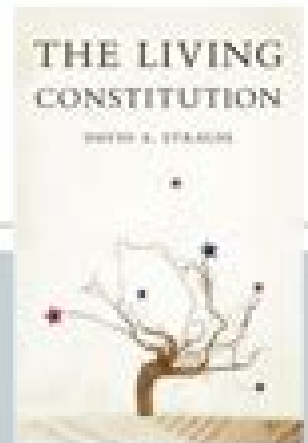


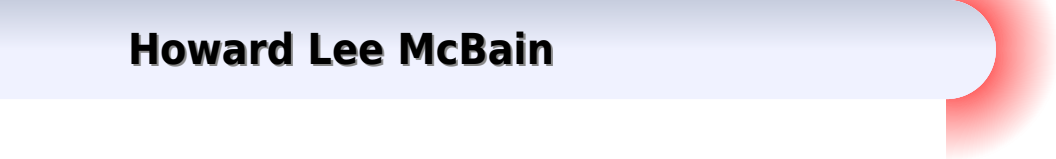
The Living Constitution



- LC: a theory of constitutional interpretation which premises that the Constitution is, to some degree, dynamic.
- As the direct counter to originalism, which centers on meaning at the time of ratification, the theory of a "living" Constitution suggests a founding document that remains interdependent with an evolving society.
- Its proponents thus argue that societal progress must be taken into account when interpreting key constitutional phrases.
 - Pragmatism: the belief that interpreting the Constitution in accordance with long outdated views is often unacceptable as a policy matter.
 - Intent: the argument that the constitutional framers specifically wrote the Constitution in broad and flexible terms to create such a dynamic, "living" document.
- Al Gore: *"I would look for justices of the Supreme Court who understand that our Constitution is a living and breathing document, that it was intended by our founders to be interpreted in the light of the constantly evolving experience of the American people."*

The Living Constitution

Howard Lee McBain



The Living Constitution:

The Living Constitution Howard Lee McBain, 1927 *The ^ALiving Constitution* David A. Strauss, 2010-05-19 There are two dominant views of the American Constitution. The first holds that it is a remarkably stable foundation of our deepest values protected from the shifting tides of public opinion. The second holds that our interpretation of it needs to change with the times given that the founders had no idea how our society would evolve. Holders of the former view, best known as originalists, contend that if we don't treat the Constitution's meaning as fixed, judges can say that the Constitution means whatever they want it to mean. In *The Living Constitution*, part of the Inalienable Rights book series, acclaimed constitutional scholar David Strauss argues that these two approaches are reconcilable. Strauss begins by contending that a rigid originalist approach, which is now more powerful than ever given the Court's conservative bent, is intellectually indefensible. While many might therefore conclude that the circle cannot be squared, Strauss shows that the common law tradition, which accounts for constant incremental social change yet which respects the constraints of tradition, drives a great deal of constitutional reasoning. The common law tradition respects the power of original understandings yet also can adjust to social changes and *The Living Constitution* is an eloquent defense of its role in Constitutional law. *The Evangelical Origins of the Living Constitution* John W. Compton, 2014-03-10 John Compton shows how evangelicals, not New Deal reformers, paved the way for the most important constitutional developments of the twentieth century. Their early 1800s crusade to destroy property that made immorality possible challenged founding era legal protections of slavery, lotteries, and liquor sales and opened the door to progressivism. *The Evangelical Origins of the Living Constitution* John W. Compton, 2014-03-17 John Compton shows how evangelicals, not New Deal reformers, paved the way for the most important constitutional developments of the twentieth century. Their early 1800s crusade to destroy property that made immorality possible challenged founding era legal protections of slavery, lotteries, and liquor sales and opened the door to progressivism. *The Living Constitution* Denny L. Schillings, 1991 ***The Living Constitution*** Howard Lee McBain, 1941 *The Living Constitution* Denny Schillings, 1997

The Living Presidency Saikrishna Bangalore Prakash, 2020-04-21 A constitutional originalist sounds the alarm over the presidency's ever-expanding powers, ascribing them unexpectedly to the liberal embrace of a living Constitution. Liberal scholars and politicians routinely denounce the imperial presidency, a self-aggrandizing executive that has progressively sidelined Congress. Yet the same people invariably extol the virtues of a living Constitution whose meaning adapts with the times. Saikrishna Bangalore Prakash argues that these stances are fundamentally incompatible. A constitution prone to informal amendment systematically favors the executive and ensures that there are no enduring constraints on executive power. In this careful study, Prakash contends that an originalist interpretation of the Constitution can rein in the living presidency legitimated by the living Constitution. No one who reads the Constitution would conclude that presidents may declare war, legislate by fiat, and make treaties without the Senate. Yet presidents do all these things. They get away with it.

Prakash argues because Congress the courts and the public routinely excuse these violations With the passage of time these transgressions are treated as informal constitutional amendments The result is an executive increasingly liberated from the Constitution The solution is originalism Though often associated with conservative goals originalism in Prakash s argument should appeal to Republicans and Democrats alike as almost all Americans decry the presidency s stunning expansion The Living Presidency proposes a baker s dozen of reforms all of which could be enacted if only Congress asserted its lawful authority *Living Constitution, Dying Faith* Bradley C. S. Watson, 2020-11-17 A living constitution Runaway courts Legislating from the bench These phrases come up a lot in the national political debate They raise the ire of many Americans But where did the ideas come from Why do courts play a role so alien to the one the American Founders outlined And how did unelected judges gain so much power in our democratic republic Political scientist and legal philosopher Bradley C S Watson provides the answers in this important book To understand why courts today rule the way they do Watson shows you must go back more than a century You ll find the philosophical and historical roots of judicial activism in the late nineteenth century Watson traces a line from social Darwinism and pragmatism through the rise of Progressivism to our situation today *Living Constitution Dying Faith* reveals a radical transformation of American political thought This ebook features a new introduction examining the latest developments which only highlight the prescience of Watson s arguments *The Supreme Court and the Living Constitution* Kenneth Frank Mott, 1981

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