

Constitutional Interpretation - Original Intent verses Progressive

I am a member of The Constitutionalist Society in Lubbock. We are a group of men and women who study the Constitution and work to apply its principals for today's society. (*Pass out Pocket Constitutions and Constitutionalist Society Business Cards*) Our website contains copies of many of our historical documents for you to research and study. In our Historical Documents section are downloadable text of many of our founding documents. Alongside the text are LibriVox recordings. LibriVox is a depository of volunteer recordings of non-copyrighted material. This presentation is about how the Constitution is to be interpreted. Original Intent or Progressive.

Some of you may be Original, some Progressive, many of you may be a mixture of both. I hope that by the end of this presentation you will be able to clearly define your position.

The Constitution is the blueprint of how the government is to operate and the responsibilities of the government to the people. It is a document filled with a whole lot of rules and procedures. What is equally important is the reason for the particular rules and procedures. The core function of our government according to the Constitution is to protect its citizens and their rights. The words in the preamble are very clear. Turn with me to page 1 of your Pocket Constitution and follow along with me as I read:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The US Constitution is like nothing else. It is a radical departure from previous forms of government. The men who wrote the Constitution, chief among them James Madison (known as the father of the Constitution) studied history and understood previous forms of government from all over Europe and other parts of the world, many of which were monarchies and feudal systems. Some were city state republics or democracies. Some were empires. Madison and Hamilton wrote specifically about the failures of these other forms of government in the Federalist Papers. Our Founding Fathers were men of learning; they had studied the great philosophers: Aristotle, John Lock, Thomas Aquinas, William Bradford. They understood Natural Rights, and English Common Law. They established a government based on individual freedom and private property rights. They were God fearing. Many of them were Christians and men of high integrity. Their vision was for self-government a "Government of the people, by the people, for the people" (Abraham Lincoln, Gettysburg Address - November 19, 1863).

In order to promote their ideals of self-government, our fathers took the 3 basic functions of government and split them up. Under the King all of the functions were under one umbrella. The King was the chief administrator, the law maker, and the judge, jury and executioner. Our fathers separated these powers. The Legislature, creates law. The Legislature is made up of two houses, the House and the Senate. The Executive Branch implements the law and the Judicial Branch interprets the law. These three branches have a check and balance on each other so that one branch does not become too powerful and over-rides the other two. A quick observation. The term "An Act of Congress" is symbolic of something that takes a lot of time and effort to get accomplished. This is intentional. The founding fathers wanted only the most important things to become law. Making the law making process difficult was their way to accomplish this.

Strict Construction is a method of constitutional interpretation that aligns itself with the original intention of the Founding Fathers. Original intent can best be explained by the Federalist Papers. The Federalist Papers was a group of 85 essays appearing in several New York papers in 1787 and 88, the Independent Journal, the Daily Advertiser, McLean's Edition and The New York Packet. They were written by three different individuals: Alexander Hamilton, John Jay and James Madison. These three used the pen name Publius, in order to keep their identity secret and in honor of a Roman aristocrat who lived during the time of Rome becoming a Republic. The purpose of these three Federalists was to convince the State of New York to ratify the newly written Constitution. New York State was the eleventh state to ratify the Constitution. New Hampshire was the 9th and met the minimum requirement for the Constitution's adoption. They specifically were answering the objections of an opposing group known as the Anti-Federalists. The Federalist believed that the United States needed a stronger central government than what the Articles of Confederation provided. The Articles of Confederation were written in 1777, They proved to be inadequate for keeping the union together. The Anti-Federalists wanted a less powerful central government, a bill of rights and they felt that the Constitution provided the Executive Branch with too much power and they feared the Executive Branch might become a monarchy and fall into despotism. As you know there is a "Bill of Rights" in the Constitution, the first ten amendments. George Mason (principal author of the Virginia Declaration of Rights) was there at the Constitutional Convention of 1787. He was one of the top 5 most frequent speakers. Other prominent Anti-federalists was Patrick Henry (give me liberty or give me death) Patrick Henry. Patrick Henry at the Constitutional Convention of 1787 argued vehemently against it. He believed that the Constitution would take away individual freedom. James Monroe the 5th president of the United States. Samuel Adams a signer of the Declaration of Independence. Other Anti-federalist who were at the Convention also wrote a series of articles appearing in many papers arguing against the ratification of the Constitution. Some of the principal authors were: Robert Yates, Abraham Yates, Thomas Tredwell, Melancton Smith, George Clinton, and Richard Henry Lee also a signer of the Declaration of Independence. They used pen names like: The Federal Farmer, Brutus, Cato and Agrippa. It is uncertain who actually penned under the name of Brutus.

I first learned of the living breathing constitution back in 1975 or 76, when I was in High School. There was a Scholarship contest to write a speech and give it as an oratory. I haven't heard the word breathing constitution since. But living constitution is common. There was to be emphasis on how the Constitution can change. To me that simply meant that the constitution could be changed by amendments. I learned this in the 8th grade. I learned about the amendments, about the separation of powers, strict construction. I actually believe that I got a good basic education in American History and Civics way back then, even as a "C" student.

The Living Constitution is a method of constitutional interpretation that aligns itself with the progressives. The progressive movement started as far back as 1890. The time period of 1890 to 1920 is most often known as the "progressive era". Teddy Roosevelt (R) through Woodrow Wilson (D) wanted to get away from our original founding principles to a more expansive form of government. Because of scientific, economic and social progress, they wanted a government that could solve societies' new, modern problems; thus government began to expand.

What is Progressive? Progress – the idea of step by step changes happening or developing gradually over time. A progression. What is a Progressive? Someone who believes that our society is evolving and changing over time and that government should change with it. When a Progressive views our Constitution they see it as old fashioned and out of sync with our modern times, economic, scientific and social. ~~The Progressives desires to change the Constitution but the structure of the Constitution resist that change.~~

To add an amendment to the Constitution takes an enormous effort. In Article 5, Congress must pass the amendment with a large majority. Two thirds of both houses are needed to propose the amendment and then three fourths of the Legislatures of the several states must ratify the amendment. There is also a provision for the States to pass amendments without the interference of the federal government. ~~Since the progressives cannot change the words they work to change the meaning of the words.~~

I want to make a distinction between a liberal and a progressive, however blurred that distinction is. A Liberal wants social justice. He wants to right the wrongs of society. Everyone is to be loving and equal. Kumbaya. He is idealistic.

The Progressive, most often a Liberal, but not always, sees a means to an end. The Progressive is willing to take baby steps in order to get to his goal.

According to Amity Shlaes in her book called "The Forgotten Man", In 1927 a group of Progressives boarded a steam ship called "President Roosevelt". A dozen or so travelers first went to Europe and then to their ultimate destination, the Soviet Union and a meeting with Joseph Stalin. As official guests they, were only allowed to visit designated factories and farms. What they brought back with them was knowledge of Central Planning and Farm Subsidies. One of these progressives, Rexford Tugwell became a member of Franklin Roosevelt's Brain Trust that helped setup the New Deal.

Here is something Hillary Clinton said back in the Democratic presidential debate, July 23rd, 2007 "I prefer the word progressive which has a real American meaning going back to the progressive era at the beginning of the 20th century. I consider myself a modern progressive".

Here is a statement from Supreme Court Justice Sotomayor before she was on the court: "I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion [as a judge] than a white male who hasn't lived that life." Spoken at the Mario G. Olmos Law and Culture Diversity Lecture at the University of California Berkeley School of Law in 2001.

Going forward how are we going to interpret the Constitution? The choices are new enlightened interpretation or more traditional interpretation. It is extremely difficult to change the Constitution; it is easier to change the meaning of its words. Many believe that we have a group of Supreme Court Justices that are described as activist judges. I am interjecting that these Justices are using the theory of The Living Constitution as their primary form of interpretation.

Through Judicial Review the Supreme Court has put forth opinions by taking pieces of the Constitution out of context. They will find a clause or phrase that can be twisted to suit their more enlightened agenda. Progressives want to abolish anything that is traditional because of their more informed understanding. Half of the Supreme Court are either activist judges or progressive judges. They find a way to interpret the Constitution according to the new social norms of the day. What is wrong with the new social norms? The answer is simple, the new social norms are tearing our society apart, like the Roman Empire crumbling from within. Not just the Roman Empire but according to Sir John Glubb in his essay called The Fate of Empires, the Assyria, Persia, Greece, Arab, Mameluke, Ottoman, Spanish, Romanov Russia and British empires as well.

Can the Constitution save us from crumbling from within like so many other great nations?

Turn to page 15 in your Pocket Constitution and observe Article 5. In the interest of time I would like for you to read this section later. Perhaps an Article 5 Convention of States can propose amendments to clarifying the meaning of the Constitution by making it harder for the Progressives and Liberals to reinterpret it. Currently there are 31 states with known outstanding class I, II, or III applications. As of this writing:

- Class I: A call for a general convention with no motivating issue listed. – 5 states
- Class II: A call for a general convention with a separate statement of proposed amendment or explicit statement that the convention may consider other amendments proposed by states. – 2 states
- Class III: A call for a general convention tied to a proposed amendment. – 24 states

Governor Abbott of Texas made his call for the Article 5 Convention of States in January of this year, 2016.

Just as there was great debate over the ratification of the Constitution, I hope that there will be a debate over the Article 5 Convention of States. Article 5 of the Constitution provides two methods of making amendments. They are, one, through the congress and two, through the states. The arguments of the Anti-federalists, made the Federalists fine tune their argument and solve potential problems.

America has made great progress since its founding in 1776. The horse and buggy to automated forms of transportation. Even within a very short number of years of flight to space flight. I personally believe that this fast pace of advancement is the result of a free people like non other in the entire history of mankind. Freedom has brought about great innovation. Economic freedom and entrepreneurship. I believe that the rest of the world who is less free has piggy backed off of us. In most cases we were first.

I wish to open the floor to questions.

Additional comment during questions: There are a number of other speakers from The Constitutionalist Society all with their unique presentation. If you desire another program from please let me know.

Larry Holland The Constitutionalist Society