

**THE FOLLIES OF DOCUMENT FUNDAMENTALISM:
Originalism in the Bible and the Constitution**

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For the letter killeth, but the spirit giveth life.

—The Apostle Paul (2 Corinthians 3:6)

I agree that the tradition of liberty is a living thing.

—Chief Justice John Roberts

I think the Constitution is a living thing in the sense that matters.

—Justice Samuel Alito

It's not always easy to figure out what the provision meant when it was adopted.

I do not say [originalism] is perfect. I just say it's better than anything else."

—Justice Antonin Scalia

How often have we said “See what it says here” in a dispute with another person? All of us are document fundamentalists at some times in our lives. Following the rules in documents guide us through our complex daily lives. Non-compliance can get us into needless trouble.

At Tea Party gatherings pocket Constitutions are handed out as eagerly as the Gideons distribute New Testaments on campuses every year. The message is clear: read God’s word and you will be redeemed, or read the Constitution and the country will be saved. In each case there are those who will very confidently tell you what text’s original intent and meaning is.

The Bible and the Constitution are similar in that they were written by multiple authors, but some will say that both were inspired by a single divine author. The two are different in that the Bible was written in three different languages over a period of a thousand years with little or no information about the intent of the human authors or the original meaning of the words. Even so biblical fundamentalists demonstrate far more ignorance about the evolution of Christianity that judicial “originalists” do with regard to our founding documents.

The divine inspiration of the Bible is based on a single verse in 2 Timothy 3:16, and since Paul is writing before the Gospels, he must have meant that only his version of the Hebrew scriptures was inspired. I’m sure that Paul would have been surprised that the Church Fathers would also include his letters to his congregations. Scholars have founded evidence of at least four letters to the Corinthians, so how can we be sure that that all of Paul’s letters were saved?

There were also heated disputes about which books to include. Many Church Fathers thought that the Book of Revelation was just too weird and esoteric, and it just barely made it in

after two hundred years of debate. Today, the Jews have their own Hebrew scriptures, Christians have their own version of the Old Testament, and even Protestants and Catholics cannot agree what constitutes the real Bible.

One sees church signs such as “Full Gospel Tabernacle” where the preachers claim that they are preaching a pure, “historical” Christianity. But historians know that there were dozens of different Christian sects, some following one gospel and not another, and some following gospels that did not make it into the canonical New Testament. Willis Barnstone has put all of these together in a 1,485-page *The Restored New Testament* (Norton, 2009), which would really amaze (and irritate) those who think they are teaching the “true” gospel.

In addition to the uncertainty whether we have translated the Hebrew, the Aramaic, and the Greek correctly, there are also 33,000 textual variations in the canonical New Testament manuscripts. Most of these are minor, but one must remember that Justice Antonin Scalia has argued over the placement of a comma in the Second Amendment, but biblical Hebrew and Greek have no such conveniences, not even periods at the end of sentences.

One variation in the New Testament manuscripts is not minor. A scribe changed the Greek in 1 John 5:7 to read: “For there are three that bear record in heaven, the Father, the Word, and Holy Ghost: and these three are one” (King James). This unauthorized trinitarian amendment to the Bible remained in place until the Revised Standard Version was published in 1946.

There is no evidence for the Trinity in the Hebrew scriptures and very little to support it in the Greek manuscripts of the New Testament, so this scribe was eager to bolster the case for the Trinity with a robust, unambiguous reference of his own. This act of textual fraud makes a lot of difference to me personally: the founder of my denomination was burned at the stake for claiming that there was not sufficient textual evidence for the Trinity. Biblical originalism got my guy killed.

With regard to biblical interpretation, my all-time favorite example is the meaning of the “whore of Babylon” in Revelation (chapters 17 & 18). Staying within the historical context of the author(s), serious scholars are divided on whether her identity is Rome or Jerusalem. In his nasty polemics Martin Luther was sure that she was the Catholic Church. More recent candidates have been the Soviet Union and Hillary Clinton. A text that can give so many readings is obviously a document subject to historical context and the individual’s world-view.

The original view of Christian economics is a form of communism in which “all who believed were together and had all things in common; and they sold their possessions and goods and distributed them to all, as any had need” (Acts 2:44-45). In Acts 5 Ananias and his wife Sapphira are struck down by God when they sold some property and “kept back some of the proceeds.” Some say that this was only a temporary arrangement, but writing 200 years later Church Father Tertullian declared that “we do not hesitate to share our earthly goods with one another. All things are common among us but our wives” (*Apology*, chap. 39). The European ancestors of our Hutterites were persecuted and murdered for insisting on original Christian economics.

For many on the Religious Right the Ten Commandments are just as important as the Constitution for their political philosophy. If we look at the historical and linguistic context of

this tribal law code we find that the Sixth Commandment applies only to the killing of Hebrews, not the innocent non-Hebrew women and children who were liquidated in great numbers during the “scorched earth” policy of the conquest of Canaan. The Seventh Commandment against adultery only applies to Hebrew women, because we know that the Israelites took non-Hebrew virgin girls for themselves in their raids (Num. 31), and that Abraham had a child with the slave girl Hagar. Furthermore, only two of the commandments (against killing and stealing) apply to today’s secular society and the Constitution on which it rests.

The biblical passage that most pertains to constitutional rights is the one that states that human beings are created in the “image of God” (Gen.1:26). Nowhere in the Bible is this concept explained; indeed, it is rarely mentioned. Early Church Fathers fell back on Greek philosophy for the meaning that humans are created as moral and rational beings. With the rise of liberal democracy Christian theologians argued that the biblical view of human nature supports the principle of equality and the intrinsic value of every single individual.

We now have archaeological evidence that shows that this interpretation is not the original meaning of the Hebrew phrase. A contemporary linguistic equivalent has been now been found, and it is the type of evidence that would thrill any conservative jurist. The inscription at Tell-Fekheriyeh is in Aramaic, later to become Jesus’ own language. The exact phrase “likeness and image of God” here means that Adam and Eve are God’s sole representatives on earth, standing as a king would to his subjects ruling them by divine right. A literal reading of the Bible supports classical conservatism, not the classical liberalism of the American and French Revolutions. American loyalists were right in remaining true to God’s representative on earth and following Paul’s injunction that Christians should “be subject to principalities and powers, to obey magistrates” (Titus 3:1).

This explains the fact that Christ alone has the “image of God” in the New Testament (Col. 1:15) and in one passage a man has it in relation to ruling his wife (1 Cor. 7:11). This hierarchical view of human relations also squares with the ancient Hebrew belief that women, counted as men’s property, are worth only three-fifths the value of a man, with the elderly having less value and young children even less (Lev. 27:1-7). Some might object saying that the laws of Leviticus no longer apply, but some Christians want to use the same laws to condemn gays and lesbians to death. Originalism in the Bible and the Constitution fails as a theory when it proponents apply it in some instances but not in others.

Some Christians in my own hometown are more consistent, denying women the right to vote and calling for the execution of homosexuals. They also follow scripture—their pastor says that one should not be ashamed of anything in it—in claiming that Southern slave owners had a biblical sanction to own slaves. They quickly become moral relativists by saying that no one should have that right today. For more see www.class.uidaho.edu/ngier/Slavery.htm

Jurists such as Antonin Scalia, Clarence Thomas, and Robert Bork insist on following the original meaning of the Constitution, but they do not always agree. Some originalists believe that the authors of the 14th Amendment would not have supported school desegregation, but Bork strongly disagrees. Justice William Rehnquist supported the principle of “separate but equal,” but he retracted this position when he was nominated for the Supreme Court. Justice Scalia believes that the 14th Amendment does not support a woman’s right to vote because female suffrage was not in the minds of the amendment’s authors.

Thomas also spurns previous court decisions, saying that these justices may have also missed the framers' intent. Scalia rejects this extreme originalist position saying that he "is not a nut." (University of Chicago law professor David Strauss replies: "If following a theory consistently would make you a nut, isn't that a problem with the theory"?) The parallel in biblical interpretation is the tendency for non-denominational Christians to reject 2,000 years of church teaching that does not conform to their reading of scripture.

With regard to abortion originalists demand to know where one can find the right to privacy in the Constitution, but then where does it say that corporations are legal persons? This was the assumption used by conservatives to decide this year that corporations should not be limited in their support for political campaigns. At the time of the nation's founding, personhood was limited to human beings and God.

Originalists also argue that foreign laws (especially those of "socialist" Europeans) should not be used as legal guides, but they do allow reference to English Common Law because it is integral to the American legal tradition. With regard to abortion these jurists then would be bound by the English law that abortion was not murder until the fetus "had quickened in the womb," a position very similar to the majority in *Roe v. Wade*. This was also the position of Christian theologians such as Augustine and Aquinas. One would normally call a view held for 1,600 years "conservative" not "liberal." For more on abortion see www.class.uidaho.edu/ngier/abortion.htm

In his dissent in *Romer v. Evans* Justice Scalia claimed that the Constitution says nothing about homosexuals, so the people of Colorado could pass laws that discriminate against them. But laws in the 18th Century required that homosexuals be executed. I don't imagine that a state legislature would ever pass such a law, but what is to prevent originalist jurists on the Religious Right, holding a position consistent with the principle, supporting such a retrograde position?

The best argument against originalism is found right in the Constitution. The Ninth Amendment states that "the enumeration of certain rights shall not be construed to deny or disparage others retained by the people." This means that judges are free to argue for rights that have not been explicitly listed in the Constitution.

Returning to the parallel between legal and biblical originalism, I want to point out an troublesome irony. Judges who are nominated to serve on our courts are expected to have the best legal education and to have displayed excellence in the legal profession. Many conservative Christians, however, have nothing but disdain for scholars who have spent their lives learning difficult languages and/or laboring in archaeological sites searching for the original meanings of biblical texts.

There is at least consistency—but certainly no virtue—in those who reject the expertise of both judges and biblical scholars. In these essential areas of our lives they arrogate all decision making to their own ill informed minds. I was pleased to read that a Pennsylvania judge, in ruling the state's blasphemy statute unconstitutional, warned that people were filing charges on "standardless determinations based on nothing by their own religious beliefs."

Finally, both jurists and religionists should realize that the Apostle Paul spoke the truth when he said: “The letter killeth, but the spirit giveth life” (2 Cor.3:6). At least two conservative Supreme Court justices agree with Paul. In response to a question from Sen. Arlen Specter, John Roberts said: “I agree that the tradition of liberty is a living thing”; and Samuel Alito answered: “I think the Constitution is a living thing in the sense that matters. . . It sets out some general principles and then leaves it for each generation to apply those to the particular factual situations that come up.” It was also good to hear that, contrary to Thomas’ originalism, Roberts and Alito would respect previous court decisions, not rehearing them nor second guessing the opinions of their distinguished predecessors.

Nick Gier taught philosophy at the University of Idaho for 31 years. I’m grateful to Donald Crowley, who teaches the Constitution at the University of Idaho, for helping me understand “originalism.”
