hostility against the U.S. Constitution and constitutional law, are presently determined to bring soon into being a kind of neo-Malthusian, world-federalist, oligarchical world-order, accompanying this by exertions to overthrow the U.S. Constitution, to replace that constitutional order with one modeled upon the British parliamentary system, and to subordinate the sovereignty of the corrupted United States by such measures as placing U.S. policy under control of supranational institutions such as the International Monetary Fund.

The leading instrument of this treasonous subversion of the United States, as by forces allied to the British oligarchical wife of former Governor Averell Harriman, Mrs. Pamela Harriman, is Delphic corruption of both political institutions and sections of U.S. citizenry with aid of the verb "to feel."

The true citizen of a republic is rightly an "independent cuss." The citizen of the republic is one conscious of a higher authority, higher than the opinion of any episodic majority, a higher authority which is knowable to any educated, intelligent citizen through scientific inquiry into history and matters of the lawful ordering of the universe about us. That citizen is constrained *to do what is right* according to a knowledge of higher law accessible through reason. He is swayed not by opinion, but by reason.

Such a citizen, whether professing religious adherence or not, is informed by the great traditions of St. Augustine's teaching of Apostolic Christianity and by the great teacher of Judaism, Philo Judaeus of Alexandria. *In that sense,* the political culture of the United States is predominantly an outgrowth of Judeo-Christian civilization, as the *Paradise Lost* of John Milton exemplifies this.

The undermining of the adherence to reason, and the ordering of policy according to the irrationalist's doctrine of "(I, thou, he, she, it, we, you, they) feel(s)," is the most important of the weapons of subversion employed by the immoral anglophiles and their accomplices in this treason. The corruption of our courts, to the effect of introducing British doctrines of jurisprudence contrary to reason and responsive to irrationalist "feeling," represents a moral decay of our institutions so profound and dangerous that the very existence of our republic is near its end.

If we do not rise as one fist against such corruption as is represented by the errors of federal courts and corruption of the Department of Justice in their constitutional approach to the Abscam-Brilab atrocities, then this nation will soon cease to exist as we have known it, because our people have lost the moral fitness to survive. Unless we can restore the principle of a republic ruled by law, not men, a nation self-governed according to reason, not "felt opinion," we have indeed lost the most essential qualification of moral fitness to survive.

LAW

# Can Mrs. O'Connor defend America's Constitution?

by Edward Spannaus, Law Editor

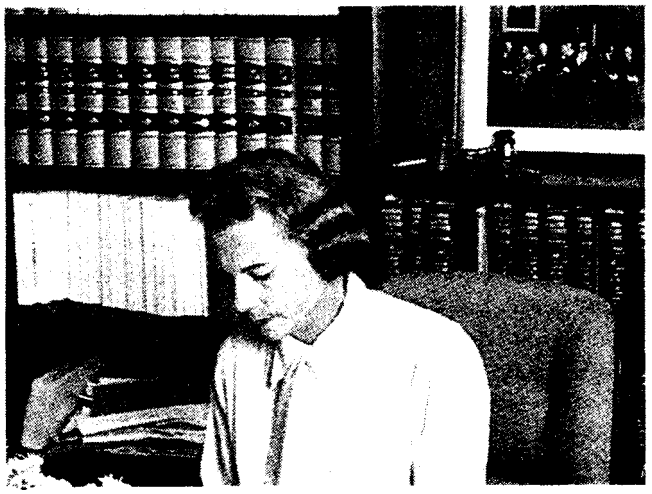
With the exception of objections from the Right to Life movement, the nomination of Sandra Day O'Connor for the United States Supreme Court seems likely to be confirmed by the U.S. Senate without dissension. Amidst the general relief that President Reagan found a woman candidate for the high court who is generally uncontroversial, there has been a singular lack of discussion as to whether Judge O'Connor is actually qualified for the position.

Even a cursory look at Judge O'Connor's qualifications indicates that she is by no means the most qualified woman that could have been found. She is a relatively recent (18 months) appointee to merely the second highest court in the state of Arizona, and according to press reports she was ranked eighth out of the 10 judges on the Court of Appeals in a survey of lawyers who practice before that court.

A survey of her published decisions is no more encouraging. Nearly all those decisions dealt with issues of Arizona state law, in legal areas which seldom if ever come before the U.S. Supreme Court. In 26 cases reviewed by this writer, only four dealt with issues under the federal Constitution. In these, Judge O'Connor treated the constitutional issues in a technical, case-precedent fashion, devoid of any sense that constitutional law is of any different order than commercial case-law or landlord-tenant case-law. (This is not at all unusual; most judges today are "technicians" who have abdicated the use of reason in favor of narrow case-law precedent-searching.)

## O'Connor's background

It is not unheard-of for a Supreme Court appointee to come from the state courts without any federal experience; of the current bench, Justice Brennan, for example, was on the highest court in New Jersey for a number of years before his Supreme Court appointment. But it is unusual for an appointee to come from a



second-tier state court.

And it is not the case that no woman could be found with better qualifications; there are a number available, the most frequently mentioned being another Republican, Judge Cornelia Kennedy of the Sixth Circuit U.S. Court of Appeals.

Since Judge O'Connor was not selected for her outstanding qualifications, the obvious question is, why was she nominated?

It is relevant to note that Mrs. O'Connor has been one of the fastest-rising political stars in Arizona politics. She became the first woman Senate majority leader in any state, enjoying the backing of the state's most powerful banking interests. Her close friendship with Sharon Percy Rockefeller (the wife of West Virginia Governor John D. Rockefeller IV) gives her an inside track in the liberal, Percy-Rockefeller wing of the Republican party.

Even more intriguing was a *Baltimore Sun* report last month which cited Mrs. O'Connor's "interest in the British legal system" as among the factors "which brought her to the top among hundreds of potential candidates for the high court seat." The *Sun* added that she shares an interest in the British legal system with Chief Justice Warren Burger, and that she has lectured on the subject at Arizona State University.

As it turns out, Mrs. O'Connor's interest in the British legal system is largely a product of her participation among a select group of 10 American jurists and lawyers who participated in the Anglo-American Legal Interchange in the summer of 1980. Others who visited England as part of the 1980 program were Chief Justice Burger, FBI Director William Webster, and Assistant Attorney General Philip Heymann. (The British team was headed by Lord Diplock, author of the Northern Ireland Emergency Laws.) The Anglo-American Legal Interchange was created in 1961 for the purpose of tapping "the unique resource of the special relationship between the United States and Britain," according to one of its principal organizers, former Chief Judge Irving Kaufman of the Second Circuit U.S. Court of Appeals in New York.

Upon her return from England, Mrs. O'Connor reportedly spoke and lectured about her impressions of the British legal system. Her associates in Arizona will say little about the content of her reports, other than to note that she was fascinated by the procedures she observed. Whatever understanding she arrived at as a result of her participation in the exchange progam would be a fruitful area of inquiry during her Senate confirmation proceedings.

## Test facing the Supreme Court

The Supreme Court is of course the final arbiter of what the Constitution means, and upon their shoulders rests the ultimate defense of our fundamental law. Alexander Hamilton once described the Justices of the Supreme Court as the "guardians of the Constitution," and it hardly needs emphasizing that if these guardians of the Constitution are not ready, willing, and able to defend it, there are few other quarters to which we can look for protection.

Under present circumstances the composition of the Supreme Court is especially crucial. This is afoot today a variety of groups whose purposes are to revise and rewrite the U.S. Constitution. Rep. Henry Reuss (D.-Wisc.) has proposed a series of constitutional amendments designed to break down the distinction between the executive and legislative branches, including allowing the Congress to remove the President through a vote of "no confidence."

Historian James McGregor Burns is involved in a number of groups which are examining the "deadlock" between the President and Congress with an aim toward substituting a parliamentary-type system. And last year Lloyd Cutler, in a *Foreign Affairs* article, argued that we are entering an era of scarcity and shortages and that only a parliamentary-type system can impose the types of "choices" between conflicting goals and groups which will have to be made.

The current wave of Abscam prosecutions by the federal government poses another kind of threat to the Constitution, as do proposals aimed at cutting back traditional constitutional protections such as habeas corpus petitions and the "exclusionary rule" pertaining to illegally seized evidence. Abscam is the product of federal law enforcement run amok, creating crime where none can be shown to have previously existed, and selecting and targeting its victims on the basis of policical activity and affiliation. These are only a few examples of why the role of the Supreme Court is so important at the present time. We could also point out actions taken by the Supreme Court itself, such as the

unanimous affirmation of President Carter's Iranian assets and hostage settlement, a debasing violation of the principle of national sovereignty, which is the very bedrock of our Constitution.

With the Constitution being attacked and undermined in these and numerous other ways, it is essential that any new appointee to the Supreme Court understand the unique nature and purposes of our Constitution, and, in particular, how it differs from the British system it was created to replace.

## Republican and oligarchal law

It is impossible to read through the extant notes of the debates of the Constitutional Convention and not come away with a deep appreciation of the commitment of most of the particpants to create a republic based upon the virtue and wisdom of its citizens, and of their explicit rejection of the British model of government. A system based upon hereditary privileges and class distinctions could not be the model for America, said the Framers, and even the separation of powers in the so-called British constitution was not an appropppriate model, for in that system the different branches of government were based upon a division of powers between the monarchy, the aristocracy and the nobility, and the common people.

## O'Connor's Arizona judicial experience

Of 26 published decisions surveyed, only 4 of the cases dealt with constitutional questions. Following is a listing by category of these 26 cases.

- **Criminal law:** Six cases. Two of the six treated constituional questions, one had to do with a guilty plea, the other with *Miranda* warnings.
- **Employment and Workman's Compensation:** Five cases.
- **Commercial law:** Four cases.
- **Landlord-Tenant:** Three cases. Two involved interpretations of leases; the other produced a finding that an appeal bond requirement was unconstitutional.
- **Tort Liability:** Three cases. Involved hotel liability municipal liability, and attorney and witness liability in a malpractice case.
- **Family law:** Two cases.
- **Taxes:** One case, upheld constitutionality of a rental occupancy tax.
- **Eminent Domain:** One case.
- **Arizona Open Meeting Law:** One case.

In America conditions were entirely different. Here the Founding Fathers were creating a republic whose purpose is not the perpetuation of the privileges of the aristocracy, but the happiness and perfection of its citizens.

"The cultivation and improvement of the human mind," not the protection of property, was understood as the highest purpose of government. This was to be accomplished by creating a framework of government that would ensure the conditions for scientific and industrial development, in which every citizen could develop and exert his individual powers to the utmost.

The laws of such a government could not be those of Great Britain. In order to transform the laws from top to bottom, a framework of fundamental law, a written constitution, was instituted. It provided for a scheme of government in which the power of making the laws, and the power of executing and administering the laws, were completely separate. A third, independent department of government, with final responsibility for interpreting the laws and ensuring that all of them conform with the fundamental law, was created; this latter, an independent judiciary determining the constitutionality of the laws, is unknown in Britain.

## The difference between British and American law

This is only the framework. The underlying purpose was to create an industrial republic, to guarantee the most rapid development of manufacturing, agriculture, and commerce generally. As such, Congress was given a broad grant of powers to "regulate" (i.e., direct) the national economy; and the presidency was created as a strong position *not* dependent upon or subservient to the Congress. The broad powers of judicial review given to the Supreme Court and assumed by Chief Justice John Marshall were intended to ensure that the confusing and conflicting mass of common law as taken over from England was transformed and developed subordinate to the principles of fundamental constitutional law.

Thus, whereas the British common-law system is based upon custom and precedent, growing out of a desire—persisting today—to preserve a system of oligarchic, class-based privilege, the American system of law is based upon republican *principles*, not custom. In our system of law the role of case-law and precedent is to be strictly subordinated to fundamental law as expressed in the Constitution. The British common-law method has, particularly in this century, permeated all too much of our state and federal judiciary. There is nothing in Judge O'Connor's writings and background to indicate that she will do anything to arrest this trend, and there is unfortunately much to suggest that she will help perpetuate it.