

Should Constitution be a Fixed Text or an Adaptable Text

Author Name

Institution Name

Course

Instructor Name

Date

Should Constitution be a Fixed Text or Flexible

The constitution is the established set of fundamental rules, principles, and laws that direct a state in governing its people and determining the limitations and power of the government. Constitution has long provided a stable base for a country's functioning which defines the distribution of powers among various spheres of a government system. In many countries, the constitution is a written doctrine that is of fixed nature; however, many believe that constitution should be a flexible body of laws that does not conform to specific boundaries and remains malleable to changes. Historically, one of the constitution's fundamental purposes was to determine the division of powers among the federal and state governments. This segregation of power is a principal aspect of the constitution which demands definitive margins between the state and federal laws. Only an originalist reading of the constitution can effectively carry out this division of power, as creating boundaries is its fundamental principle. The central conflict in opinions regarding nature arises from its interpretation. Originalists believe that the interpretation of the constitution should be in sync with the intent of those who drafted the constitution. Proponents of a fixed constitution also disregard interpretations of the constitution that do not directly align with its textual meaning. Contrastingly, living constitutionalists argue against these rigid interpretations and believe that a constitutional doctrine 'lives' and grows with time, adjusting to multiple changes following its internal logic. This dichotomy has long divided people; however, the concept of a living constitution is present as a theory in the United States. Although living constitutionalism suggests interpreting the constitution flexibly, such dynamic boundaries can result in irregular and insufficient interpretation of a law that can be conformed to the interests of any authority practicing the constitution.

Originalism creates a clear and definite guide for interpretation of the constitution because it limits the reading of the text and its meaning, which avoids vague inferences. The originalist approach promotes close and textual reading of the constitution to interpret its meaning. The text of the constitution does not limit its implementation to the inclusion of technological changes, as it is often contended by living constitutionalists. For instance, the terminology used in the First Amendment protected speech encompasses not only the speech given to a crowd of people or in newspapers but also a speech given on television or the internet. This instance demonstrates how the textual interpretation of the constitution is not subjected to limited or constrained inferences. Originalists believe in a textual approach, which arose during the conflict of James Maddison, who feared that the Necessary and Proper Clause gifted Congress too many powers. Similarly, the debate about the Jay Treaty resulted in a close, textual reading of the constitution for resolving the problem (Arlyck, 2019). Thus, the textual interpretation of the constitution avoids ambiguity and provides a clear guide for carrying out the law.

A fixed constitution provides a valuable and concise judicial review, as the constitution's meaning was the base upon which it had been formed. The fixed constitution requires the interpretation according to the original meaning, which helps to avoid the fear that any authority figure can mold the meaning to their accordance (Miller, 2011). This ensures that any substantial authority is not transferred, so it does not result in theories centered on Supreme Court. Moreover, originalism proves to be an efficient approach as it dictates its methodology of interpretation. The enactors of the constitution ratify the document on a particular comprehensive understanding, and its original meaning lies in the intent of the constitution. If modern courts were not to interpret it according to its original meaning, it would defy the document's purpose as

it had been enacted by consensus that ensured the constitution's efficacy (Borocz-Johnson, 2019). Thus, the original meaning of the interpretation acts as a controlling factor that resolves the ambiguity; however, it does not close all doors for necessary changes. In addition, originalism also paves the way for effective amendments while requiring a fixed textual interpretation. Without an originalist reading, the changes in the constitution would have to be brought about through different means. Since the living constitution is a malleable text, its non-definite boundaries already have much more space for the constitution to be molded, creating further ambiguity regarding the process of amendments (Griffin, 2020). Hence, a clear and effective amendment must result from originalist reading as any other interpretation will transform it rather than bringing a definite addition or change; an amendment. This provides a clear guide to incorporating amendments consistent with the existing document to ensure its efficacy and applicability.

Although living constitutionalists argue that the constitution should develop with the needs of society, allowing the judges to interpret the constitution according to their inferences can not only result in conflicts over the interpretation but also undermines the purpose of democracy. Therefore, the originalist reading of the constitution is in sync with the values of a democracy (Dawood, 2020). Originalist interpretation ensures that the constitution is carried out according to popular ratification, which promotes the aspirational and beneficial purpose of the constitution. Moreover, living originalists argue that the enactors of the constitution formulated the original constitution to create an evolving document; thus, the constitution is, by nature, a "living" document with dynamic aspects to it. Living constitutionalists reject originalist readings because they believe that a dynamic interpretation allows for the constitution to evolve following societal needs. Thus, it is a matter of necessity as well as welfare. They also believe that

contemporaneous reading is essential because specific ideas have significantly evolved. For instance, "equal rights" should be regarded with contemporary human rights standards rather than what it meant at the time it was produced. However, the constitution has been enacted with consensus over the original meanings of its intents. The framing of the constitution through a super majoritarian proves that the text speaks for most people, making it a democratic document in its true sense.

To conclude, originalist reading has long been favored as it conveys the fundamental intentions of the constitution. A close interpretation of the intent of the text removes all hindrances of ambiguity and vagueness as it provides a definite guide for the implementation of the law. The counter-argument of living constitutionalists against originalists that poses originalist reading as a rigid interpretation is falsified by the fact that originalism is the most effective way to bring amendments. For the constitution to evolve or change with society's needs, carrying out effective amendments is only an applicable option in originalism. Moreover, originalism acts as a voice for democratic values as it is enacted with widespread approval and consensus. Contrastingly to living constitutionalism, which gives the power of reshaping the constitution to the judges, limiting the power of the people. Originalist reading also effectively fulfills one of the constitution's fundamental purposes, which is the division of power between national and state governments. Such aspects of the constitution demand that they be interpreted in a definite manner to avoid ambiguity and set a clear path for the execution of the constitution.

Works Cited

- Arlyck, K. (2019). The Closing of the Constitution. *Law and History Review*, 37(03), 861–866.
<https://doi.org/10.1017/S0738248019000476>
- Borocz-Johnson, L. (2019). Reassessing the Historical Foundations of Originalism. *Tulsa Law Review*, 55, 175.
- Dawood, Y. (2020). *Election Law Originalism: The Supreme Court's Elitist Theory of Democracy* (SSRN Scholarly Paper No. 3661959). <https://doi.org/10.2139/ssrn.3661959>
- Griffin, S. M. (2020). Optimistic Originalism and the Reconstruction Amendments. *Tulane Law Review*, 95, 281.
- Miller, R. J. (2011). The International Law of Colonialism: A Comparative Analysis. *Lewis & Clark Law Review*, 15, 847.