration and *person* in the Constitution was of sufficient significance to not only allow for the enslavement of the individual themselves, but all of their offspring (born of a female slave).

The concept of *person* was not created by the Constitution; it has been around since the beginning of government. Nor is it the *concept* which is evil; it is how the term is defined in some instances at various points in time.

While the *person* of the *slave* is now extinct due to the acknowledgement of the immoral nature of one *person* owning another (through the legal workings of the 13th Amendment), *persons* of greatly reduced rights are still quite prevalent in America.

Sometimes it is easiest to more-fully explore a subject when it is most obvious, therefore a study of the extremes is often beneficial. Mental illness is a condition of persons losing, at least during their incapacity, their civil rights. One type of "mental illness" in Washington State deals with a *person* who is a *Sexually violent Predator.*[2]

The following is not offered in defense of this *predator*, but to study how a *man* with inherent rights can be held as a *person* who is a *Predator* with few "rights".[3]

RCW 71.09.020 (1) gives the following definition:

> "*Sexually violent predator* means any *person* who has been convicted of **or charged** with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the *person* **likely** to engage in predatory acts of sexual violence if not confined in a secure facility."

2. See the Revised Code of Washington, Chapter 71.09 (abbreviated: RCW 71.09).

3. As specifically-enumerated in RCW 71.09.040 (3).

Once the procedural process is complete specifying a *person* to be a *sexually violent predator* by the court specifically called for this determination (even without criminal conviction or after the entire sentence has been served after conviction), the *predator* is to be civilly "committed to the custody of the Department of Social and Health Services for placement in a secure facility… for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe…to be at large…" (71.09.060 [1]).

Sexually violent Predators are beasts without rights. A *person* who is a *Sexually violent Predator* can be incarcerated at will without regard to any protections afforded to *Citizens* and *men*. Nowhere in the Constitution or the Declaration is it said that *Sexually violent Predators* have any inherent and inalienable rights: therefore their "rights" are determined solely by the statutes enacted dealing with them.

The trick is again on definition — on *who* is defined as a *Sexually violent Predator*. Once a *man* is defined as something other than a man, his rights and duties are now determined by the "rights" of the *person* he *portrays*. This opens the door to widespread and wholesale obliteration of that man's unalienable rights and protections against arbitrary government action.

By defining a man as something other than a man, one opens the door to widespread and wholesale obliteration of that man's unalienable rights and protections against arbitrary government action.

From the definition above, the predator can be incarcerated at will based upon some expert's assessment of this predator's mere *propensity* to engage in **future** "predatory acts of sexual violence". Once a person is defined as a predator, his future is set.

Other *persons* can be of wide interest. The *person* of a *wife* of yesteryear and the *person* of the *wife* of today are quite different from one another. When a woman in the days of old married, she became *one* with her husband (*man* and *wife*), essentially meaning she subjected herself to her husband's absolute dominion over her. Having only one final authority within every marriage certainly lessened controversy when the wife portrayed her role correctly, but over time too many wives desired to lessen their shackles for the rights of that *person* not to change at law.

The business world has a vast number of roles which many *persons* play; those of *employer, employee, firm, business, contractor,* or *property owner* are but a few. These terms are not inherently bad, but one must understand their ramifications when using them.

Article I, Section 9, Clause 3 of the Constitution prohibits Congress from passing any **Bill of Attainder**. A *Bill* is simply a legislative writing or law. A legislative *attainder* is a writing containing a legislative punishment without a judicial determination of guilt. It is a political process, rather than judicial. Legislative attainders do not have the same safety mechanisms in place to protect the innocent and mandate fair trials before a independent jury of one's peers. The attainder is a *stain* on the person, a *smearing* of the person and his reputation causing widespread repercussions.

It is a fine line to walk to call a *man* something other than a man when it decreases his status without being held at least as a mild form of a bill of attainder. To call a man the *person* of *x, y,* or *z* and have his status and rights change correspondingly, amounts to a legislative infringement on the rights of that man (at least without full disclosure).

To call a man the *person* of *x, y,* or *z* and have his status and rights change correspondingly, amounts to a legislative infringement on the rights of that man.

The power to create various definitions of types of *persons* is an awesome power. This is practiced often by the State legislatures or Congress, and occasionally by judges. To make definitions of various *persons* indirectly involves the ability to define **who is <u>not</u> a *person***.

To **not** be a *person* is at the center of one of the most decisive issues to face Americans today. This is the issue of abortion. The 1972 supreme Court case of **Roe v. Wade**[4] is touched here ever so briefly to drive home the concept that status is of extreme importance.

Judges do not rule on the law, *they rule according to law*. How a law is worded makes a huge difference as to how a judge will rule on any particular case before him. When various laws are consistent with one another, there is no controversy at law and a judge has no discretion as to how he will rule based on given facts. When there is a great deal of inconsistency within law — when one law contradicts another — Justices are compelled to uphold the greater law and hold invalid a lesser law. When two laws of equal magnitude contradict one another, then here is where the outcome is dependent upon so-called *judicial discretion*. The amount of judicial discretion practiced tells of the extent of inconsistent laws enacted by the legislative branch.

Judges are not empowered to enact law in place of the legislative branch; they cannot substitute their will for that of the legislature. They can, and must, however, help keep the legislative branch on the straight and narrow path (thereby upholding their oath to "support this Constitution"). Inconsistencies within a poorly-constructed law give wide latitude for a judge to rule as to the meaning of that law or of its being unconstitutionally vague. When a judge rules against an inconsistent law, he holds this "law" as null and void; it is acknowledged as inoperable. This, however, does not prevent the legislature from enacting a consistent new law and having the court then support this revised law.

The supreme Court in Roe v. Wade adjudicated an abortion case under Texas law. The Justices specifically mentioned a few inconsistencies within the Texas law that were especially troubling. For instance, the court footnoted:

> "When Texas urges that a *fetus* is entitled to Fourteenth Amendment protection as a *person*, it faces a dilemma. Neither in Texas nor in any other State are all abortions prohibited. Despite broad proscription, an exception always exists…But if the *fetus* is a *person* who is not to be deprived of life without due process of law, and if the mother's condition is the sole determinant, does not the Texas exception appear to be out of line with the Amendment's command?
>
> "There are other inconsistencies between Fourteenth Amendment *status* and the typical abortion statute. It has already been pointed out…that in Texas the woman is not a *principal* or an *accomplice* with respect to an abortion upon her. If the *fetus* is a *person*, why is the woman not a *principal* or an *accomplice*?
>
> "Further, the penalty for criminal abortion specified by Art. 1195 is significantly less than the maximum penalty for murder prescribed by Art. 1257 of the Texas Penal Code. If the *fetus* is a *person*, may the penalties be different?"[5]

Much time was spent in the Court's Opinion looking for an instance in the U.S. Constitution of a *fetus* being held or defined as a *person* (in large part due to Dallas County District Attorney Wade's assertion that "the *fetus* is a *person* within the language and meaning of the Fourteenth Amendment."[6]

The Court was most likely correct that they could find no such direct reference; their ruling that "the word *person*, *as used in the Fourteenth Amendment*, does not include the unborn"[7] is therefore likely to withstand later attack. This does not preclude successful attacks from other approaches, however.

The supreme Court was specifically hearing a Texas case. Where Texas law did not consistently and explicitly detail the status of a fetus under State law, the courts were left to search for their own answer.

4. As reported in Volume 410 of the United States Reports, beginning at page 113, adjudged in 1972: abbreviated 410 U.S. 113, 1972).

5. Roe v. Wade, pp. 157 - 158.
6. Ibid, p. 156.
7. Ibid, p. 158.

When the Court stated that the *unborn* was not a *person* under the 14th Amendment, they specifically footnoted a Wisconsin abortion statute (without comment) and its definition that an "*unborn child*" is "a *human being* from the time of conception until it is born alive."[8] Such a clear and unequivocal legislative definition is incapable of judicial attack.

The Court, if it were reviewing an abortion case under Wisconsin law, would necessarily treat an *unborn child* as "a human being from the time of conception until it is born alive" **because that was the legal definition of the term**. There would be no searching for the rights of an unborn child, for it would have the rights of a human being. The only judicial attack that could be made would necessarily have to come from other sections of Wisconsin abortion laws which may be inconsistent with that fundamental statement.

When laws are consistent, they are all but an impenetrable fortress to collateral attack.

The Court would be unable to rule against such a clear and consistent legislative meaning; they could **not** rule that an "unborn child" in Wisconsin was, for example, "a person from the time of 'quickening' until it is born alive". The courts cannot replace the will of the legislature with their own.

Consistency at law is of utmost importance, from basic underlying premises to minor follow-through regulations. The supreme Court did not rule that abortion was permitted in principle, *they ruled that the law **as enacted** could not impose criminal sanctions on persons violating its commands* and that the inconsistent Texas statute could not "survive the constitutional attack *made upon it here*".[9]

The Court specifically held on the same page that "A state criminal abortion statute **of the current Texas type** …is violative of the Due Process Clause of the Fourteenth Amendment". The actual **type** of law was the *type which inconsistently supports all life.*

The ruling that the 1972 Court established, that a *fetus* is **not** a *person* (within the 14th Amendment) can be held until proper laws establishing that a *fetus* **is** a *person* (or better yet, a *human being*). Wisconsin's pre-1972 abortion law that an *unborn child* is "a human being from the time of conception until it is born alive" is an excellent example of a properly-constructed premise. Consistent laws protecting this human being's life would then be necessary to defend against judicial examination.

The only blanket statement the Court issued about abortion was on page 154 of the opinion:

> "We, therefore, conclude that **the right to personal privacy includes the abortion *decision***, but that this right is not unqualified and must be considered against important state interests in regulation."

The abortion **decision** is among one's personal privacy rights; **as are all *decisions***. *Abortion* was merely an adjective within the sentence, telling the subject-matter of the decision. Certainly personal privacy includes various *decisions* — the *mind* is the last place where the government will be able to invade.

A "decision" of abortion, though, **is not the same as *carrying into effect* that decision**! The right to personal privacy was **not** said to extend to the abortion *procedure* (the *action* rather than *thought*). The significance of the phrase "the abortion *decision*" is evidenced by the Court's verbatim re-use of it on the next page.

The Court cannot rule for abortion as a principle any more than it could for slavery. The 1857 Court (Dred Scott v. Sanford, 60 U.S. 393) upheld slavery **as it was then before the court** (without any federal law prohibiting it over State law that allowed it), but did not rule that slavery was *always* permitted in principle.

Once slavery of *persons* was abolished through the passing of an appropriate law (13th Amendment), then the Court would uphold freedom in every case coming before it. The same is true for the issue of abortion: when life is properly supported at law, the criminal ending of it is properly punished. **As in the case of *any* crime** — when law is inconsistent in its attempt to punish crime or the procedures for carrying out that law are not followed — **criminals go free**.

It is beyond the scope of this newsletter to expand into the issue of abortion. It is important, however, to realize the gravity of situations which one should not readily dismiss out-of-hand due to their unfamiliarity. Personal status can play a looming role in government out-of-control which acts in apparent wanton behavior.

Definitions of terms yet in the 21st century have an amazing importance in life and in death.

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8. Ibid., p. 158.
9. Ibid., p. 164.

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