

A BIBLICAL VIEW ON
**CONSTITUTIONAL
INTERPRETATION**



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CONSTITUTIONAL INTERPRETATION



How should judges and justices interpret the Constitution? This age-old question has been around since this country's founding. And it is a topic in every law school in the country. But it surfaces for most of us during the confirmation hearings for a nominee to the high court.

In some ways, questions about constitutional interpretation parallel conversations you might have had about biblical interpretation. No doubt you have met someone who disagrees with your

understanding of an important verse of Scripture. You both look at the same verse but come to very different conclusions. On the one side is someone who attempts to understand what the writer attempted to communicate at the time using various exegetical tools (language, culture, other verses) to interpret the passage. On the other side is someone who reads into the passage his or her assumptions.

Background to Constitutional Interpretation

Something similar has been happening in the area of constitutional interpretation. On the one side are the originalists who believe that the way to interpret the Constitution is to understand how the framers intended it to be interpreted. On the other side are the modernists who don't feel bound by the past and believe we should have a "living Constitution." They would read modern interpretations into it.

Both views would acknowledge that some interpretation is necessary. After all, the Constitution is a very short document that does not even try to cover every issue that might arise. And there are conflicting views even within the two large groups given the diversity of issues and the potential conflict of rights and perspectives.

This problem of Constitutional interpretation is made even worse, given the general tendency for Congress to avoid many of the most controversial issues (abortion, affirmative action, busing, civil rights, environment, or same-sex marriage). The Supreme Court isn't so much the court of last resort as it has become the court of first resort.

Two Views of Constitutional Interpretation

Originalism is the view espoused by lawyers, judges, and politicians who believe that the best way to interpret the

Constitution is to understand the mindset of the framers who constructed it. That is why some have referred to this view as “strict constructionism.” They want to look at the original construction of the key passages in the Constitution.

They work to understand the original intent of the Constitution by reading the writings of the framers, looking at the notes from the Constitution Convention, and reading the Federalist Papers. They may also look at other writings from the founding era and also depend upon previous judicial opinions that came from originalist judges attempting to apply their legal and historical scholarship to their opinions.

One key argument for originalism is the belief that the Constitution is a binding contract with the American people. When people die and the court attempts to probate their will, we rightly assume that the court officers will do their best to

interpret the will according to the wishes of the deceased. We would be outraged if a judge or lawyer attempted to read into someone's will a view contrary to the expressed wishes of the deceased.

If we passed a constitutional amendment to the Constitution today, we would expect the judges and politicians in the future to interpret it accordingly. We would expect them to ask what we intended to adopt and not read into it their own interpretation and change the meaning of the amendment.

Another key argument for originalism is the belief that it preserves the authority of the Supreme Court and the legitimacy of the federal government. If a few unelected judges can change the clear meaning of the Constitution according to their whim, then the court and the rest of the federal government would lose any continuity and quickly lose any legitimacy. Originalism also protects the

government from a few unelected judges seizing power from the elected representatives in Congress.

Modernism attempts to bring the Constitution into today's world and often ignores the historic position. Instead it attempts to find meaning for the Constitution today and rejects attempts to view it through the eyes of white men who lived in the 18th century. Proponents also argue that even if the framers were bright individuals, they couldn't possibly understand our modern world of airplanes, telephones, and computers.

They also point to the fact that the Constitution is vague in so many areas and thus requires modern interpretations to replace dated and incomplete interpretations from the past. They believe that the Constitution must be flexible and adapt to the changing times, including the change in morals and lifestyles of the American population. They also

believe we can learn a great deal from constitutions from other countries and apply those novel principles to their interpretation of the US Constitution.

A key argument for modernism is the belief that their approach allows them to address important crises that could not otherwise be addressed in a timely manner. They remind us how difficult it has become to pass a constitutional amendment. While that is true, that doesn't mean unelected judges should address the issue when we have elected representatives in Congress who are more likely to be responsive to the electorate.

Another key argument for modernism is the stated need to evolve the Constitution to address the treatment of minorities (e.g. blacks, Latinos, women). While it is true that the high court has addressed the issue of race, we should not forget that many of the most important solutions to racial and sexual issues

have come from legislation enacted by Congress and regulations implemented by the executive branch.

The Danger of a Living Constitution

There is a danger when judges and justices are no longer bound by constitutional precedent and instead promote a living Constitution that can evolve according to their whims. Rights and legal principles become putty in the hands of these unelected judges. When there is no established way to interpret the Constitution, then any view can be proposed and become precedent regardless of the legal merit for such a view.

If we go back to my illustration of biblical interpretation, we can see the danger. So many false religions and cults have arisen simply because the founders decided to read into Scripture their bizarre views on key biblical passages. If there are no accepted principles of exegesis, then you can make

the Bible say just about anything you want it to say.

Likewise, judges and justices that are free to change the meaning of words and reinterpret various judicial opinions in the past are free to rule from the bench. Once you reject accepted principles of Constitutional interpretation, just about any kind of court opinion can result as long as a majority of other judges or justices accept that novel interpretation.

It is true that sometimes Congress passes laws that are vague or contradictory. The solution is not for the Supreme Court to rewrite the laws or “fix” the laws. Instead, they should force Congress to rewrite them or repeal them. That is what some of the originalists on the high court have advocated. But those who espouse a living Constitution take it upon themselves to write laws or rewrite laws and take upon themselves a function they are not allowed to have.

Perhaps the greatest danger of a living Constitution is the justification for rendering judicial opinions that the American people would never accept if they were proposed in Congress. Consider two examples: abortion and same-sex marriage.

The 1973 abortion decision forced on the American people a decision that would never have been passed in Congress. Some states already allowed abortion, while others states were more restrictive. But the justices forced on the entire nation some of the most liberal laws on abortion in any nation.

The 2015 decision concerning same-sex marriage also forced a view on the entire nation. Remember that many states actually passed legislation defining marriage as one man and one woman. Some states had same-sex marriages, while others did not. Five justices on the high court overturned any law (federal, state, or local) defining marriage.

Originalism is the best way to have a consistent interpretation of the Constitution. It is also the best way to prevent judges and justices from taking control of the government in a way never intended by the framers. That is why we need more originalist judges and justices on the federal courts to protect us from judicial overreach.

Additional Resources

Kerby Anderson, *Christian View of Government and Law*,

<https://probe.org/christian-view-of-government-and-law/>

Kerby Anderson, *The Declaration and Constitution: Their Christian Roots*,

<https://probe.org/the-declaration-and-constitution-their-christian-roots/>

David Barton, *Original Intent*, Aledo, TX: Wallbuilder Press, 1997.

Hamilton-Madison-Jay, *The Federalist Papers*, New York: New American Library, 1961.

Wayne House, ed., *Restoring The Constitution*, Dallas, TX: Probe Books, 1987.

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