

the time it was drafted paramount, or should the intent and expectations of the drafters prevail? This distinction can lead to different opinions on whether the Second Amendment protects individual or collective rights. Is “originalism” more “objective” and “faithful” than “living Constitution” analysis? Some commentators asserted that “originalism” is both unduly rigid in limiting analysis to contemporaneous sources and malleable in presenting the interpreter with a range of often contradictory historical materials. In any event, a constitutional case in the twenty-first century without a line of probative judicial precedent to guide decision-making is rare, and contemporary constitutional analysis is more typically informed by a combination of earlier Court decisions, traditional practices, a desire to sustain foundational principles in an evolving society, and pragmatic considerations.

## SECTION VII

The last six decades were among the most significant in the Court’s history. They saw some of the most sustained efforts to change the Court or its decisions or both with respect to a substantial number of issues. On only a few past occasions was the Court so centrally a subject of political debate and controversy in national life or an object of contention in presidential elections. One can doubt that the public any longer perceives the Court as an institution above political dispute, any longer believes that the answers to difficult issues in litigation before the Justices may be found solely in the text of the document entrusted to their keeping. While the Court has historically enjoyed the respect of the bar and the public, a sense has arisen that the institution is not immune from the partisan politics affecting other branches. Its decisions, however, are generally accorded uncoerced acquiescence, and its pronouncements are accepted as authoritative, binding constructions of the constitutional instrument.

Indeed, it can be argued that the disappearance of the myth of the absence of judicial choice strengthens the Court as an institution to the degree that it explains and justifies the exercise of discretion in those areas of controversy in which the Constitution does not speak clearly or in which different sections lead to different answers. The public attitude thus established is then better enabled to understand division within the Court and within the legal profession generally, and all sides are therefore seen to be entitled to the respect accorded the search for answers. Although the Court’s workload has declined of late, a significant proportion of its cases are still “hard” cases; while hard cases need not make bad law they do in fact lead to division among the Justices and public controversy. Increased sophistication, then, about the Court’s role and its methods can only redound to its benefit.