

Analyzing originalism and pragmatism as depicted in the united states constitutio...

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Originalism v. Pragmatism

The Framers wrote the Constitution in 1787. Agreeably, this was a completely different time and generation than that of ours today. With that being said, there are two sides, among many, in the discussion about the status of the Constitution. Originalism is the side that believes that the Constitution was written with the intention of, for the most part, keeping its original text, and the way it was intended when written. This side of the argument tends to fall onto the conservative spectrum in the two party systems, although some liberals and other parties will agree with this as well. The contrary side of the discussion is pragmatism. This is the belief that the Constitution is a living-breathing document with direct text, however contains principles that must change as society changes as well (Stone and Marshall). Both sides establish that the Constitution is a written document, and is an essential entity for our government to function.

Originalists believe that the Constitution has been drafted, written, thoroughly examined, revised, revised again, and finally ratified. Both Meese and Forte discuss that the Framers knew exactly what they wanted in the text, and that when all was said and done, they had put everything necessary into the Constitution for our country to be run correctly. Attorney General Edwin Meese III states:

We know that those who framed the Constitution chose their words carefully. They debated at great length the most minute points. The language they chose meant something. They proposed, they substituted, they edited, and

they carefully revised. Their words were studied with equal care by state ratifying conventions. (pg. 3-4)

This statement backs up that the founders knew what they were doing, and made sure everything that they had done was perfect. Meese also mentions that not everyone was unanimous, however at the end of the day they were happy and hopeful that what was written would be sufficient to run this country. Ultimately, the originalist argument is that what is in the Constitution is right and little change or interpretation is needed. Meese continually adds to the argument by mentioning that the Constitution, at its' founding time, was about the prosperity of running the country for the future generations and not simply just fixes holes that had occurred before. The Framers had everything in the Constitution that they thought was needed. The Constitution was intended to be discussed and arguments, which is why there was implementation of courts and judges that took oaths to defend it (Meese 6). In their opinions, there was little to no change necessary, and to this day originalists stick to that argument.

The pragmatism side of the argument is the belief that the Constitution is a living, breathing document with different intended meaning. In today's debate, Conservatives tend to be more aggressive in making sure that the Constitution's intention does not change (Appointing conservative judges to uphold Amendments). Opposing, liberals only want few results changed due to, what they think as, changes in society therefor necessary changes of amendments (or at least how the amendment's principles are thought of).

Geoffrey R. Stone and William P. Marshall, authors of *The Framers'*

Constitution: Toward a Theory of Principled Constitutionalism, back up this argument: that the text of the Constitution is written in print and will not change, but the intended principles of the text should as society progresses and views topics in a certain light (pg. 3). Examples of different topics may be gay marriage, slavery, or gun laws. Obviously, pragmatism has more of an open and general view as opposed to originalists, however both sides of the argument are essential to understanding and interpreting the Constitutions.

Taking a side from my perspective is not very easy. I was raised with what I think are liberal principles. My father is undoubtedly a democrat, to which I have nothing to criticize him for. He has never demanded that I vote liberal, or have liberal beliefs, which is why I think that I think the way I do. I would say that I am an open-minded conservative democrat; obviously I don't really have a set definition of what I am yet. With this in mind, I believe that while some things are necessary to be changed in the Constitutions, others should not be touched. For example, the P. A. T. R. I. O. T. Act is essential to be implemented because of the change in technology and protection of our liberties. Author Richard A. Posner of *The case against strict constructionism: WHAT AM I? A POTTED PLANT?*, states:

. . . but it is no use pretending that what they are doing is not interpretation but “ deconstruction,” not law but politics, because it involves the exercise of discretion and a concern with consequences and because it reaches results not foreseen 200 years ago. (Pg. 25)

This statement is the explanation of why the liberal judicial activists must be concerned in turning law constitutional. He basically is ranting that there are things the Framers had not and could not conceive in their imaginations to design in the Constitution. An example, as mentioned above, is technology of cell phones, drones, wire tapping, etc. There is no way they could set any amendment up to deal with these subjects. That is why technology and taking away some privacy to ensure liberties is the perfect argument for pragmatists. However, the issue of gun laws may be the perfect argument for originalists to hold on to. We no longer need a well-regulated militia. That is what any sane minded liberal would argue and I completely agree.

Nonetheless, the amending of the right to bear arms would be hypocritical to our liberty. Author David Forte of The Originalist Perspective argues:

Originalism accords with the constitutional purpose of limiting government. It understands the several parts of the federal government to be creatures of the Constitution, and to have no legitimate existence outside of the Constitution. The authority of these various entities extends no further than what was devolved upon them by the Constitution. (Pg. 2)

Although this is somewhat skewed from the argument on gun control, I believe that some things implemented in the Constitution ultimately need to be kept. As I mentioned, no we do not need a militia, however the principle that Americans have the right to bear arms is a symbol of freedom. If the government were to amend the Second Amendment, this would be an over reach of our government's limits, and an attack on our liberties.

Originalism is the principle that the Constitution should be implemented and interpreted the way the Framers had initially wanted it during their generation. Pragmatism is the view that society is always changing, and the Constitution must be able to adapt to this. Originalism is necessary to keep balance of long term, age-less principles such as liberty of gun controls. Pragmatism is crucial to adapting policy for changing society such as technology and security. Regardless, both sides are essential to keep our government healthy and in check with valid arguments. I personally think the Framers would be proud with both sides of the arguments.