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## BOOK REVIEW

### A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW

Antonin Scalia, Associate Justice, United States Supreme Court

RICHARD T. BOWSER\*

What do statutes, constitutions (including the United States Constitution) and the Holy Scriptures of the Old and New Testaments have in common? One could list a number of matters. Included on that list however, would be that they share in what many consider to be a common malady- their meaning is always in doubt, being always a matter of interpretation. Justice Scalia addresses the matter of the former in his essay, now published by Princeton Press, in which he puts forward some ideas regarding the interpretation of both statutes and the Constitution. The book also contains responses from such notables as Laurence Tribe, Mary Ann Glendon, and Ronald Dworkin.<sup>1</sup>

Justice Scalia addresses three principal topics, the first being a necessary precursor to the latter two: (1) the nature of the common law and the effect that immersion in that common law sys-

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1. My comments will be addressed primarily to the ideas that Justice Scalia addresses in his essay in chief and to the responses offered by Professors Tribe and Dworkin because the essay and the comments by these two offer the most fruitful opportunity for discussion.

tem has on law students, lawyers, judges; (2) the need for separate attention to the work of statutory interpretation and a model for doing the same which is in his view consistent with democratic principles; and (3) an approach to constitutional interpretation that is also consistent with the constitutional text and democratic principles.

As to the first, Justice Scalia begins by recounting the central role that the study of the common law has played and continues to play in American legal education. That description must go without challenge. Lawyers and law students alike know of the casebook method of studying law, that is to read opinions by judges in which the judge is called to divine the appropriate principles, separated in almost every instance from any affirmative legislative action, and lay down the rule by which litigants and those that follow should live. Justice Scalia suggests that it is this attention to the courts and the opinions offered by them through common law judges that creates in first-year students a sense of exhilaration, because the methodology of law school, in fact, "consists of playing common-law judge, which in turn consists of playing king—devising, out of the brilliance of one's own mind, those laws that ought to govern mankind. How exciting! And no wonder so many law students, having drunk at this intoxicating well, aspire for the rest of their lives to be judges."<sup>2</sup>

Justice Scalia goes on to point out that law school not only encourages developing the ability to determine the best legal rule in a world that resembles a clear slate, but because the common law proceeds on the doctrine of *stare decisis*, law school also imparts the skill of "distinguishing." Says Justice Scalia,

Within such a precedent-bound common-law system, it is critical for the lawyer, or the judge, to establish whether the case at hand falls within a principle that has already been decided. Hence the technique—or the art, or the game—of "distinguishing" earlier cases. It is an art or a game, rather than a science, because what constitutes the "holding" of an earlier case is not well defined and can be adjusted to suit the occasion. At its broadest, the holding of a case can be said to be the analytical principle that produced the judgment . . . . In the narrowest sense, however (and courts will squint narrowly when they wish to avoid an earlier

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2. ANTONIN SCALIA, *A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW* 7 (1997).

decision), the holding of a case cannot go beyond the facts that were before the court.<sup>3</sup>

In Justice Scalia's view, this common law system of making law by judicial opinion, and making law by distinguishing earlier cases does more than train one in these skills. It creates an almost indelible impression that continues throughout one's life as a lawyer. As Justice Scalia puts it, it is

What every American law student, every newborn American lawyer, first sees when he opens his eyes. . . . His image of the great judge—the Holmes, the Cardozo—is the man (or woman) who has the intelligence to discern the best rule of law for the case at hand and then the skill to perform the broken-field running through earlier cases that leaves him free to impose that rule: distinguishing one prior case on the left, straight-arming another on the right, high-stepping away from another precedent about to tackle him from the rear, until (bravo!) he reaches the goal—good law. That image of the great judge remains with the former law student when he himself becomes a judge, and thus the common-law tradition is passed on.<sup>4</sup>

#### LEGISLATIVE INTERPRETATION

Justice Scalia finds no fault with this approach to common-law lawmaking in the abstract. The concern arises when the attitude of the common-law judge—“the mind set that asks ‘What is the most desirable resolution of this case, and how can any impediments to the achievement of that result be evaded?’” meets the age of legislation, the expression of the democratic majority.<sup>5</sup> This, he notes, is especially acute in the context of federal courts where every issue of law resolved by the federal judge involves the interpretation of text, be it regulatory, legislative or constitutional text. That concern leads Justice Scalia into an appeal for instruction on textual interpretation, first statutory and then constitutional (to be discussed later).

Focusing then on statutory interpretation, he notes that the state of statutory interpretation in America is so unformed that there is not only no agreement on methodology, but also no agreement on the objective of statutory interpretation.<sup>6</sup> That is, how do we answer this question: “What are we looking for when we con-

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3. *Id.* at 8-9.

4. *Id.* at 9.

5. *Id.* at 13.

6. *Id.* at 16.

strue a statute?" If we answer that question as many do with "the intent of the legislature," do we mean by that the subjective intent of the legislature or what might be described as the objective intent of the legislature—the intent that a reasonable person would gather from the text of the law, placed within the context of the existing law. Justice Scalia makes it clear that to the extent that intent of the legislature is the object of statutory interpretation, the sought-after intent must be this objective or "objectified" intent.<sup>7</sup> For him, the alternative is not consistent with democratic government. As he explains,

... the reason we adopt this objectified version is, I think, that it is simply incompatible with democratic government, or indeed even with fair government, to have the meaning of a law determined by what the lawgiver meant, rather than by what the lawgiver promulgated. That seems to me one step worse than the trick the emperor Nero was said to engage in: posting edicts high up on the pillars, so that they could not easily be read. Government by unexpressed intent is similarly tyrannical. It is the law that governs, not the intent of the lawgiver. . . . Men may intend what they will; but it is only the laws that they enact bind us.<sup>8</sup>

Most interestingly, Justice Scalia points out that if one were to adopt the principle that the goal of statutory interpretation is to determine the unexpressed, subjective intent of the legislature, the *theoretical* threat would be that we would all be governed by that legislative intent not now known to us. However, the *real* threat is that "under the guise or even self-delusion of pursuing unexpressed legislative intents, common-law judges will in fact pursue their own objectives and desires, extending their lawmaking proclivities from the common law to the statutory field."<sup>9</sup> Justice Scalia suggests that this is common-law lawmaking operating under the subterfuge of statutory interpretation. Why? Because "[w]hen you are told to decide, not on the basis of what the legislature said, but on the basis of what it *meant*, and are assured that there is no necessary connection between the two, your best shot at figuring out what the legislature meant is to ask yourself what a wise and intelligent person *should* have meant; and that will surely bring you to the conclusion that the law means what you think it *ought* to mean. . . ."<sup>10</sup>

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7. *Id.* at 17.

8. *Id.*

9. *Id.* at 17-18.

10. *Id.* at 18.

Some have suggested that this subterfuge must be avoided. Justice Scalia cites two, Guido Calabresi and William Eskridge.<sup>11</sup> But for them, only the subterfuge of using intent and the judicial rationalization that goes with it must be avoided; permitting judges to treat statutes as *de facto* common law is to be commended.<sup>12</sup> As one would expect, Justice Scalia argues that not only the rationalization and subterfuge involved in seeking the subjective intent of the legislature, but also the very idea that the judge fills the role of the arbiter of the good, even in the face of statute providing to the contrary, must be abandoned. For Justice Scalia, the idea that text means whatever it ought to mean and that unelected judges decide what that is is simply not compatible with democratic theory.<sup>13</sup>

He describes his interpretive philosophy as “textualism.”<sup>14</sup> He distinguishes it from strict constructionism saying,

I am not a strict constructionist, and no one ought to be— though better that, I suppose, than a nontextualist. A text should not be construed strictly, and it should not be construed leniently; it should be construed reasonably, to contain all that it fairly means.<sup>15</sup>

A textualist for Justice Scalia is neither a literalist nor a nihilist. Words do not always mean exactly the same thing, but neither do they have an unlimited range of meaning as the deconstructionist would suggest.<sup>16</sup> While this may be formalistic, this is the glory of textualism, says Justice Scalia, because the law is about form. Formalism “is what makes a government a government of laws and not of men.”<sup>17</sup>

Justice Scalia, after a brief excursion into canons of statutory construction, then addresses the subject of the use of legislative history (floor statements, debates, committee reports and such) in the interpretation of statutes. He argues that the use of legislative history in statutory interpretation is a relatively recent development, dating from the early decades of this century and was then suggested as a mechanism to keep common-law minded

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11. *Id.* at 22.

12. See Guido Calabresi, *A COMMON LAW FOR THE AGE OF STATUTES* (1982); WILLIAM N. ESKRIDGE, JR., *DYNAMIC STATUTORY INTERPRETATION* (1994).

13. SCALIA, *supra* note 2, at 22.

14. *Id.* at 23.

15. *Id.*

16. *Id.* at 24.

17. *Id.* at 25.

judges in check. That is, it was intended to compel them to follow the intent of the legislature by placing that intent beyond manipulation by the judge.<sup>18</sup> Justice Scalia notes, however, that in the past few decades, reference to legislative history has become commonplace and ironically less reliable as a guide to legislative intent:

In the earlier days, it was at least genuine and not contrived—a real part of the legislation's *history*, in the sense that it was part of the *development* of the bill . . . Nowadays, however, when it is universally known and expected that judges will resort to floor debates and (especially) committee reports as authoritative expressions of 'legislative intent' affecting the courts rather than informing the Congress has become the primary purpose of the exercise.<sup>19</sup>

On principle the Justice rejects the use of legislative history, but he also rejects it as a practical matter as well. In his view, its use has done nothing to limit the manipulation of the language of legislation by common-law minded judges; it has only augmented it by giving them a new device with which to accomplish their common good objective. Furthermore, it is a particularly powerful tool to that end because in many pieces of legislation, there is some legislative history for everyone. "As Judge Harold Leventhal used to say, the trick is to look over the heads of the crowd and pick out your friends."<sup>20</sup>

Surely on this subject of statutory interpretation the Justice is correct. Can it be that we would wish to be bound by an intent not known to us? Can it be that we have such confidence in federal judges, exempt from the political process, that we are willing to place in them the authority to change the law to that which they, or more appropriately he or she, think best? Do we really have so little confidence in the political branches and if so why? Is our lack of confidence in the political processes born of elitism, a suspicion of the citizenry? Or is it that we trust the citizenry but distrust the elected representatives? If it is either, is the remedy a "corrective" court? Should we use the least political branch of government to correct the errors in "wisdom," not the abuses of power, of the political branches of government? And if we opt for that, have we not given up on the great democratic experiment? On this matter, Justice Scalia has given us much-needed assist-

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18. *Id.* at 30.

19. *Id.* at 34.

20. *Id.* at 36.

ance. There is little doubt that we give too much attention to common-law lawmaking and too little attention to legislation and statutory interpretation. And to the extent that it is done, Justice Scalia perceptively points out the customary flaw: it is done always within a common-law frame of reference. It is time that we in the business of law and legal education collectively recognize that the common law ends where legislation begins, both substantively and methodologically.

### *Constitution Interpretation*

The common-law way of making law also finds its way into constitutional interpretation.<sup>21</sup> But in this context there is a peculiar irony: in statutory interpretation, the common-law lawmaking approach concerned itself with the intent of the drafters; in constitutional interpretation, those most given to the common-law lawmaking approach reject the drafter's intent as a criterion for consideration.<sup>22</sup> Justice Scalia asserts that he rejects the use of such subjective intent both for statutory interpretation as well as constitutional interpretation.<sup>23</sup> For him, the "Great Divide with regard to constitutional interpretation is not that between Framers' intent and objective meaning, but rather that between *original* meaning (whether derived from Framers' intent or not) and *current* meaning."<sup>24</sup> Those taking the latter position affirm the existence of a Living Constitution, "a body of law that . . . grows and changes from age to age, in order to meet the needs of a changing society. And it is the judges who determine those needs and 'find' that changing law."<sup>25</sup> This, the Justice says, is the common law methodology applied in the context of the Constitution text, but in this context the method is "infinitely more powerful than what the old common law ever pretended to be, for now it trumps even the statutes of democratic legislatures."<sup>26</sup>

What supports this exercise of common-law lawmaking in the context of the constitution? The Justice offers the necessity of a flexible document as the argument most frequently advanced.<sup>27</sup> Such flexibility is needed, it is argued, in order to provide for the

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21. *Id.* at 40.

22. *Id.* at 38.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 41.



needs of a constantly changing society. Justice Scalia takes issue with that assessment, however. He argues that most of the "growth" (as assessed by those favoring the Living Constitution) experienced constitutionally has not tended to encourage flexibility within the political culture, but rather has created a great deal of rigidity.<sup>28</sup> He offers as examples such cases as *Lee v. Weisman*, 505 U.S. 577 (1992) (prohibiting prayer at public school graduations), *Reynolds v. Sims*, 377 U.S. 533 (1964) (prohibiting election of state legislatures except by one person-one vote rules), *Miller v. California*, 413 U.S. 15 (1973) (denying to states the ability to prohibit pornography except when it is obscene). In each instance, before the ruling, society was free to regulate or not regulate the activity as it saw fit, as the needs of society changed. After the rulings, the flexibility was gone. The societal choice had been eliminated.

Justice Scalia does admit, however, that some constitutional decisions (maybe better put, holdings that state or federal actions are unconstitutional) created more flexibility. But those, he says, only serve to refute the proposition that the Living Constitution will invariably enlarge individual rights.<sup>29</sup> He cites as the most obvious example, the Court's withdrawal of constitutional protection of property, including its treatment of the Contracts Clause. The reason for such a development in constitutional analysis, he suggests, is that we value property rights today less than the Founders did.<sup>30</sup> While that may be true, he suggests, it only serves to illustrate that the evolving Constitution does not *always* expand individual rights (assuming that the expansion is always a good thing). It expands individual rights only in a selective manner; rights are expanded when some dimension of society (but obviously not the dimension represented by the political subdivision whose action is at issue) supports the expansion.

Therein lies, from Justice Scalia's perspective, perhaps the greatest defect in the Living Constitution approach: "there is no agreement, and no chance of agreement, upon what is to be the guiding principle of the evolution. . . . As soon as the discussion goes beyond the issue of whether the Constitution is static, the evolutionists divide into as many camps as there are individual views of the good, the true and the beautiful."<sup>31</sup>

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28. *Id.*

29. *Id.* at 42-3.

30. *Id.* at 43.

31. *Id.* at 44-5.

Justice Scalia argues, however, that in the final analysis it may not matter what principle guides the growth of the Living Constitution. “[A]t the end of the day an evolving constitution will evolve the way the majority wishes.”<sup>32</sup> This is so, he argues, because at some point people will come to believe that the Constitution means what it ought to mean in light of the standards of our evolving culture. If that is the case, then citizens will no longer be concerned about judges possessing the qualities of “impartiality, judgment and lawyerly acumen,” but rather will want judges who “agree with *them* as to what the evolving standards have evolved to; who agree with *them* as to what the Constitution *ought* to be.”<sup>33</sup> When that happens, says Justice Scalia, we will see the end of the Bill of Rights, because its “meaning will be committed to the very body it was meant to protect against: the majority.”<sup>34</sup>

#### COMMENTS

##### *Laurence Tribe*

Professor Tribe acknowledges that he agrees with Justice Scalia that

when we ask what a *legal text* means— what it requires of us, what it permits us to do, and what it forbids—we ought *not* to be inquiring (except perhaps very peripherally) into the ideas, intentions, or expectations subjectively held by whatever particular persons were, as a historical matter, involved in drafting, promulgating, or ratifying the text in question. . . . such thoughts and beliefs can never substitute for what was in fact *enacted as law*.<sup>35</sup>

However, Professor Tribe rejects the Justice’s notion that the original meaning of a constitutional text, especially whether that text was an expression of a broad moral principle or a specific rule, is knowable with a sufficient degree of certainty so as to make it outcome determinate in constitutional interpretation.<sup>36</sup> Therefore, says Professor Tribe, “when Justice Scalia insists of the First Amendment’s provision that, ‘Congress shall make no law. . . abridging the freedom of speech’ that it ought to be read as a still photo command that Congress not abridge such speech rights of

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32. *Id.* at 46.

33. *Id.* at 47.

34. *Id.*

35. *Id.* at 65.

36. *Id.* at 67-71.

Englishmen as were then extant<sup>37</sup> he is stepping into a world that is in fact unknown. While Professor Tribe sees the First Amendment's text to embody a "set of moral and political principles about the freedom of expression,"<sup>38</sup> he cannot bring himself "to insist that the words can bear no other interpretation."<sup>39</sup> And therein, lies the great distinction between the two men—a philosophical and epistemological distinction finding its way into interpretative philosophy. Justice Scalia believes that some matters, including words and their meaning—even words and meaning captured in the context of a time and a place— can be known at least with a degree of certainty sufficient to justify other time-based actions based upon those words and their "original meaning." Professor Tribe, however, finds such a position to lack an intellectual and interpretive humility that must proceed the constitutional interpretative process. He is left then with a constitution, not freed from its mooring and to set sail for a "historic voyage,"<sup>40</sup> but rather a constitution which, epistemologically speaking, was never meaningfully tied to any mooring.

Such an approach may have merit if the Constitution created a government structure that allowed for no flexibility and change due to different circumstances and perspectives. That, however, is not the case. As Justice Scalia noted, the "voyage" theory of constitutional interpretation is the one destined to create a most inflexible governance, because it shapes rules from constitutional whole cloth and sets them against the democratic initiatives of our day and those days to come. In the final analysis, it is an invitation to a present-day oligarchy where justices sit in judgment of the wisdom of the will of the people expressed through its democratic institutions. Such an approach glorifies the common-law lawmaking in constitutional interpretation, the matter that has been the central point of Justice Scalia's criticism.

### *Ronald Dworkin*

Ronald Dworkin's principle objection to Justice Scalia's comments is that the Justice is inconsistent. By which Professor Dworkin means that while Justice Scalia vigorously argues that in the context of legislative enactments neither the subjective intent of the legislators individually nor the collective intent of the

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37. *Id.* at 79-80.

38. *Id.* at 80.

39. *Id.*

40. *Id.* at 70.

legislature as a whole should determine the “meaning” of the text, Justice Scalia abandons this principle and considers the intent of the framers in determining the original meaning of any and all constitutional texts. How can that be so when Justice Scalia so categorically denies referring to this subjective intent? Professor Dworkin contends that, in effect, Justice Scalia, in the context of constitutional interpretation, brings intent in through the door of expected consequences. That is to say, that, in Professor Dworkin’s assessment, as Justice Scalia searches for the text’s original (and reasonable) meaning he does so with reference to what the text would have been expected to do or would have been expected to reach when it was ratified. He calls this “expectation originalism” in distinction from “semantic originalism” (the authors intended to say the words that they authored which may, in some instances, have been a concrete rule, the application of which would be consistent with their temporal expectation, but in other instances may have been broad, general moral principles, the full ramifications of which they would not have expected).

He uses the case of *Brown v. Board of Education*<sup>41</sup> and the question which it addressed, does the Fourteenth Amendment’s guarantee of equal protection of the laws forbid racially segregated public schools, as an illustration.

We know that the majority of the members of Congress who voted for that amendment did not expect or intend it to have that consequence: they themselves sustained racial segregation in the schools of the District of Columbia. So an expectation-originalist would interpret the Fourteenth Amendment to permit segregation and would declare the Court’s decision [in *Brown*] wrong. But there is no plausible interpretation of what these statesmen meant to say, in laying down the language “equal protection of the laws”, that entitles us to conclude that they *declared* segregation constitutional. On the contrary, as the Supreme Court held, the best understanding of their semantic intentions supposes that they meant to, and did, lay down a general principle of political morality which (it had become clear by 1954) condemns racial segregation. So, on that ground, a semantic-originalist would concur in the Court’s decision.<sup>42</sup>

This approach, Professor Dworkin argues, does not result in a “morphing,” ever-changing Constitution, as Justice Scalia has characterized it. Rather, according to Professor Dworkin, the

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41. 347 U.S. 483 (1954).

42. SCALIA, *supra* note 2, at 119.

Constitution has from its adoption set down in its great texts abstract moral principles the implications of which may be discovered as one considers those principles in light of the new circumstances.<sup>43</sup>

Is Professor Dworkin right? Does Justice Scalia change his methodology as he changes from a statutory to a constitutional text? Does he allow subjective intent to guide interpretation of constitutional texts by referring to the expectations of the authors/framers? It is a difficult question. Difficult because the process of interpretation and application does not fit neatly into the categories that Professor Dworkin provides.

For him, the first consideration is the text, what do the words import and is that importation the expression of a concrete rule or a general principle. If it is the former, the rule simply applies in a mechanical fashion to the circumstances at hand. If it is the latter, the statement of a broad, general, moral principle by which we are to be governed, then the current government action (the subject of the litigation) must be assessed in light of the current understanding of the moral principle. The government action stands if it is not in conflict with the current understanding; conversely, the government action must be stricken if a conflict with the current understanding of the moral principle is found. Therefore, the same law may be at one time in our history constitutional, (not in conflict with our current, best understanding of the moral principle—one wonders whether *Plessy v. Ferguson* is such an example) but later (or earlier unless one's presupposition

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43. Professor Dworkin develops this idea further in his recent book, *FREEDOM'S LAW* (1996). He also argues in the introduction of that book that this moral reading of the Constitution is not only good and necessary, but also that when it is used to strike down statutes as unconstitutional, it is not counter-democratic, because what is unconstitutional under this moral reading is also inconsistent with American democracy. Few would argue with such a proposition if a legislature were to pass a law that prohibits the political minority from expressing its views. I doubt that he would find so many to assent to his proposition if the legislation requires spousal notification before obtaining an abortion (struck down as unconstitutional in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992)) or removes sexual orientation as a protected category (struck down in *Romer v. Evans*, 116 S. Ct. 1620 (1996)). In the latter two, which action of government is counter-democratic, the statute (or referendum in the case of *Romer*) or the Court's decision striking it down? Surely, that decision turns on whether one concludes that the constitution places those decisions beyond the will of the political majority, which puts us right back to the question of constitutional interpretation.

regarding cultural change will not permit it) the same law may be unconstitutional, having been found to conflict with the best current understanding of the principle.

The Equal Protection Clause of the Fourteenth Amendment can be used to illustrate. Does it lay down a specific rule or a general, moral principle? How does one decide? Professor Dworkin would argue that the text itself must supply the answer. He concludes that the text, in fact, expresses an abstract, general, moral principle: equal treatment of all under the law. Therefore, it is irrelevant that those who authored it and/or ratified it and/or all persons then reading it understood that it would apply in some areas but would not apply in others. Thus, for Professor Dworkin, when the Court considers a challenge brought under the Equal Protection Clause, it is to consider whether the best, current understanding of this abstract moral principle of equal treatment by government prevents government from acting in the way that it has chosen to act.

Such an approach must answer a number of objections, including one offered by Professor Tribe who asks whether it is possible to determine with sufficient certainty whether the text in question is concrete or abstract. Take for example the Fourth Amendment's Search and Seizure Clause ("The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated. . ."). Is that an abstract principle or a concrete rule? It seems to have elements of both. Which one is to be preferred?

Secondly, assuming one discovers that a text is abstract and contains a general, moral principle, what guidance is there as to the dimensions of that principle and its application? Professor Dworkin's approach seems to be grounded on the presupposition that there is and will continue to be continuity of the moral principle, that while there may be changes in its application (as things become more clear), the moral principle remains the same and remains knowable and understandable by most in the culture. Postmodernism, I thought, had put an end to such modernistic notions and had revealed that concepts of truth alter one's construct of moral principles. For purposes of interpretation, the point is that without such a shared concept of truth, (and surely we do not have that)<sup>44</sup> we cannot hope to have a shared construct

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44. See JAMES DAVISON HUNTER, *CULTURE WAR: THE STRUGGLE TO DEFINE AMERICA* (1991) (where Hunter argues that there has been a fundamental realignment in American culture along a fault line that might best be defined in

of general, moral principles to be applied to new and changed circumstances. The application of principles to new circumstances then becomes an imposition of a concept of truth rather than merely the application of principle, moral or otherwise.

Thirdly, and this is in more direct defense of the approach use by Justice Scalia, meaning cannot be reduced to these two options, semantic originalism and expectation originalism. The two must be interrelated because words always come in a context of time and place, not only in a cultural, historical time and place, but also within the historic flow of ideas. Communication requires that we understand what the speaker means. Therefore, what the words mean, in the first instance, must be determined in reference to the author's time and place and not that of the audience. Audience-determined meaning is the error of deconstructionism and the very reason why it is a game with no useful application for the construction of a legal system designed to avoid tyranny. In a system of the Rule of Law, the expectation and understanding of the author and those to whom that text was immediately addressed is essential to determine the semantic interpretation of the text. Therefore, genuine "semantic originalism" must take account of the expectations of the authors and the audience at the time of the pronouncement if it is to be "originalism" at all.

### CONCLUSION

Justice Scalia has done a very admirable job of discussing the matter of interpretation. His style is like that of his opinions, refreshingly to the point and quite often provocative. Even if one disagrees with him on the major points, one should not avoid considering those ideas and the ideas presented by the comments to his remarks. By my assessment the two disciplines where interpretation of text is inescapable are theology and law. Oddly enough, the matter of interpretation of text in law, in stark contrast to the case of theology, has proceeded without much conscious reflection on that subject apart from that offered by the critical schools. Justice Scalia's comments encourage that conscious reflection and shed light on how it might best be done. For that reason, if for no other, it deserves our attention.

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terms of commitments to either objective or subjective visions of truth. He argues that the groups, made up of individuals who cross traditional lines of society and culture, representing each vision are in a struggle to define American culture, including the law.).