*Preparation for the October 12 topical seminar at the Lewes Library at 3 pm*

*Topic – Common Good Constitutionalism: How Should the Constitution Be Interpreted?*

Instructions

To prepare for the seminar, read the following materials and watch the recommended video. After considering what you’ve read and watched, write a response of between 200 and 400 words that addresses some of the writing prompts found at the end.

Email your written response to [lewesseminar@gmail.com](mailto:lewesseminar@gmail.com) no later than Monday, October 10. Participants are asked to read these responses prior to the seminar meeting on October 10.

Introduction

The Constitution of the United States, ratified in 1789, is our founding document and supreme law, governing all of American jurisprudence. It, along with the Declaration of Independence, captures our deepest values and principles as a people by which we are to be governed. It is the oldest surviving written charter of government, and notably, at only four pages long, it is also the shortest. Necessarily, then, given its brevity and scope, its provisions are frequently general, abstract, and encode values that we must interpret before applying.

Consequently, it is not always easy to know exactly, specifically and concretely, what the Constitution requires of us in today’s world. Should, for instance, the 14th Amendment's declaration of rights and due process for “persons born or naturalized” also apply to fetuses before birth? Or how and to what extent the First Amendment’s “establishment” and “free exercise” clauses limit each other? Or whether the Second Amendment’s protection of the right to bear arms applies to individual citizens or to members of “a well regulated Militia,” and what is the meaning of “well-regulated” anyway? These, and many more issues, require that we interpret constitutional provisions.

But how is the Constitution to be properly interpreted? That is a contested question, and how it is answered matters greatly when it comes to how we arrange our common life together as a free people.

Materials to Be Read or Watched

In the readings and clips below, you’ll briefly encounter two contemporary theories of constitutional interpretation, Originalism and the Moral Reading, before taking a look at Common Good Constitutionalism that is only now emerging on the legal landscape.

* In the Youtube clip, Justice Scalia, Originalism’s foremost architect and defender, lays out its central contentions. <https://www.youtube.com/watch?v=XUnI3gaEmGY&t=75s>
* Ronald Dworkin sharply contrasts Originalism to what he calls the Moral Reading of the Constitution. (The Dworkin article is long, but the first few paragraphs should give you a good sense of his argument.)
* Adrian Vermeule of Harvard Law School sketches out an alternative reading of the Constitution that synthesizes and then goes beyond Scalia’s and Dworkin’s accounts. While Vermeule’s account would probably be considered a radical break with the past by most constitutional scholars, it represents a view that is gaining prominence.
* Finally, a recent opinion piece in the New York Times by Doerfler and Moyn questions whether appeals to the Constitution should be the final arbiter of today’s political and cultural issues.

Writing Prompts

As you consider what to write as a reaction to these materials, you may wish to consider one or more of the following writing prompts.

1. Should it matter so much what a two-hundred-year-old document says?
2. What are the principal values embedded in the Constitution?
3. Is there a "common good" that the Constitution should serve, and if so, what is it?
4. How does "common good" constitutionalism differ from "originalism" as a constitutional theory of interpretation?

These questions are meant only to prompt your thinking. Use this exercise as an opportunity to reflect upon how you think the Constitution should be interpreted.

Submitted by Michael D. Redmond

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