Opinion
Letters to the Editor



by NCR Staff

View Author Profile

Join the Conversation

Send your thoughts to *Letters to the Editor*. Learn more

October 20, 2022
Share on BlueskyShare on FacebookShare on TwitterEmail to a friendPrint



U.S. Supreme Court Justice Samuel Alito Jr. on Sept. 27 gave the inaugural lecture for a new project on constitutional originalism at the Catholic University of America's law school. Following are reader responses to our reporting that have been edited for length and clarity.

The test U.S. Supreme Court Justice Samuel Alito Jr. administered to his wife aptly illustrates a failure of original constitutionalism. Proof of original constitutionalism would have had Mrs. Alito, indeed, any listener, expressing a strong preference for Bach on a harpsichord. Perhaps Mrs. Alito doesn't have an appreciation for historical performances, nor do most of us. Our ears and taste reflect the times and culture in which we live. So, music fails as a test. What about medicine, space exploration or map reading, say the way Ben Franklin did it. Would they work any better?

A better perspective for me comes from a tweet by Bishop Daniel Flores, U.S. bishops' conference Committee on Doctrine Chair, posted on Wednesday, Sept 28. He tweeted a verse from the day's Gospel "No one who sets a hand to the plow & looks to what was left behind is fit for the Kingdom of God. Luke 9:62" and this reflection: "We cannot drag the future backwards, we can only wield the plow forward. We carry what lies behind within the movement that is the present moment emptying itself into the future."

Let's apply that perspective here: Judges are to wield the plow forward, driven by the momentum of present (and the accumulation of previous times) to rule on

legislation for the future, not to drag us backwards.

JULIANA BOERIO-GOATES
Orem, Utah

***

From the perspective of a layman, the idea of interpreting the Constitution based upon the cultural understandings of the late 18th century is nonsense. For example, whereas the Eighth Amendment, enacted in 1791, proscribes cruel and unusual punishments, it was not uncommon for horse thieves to be hanged. Should we hang horse thieves today? The church argues against capital punishment generally but it was common at the time so perhaps Justice Alito and his fellow Catholics would argue for the continuation of capital punishment since it was common place in 1789 when the Constitution was ratified. That would place them outside the teachings of the church which, I am certain, some of our bishops would find a reason to excuse.

Justice Antonin Scalia said the "militia clause" in the Second Amendment was inoperable thereby denying the states the right to regulate firearms. The amendment specifically provides for that oversight since the militias were state responsibilities. If considered in the "originalist" context, any state could ban the types of weapons it chooses since the states control the militia presumably including the types of firearms they allow their citizens to carry.

Scalia also argued in a presentation that equity and justice are subordinate to the text of the law. If that is the case, why do we need judges to interpret the law? The text must be definitive from his perspective. However, in this culture that does not work very well when there are mitigating circumstances to cases which need to be considered.

The whole canard of originalism is to prevent the government, particularly the federal government, from exercising its powers since control of that level of government is more difficult than controlling government on the state level where campaigns are less expensive. Some members of the legal establishment, including scholars of the Constitution, see the Constitution as a living document which is adaptable, through interpretation, to the current culture. This is the reason we do not hang horse thieves or put people in debtors' prisons. It is also the reason we have an air force and railroads, neither of which existed in the 18th century.

It is unfortunate that some conservatives are afraid of our evolving culture wherein we have equality across the board for both sexes and all races and ethnicities which was not the case in 1789.

CHARLES A. LE GUERN
Granger, Indiana

Advertisement

***

Catholic University of America's Project on Constitutional Originalism and the Catholic Intellectual Tradition appears to embrace the principle that "the change in public opinion and feeling in relation to [Issue X], which has taken place since the adoption of the Constitution, cannot change its construction and meaning, and it must be construed and administered now according to its true meaning and intention when it was formed and adopted."

If you substitute "the African race" for "[Issue X]" in the above, you have an exact quote from the Supreme Court's statement of the case in *Dred Scott* v. *Sandford*. In fact, Chief Justice Roger Taney engaged in an exhaustive summary of state and local laws regarding slavery at the time of the ratification of the Constitution, to support his contention that Americans of African descent were not and could not be U.S. citizens, making his opinion a "master class" in the theory and practice of constitutional originalism. Is that the intellectual tradition that Catholic University is celebrating?

A statue of Taney, a Catholic, once used to stand on the grounds of the Maryland State House in Annapolis. It was removed by the State of Maryland to an undisclosed storage facility in 2017. Since Catholic University wants to highlight and endorse the practice of constitutional originalism by Catholics, it would only make sense for it to use some of the $4.25 million anonymous payment it was given for this "project" to acquire, erect, and give pride of place to the now-available statue of Taney, right?

ROBERT M. SIMON
Berwyn Heights, Maryland

***

Given the power that the Supreme Court has in affecting the future of our country, I am writing to Supreme Court justices to encourage a broad view of justice, regardless of their politics.

I write:

> Dear Judge Barrett,
>
> As a woman, a mother, and a Catholic many of us feel a connection to you and expect that you will work for the preservation and betterment of all Americans, regardless of your political beliefs. I ask that your deliberations be informed and refined by considerations for the common good and Catholic social teaching, as you write opinions and make rulings.

I encourage others to write to the Supreme Court Justices, too.

MARY RYAN-HOTCHKISS
Portland, Oregon

***

Justice Alito's point about early music, i.e. historical performance on copies of original instruments and comparing it with "constitutional originalism" is both nutty and ill informed. The core issues here are music and law. Music is an art, organic and grounded in performance and performance skills with an understanding and appreciation of the composer(s). Music is also emotionally grounded and about sound and movement. "Historical performance" is about all of these things. The law is not at all the same thing or about the same things.

The law is not meant to be static, and stasis seems to be what Alito is out to reaffirm, as are many of his colleagues on the high court. It is unfortunate that Alito carries with him a kind of cultural and social ignorance and insensitivity, which are both grounded in and protected by his Catholicism. I do not believe this is what Catholicism is meant to be about. Among other things, Alito needs to read more encyclical letters.

PETER KOUNTZ
Philadelphia, Pennsylvania