

# The Darwinization Of Law In America

by Pastor David Whitney, Cornerstone Evangelical Free Church, Pasadena,  
Maryland Senior Instructor, Institute On The Constitution

Through a series of corrupt and prejudiced judges Michael Schiavo finally accomplished the end he has sought for years, the end of his wife's life. What has become of the law in America? How is it that our court system can now be manipulated by a husband to accomplish the execution his wife?

The answer lies in what I am calling the Darwinization of Law in America. This act of judicial murder has puzzled many Americans. How have we come to a position in America where the "law" is used by an adulterous husband to have the court starve and dehydrate his wife with impunity? They rightly ask what is the essential purpose of government? Our Founders clearly answered that question in our founding document - the Declaration of Independence. The purpose of civil government is to secure our God given rights; the first and most important of which is the right to life. So what has changed in America since that Declaration was signed? Would our Founders even recognize the legal landscape currently in force in our land?

Many Americans understand that our judicial system is out of control. They have seen judges act in completely unconstitutional fashion; judges legislating from the bench; judges violating the rule of law. They know when you go to court these days you're more likely to lose your shirt than to actually experience the satisfaction of seeing justice done. In the course of time many Americans have come to a visceral loathing of all the officers of the court; judges, prosecutors and attorneys one and all. They know in their bones that something has gone terribly wrong with a system which can no longer rightly be called a justice system.

In this article, I intend to demonstrate that what has changed in America is the invasion of a foreign, non- American system of law, what I am calling the Darwinization of Law. It is foreign in that not one of our Founders would have recognized it as law. In fact our Founders would not have acknowledged our current legal system as an American system of law and justice at all. In this article I will trace the changes which have occurred in our legal system that have brought us to this sorry state.

Our Founders understood that all law is the will of the Sovereign. They clearly expressed that the civil government they were establishing rested upon "the laws of nature and nature's God." In other words superior to every man made law is the Supreme Law of the Universe. Any man made law which violates the Supreme Law of the Universe is no law at all. In fact it is lawlessness, and mutinous anarchy against the Sovereign ruler of the Universe.

To understand those vitally important sayings, we need to read those who influenced our Founder's thinking; Blackstone, Locke, and Montesquieu. There we discover that "the laws of nature" they spoke of is what the Apostle Paul wrote of in Romans chapter 1 and 2. In Romans 2:14-15 Paul writes that God's law is "written in their hearts, their conscience also bearing witness..." In Romans 1 it states that in all creation "the wrath of God is revealed against all ungodliness and unrighteousness of men..." Scripture affirms that every human being has God's law written upon the face of creation as well as written upon their own conscience. They may ignore it, violate it or sear it, but God's law is still there. This is the law of nature upon which our Founders established our civil government. The other crucial phrase was "the Laws of Nature's God." In reading the thinkers who shaped the ideas of our Founders we find that this saying refers to the revealed laws of the Creator, which is the Bible.

William Blackstone could rightly be called the law professor for our Founders. In his Commentaries on the Laws of England, he concluded that "the laws of nature," having been dictated by God Himself, is superior to all others and "binding over all the globe, in all countries, and at all times." Therefore no human laws are of any validity if contrary to God's law, and that no human laws have any authority except as derived from that higher law.<sup>1</sup>

Our Founders clearly established a fixed standard of justice for our land; they spoke of an unchanging benchmark. They were not inventing anything new through the War for Independence; they were simply reasserting the ancient rights of Englishmen or more broadly the rights of all men as subjects of the Sovereign Creator of the Universe. So how did we shift off that fixed foundation to the legislative and judicial insanity of our day?

Though there were many streams that contributed to the change, the major source was the 1859 publication titled, *On the Origin of Species by Means of Natural Selection, or the Preservation of Favoured Races in the Struggle for Life*. Charles Darwin was presenting an old pagan idea with new clothing; the glamorous garb of supposed science. Darwin's notions might never have obtained wide spread acceptance without the tireless proselytizing of his contemporary, Herbert Spencer. Spencer took what was a biological conjecture and applied it as if it were absolute truth in every field of study. While Darwin speculated in the field of biology, Spencer insisted evolution was truly a life philosophy, a world view, and the organizing principle in every academic discipline. This belief in social Darwinism had an even wider impact as Universities adopted this philosophy as their guiding light in every field of study.

When this virus of Darwinism traversed the Atlantic, a dramatic change was underway in our land. In terms of our legal system the first infection was at Harvard University. Ten years after the publication of *Origin of the Species* a new president took the reigns of Harvard, Charles William Eliot. His 40 year reign at Harvard drastically altered the educational mission of the school. He changed the motto from "Christo et Ecclesiae" (For Christ and Church) to "Veritas" the Latin word for Truth. Eliot believed that man on his own, without any Divine guidance, help or revelation, could determine the truth by means of the scientific method. He

presupposed that the key to knowledge was human observation using the tools of science. For Eliot “the law of nature and nature’s God” had nothing to offer a man in search of the truth in any academic discipline. Eliot eliminated what was left of Harvard’s historic commitment to Orthodox Christianity. He embarked on a mission to spread this virus to every college in America. Listen as he champions the evolutionary philosophy applied to both physical and moral laws.

“They [the new schools] can show how physics with its law of conservation of energy, chemistry with its doctrine of indestructibility and eternal flux of atoms, and biology with its principle of evolution through natural selection, have brought about within thirty years a wonderful change in men’s conception of the universe. If the universe, as science teaches, be an organism which has by slow degrees grown to its form of today on its way to its form of tomorrow,

with slowly formed habits which we call laws, and a general health which we call harmony of nature, then, as science also teaches, the life-principle or soul of that organism for which science has no better name than God, pervades and informs it so absolutely that there is no separating God from nature.”<sup>2</sup>

Whether he realized it or not, Eliot was preaching Pantheism; the ancient religion which claimed that God and the universe were one and the same. For Eliot the laws, both physical and moral, were merely “slowly formed habits.” For him nothing in the universe is governed by fixed unchanging laws; instead all is in flux, all is evolving. Therefore the “law” of evolution is the only “supreme law.” Even though Eliot admitted that man had not proven the theory of evolution, he dedicated Harvard to and exhorted a multitude of other colleges to promote research to verify Darwin’s conjecture.

In the field of law, Eliot also preached that evolution was the key to truth. With less than a year at the helm, he found a lawyer who believed as he did that the principle of evolution was the key to truth; Christopher Columbus Langdell. He offered this young lawyer who had almost no trial experience and no legal reputation, a professorship in order to bring that evolutionary principle into Harvard Law School. Langdell did not disappoint. Within ten months Eliot had Langdell elected as the first dean of Harvard Law School.

From this station Langdell not only disfigured legal education at Harvard, but also at nearly every single law school in the United States. He championed the case method for studying law as well as developing lawyers because it appropriated the evolutionary philosophy most effectively. Langdell asserted,

“Law, considered as a science, consists of certain principles or doctrines... Each of these doctrines has arrived at its present state by slow degrees; in other words, it is a growth, extending in many cases through centuries. This growth is to be traced in the main

through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectively, is by studying the case in which it is embodied.”<sup>3</sup>

Law was to be studied as if it were a science that is guided by the evolutionary principle. The cases were the “original sources” of legal doctrines and principles. This was a seismic shift in the philosophy of law. Our Founders believed law was a fixed unchanging principle given to mankind by the Creator. Langdell preached that because there is no Creator, law was always in flux, ever changing, developing and evolving. Therefore what was law at the beginning of one century may no longer be law by the beginning of the next.

Studying case law is like a monkey studying his navel to discover why he exists. He will never find anything but lint. Studying by the case method condemns law students to learning law by examining the rulings of other judges. And we should always remember that a judge is nothing more than a lawyer who received the promotion to wearing a black robe. Langdell taught that the evolution of law was guided by judges. Each opinion they wrote was one more step up the evolutionary ladder. A modern law student will never understand the mind of our Founders, because our Founders did not study the scribbling of men in black, they studied the Supreme Law of the Universe – the law of nature and nature’s God. Furthermore because Langdell taught that the evolution of law always means improvement, this would further discourage anyone from even studying our Founders. After all they would be considered legal Neanderthals by comparison with the enlightened Langdell. He rejected the Creator and His Law as the moral law which governs the universe.

Langdell claimed that his method of studying the law was the truly scientific method, implying that our Founders were unscientific and therefore in error. He substituted man’s reasoning for God’s revealed truth and taught his students that the scientific understanding of law requires society to reject the notion of fixed unalterable laws. His goal has been achieved. Like a virus unleashed, Langdell’s ideas infected not only his students, but other law schools, future law professors, judges and attorneys, and a vast number of legislators as well as anyone who came through the ranks of law schools across our land. And today the average American has also begun to view law in a different light altogether. Now we have reached the point where, when you explain our Founder’s view of law and government people are dumbfounded. They often conclude, “How could our Founders have been so wrong about so many things?”

Of the multitude of students Langdell directly influenced during his 25 years as Dean of Harvard Law School, three stand out for their contributions to the seismic shift in America’s legal landscape; Louis Brandeis, Oliver Wendell Holmes Jr. and Learned Hand.

Louis Brandeis graduated from Harvard in 1877. In his early career he demonstrated a strong sympathy for the trade union movement and feminism. His most memorable case was the 1908 case *Muller v. Oregon*. Acting as a litigator, he collected empirical data from hundreds of sources. In what became known as the Brandeis Brief, his report provided social authorities data

on the impact of long working hours on women. This was first case in the United States that social science had been used in law and changed the direction of the U.S. Supreme Court and of U.S. law. The Brandeis Brief became the model for future Supreme Court presentations. Brandeis also advised President Woodrow Wilson influencing his New Freedom economic doctrine. In 1916 Brandeis was appointed to the Supreme Court where he was often aligned with his friend Oliver Wendell Holmes Jr.. Brandeis favored government intervention to control the economy and therefore defended most of the New Deal legislation that was introduced by Franklin D. Roosevelt. In other words he was no friend of our Constitutional Republic instead he worked diligently to undermine it.

The significance of the Brandeis Brief cannot be understated. If we consider our Founders understanding of law, it was fixed and unchangeable, it was “the laws of nature and nature’s God.” Once that anchor of law is abandoned the real challenge becomes who or what will become the new authority, the new god of the land. Brandeis succeeded in establishing “social science” as the new foundation of law. Social science in contrast to the hard sciences is squishy, changeable and very unstable. Therefore it was and still is the perfect tool for social engineers to accomplish their aim of the complete transformation of America through perverting the law.

His friend Oliver Wendell Holmes Jr. entered Harvard in 1864. Within a decade he became a law professor there; indicating how closely his view fit with that of Langdell. He pushed forward a socialist agenda and his reward was being appointed to the U.S. Supreme Court in 1902.

In his 1897 article for the Harvard Law Review, titled “The Path of the Law,” Holmes reveals how distant his view was from that of our Founders.

“The development of our law has gone on for nearly a thousand years, like the development of a plant, each generation taking the inevitable next step, mind, like matter, simply obeying a law of spontaneous growth. It is perfectly natural and right that it should have been so.”

We see that his guiding principle of law was evolution. He followed his teacher Langdell in lock step. Holmes continues,

“The first thing for a businesslike understanding of the matter is to understand its limits, and therefore I think it desirable at once to point out and dispel a confusion between morality and law, which sometimes rises to the height of conscious theory, and more often and indeed constantly is making trouble in detail without reaching the point of consciousness.... I hope that my illustrations have shown the danger, both to speculation and to practice, of confounding morality with law, and the trap which legal language lays for us on that side of our way. For my own part, I often doubt whether it would not be a gain if every word of moral significance could be banished from the law altogether,

and other words adopted which should convey legal ideas uncolored by anything outside the law.”

Notice what Holmes claims is outside the law; all moral language, all moral reasoning, and all moral theory. He declares that morality and law have nothing to do with each other and that every trace or hint of morality must be stripped from law. Holmes has succeeded, his evil plan has worked. His thinking is alive and well in the legal profession today. Just consider March 28, 2005 Colorado Supreme Court decision to throw out a death penalty conviction in a rape a murder case because jurors had studied Bible verses during deliberations. During oral arguments before the Colorado Supreme Court defense attorney Kathleen Lord said, “The jurors had gone outside the law. They went to the Bible to find out God’s position on capital punishment.”<sup>4</sup>

So man’s law, they claim, no longer has any foundation in “the laws of nature and nature’s God.” Holmes declared that law can change just as fast as the populous can be manipulated to believe a new idea.

“We do not realize how large a part of our law is open to reconsideration upon a slight change in the habit of the public mind. No concrete proposition is self evident, no matter how ready we may be to accept it,”

It is evident that Holmes doesn’t believe the Declaration of Independence where our Founders declared, “We hold these truths to be self evident...” Holmes then reveals what he and his Harvard Law buddies look to as the god of the land.

“the inquiries which have been started look toward an answer of my questions based on science for the first time. If the typical criminal is a degenerate, bound to swindle or to murder by as deep seated an organic necessity as that which makes the rattlesnake bite, it is idle to talk of deterring him by the classical method of imprisonment.... The study of criminals has been thought by some well known men of science to sustain the former hypothesis.”

Social Science is the new darling, the god of law for these destroyers of our Constitutional Republic. At one point however, Holmes lets the cat out of the bag,

“I think that something similar has led people who no longer hope to control the legislatures to look to the courts as expounders of the constitutions, and that in some courts new principles have been discovered outside the bodies of those instruments,”

If the “new principles discovered” are actually “outside” the Constitution are they not therefore unconstitutional? If there is no standard, if we the people no longer have a contract with the government we formed, who has betrayed us? the likes of Langdell, Brandeis, Holmes and their pack of lying deceiving lawyers.

Another of the progeny of Langdell is Learned Hand. Although never having served on the Supreme Court, he was so influential that he is often referred to as the 10th Justice of the Supreme Court. He delivered more than 2,000 opinions, but his greatest legacy was founding the American Law Institute (ALI). The Mission of ALI was “to promote the clarification and simplification of the law, to better adapt law to contemporary social needs, to achieve agreement among lawyers on the fundamental principles of the common law, and to correct legal uncertainty and complexity.”<sup>5</sup> Learned Hand as the founder maintained major positions in the Institute for the duration of his life. The ALI was funded by Carnegie and Rockefeller Foundations, no friends of liberty nor of our Constitutional Republic.

The most damaging work the ALI produced was their “Model Penal Code.” The Model Penal Code was the fulcrum for massive change in the legal landscape of our land. Given the assumption established by Langdell, Brandeis, and Holmes, that law evolves and therefore the best system of justice would be based upon the findings of social “science,” the pump was primed for the change which Model Penal Code proposed.

The social “science” research that gave an appearance of justification for the changes was the fraudulent research of Alfred Kinsey. It takes over three hundred pages to document not only the fraud but also the horrific abuse of children and infants, even as young as six months, all of this was funded, as was the ALI, by the Rockefeller Foundation.<sup>6</sup>

His fraudulent research claimed to reveal the sexual activity of average American male and female. Among men his research was largely with prison populations, and in particular those incarcerated for sex crimes; hardly a true cross section of the population. In his study of females he lumped into the same category married women and prostitutes, providing the prostitute had been with her pimp for at least a year. There is not one piece of his research that is in trustworthy. The legal conclusion from Kinsey’s “findings” was “that the sex offender is not a monster ... but an individual who is not very different from others in his social group, and that his behavior is similar to theirs. The only difference is that others in the offender’s social group have not been apprehended... This ... should lead to a downward revision of the penalties imposed on sex offenders.”<sup>7</sup> Every page of Kinsey’s reports if acted upon would drastically alter the Legal Code in America. Tragically his fraudulently “research” was the basis for the Model Penal Code.

Kinsey’s biographer acknowledges that The Model Penal Code “is virtually a Kinsey document... At one point Kinsey is cited six times in twelve pages.”<sup>8</sup> Kinsey “findings” recommended in the Model Penal Code intended that penalties should be lightened for all “sex offenders.” It recommended not only that fornication and adultery be normalized, but pornography, rape, incest, abortion, sodomy and pedophilia as well.

The preeminent sexual pervert Kinsey, with the support of a rich and powerful elite, successfully undermined the legal protections of God’s institutions of marriage and family. In

1955 when the American Bar Association adopted the Model Penal Code, it became the engine of change for all sex crimes across America. During the 1960's and 1970's

state after state began to alter their legal code to conform to the Model Penal Code. That is why we face the current debate about sodomite rights or sodomite "Marriage." None of this would have occurred without the seismic shift in our legal culture from the absolutes of "laws of nature and nature's God," to the evolution of law guided by the supposedly neutral research of social science.

If evolution is the compass for law then survival of the fittest means more robust laws will replace weaker laws. But in practice that means anything a legislator or judge can get away with they will attempt to do. This should remind us of the Laws of Tyranny:

Law #1 Any power that can be abused will be abused.

Law #2 Abuse always expands to fill the limits of resistance to it.

Law #3 If people don't resist the abuses of others, they will have no one to resist the abuses of themselves, and tyranny will prevail.

What is the way back from this current disease of State where the law is an excuse to destroy all that is sacred and holy? We must retake the legislative, executive and judicial branches of government on all four levels; federal, state, county and local. We the people must require our legislators to reign in an out of control judiciary and impeach those judges who have violated their oaths to uphold and defend the constitution.

To accomplish this, we must educate millions of Americans about the original intent of our Founders. We must teach Americans the truly American view of law and justice established upon the "laws of nature and of nature's God." That's what Institute on the Constitution is all about. I hope that you will take up the mantle, and help lead our nation out of this moral abyss by teaching yourself, your family, your church, and your community the American view of law and government.

#### Sources

1 Herb Titus, *God, Man and Law: The Biblical Principles*, p.5 (1994)

2 H. Hawkins, *Between Harvard and America*, 129-130. (1972).

3 Christopher Columbus Langdell, *Cases on Contracts*, preface (1879).

4 NewsMax.com Tuesday, March 29, 2005 "Death Penalty Tossed Over Bible Verses." 5 As quoted in Judith Reisman, *Kinsey: Crimes and Consequences*, 188 (2000).

6 Judith Reisman, *Kinsey: Crimes and Consequences*, (2000).

7 *Ibid*, 189.

8 Jonathan Gathorne-Hardy, Alfred C. Kinsey, *Sex - The Measure of All Things*, 449 (1998)