

IS THE CONSTITUTION DEAD OR ALIVE?

15 Minutes of Freedom by Aaron Ferguson

The Constitution is a timeless, relevant document, but while the body is still with us, its soul is missing.

One Pitch, Two Calls

Is the United States Constitution dead or alive? It depends on who you ask. Some say the heart of the Constitution is still beating. Others claim that it has “breathed its last.”

But what if we narrowed the field to Supreme Court judges and asked them, “Is the Constitution dead or alive?” These men and women are appointed to study the Constitution in detail and offer their opinions on specific cases, opinions supported by constitutional law. However, the answer to whether the Constitution is dead or alive would be the same — it depends on who you ask.

Why is that? Aren’t they all reading the same Constitution? Yes, they’re reading the same document, but they have differing opinions and interpretations on what it means. Imagine two baseball umpires standing behind a catcher. When the pitcher throws a fastball down the middle, one umpire calls a strike, and the other one calls a ball. One pitch, two different calls. How is that possible?

It’s like two theologians studying the same passage of Scripture but coming to different conclusions. The text is not the problem. The interpretation of the text is the problem. One theologian seeks to understand what the text meant to its original audience, in its original context. The other theologian reads into the text his own opinions, preferences, and values.

In other words, it’s not the pitch that’s the problem, but rather it’s the perspective of the umpires. It’s not the Constitution that’s the issue, but rather it’s the viewpoint of the judges. One judge is an “originalist” who seeks to understand what the Framers of the Constitution originally intended, the principles behind its wisdom, and how it applies today. The second judge is a “living constitutionalist” who believes that the Constitution is not only alive but that it’s also evolving with the times. It should bend to social norms and preferences, instead of being bound to the views and values of the 1700s.



But apply the living constitutionalist’s perspective to the Bible. The Scriptures don’t say anything, of course, about our current technology or modern lifestyles. So how can a text written more than 2000 years ago apply today? It must change with the times, right?

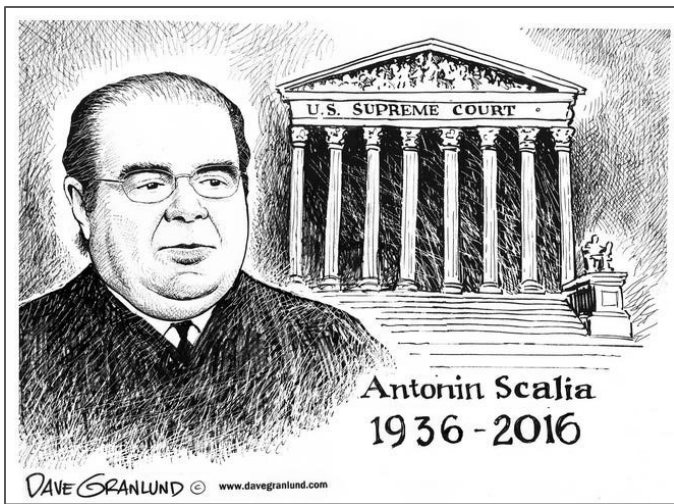
While it’s true that the Bible doesn’t directly address certain issues by name, it does provide unchanging principles that apply at all points in time. After all, “There is nothing new under the sun” (*Ecclesiastes 1:9*). The nature of man, such as it is, will never change, and thus the Bible’s wisdom will always be true.

Likewise, the Framers of the Constitution grounded it in the unchanging laws of nature and nature’s God, principles that not only worked in the 1700s but also apply today. Therefore, we should believe as the originalists do. For when we best understand the original intent of the Framers, in the context of their day, then we can more wisely apply their wisdom to current situations, no matter how “advanced” or “evolved” we think we are.

A Living Constitution Is a Dead Constitution

But we haven’t answered our question yet, “Is the Constitution dead or alive?” It depends on the meaning of the word *alive*. Does “alive” mean that the Constitution still exists as a guide today? Then, yes. It is alive.

But if “alive” means that the Constitution is “one that changes over time and adapts to new circumstances, without being formally amended,”¹ then that’s a different question. Living constitutionalists would say that the document is alive in this way. But that mindset gave us the infamous *Roe v. Wade* decision in 1973, opening the door to unprecedented abortions. An originalist would’ve never voted for abortion, as one of the primary ends of civil government is to protect human life, at all stages.



Antonin Scalia, a longtime originalist judge on the Supreme Court (1986-2016), argued that if the Constitution is “living,” then it has already died. In a 2008 interview with National Public Radio (NPR), Justice Scalia argued against a living constitution.

“If you adopt a philosophy that the Constitution itself is not static (fixed), but rather it morphs from age to age to say whatever it ought to say — which is probably whatever the people want it to say — you’ve eliminated the whole purpose of a constitution. That’s what a ‘living constitution’ leaves you with.”²

In other words, the Constitution is not a living document to be reinterpreted with every new generation, but a rigid set of rules which can be amended by lawmakers as society evolves. With the change of time, laws and amendments can be adopted (following constitutional procedure, of course), rather than having judges reinterpret the original text.³

Scalia continues, “The reason the Founders adopted the Constitution (1787) and Bill of Rights (1789) is that they feared that future generations (that’s us) would not be as wise or as virtuous as they were. So, they laid down some rigid rules. To give those rules whatever meaning the current society wants is to destroy the Constitution.”⁴

Thus, if the Constitution is a “living document,” which must conform to our times, then the original Constitution is dead. Go back to the example of the Bible. If we chucked or changed everything about the Bible that does not conform to our modern lifestyles, then God’s original words would be, in a sense, “dead” to us. We would have made the Bible something that it was not meant to be.

The Constitution is supposed to be a rock-solid foundation, the embodiment of our most fundamental principles. Public opinion may blow every which way, but our basic principles must remain constant. Otherwise, why have a constitution at all?⁵

“I don’t know how anyone would not be an originalist,” Scalia said. “When we read Shakespeare, they have a glossary so we can see what was meant when it was written.”⁶ We don’t change Shakespeare’s words to fit our times, but rather we seek to understand Shakespeare’s words in their context. The same applies to Scripture, and the same applies to the Constitution.

So, why aren’t more judges and Americans originalists? Simply put, either they don’t like, or they don’t agree with, our founding documents or the principles upon which they were established. Whether it’s the Christian influence that developed the documents, the Christian virtues that are embedded in them, or simply the vast degree of liberty and independence that we enjoy in this country, two things are clear — the enemies of America despise our country, and they can’t conform it into their image fast enough.

That’s why referring to the Constitution as “a living document” is beneficial for them. A living constitution is a malleable one. It’s easily manipulated. But the Founders made the Amendment process difficult for a reason, so that the Constitution couldn’t be changed so easily. It’s not impossible (we’ve done it 27 times), but it is difficult. A living document allows our enemies to change it without trudging through the mire of the Amendment process.

The Young Americans Foundation (YAF) waded into this debate by posting on their website, “The genius of the Constitution is that it was constructed to withstand the test of time. It was not meant to be interpreted in a way to achieve a desired policy-based outcome (called “judicial activism”). The authors did not intend for the Constitution to be changed every time there was a swing in popular opinion.”⁷

The post continues, “Constitutional principles are timeless. The truths found there were self-evident in 1787 and still remain so today. The Constitution is very much alive in that it will always be relevant, no matter what the cultural or political climate may be. Besides, the Constitution withholds power from the government and gives it to the people. Altering it, giving government more power, would be detrimental to individual liberty.”⁸

A Body Without a Soul

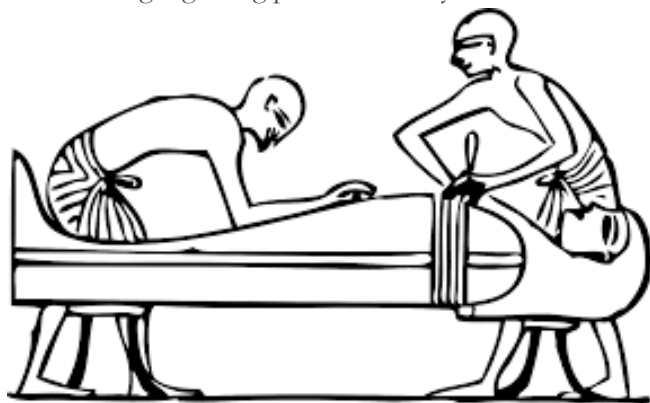
Okay, so we've partially answered the question, "Is the Constitution dead or alive?" But let's assume that the Constitution is alive in the sense that it still exists and is still relevant today. There is one more problem we must confront — the mummification of the Constitution.

In ancient Egypt, after someone important died, embalmers mummified the body to prepare it for the afterlife. For example, they removed internal organs and stuffed the body with various fillers. Then, they enveloped the skin with a hardening resin and strips of cloth. Finally, the body was encased in a painted coffin. Within a 40-day period, the deceased was "ready" to enjoy the beyond, literally a shell of his or her former self.

Since its adoption in 1789, the Constitution has been surgically gutted of its original organs, "mummified" if you will, where today it is only a shell of its former self. However, unlike a mummified Egyptian, the Constitution was not gutted after its death, but rather organ removal was the cause of its death.

What exactly "gutted" and "killed" the Constitution? Besides the fact that political leaders have long ignored aspects of this document (only using it for political gain), and they've even invented new powers not prescribed in the original Constitution, the removal of the Constitution's organs started with several unprecedented "surgeries." The list is long, but it would include events like creating the Federal Reserve, establishing a graduated income tax, passing the 17th Amendment (an assault on states' rights), joining globalist organizations (e.g., U.N.), building the Washington bureaucracy, erecting the welfare state, allowing government bailouts, and so on.

In short, the original Constitution has been embalmed! The body is still there, but it's lifeless and cold, an empty shell no longer guiding policies the way that it once did.



But even if these "embalming events" hadn't taken place, we have lost the soul of the Constitution. The letter is still there, but the spirit has departed. What does that mean?

Rosalie Slater, author of *Teaching and Learning America's Christian History and Government*, explains it this way.

"To understand the American Christian Constitution..., it is necessary to consider its two spheres — the *spirit* and the *letter*, the internal and the external. Both spheres must be active in order for the Constitution to preserve the basic republican spirit of individual liberty.

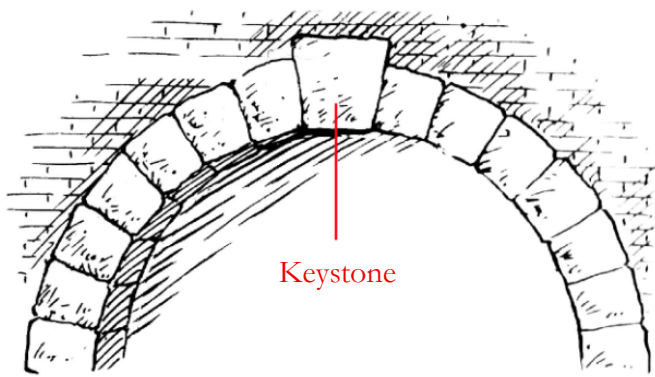
"Today, we still have the letter of the Constitution. That is, we still go through most of the legal processes of the Constitution in the legislative, executive, and judicial branches. But the spirit which was intended and understood by our Founding Fathers is missing (and has been for some time).

"The spirit was the Christian foundation of our Constitution — the faith of our fathers — and as our nation has fallen away from its foundation, the essence of that faith, our Constitution, has become a hallow shell."

In her book *The Christian History of the Constitution*, historian and educator Verna Hall describes the departure of our constitutional spirit another way.

"Americans have forgotten the Christian foundation upon which this nation is reared and the importance of its relation to the form of government established by the Constitution. We, as a people, are allowing ourselves to become separated from the keystone of our national structure — our Christian heritage. The keystone in the arch of our national structure has been loosed."¹⁰

Notice that Hall described the United States as an arch with a "loosed" or missing keystone. The Romans figured out how to build cement arches simply by stacking and leaning rocks. The only force holding them together was gravity. The most vital part of the arch was the keystone, the rock that was "pinched" into place. If the keystone was removed, then gravity would naturally topple the structure, and the arch would be no more.



Verna Hall identified our nation's keystone as "our Christian heritage," which is the spirit of the Constitution. That keystone must remain in place for our original form of government to survive. If that keystone is ever removed or forgotten, then the rest of our national structure will collapse, and our republic will be no more.

In 1799, Dr. Jedidiah Morse, preaching from *Psalms 11:3*, warned Americans, "To the kindly influence of Christianity we owe that degree of civil freedom and political and social happiness that we now enjoy. All efforts made to destroy the foundations of our holy religion ultimately tend to the subversion of our political freedom and happiness. Whenever the pillars of Christianity shall be overthrown, our present republican forms of government (secured by the Constitution), and all the blessings which flow from them, must fall with them."¹¹

Sadly, while the "embalming" of our Constitution has occurred already, we are witnessing the "de-spiritization" of our Constitution and republican form of government today. What is left of this key document is empty and meaningless to modern Americans. So, do we just give up?

Reject, Restore, and Revive

It is true that the Constitution is in trouble, but it's still here. It has endured, which says something about how well it was built. It was made to last, and while it is still here, and there is life left in it, we still can hope for its survival and success. But there is work to be done.

First, we must *reject* the concept of a living constitution, one that can be adapted to "fit our times." Constitutional mischief occurs when ambitious, impatient politicians appoint activist justices who willfully defy, disregard, and reinterpret the Constitution, rather than insist that it be changed lawfully through the amendment process.¹²

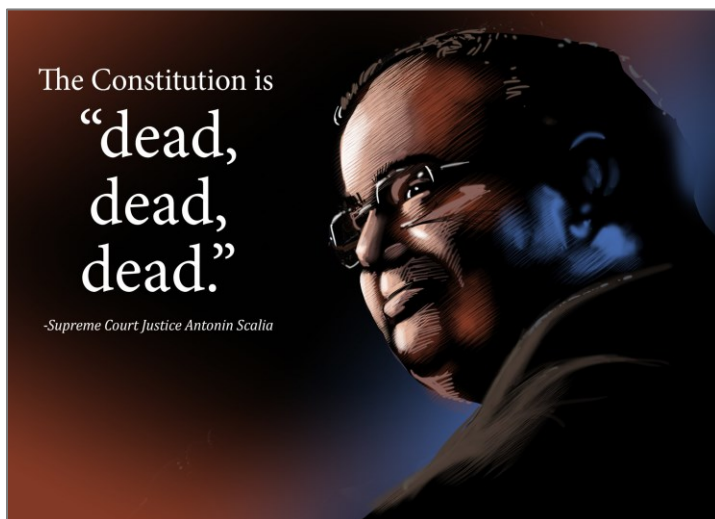
We must agree with Antonin Scalia. "The only good Constitution is a dead Constitution."¹³ We don't need to kill the Constitution on the pretense of letting it live. The Father of the Constitution, James Madison, would agree. "If it (the Constitution) is to mean whatever we want it to mean," he said, "then we should hasten the parchment to the fire."¹⁴ Let's preserve the Constitution from those who want it to live and, instead, keep it fixed and immovable, as its framers intended, unless altered by its own mechanisms in line with its original principles.

The fact that the Framers of the Constitution used general terms strongly suggests that they understood they were drafting a charter meant to long outlive them, one that could guide resolutions to unforeseen problems. If you want to bind people to your specific intentions, you write with specificity. The Framers didn't choose a straitjacket but a set of enduring principles whose meaning and application would unfold over time to meet the evolving needs of a growing nation.¹⁵

Second, we must *restore* the vital organs lost during the "embalming period." It's never too late for us to do the right thing, to admit an error and reverse course. We can abolish the Federal Reserve. We can repeal the 16th and 17th Amendments. We can dismantle the bureaucracy. We can end our membership in global organizations. We can deconstruct the welfare state and end bailouts. All unconstitutional actions can be reversed, at least those that still affect us today. Those missing constitutional "organs" can be reinstalled.

Third, we can *revive* the original Constitution, not only by restoring the letter of the law, but also by renewing its spirit. If today's Americans knew their history better, they would realize how wise the Founding Fathers were, and that we depart from their principles of governance at our peril. By respecting the understanding behind the document, originalism keeps the document alive.¹⁶

Verna Hall warned us in the 1960s, "The blessings of liberty cannot be perpetuated unless the principles of liberty are re-identified and re-affirmed in each generation." American Christian parents, teachers, pastors, and patriots can reverse the mummification process by producing generations of young people who understand the spirit of the original Constitution and can breathe life into our republic once again. With God's help, our "dead" Constitution can live another day!



⁷ “4 Easy Ways to Argue the Constitution Is Not a ‘Living Document.’” 2023. Young America’s Foundation. September 12, 2023. <https://yaf.org/news/4-easy-ways-to-argue-the-constitution-is-not-a-living-document/>.

⁸ “4 Easy Ways to Argue the Constitution Is Not a ‘Living Document.’” 2023. Young America’s Foundation. September 12, 2023. <https://yaf.org/news/4-easy-ways-to-argue-the-constitution-is-not-a-living-document/>.

⁹ Slater, Rosalie J. 1975. *Teaching and Learning America’s Christian History*, p.240-241.

¹⁰ Hall, Verna. 1966. *The Christian History of the Constitution of the United States of America*, p.II-III.

¹¹ Hall, Verna. 1966. *The Christian History of the Constitution of the United States of America*, p.IV-V.

¹² “The U.S. Constitution: Living, Breathing Document or Dead Letter?” 2009. The Institute for Faith and Freedom. May 28, 2009. <https://www.faithandfreedom.com/the-us-constitution-living-breathing-document-or-dead-letter/>.

¹³ “Page Restricted.” 2025. Spontaneousorder.in. 2025. <https://spontaneousorder.in/constitution-scalia/>.

¹⁴ “Page Restricted.” 2025. Spontaneousorder.in. 2025. <https://spontaneousorder.in/constitution-scalia/>.

¹⁵ Freivogel, William H. 2023. “Originalism vs. a Living Constitution.” Gateway Journalism Review. February 2, 2023. <https://gatewayjr.org/originalism-vs-a-living-constitution/>.

¹⁶ Natelson, Rob, and Rob Natelson. 2021. “Defending the Constitution from the ‘Living Constitutionalists’ - Independence Institute.” Independence Institute - Think Freedom. April 23, 2021. <https://i2i.org/defending-the-constitution-from-the-living-constitutionalists/>.

¹ Strauss, David. 2010. “The Living Constitution.” Uchicago.edu. September 27, 2010. <https://www.law.uchicago.edu/news/living-constitution>.

² Miller, Jodi. 2025. “Is the U.S. Constitution Dead or Alive? - New Jersey State Bar Foundation.” New Jersey State Bar Foundation. January 28, 2025. <https://njsbf.org/2025/01/28/is-the-u-s-constitution-dead-or-alive/>.

³ “Scalia | UCDC.” 2021. Ucdc.edu. 2021. <https://www.ucdc.edu/scalia>.

⁴ “Scalia | UCDC.” 2021. Ucdc.edu. 2021. <https://www.ucdc.edu/scalia>.

⁵ Strauss, David. 2010. “The Living Constitution.” Uchicago.edu. September 27, 2010. <https://www.law.uchicago.edu/news/living-constitution>.

⁶ “Scalia | UCDC.” 2021. Ucdc.edu. 2021. <https://www.ucdc.edu/scalia>.