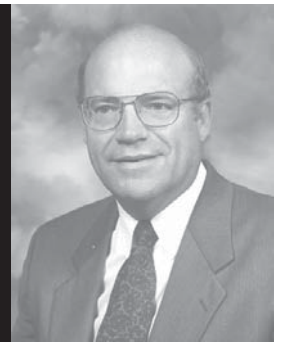




Dr. Fred Schwarz

# The Schwarz Report



Dr. David Noebel

Volume 45, Number 8

August 2005

## Our 51st Year!

### Inside



#### Vietnam Communism and Christianity

by Michael Bengé, Page 7

Mr. Bengé asks the question, "When will they ever learn?"



#### The Schwarz Report Bookshelf

To see a complete list of books recommended by the Christian Anti-Communism Crusade please check out our website at [www.schwarzreport.org](http://www.schwarzreport.org). This site also has back issues of *The Schwarz Report* as well as other great resources.



And do not participate in the unfruitful deeds of darkness, but instead expose them. Ephesians 5:11

## God, Man and Law

by Joseph Sobran

One of the great goals of education is to initiate the young into the conversation of their ancestors; to enable them to understand the language of that conversation, in all its subtlety, and maybe even, in their maturity, to add to it some wisdom of their own.

The modern American educational system no longer teaches us the political language of our ancestors. In fact our schooling helps widen the gulf of time between our ancestors and ourselves, because much of what we are taught in the name of civics, political science, or American history is really modern liberal propaganda. Sometimes this is deliberate. Worse yet, sometimes it isn't. Our ancestral voices have come to sound alien to us, and therefore our own moral and political language is impoverished. It's as if the people of England could no longer understand Shakespeare, or Germans couldn't comprehend Mozart and Beethoven.

So to most Americans, even those who feel oppressed by what they call *big government*, it must sound strange to hear it said, in the past tense, that tyranny "came" to America. After all, we have a constitution, don't we? We've abolished slavery and segregation. We won two world wars and the Cold War. We still congratulate ourselves before every ballgame on being the Land of the Free. And we aren't ruled by some fanatic with a funny mustache who likes big parades with thousands of soldiers goose-stepping past huge pictures of himself.

For all that, we no longer fully have what our ancestors, who framed and ratified our Constitution, thought of as freedom — a careful division of power that prevents power from becoming concentrated and unlimited. The word they usually used for concentrated power was *consolidated* — a rough synonym for *fascist*. And the words they used for any excessive powers claimed or exercised by the state were *usurped* and *tyrannical*. They would consider the modern "liberal" state tyrannical in principle; they would see in it not the opposite of the fascist, communist, and socialist states, but their sister.

If Washington, Jefferson, Madison, and Hamilton could come back, the first thing they'd notice would be that the federal government now routinely assumes thousands of powers never assigned to it — powers never *granted*, never *delegated*, never *enumerated*. These were the words they used, and it's a good idea for us to learn their language. They would say that we no longer live under the Constitution they wrote. And the Americans of a much later era — the period from Cleveland to Coolidge, for example — would say we no longer live even under the Constitution they inherited and amended.

I call the present system "Post-Constitutional America." As I sometimes put it, the U.S. Constitution poses no serious threat to our form of government.

What's worse is that our constitutional illiteracy cuts us off from our own national heritage. And so our politics degenerates into increasingly bitter and unprincipled quarrels about who is going to bear the burdens of war and welfare.

"Dwell on the past and you'll lose an eye; forget the past and you'll lose both eyes." Old Russian Proverb

I don't want to sound like an oracle on this subject. As a typical victim of modern public education and a disinformed citizen of this media-ridden country, I took a long time — an embarrassingly long time — to learn what I'm passing on. It was like studying geometry in old age, and discovering how simple the basic principles of space really are. It was the old story: In order to learn, first I had to unlearn. Most of what I'd been taught and told about the Constitution was misguided or even false. And I'd never been told some of the most elementary things, which would have saved me a tremendous amount of confusion.

The Constitution does two things. First, it delegates certain enumerated powers to the federal government. Second, it separates those powers among the three branches. Most people understand the secondary principle of the separation of powers. But they don't grasp the primary idea of delegated and enumerated powers.

Consider this. We have recently had a big national debate over national health care. Advocates and opponents argued long and loud over whether it could work, what was fair, how to pay for it, and so forth. But almost nobody raised the basic issue: Where does the federal government get the power to legislate in this area? The answer is: Nowhere. The Constitution lists 18 specific legislative powers of Congress, and not a one of them covers national health care.

As a matter of fact, none of the delegated powers of Congress — and *delegated* is always the key word — covers Social Security, or Medicaid, or Medicare, or federal aid to education, or most of what are now mis-called “civil rights,” or countless public works projects, or equally countless regulations of business, large and small, or the space program, or farm subsidies, or research grants, or subsidies to the arts and humanities, or ... well, you name it, chances are it's unconstitutional. Even the most cynical opponents of the Constitution would be dumbfounded to learn that the federal government now tells us where we can smoke. We are less free, more heavily taxed, and worse governed than our ancestors under British rule. Sometimes this government makes me wonder: Was George III really all that bad?

Let's be clear about one thing. *Constitutional* and *unconstitutional* aren't just simple terms of approval and disapproval. A bad law may be perfectly constitutional. A wise and humane law may be unconstitutional. But what is almost certainly bad is a constant disposition to thwart or disregard the Constitution.

It's not just a matter of what is sometimes called the “original intent” of the authors of the Constitution. What really matters is the common, explicit, unchallenged understanding of the Constitution, on all sides, over several generations. There was no mystery about it.

The logic of the Constitution was so elegantly simple that a foreign observer could explain it to his countrymen in two sentences. Alexis de Tocqueville wrote that “the attributes of the federal government were carefully defined [in the Constitution], and all that was not included among them was declared to remain to the governments of the individual states. Thus the government of the states remained the rule, and that of the federal government the exception.”

The Declaration of Independence, which underlies the Constitution, holds that the rights of the people come from God, and that the powers of the government come from the people. Let me repeat that: According to the Declaration of Independence, the rights of the people come from God, and the powers of the government come from the people. Unless you grasp this basic order of things, you'll have a hard time understanding the Constitution.

The Constitution was the instrument by which the American people granted, or delegated, certain specific powers to the federal government. Any power not delegated was withheld, or “reserved.” As we'll see later, these principles are expressed particularly in the Ninth and Tenth Amendments, two crucial but neglected provisions of the Constitution.

Let me say it yet again: The rights of the people come from God. The powers of government come from the people. The American people delegated the specific powers they wanted the federal government to have through the Constitution. And any additional powers they wanted to grant were supposed to be added by amendment.

It's largely because we've forgotten these simple principles that the country is in so much trouble. The powers of the federal government have multiplied madly, with only the vaguest justifications and on the most slippery pretexts. Its chief business now is not defending our rights but taking and redistributing our wealth. It has even created its own economy, the tax economy, which is parasitical on the basic and productive voluntary economy. Even much of what passes for “national defense” is a kind of hidden entitlement program, as was illustrated when President George Bush warned some states during the 1992 campaign that Bill Clinton would destroy jobs by closing down military bases. Well, if those bases aren't necessary for our defense, they should be closed down.

Now of course nobody in American politics, not even the most fanatical liberal, will admit openly that he doesn't care what the Constitution says and isn't going to let it interfere with his agenda. Everyone professes to respect it — even the Supreme Court. That's the problem. The U.S. Constitution serves the same function as the British royal family: it offers a comforting symbol of tradition and continuity, thereby masking a radical change in the actual system of power.

So the people who mean to do without the Constitution

have come up with a slogan to keep up appearances: they say the Constitution is a “living document,” which sounds like a compliment. They say it has “evolved” in response to “changing circumstances,” etc. They sneer at the idea that such a mystic document could still have the same meanings it had two centuries ago, or even, I guess, sixty years ago, just before the evolutionary process started accelerating with fantastic velocity. These people, who tend with suspicious consistency to be liberals, have discovered that the Constitution, whatever it may have meant in the past, now means — again, with suspicious consistency — whatever suits their present convenience.

Do liberals want big federal entitlement programs? Lo, the Interstate Commerce Clause turns out to mean that the big federal programs are constitutional! Do liberals oppose capital punishment? Lo, the ban on “cruel and unusual punishment” turns out to mean that capital punishment is unconstitutional! Do liberals want abortion on demand? Lo, the Ninth and Fourteenth Amendments, plus their emanations and penumbras, turn out to mean that abortion is nothing less than a woman’s constitutional right!

Can all this be blind evolution? If liberals were more religious, they might suspect the hand of Providence behind it! This marvelous “living document” never seems to impede the liberal agenda in any way. On the contrary: it always seems to demand, by a wonderful coincidence, just what liberals are prescribing on other grounds.

Take abortion. Set aside your own views and feelings about it. Is it really possible that, as the Supreme Court in effect said, all the abortion laws of all 50 states — no matter how restrictive, no matter how permissive — had always been unconstitutional? Not only that, but no previous Court, no justice on any Court in all our history — not Marshall, not Story, not Taney, not Holmes, not Hughes, not Frankfurter, not even Warren — had ever been recorded as doubting the constitutionality of those laws. Everyone had always taken it for granted that the states had every right to enact them.

Are we supposed to believe, in all seriousness, that the Court’s ruling in *Roe v. Wade* was a response to the text of the Constitution, the discernment of a meaning that had eluded all its predecessors, rather than an enactment of the current liberal agenda? Come now.

And notice that the parts of this “living document” don’t develop equally or consistently. The Court has expanded the meaning of some of liberalism’s pet rights, such as freedom of speech, to absurd lengths; but it has neglected or even contracted other rights, such as property rights, which liberalism is hostile to.

In order to appreciate what has happened, you have to stand back from all the details and look at the outline. What

follows is a thumbnail history of the Constitution.

In the beginning the states were independent and sovereign. That is why they were called “states”: a state was not yet thought of as a mere subdivision of a larger unit, as is the case now. The universal understanding was that in ratifying the Constitution, the 13 states yielded a very little of their sovereignty, but kept most of it.

Those who were reluctant to ratify generally didn’t object to the powers the Constitution delegated to the federal government. But they were suspicious: they wanted assurance that if those few powers were granted, other powers, never granted, wouldn’t be seized too. In *The Federalist*, Hamilton and Madison argued at some length that under the proposed distribution of power the federal government would never be able to “usurp,” as they put it, those other powers. Madison wrote soothingly in Federalist No. 45 that the powers of the federal government would be “few and defined,” relating mostly to war and foreign policy, while those remaining with the states would be “numerous and indefinite,” and would have to do with the everyday domestic life of the country. The word *usurpation* occurs numberless times in the ratification debates, reflecting the chief anxiety the champions of the Constitution had to allay. And as a final assurance, the Tenth Amendment stipulated that the powers not “delegated” to the federal government were “reserved” to the separate states and to the people.

But this wasn’t enough to satisfy everyone. Well-grounded fears persisted. And during the first half of the nineteenth century, nearly every president, in his inaugural message, felt it appropriate to renew the promise that the powers of the federal government would not be exceeded, nor the reserved powers of the states transgressed. The federal government was to remain truly federal, with only a few specified powers, rather than “consolidated,” with unlimited powers.

The Civil War, or the War Between the States if you like, resulted from the suspicion that the North meant to use the power of the Union to destroy the sovereignty of the Southern states. Whether or not that suspicion was justified, the war itself produced that very result. The South was subjugated and occupied like a conquered country. Its institutions were profoundly remade by the federal government; the United States of America was taking on the character of an extensive, and highly centralized, empire. Similar processes were under way in Europe, as small states were consolidated into large ones, setting the stage for the tyrannies and gigantic wars of the twentieth century.

Even so, the three constitutional amendments ratified after the war contain a significant clause: “Congress shall have power to enforce this article by appropriate legislation.” Why is this significant? Because it shows that even the conquerors

still understood that a new power of Congress required a constitutional amendment. It couldn't just be taken by majority vote, as it would be today. If the Congress then had wanted a national health plan, it would have begun by asking the people for an amendment to the Constitution authorizing it to legislate in the area of health care. The immediate purpose of the Fourteenth Amendment was to provide a constitutional basis for a proposed civil rights act.

But the Supreme Court soon found other uses for the Fourteenth Amendment. It began striking down state laws as unconstitutional. This was an important new twist in American constitutional law. Hamilton, in arguing for judicial review in *Federalist No. 78*, had envisioned the Court as a check on Congress, resisting the illicit consolidation or centralization of power. And our civics books still describe the function of checks and balances in terms of the three branches of the federal government mutually controlling each other. But in fact, the Court was now countermanding the state legislatures, where the principle of checks and balances had no meaning, since those state legislatures had no reciprocal control on the Court. This development eventually set the stage for the convulsive Supreme Court rulings of the late twentieth century, from *Brown v. Board of Education* to *Roe v. Wade*.

The big thing to recognize here is that the Court had become the very opposite of the institution Hamilton and others had had in mind. Instead of blocking the centralization of power in the federal government, the Court was assisting it.

The original point of the federal system was that the federal government would have very little to say about the internal affairs of the states. But the result of the Civil War was that the federal government had a great deal to say about those affairs — in Northern as well as Southern states.

Note that this trend toward centralization was occurring largely under Republican presidents. The Democrat Grover Cleveland was one of the last great spokesmen for federalism. He once vetoed a modest \$10,000 federal grant for drought relief on grounds that there was no constitutional power to do it. If that sounds archaic, remember that the federal principle remained strong long enough that during the 1950s, the federal highway program had to be called a “defense” measure in order to win approval, and federal loans to college students in the 1960s were absurdly called “defense” loans for the same reason. The Tenth Amendment is a refined taste, but it has always had a few devotees.

But federalism suffered some serious wounds during the

presidency of Woodrow Wilson. First came the income tax, its constitutionality established by the Sixteenth Amendment; this meant that every U.S. citizen was now, for the first time, directly accountable to the federal government. Then the Seventeenth Amendment required that senators be elected by popular vote rather than chosen by state legislators; this meant that the states no longer had their own representation in Congress, so that they now lost their remaining control over the federal government. The Eighteenth Amendment, establishing Prohibition, gave the federal government even greater powers over the country's internal affairs. All these amendments were ominous signs that federalism was losing its traditional place in the hearts, and perhaps the minds, of Americans.

But again, notice that these expansions of federal power were at least achieved by amending the Constitution, as the Constitution itself requires. The Constitution doesn't claim to be a “living document.” It is written on paper, not rubber.

In fact the radicals of the early twentieth century despaired of achieving socialism or communism as long as the Constitution remained. They regarded it as the critical obstacle to their plans, and thought a revolution would be necessary to remove it. As *The New Republic* wrote: “To have a socialist society we must have a new Constitution.” That's laying it on the line!

Unfortunately, the next generation of collectivists would be less candid in their contempt for the federal system. Once they learned to feign devotion to the Constitution they secretly regarded as obsolete, the laborious formality of amendment would no longer be necessary. They could merely pretend that the Constitution was on their side. After Franklin Roosevelt restaffed the Supreme Court with his compliant cronies, the federal government would be free to make up its own powers as it went along, thanks to the notion that the Constitution was a malleable “living document,” whose central meaning could be changed, and even reversed, by ingenious interpretation.

Roosevelt's New Deal brought fascist-style central planning to America — what some call the “mixed economy” but Hilaire Belloc called the *Servile State* — and his highhanded approach to governance soon led to conflict with the Court, which found several of his chief measures unconstitutional. Early in his second term, as you know, Roosevelt retaliated by trying to “pack” the Court by increasing the number of seats. This power play alienated even many of his allies, but it turned out not to be necessary. After 1937 the Court began

Founded in 1953, the Christian Anti-Communism Crusade, under the leadership of Dr. Fred C. Schwarz, has been publishing a monthly newsletter since 1960. *The Schwarz Report* is edited by Dr. David A. Noebel and Dr. Michael Bauman with the assistance of Dr. Ronald H. Nash. The Crusade's address is PO Box 129, Manitou Springs, CO 80829. Our telephone number is (719) 685-9043. All correspondence and tax-deductible gifts (the Crusade is a 501(c)3 tax-exempt organization) may be sent to this address. Permission to reproduce materials from this *Report* is granted provided our name and address are given.

seeing things Roosevelt's way. It voted as he wished; several members obligingly retired; and soon he had appointed a majority of the justices. The country virtually got a new Constitution.

Roosevelt's Court soon decided that the Tenth Amendment was a "truism," of no real force. This meant that almost any federal act was ipso facto constitutional, and the powers "reserved" to the states and the people were just leftovers the federal government didn't want, like the meal left for the jackals by the satisfied lion. There was almost no limit, now, on what the federal government could do. In effect, the powers of the federal government no longer had to come from the people by constitutional delegation: they could be created by simple political power.

Roosevelt also set the baneful precedent of using entitlement programs, such as Social Security, to buy some people's votes with other people's money. It was both a fatal corruption of democracy and the realization of the Servile State in America. The class of voting parasites has been swelling ever since.

So the New Deal didn't just expand the power of the federal government; that had been done before. The New Deal did much deeper mischief: it struck at the whole principle of constitutional resistance to federal expansion. Congress didn't need any constitutional amendment to increase its powers; it could increase its own powers ad hoc, at any time, by simple majority vote.

All this, of course, would have seemed monstrous to our ancestors. Even Alexander Hamilton, who favored a relatively strong central government in his time, never dreamed of a government so powerful.

The Court suffered a bloody defeat at Roosevelt's hands, and since his time it has never found a major act of Congress unconstitutional. This has allowed the power of the federal government to grow without restraint. At the federal level, "checks and balances" has ceased to include judicial review.

This is a startling fact, flying as it does in the face of the familiar conservative complaints about the Court's "activism." When it comes to Congress, the Court has been absolutely passive. As if to compensate for its habit of capitulation to Congress, the Court's post-World War II "activism" has been directed entirely against the states, whose laws it has struck down in areas that used to be considered their settled and exclusive provinces. Time after time, it has found "unconstitutional" laws whose legitimacy had stood unquestioned throughout the history of the Republic.

Notice how total the reversal of the Court's role has been. It began with the duty, according to Hamilton, of striking down new seizures of power by Congress. Now it finds constitutional virtually everything Congress chooses to do. The fed-

eral government has assumed myriads of new powers nowhere mentioned or implied in the Constitution, yet the Court has never seriously impeded this expansion, or rather explosion, of novel claims of power. What it finds unconstitutional are the traditional powers of the states.

The postwar Court has done pioneering work in one notable area: the separation of church and state. I said "pioneering," not "praiseworthy". The Court has consistently imposed an understanding of the First Amendment that is not only exaggerated but unprecedented — most notoriously in its 1962 ruling that prayer in public schools amounts to an "establishment of religion." This interpretation of the Establishment Clause has always been to the disadvantage of Christianity and of any law with roots in Christian morality. And it's impossible to doubt that the justices who voted for this interpretation were voting their predilections.

Maybe that's the point. I've never heard it put quite this way, but the Court's boldest rulings showed something less innocent than a series of honest mistakes. Studying these cases and others of the Court's liberal heyday, one never gets the sense that the majority was suppressing its own preferences; it was clearly enacting them. Those rulings can be described as wishful thinking run amok, and touched with more than a little arrogance. All in all, the Court displayed the opposite of the restrained and impartial temperament one expects even of a traffic-court judge, let alone a Supreme Court Justice.

It's ironic to recall Hamilton's assurance that the Supreme Court would be "the least dangerous" of the three branches of the federal government. But Hamilton did give us a shrewd warning about what would happen if the Court were ever corrupted: in Federalist No. 78 he wrote that "liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other [branches]." Since Franklin Roosevelt, as I've said, the judiciary has in effect formed a union with the other two branches to aggrandize the power of the federal government at the expense of the states and the people.

This, in outline, is the constitutional history of the United States. You won't find it in the textbooks, which are required to be optimistic, to present degeneration as development, and to treat the successive pronouncements of the Supreme Court as so many oracular revelations of constitutional meaning. A leading liberal scholar, Leonard Levy, has gone so far as to say that what matters is not what the Constitution says, but what the Court has said about the Constitution in more than 400 volumes of commentary.

This can only mean that the commentary has displaced the original text, and that "We the People" have been supplanted by "We the Lawyers." We the People can't read and understand our own Constitution. We have to have it explained

to us by the professionals. Moreover, if the Court enjoys oracular status, it can't really be criticized, because it can do no wrong. We may dislike its results, but future rulings will have to be derived from them as precedents, rather than from the text and logic of the Constitution. And notice that the "conservative" justices appointed by Republican presidents have by and large upheld not the original Constitution, but the most liberal interpretations of the Court itself — notably on the subject of abortion, which I'll return to in a minute.

To sum up this little constitutional history. The history of the Constitution is the story of its inversion. The original understanding of the Constitution has been reversed. The Constitution creates a presumption against any power not plainly delegated to the federal government and a corresponding presumption in favor of the rights and powers of the states and the people. But we now have a sloppy presumption in favor of federal power. Most people assume the federal government can do anything it isn't plainly forbidden to do.

The Ninth and Tenth Amendments were adopted to make the principle of the Constitution as clear as possible. Hamilton, you know, argued against adding a Bill of Rights, on grounds that it would be redundant and confusing. He thought it would seem to imply that the federal government had more powers than it had been given. Why say, he asked, that the freedom of the press shall not be infringed, when the federal government would have no power by which it could be infringed? And you can even make the case that he was exactly right. He understood, at any rate, that our freedom is safer if we think of the Constitution as a list of powers rather than as a list of rights.

Be that as it may, the Bill of Rights was adopted, but it was designed to meet his objection. The Ninth Amendment says: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." The Tenth says: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Now what these two provisions mean is pretty simple. The Ninth means that the list of the people's rights in the Constitution is not meant to be complete — that they still have many other rights, like the right to travel or to marry, which may deserve just as much respect as the right not to have soldiers quartered in one's home in peacetime. The Tenth, on the other hand, means that the list of powers "delegated" to the federal government is complete — and that any other powers the government assumed would be, in the Framers' habitual word, "usurped."

As I said earlier, the Founders believed that our rights come from God, and the government's powers come from

us. So the Constitution can't list all our rights, but it can and does list all the federal government's powers.

You can think of the Constitution as a sort of antitrust act for government, with the Ninth and Tenth Amendments at its core. It's remarkable that the same liberals who think business monopolies are sinister think monopolies of political power are progressive. When they can't pass their programs because of the constitutional safeguards, they complain about "gridlock" — a cliché that shows they miss the whole point of the enumeration and separation of powers.

Well, I don't have to tell you that this way of thinking is absolutely alien to that of today's politicians and pundits. Can you imagine Al Gore, Dan Rostenkowski, or Tom Brokaw having a conversation about political principles with any of the Founding Fathers? If you can, you must have a vivid fantasy life.

And the result of the loss of our original political idiom has been, as I say, to invert the original presumptions. The average American, whether he has had high-school civics or a degree in political science, is apt to assume that the Constitution somehow empowers the government to do nearly anything, while implicitly limiting our rights by listing them. Not that anyone would say it this way. But it's as if the Bill of Rights had said that the enumeration of the federal government's powers in the Constitution is not meant to deny or disparage any other powers it may choose to claim, while the rights not given to the people in the Constitution are reserved to the federal government to give or withhold, and the states may be progressively stripped of their original powers.

What it comes to is that we don't really have an operative Constitution anymore. The federal government defines its own powers day by day. It's limited not by the list of its powers in the Constitution, but by whatever it can get away with politically. Just as the president can now send troops abroad to fight without a declaration of war, Congress can pass a national health care program without a constitutional delegation of power. The only restraint left is political opposition.

If you suspect I'm overstating the change from our original principles, I give you the late Justice Hugo Black. In a 1965 case called *Griswold v. Connecticut*, the Court struck down a law forbidding the sale of contraceptives on grounds that it violated a right of "privacy." (This supposed right, of course, became the basis for the Court's even more radical 1973 ruling in *Roe v. Wade*, but that's another story.) Justice Black dissented in the *Griswold* case on the following ground: "I like my privacy as well as the next [man]," he wrote, "but I am nevertheless compelled to admit that government has a right to invade it unless prohibited by some specific constitutional provision." What a hopelessly muddled — and really sinister — misconception of the relation between the indi-

vidual and the state: government has a right to invade our privacy, unless prohibited by the Constitution. You don't have to share the Court's twisted view of the right of privacy in order to be shocked that one of its members takes this view of the "right" of government to invade privacy.

It gets crazier. In 1993 the Court handed down one of the most bizarre decisions of all time. For two decades, enemies of legal abortion had been supporting Republican candidates in the hope of filling the Court with appointees who would review *Roe v. Wade*. In *Planned Parenthood v. Casey*, the Court finally did so. But even with eight Republican appointees on the Court, the result was not what the conservatives had hoped for. The Court reaffirmed *Roe*.

Its reasoning was amazing. A plurality opinion — a majority of the five-justice majority in the case — admitted that the Court's previous ruling in *Roe* might be logically and historically vulnerable. But it held that the paramount consideration was that the Court be consistent, and not appear to be yielding to public pressure, lest it lose the respect of the public. Therefore the Court allowed *Roe* to stand.

Among many things that might be said about this ruling, the most basic is this: The Court in effect declared itself a third party to the controversy, and then, setting aside the merits of the two principals' claims, ruled in its own interest! It was as if the referee in a prizefight had declared himself the winner. Cynics had always suspected that the Court did not forget its self-interest in its decisions, but they never expected to hear it say so.

The three justices who signed that opinion evidently didn't realize what they were saying. A distinguished veteran Court-watcher (who approved of *Roe*, by the way) told me he had never seen anything like it. The Court was actually telling us that it put its own welfare ahead of the merits of the arguments before it. In its confusion, it was blurting out the truth.

But by then very few Americans could even remember the original constitutional plan. The original plan was as Madison and Tocqueville described it: State government was to be the rule, federal government the exception. The states' powers were to be "numerous and indefinite," federal powers "few and defined." This is a matter not only of history, but of iron logic: the Constitution doesn't make sense when read any other way. As Madison asked, why bother listing particular federal powers unless unlisted powers are withheld?

The unchecked federal government has not only overflowed its banks; it has even created its own economy. Thanks to its exercise of myriad unwarranted powers, it can claim tens of millions of dependents, at least part of whose income is due to the abuse of the taxing and spending powers for their benefit: government employees, retirees, farmers, contractors, teachers, artists, even soldiers. Large numbers of these people

are paid much more than their market value because the taxpayer is forced to subsidize them. By the same token, most taxpayers would instantly be better off if the federal government simply ceased to exist — or if it suddenly returned to its constitutional functions.

Can we restore the Constitution and recover our freedom? I have no doubt that we can. Like all great reforms, it will take an intelligent, determined effort by many people. I don't want to sow false optimism.

But the time is ripe for a constitutional counterrevolution. Discontent with the ruling system, as the 1992 Perot vote showed, is deep and widespread among several classes of people: Christians, conservatives, gun owners, taxpayers, and simple believers in honest government all have their reasons. The rulers lack legitimacy and don't believe in their own power strongly enough to defend it.

The beauty of it is that the people don't have to invent a new system of government in order to get rid of this one. They only have to restore the one described in the Constitution — the system our government already professes to be upholding. Taken seriously, the Constitution would pose a serious threat to our form of government.

And for just that reason, the ruling parties will be finished as soon as the American people rediscover and awaken their dormant Constitution.

—www.Sobran.com

---

## Vietnam Communism and Christianity

by Michael Bengé  
Vietnam Foreign Service Officer

Vietnam recently was named as a Country of Particular Concern (CPC), ranking it among the "Top 10" of the world's worst violators of religious freedom and human rights. This designation carries the option of sanctions against repressive countries, such as barring its officials from traveling to the United States. Instead, State Department officials have arranged for Prime Minister Phan Van Khai to come to the White House to meet with President Bush on June 21. Vietnam is one of the last bastions of communism along with China, Cuba, North Korea and Cambodia.

Once again the State Department's position seems to be all carrot but no stick, seemingly forgetting the Vietnamese communists broke every agreement with the U.S. As Pete Seeger's '60s antiwar song goes, "When will they ever learn?"

During the Vietnam War, the Vietnamese communists' strategy was "talk and fight." During negotiations, U.S. diplomats were lulled into diplomatic la-la-land, while the communists repositioned and resupplied their troops for the next round of fighting: Advantage, the communists. The communists' policy has not changed to this day.

In return for the U.S. suspending proposed sanctions, the Vietnamese communists have conned U.S. diplomats into believing they will reform on religious freedom and human rights. As a token gesture the Vietnamese communists released a few high-profile political and religious prisoners from their swinging-door prison system, only to place them under 24-hour surveillance and house arrest and bar them from media access, including using the Internet.

Released after 16 years in prison, Monk Thich Thien Minh of the banned Unified Buddhist Church of Vietnam (UBCV) wrote, "There is no amelioration in human rights and religious freedom. I have exchanged my small prison for a bigger one." Still, many Buddhist monks, Catholic priests, and Christian pastors and laypersons remain in prison. The State Department has asked Congress for several more weeks before considering sanctions, "and indicated the talks were bearing fruit." Evidently, the diplomats have a preference for spoiled fruit.

While negotiating with the State Department, the Vietnamese communists were filling their prisons with other-not-so-high-profile political/religious prisoners sentenced up to 15 years for "undermining national security and unity." In reality, these people fled religious persecution in Vietnam for refuge in Cambodia, but were captured by Vietnamese and Cambodian forces and sent back for prosecution.

Now Prime Minister Phan Van Khai made the oblique promise to ease registration requirements for churches. Nevertheless, churches are still requested to register; the names of each of the churches' congregation must be filed with the state, and no one else is allowed to attend services; sermons must be submitted for approval, and monks, priests, and pastors cannot deviate from the approved script; all sermons must be given in Vietnamese and all pastors must be Vietnamese, which excludes ethnic minority languages and pastors; monks, priests, and pastors cannot proselytize. According to Human Rights Watch, the Vietnamese government continues branding all unauthorized religious activities as potentially subversive.

Targeted in particular are ethnic minority Protestants, Mennonites, and members of the Unified Buddhist Church of Vietnam. In a final insult to religious freedom, secret police agents infiltrate churches to ensure compliance.

Prime Minister Phan Van Khai 2 ½ months ago reportedly instructed officials to "ensure that each citizen's free-

dom of religious and belief practice is observed [and] outlaw attempts to force people to follow a religion or to deny their religion." Is this something new? *No*. This is written into the Vietnamese communist constitution. Has the repression stopped? *No*. In northern and central Vietnam persecution continues and local officials harass and beat Christians and confiscate their rice fields when they refuse to renounce their religion. Recently in Buon Ale A in Darlak province a pastor was forced to sign an affidavit stating the Montagnards enjoyed religious freedom after he was almost killed by hanging as part of the torture designed to crush his resistance.

Because no independent organizations are allowed in the areas where most persecution occurs, there is no way for the State Department to verify the Vietnamese communists live up to their promises.

Moreover, families of Mantagnard Christians who fled Vietnam after religious protests in 2001 and resettled in the U.S. are not being allowed to immigrate for family reunification in direct violation of the Jackson/Vanik Amendment that prohibits trade with countries that do not allow free emigration.

Vietnam's communists have been good students of Chinese policies that permit repression and retain power by playing off American's "Coke bottle diplomacy."

What's behind the Vietnamese communists' charade of easing religious persecution and the State Department's swallowing the "spoiled fruit" of its diplomacy? *Trade*. The U.S. is now Vietnam's biggest export market—totaling \$5 billion. The Vietnamese communists hope to again pull the wool over U.S. diplomats' eyes long enough to gain U.S. backing for Vietnam membership in the World Trade Organization (WTO). "When will they ever learn?"

In his second Inaugural speech, President Bush pledged: "All who live in tyranny and hopelessness can know: The United States will not ignore your oppression, or excuse your oppressors."

In his June 21 meeting with Prime Minister Khai, the president must set concrete benchmarks and timelines to prove the Vietnamese communists are improving their citizens' religious freedom and human rights. Mr. Khai must be told that if the Vietnamese government does not meet these standards, the U.S. will curtail trade and it will no longer enjoy our diplomatic support for WTO membership. Unless this is done, the president will have broken his pledge to the oppressed and exposed the U.S. as the paper tiger it has always been when negotiating with the Vietnamese communists.

—*The Washington Times*, June 12, 2005