

Interpreting the Constitution - Teacher Guide

Lesson Overview

This lesson teaches students about the interpretation of the Constitution, specifically the concepts of originalism and pragmatism. By examining the Constitution and listening to a recording of two Supreme Court Justices' arguments, students will evaluate and determine which interpretation of the Constitution they support. Once they have selected their position, they will express their viewpoints through a presentation of their choosing, based on the guidelines provided.



Using the Student Resource, students will:

1. Read the Constitution, Bill of Rights, and Amendments.
2. Listen to a debate by Justice Stephen Breyer and Justice Antonin Scalia.
3. Consider the concepts of Originalism and Pragmatism.
4. Discuss their opinions as either an originalist or pragmatist.
5. Present their supported views through a variety of submission options.

The remainder of this guide provides options for facilitation, differentiation strategies, and extension activities. This lesson can be used for both middle and high school students and can be adapted for the traditional or virtual classroom. Following this guide, you will find the Student Resource, which is the student-facing content for the lesson and can also be adapted to meet your classroom's needs.

Facilitation and Differentiation Options

1. **Students can complete this lesson independently or in groups.**
2. **Students can print or view the Student Resource virtually.**
3. **Consider various differentiation options for sharing the resource and discussing the concepts with your students.**
 - Some students may prefer to read and interpret all documents together, while other students may prefer to view only parts.
 - Some students may benefit from working in partners or groups to support their understanding of the documents.
 - Full classroom discussion may allow students to hear differing opinions before presenting their own thoughts in their final product.
 - A classroom debate can replace the assignment submission, allowing students to share their viewpoints and respond to opposing arguments.



Check out envisionexperience.com/Inauguration **for more resources**

Student Submissions

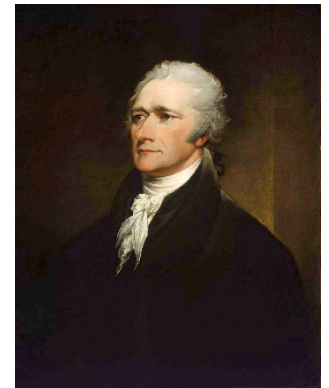
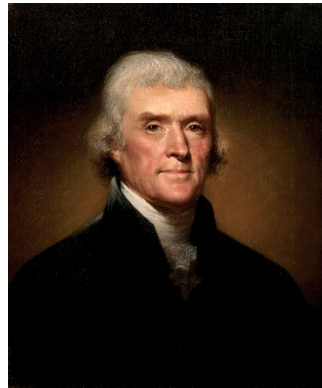
There are various methods for students to present their viewpoints suggested in the Student Resource. Please adapt to fit the needs of your classroom and assignment requirements.

Included in the Student Resources section of the landing page are instructions for conducting a debate dialogue. If you choose to use the debate format, consider sharing debate best practices from the *Mini Debate* lesson plan before work begins.

Extension Activities

1. Consider the element of Thomas Jefferson and Alexander Hamilton's opposing views of the Constitution's interpretation.

Both men were involved in the creation of the Constitution, although with very different views. Jefferson believed that the Constitution should be taken exactly how it was written, with no room for interpretation. On the other hand, Hamilton thought that the Constitution was open to interpretation and that the implied meaning should also be considered. This goes hand in hand with the concepts of originalism and pragmatism. Originalists believe the Constitution should be taken literally in its original intent, whereas pragmatists believe it is open for interpretation based on the current time.



Class Discussion:

- Why do you feel Jefferson and Hamilton interpreted the Constitution differently? (Allow students time to research.)
- How did their views on the constitution impact their leadership?
- How do Jefferson's and Hamilton's views align with Justice Scalia and Justice Breyer?
- Knowing how various leaders viewed the Constitution, how do their opinions impact your original position of Originalist or Pragmatist?

2. Take the element of Hamilton and Jefferson's opposing views a step further by discussing expressed powers v. implied powers of the Constitution.

The expressed powers are the powers explicitly stated in the Constitution. The implied powers are the powers that can be inferred by the expressed powers in the Constitution. Throughout history, the branches of government have assumed both expressed and implied powers. Those who believe in a strict interpretation of the Constitution believe in only the expressed powers. In contrast, those who believe in a liberal interpretation believe in both the expressed and implied powers.



Class Discussion:

- What are examples of expressed and implied powers? (Allow students time to research.)
- Do you support a strict or liberal interpretation? (Consider a discussion of the Necessary and Proper Clause.)
- How do the ideas of expressed and implied powers support or refute your original argument?

3. Ask students to compare the views of two current Supreme Court Justices on their stance of constitutional interpretation.

4. Have students identify the most common interpretation of the Constitution today.

Optional Additional Discussion Questions

1. What was Justice Scalia's argument for his position on the topic?
2. What was Justice Breyer's argument for this position on the topic?
3. Do you feel that their arguments were sound and based in fact and reason?
4. Do you agree or disagree with the position of Supreme Court Justice Scalia? Why?
5. Do you agree or disagree with the position of Supreme Court Justice Breyer? Why?
6. Why do you think Hamilton and Jefferson had such opposing viewpoints?
7. Do you agree with the position of Jefferson or Hamilton? Why?
8. Do you think implied powers give the government too much power?
9. Based on what you know about the Constitution, do you think the writers intended there to be a strict or liberal interpretation of it?
10. Based on what we know, how does the Constitution seem to be interpreted most often today?
11. There are three known constitutional originalists that sit on the Supreme Court today. What, if anything, does that tell you about how the Constitution is interpreted today?

Interpreting the Constitution - Student Resource

The Constitution is the heart of our democracy and vital to the foundation of our country. Many people, not just Supreme Court Justices, disagree about exactly what all the words in any part of the Constitution mean, and the Constitution doesn't come with a guide to figuring it out. To complicate matters, the Constitution has been amended 27 times since it was ratified in 1791. Refresh your knowledge of the Constitution by reviewing the resources below.

Scan the QR codes or use the links below to review the Constitution's text, Bill of Rights, and Constitutional Amendments.



[Full Text of the Constitution](#)



[Bill of Rights
Amendments 1-10](#)



[Amendments 11-27](#)

Scan the QR code or use the link to listen to an interview with Justice Antonin Scalia and Justice Stephen Breyer. As you listen to the Justices' words and opinions, ask yourself: What are their views on interpreting the Constitution?



["Justices Get Candid About the Constitution."](#)

Andrea Seabrook. NPR Weekend Edition. (2011, October 9).

[Click to view transcript of audio](#)

The justices debating in this 2011 radio story are Stephen Breyer (pictured on the left) and Antonin Scalia (pictured on the right). Justice Breyer is an active Supreme Court Justice who was nominated and confirmed in 1994. Justice Scalia served on the Supreme Court from 1986 until 2016 when he passed away.



Alex Wong/Getty



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Originalism vs. Pragmatism

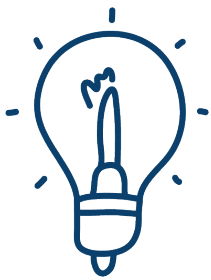
Originalism

Believes that the “constitutional text ought to be given the original public meaning that it would have had at the time that it became law.” Originalists believe that the Constitution should be interpreted today exactly how it was when it was written.

Pragmatism

Also known as Living Constitutionalism believes that the “meaning of the constitutional text changes over time, as social attitudes change, even without the adoption of a formal constitutional amendment.” Pragmatists believe that the Constitution is a “living” document, continuously being adapted and interpreted differently throughout history.

Source: Calabresi, Steven G. “On Originalism in Constitutional Interpretation.” National Constitution Center.
<https://constitutioncenter.org/interactive-constitution/white-papers/on-originalism-in-constitutional-interpretation>



Ask yourself:

- “What do I know about the Constitution?”
- “Where do I stand? Am I an ‘originalist’ or a ‘pragmatist’?”

Your task is to answer the following question prompt through one of the submission options below.

Do you think the U.S. Constitution is a ‘living’ document that adapts to the times (pragmatism) or does it mean today exactly what it meant when it was written (originalism)?

- Why do you think so?
- Provide at least two clear examples to support the argument.
 - One example should reference an amendment to the Constitution.
 - One example should refer to text in the main body of the Constitution.

Submission Options

1. Write an essay responding to the question prompt above. The essay should be at least one page in length (double-spaced, 12-point font).
2. Create a digital presentation that addresses the question prompt above (PowerPoint, Prezi, etc.). The presentation should consist of at least five slides and include at least five images. Be sure to include your script for each slide of the presentation or record a voice-over to accompany the slides.
3. Record a video or audio file discussing your response to the question prompt above. The video or audio file should be four to six minutes in length.
4. Create a comic book or graphic novel page depicting your response to the question prompt above. Be creative! The page should include at least four comic strips with significant text bubbles.

Don’t forget to properly cite your sources!