Samuel A. Alito

Address to the Federalist Society on the Declination of Individual Liberty

delivered 12 November 2020

Thank you, Dean [Reuter]. I'm very pleased to have this opportunity to speak to all of you who are attending the Federalist Society's annual lawyers convention via the Internet.

I've given the convention's keynote spee[ch] several times before, but today is quite different. On all those occasions, I spoke to a live audience at the big convention dinner. By the time I got up to speak, there had been a cocktail hour, everybody had had the chance to enjoy a glass of wine or two with dinner, and people were in a good mood. Those are optimal circumstances for a speaker. They tend to make the audience a lot more forgiving in its assessment of the speech.

Today, I'm talking to a camera, and that feels really strange. And I wondered if anything could be done to alleviate that. If any of you watched any regular season baseball games this year, you will have seen that there were no real people in attendance. But in an effort to make the atmosphere seem a bit more normal, teams placed cardboard cutouts of fans in the seats, and piped in recorded cheers.

I thought for a moment about asking the organizers of the convention to do something like that, but that would only make the setting more surreal. However, if any of you would like to enjoy a beverage in the comfort of your homes, I hope you will feel free to do so. And on the other hand, if any of you feel the urge to throw rotten tomatoes, go right ahead -- you will only mess up your own screen.

If you have watched some of the events of this year's convention, I hope you've found them informative and thought provoking. As in the past, they have featured speakers with a variety of views on important topics. Some of those watching tonight may be new to Federalist Society events, and may have heard a lot of misinformation about the Society. So let me say a word at the outset about what the Society is, what it is not, and why I have been a member for many years.

Let me start with what it is not. It is not an advocacy group. Unlike other bar groups, it does not take a position on any issue. It doesn't propose legislation or lobby or testify before Congress, or file briefs in the Supreme Court or any other court. It holds events like this convention at which issues are debated and discussed openly and civilly. Anybody can join the Society, and anybody can attend events like this convention. Most members of the Society are conservative in the sense that they want to conserve our Constitution and the rule of law. But members disagree about many important things.

The Society started in law schools in the 1980s and now has 200 Law School chapters. And the best law school deans have expressed appreciation of the Society's contribution to free and open debate. My colleague, Elena Kagan, is a prime example.

When she was the Dean of Harvard Law School, she spoke at a Federalist Society event and began with these words: "I love the Federalist Society." After some applause, she repeat[ed] it: "I love the Federalist Society" -- pause, "but...you are not my people." That is a true expression of the freedom of speech that our Constitution guarantees and that we need to preserve. We should all welcome rational, civil speech on important subjects, even if we do not agree with what the speaker has to say.

Unfortunately, tolerance for opposing views is now in short supply in many law schools, and in the broader academic community. When I speak with recent law school graduates, what I hear over and over is that they face harassment and retaliation if they say anything that departs from the law school orthodoxy. Under these circumstances, Federalist Society law school events are more important than ever.

I will have more to say about freedom of speech later, but at this point I want to express appreciation to the many judges and lawyers who stood up to an attempt to hobble the debate that the Federalist Society fosters.

A move was afoot to bar federal judges from membership in the Society. And if that had succeeded, the next logical step would have been to forbid them from speaking at law school events and other events sponsored by the Society. Four Court of Appeals judges, Amul Thapar, Andy Oldham, Bill Prior, and Greg Katsas, prepared a letter that devastated the arguments of those who wanted to ban membership. The letter was signed by more than 200 judges, including judges appointed by every President going back to President Ford. And at least for now, the proposal is on hold. We should all express our thanks to these defenders of free speech.[1]

The topic of this year's convention is "The Rule of Law and the Current Crisis." And I take it that the title is intended primarily to refer to the COVID-19 crisis that has transformed life for the past eight months. The pandemic has obviously taken a heavy human toll: thousands dead, many more hospitalized, millions unemployed, the dreams of many small business owners dashed.

But what has it meant for the rule of law?

I'm now going to say something that I hope will not be twisted or misunderstood, but I have spent more than 20 years in Washington, so I'm not overly optimistic. In any event, here goes: *The pandemic has resulted in previously unimaginable restrictions on individual liberty.*

Now, notice what I am not saying, or even implying. I am not diminishing the severity of the virus's threat to public health. And putting aside what I will say shortly about a few Supreme Court cases, I'm not saying anything about the legality of COVID restrictions. Nor am I saying anything about whether any of these restrictions represent good public policy. I'm a judge, not a policymaker. All that I'm saying is this -- and I think it is an indisputable statement of fact: We have never before seen restrictions as severe, extensive, and prolonged as those experienced for most of 2020.

Think of all the live events that would otherwise be protected by the right to freedom of speech -- live speeches, conferences, lectures, meetings. Think of worship services -- churches closed on Easter Sunday, synagogues closed for Passover and Yom Kippur. Think about access to the courts, or the constitutional right to a speedy trial. Trials in federal courts have virtually disappeared in many places. Who could have imagined that?

The COVID crisis has served as a sort of constitutional stress test. And in doing so it has highlighted disturbing trends that were already present before the virus struck. One of these is the dominance of lawmaking by executive fiat rather than legislation. The vision of early 20th-century Progressives and the New Dealers of the 1930s was that policymaking would shift from narrow-minded elected legislators to an elite group of appointed experts -- in a word, that policymaking would become more *scientific*.

That dream has been realized to a large extent. Every year administrative agencies acting under broad delegations of authority churn out huge volumes of regulations that dwarf the statutes enacted by the People's elected representatives.

And what have we seen in the pandemic? Sweeping restrictions imposed, for the most part, under statutes that confer enormous executive discretion?

We had a COVID related case from Nevada, so I -- I will take the Nevada law as an example. Under that law, if the governor finds that there is, quote, "a[ny] natural, technological, or man-made emergency or disaster of major proportions," the governor can "perform and exercise such [other] functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population."

To say that this provision confers broad discretion would be an understatement.

Now, again, let me be clear: I'm not disputing that broad wording may be appropriate in statutes designed to address a wide range of emergencies, the nature of which may be hard to anticipate; and I'm not passing judgment on this particular statute. I want to make two different points.

First, what we see in this statute, and in what was done under it, is a particularly developed example of where the law in general has been going for some time: in the direction of government by executive officials who were thought to implement policies based on expertise; and in the purest form, scientific expertise.

Second, laws giving an official so much discretion can, of course, be abused. And whatever one may think about the COVID restrictions, we surely don't want them to become a recurring feature after the pandemic has passed. All sorts of things can be called an "emergency" or "disaster of major proportions." Simply slapping on that label cannot provide the ground for abrogating our most fundamental rights. And whenever fundamental rights are restricted, the Supreme Court, and other courts, cannot close their eyes.

So what have the courts done in this crisis?

When the constitutionality of COVID restrictions has been challenged in court, the leading authority cited in their defense is a 1905 Supreme Court decision called Jacobson versus Massachusetts. The case concerned an outbreak of smallpox in Cambridge, and the Court upheld the constitutionality of an ordinance that required vaccinations to prevent the disease from spreading. Now, I'm all in favor of preventing dangerous things from issuing out of Cambridge and infecting the rest of the country and the world. It would be good if what originates in Cambridge stayed in Cambridge.

But to return to the serious point, it's important to keep Jacobson in perspective. Its primary holding rejected a substantive due process challenge to a local measure that targeted a problem of limited scope. It did not involve sweeping restrictions imposed across the country for an extended period. And it does not mean that whenever there is an emergency, executive officials have unlimited, unreviewable discretion.

Just as the COVID restrictions have highlighted the movement toward "rule by experts," litigation about those restrictions has pointed up emerging trends in the assessment of individual rights. This is especially evident with respect to religious liberty. It pains me to say this, but in certain quarters religious liberty is fast becoming a disfavored right. And that marks a surprising turn of events.

Consider where things stood in the 1990s. (And to me at least, that does not seem like the Jurassic Age.) When a Supreme Court decision called Employment Division versus Smith cut back sharply on the protection provided by the Free Exercise Clause of the First Amendment, Congress was quick to respond. It passed the Religious Freedom Restoration Act (RFRA) to ensure broad protection for religious liberty. The law had almost universal support. In the House, the vote was unanimous. In the Senate, it was merely 97 to 3. And the bill was enthusiastically signed by President Clinton.

Today, that wide[spread] support has vanished. When states have considered, or gone ahead and adopted, their own versions of RFRA, they have been threatened with punishing economic boycotts.

Some of our cases illustrate this same trend. Take the protracted campaign against the Little Sisters of the Poor, an order of Catholic nuns. The Little Sisters are women who have dedicated their lives to caring for the elderly poor, regardless of religion. They run homes that have won high praise. Here are some of the testimonials filed in our Court by residents of their homes:

Carl Bergquist: The Little Sisters, quote,

> *...do everything to make us happy...I feel I'm part of the family and that's a great feeling [to have]... They will keep you alive ten years longer than anyplace else because they love you.*[2]

Carol Hassell:

> *In a nutshell I would say this about the Little Sisters: a little bit of heaven fell from [out] the sky one day and landed in my apartment.*[3,4]

Despite this inspiring work, the Little Sisters have been under unrelenting attack for the better part of a decade. Why? Because they refused to allow their health insurance plan to provide contraceptives to their employees. For that, they were targeted by the prior Administration. If they did not knuckle under and violate a tenet of their faith, they faced crippling fines, fines that would likely have forced them to shut down their homes.

The current Administration tried to prevent that by adopting a new rule, but the states of Pennsylvania and New Jersey, supported by 17 other states, challenged that new rule. Last spring, the Little Sisters won their most recent battle in the Supreme Court -- I should add by a vote of 7 to 2 -- but the case was sent back to the Court of Appeals, and the Little Sisters legal fight goes on and on.

Here's another example from our cases.[5] The state of Washington adopted a rule requiring every pharmacy to carry every form of contraceptive approved by the Food and Drug Administration, including so called "morning after pills," which destroy an embryo after fertilization. A pharmacy called Ralph's [Thriftway Pharmacy, Olympia, WA] was owned by a Christian family. Opposed to abortion, they refuse to carry abortifacients. If a woman came to the store with a prescription for such a drug, the pharmacy referred her to a nearby store that was happy to provide it. And there were 30 such stores within five miles of Ralph's. But to the state of Washington, that was not good enough. Ralph['s] had to provide the drugs itself or get out of the state.

One more example. Consider what a member of the Colorado Human Rights Commission said to Jack Phillips, the owner of the now notorious Masterpiece Cake Shop, when he refused to create a cake celebrating a same-sex wedding.[6] She said that "freedom of religion" had been used, quote:

> *to justify all kinds of discrimination throughout history, whether it be slavery, whether it be the holocaust; we can list hundreds of situations where freedom of religion has been used to justify discrimination.*[7]

You can easily see the point. For many today, religious liberty is not a cherished freedom. It's often just an excuse for bigotry, and it can't be tolerated, even when there is no evidence that anybody has been harmed.

And the cases I just mentioned illustrate the point. As far as I am aware, not one employee of the Little Sisters has come forward and demanded contraceptives under the Little Sisters plan; there was no risk that Ralph's referral practice would have deprived any woman of the drugs she sought; and no reason to think that Jack Phillips' stand would deprive any same-sex couple of a wedding cake. The couple that came to his shop was given a free cake by another bakery, and celebrity chefs have jumped to the couple's defense.

A great many Americans disagree, sometimes quite strongly, with the religious beliefs of the Little Sisters, the owners of Ralph's, and Jack Phillips. And of course they have a perfect right to do so. That is not the question. The question we face is whether our society will be inclusive enough to tolerate people with unpopular religious beliefs.

Over the years, I have sat on cases involving the rights of many religious minorities -- Muslim police officers whose religion required them to have beards, a Native American who wanted to keep a bear for religious services, a Jewish prisoner who tried to organize a Torah study group. The Little Sisters, Ralph's, and Jack Phillips deserve no less protection.

A Harvard Law School Professor provided a different vision of a future America. He candidly wrote, quote,

> *The culture wars are over. They lost. We won...[For liberals,] the question now is how to deal with the losers in the culture wars...My own judgment is that taking a hard line ("You lost, live with it") is better than trying to accommodate the losers...(taking a hard line seemed to work reasonably well in Germany and Japan after 1945.)*

Is our country going to follow that course? To quote a popular Nobel laureate: "It's not dark yet but it's gettin' there."[8] So let's look at what we've seen during the pandemic.

Over the summer, the Supreme Court received two applications to stay COVID restrictions that blatantly discriminated against houses of worship -- one from California, one from Nevada. In both cases, the Court allowed the discrimination to stand. The only justification given was that we should defer to the judgment of the governors because they have the responsibility to safeguard the public health.

Consider what that deference meant in the Nevada case. After initially closing the state's casinos for a time, the governor opened them up and allowed them to admit 50% of their normal occupancy. And since many casinos are enormous, that is a lot of people.

And not only did the governor open up the casinos, he made a point of an inviting people from all over the country to visit the state. So if you go to Nevada, you can gamble, drink, and attend all sorts of shows.

But here's what you can't do. If you want to worship and you're the 51st person in line -- sorry, you are out of luck. Houses of worship are limited to 50 attendees. The size of the building doesn't matter; nor does it matter if you wear a mask and keep more than six feet away from everybody else. And it doesn't matter if the building is carefully sanitized before and after a service. The state's message is this: Forget about worship and head for the slot machines, or maybe a Cirque du Soleil show.

Now, deciding whether to allow this disparate treatment should not have been a very tough call. Take a quick look at the Constitution. You will see the Free Exercise Clause of the First Amendment, which protects religious liberty. You will not find a craps clause or a blackjack clause or a slot machine clause. Nevada was unable to provide any plausible justification for treating casinos more favorably than houses of worship. But the court nevertheless deferred to the governor's judgment, which just so happened to favor the state's biggest industry and the many voters it employs.

If what I have said so far does not convince you that religious liberty is in danger of becoming a second class right, consider a case that came shortly after the Nevada case. The FDA has long had a rule[9] providing that a woman who wants a medication abortion must go to a clinic to pick up the drug. The idea is that it's important for the woman to receive instruction about the drug at that time. The rule was first adopted in 2000. And it has been kept on the books ever since.

A few weeks ago, however, a federal district judge in Maryland issued an order prohibiting the FDA from enforcing this drug [rule] any place in the country.[10] Enforcement, he found, would interfere with the right of women to get abortions. Why? Because some women, fearful of contracting COVID if they left their homes, would hesitate about making the trip to a clinic.

Now, when the judge made this decision, the governor of Maryland, presumably advised by public health experts, had apparently concluded that Marylanders could safely engage in all sorts of activities outside the home -- such as visiting an indoor exercise facility, a hair or nail salon, and the state's casinos. If deference was appropriate in the California and Nevada cases, then surely we should have deferred to the federal Food and Drug Administration on an issue of drug safety. But no, in this instance, the right in question was the abortion right, not the right to religious liberty. And the abortion right prevailed.

The rights of the free exercise of religion is not the only once-cherished freedom that is falling in the estimation of some segments of the population. Support for freedom of speech is also in danger. And COVID rules have restricted speech in unprecedented ways. As I mentioned, attendance at speeches, lectures, conferences, conventions, rallies, and other similar events has been banned or limited. And some of these restrictions are alleged to have included discrimination based on the viewpoint of the speaker.

Even before the pandemic, there was growing hostility to the expression of unfashionable views. And that too was a surprising development. Here's a marker: In 1972, the comedian George Carlin began to perform a routine called "The Seven Words You Can't Say On TV." Today, you can see shows on your TV screen in which the dialog appears at time[s] to consist almost entirely of those words. Carlin's list seems like a quaint relic.

But it would be easy to put together a new list called "Things You Can't Say If You're a Student or Professor at a College or University or an Employee of Many Big Corporations." And there wouldn't be just seven items on that list. Seventy times seven would be closer to the mark.

I won't go down the list, but I'll mention one that I've discussed in a published opinion. You can't say that "Marriage is the union between one man and one woman." Until very recently, that's what the vast majority of Americans thought. Now it's considered bigotry.

That this would happen after our decision in Obergefell should not have come as a surprise. Yes, the opinion of the Court included words meant to calm the fears of those who cling to traditional views on marriage. But I could see, and so did the other justices in dissent, where the decision would lead. I wrote the following:

> *I assume that those who cling to old beliefs will be able to whisper their thoughts in the recesses of their homes, but if they repeat those views in public, they will risk being labeled as bigots, and treated as such by governments, employers, and schools.*[11]

That is just what is coming to pass. One of the great challenges for the Supreme Court going forward will be to protect freedom of speech. Although that freedom is falling out of favor in some circles, we need to do whatever we can to prevent it from becoming a second tier constitutional right.

Of course, the ultimate second tier constitutional right in the minds of some is the Second Amendment right to keep and bear arms. From 2010, when we decided McDonald vs. Chicago until last term, the Supreme Court denied every single petition asking us to review a lower court decision that rejected the Second Amendment claim. Last year, we finally took another Second Amendment case. And what happened after that is interesting.

The case involved a New York City ordinance. The city makes it very inconvenient for a law abiding resident to get a license to keep a gun in the home for self defense. But the Second Amendment protects that right. And if a person is going to have a gun in the home, there's broad agreement that the gun owner should know how to handle it safely, and that the best way to acquire and maintain that skill is to go to a range every now and then.

The New York City ordinance, however, made that hard. It prohibited a lawful gun owner from going to any range outside city limits. And there were only seven ranges in the entire city. And all of these but one were largely restricted to members and their guests.

There were other ranges that lay just outside the city, so why couldn't a city resident go to one of those ranges? The city really had no plausible explanation. But that didn't stop it from vigorously defending its rule; nor did it stop the district court or the Second Circuit from upholding it.

Once we granted review, however, the city suddenly saw things differently. It quickly repealed the ordinance. And it said that, on reconsideration, doing that did not make the city any less safe. In the place of the old ordinance, it adopted a new vaguer one that still did not give gun owners what they wanted. But the city nevertheless asked us to dismiss the case before it was even briefed or argued. And when we refused to do that the city was obviously miffed.

Five United States senators who filed a brief in support of the city went further. They wrote that the Supreme Court is a sick institution, and that if the Court did not mend its ways, well, it might have to be, quote, "restructured."[12]

After receiving this warning, the Court did exactly what the city and the senators wanted. It held that the case was moot. And it said nothing about the Second Amendment.

Three of us protested, but to no avail. Now, let me be clear. Again, I'm not suggesting that the Court's decision was influenced by the senators' threat. But I am concerned that the outcome might be viewed that way by the senators and others with thoughts of bullying the Court.

This little episode, I am afraid, may provide a foretaste of what the Supreme Court will face in the future. And therefore, I don't think it can simply be brushed aside. The senators' brief was extraordinary. I could say something about standards of professional conduct, but the brief involved something even more important. It was an affront to the Constitution and the rule of law.

Let's go back to some basics. The Supreme Court was created by the Constitution, not by Congress. Under the Constitution, we exercise the judicial power of the United States.

Congress has no right to interfere with that work any more than we have the right to legislate. Our obligation is to decide cases based on the law. Period. And it is therefore wrong for anybody, including members of Congress, to try to influence our decisions by anything other than legal argumentation.

That sort of thing has often happened in countries governed by power, not law. A Supreme Court Justice from one such place recounted what happened when his court was considering a case that was very important to those in power. He looked out the window and saw a tank pull up and point its gun toward the court. Message was clear: Decide the right way or the courthouse might be, shall we say, "restructured."

That was a crude threat. But all threats and inducements are intolerable. Judges dedicated to the rule of law have a clear duty. They cannot compromise principle or rationalize any departure from what they are obligated to do. And I am confident that the Supreme Court will not do that in the years ahead.

When we look back at the history of the American judiciary, we can see many judges who were fearless in their dedication to principle. And one who is especially dear to the Federalist Society springs immediately to mind. I'm referring to Justice Antonin Scalia. *Nino* was one of the law professors who helped the Society get started. And during his long judicial career, his thinking influenced generations of young lawyers.

He left his mark in many ways. Perhaps above all else, he is renowned for his advocacy of two theories of interpretation: *originalism*, the idea that the Constitution should be interpreted in accordance with its public meaning at the time of adoption; and *textualism*, which is essentially originalism applied to statutes.

To see the extent of his influence consider these two statements by Justice Kagan, quote: "[We are] all originalists" now.[13] And, quote, "We're all textualists now."

What do they mean? These statements do not mean that all jurists are in complete agreement about how the Constitution and statutes should be interpreted. But what they mean is that a lot of the debate about constitutional and statutory interpretation now takes place within the framework of, or at least using the language of, those two theories.

And going forward, a lot of the debate among Justice Scalia's admirers will probe his understanding of these theories. I will not go deeply into that subject now. But I will say that we have seen the emergence of what I believe are erroneous elaborations of Justice Scalia's theories, and I look forward to friendly and fruitful debate about where his thinking leads.

As I discussed tonight, the COVID crisis has highlighted constitutional fault lines. And I've criticized some of what the Supreme Court has done, but I don't want to leave you with a distorted picture. During my 15 years on the Court, a lot of good work has been done to protect freedom of speech, religious liberty, and the structure of government created by the Constitution.

All of this is important. But in the end, there is only so much that the judiciary can do to preserve our Constitution and the liberty it was adopted to protect. As Learned Hand famously wrote, "Liberty lies in the hearts of men and women. When it dies there, no constitution, no law, no court can do much to help it."[14]

For all Americans, standing up for our Constitution and our freedom is work that lies ahead. It will not be easy work. But when we meet next year, I hope we will be able to say that progress was made. At that time, I trust, we will be back together in the flesh. Until then, I wish you all the best.

Thank you.

---

[1] Judicial Conference Code of Conduct Committee Exposure Draft; Response Letter Signed by Judges; Response Letter Signed by Senators

[2] See this Amici Curiae Brief of Residents and Families of Residents at Homes of the Little Sisters of the Poor in Support of Petitioner

[3] Ibid.

[4] Quotation strictly as rendered in the Amici Curiae Brief above

[5] SCOTUS declined to hear appeal in Stormans, Inc. v. Wiesman, 136 S. Ct. 2433. Dispute legal trajectory and Alito et al. dissent

[6] See Masterpiece Cakeshop v. Colorado Civil Rights Commission

[7] Broader quotation: "Freedom of religion and religion has been used to justify all kinds of discrimination throughout history, whether it be slavery, whether it be the holocaust, whether it be -- I mean, we -- we can list hundreds of situations where freedom of religion has been used to justify discrimination. And to me it is one of the most despicable pieces of rhetoric that people can use to -- to use their religion to hurt others. So that's just my personal point of view." [Source: http://www.adfmedia.org/files/MasterpieceHearingTranscript.pdf#page=11]

[8] Bob Dylan's line in the song "Not Dark Yet"

[9] See section 5.3 "Mifeprestone REMS [Risk Evaluation and Management Strategies] Program" of the FDA-approved (year 2000) Medication Guide for Mifiprex. See also "Dosage and Administration" section of FDA's "Approved Labeling Text" on its "Drug Approval Package" page for Mifepristone (marketed as Mifeprex) which states: "Mifeprex may be administered only in a clinic, medical office, or hospital, by or under the supervision of a physician, able to assess the gestational age of an embryo and to diagnose ectopic pregnancies. Physicians must also be able to provide surgical intervention in cases of incomplete abortion or severe bleeding, or have made plans to provide such care through others, and be able to assure patient access to medical facilities equipped to provide blood transfusions and resuscitation, if necessary."

[10] Order and dispute legal trajectory before USSC ruling

[11] In USSC Opinion Obergefell v. Hodges, Alito dissent

[12] Relevant quotation from the brief: "Today, fifty-five percent of Americans believe the Supreme Court is 'mainly motivated by politics' (up five percent from last year); fifty-nine percent believe the Court is 'too influenced by politics"; and a majority now believes the "Supreme Court should be restructured in order to reduce the influence of politics." And "The Supreme Court is not well. And the people know it. Perhaps the Court can heal itself before the public demands it be 'restructured in order to reduce the influence of politics.' Particularly on the urgent issue of gun control, a nation desperately needs it to heal."

[13] Strictly considered, Kagan did not use the word "now." If she had the rhetoric here would have accurately -- as well capably -- styled epistrophe and parallelism together. Moreover, Kagan's remarks occurred within the context of a discussion on the 4th Amendment to the Constitution, thereby offering an additional sense-making parameter to the passage. Broader quotation: "The Framers were incredibly wise men...[who] wrote a Constitution for the ages...And they wrote a Constitution, I think, that has all kinds of provisions in it...some that are very specific provisions. But there are a range of other kinds of provisions in the Constitution of a much more general kind, and these provisions were meant to be interpreted over time, to be applied to new situations and new factual contexts. So the Fourth Amendment is a great example of this. It says, 'There shall be no unreasonable searches and seizures.' Well, what is unreasonable? That is a question...And I think that they laid down -- sometimes they laid down very specific rules. Sometimes they laid down broad principles. Either way we apply what they say, what they meant to do. So in that sense, we are all originalists." [Source: http://purl.fdlp.gov/GPO/gpo12385]

[14] From Hand's "The Spirit of Liberty" address