

## **The Supreme Court and The Constitution.** [By Sue M. Long](#)

Of all the misconceptions about the Constitution, none is more prevalent than the notion that the Supreme Court has the final say on what the Constitution means. This could not be further from what the original Framers and ratifiers of the Constitution intended.

Alexander Hamilton vowed to the ratifiers that the judiciary “is beyond comparison the weakest of the three departments of power.” He explained that its ability was limited to only preventing the Congress from overstepping their limits by legislating in an area outside of their constitutional authorization.

So how did the Supreme Court broaden its jurisdiction and, in effect, re-write the Constitution? The answer is in the concept of the legal doctrine of precedent.

Once the concept of judicial review was established, it led to a series of cases where the court began to rely on earlier cases as sources for decisions instead of the Constitution itself. Larry McDonald summed up the history of how the Supreme Court moved further and further away from the Constitution: “From the first cases they heard, Justices of the Supreme Court have said too much in their majority decisions and dissenting opinions. They seem to pride themselves on their literary style. Instead of stating their decision in the case at hand and citing authorities used, they tend to philosophize and explain, and thus fill the record with language, which later justices expound and expand.”

Defining the Constitution based on the original understanding, meaning, and intent is referred to as originalism, and supporters of this are referred to as constitutionalists. Constitutionalism is extremely important because it provides insight into the Constitution’s true purpose regardless of an individual’s personal preference. The Constitution means what it meant at the time of ratification and the same holds true with regard to the amendments at the time of their adoption. This objective method removes the subjective ability of activists to insert their political beliefs in place of the Constitution.

On the other hand, there are numerous proponents of “a living, breathing” Constitution who assert that the document must “change” with the times. This approach, which allows the researcher or interpreter, perhaps more accurately, referred to as a “re-writer,” to drastically re-interpret the Constitution without regard to its founding period and has come to be known as “judicial activism.” This approach is widely taught in law schools and promoted by the establishment elite as an enlightened improvement from the old “horse and buggy” approach of constitutionalists.

Such a position conflicts with the entire reason for having a written Constitution. If the document can simply be modified at will, then why even record it in the first place?

Indeed, the entire notion of an unwritten Constitution, which could easily change based on the desires of the political elite, was exactly what the framers had sought to get away from; they desperately wanted to permanently fix the terms by which the people were to be governed. If the government can just reinterpret the fundamental law of the land as they see fit, then what limits are there on that government? The result is a completely unrestrained government that is dangerous to the liberty of the citizenry.

The Constitution is the rulebook by which our national government should play. Once that very same government starts making the rules up as they go along, we run the risk of descending into the same type of tyranny that our patriotic Revolutionary Founding Fathers rebelled against.

It is human nature to be tempted to “read” one’s personal feelings into the Constitution. Doing this allows someone to declare anything they like as constitutional and anything they dislike as unconstitutional. That approach of substituting one’s personal beliefs for the supreme law of the land is in direct conflict with our nation’s founding. It’s bad enough when individuals do it in the course of their personal lives, but absolutely unforgivable when our public officials do it in their representative capacity.