

“Constitutional Interpretation” Summary and Application

Originalism

Summary: Originalism is the belief that the Constitution should be interpreted how the Framers interpreted it. Originalists believe that this original intent was the most pure and true, and that it should be most important. They use primary sources to try to find the Framers' thoughts on a matter, especially when something in the Constitution is unclear. It is powerful because it references uses a sort of “expert testimony” to find the original authors' intent, and those writers had created such a powerful Constitution. They oppose Modernism and have a similar belief to contemporary literalists.

Application: Amendment VIII: When a person be tried for a crime, they shall not be publicly made fun of, nor should a large bail be made in order to let them out, nor should they have to pay extreme fines. This is to prevent against dictatorial governmental control that might result in immoral and unfair punishments, and therefore to better ensure the people's' right to freedom.

Modernism / Instrumentalism

Summary: Modernism is the opposite of originalism: modernists believe that the Constitution is purposefully vague to allow for future changes. They believe that it should be interpreted with a modern perspective. This is essential because society has become so much more diverse and changed so dramatically in so many ways since the 18th century, so that many of our current ideals may be different than those from the time of the Framers'. It also supports the idea the the Constitution is adaptable and “living,” so that it can change as needed.

Application: Amendment VIII: It should not be fair to allow the government to use the media to publicly humiliate criminals — this is immoral. In addition, “barbaric” and painful methods of punishment should not be allowed, and neither should the death penalty be carried out. Instead, criminals should enjoy a fair punishment in prison and perhaps parole.

Literalism (historical)

Summary: Historical literalists choose to view the Constitution solely from a point of diction, but taking into consideration the historical meaning of the ideas and words in the text. Therefore, similar to originalism, it still preserves much of the “old” ideas, but limited to the fact that it does not reference the Framers' thoughts outside the Constitution. It is strictly narrowed down to diction, so that what they say is true, because the Constitution explicitly says so.

Application: Amendment III: The government has no right to force the housing of a soldier by a citizen, especially against the will of and to the disadvantage of the citizens, such as what had

happened during the Revolutionary War. However, nothing prevents the housing of a soldier by a citizen who gives consent, nor does it prevent it during a time of war.

Literalism (contemporary)

Summary: Similar to historical literalism, contemporary literalism takes only the words of the Constitution into consideration when interpreting it. Again, it is very correct because everything they support is listed specifically with words in the Constitution, but they use modern ideas of the words instead. This gives a mix of the old and new, because it takes the old text of the Constitution with new meanings of its words. It is similar to a narrow version of modernism.

Application: Amendment VII: When there is over \$20 (of today's money) in question, any citizen has the right to have a civil trial and be tried by a jury, and they should be treated with the "common law," or normal justice process. Therefore, any controversy so small as the theft of a \$21 book may become a case of civil law that cannot be denied a full trial and the course of law.

Democratic / Normative Reinforcement

Summary: Democratic interpretation involves the use of the general "feel" of the Constitution, basing their interpretation on the fact that the Constitution is solely a guideline. It is purposely vague to allow for the popular public opinion to interpret the Constitution — a "democratic" idea — and then finish it with a realistic plan. This philosophy ends up with very moral and ethical representations of the Constitution.

Application: Amendment I: The basic rights of religion, speech, press, and petition can be restricted if they become disruptive to society or otherwise harmful to others. For example, having a person say that they have a bomb is not acceptable for the sake of safety, nor is a social media statement designed specifically to target a certain person and ruin their personal life. The Constitution is just a guideline that gives these rights as a privilege; it is not our place to abuse them.