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## Why didnt the South vote to secede?

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Much of what Prof. Amar says about the Preamble (in "Biography") emphasizes that the People reserved the right to reverse anything that was in the Constitution by an amendment process. Although the Constitution provided for a ratification process, it did not provide for Dissolution or for a process for individual States to drop out. But if the People are always sovereign, why didn't the South argue: "What the People united, they could disunite"? Thus, they could have tried to either completely dissolve the Union or withdraw from it by the process specified in Article V for amending the Constitution. Although in the election of 1860, the South only carried only 14 of 32 States, the story may have been different if the vote were for an amendment for peaceful secession from the Union. Was this not used because the South was not likely to prevail? Was this ever considered in a serious way?

 0  · [flag](#)[Howard F. Campbell](#) · 2 months ago 

Hello, all,

As a Northerner presently assigned and working in the South, it should be taken into consideration that the South has a completely different take on the Civil War. Although the South started the war, they refer to it as "The War of Northern Aggression". You see a lot of bumper stickers down here that say "Heritage, Not Hate". If that is the case, then slavery has to logically be accepted as part of that heritage that they defend(ed). The South, even to this day, is the most Conservative part of the US. This is political and historical. It is no accident that the leading Federalists were Northerners and the leading anti-Federalists were Southerners. The South tried nullification, based very loosely on writings of Jefferson, a Southerner, whereby they only wanted to obey the laws they wanted to, regardless of the common good. That was very unsuccessful. It is no accident that the most hateful and disrespectful attitudes towards the current President come mostly from the South. It is no accident that some of the most reactionary laws in politics and social matters were passed in the South and are presently in the process of being overturned by the Courts, one by one, state by state. It is no accident that the Jim Crow laws developed in the South, as did the Ku Klux Klan, founded by a Confederate general after the war. It is no accident that a Confederate sympathizer assassinated President Lincoln. There is also an economic element, both prior to and after the Civil War. The North was and is primarily industrial; the

South was and is primarily rural and agricultural. The population demographics skewed heavily in favor of the North. It is easy to see that the South was feeling put upon by the North, regardless of the fact that the Congress was dominated by Southerners, and 5 of the first 7 Presidents were from the South. The South by and large wasn't the South of Scarlett O'Hara and Gone with The Wind. Only 75-80% of all southerners owned slaves, and the average number owned was 4. Many people fell prey to the blusterings of the large plantation owners, who held all the political and economic power in the South. Finally, the South isn't a bad place. People are friendly, will do anything for you, and polite. But you accept all of that with the knowledge that you will never truly be accepted because you weren't born here. Thanks for hearing me out.

Harry

↑ 5 ↓ · flag



Howard F. Campbell · 2 months ago

Slight correction. In my last comment, it should've read, " 75-80% of Southerners did NOT own slaves." I apologize for the egregious error.

Harry

↑ 2 ↓ · flag

Ruwack Naziyr Zadaq YishmaEl · 2 months ago

Very thoughtful and insightful post. I will say one thing about slavery in the south; yes only a minority owned slaves; but slave labor was also rented out at low cost as well to others. Mistreatment of those slaves were rampant as well as long as the owners "property" was not damaged.

I am absolutely in agreement that southerners are friendly and straight forward if they do not like you. I respect that and prefer it in many cases than some of the experiences that I have had while up north. In that I have to find out second hand (or by the fingerprints on the knife in the back) if one does not like me here.

I was rather young when I moved up north to Nebraska; and before then I had never been called the word "nigger" and knew very little about the Klan. Yes we knew that certain areas were not for us and we were ok because we had what we needed where we were. By no means are all southerner, even most of them outwardly bigots or showed racism as we interacted fine with one another. Every place has it's mental "questionables".

Naz

↑ 0 ↓ · flag

Miriam Kerzner · 2 months ago

The mudsill theory also explains why, even though the vast majority of southern whites didn't own slaves, they still supported slavery. It also explains why, even today, it is often those just above the poverty level who most (by percentage) object to support for the poor.

Here's Hammond's speech. The relevant section is about half-way down.

[http://www.sewanee.edu/faculty/willis/Civil\\_War/documents/HammondCotton.html](http://www.sewanee.edu/faculty/willis/Civil_War/documents/HammondCotton.html)

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+ Comment

judah I rosner · 2 months ago

Very interesting observations. But have you ever heard anyone explain why the South didn't try to get their way by means of amendment?

↑ 0 ↓ · flag

Wilma Jeanne Merello · 2 months ago

Hi Judah. The South (Confederacy) did rise up against the North (Union), in what was called the Civil War. But not until some time after the writing of the Constitution.

<http://www.civilwar.org/education/history/civil-war-overview/northandsouth.html>

<http://www.ushistory.org/us/33b.asp>

Even though the Confederacy lost, and the Union now encompasses all 50 states, there are some people who truly believe that the Confederacy will Rise Again!

<http://www.urbandictionary.com/define.php?term=the%20south%20will%20rise%20again>

↑ -1 ↓ · flag



Howard F. Campbell · 2 months ago

In the unlikely event that the South wants to go again, they will face the full combat power of the US. While many military locations are located in the South, that won't be helpful to their cause at all, since the "enemy" will be among them when they start. Even the somewhat obtuse Governor Perry of Texas seems to realize this. To say nothing of the fact that there are now more states that would be "Union", the South hasn't gained any at all. There is also a word for when you're surrounded by an indifferent and hostile group of people to your front, your right flank, and your left flank-surrounded.

If this was written in a facetious manner, Wilma, please disregard the comment.

Thanks for hearing me out.

Harry

↑ 0 ↓ · flag

Anonymous · 2 months ago

Howard,

I think that what is taken many states to the point of seriously thinking about secession is the fact that activist judges are imposing lifestyles about which the US Constitution is silent and that are explicitly rejected by they populations. I am talking fundamentally about abortion on demand and gay marriage.

In a state like Texas, right now secession is supported by 20%. While that doesn't look good, I don't think it would take much to take that support to 50% or 60%. If that were to happen, I think that the game would be different. Either totalitarian justices like Anthony Kennedy would realize that they are risking another start of hostilities or they should back down in their totalitarian program of ramming through abortion on demand and gay marriage on people who don't want it.

↑ 0 ↓ · flag

Neil Schutzman · 2 months ago

It will be interesting to see how Texas plays out. Current trends point to whites becoming a minority of the voting population in the next few decades.

<http://www.bloomberg.com/news/2012-05-17/non-white-u-s-births-become-the-majority-for-first-time.htm...>

↑ 0 ↓ · flag



Howard F. Campbell · 2 months ago

I think the point is that no matter what the demographic distribution may be in Texas or anyplace else, no US Government is going to allow a state to secede. Period. We've already proven that. Even if we did, consider just this: there are a lot of professional sports teams in Texas. Many baseball players come from Latin America. Since Texas has become their own country, they would have to get three visas: one for Texas, one for the US, one for Canada. There are many pro football teams in Texas. They would have to get a US passport and a work visa from Texas. There are hockey players and soccer players in Texas; they would have to get work visas from their prospective countries (Canada, in the case of hockey players, for example), to play there. On and on.

Texas's public school system is a joke. Massive cheating, teaching subjects that are academically bogus, etc. There are not enough Texas residents to fill up all of their major colleges (UT-Austin, Texas Tech, Texas A&M, Rice, SMU, Baylor, et al). So, some of those schools would eventually have to close, or turn themselves over completely to foreign students, to include those who formerly were out of state students who are now just foreigners.

Any athlete from Texas who would be drafted into any professional sport would have to get a Texas passport and a US work visa.

It is unclear whether or not corporations would leave Texas, but the ones who rely heavily on defense contracts would. A US defense contractor can't be located in another country. Which is what Texas would be.

I could go on, such as close scrutiny of any college transcript and/or professional license issued in Texas for those who want to work in the US. But the point has been made. Gov.

Perry likes to boast that Texas is the 7th largest economy in the world. Not only is that factually untrue, but even if it were, it wouldn't be for long. Taxes would certainly go up, because all of that stuff that the US provided Texas, such as a military presence, Border Patrol, etc, would now have to be paid for by the good citizens of the Republic of Texas. The cost of government would go up necessarily.

Secession by Texas or any other state isn't going to happen, so this might just be an academic exercise. Or it could be reality in Texas after the smoke clear from combat destruction.

Thanks for hearing me out.

Harry

↑ 0 ↓ · flag

Anonymous · 2 months ago

What makes the Texas case different is that by its sheer size alone, both territorial and population, it could well be a mid sized independent country. The same does not apply to smaller states.

We are not in the XIX-th century either when war was an acceptable way in the West to solve almost any problem, not only in the US but also in Europe. Right now, we are more diplomatic. If secession were to become really popular in Texas, ie, supported by 50% to 60% of the population it would be very hard to ignore. 10 years ago talks of an independence referendum in Scotland were dismissed as non realistic. This year said referendum will take place. Although the polls indicate that the pro independence side is headed for defeat, that the referendum is taking place shows that when secession becomes popular, it cannot be ignored.

Texas would be a very successful country if it were to become independent. There is no reason to believe that it couldn't have with the remaining US the same relationship the US has with Canada. But it would be free of imposition, by way of judicial activism, of things like gay marriage or abortion on demand. If one day these things become popular in Texas and Texans vote to adopt them, so be it. Right now, they are being imposed to Texans against the overwhelming opposition of a majority. The US constitution is silent on these matters. It's justices inventing non existent rights to please pro abortion activist and gay marriage proponents.

↑ -1 ↓ · flag



Lori A Decker · 2 months ago

Hi Harry! Good to see you! I don't see military action as a possibility, really, other than blocking their borders to isolate/shun them, take them off the national power grid, stop food stamps and FDIC and what-have-you. I think most would just wait them out to see if they could make it on their own. Many don't realize how many daily comforts are federal efforts. Even the airwaves for gosh sakes. A week or two without electricity and cell service would probably do them in.

I find secession just as confounding as the delay in letting Puerto Rico join. Other than making room on the flag for a 51st star, I don't see a downside, but it's probably a complicated economic issue, eh?

↑ 0 ↓ · flag

Joe Caro · 2 months ago 

Come on guys. Texas is NOT going to secede. This got press coverage only because of the ignorance of the media with respect to the issue, but also a political agenda that wants to generate outrage. Yes, some voices in Texas expressed a desire to secede due to the federal government's incompetence and failure to live up to its constitutional duties within the state, and the notion of state sovereignty as described in the constitution. But what people are doing is mistaking local frustration for the larger issues concerning individual states, such as the failure of the feds to secure the national border, and their interference on issues that could arguably be the pervue of the STATE and NOT the federal government.

(Somewhere in the paperwork whereby Texas gave up their position as a Republic to become a state is a provision allowing them to split into five states should they wish,( I am told.) THAT would be a nightmare scenario for some political types, FIVE Texas to deal with.)

These issues are properly handled by the courts, as outlined in the constitution and ultimately will do so.

For example, the issue of the border is an interesting case in point. Border security is properly the duty of the feds, but should the feds fail in their duty the question becomes what are the state's rights in this case? Can they assume the responsibility if the federal government does not? Evidently not as it stands NOW. How about the feds reimbursing the state for the costs incurred because they failed to secure the border then? The courts have given this a resounding NO.

There are many more situations of the federal government placing the people in a dependence on them situation, yet NOT fulfilling their responsibility in the end, and not allowing the locals to solve the problem for themselves.

Being caught in such a situation where the feds fail in their duty, yet do not allow the states to step in and do the feds job for it is likely to create some frustration. So typical when one deals with government one finds that THEY do not protect you, yet they do not allow you to protect yourself. Any wonder why approval of congress is so low?

↑ 1 ↓ · flag

Anonymous · 2 months ago

"These issues are properly handled by the courts, as outlined in the constitution and ultimately will do so."

I take issue with that. That would be true if justices weren't ideological. But they are ideological. Roe v Wade became the law of the land by nullifying a Texas law.

If a similar ruling were to happen with gay marriage (ie, that the SCOTUS were to override states' decisions of defining marriage as they wish) I think that momentum in Texas would increase.

There is not going to be a new Civil War to be sure because people these days are more peaceful, but I see everything else happening, including invoking the 5 state clause in order to force more red senators in the US senate as to stop the unconstitutional agenda of people like Anthony Kennedy and the liberal block of the SCOTUS.

↑ -1 ↓ · flag

Joe Caro · 2 months ago

Your point about nullification is not a bad one. But remember that history is full of poor decisions by the courts, even by the Supremes. Over the long haul, however, the right decisions will get made. Plessy v Ferguson, Korematsu v United States being among the most egregious examples.

Judges not worthy of the name come and go, but the Constitution remains. Thus courses such as this are essential to our democracy in that we must, from time to time, review the very foundation of our Republic and stop getting our information from the embarrassingly biased forth estate and from what is laughingly still called our education system.

But the issue is NOT whether we agree or disagree with any decision, it is that the decision is based on the honest constitutional interpretation. On this people can disagree or not. When a decision is dependent on creating a tortured logic by the justices, by their creating something that is not there via their "cleverness" then I submit that this does damage to our institutions by the very people sworn to uphold them. In effect, we become a Banana Republic if we cannot trust our institutions or rely on the rule of law, if these people just make it up as they go.

You are correct about Roe v Wade, a decision totally created with no legal basis, in my opinion, evidenced by the painful logic used to defend the decision made by the court at the time. The weakness of doing law by court decision and NOT by legislation by the appropriate level of government is clear in that this could be overturned by a decision of some future court leaving the legality of abortion up to the individual states where it properly belongs. Thus Roe

v Wade hangs by a very thin thread, and is NOT the written in stone law. It is NOT the law, it is but a court interpretation based on a court doing what it should not do, create the argument FOR a decision that the advocates could not do in the proceedings.

A constitutional law MUST come from the people, written by the appropriate legislators as representatives of the people and approved according to the laws of the appropriate jurisdiction, state, local or federal.

And the tortured decision of John Roberts determining that the ACA was indeed a tax, contrary to any legislative intent at all is further evidence of the problem. When it requires the torturing of logic that these decisions used to justify them, it is my belief that the decision is not one justified by the legislation, but it is evidence of the court overstepping ITS constitutional authority by creating law and not ruling on the law

↑ 0 ↓ · flag

Anonymous · 2 months ago 🔒

Joe,

I spoke of the Roe v Wade, Obamacare and DOMA decisions in a different thread in which I ask the staff to tell us what is the view o the professor on judicial activism. So far, I have gotten no answers.

I have no doubt in my mind that justices like Stephen Breyer , and the other liberal judges, are first and foremost ideological. The have a desired result and then they twist the Constitution to fit their ideological agenda. I would include Anthony Kennedy in the block of ideological justices as well. The difference of Kennedy with the other ideological justices is that his ideology is libertarian, thus he sides with the conservatives on economic issues but with liberals on the social issues.

When on matters where the constitution is silent about you can predict consistently that those legislating from the bench are the liberals or libertarians, you understand that the true enemies of freedom and democracy are the "living constitution" crowd not those who are cautious about stepping their authority (that would be the originalists). That is not to say that originalists do not over step it from time to time (like the notion that corporations are people embedded in Citizens United) but they do it less often and on less controversial matters. Somebody like Scalia will never say that abortion or gay marriage should be illegal, rather that it is up to for the people to decide. Kennedy imposes his notion that gay marriage should be legal at the federal level in direct opposition of a law that was approved with veto proof majorities and approved by the sitting president. If the public had truly changed views on the issue, Obama could sign into law a new law repealing DOMA entirely and that would be the right thing to do. Instead, they used judicial activism to tell people like me that our vote does not matter. Even when our ideas get approved by large majorities, all it takes is to brainwash a few activists judges and they will be thrown out.



As students taking this course, we need to know where the professor lies on this issue since it will cloud everything, including the first part of the course dedicated to explaining the constitution as it is written.

↑ -3 ↓ · flag

Miriam Kerzner · 2 months ago

All justices are biased. Interpretation necessarily requires one to determine which principles and facts are relevant and important. Scalia, though he purports to be an originalist, actually stated that our understanding of the 2nd Amendment had evolved. Probably the only true originalist on the Court is Justice Thomas.

As for Prof. Amar, he is neither a strict originalist nor living constitutionalist. We'll probably get into this more in the second half of the course, but he argues (and this is overly simplified, since it's the subject of an entire book) that the Constitution needs to be understood first and foremost as a unified document. When questions arise as to its meaning, which they will since it's such a terse document, answers need to be consistent with the sense of the whole document rather than simply to the particular words in the relevant section. This requires understanding the original intent of the authors. At the same time, he argues that there are rights that are not specifically enumerated by the Constitution, but are attested to by the way Americans live there lives. This changes, but it also needs to be reflected in Constitutional interpretation. Nonetheless, even if there are changes in the way we live, those changes cannot be sanctioned if they contravene the spirit of the founding document.

As for abortion and gay marriage, the questions there were the extent of a doctor's right to privacy with his patient and the meaning of equal protection. It's the legal, not the ethical, principles that are the focus of the law.

↑ 0 ↓ · flag

Anonymous · 2 months ago

Again, no other than Ruth Ginsburg is on record saying that Roe v Wade was wrongly decided <http://www.law.uchicago.edu/news/justice-ruth-bader-ginsburg-offers-critique-roe-v-wade-during-law-s...>

The repeal of DOMA was a 5-4 decision along ideological lines. Hardly a proof that personal ideology doesn't play a role on these matters.

↑ -1 ↓ · flag

Miriam Kerzner · 2 months ago

Ginsburg disagrees with Roe because she thinks it should have been decided on a principle of a woman's right to control her own body, not on the right of a doctor to privacy in consultation

with a patient.

If you look at the beginning of my post, you'll note that I argue that ideology plays a role in ALL decisions.

↑ 0 ↓ · flag

Anonymous · 2 months ago

So, if we agree that ideology plays a role in all decisions, then the notion that Texas does have a right to live by the ideology of their own people instead of by the ideology of somebody like Anthony Kennedy is relevant to the matter at hand.

Similarly, equal protection when it comes to gay marriage is a red herring. The fact remains that even in those states where gay marriage is legal, equal protection is not afforded to consenting gay siblings adults or consenting father/son, mother/daughter adults. The rationale that makes sense to ban incest in the context of normal marriages is irrelevant when it comes to gay marriages. So by making an "equal protection" argument to justify gay marriage the Kennedy ideology opened a door to strike down the ban against incest or polygamy. Unfortunately, judges that are first and foremost ideological, like Kennedy, cannot contain themselves. They rather see their ideology in an opinion than think twice about the unintended consequences of their own actions.

↑ -2 ↓ · flag

Miriam Kerzner · 2 months ago

Initially, the Founders believed that states were best positioned to protect the individual rights of their citizens which is why the Bill of Rights was written to protect states against the encroachment of the federal government. This belief changed as a result of the lead up to and subsequent actions by southern states with respect to their Black populations. Current opinion is that one of the responsibilities of SCOTUS is to protect the Constitutional rights of all within all states and that the interpretation of those rights needs to be uniform. Still, the DOMA decision is really only binding on the federal government. It is still perfectly legal for states to ban gay marriage.

As for the other examples you give, they've never gone before SCOTUS to be decided, though there are medical issues to be taken into account in some of them. In the Prop. 8 case, the medical assertions by those supporting the proposition were deemed unsupported by the current data.

↑ 0 ↓ · flag

Anonymous · 2 months ago

I think that you are unaware of the contradictions of your own statements. The Founders are

unlikely to have changed their opinion by 1865 because they were DEAD. And even if they had, they had all agreed that the way to change the constitution is to amend it, not to twist the meaning of the constitution to fit the fad of the day. If the constitution is meaningless and it can be twisted as the justices sitting in the US Supreme Court see fit, we have a de facto anarchy in which anything goes. Why would a state feel bound by the constitution when the US Supreme Court thinks it is not bound by it and can change its meaning as it pleases?

The unraveling of the rule of law is, in my opinion, the most pernicious effect of the "living constitution" doctrine. We might agree or disagree with the right to bear arms, but if you want to legally repeal it, you should fight to pass an amendment that undoes the second amendment, not twist the meaning to fit whatever liberals think should mean in this day and age.

A strong respect for the rule of law is one of the main differentiators of the US with respect to corrupt countries like the native country of the professor's parents.

↑ -2 ↓ · flag



Howard F. Campbell · 2 months ago 🔗

Hello all,

Funny there was no thunder from the right when the Court decided the election in 2000, when the Constitution states that in that event, it goes to the House of Representatives. Funny there was no thunder on the right when the Court opened up the floodgates of ideological money based on the 1st Amendment in the Citizens case. Besides, a 5-4 Court decision is always a bad sign of division in the Court. Roe v. Wade was handed down in 1971 based on the 9th Amendment and a long series of Court decisions concerning personal privacy. There is no federal effort to push gay rights on anybody; those initiatives are happening at the state level, along with marijuana legalization. Not the feds. As for Texas seceding, it isn't going to happen. Ever. Relations would NOT be like those we have with Canada, because Canada was never a part of the US. Everything, repeat everything, I stated in a previous post would happen. DOMA is federal law; in case people haven't noticed, more and more states are passing gay marriage laws, and those with anti-gay marriage statutes are having them struck down in Federal courts. In the Full Faith and Credit Article, states have to recognize the legal documents from another state, such as birth records, marriage and divorce decrees, driver's licenses, professional licenses, even college transcripts if they're from a public university. As for gay marriage, the states permitting it aren't all wild eyed, crazy liberal states. Iowa, Utah(?), just to name a few. Also, Justice Kennedy is but one justice. Where is the thunder from the right when Scalia goes off on a rant with little legal support, or when Justice Thomas, who has never asked a question since he has been on the Bench, refuses to recuse himself when a case involving the TEA Party, of which his wife is an active participant and fund-raiser? C'mon guys. Throwing terms like ideological around is like lobbing grenades into a cellar filled with women and children. Nothing good comes out of either.

Thanks for hearing me out.

Harry

↑ 0 ↓ · flag

Anonymous · 2 months ago

Funny that you have finally shown your own bigoted colors which results in your own contradictions. So you are fine with federal courts undoing the will of the people when it comes to gay marriage at the state level?

On this regard, shame on the SCOTUS as well. By refusing to hear the prop 8 case on the merits they wronged in two ways: first by subverting the initiative process nationwide (all a state executive needs to do to have an initiative that he/she doesn't like is to have it repealed at a favorable venue and refuse to defend it) and second by giving activist judges nationwide free ride to copy the Prop 8 case. It seems that with the Utah case the SCOTUS is finally getting some sanity.

Look, you are a liberal. Fine. Nobody forces you to live in the South or a society that doesn't share your liberal values. You have plenty of places to live in. This notion that the SCOTUS has a right to impose liberal values all around the place is the very reason people in Texas and elsewhere are thinking about secession. Again, not very popular now, but gay marriage went in 10 years from unthinkable to possible. The same could happen with secession, especially if initiatives in places like Scotland are successful.

↑ -1 ↓ · flag

Miriam Kerzner · 2 months ago

I didn't mean that the Founders changed their belief, rather that current thinking in the US had changed as a result of the ways in which African-Americans were physically harmed by their governments as well as denied their civil rights. And they DID amend the Constitution -- that's why they're called the Reconstruction Amendments. The principles of those amendments were then read back into the Bill of Rights. Even Scalia acknowledged the "evolution" of US understanding of those first ten amendments.

As for the Constitution meaning whatever the justices feel it should mean, I suggest you read Prof. Amar's **Unwritten Constitution** to get a sense of the nuance involved in at least one person's approach to this issue.

The original meaning of the 2nd Amendment is still under dispute. I've heard several plausible interpretations which end up with different understandings and all of them take into account original understandings of the terms involved.

↑ 0 ↓ · flag

Anonymous · 2 months ago

I am sorry but the XIV-th amendment was not passed with the intention of covering for gay

marriage at either the federal level or the state level. Anybody making that argument is lying deliberately. Anthony Kennedy is a peculiar creature. During the oral arguments of the DOMA/Prop 8 cases he conceded that gay marriage is a new institution and that the argument "gay marriage" like "interracial marriage" was not constitutional. He told that "in his face" to Ted Olson. You can listen to the arguments yourself.

Still he felt that he could ignore that and still impose gay marriage at the federal level. If there was a clear moment where Kennedy's disregard for the constitution is real, this was it.

↑ -1 ↓ · flag

Miriam Kerzner · 2 months ago

I guess you'd argue that the Air Force is unconstitutional as well since it was never the intention of the Founders to have one since the only forces specifically mentioned in the Constitution are the Navy and the Army.

↑ 0 ↓ · flag

Anonymous · 2 months ago

Now you are "strawmanning". I didn't say that things about which the constitution is silent are by default legal or illegal. What I say is that on those matters, the people, either at the state or the federal level should decide on them be through their representatives or via voting (state matters).

As far as I can tell, the Air Force was and is funded by congress. So are the cabinet level departments. Congress has agreed to this. Congress also agreed to DOMA and DOMA was made a law by Bill Clinton.

So where the US Supreme Court is overstepping its authority is in nullifying an a lawfully passed bill on a matter the constitution is silent about only because 5 SCOTUS justices are ideologically opposed to that bill.

↑ -1 ↓ · flag

Joe Caro · 2 months ago

Holy cow. Ginsberg agrees with little 'ol me with respect to Roe v. Wade? Who knew.

I submit that there is a difference between a justice's point of view, and bias. I also submit that I do not disagree that there are issues with a biased judiciary. Various points of view cannot be helped, as evidenced by you guys comments here. To me that is not the issue, although I confess that I would rather that the judges share MY point of view. That we disagree with certain decisions does not raise them to the level of judicial bias, however. I suggest that when the justices go to great lengths to STRETCH the content of a law, to seek out anything they can find to justify their decision that is NOT IN EVIDENCE in a case, as they did with Roe

v Wade, as Roberts did in upholding the ACA as a tax, thus justifying the penalties necessary for its existence we see evidence of bias.

ALL of the constitution is the law of the land, and that includes all of the amendments. I especially point out the TENTH amendment.

And Howard, may I suggest that you read the text of the Gore v Bush decision to see what the Justices said, and not rely on the news accounts of it before you comment about what you think the "right" thinks about it. You may be surprised to find that the vote of some of the justices did NOT comport with their written words on the subject. You might also be surprised that there was more than one decision on the matter particularly their comments with respect to Florida changing their electoral procedures during the midst of the controversy.

↑ 0 ↓ · flag

Miriam Kerzner · 2 months ago

Then let's go with the obvious intent of the Founders. They wanted a small standing army. The behemoth we currently have would be anathema and this is based on the clear wording of the Constitution. Each state was to maintain local militias that were trained according to rules from the federal government. The standing army was only to man the forts on the edges of US territory. One reason for this was to avoid having it used for foreign wars (navies and marines can't occupy territory the same way). So is the army, as currently constituted, unconstitutional, especially since it really requires trusting that its funding won't be cut off after a two years?

↑ 1 ↓ · flag

Anonymous · 2 months ago

Some of it definitely is, not only the army, but things like the NSA. I don't see the Founders agreeing to what the NSA is doing, frankly.

You have this distorted view that "living constitutionalists" have that we all believe in it but we disagree on the issues it should be "alive" about. I think that the constitution is a dead document and that when the constitution is silent about something, nothing should be assumed one way or another. Very typical of liberals in my experience. You guys are intellectually corrupt and you think that everybody is equally corrupt.

With respect to containing the size of the Army/NSA, the checks and balances have failed because no branch of government has complained about it, which is the true tragedy here. I feel though that things are changing and that we might see soon a congress initiated bill that will try to reign on the NSA out of control.

↑ -1 ↓ · flag

Miriam Kerzner · 2 months ago

I don't know why you are making assumptions about my political bent or my theories about Constitutional interpretation. I have a hard time believing that people take the Constitution as it is meant, simply because I never see that happen. Even those who argue for a "dead" Constitution invariably interpret it, which means understanding it within a particular context, often ahistorical. The same is true of Biblical interpretation. Frankly, I don't know enough about any theory of legal interpretation to come down definitively one way or another. I do know that, at one point, it was the liberals on the court who were the originalists and the conservatives who argued for a living constitution. Odd how that gets turned around.

↑ 1 ↓ · flag

Anonymous · 2 months ago 🔒

Miriam,

It is very obvious you are a liberal, "living constitution" person. I have acknowledged earlier that originalists also overstep their authority from time to time, with things like saying that "corporations are people" but they rarely do it to invent things out of thin air. You might agree or disagree that "corporations are people" but the right to free speech was not invented to fit corporations. What the liberal, "living constitution" justices usually do is to invent non existing rights to fit their own political agenda, be it "right to privacy" to allow abortion on demand, the individual mandate of Obamacare (which introduced the notion that the federal government can tax you if you refuse to buy a product it promotes) or gay marriage for DOMA. Again, very different.

↑ -2 ↓ · flag

Miriam Kerzner · 2 months ago 🔒

Then you misread me.

<http://law2.umkc.edu/faculty/projects/ftrials/conlaw/rightofprivacy.html>

↑ 0 ↓ · flag



Lori A Decker · a month ago 🔒

Jeepers, if arguing and labeling hadn't been invented, some people would have nothing to live for, eh?

A few comments:

First, to the Anon who wants Dr. Amar to weigh-in: Gossip in US Attorney circles says our professor's name is on some short list as a future SCOTUS, so it's unlikely he'll address certain issues that may visit or revisit the court. Yes, he's *that* highly-regarded as a Constitutional Scholar. How lucky are we?

Second, men (**all** men) need to sit down and shut up about women's reproductive rights. Whatever laws you want to pass or think you can pass, in reality you have **zero** power of enforcement. Genie's out of the bottle and has been for five generations. Women need to resolve the issue, and have (or can take) the power. So go spend your energy elsewhere.

Third, when ACA first arose, I was thinking, "Well, hell, 2000+ pages--why not just make it a tax?" Feds can't make you buy milk, but they can give you milk then tax you for it, whether you drink it or not. Simple. Chief Justice Roberts apparently thought the same.

Finally, I live in Arizona, so am interested in this battle regarding States picking up the slack when the Feds fail to secure the border. I also think government should work bottom-up instead of top-down. But I also voted to pay my part of an extra \$14B in State taxes to ensure no one is turned away for medical treatment regardless of their ability to pay or their immigration status. What label, then, applies to me?

↑ 0 ↓ · flag



Anthony Watkins · a month ago

Cool piece of gossip! Be fun to someday to be able to say, "yeah I took constitutional law from justice amar":)

↑ 0 ↓ · flag

Anonymous · a month ago

If he is short listed by Obama then the guy could not be more liberal and activist given the type of people Obama has already nominated. What a disgrace.

↑ 0 ↓ · flag

Anonymous · a month ago

Lori, you are a liberal. What if I don't want milk? The notion that the feds can tax you if you refuse to buy something is anathema to the American experience.

↑ 0 ↓ · flag



Howard F. Campbell · a month ago

Lori,  
Good to see you around again! Thus far, this has been an entertaining course. As for the AHA, the Republicans...er, excuse me, the TEA Party...have a profound fear that it will work. And, apparently it is. I'm always curious as to all of these people out there who hold elected office who get all worked up over nothing, if they know how many of their constituents have signed up for it? Second, it isn't men solely who are passing restrictive laws. Women are in Congress, various state houses, city councils, governor's mansions. The ones where i live are by and



large an embarrassment, but then again so are most of the males. As for securing the borders. The numbers say differently, Lori, and people have no idea how busy we are down there; on both sides of the border. Besides, you have a sheriff down there that thinks he is all that; let him clean up the mess. Of course, it takes courage, and I think he lacks that, and now the Feds are interested in him, as are the Federales. Personally, I don't understand what the fuss is about. States have been getting unfunded mandates from the Feds for decades. Where was the thunder from the right then? As for the border, there is a serious fence/wall being constructed, National Guard and Reserve units rotate through there, there has been an increase by both Bush and Obama in terms of Border Patrols, the State of Arizona actively recruits from military separating from the military, etc. Besides, you know how many terrorists we've captured trying to sneak in from Mexico. Zero. Or put another way, the next one we catch will be the first one. Besides, who do you think discovers all the tunnels and caves used by the drug cartels? If you think the local LEOs do, or even the DEA or the FBI, think again. Who do you think is flying those helicopters when they spotlight on coyotes dumping their human cargo here? Not the locals, and not the Feds who worked for agencies with initials. By the way, lori, it is good to know you're a "liberal"...haha.

Thanks for hearing me out.

Harry

↑ 0 ↓ · flag



Lori A Decker · a month ago 🔒

A liberal. hmmm I'm also fiscally conservative and want less government. Also, doesn't matter if you want milk or not regarding the government's power to tax, just like we're taxed for public schools even when we have no kids. I pay for Medicaid though I can never use it.

I'm against radical gun control, for GLBT marriage, for the death penalty, against Amnesty, but for work permits and paths to citizenship like military or public service

↑ 1 ↓ · flag

Anonymous · a month ago 🔒

The way Roberts rewrote Obamacare to make it a "tax" (and the prof is on record supporting this act of legislating from the bench) is problematic on several aspects,

1- If Americans had been told that the penalty was a tax, the law would not have passed. It is easy to forget now but the ACA barely made it through the house of representatives (even though it was controlled by Democrats). If it had been sold as a tax, the ACA would have been dead on arrival for that fact alone. So whether it was or it wasn't a tax is not for Roberts to decide, is for the house of representatives to decide per Article I explicit powers of the house. So this act of legislating from the bench is pernicious because it also provides a blueprint for passing other unpopular "taxes". Don't call it a "tax" when it is being argue, wait until it is being challenged, then call it a "tax" to uphold it. This is plain and simple the subversion of the power of the purse that Article I gives exclusively to the house (not to the SCOTUS).

2- It creates the precedent that the feds can tax you to force you to buy something you don't want to buy. You said that it is as medicaid, but it is not. You are taxed to fund medicaid but until Obamacare came into effect nobody forced you to use it if you became unemployed (at which point you were not taxed anymore). This law violates another fundamental American right: the right to be left alone.

You say you are fiscally conservative, but that flies in the evidence of your support to Obamacare. You are a liberal. Whether you have a problem reconciling that is a different matter.

↑ -1 ↓ · flag



David E. Johnson · a month ago

I do not profess to be well educated, nor do understand the nuances and interpretation of the law. But as a conservative (NOT a Republican) born/raised and living in the southeastern United States it seems to me that the federal government is over stepping it's bounds by attempting to legislate morality.

Hot topics of the day like the Affordable Healthcare Act and same sex marriage seem to be used as topics to divide - they most often are presented as all for or all against. I don't know a single person that would say healthcare reform is not needed. My opposition is to the current law, not that The President attempted to do something to correct the business of Healthcare but the idea that by law "everyone" MUST have healthcare. I also support peoples right to marry their "significant other" legally but I don't believe that churches should be mandated to participate.

If we are a melting pot, do we eventually need to remove the heat so that some individualism can be maintained? Or do we just continue the attempt to force everyone to "acquiesce".

What do you believe the purpose of the Federal Government to be?

↑ 1 ↓ · flag

Joe Caro · a month ago

To your point, David, your final question is the operative one. The litany of policies you cite are illustrative of the debate we should have HERE. The debate should be about whether the federal government has a role in ANY of this, was it intended that this kind of stuff be left to the individual states, OR perhaps intended for a government to have NO say in such things and leave it up to the people to decide for themselves.

The debate devolves into whether the policies are any good or not, but I submit, that for our purposes it might be more instructive to discuss whether the government has a role in these things, notwithstanding their being a good idea or not.

I suggest that these are two different arguments in the context of studying the Constitution.

↑ 0 ↓ · flag



Lori A Decker · a month ago

Harry, Sir! <salute> Yeah, I didn't intend that statement as being that only men pass restrictive laws, and of course we have women lawmakers as well. I meant that men (period) should back out of the discussion. Not your issue; none of your business; you have no power and thus no voice. The womenfolk need to address it. Don't worry, you have plenty of other things to keep you occupied.

Are you talking about Sheriff Joe Arpaio? Different County, but yeah, he's a trip, isn't he? Inmates outside in tent city, pink underwear, most recent controversy is bread&water punishment. He's on Steven Segal's reality show a lot now, too.

Ours is Sheriff Clarence Dupnik and has been forever (like, 50 years). He's more liberal. Used to live down the street from me. In High School, a couple of my acquaintances threw some marijuana seeds over the wall into his garden. I doubt they ever grew, but it was pretty funny. I'm an accomplice only in that I never revealed their identities. :p

Yeah, my unit had a border rotation for the joint narcotics task-force, and a couple people who worked for me as weekenders were Border Patrol Agents. The drive-bys and violence at the border are more concerning to me than the nationality of who crosses.

@Anon, I never said I supported Obamacare. I only said I agreed it was a tax. I was a Federal employee, so could never use Medicaid, just pay my share. The only time it adversely affected me was when I didn't qualify for a low-income mortgage due to \$100 overage in annual net income--but I paid \$1600 for Medicaid. Small injustice; I survived.

My ideas for *affordable* healthcare were that since I pay \$200/mo for mine, HealthNet shouldn't be able to charge you \$800 for it (I consider it price-gouging). And that the \$300M marketplace would have been cheaper had we asked Amazon for a blank of their software or just made healthcare providers upload their "goods" to Amazon. Simpler still to just put everyone on Medicare then tax us for it later.

Whatever. Labels are your thing, not mine.

Hi Joe Caro! Another familiar "face". :) Good nudge. I vote No, the government shouldn't have a say in every-damn-thing. Better to start at the lowest level possible (city, county, state). Easier to test the pulse of the nation, probably cheaper, and good to let the "kids" walk on their own two feet. The Feds are too much like Tiger Moms or Helicopter Moms of late. I don't like it.

Am I Off Topic? Yes. Yes I am. I pass the floor.

↑ 0 ↓ · flag

Miriam Kerzner · a month ago

David,

Like Joe, I agree that the key point, especially for this course, is to try and understand what is permissible behavior by the various branches according to the Constitution rather than argued about preferred outcomes of policy. At the same time, belief systems tend to influence our perspectives when interpreting. What is meant, for instance, by the General Welfare? Or Liberty? To what extent should privacy rights be read broadly (the Constitution only presents examples) or strictly (only those privacy rights that are specifically spelled out)? In terms of the ACA, faith-based organizations, corporations that are owned by those who are firmly grounded in a faith community, and employees, whose "free expression" of religious rights should be honored and is one religious perspective being privileged by the state? These are all fair questions, but the answers likely turn on one's sense of morality.

↑ 0 ↓ · flag

[+ Comment](#)



Howard F. Campbell · 2 months ago

Judah,

The short answer is no. Not ever. I don't think the Southern mindset, generally speaking, works along those lines. They were right, the entire country was wrong. An amendment is not an easy process, and it isn't meant to be. It has to pass out of both Houses of Congress, then go to the states for ratification. Then, 75% of the states have to agree to the amendment, which given the times, probably would've not passed. There are also time limits for ratification, set by Congress, and usually are a few years. War was coming, and I think everybody knew it, so it would have been an exercise in futility to use the amendment process.

Thanks for hearing me out.

Harry

↑ 0 ↓ · flag

[+ Comment](#)

judah I rosner · 2 months ago

So nice to discuss this with you. I recognize that the South was numerically a minority but they had lots of heft in Congress & they might have appealed to a lot of Northerners by saying, "let's go our separate ways as friends- we can always do business when mutually desirable." That might get a lot of votes from people who really didnt care that much about slavery.

↑ 0 ↓ · flag

Neil Schutzman · 2 months ago

It has been argued by some historians (and my data is hopelessly out of date) that the North wanted to maintain access to cheap Southern cotton, and by extension keep the price of cotton high for Brittan so that Northern manufacturing had a competitive advantage. So economics were a forcing function in the North wanting to prevent a Southern succession.

By this same argument the South wanted to succeed to have access to more markets and hence get a better price for its product.

↑ 0 ↓ · flag

[+ Comment](#)

Neil Schutzman · 2 months ago

It is a good question as to why the south felt it was time for war, or if they were just driven that way by a bunch of hot heads in South Carolina. Once cannons are fired its is hard to step back. It is interesting to read the South Carolina justification for leaving the Union ([http://en.wikipedia.org/wiki/Declaration\\_of\\_the\\_Immediate\\_Causes\\_Which\\_Induce\\_and\\_Justify\\_the\\_Secess...](http://en.wikipedia.org/wiki/Declaration_of_the_Immediate_Causes_Which_Induce_and_Justify_the_Secess...))

Clearly they felt threatened and that they would not get a fair deal in the coming administration. I think also the must have realized that there was no way they would get 2/3 of the states to agree to dissolve the Union, but more importantly it reads to me that they were acting in haste before cooler heads had a chance to calm things down.

A final note I believe that viewing the Civil War as a war of aggression is a very reasonable view, after all it was the North that attempted to force the South back into the Union. The South's position was "just leave us alone".

↑ 0 ↓ · flag



Howard F. Campbell · 2 months ago

Neil,

An interesting take. It is always going to be who was to blame-and there was plenty on both sides to go around, since the abolitionists were just as melodramatic as the pro-slavery folks were. What is not in dispute was who initiated hostilities, and the firing on Ft. Sumter, a federal installation, left Lincoln with no choice, although I believe war was inevitable. As for the economic issues advanced, they have merit as well, since within a few days, perhaps weeks, of initiation of hostilities, the Union put the Anaconda Plan into effect, effectively blockading every port city in the South, including New Orleans. The only action more devastating economically to the South than the Anaconda Plan was Sherman's March, also initiated, ironically, by the South. Regarding the South's attitude, I personally don't think that holds

water. Did the Hotheads and the Firebrands in South Carolina really think they were going to bombard a military installation and not suffer consequences? By the way, I've seen Ft. Sumter, and it is extremely disappointing. You walk away from it and think, the worst war in the history of the US started here?

Thanks for hearing me out.

Harry

↑ 0 ↓ · flag

[Neil Schutzman](#) · 2 months ago 🔗

Good points, just a few additional comments.

I have to say from what I remember of studying history it is amazing the bone head reasons people will actually use to fire the first shot in a war, or the grievous miscalculations nations make. In the first case the first world war was initiated by a lone assassin, all sides thought the war would be short. The Japanese attack on Pearl Harbor was based on the assumption that the US would quickly sue for peace. The Japanese were under no illusion that they could win a protracted war. So unfortunately stupidity or miscalculation often seems to happen.

↑ 0 ↓ · flag

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[+ Comment](#)

[Miriam Kerzner](#) · 2 months ago 🔗

Southern states did vote to secede after their preferred candidate lost the election. They argued that they had that right. Lincoln argued that they didn't. Prof. Amar argues that, upon initial ratification of the Constitution, states no longer had the right to secede in part because representatives swear an oath to the Constitution. Furthermore, according to this argument, if you read the Declaration, there is a list of offenses by the king. The institutions of the federal government were functioning according to the rules of the Constitution just prior to the Civil War. Lincoln didn't steal the election, the judiciary could and would still hear cases brought before it (if I'm not mistaken, it was even dominated by southern justices). There was no tyranny and therefore no legal justification for secession or rebellion.

↑ 2 ↓ · flag

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[+ Comment](#)

[judah I rosner](#) · 2 months ago 🔗

All that you say is true. My question is why didn't they try to do it legally, ie by amending the Constitution rather than by firing on Ft Sumter?

↑ 0 ↓ · flag

[+ Comment](#)

Howard F. Campbell · 2 months ago

Miriam,

I couldn't agree more. Lost in the fog of history is the fact that Lincoln was indifferent at best to slavery; his causes were the preservation of the Union, and pretty much stopped there. The fact that the Courts, as you so correctly pointed out, were functioning, actually held Lincoln in check. He tried to suspend habeas corpus; no such luck. He tried to implement income tax legislation; again, no such luck. Neil, your observations are also essentially correct. What August 1914 did was expose all of the secret deals and treaties that had been made, and couldn't be abrogated. The person who probably knew more about the US than anybody in Japan, Admiral Yamamoto, vociferously argued that war with the US and its enormous industrial base would only buy Japan 6 months. Yamamoto, true to his uniform and oath, after he lost the discussion, dutifully started operational planning for the attack on Pearl Harbor, eventually paying for that with his life. As for the Civil War, both sides thought it would all be over in about 6 months, and like WWI, everybody would be home for Christmas. As for stupidity v. miscalculation, I'd always opt for the former.

Thanks for hearing me out.

Harry

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[+ Comment](#)

Joe Caro · 2 months ago

At the time the arguments proffered by the south revolved around states rights and sovereignty, and the north's were to preserve the union.

The south seceded from the union, and Lincoln's position was that they could NOT do so. As is usually the case, it was not really the first cannon fired that actually starts a war, but the inability to resolve the issues festering since colonial days. And since both sides staunchly believed they were in the right, there was not really going to be any resolution other than a fighting war because neither was going to give in on their principles.

Remember that it was a series of Rube Goldberg types of arrangements that kept them together until this. The 3/5 compromise we have already seen, and the Missouri Compromise being examples of desperately trying to accomodate and keep the union together.

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[+ Comment](#)

Miriam Kerzner · 2 months ago

Judah, they did vote, but at the individual state level. If they couldn't get their preferred candidate

elected for president, how would they manage to get a Constitutional amendment passed? That's a much higher hurdle.

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[+ Comment](#)



Howard F. Campbell · 2 months ago

Hello, all,

All valid points. At the time of the start of the civil war, there were 35 states, counting the "border states". Of that 35, only 11 were in the South. There was no way they were going to convince 16 other states-the 75% needed by Constitution of 27 at the time-to ratify an amendment to leave the Union. Fevers were running high on both sides.

Thanks for hearing me out.

Harry

↑ 0 ↓ · flag

Joe Caro · 2 months ago

Excellent observation.

I would add that the issue has more to do with slave vs free states. At the start of the Civil war there were 15 slave states. Eleven of those chose to secede. Maryland, Missouri, Kentucky and Delaware were slave states that did NOT secede. But the point about being outvoted is valid, that there was no way the slave states could, fortunately, get their way, BUT neither were the abolitionists going to get the requisite votes necessary for slavery's abolition. The compromises along the way, being felt as necessary to preserve the union, merely prolonged the date of the ultimate conflict over whether states had the right to sovereignty over the issue or the free states had enough votes to impose THEIR laws upon the others.

In my opinion what we see unfold here is a great example of the consequences of avoiding conflicting issues. Of course the course of history could have been different depending on how this was handled, such as the establishment of TWO nations, a North United States and South United States, for example, before the Civil War. Had the south won that is what we would have had anyway. But as we see, history turned out differently.

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[+ Comment](#)

judah I rosner · 2 months ago

Thanks everyone for your interesting & informed viewpoints. I guess the answer to my question is that the Southern states saw no way they could get enough votes via the Amendment process for them "resign" from the US in a lawful manner. Then, too, the hotheads usually lead the way into war & make it



very unpatriotic for others not to join.

Thanks again for making this an interesting thread..

↑ 0 ↓ · flag

Anonymous · 2 months ago

Just prior to hostilities there was a last-ditch "13 Amendment" that would protect slavery as it existed at the time. This was a Hail-Mary action that some had hoped would stave off a war between the states. However, the Northern states were lukewarm to it while the deep Southern states (South Carolina, Georgia, Alabama, Mississippi, and Florida) were enthusiastically hurdling towards succession.

As pointed out earlier, the founders insisted that once in with the U.S. Constitution the bond would not be broken. An early example is the founders nixing the suggestion by New York that it would sign on to the Constitution if in a few years could they have the option to leave.

This has to do with the 'geostrategic position' in support of a Constitution. Just as Britain and Scotland had their moat (the seas) and Switzerland had their natural mountainous borders, the US has their oceans. If the southern states had become a confederacy, and particularly if each state became "autonomous," which was witnessed in the last days of the war when states were leaving the confederacy, they would be free to enter into arrangements with the European powers. This would pose a constant threat to the southern border of the remaining Union states. Additionally, a succession blocked Union access to vital ports like New Orleans (via the Mississippi), Charlestown, and the Florida.

It was inconceivable that the US would ever allow succession. Buchanan thought he might go down as the last US President of it was in 1860.

↑ 1 ↓ · flag

Renee VonBergen Signature Track · 2 months ago

Nice call-out on the 13th Amendment (Corwin Amendment) that never was: "No Amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any state, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State."

This site ([ghostamendment.com](http://ghostamendment.com)) seems to give a good overview of it, but I take exception to this statement: "Not too steady in his grasp of constitutional law, President Buchanan signed the joint resolution the day the Senate approved it: an unnecessary step, given the fact that Congressional power to propose amendments to the Constitution is not subject to presidential approval or veto." I don't take that as an accurate example of whether or not Buchanan had a grasp on the Constitution, for when the real 13th Amendment was ratified, Lincoln, who clearly

grasped the Constitution, signed it, even though it was an "unnecessary step." In both cases, I believe both Presidents took those actions to show their support for the respective documents.

↑ 1 ↓ · flag

Russell Kehoe · 2 months ago

In a recent New Yorker article [http://www.newyorker.com/reporting/2013/03/11/130311fa\\_fact\\_toobin](http://www.newyorker.com/reporting/2013/03/11/130311fa_fact_toobin) it is pointed out how influential Justice Ginsburg has been in codifying the protection and demanded equality through laws and codes for all (sex, gender, race, sexual orientation) would in the workplace.

However, Justice Ginsburg had issues with the *Roe v. Wade* decision. This Supreme Court decision gave a right to [privacy](#) under the [due process](#) clause of the [14th Amendment](#) extended to a woman's decision to have an abortion. Ginsburg notes that, like all Supreme Court decisions, it could be overturned at any time. It made this 'right' a sitting target. From the article I gleamed that Justice Ginsburg showed the way to secure a 'right' so it cannot be susceptible to being voided is to tie it up with multiple laws, have it codified, and make it a part of the fabric of society.

↑ 2 ↓ · flag

Miriam Kerzner · 2 months ago

Had been. While she was a litigator and activist. As a justice her power comes only through her ability to persuade her fellow justices to see her interpretation.

Ginsburg's political problem with *Roe* is that she believes it was too far ahead of public opinion and led to a backlash. In other words, you can't make it a part of society, but you can act in a way that ensures that it doesn't become so. There is considerable disagreement with this perspective. Many people have pointed out that the pro-life/anti-abortion movement had already developed considerable strength before the decision in *Roe*.

Rights, btw, cannot be secured through legislation; only the Constitution (or its interpretation) can do so. Rights can be weakened through legislation as the laws minimizing access to abortion have done.

Again, the decision in *Roe* was not for a *woman's* right to privacy, but the doctor's: "According to Blackmun's majority opinion, the ruling fell under the right to privacy that is implicit in the Constitution. In keeping with his predilection for his former colleagues, he emphasized the rights not of women but of doctors: "The attending physician, in consultation with his patient, is free to determine, without regulation by the State, that, in his medical judgment, the patient's pregnancy should be terminated." The word "physician" appears in *Roe v. Wade* forty-eight times, the word "woman" forty-four times." [http://www.newyorker.com/talk/comment/2013/01/28/130128taco\\_talk\\_toobin](http://www.newyorker.com/talk/comment/2013/01/28/130128taco_talk_toobin)

↑ 1 ↓ · flag

[+ Comment](#)



Anthony Watkins · 2 months ago

Wow! I was wondering if anybody was ever gonna answer Judah's question!

Thanks!

I think this is exactly the case, as I see it, as a life long southerner:

Judah,

The short answer is no. Not ever. I don't think the Southern mindset, generally speaking, works along those lines. They were right, the entire country was wrong. An amendment is not an easy process, and it isn't meant to be. It has to pass out of both Houses of Congress, then go to the states for ratification. Then, 75% of the states have to agree to the amendment, which given the times, probably would've not passed. There are also time limits for ratification, set by Congress, and usually are a few years. War was coming, and I think everybody knew it, so it would have been an exercise in futility to use the amendment process.

Thanks for hearing me out.

Harry

↑ 1 ↓ · flag

[+ Comment](#)



Anthony Watkins · 2 months ago

Just curious, Anonymous, why do you not choose to match your opinions with your name?

↑ 0 ↓ · flag

[+ Comment](#)



Arlen Coyle · 2 months ago

This is my 8th Coursera course. This will be my only post on a discussion forum for the Con Law course.

In every course I have taken, without exception, an "Anonymous" poster has appeared to spout baloney. That's not an acceptable term in academic circles ... I suppose I'm not acceptable in academic circles either. But in other courses, and now this one, I wade through post after post by "Anonymous," and they

are all just fulla baloney. In another course, Anonymous hammered and hammered and hammered that the manned moon walks were staged ... phony ... fake. Again and again and again Anonymous came back with drivel. In another, Anonymous repeated and repeated and repeated that the CIA murdered President Kennedy and that it was all a giant conspiracy. Again and again and again. And so it has gone in history courses and others.

So ... this will be my only post on this course. I'm calling out Anonymous as a fraud, a phony ... a mere mouth organ for über right wack jobs. You are incapable of serious and rational thought. Anonymous: be off with ye.

↑ 2 ↓ · flag

Anonymous · 2 months ago

As far as I can tell, there are at least two "Anonymous" in this thread, me being one of them. This is my first "softy" Coursera class since all the others were about the real deal: scientific.

As to why I remain anonymous, easy. This is a class taught by a liberal professor, helped by, very likely, left leaning TAs. So to challenge their ideas effectively, ie dealing with the issues not with name calling, one needs to remain anonymous. In academic circles that deal with softy stuff, the overwhelming majority of debaters are liberal. The starting point is a "liberal point of view" and the debates are usually about the degree of "liberalism". One of my contributions, I hope, is "the other point of view", namely, that there is an intelligent argument to be made that the "living constitution", "legislation from the bench" ideas that liberals defend as if it were a matter of faith, undermines the rule of law that makes the US different from India.

↑ -2 ↓ · flag

Joe Caro · 2 months ago

Sorry anony. I\* am sure that you believe the rationale that you give for not identifying yourself.

You however, are guilty of the very same thing you imagine others on the other side are doing.

Personally I never respond to any annony post, I only respond to you at this time to suggest that you identify yourself to give your opinions some credence, if only that you have a name to identify with your posts. You can achieve all of your stated goals with a name attached, and let's face it if you have confidence in what you post then you should have the courage to put an identifier with it, even if this course is a "softy" as you describe it.

If you believe the course and those taking it are beneath your dignity, then why not move on to more substantive endeavors and leave the softies to their discussion.

↑ 0 ↓ · flag

Anonymous · 2 months ago

Joe.

I definitely reject the notion that this course and those taking it are beneath my dignity. I am very interested in these matters because they affect our daily lives in a very subtle but at the same substantial way. There is a reason why around half of the country doesn't bother with politics: by design, the US constitution mitigates a lot of government evilness. I myself am quite knowledgeable about politics and constitutional matters but at the same time politically disenfranchised because judicial activism is only one way our government is disconnected from Americans. The other way is of course, is lobbies of all sorts. At the end of the day, the vote of individual citizens doesn't matter as much as politicians tell us they do. For instance, I didn't even bother voting in the last Presidential election because my state is not a swing state (and will not be one unless there is some sort of political earthquake like the abolition of the electoral college). Since I wasn't passionate about Romney (and there is no way I would vote for a socialist like Obama), I thought that not voting was a way to show my displeasure with our political system.

Still, I think knowledge about our political system is paramount to success in America, which is why Constitutional Law is very important. I hope to learn something by the end of the course that I didn't already know. The professor is also a well known Constitutional Law which adds an excitement to the class that would not be there if he was a professor at some random college.

With that said, in science classes, the politics of the professor are irrelevant. Science deals with absolute truths in which opinion plays no role, so there you are free to discuss things on the merits. In the softies, not so much.

↑ -1 ↓ · flag

Anonymous · [a month ago](#) 🔒

As Anonymous I have decided to reveal myself:

**Jesse Ventura says he's gone 'off the grid' in Mexico so drones can't find him**  
<http://www.nydailynews.com/news/national/jesse-ventura-mexico-drones-find-article-1.1603880>

↑ 0 ↓ · flag

Joe Caro · [a month ago](#) 🔒

Drones go after their own?

Who knew?

↑ 0 ↓ · flag



Anthony Watkins · [a month ago](#) 🔒

I always enjoyed JV, but only because he brought pro wrestling humor to the blood sport of politics, but he was a rodeo clown pretending to be a bullfighter!

↑ 0 ↓ · flag

[+ Comment](#)

judah I rosner · 2 months ago

So sorry this thread has turned into a fight between right & left. I hope now that everyone has vented we can reserve these threads for serious thoughts on the Constitution & not arguments that can be read, heard & seen on your favorite media. Please, let's use the opportunity this course affords us to enlighten & not befuddle, to clarify & not to assert one's political opinions. No one is going to be converted by the humdrum arguments we hear over & over.

↑ 0 ↓ · flag

Joe Caro · 2 months ago

I understand your sentiment.

However the ongoing debate over the Constitution does take a liberal, conservative, and may I also add, a libertarian line. I believe that in order to fully understand the issues we should hear (read) out the opinions, especially the opinions of those who take a more extreme position, the reason being that I believe it is helpful to understand what they are selling, the better to prepare one's own arguments against their positions

I want to hear them out to see if they have any reasoning behind their position so I can understand it, and develop my own reasoning in response to it. By examining what they have to say it becomes easier to identify any fallacious reasoning on their part. It also helps to develop your own reasoning skills when constructing a defense of you OWN opinion. You will likely find that the extremes among us have the least sound arguments, and it is instructive to understand when crafting your own response.

For what it is worth.

↑ 1 ↓ · flag

Anonymous · 2 months ago

Very true.

Further, if ideology played no role on constitutional matters, we could replace all federal judges (at all levels) by a single, automated, mega computer that would interpret the constitution according to some algorithm (the political battle then would be about the algorithm). We have federal judges precisely because of the politics involved in the interpretation of constitutional matters. So attacking and exposing the politics of those who will strike down laws like DOMA or that uphold laws like Obamacare is as important to constitutional law as the constitution

itself, especially now that it is sure that we will get a "living constitution" flavor of the constitution.

Anthony Kennedy called "bigots" all those who oppose gay marriage in his DOMA decision. That cannot be let stand without scrutiny no matter his title and his role in the SCOTUS.

↑ 0 ↓ · flag

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### New post

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<https://class.coursera.org/conlaw-001/forum/...>