Methods of Interpreting the Constitution

Time and Grade Level

Two 50 minute class periods in a 9-12 grade US Government, US History, Civics, or social studies classroom.

Purpose of the Lesson

The purpose of this lesson is to explain the two overarching modes of constitutional interpretation – strict and loose construction – and their use and application to particular Supreme Court cases. After an in-class investigation activity to explore the various methods of interpretation, students will be given the opportunity to demonstrate their command of these definitions and express their opinions of the merits and limitations of each method during a mock Supreme Court session where students will revisit the Court's opinions in Brown v. Board of Education (school segregation) and DC v. Heller (Second Amendment).

Critical Engagement Questions & Lesson Objectives

1. How do different methods of interpreting the Constitution affect the decisions of the Court on various issues? How does this affect the ways laws are interpreted and implemented?
    - Objective: Students will be able to explain how the mode of interpretation employed in particular Supreme Court cases had an impact on the outcome.
    - Objective: Student will be able to engage in thoughtful discussion of issues decided by the Supreme Court and use these issues as a platform to discuss the merits and limitations of particular methods of constitutional interpretation.
2. How and why can the Constitution be interpreted differently? What are the merits and limitations of each method of interpretation? Can all methods of interpretation be applied to all cases?
    - Objective: Students will be able to identify, describe and apply the two major modes of constitutional interpretation.
    - Objective: Students will be able to recognize that each method of interpretation has merits and limits and will be able to describe at least two merits and limits for each of the two main methods of interpretation.
    - Objective: Students will be able to demonstrate command of the definitions of each method of interpretation by applying them to cases tried by the Supreme Court.

Standards

Common Core Standards: English Language Arts Standards-History/Social Studies-Grade 11-12

CCSS.ELA-Literacy.RH.11-12.7 Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or sole a problem.

CCSS.ELA-Literacy.RH.11-12.10 By the end of grade 12, read and comprehend history/social studies texts in the grades 11–CCR text complexity band independently and proficiently.

CCSS.ELA-Literacy.RH.11-12.9 Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

C3 Standards: Suggested K-12 Pathway for College, Career, and Civic Readiness Dimension 2, Civic and Political Institutions, Perspectives, & Causation and Argumentation

D2. Civ.2.9-12. Analyze the role of citizen in the U.S. political system, with attention to various theories and democracy, changes in Americans' participation over time, and alternative models from other countries, past and present.

D2.His.10.9-12. Analyze complex and interacting factors that influenced the perspectives of people during different historical eras.

D2.His.16.9-12. Integrate evidence from multiple relevant historical sources and interpretations into a reasoned argument about the past.

Overview of the Lesson

Day One
1. Homework: Reading from Liberty, Order, and Justice: An Introduction to the Constitutional Principles of American Government 2. Introduction to constitutional interpretation 3. Investigation activity for the majority of class time where students visit various stations and read or listen to primary and secondary sources explaining the methods of Constitutional interpretation. 4. Assignment of homework: Excerpts from Brown v. Board and DC v. Heller highlighting differences in Constitutional interpretation.

Day Two
1. Fishbowl discussion activity preparation: Give student 10-5 minute sot review their readings of Brown or Heller and the fishbowl discussion questions. 2. Fishbowl discussion activity for the remainder of class, teacher acts as mediator but otherwise listens in and takes participation points. 3. Assignment of extension activity.

Materials

1. Printed or virtual copies of section 6 "Strict v. Loose Construction" from James McClellan's Liberty, Order, and Justice: An Introduction to the Constitutional Principles of American Government (3rd Edition, Indianapolis: Liberty Fund, 2000). Accessible here and in Appendix A.
2. Printed copies of the investigation activity worksheet (found in Appendix B).
3. Printed or virtual copies of "Draft Sketch of Constitution by Edmund Randolph" and "James Madison to Henry Lee June 25, 1824" from the ConSource Digital Library (also found in Appendices C and D respectively).
4. Access to ConSource's Prezi on "Methods of Constitutional Interpretation."
5. Access to the NPR broadcast, "Original Meaning and the New Supreme Court Justice" (the transcript is found in Appendix E).
6. Access to the Center for Civic Education's 60 Second Civic Podcasts on: Textualism, Instrumentalism, and Original Intent.
7. Printed or virtual access to the opinions of DC v. Heller and Brown v. Board of Education (found in Appendix F).
8. Printed copies of the fishbowl discussion (found in Appendix G).

Teacher Warm-Up for the Lesson

RESOURCES FOR BACKGROUND ON THE TOPIC

Primary Source Documents (ConSource)

- The following documents provide discussion of Article III:
  - The Federalist No. 78 (see Appendix C for excerpts from the document)

    - This document provides elaboration on the theoretical basis for the court and its purpose in American government.
    - Federalist No. 81 and 82 provide additional discussion of the Supreme Court in this lens.
- James Madison's Notes of the Constitutional Convention (June 15th, 1787): Use the sidebar on the right side of the page to toggle to annotations 9-12 for discussion of the Judiciary.
    - This document includes discussion of the logistics of the Supreme Court created at the Constitutional Convention. In particular, this document covers the power of the court to have jurisdiction in cases affecting ambassadors and the origin of the court's power.
- James Madison's Notes of the Constitutional Convention (June 13th, 1787): Use the sidebar on the right side of the page to toggle to annotations 2-3 for a discussion of the Judiciary.
    - This document provides discussion from the Constitutional convention of the wording of the Judicial Power and Vesting clauses.
- James Madison's Notes of the Constitutional Convention (June 13th, 1787): Use the sidebar on the right side of the page to toggle to annotations 1-4 for a discussion of the Judiciary.
    - This documents provides discussion of the creation of inferior courts and the types of cases the Supreme Court may hear.
- Roger Sherman-(December 8, 1787)
    - Sherman's letter outlined many aspects of the new Constitution as the Drafters envisioned them, but he paid special attention the specific duties and the jurisdictional powers of the new Judicial Branch.

- ConSource's Collection of primary source documents related to the Judicial Branch may be found here.

Websites

- Explanations of different methods of interpretation:
    - http://www.usconstitution.net/consttop_intr.html
    - http://faculty.ncwc.edu/mstevens/410/410lect04.htm
    - http://voices.yahoo.com/interpreting-our-constitution-living-document-original-550904.html?cat=17

- http://law2.umkc.edu/faculty/projects/ftrials/conlaw/interp.html

- Court Cases
  - DC v. Heller
    - http://www.lawnix.com/cases/dc-heller.html
    - http://www.oyez.org/cases/2000-2009/2007/2007_07_290
  - Brown v. Board
    - http://www.oyez.org/cases/1950-1959/1952/1952_1/
    - http://www.lawnix.com/cases/brown-board-education.html
- The Supreme Court and Interpretation
  - http://www.supremecourt.gov/about/constitutional.aspx
- Blog (Constitution Daily)
  - http://blog.constitutioncenter.org/2013/11/constitution-check-is-devotion-to-the-constitution-destroying-democracy/

Activity

DAY ONE

Activity	Description	Suggested Questions
Homework	For homework, students should be assigned the short reading from Liberty, Order, and Justice: An Introduction to the Constitutional Principles of American Government located in Appendix A.	
Introduction to Methods of Constitutional Interpretation	Teachers should use the provided background readings to prepare for a 5-10 minute introduction to the methods constitutional interpretation before leading students into the investigative activity.	1. Why does the court interpret the Constitution differently? 2. Does the Constitution allow differing interpretations or does it seem to favor a specific method of interpretation? 3. Is it better to commit to a single method or to incorporate multiple methods in interpretation. 4. What is the difference between strict and loose construction? 5. What types of nuances to these two basic interpretations are there?

Activity	Description	Suggested Questions
Investigation Activity	Distribute the activity worksheet to students, found in Appendix B. Students should then work independently to visit different stations (for 5-10 minutes at each station) to view, read, or listen to the various sources to build understanding of the interpretive methods. Stations should included (resources are found under Materials): 1. The Primary Source documents from ConSource ("Draft Sketch of Constitution by Edmund Randolph" and "James Madison to Henry Lee June 25, 1824" found in Appendixes C and D) 2. The prezi "Methods of Constitutional Interpretation." provides historical background and asks students to complete an activity to identify which mode of interpretation matches a certain issue. 3. The NPR broadcast "Original Meaning and the New Supreme Court Justice" (the transcript is found in Appendix E). 4. The Center for Civic Education's 60 Second Civic Podcasts on: Textualism, Instrumentalism, and Original Intent.	
Assignment of homework	Distribute the excerpts of the cases and the list of fishbowl discussion questions (found in Appendices F & G)	1. As you read the excerpts from these cases, consider which method of Constitution is being used, and by whom. 2. What is the issue at stake here? Is this a constitutional or statutory issue? How does that affect the opinion? 3. Does the method of interpretation being used limit or expand the Court's power of judicial review? 4. How does using a particular method of interpretation alter (if at all) our personal understanding of an issue? That is to say, do certain interpretations of the constitution result in decisions we do not agree with?

DAY TWO

Activity	Description	Suggested Questions
Fishbowl Discussion preparation	Give student 10 minutes at the start of class to review their notes on the cases assigned for homework and gather their thoughts for the fishbowl discussion. At this time, also arrange desks into a circle.	
Fishbowl Discussion of the merits and limits of methods of Constitutional interpretations in practice	The teacher should be act as a mediator for the discussion while the student's discussion comes first. Use the fishbowl discussion questions to guide the activity.	

Homework

Day One: Have students read the selection from James McClellen's Liberty, Order, and Justice: An Introduction to the constitutional Principles of American Government. For homework. The selection is found here and in Appendix A.

Day Two: Have student read the excerpts for the Brown v. Board of Education and DC v. Heller opinions and prepare answer/consider the fishbowl discussion questions.

Extension Activity

Essay Prompt: Have students read the journal article, "Behind the Mask of Method: Political Orientation and Constitutional Interpretive Preferences," and respond to the prompt: Does the existence of various methods of constitutional interpretation--and the perceived devotion of justices to a specific methods--undermine the idea of an independent and impartial Judicial Branch?

Appendix A. Liberty, Order, and Justice Excerpt

Strict Versus Loose Construction

From Liberty, Order, and Justice:
An Introduction to the constitutional Principles of American Government
By James McClellan

In addition to arguing that the several States have a role to play in constitutional interpretation, many advocates of limited constitutional government have also insisted that there should be a rule of interpretation which favors the States in cases involving the scope of Federal power. Since the earliest days of the American republic, there has been considerable concern that the Federal government, through a broad interpretation of its powers, might swallow up the reserved powers of the States.

Many of the powers delegated by the States to Congress, for example, are expressed in general terms and are susceptible to conflicting interpretations, most especially when the implied or "necessary and proper" powers are added to expand the enumerated power. As we saw earlier, the power of Congress "to regulate commerce among the several States" is open to a wide variety of interpretations. Does the word "regulate" include the right to prohibit? Does the word "commerce" mean just the goods themselves, or does it include as well the environment in which commerce moves, such as waterways or the airspace above a State? Does "commerce" include manufacturing, mining, and other activities prior to the time the goods are shipped? Does it include agriculture before harvest? Does it include individuals traveling from one State to another to visit relatives? Is the commerce power an exclusive power, or may the States in the absence of Federal laws regulate commerce passing through their territory?

These are the kinds of difficult issues that have confronted the Supreme Court from the beginning, often requiring the judges to define the limits of power. If the powers are defined broadly, the Federal government tends to benefit. A narrow definition restricting the scope of a Federal power usually works to the advantage of the States. Very early in our history, States' Rightists in the Republican-Democratic Party, led by Thomas Jefferson, accused Chief Justice Marshall and many of the Associate Justices serving on the Court with him of a federal bias. They favored "strict" construction of the Constitution, whereas Marshall and other Federalists advocated a "loose" construction. The proper rule of interpretation, wrote St. George Tucker of Virginia in his American edition of Blackstone, was to interpret the Constitution strictly: "it is to be construed strictly, in all cases, where the antecedent rights of a State may be drawn into question." That is to say, although the Constitution should not necessarily be interpreted narrowly in all respects, it should be strictly construed in those instances where the rights of the States were at stake and a power previously exercised by the State governments was in danger of

being usurped by the Federal government. His reasoning was that the Union was a compact or written agreement among the States. Like a contract between two or more parties, the Constitution established rights and obligations. The "loose" construction of its terms would defeat the intent of the parties and was inconsistent with State sovereignty.

Similarly, Thomas Jefferson laid down two rules for the interpretation of the Constitution. His first rule of interpretation was to reserve to the States authority over all matters that affected only their own citizens: "The capital and leading object of the Constitution was, to leave with the States all authorities which respected their own citizens only, and to transfer to the United States those which respected citizens of foreign or other States; to make us several to ourselves, but one as to all others. In the latter case, then, constructions should lean to the general jurisdiction, if the words will bear it; and in favor of the States in the former, if possible to be so construed."

The second rule of interpretation, said Jefferson, was to construe the Constitution as the Founding Fathers would have construed it: "On every question of construction, we should carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed."

John Marshall and his brethren on the Supreme Court were in basic agreement with Jefferson that the original intent of the Framers ought to govern. What divided the "strict" constructionists from the "loose" constructionists, therefore, was not whether the original meaning of the Constitution should be followed, but what the Framers intended.

The "loose" constructionists, enjoying strong support on the Supreme Court through Marshall, Story, and other Justices, tended to prevail. In such major cases as McCulloch v. Maryland (1819) and Gibbons v. Ogden (1823), the Court broadly interpreted the powers of Congress. By 1835, when John Marshall was succeeded by Roger B. Taney as Chief Justice, the Court had built a strong array of judicial precedents that strengthened its own position in relation to the other two branches of the Federal government, and also laid the foundation for future expansions of national power.

It would be erroneous to conclude, however, that the nationalism of the Marshall Court reached into every nook and cranny of the Constitution, eclipsing the reserved powers of the States wherever it went. By today's practices, it was very limited. The principal gains of the national government were related to the commercial life of the young Republic, and the States continued to function as powerful, independent entities in public affairs. In the broad area of civil rights, for example, the Federal government had no major role to play—and would not for

another century. In keeping with the original purpose and meaning of the Bill of Rights, a unanimous court, speaking through Chief Justice Marshall, held in Barron v. Baltimore (1833) that the Bill of Rights was designed to limit only the Federal government and did not apply to the States. Not until the adoption of the Thirteenth, Fourteenth, and Fifteenth amendments, otherwise known as the Civil War or Reconstruction Amendments, did the Federal government acquire much jurisdiction over civil rights disputes in the States. Even then, the main thrust of its involvement was the protection of the newly emancipated slaves in the post–Civil War era of Reconstruction and not such matters as freedom of speech and religion.

The States' Rightists, resisting the Marshall court, viewed judicial nationalism with great apprehension, fearing that the practice of loose construction would set dangerous precedents and weaken the States. Although States' Rights would later become a convenient peg upon which to defend the institution of slavery, the doctrine was rooted in the Federal Convention. And in the early days of the Republic, before slavery became a burning issue, States' Rights was a constitutional theory that cut across sectional lines between the North and South. One of the leading States' Rightists in the Federal Convention, we are reminded, was Elbridge Gerry of Massachusetts. The States' Rightist from Virginia, George Mason, spoke against slavery and vigorously opposed it. States' Rightists did not share the Federalists' vision of a great empire reaching from the Atlantic to the Pacific. They had strong attachments and loyalties to their States, and generally distrusted centralized political power. The constitutional theories they advanced in support of strict interpretation were almost fully developed by the time Thomas Jefferson was elected President.

These differing constitutional theories of interpretation between the Nationalists and the States' Rightists dominated American politics during the first century of the Republic. The Civil War (or War Between the States, as the southerners preferred to call it) was the end result of this constitutional quarrel. To a very large extent, the great military conflict that erupted between the North and the South in 1861 was fought over this basic question: what is the correct interpretation of the Constitution respecting the powers of the States and the national government? The Civil War answered this question in part by laying to rest the doctrines of Nullification and Secession. But it did not put an end to federalism or change the rules of constitutional interpretation. The basic principle that the Constitution should be strictly construed to reflect the original meaning of the words and text has found considerable support on the Supreme Court since the Civil War, just as the principle that it should be loosely construed has also enjoyed considerable—if not majority—support.

In the final analysis, it must be remembered that the question of interpretation is inevitably affected by politics. Ideally, the Constitution should be given a consistent interpretation. But as the Founding Fathers understood well, the temptations of office are often

too great to expect a uniform adherence to principle in all situations. Those who possess political power may be inclined to favor a broad interpretation of the Constitution in order to carry out their programs, whereas those who are out of power may be inclined to argue for a narrow interpretation in order to block those programs.

The task of the principled statesman and judge is to resist those temptations and consistently defend the proper interpretation of the Constitution—even when it results in the advancement of a particular social, economic, or political policy that he personally opposes. But perhaps too few public leaders are willing to put principle ahead of personal gain or partisanship. This is not to suggest that those who argue for a particular interpretation in any given situation may be insincere, but merely to put the student on notice that, in order to evaluate a constitutional interpretation fairly and honestly, he should judge it on its own merits and not by the policy it promotes. Principled constitutionalism is resisting the temptation to twist the meaning of the Constitution to suit a particular political goal, no matter how worthy, and letting the chips fall as they may.

Appendix B. Methods of InterpretationWorksheet

METHODS OF CONSTITUTIONAL INTERPRETATION

Name:_____

Method of Interpretations	Description	Other Names used	Merits of Method	Limits of method	Implications for the Court
Strict Construction					
Loose Construction					
Original Meaning					

Appendix C. Draft Sketch of Constitution by Edmund Randolph

Draft Sketch of Constitution by Edmund Randolph (July 26, 1787)

In the draught(draft) of a fundamental constitution, two things deserve attention: 1. 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: and 2. To use simple and precise language, and general propositions, according to the example of the (several) constitutions of the several states. (For the construction of a constitution necessarily differs from that of law) I.

Appendix D. James Madison to Henry Lee June 25, 1824

James Madison to Henry Lee (June 25, 1824)

Montpellier, June 25, 1824.

What a metamorphosis would be produced in the code of law if all its ancient phraseology were to be taken in its modern sense! And that the language of our Constitution is already undergoing interpretations unknown to its founders will, I believe, appear to all unbiased inquirers into the history of its origin and adoption. Not to look farther for an example, take the word "consolidate," in the Address of the convention prefixed to the Constitution. It there and then meant to give strength and solidity to the union of the States. In its current and controversial application, it means a destruction of the States by transfusing their powers into the government of the Union.

Appendix E. NPR Broadcast Transcript: Original Meaning

'Original Meaning' and the Next Supreme Court Justice

July 9, 2005

SCOTT SIMON, host:

A justice on the US Supreme Court is not required to have any experience as a judge or even a lawyer. This week, Senate Judiciary Committee Chairman Arlen Specter and the ranking Democrat, Patrick Leahy, said that they could be satisfied with a nominee with no such credentials. Senators are divided over whether the next Supreme Court justice should base his or decisions on the Constitution's original meaning, a literal reading of what the original framers and subsequent amenders intended. Now in the years since the Constitution was ratified in 1787, then amended by the Bill of Rights four years later, urgent issues of national consequence have moved the Supreme Court to resolve cases that the framers never confronted--school integration, for instance; voting rights for women; pornography; abortion. And justices have widely interpreted the meaning of particular words or phrases in the Constitution.

Jack Rakove is a professor of history and political science at Stanford University and author of the book, "Original Meanings: Politics and Ideas in the Making of the Constitution." He joins us from Stanford.

Professor Rakove, thanks very much for being with us.

Professor JACK RAKOVE (Stanford University): I'm glad to be here, Scott.

SIMON: How do you define original meaning?

Prof. RAKOVE: Original meaning is a theory of constitutional interpretation, and it says that when an interpreter of the Supreme Court comes to resolve some puzzle about the meaning of the constitutional clause, his goal and indeed his obligation should be to interpret that clause as close to what its adopters thought they were doing as he or she possibly can.

SIMON: How would the framers have reacted to something like the original Supreme Court decision in Brown vs. the Board of Education?

Prof. RAKOVE: You have to think about the original constitutional design of 1787. And then you have to think about what's added to that design after the Civil War, because it's often argued by scholars that we've really had two foundings in this country. One was the basic founding at the time of the Revolution, which organizes the government. But then major changes come about as a consequence of the Civil War. And Chief Justice Warren and his brethren on the bench

basically look at this historical material and decide that the historical evidence, however it was parsed and divided, simply, you know, could not come to grips with the fundamental question of the justice or injustice of segregation. So when Warren writes the opinion and convinces, with a lot of hard work and arm-twisting and, you know, in all his persuasive powers the court to issue a unanimous opinion, in effect the court is knowingly turning its back on originalism. It's knowingly turned its back on the historical evidence and tried to reason for more general principles.

That's one reason why the Brown opinion remains very controversial is legal circles. I mean, not that the case was wrongly decided, because everybody agrees it was the right thing to do, but because the opinion itself, you know, many scholars have argued, was insufficiently grounded in existing law or didn't deal sufficiently with the history, which was again a complicated history.

SIMON: One of the things that I find useful when the Supreme Court begins to hand down a raft of decisions is, as you read through them, to often notice that they're not really deciding something on what we in the outside world consider the substance of a case so much as they are citing precedent and license with previous courts. To what degree do courts then have to enter into that kind of interpretation? What becomes their importance of precedent?

Prof. RAKOVE: Well, the whole debate of originalism, in a sense, is a debate about just how important precedent is. 'Cause after all, the whole theory of originalism says if previous courts or previous Congresses had been more faithful to the original intent, then they would've decided those cases otherwise.

In some ways, this is really the theory of the conservative movement that's known as the Constitution-in-exile school. I mean, they basically argue that the decisions of the New Deal court that finally allowed the New Deal legislation to take effect were all, in effect, wrongly decided, and the Constitution has been in exile from its true self for the last 70 some years--60, 70 years.

SIMON: You mention in the book that one of the things that people who are interested in original meaning have to decide for themselves is are they citing the importance of original meaning because they believe that the founders had clearer ideas about democracy that were uncluttered by the politics of our time or, for that matter, their time too.

Prof. RAKOVE: I personally think that all constitutional interpretation should at least begin by paying some attention to the original intentions, the original understandings of the founding period or, for that matter, the post-Civil War period. But I think the framers, in a sense, would think we had really let them down if we trusted their judgment more than our own, because after all they were living a great political experiment. And I think they wanted to lay a foundation upon which later generations could build and that indeed for us not to trust our reason would be a denial of everything the American Revolution originally meant.

SIMON: Jack, thank you very much.

Prof. RAKOVE: Well, good to talk to you, Scott.

SIMON: Jack Rakove, author of "Original Meanings: Politics and Ideas in the Making of the Constitution." He teaches history and political science at Stanford University.

Appendix F. Excerpts from the Opinions of Brown and Heller

Also found here: DC v. Heller, Brown v. Board of Education

BROWN V. BOARD OF EDUCATION OF TOPEKA

SUPREME COURT OF THE UNITED STATES

347 U.S. 483

Brown v. Board of Education of Topeka

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

No. 1. Argued: Argued December 9, 1952Reargued December 8, 1953

Decided: Decided May 17, 1954

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion. [347 U.S. 483, 487]

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, [347 U.S. 483, 488] they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in Plessy v. Ferguson, 163 U.S. 537 . Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate...

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws....

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-

War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States."...What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time.

...In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout [347 U.S. 483, 493] the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

...To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

- "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system."

...We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

...We have now announced that such segregation is a denial of the equal protection of the laws. In order that we may have the full assistance of the parties in formulating decrees, the cases will be restored to the docket, and the parties are requested to present further argument on Questions 4 and 5 previously propounded by the Court for the reargument this Term. The Attorney General [347 U.S. 483, 496] of the United States is again invited to participate. The Attorneys General of the states requiring or permitting segregation in public education will also be permitted to appear as amici curiae upon request to do so by September 15, 1954, and submission of briefs by October 1, 1954.

It is so ordered.

DC V. HELLER

SUPREME COURT OF THE UNITED STATES

DISTRICT OF COLUMBIA et al. v. HELLER

certiorari to the united states court of appeals for the district of columbia circuit

No. 07–290. Argued March 18, 2008—Decided June 26, 2008

Justice Scalia delivered the opinion of the Court.

We consider whether a District of Columbia prohibition on the possession of usable handguns in the home violates the Second Amendment to the Constitution.

The District of Columbia generally prohibits the possession of handguns. It is a crime to carry an unregistered firearm, and the registration of handguns is prohibited...District of Columbia law also requires residents to keep their lawfully owned firearms, such as registered long guns, "unloaded and dissembled or bound by a trigger lock or similar device" unless they are located in a place of business or are being used for lawful recreational activities.

Respondent Dick Heller is a D. C. special police officer authorized to carry a handgun while on duty at the Federal Judicial Center. He applied for a registration certificate for a handgun that he wished to keep at home, but the District refused. He thereafter filed a lawsuit in the Federal District Court for the District of Columbia seeking, on Second Amendment grounds, to enjoin the city from enforcing the bar on the registration of handguns...The District Court dismissed respondent's complaint...the Court of Appeals for the District of Columbia Circuit, construing his complaint as seeking the right to render a firearm operable and carry it about his home in that

condition only when necessary for self-defense...held that the Second Amendment protects an individual right to possess firearms and that the city's total ban on handguns, as well as its requirement that firearms in the home be kept nonfunctional even when necessary for self-defense, violated that right.

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." In interpreting this text, we are guided by the principle that "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." ... Normal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.

...The Second Amendment is naturally divided into two parts: its prefatory clause and its operative clause. The former does not limit the latter grammatically, but rather announces a purpose. The Amendment could be rephrased, "Because a well regulated Militia is necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed."...Although this structure of the Second Amendment is unique in our Constitution, other legal documents of the founding era, particularly individual-rights provisions of state constitutions, commonly included a prefatory statement of purpose.

...The first salient feature of the operative clause is that it codifies a "right of the people." The unamended Constitution and the Bill of Rights use the phrase "right of the people" two other times, in the First Amendment's Assembly-and-Petition Clause and in the Fourth Amendment's Search-and-Seizure Clause. The Ninth Amendment uses very similar terminology ("The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people"). All three of these instances unambiguously refer to individual rights, not "collective" rights, or rights that may be exercised only through participation in some corporate body.

...Before addressing the verbs "keep" and "bear," we interpret their object: "Arms." The 18th-century meaning is no different from the meaning today. The 1773 edition of Samuel Johnson's dictionary defined "arms" as "weapons of offence, or armour of defence."...

The term was applied, then as now, to weapons that were not specifically designed for military use and were not employed in a military capacity... Although one founding-era thesaurus limited "arms" (as opposed to "weapons") to "instruments of offence generally made use of in war," even that source stated that all firearms constituted "arms."

...The phrase "keep arms" was not prevalent in the written documents of the founding period that we have found, but there are a few examples, all of which favor viewing the right to "keep Arms" as an individual right unconnected with militia service...

...Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation. This meaning is strongly confirmed by the

historical background of the Second Amendment. We look to this because it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existingright....

Between the Restoration and the Glorious Revolution, the Stuart Kings Charles II and James II succeeded in using select militias loyal to them to suppress political dissidents, in part by disarming their opponents... These experiences caused Englishmen to be extremely wary of concentrated military forces run by the state and to be jealous of their arms. They accordingly obtained an assurance from William and Mary, in the Declaration of Right (which was codified as the English Bill of Rights), that Protestants would never be disarmed: "That the subjects which are Protestants may have arms for their defense suitable to their conditions and as allowed by law."...

By the time of the founding, the right to have arms had become fundamental for English subjects... Thus, the right secured in 1689 as a result of the Stuarts' abuses was by the time of the founding understood to be an individual right protecting against both public and private violence.

...In the tumultuous decades of the 1760's and 1770's, the Crown began to disarm the inhabitants of the most rebellious areas. That provoked polemical reactions by Americans invoking their rights as Englishmen to keep arms. A New York article of April 1769 said that "[i]t is a natural right which the people have reserved to themselves, confirmed by the Bill of Rights, to keep arms for their own defence."...

...During the 1788 ratification debates, the fear that the federal government would disarm the people in order to impose rule through a standing army or select militia was pervasive in Antifederalist rhetoric. John Smilie, for example, worried not only that Congress's "command of the militia" could be used to create a "select militia," or to have "no militia at all," but also, as a separate concern, that "[w]hen a select militia is formed; the people in general may be disarmed." 2 Documentary History of the Ratification of the Constitution 508-509 (M. Jensen ed. 1976) (hereinafter Documentary Hist.). Federalists responded that because Congress was given no power to abridge the ancient right of individuals to keep and bear arms, such a force could never oppress the people. It was understood across the political spectrum that the right helped to secure the ideal of a citizen militia, which might be necessary to oppose an oppressive military force if the constitutional order broke down.

It is therefore entirely sensible that the Second Amendment's prefatory clause announces the purpose for which the right was codified: to prevent elimination of the militia. The prefatory clause does not suggest that preserving the militia was the only reason Americans valued the ancient right; most undoubtedly thought it even more important for self-defense and hunting. But the threat that the new Federal Government would destroy the citizens' militia by taking away their arms was the reason that right--unlike some other English rights--was codified in a written Constitution. Justice Breyer's assertion that individual self-defense is merely a "subsidiary interest" of the right to keep and bear arms, see post, at 36, is profoundly mistaken. He bases that

assertion solely upon the prologue--but that can only show that self-defense had little to do with the right's codification; it was the central component of the right itself.

...Between 1789 and 1820, nine States adopted Second Amendment analogues. Four of them--Kentucky, Ohio, Indiana, and Missouri--referred to the right of the people to "bear arms in defence of themselves and the State." See n. 8, supra. Another three States--Mississippi, Connecticut, and Alabama--used the even more individualistic phrasing that each citizen has the "right to bear arms in defence of himself and the State." Seeibid. Finally, two States--Tennessee and Maine--used the "common defence" language of Massachusetts. See Tenn. Const., Art. XI, §26 (1796), in 6 Thorpe 3414, 3424; Me. Const., Art. I, §16 (1819), in 3 id., at 1646, 1648. That of the nine state constitutional protections for the right to bear arms enacted immediately after 1789 at least seven unequivocally protected an individual citizen's right to self-defense is strong evidence that that is how the founding generation conceived of the right. And with one possible exception that we discuss in Part II-D-2, 19th-century courts and commentators interpreted these state constitutional provisions to protect an individual right to use arms for self-defense. See n. 9, supra; Simpson v. State, 5 Yer. 356, 360 (Tenn. 1833).

The historical narrative that petitioners must endorse would thus treat the Federal Second Amendment as an odd outlier, protecting a right unknown in state constitutions or at English common law, based on little more than an overreading of the prefatory clause.

...Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.

...the inherent right of self-defense has been central to the Second Amendment right. The handgun ban amounts to a prohibition of an entire class of "arms" that is overwhelmingly chosen by American society for that lawful purpose. The prohibition extends, moreover, to the home, where the need for defense of self, family, and property is most acute...Few laws in the history of our Nation have come close to the severe restriction of the District's handgun ban. And some of those few have been struck down. In Nunn v. State, the Georgia Supreme Court struck down a prohibition on carrying pistols openly (even though it upheld a prohibition on carrying concealed weapons). In Andrews v. State, the Tennessee Supreme Court likewise held that a statute that forbade openly carrying a pistol "publicly or privately, without regard to time or place, or circumstances," 50 Tenn., at 187, violated the state constitutional provision (which the court equated with the Second Amendment).

...We know of no other enumerated constitutional right whose core protection has been subjected to a freestanding "interest-balancing" approach...The First Amendment contains the freedom-of-speech guarantee that the people ratified, which included exceptions for obscenity, libel, and disclosure of state secrets, but not for the expression of extremely unpopular and wrong-headed views. The Second Amendment is no different. Like the First, it is the very

product of an interest-balancing by the people--which Justice Breyer would now conduct for them anew. And whatever else it leaves to future evaluation, it surely elevates above all other

In sum, we hold that the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense. Assuming that Heller is not disqualified from the exercise of Second Amendment rights, the District must permit him to register his handgun and must issue him a license to carry it in the home.

We are aware of the problem of handgun violence in this country, and we take seriously the concerns raised by the many amici who believe that prohibition of handgun ownership is a solution....But the enshrinement of constitutional rights necessarily takes certain policy choices off the table. These include the absolute prohibition of handguns held and used for self-defense in the home. Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct.

We affirm the judgment of the Court of Appeals.

It is so ordered.

Appendix G. Fishbowl Discussion Questions

1. Can a single method of interpretation be used in all cases brought to the Supreme Court? Does using a particular method affect the ultimate decision of the court or does the method of interpretation only have an impact on the reasoning behind a decision? In other words does method matter?

2. In your opinion, which method of Constitutional interpretation is best suited to the American government and society at present?

3. Are methods of interpretation mutually exclusive or can there be compromise amongst multiple interpretations?

4. Is the fact that Supreme Court justices differ in interpretations alarming? Do these differences amount to a stronger or weaker court? Who would the founders consider these differences?

5. Article III does not provide much detail on the Supreme Court. In fact, the constitution provides almost no elaboration upon what should happen inside the court. With Article III in mind, how is it that the Court is vested with the powers we understand it to have today? In particular, how did various methods of Constitutional Interpretation develop and can they be considered valid under the Constitution?

    a. Related, what is the purpose of having various methods of interpreting the constitution?