

# Scalia vs breyer

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Supreme Court Justice Antonin Scalia rejects the notion of a “ living Constitution,” arguing that the judges must try to understand what the framers meant at the time the text was written. (pg 92) Supreme Court Justice Stephen Breyer contends that in finding the meaning of the Constitution, judges cannot neglect to consider the probable consequences of different interpretations. In a YouTube video I watched a debate with Breyer and Scalia, the first question asked was regarding purpose and consequence.

Breyer Stated that he agrees with text, history, tradition , precedence, purpose , and consequence , however he feels people emphasize more on text, history, tradition, and precedence and try to avoid , purpose and consequence. However Scalia felt that purpose and consequence invite subjective judgment. He gave an example stating “ If the purpose of the statue is to protect civil rights and if you do not interpret it this limitation on it you will protect civil rights all the more, and therefore you should adopt that interpretation.

The problem is the limitation in its statue adopted by the legislature is as much apart of its purpose as protecting is the general purpose of protecting civil rights. ”( stated in video) He also argued that he doesn’t agree with peoples interpretation because they pick out the consequences they do and do not like and interpret it according to how they feel about it. The next subject touched on in the debate was the subject of the Constitution as a living breathing document.

Breyer gave some good points arguing that “ If you go back to the end of the 18 century to exam what the Founding Fathers thought say about the <https://assignbuster.com/scalia-vs-breyer/>

Commerce clause, they didn't think about the internet, or television, and radio, or automobiles, etc, but they wrote a value into that clause, and that value is permanent. " (stated from video) He stated its how can you apply that in a world that has changed with social conditions and other conditions that is continuously changing, you would have to adapt to circumstances in order to keep the value of the constitution the same.

Scalia agreed with Breyer's argument, however felt " preexisting technology preexisting reality problems that were there at the time the Constitution was written and changing the answers. " (stated from video) Scalia also gave an example of the death penalty, stating that on that subject nothing has changed and believes technology does not alter whether its a constitutional punishment or not.

He also stated that if you want to make a change you do not need the constitution, one should go ahead and use the legislature. Scalia describes himself as a originalist, he believes that " Interpreting the constitution is to begin with the text, and to give that text the meaning that it bore . " (pg 93) Conservative's are willing to grow the Constitution to cover their favorite clause just like liberals are, it is a matter of convenience.

He gives examples like the constitution guarantees the right to be represented by counsel, where by some it is interpreted that the state should pay for it, however in the constitution is it not written as such, basically stating that originalist would not have changed the text to a different meaning they would have interpreted the text to its original meaning. Scalia also gives an example about flexibility in which is does not believe in, he states " But to read either result into the Constitution is not to produce

flexibility, it is to produce what a constitution is designed to produce: rigidity.” (pg96)

He then makes a second argument basically stating without the rules you don't have freedom within the rules, or like saying, “ I have boundaries and within those boundaries U found freedom. Scalia believes if you don't believe in originalism then you need some sort of interpretation. If you don't believe laws are laws then there is no law, unless you believe in natural law which is reasonable for the situation. One part of Scalia's argument that I found interesting was when he talked about moderate interpretation of the text. He asked the question “ What is moderate interpretation of the text?” (pg98)

According to Scalia there is no moderate interpretation of the text you either, believe what it states or you don't. He also ask the reader “ Would you ask your lawyer to draw you a moderate contract ? ” (pg 98) I thought that question was funny, however I do in some ways agree to what he is saying, if there is no law there is no freedom and it should be interpreted how it is written. Scalia also argues that the point that some non originalist are seeking for someone to write a law rather than interpret what the original text of the constitution states when they were democratically adopted.

He states that by selecting senators and justices to devise the constitution to what the majority wants that now deprives the Constitution of its principle utility. In the YouTube video Scalia states he believes in democracy and the majority rules. He states “ we live in a liberal democracy some things the majority does not rule. The Bill of Rights is about limitations on majority which are applied to the judges, however the majority are the ones that voted for the limitation.”

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Scalia also states that we must recognize that the Constitution has an amendment clause and things that people did not agree to we should amend the constitution or in the state level make a law. Justice Breyer believes that modern day judges use precedent as general boundaries, in only big cases or landmark cases do they make big changes, otherwise they go to previous cases to make their decision. So they are bound by previous cases. Breyer gives an example stating that “ The First Amendment says that “ Congress shall make no law respecting an establishment of religion.” (pg 102)

Breyer feels that if you interpret the text to what its founders adopted it to be, how does it apply to the issues of today. The founders wrote the text to accordance of what was going on during that time period and with how the nation has evolved and changed with over 50 or more different religions today in the U. S how can the first Amendment be implemented as its written, it will cause for social conflict. He gave another example to help support his argument on religion, the public display of the Ten Commandments, one in the Kentucky State Court House another in Texas state Capitol.

In example Breyer states that “ It is well recognized that the Establishment Clause does not allow the government to compel religious practices, to show favoritism among sects or between religion and non-religion, or to promote religion. Yet, at the same time, given the religious beliefs of most Americans, an absolutist approach that would purge all religious references from the public sphere could well promote the very kind of social conflict that the Establishment Clause seeks to avoid.

Thus, I thought, the Establishment Clause cannot automatically forbid every public display of the Ten Commandments, despite the religious nature of its text. Rather, one must examine the context of the particular display to see whether, in that context, the tablets convey the kind of government-endorsed religious message that the Establishment Clause forbids. " ( pg 103) Breyer makes an interesting point, with so many different religious groups in the U. S, interpreting the text to its original state would not be able to be implemented in today's society as to when it was originally adopted.

Breyer believes precedent, constitutional values, and factual circumstances all constrain judicial subjectivity. Which basically means based on evidence and precedence judicial subjectivity is constrained. Breyer feels consequences matter and precedence is better and judges today are handcuff by precedence rules, standards, and practice. Precedence effect looking back today and tomorrow. Breyer believes yes there are boundaries however precedence is more flexible than changes sides when looking at consequences.

Breyer also " does not believe that textualist or originalist methods of interpretation are more likely to produce clear, workable legal rules. " (pg 104) Breyer feels that rules must be interpreted and applied, he feels that certain words in the constitution must be explained in difficult cases you must have tools to explain, and if its unconstitutional its going to be forbidden by a certain part of the constitution. Both parties man an interesting argument. However I must agree with Breyer on his argument of interpreting the text to make sense for today's issues and circumstances that apply for conflicts that occur today.

On the other hand I agree with Scalia when he stated that when it comes to certain consequences such as the death penalty there should not be another interpretation and just because you do not agree or like a certain part of the text you should not interpret it according to your feelings. If rules are not applied there is no such thing as freedom, because people would be doing whatever they want, and no need for anyone to be governed. But the constitution was set up by the founding fathers for the purpose to apply boundaries and limitations.