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Chapter 1 : U.S. Constitution: A flexible document â€“ Global Public Square - calendrierdelascience.com B

How Does the Constitution Show Flexibility? The United States Constitution is the most basic law of the United States, all other laws must agree with it.

There are class notes, numerous Supreme Court case summaries and information on how to write a research paper inside. How can the Constitution be referred to as a living document? When our founding fathers created the Constitution they realized that any document meant to frame a government needed flexibility. They wanted the Constitution to be able to stand for generation after generation. In recognizing this they incorporated two important features: This then allows for a loose interpretation of the constitution and allows constitutional flexibility. The fact that Jefferson actually used the elastic clause is an irony not lost on either Hamilton or Jefferson. Here is the original text: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof. Here is the text from the Constitution: When justices make a decision, take for example Roe v Wade, they are interpreting what the Constitution meant and said. In Roe, Justice Blackmun claimed that women had had a "right to privacy" and that as a result the state could not pass laws restricting women from having abortions. There is nowhere, however, in the Constitution where you will find this "right to privacy. They felt that the umbrella of Constitutional protections in the Bill of Rights created an unstated right to privacy. Other Supreme Courts have agreed. There are many other examples of interpretation as well. For example, in Gideon v Wainright the Court ruled that a lawyer had to be provided if the accused could not afford one. The Court interpreted this to mean that the state had to provide one if you can not afford one. There is nothing to say that later courts can not disagree and change the official interpretation of the Constitution but this too provides flexibility to meet the needs of a changing nation. It should be noted that this is not even in the Constitution, it is custom or precedent. This speaks to the evolving and flexible nature of the document. All of these portions of the constitution provide for flexibility and enable the constitution to truly be a "living" document.

Chapter 2 : How Does the Constitution Show Flexibility? by Casey C on Prezi

ELASTIC CLAUSE. Article 1, Section 8, Clause In this clause our founding fathers state that congress may pass all laws necessary and calendrierdelascience.com then allows for a loose interpretation of the constitution and allows constitutional flexibility.

Constitution, a topic that has stirred much discussion on the Global Public Square. Their key point was that our founding document is not monolithic - it requires constant interpretation and re-interpretation. Rarely has Constitution been at the heart of our politics as much as it is today - from the Tea Party invoking it daily, to the claim that the Health Care Reform Act violates its mandates. But what the Constitution actually means is a question that stirs all Americans. Here to put it into context are two of the smartest minds out there: Simon, let me start with you. What the Constitution meant in terms of government power was at the vortex of their debate. Tell us about it. The miracle is that Hamilton and Jefferson ever collaborated enough to craft the Federalist Papers. The issue that is the hot button issue for us now is actually in the best tradition of American politics. It is whether or not to take a relatively expansive view of what government should do. Is government only entitled to do those things, which were enumerated in the late 18th century? The Constitution was written by men in wigs, some of whom owned slaves, in a country that numbered 4 million. They did not know of the existence of the cotton gin, let alone manufacturing. They did not know of an army, navy and air force of the kind we have today, let alone all of modern technology. Alexander Hamilton envisioned a modern, great industrial superpower. The founders all fought and disagreed, often vehemently, but there was one thing they were all very impressed by, and that was the classical Republican virtues. The Constitution was written because the Articles of Confederation produced a central government that was too weak. They were worried about the fact there was no space for civic virtue, for public virtue, and for the proper handling of government debt. So that was why they brought together a stronger government and talked a great deal about civic virtue - about Republican virtue. In other words, they were not so hard on individualism. They were more concerned about the common good. But the most important thing they did was to write a short document. It is a version of an English Constitution. People often point out famously that Britain has no constitution. Well, they have an accumulated set of practices. In that sense, the genius of the U. Constitution was they understood not to overdo it. So, let me jump then to a question which is at the heart of so much of this debate - the word originalism. People say we must interpret the Constitution as it was understood by those who drafted it. Does that make sense? And then, more suddenly, how do those who drafted it understand our ability - and you maybe just answered this - to add interpretations based upon new dynamics, new facts and new situations? Well, originalism cannot possibly be a monolithic concept. As Fareed said, and I think the three of us agree, the glory of that founding was the intensity of its dispute. Disputes were never allowed to be so ferocious that they called, as some do in contemporary political sphere, for a virtual obliteration of the other party. You are a some form of, you know, crummy European traitor. What Hamilton wanted to do was improve the British state and make it free. The British state was a monied, corrupt oligarchy. And Hamilton rebelled against that. But he wanted to take the practical wisdom as a relationship between power, finance and political justice and make it better. But bring that back to just the interpretation of the document itself, since that is - Schama: The Founding Fathers in all their disputes and disagreements were children of the Enlightenment. And the essence of the Enlightenment was to understand how to think about power and government. It was in their intellectual DNA to feel things would move on again. Their generosity was to sort of organically provide for the Constitution to flower and bloom and change and mutate as circumstances changed. Do we see that in the writings of time so we can say, "Wait a minute, the Founders themselves understood that the wooden interpretation of the words just on the page themselves would not deal with the crises we would have to deal with? And many people at the time recognized that there were major issues that were unfinished. The nation was just being founded. The United States is unusual that we became a state before we became a nation. In America, you first created a state. You first created a founding document, and then you got about creating Americans. And so, nobody really knew how it would play out. I think there was a sense of uncertainty. And

everyone accepted that. Well, I think that they are right to recognize that America is unique and it has, at its core, not a blood and soil nationalism, but a document - a document about political ideas. And we should cherish them and we should debate them. It really is a brief document that allows you to fill in the blanks over the last years, filled with disagreements from the Founding Fathers onwards. And so the idea that you can magically say the Constitution says this is flawed. People keep saying, "Well, what would Madison have said about modern drug policy in Washington? The world the Founders knew was so different. So of course you have to modernize the Constitution and interpret it. But we have an upper House now, the Senate, which is probably the most undemocratic and unrepresentative upper House in the world. Because of the allocations: Each state gets two votes regardless of how many people they have - 36 million people in California, half a million in Wyoming. But people in Wyoming have 72 votes for every vote that California has. Well, let me end this fascinating conversation by observing the debate about the Constitution and education about the Constitution that we all need is precisely what, I hope, folks get by listening to you. I hope people better understand the historical roots of what is a much more subtle, organic document than the wooden, monolithic and linear document we hear about so often. I hope we get that.

Chapter 3 : Constitutional - Flexibility of the UK constitution Flashcards by Mark Hardy | Brainscape

The adaptability of flexible constitutions makes them popular among the people. It also allows for governments to bend in the face of extreme crises and circumstances without having to break laws or reformat national frameworks.

Robinson and the flexibility of the UK constitution also received attention in oral arguments and exchanges with the Justices during the four-day hearing before the Supreme Court. In exchanges with the President, Lord Neuberger, and Lord Reed, an even more radical possibility of flexibility was mooted, namely that the constitutional effect of the Act and Brexit referendum might be to render the question of construction of the ECA for Parliament and not the courts eg Day 2 transcript, pp. Is there authority â€" or otherwise constitutional warrant â€" for such flexibility in interpreting a statute such as the ECA? There were textual indicators in support of a strict six-week requirement for the further elections which the minority, Lords Hutton and Hobhouse, and the Lord Chief Justice in the Court of Appeal, found to be determinative but the legislation contained no express provision directly addressing the question. As such, no support can be found in Robinson for the court abdicating its ordinary constitutional duty to authoritatively construe the legal effect of statutes enacted by Parliament. Put another way, it would be an exercise in politics and not law. The Miller case does not concern a constitutional arrangement with a retained component of political judgment. It raises hard-edged questions of law as to the legal effect of an Act of Parliament on the scope of prerogative powers and, as such, is squarely and exclusively a question of law for the courts. This is and should be less fertile ground for a plea for flexibility. A conclusion that a later Act has impliedly amended an early Act on the same subject matter by the reading of two Acts together is in modern times exceptional. This is surely a fortiori in the case of an amendment to legislation deemed of constitutional status because Parliament has specified that it cannot be repealed by implication, or when the putative amendment otherwise impinges on fundamental constitutional principles a point to which I return briefly below. Special flexibility to allow the court to reach the conclusion that a later Act has amended the effect of earlier legislation without a clear textual foundation is moreover an invitation to identify Parliamentary intention other than through the established means for doing so. The problems with seeking to discern Parliamentary intention from Parliamentary debates in the case of ambiguous statutory language pursuant to the strict rule in Pepper v Hart are notorious see eg per Lord Hoffmann in Robinson at [39]-[40]. The myriad additional problems arising from employing a broader range of sources extraneous to the statutory language to discern Parliamentary intention â€" let alone popular intention in a referendum â€" are self-evident. On the case as put by the claimants and accepted by the Divisional Court, the proposition that the Government retains prerogative power to withdraw the UK from the EU, despite the resulting sea-change in domestic law and removal of individual rights, engages certain fundamental constitutional principles. These principles were not at issue in Robinson. It is trite that legislation is not enacted in a vacuum and that legislators and drafters take for granted and in any event are assumed by the courts to take for granted long-standing principles of constitutional and administrative law such as those relied on by the claimants and Divisional Court. These principles do not just illuminate Parliamentary intention, but also define the proper constitutional relationship between the branches of government in the UK. As Cross on Statutory Interpretation explains: As the extraordinarily constituted Supreme Court deliberates following the hearing in Miller, it will no doubt be all too aware of the pressing factual and political context of the extraordinary case before it. The author would like to thank Professor Alison Young for helpful comments on an earlier draft of this post. Raj Desai is a barrister at Matrix Chambers. Blog 17th Jan available at https:

Chapter 4 : Constitution of the United Kingdom - Wikipedia

Flexible constitution definition is - a constitution that may be amended by the ordinary process of legislation and is therefore relatively easy to amend. a constitution that may be amended by the ordinary process of legislation and is therefore relatively easy to amend.

Parliamentary sovereignty means judges cannot invalidate legislation. In the 19th century, A. Dicey , a highly influential constitutional scholar and lawyer, wrote of the twin pillars of the British constitution in his classic work Introduction to the Study of the Law of the Constitution These pillars are the principle of Parliamentary sovereignty and the rule of law. Parliamentary sovereignty means that Parliament is the supreme law-making body: There has been some academic and legal debate as to whether the Acts of Union place limits on parliamentary supremacy. Historically, "No Act of Parliament can be unconstitutional, for the law of the land knows not the word or the idea. For example, Parliament has the power to determine the length of its term. By the Parliament Acts and , the maximum length of a term of parliament is five years but this may be extended with the consent of both Houses. This power was most recently used during World War II to extend the lifetime of the parliament in annual increments up to Parliament also has the power to change the make-up of its constituent houses and the relation between them. Examples include the House of Lords Act which changed the membership of the House of Lords, the Parliament Acts and which altered the relationship between the House of Commons and the House of Lords, and the Reform Act which made changes to the system used to elect members of the House of Commons. The power extended to Parliament includes the power to determine the line of succession to the British throne. Parliament also has the power to remove or regulate the executive powers of the Monarch. In recent times the House of Commons has consisted of more than members elected by the people from single-member constituencies under a first past the post system. Following the passage of the House of Lords Act , the House of Lords consists of 26 bishops of the Church of England Lords Spiritual , 92 representatives of the hereditary peers and several hundred life peers. The power to nominate bishops of the Church of England and to create hereditary and life peers is exercised by the Monarch, on the advice of the prime minister. By the Parliament Acts and legislation may, in certain circumstances, be passed without the approval of the House of Lords. Although all legislation must receive the approval of the Monarch Royal Assent , no monarch has withheld such assent since Such a motion does not require passage by the Lords or Royal Assent. The House of Lords has been described as a "revising chamber". By the Constitutional Reform Act it has the power to remove individual judges from office for misconduct. Additionally, Dicey has observed that the constitution of Belgium as it stood at the time "comes very near to a written reproduction of the English constitution. These principles include equal application of the law: Another is that no person is punishable in body or goods without a breach of the law: Unity and devolution[edit] Main articles: England, Wales , Scotland and Northern Ireland. Parliament contains no chamber comparable to the United States Senate which has equal representation from each state of the USA , the Brazilian Senate, which has three senators from each state, or the German Bundesrat whose membership is selected by the governments of the States of Germany. Scotland, Wales and Northern Ireland have devolved legislatures and executives, while England does not. The authority of these devolved legislatures is dependent on Acts of Parliament and, although it is politically very unlikely, they can in principle be abolished at the will of the Parliament of the United Kingdom. In England the established church is the Church of England. In Scotland, Wales and Northern Ireland, there is no state church; in Wales and Northern Ireland their respective state churches were disestablished that is, they were not disbanded but had their "established" status abolished by the Welsh Church Act and the Irish Church Act In Scotland, its national church had long held its independence from the state, which was confirmed by the Church of Scotland Act England and Wales share the same legal system, while Scotland and Northern Ireland each have their own distinct systems. These distinctions arose prior to and were retained after the unions according to the terms of the Treaty of Union , ratified by the Acts of Union , and the Acts of Union The Scottish Parliament in Edinburgh is an institution created by recent devolution in the United Kingdom. Reforms since have decentralised the UK by setting up a

devolved Scottish Parliament and assemblies in Wales and Northern Ireland. The UK was formed as a unitary state , though Scotland and England retained separate legal systems. Some commentators [33] have stated the UK is now a "quasi- federal " state: Attempts to extend devolution to the various regions of England have stalled, and the fact that Parliament functions both as a British and as an English legislature has created some dissatisfaction the so-called " West Lothian question ". European Union membership[edit] Main article: In his judgment in Factortame, Lord Bridge wrote: Thus, whatever limitation of its sovereignty Parliament accepted when it enacted the European Communities Act was entirely voluntary. Under the terms of the Act of it has always been clear that it was the duty of a United Kingdom court, when delivering final judgment, to override any rule of national law found to be in conflict with any directly enforceable rule of Community law. Thus there is nothing in any way novel in according supremacy to rules of Community law in those areas to which they apply and to insist that, in the protection of rights under Community law, national courts must not be inhibited by rules of national law from granting interim relief in appropriate cases is no more than a logical recognition of that supremacy.

Chapter 5 : Constitution - Constitutional change | calendrierdelascience.com

There are implications regarding the flexibility of the constitutions according to whether or not they are codified. The English constitution is flexible in the sense that there are no special majorities or arrangements needed to change the constitution, it can be done via the normal legislative process.

Bring fact-checked results to the top of your browser search. Constitutional change Written constitutions are not only likely to give rise to greater problems of interpretation than unwritten ones, but they are also harder to change. Unwritten constitutions tend to change gradually, continually, and often imperceptibly, in response to changing needs. But when a constitution lays down exact procedures for the election of the president , for relations between the executive and legislative branches, or for defining whether a particular governmental function is to be performed by the federal government or a member state, then the only constitutional way to change these procedures is by means of the procedure provided by the constitution itself for its own amendment. Any attempt to effect change by means of judicial review or interpretation is unconstitutional, unless, of course, the constitution provides that a body such as the U. Supreme Court may change, rather than interpret, the constitution. Many constitutional documents make no clear distinction between that which is to be regarded as constitutional, fundamental, and organic, on the one hand, and that which is merely legislative, circumstantial, and more or less transitory, on the other. The constitution of the German Weimar Republic could be amended by as little as four-ninths of the membership of the Reichstag , without any requirement for subsequent ratification by the states, by constitutional conventions, or by referendum. Although Hitler never explicitly abrogated the Weimar Constitution, he was able to replace the procedural and institutional stability that it had sought to establish with a condition of almost total procedural and institutional flux. A similar situation prevailed in the Soviet Union under the rule of Stalin. But Stalin took great trouble and some pride in having a constitution bearing his name adopted in The Stalin constitution continued, together with the Rules of the Communist Party of the Soviet Union , to serve as the formal framework of government until the ratification of a new, though rather similar, constitution in The procedures established by these documents, however, were not able to provide Soviet citizens and politicians with reliable knowledge of the rules of the political process from one year to the next or with guidance as to which institutions and practices they were to consider fundamental or virtually sacrosanct and which they could safely criticize. As a result, changes in the personnel and policies of the Soviet Union and of similar Communist regimes were rarely brought about smoothly and frequently required the use of violence. Constitutional stability If one distinguishes between stability and stagnation on the one hand and between flexibility and flux on the other, then one can consider those constitutional systems most successful that combine procedural stability with substantive flexibilityâ€”that is, that preserve the same general rules of political procedure from one generation to the next while at the same time facilitating adaptation to changing circumstances. By reference to such criteria , those written constitutions have achieved the greatest success that are comparatively short; that confine themselves in the main to matters of procedure including their own amendment rather than matters of substance; that, to the extent that they contain substantive provisions at all, keep these rather vague and generalized; and that contain procedures that are congruent with popular political experience and know-how. These general characteristics appear to be more important in making for stability than such particular arrangements as the relations between various organs and levels of government or the powers, functions, and terms of tenure of different officers of state. There is little evidence to support the thesis that a high level of citizen participation necessarily contributes to the stability of constitutional government. Much more important than formal citizen behaviour, such as electoral participation, are informal attitudes and practices and the extent to which they are congruent with the formal prescriptions and proscriptions of the constitution itself. Constitutional government cannot survive effectively in situations in which the constitution prescribes a pattern of behaviour or of conducting affairs that is alien to the customs and way of thinking of the people. When, as happened in many developing countries in the decades after World War II , a new and alien kind of constitutional democracy is imposed or adopted, a gap may soon develop between constitutionally prescribed and actual governmental

practice. This in turn renders the government susceptible to attack by opposition groups. Such attack is especially easy to mount in situations in which a constitution has a heavy and detailed substantive content, when, for example, it guarantees the right to gainful employment or the right to a university education for all qualified candidates. In the event of the government being unable to fulfill its commitment, the opposition is able to call the constitution a mere scrap of paper and to demand its improvement or even its complete replacement. Such tactics often have succeeded, but they ignore the dual strategic function of the constitution.

Chapter 6 : What is the UK Constitution?

"The present publication is the updated edition of the proceedings of the Hogendorp conference of It incorporates the modified flexibility provisions of the Treaty of Nice."--Jacket.

What is the UK Constitution? Constitutions organise, distribute and regulate state power. In other countries, many of whom have experienced revolution or regime change, it has been necessary to start from scratch or begin from first principles, constructing new state institutions and defining in detail their relations with each other and their citizens. By contrast, the British Constitution has evolved over a long period of time, reflecting the relative stability of the British polity. It has never been thought necessary to consolidate the basic building blocks of this order in Britain. What Britain has instead is an accumulation of various statutes, conventions, judicial decisions and treaties which collectively can be referred to as the British Constitution. It has been suggested that the British Constitution can be summed up in eight words: What the Queen in Parliament enacts is law. Parliamentary sovereignty is commonly regarded as the defining principle of the British Constitution. This is the ultimate lawmaking power vested in a democratically elected Parliament to create or abolish any law. The British Constitution is derived from a number of sources. Statutes are laws passed by Parliament and are generally the highest form of law. Conventions are unwritten practices which have developed over time and regulate the business of governing. Common law is law developed by the courts and judges through cases. The UK is also subject to international law. Finally, because the British Constitution cannot be found in any single document, politicians and lawyers have relied on constitutional authorities to locate and understand the constitution. An uncodified constitution creates two problems. First, it makes it difficult to know what the state of the constitution actually is. The flexibility of the UK constitution is evident from the large number of constitutional reforms since , including the abolition of the majority of hereditary peers in the House of Lords, the introduction of codified rights of individuals for the the first time in the Human Rights Act , and devolution to Scotland, Wales and Northern Ireland. Arguably, however, these recent constitutional reforms may have made the constitution less flexible in some respects:

Chapter 7 : Flexibility of the Constitution by Stephanie Singh on Prezi

Constitutional law cannot be amended by the ordinary legislature using normal legislative procedure. Moreover, a rigid constitution is the supreme law of the land and ordinary legislature cannot pass a law which is repugnant to its spirit.

What is the difference between rigid and flexible constitution? A rigid constitution is one which cannot be amended, in the manner in which ordinary laws are passed amended or repealed. If a special procedure or organ is needed for its amendment, it is a rigid constitution. As Gettle says, "Its laws are thus fixed and emanate from a source different from that of ordinary laws, which must keep within the bounds fixed by the constitution". Ordinary legislature of the country is not competent to amend it in the ordinary legislative procedure. Under a rigid constitution distinction is always maintained between a constitutional law and an ordinary law, since a constitutional law is regarded as superior to an ordinary law. Constitutional law cannot be amended by the ordinary legislature using normal legislative procedure. Moreover, a rigid constitution is the supreme law of the land and ordinary legislature cannot pass a law which is repugnant to its spirit. The legislature under a rigid constitution is not sovereign. Its authority is limited by the constitution. It cannot be amended in the manner in which ordinary laws are passed, amended or repealed. A distinction is maintained between a constitutional and an ordinary law. Both are not placed on an equal footing. There is a special procedure for constitutional amendment. Ordinary law in U. The Swiss constitution is still more rigid. An amendment whether proposed by the Federal Assembly or through initiative needs to be approved by the Cantons and the electorate through referendum. It must be, thus approved by majority of all the voters casting their vote and by majority of such votes in majority of Cantons. A flexible constitution is one which can be amended in an ordinary legislative process by the ordinary legislature. A Constitutional law and an ordinary law are treated alike. They are placed on an equal footing. All constitutional amendments can be made by a simple majority of the legislature. No distinction is made between the constitution making authority and the ordinary law making authority. No law is unconstitutional if passed by the Parliament. It is at once a legislature and a constituent assembly. The constitution of England is a typical example of a flexible constitution. The British Parliament is competent to pass, amend or repeal any constitutional law in an ordinary legislative process as both constitutional laws and ordinary laws are treated alike.

Chapter 8 : Raj Desai: Miller and the Flexibility of the UK Constitution | UK Constitutional Law Association

(b) Adds flexibility to the UK constitution because: Being non-legal, decisions that affect the constitution can be made under the Royal Prerogative relatively easily and flexibly without needing the formal procedure associated with constitutional amendments.

Background[edit] During the progressive era, many initiatives were promoted and fought for, but were prevented from coming to full fruition in either legislative bodies or judicial proceedings. One case in particular, Pollock v. Brandeis , and Woodrow Wilson. Living political constitutions must be Darwinian in structure and in practice. Society is a living organism and must obey the laws of life, not of mechanics; it must develop. All that progressives ask or desire is permission - in an era when "development," "evolution," is the scientific word - to interpret the Constitution according to the Darwinian principle; all they ask is recognition of the fact that a nation is a living thing and not a machine. In an letter to Samuel Kercheval , excerpted on Panel 4 of the Jefferson Memorial , he wrote But I know also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors. The most common association is with judicial pragmatism. With regard to that we may add that when we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation. The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago. The treaty in question does not contravene any prohibitory words to be found in the Constitution. The only question is whether [U. We must consider what this country has become in deciding what that amendment has reserved. According to the pragmatist view, the Constitution should be seen as evolving over time as a matter of social necessity. Looking solely to original meaning, when the original intent was largely to permit many practices universally condemned today, is under this view cause to reject pure originalism out of hand. This general view has been expressed by Judge Richard Posner: A constitution that did not invalidate so offensive, oppressive, probably undemocratic, and sectarian law [as the Connecticut law banning contraceptives] would stand revealed as containing major gaps. Maybe that is the nature of our, or perhaps any, written Constitution; but yet, perhaps the courts are authorized to plug at least the most glaring gaps. Does anyone really believe, in his heart of hearts, that the Constitution should be interpreted so literally as to authorize every conceivable law that would not violate a specific constitutional clause? We find it reassuring to think that the courts stand between us and legislative tyranny even if a particular form of tyranny was not foreseen and expressly forbidden by framers of the Constitution. Under this view, for example, constitutional requirements of "equal rights" should be read with regard to current standards of equality, and not those of decades or centuries ago, because the alternative would be unacceptable. Original intent In addition to pragmatist arguments, most proponents of the living Constitution argue that the Constitution was deliberately written to be broad and flexible to accommodate social or technological change over time. Edmund Randolph , in his Draft Sketch of Constitution , wrote this: To insert essential principles only; lest the operations of government should be clogged by rendering those provisions permanent and unalterable, which ought to be accommodated to times and events: To use simple and precise language, and general propositions, according to the example of the constitutions of the several states. James Madison , principal author of the U. Constitution and often called the "Father of the Constitution," said this in argument for original intent and against changing the Constitution by evolving language: I entirely concur in the propriety of resorting to the sense in which the Constitution was accepted and ratified by the nation. In that sense alone it is the legitimate Constitution. And if that is not the guide in expounding it, there may be no

security for a consistent and stable, more than for a faithful exercise of its powers. If the meaning of the text be sought in the changeable meaning of the words composing it, it is evident that the shape and attributes of the Government must partake of the changes to which the words and phrases of all living languages are constantly subject. What a metamorphosis would be produced in the code of law if all its ancient phraseology were to be taken in its modern sense. Some living Constitutionists seek to reconcile themselves with the originalist view; e. This was seen in the Supreme Court case of Trop v. The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society. From its inception, one of the most controversial aspects of the living Constitutional framework has been its association with broad interpretations of the equal protection and due process clauses of the 5th and 14th Amendments. Not only is it currently seen as unacceptable to suggest that married women or descendants of slaves are not entitled to liberty or equal protection with regard to coverture laws, slavery laws and their legacy as they were not expressly seen as free from such by all ratifiers at the time of the Constitutional ratification, but neither do advocates of the living Constitution believe that the framers intended, or certainly demanded, that their 18th century practices be regarded as the permanent standard for these ideals. Liberty in , it is argued, was never thought to be the same as liberty in or , but rather was seen as a principle transcending the recognized rights of that day and age. Giving them a fixed and static meaning in the name of "originalism," thus, is said to violate the very theory it purports to uphold. Disregard of Constitutional language[edit] The idea of a Living Constitution was often characterized by Justice Scalia and others as inherently disregarding Constitutional language, suggesting that one should not simply read and apply the constitutional text. Jack Balkin argues that this is not the intended meaning of the term, however, which suggests rather that the Constitution be read contemporaneously, rather than historically. A proper application, then, involves some reconciliation between these various devices, not a simple disregard for one or another. Indeed, Living Constitutionalists often suggest that it is the true originalist philosophy, while originalists generally agree that phrases such as "just compensation" should be applied differently than years ago. It has been suggested that the true difference between these judicial philosophies does not regard "meaning" at all, but rather, the correct application of Constitutional principles. It may be what it always has always been: The important change then might be in what is recognized as liberty today, that was not fully recognized two centuries ago. In a changing world it is impossible that it should be otherwise. But although a degree of elasticity is thus imparted, not to the meaning, but to the application of constitutional principles, statutes and ordinances, which, after giving due weight to the new conditions, are found clearly not to conform to the Constitution, of course, must fall. Living Constitutionalists tend to advocate a broad application in accordance with current views, while originalists tend to seek an application consistent with views at the time of ratification. Critics of the Living Constitution assert that it is more open to judicial manipulation, while proponents argue that theoretical flexibility in either view provides adherents extensive leeway in what decision to reach in a particular case. By its nature, the "living Constitution" is not held to be a specific theory of construction, but a vision of a Constitution whose boundaries are dynamic, congruent with the needs of society as it changes. This method also has its critics; in the description of Chief Justice William Rehnquist , it "has about it a teasing imprecision that makes it a coat of many colors. Opponents of the doctrine tend to use the term as an epithet synonymous with judicial activism itself a hotly debated phrase. However, just as some conservative theorists have embraced the term Constitution in Exile which similarly gained popularity through use by liberal critics , and textualism was a term which once had pejorative connotations before its widespread acceptance as a badge of honor, some liberal theorists have embraced the image of a living document as appealing. Please help improve this article by adding citations to reliable sources. Unsourced material may be challenged and removed. February Learn how and when to remove this template message Two of the arguments in support of the concept of a "living Constitution" is the concept that the Constitution itself is silent on the matter of constitutional interpretation. Proponents of the living Constitution assert that the Constitutional framers, most of whom were trained lawyers and legal theorists, were certainly aware of these debates; they also would have known the confusion that not providing a clear interpretive method would cause. Had the framers meant for future generations to interpret the Constitution in a specific manner, they could have indicated such within the Constitution itself.

Relating to the pragmatic argument, it is further argued that if judges were denied the opportunity to reflect on changes to modern society in interpreting the scope of Constitutional rights, the resulting Constitution either would not reflect current mores and values, or would necessitate a constant amendment process to reflect our changing society. Another defense of the Living Constitution is based in viewing the Constitution not merely as law, but as a source of foundational concepts for the governing of society. Of course, laws must be fixed and clear so that people can understand and abide by them on a daily basis. But if the Constitution is more than a set of laws, if it provides guiding concepts which themselves will in turn provide the foundations for laws, then the costs and benefits of such an entirely fixed meaning are very different. The reason for this is simple: Their significance is not to be gathered simply from the words and a dictionary, but by considering their origin and the line of their growth. The term presumes the premise of "that which is written is insufficient in light of what has transpired since". This more moderate concept is generally not the target of those who are against the "Living Constitution". The concept considered perverse by constructionalists is "making the law say what you think it should say, rather than submitting to what it does say". Economist Thomas Sowell argues in his book Knowledge and Decisions that since the original designers of the Constitution provided for the process of changing it , they never intended for their original words to change meaning. Sowell also points out cases where arguments are made that the original framers never considered certain issues, when clear record of them doing so exists. Please help improve it by rewriting it in an encyclopedic style. October Learn how and when to remove this template message Another argument against the concept of a "living Constitution" ironically, is similar to the argument for it; the fact that the Constitution itself is silent on the matter of constitutional interpretation. The doctrine of the "living Constitution" relies on the concept that the original framers either could not come to a consensus about how to interpret, or they never intended any fixed method of interpretation. This would then allow future generations the freedom to reexamine for themselves how to interpret the Constitution. This view does not take into account why the original constitution does not allow for judicial interpretation in any form. The concept for a "living constitution" therefore relies on an argument regarding the writing of the constitution that had no validity when the constitution was written. The views of constitutional law scholar Laurence Tribe are often described by conservative critics such as Robert Bork as being characteristic of the "living Constitution paradigm" they condemn. Tribe rejects both the term and the description Such a construction appears to define "living Constitution" doctrine as being an ends dictate the means anti-law philosophy. Some liberal constitutional scholars have since implied a similar charge of intellectual dishonesty regarding originalists, noting that they virtually never reach outcomes with which they disagree. Many academic political scientists believe that justices and appeals judges are willing to alter their outcomes to attain philosophical majorities on certain questions. A Living Document," in which he argued that the Constitution must be interpreted in light of the moral, political, and cultural climate of the age of interpretation. References to "the living Constitution" are relatively rare among legal academics and judges, who generally prefer to use language that is specific and less rhetorical. It is also worth noting that there is disagreement among opponents of "the living Constitution" about whether the idea is the same as, implied by, or assumed by judicial activism, which has a similar ambiguity of meaning and is also used primarily as an epithet. Justice Clarence Thomas has routinely castigated "living Constitution" doctrine. In one particularly strongly worded attack, he noted that: Let me put it this way; there are really only two ways to interpret the Constitution â€” try to discern as best we can what the framers intended or make it up. No matter how ingenious, imaginative or artfully put, unless interpretive methodologies are tied to the original intent of the framers, they have no more basis in the Constitution than the latest football scores. To be sure, even the most conscientious effort to adhere to the original intent of the framers of our Constitution is flawed, as all methodologies and human institutions are; but at least originalism has the advantage of being legitimate and, I might add, impartial. The Constitution is over years old and societies change. It has to change with society, like a living organism, or it will become brittle and break. But you would have to be an idiot to believe that; the Constitution is not a living organism; it is a legal document. You think the death penalty is a good idea? Under the formalist understanding of the Constitution, but not under the Living Constitution understanding, you can persuade your fellow citizens to adopt it. You want a right to abortion? Persuade your fellow citizens

and enact it. This section needs additional citations for verification.

Chapter 9 : Flexible Constitution | Definition of Flexible Constitution by Merriam-Webster

Holy old video HipHughes! Check out the ancient stuff from the past when resolution is a nightmare and special effects were titles on the screen! Geared for 11th grade NY State students seeking to.