Chapter 1 : Sarbanes-Oxley Act Of (SOX)

Jan 17, Â· Many of the founders had perspectives about slavery, race, punishment, women's rights and social relationships that are out of step with modern thought and philosophy.

Originally published as 19 Harv. For educational use only. The printed edition remains canonical. For citational use please obtain a back issue from William S. In this Article, I will argue that we cannot assess either the practicality or the justice of discerning original intent without first asking why it is we are consulting the intentions of the Framers. I shall discuss two reasons to consult the Framers. The first views the Framers as wardens; the second as designers or architects. The Framers as Wardens Let me begin by posing a question: Would it be appropriate not merely to punish, but also to condemn a person who disobeys a law for having done something morally wrong? Did Randy Weaver do something wrong, not merely illegal, when he failed to surrender to the U. Marshals who approached his cabin or to the FBI agents who then surrounded it? What, then, is the role of the Constitution? According to this view, the Constitution places limits on what laws a majority may impose on the people, but these limits are themselves a reflection of majority will; the Constitution reflects the will of the majority who elected representatives to state constitutional conventions, a majority of whom, in turn, voted to ratify the Constitution. Because the Constitution, like a statute, is viewed as a command from the majority, we need to determine the intentions of those who issued the command to determine its meaning. Of course, as many have noted, this is exceedingly difficult to do. As a surrogate, we consult the statements made by various members of the constitutional convention, supplemented perhaps by statements made by members of ratification conventions, with the assumption that others shared these stated views. But these arguments can get extremely complicated. Witness, for example, my debate with Professor Thomas McAffee concerning p. Would the Framers have considered a wiretap to be a "search"? Often, in the absence of evidence, a hypothetical group of framers is consulted--as in, "The Framers would have been shocked to learn that the First Amendment protects [fill in the blank]. Because the Constitution does not mention wiretaps or electronic surveillance, the government is not restricted by the Fourth Amendment in using these technologies. Notice how this originalist method leads to what can only be described as--well--the Leviathan: Yet many originalists seem unembarrassed by this disconnection between the results of their methodology and the views of limited government that were universally accepted by the founding generation. In my experience, persons from every political group and interpretive school are fascinated by the intentions of the Framers. They are not, however, particularly interested in the intentions of delegates to state ratification conventions or the attitudes of the general population at the time of the framing. Perhaps they are "authorities," not in the sense that a statute is said to be authority, but in the sense that Story, Kent, Williston, Wigmore, and Corbin are authorities. We respect their opinions because we think they knew what they were talking about. The weight of their expertise, knowledge, and reflection influences us in a way that sheer majority will cannot. With this in mind, let me sketch my view of the Framers as Designers. The Framers as Designers Suppose that instead of viewing the Constitution as representing a command by a long-ago majority whose intentions we need somehow to discern, we view the Constitution as the blueprint for a machine that was designed to perform a certain function. In this case, the machine is designed to make laws to accomplish certain ends--laws that are supposed to be binding in conscience upon the citizenry. We want a sausage-making machine to provide us with food, but we also want to ensure that the sausages the machine produces are wholesome and untainted by disease. Because we do not want to have to inspect each and every sausage to see if it is wholesome, we want a machine whose design gives us confidence that it produces good sausages. Similarly, a constitution specifies the design of a mechanism to produce laws that are beneficial but not unjust; laws that, because they are both necessary and proper, [12] bind us in conscience. Yet because we cannot inspect every law individually, we need some confidence that the internal operation of the lawmaking process is designed to produce beneficial laws and to weed out those that violate the rights retained by the people. Only a constitution that establishes a lawmaking process with the requisite built-in quality controls can impart legitimacy on the laws enacted in its name. We may obey, like the Holmesian p. By this approach, the Framers

are viewed as designers or architects of the lawmaking "machine. They gave its purpose and design much thought--perhaps more thought than we have--and we benefit from their learning in interpreting their design. More important, however, in designing this machine, the Framers adhered to certain basic principles, analogous to principles of engineering. These principles are either sound or unsound. Adhering to them leads either to laws that bind in conscience or to ones that do not. If they are sound, we must continue to operate the machine according to these principles or we will pay a heavy price. Similarly, by eliminating the safeguards built into the constitutional structure by its Framers, we risk the adverse consequences they consciously sought to avoid. We need to learn about and adhere to the principles of the Framers, then, not because they rule us from the grave, but because the principles they discovered and embodied in their machine are as valid and useful today as they were then. If the laws produced by their machine bind us, they do so because they were produced by a machine that still adheres to the sound principles of lawmaking that the Framers devised. First, it explains why we remain so fascinated and influenced by the views of the small group of p. Indeed, we generally confine our attention to just a handful of the Framers, such as James Madison or James Wilson or George Mason, as opposed to the views of other members of the convention or of the reigning majority of the time. We listen to them more carefully than others because we respect their opinion, especially the opinion of the chief architect or designer, James Madison. Second, this Framers-as-Designers approach answers the question why we are bound by the decisions of a few dead white males. The answer is that we are not bound by their decisions per se. Instead, if their principles are correct and we seek what they sought, then we must adhere to the principles they discovered and embodied in the Constitution. In sum, we are bound by the correctness of their principles, not by their source, though we consult their source to discern what exactly these principles are and to understand them better. Third, according to the Framers-as-Designers approach, we consult the writings of the Framers to discern not their specific hypothetical intentions towards particular legislation, but the principles that they designed into the constitutional structure we interpret. Among these principles are federalism, separation of powers, judicial review, and freedom of speech and religion. I would add to this frequently cited list the principle embodied in the Tenth Amendment [15] --that the government of the United States is supposed to be limited to the delegated powers--which p. And it should come as no surprise that I also would emphasize the principle embodied in the Ninth Amendment [17] --that constitutional protection of liberty is not limited to the few liberties that were mentioned expressly in the constitutional text, but that this protection extends to all the other rights retained by the people as well. We are quite capable today of discerning the meaning and the merit of these general principles. Perhaps, after seeing them violated for sixty years, we can even appreciate these principles better. If the proof of the pudding is in the eating, the misery and injustice created by the modern welfare state is testimony to the wisdom of the Framers. We are "bound" to adhere to their principles because they are as vital to protecting liberty as the principles by which one designs a bridge are to preventing its collapse. We ignore them at our peril. Another writer who has made the connection between popular will and legitimacy more explicit is Robert Bork: If that were so, if the Constitution cannot be law that binds judges, there would remain only one democratically legitimate solution: For the choice would then be either rule by judges according to their own desires or rule by the people according to theirs. Bork, The Tempting of America Dworkin, supra note 1 , at ; Brest, supra note 1 , at IV "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated

Chapter 2 : UN|DPI â€" OD|Dag HammarskjÃ¶ld Library: Member States|On the Record

What were the Framers' intentions? maintain that current law must be strictly guided by the original intent of the Founders â€" and that such intent can be authoritatively discerned from the.

Halbrook is a practicing attorney in Fairfax, Virginia who received his Ph. From Georgetown University Law Center in He was lead counsel in National Rifle Association v. United States, F. In addition to case law, this paper sets forth the intent of the framers of those respective amendments. It concerns two fundamental issues: First, to what extent does the Second Amendment, which provides protection from federal infringement, guarantee the individual right to keep and bear arms? Second, does the Fourteenth Amendment protect this right from state infringement? The Second Amendment protects "the right of the people to keep and bear Arms," and the Ninth and Tenth Amendments provide that certain rights and powers are retained by and reserved to "the people. While this textual exegesis is by no means conclusive, it suggests that "the people" protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community. The above decision reversed a split decision by the Ninth Circuit, F. The fourth amendment extends its guarantees to "the people," meaning "the people of the United States. Presumably, "the people" identified in each amendment is coextensive with "the people" cited in the above amendments. No contrary indication appears in either the text or history of the Constitution. Such a construction would mean that during military occupation irreconcilable enemy elements, guerrilla fighters, and "werewolves" could require the American Judiciary to assure them freedoms of speech, press, and assembly as in the First Amendment, right to bear arms as in the Second, security against "unreasonable" searches and seizures as in the Fourth, as well as rights to jury trial as in the Fifth and Sixth Amendments. As is clear, the rights to speech and bearing arms are assumed to be guaranteed to the citizens. After quoting the First Amendment, the Court has referred to "the equally unqualified command of the Second Amendment: State Bar of California, U. As stated by the Court: This constitutional protection must not be interpreted in a hostile or niggardly spirit As no constitutional guarantee enjoys preference, so none should suffer subordination or deletion. To view a particular provision of the Bill of Rights with disfavor inevitably results in a constricted application of it. This is to disrespect the Constitution. The Supreme Court remanded the case for fact-finding based on the following: In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense. The Miller court did not suggest that the possessor must be a member of the militia or National Guard, asking only whether the arm could have militia use. The individual character of the right protected by the Second Amendment went unquestioned. The Aymette opinion stated on the page cited above by the U. If the citizens have these arms in their hands, they are prepared in the best possible manner to repel any encroachments on their rights, etc. Referring to the militia clause of the Constitution, the Supreme Court stated that "to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made. The Court then noted that "the Militia comprised all males physically capable of acting in concert for the common defense" and that "these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time. The Miller court noted that most states "have adopted provisions touching the right to keep and bear arms" but that differences in language meant variations in "the scope of the right guaranteed. State precedents cited by the court are divided mainly over whether the respective state guarantees protect all arms or only militia-type arms. Among the other safeguards to liberty should be mentioned the right of the people to keep and bear arms United States, U. Since "a legislature constitutionally may prohibit a convicted felon from engaging in activities far more fundamental than the possession of a

firearm" â€” including the exercise of other civil liberties, and may even deprive a felon of life itself â€” felons have no fundamental right to keep and bear arms. Lewis explicitly reaffirmed the Miller rule, and removed any uncertainty, that the Second Amendment protects possession of "a firearm" with a militia nexus, and does not merely protect a person with a militia nexus. Lewis did not say that the right to keep and bear arms is not a fundamental right of law-abiding citizens. Until recently, no law has ever been passed which banned possession of ordinary firearms by law-abiding citizens. There is dictum about the Second Amendment from cases concerning felons. Other cases presuppose an individual right. Villaqe of Morton Grove, F. Yet the majority in this case decided that the Second Amendment does not apply to the states, and did not decide that the Second Amendment does not recognize an individual right. Instead, the court noted the Miller.

Chapter 3 : Department of Emergency Services and Public Protection

Check out discussion on the forum thread - The Intentions of the Founders.

Search The Second Amendment: Constitution states that a well regulated Militia, the right of the people to keep and bear Arms, shall not be infringed. However, that conclusion is erroneous. Rather, the term meant only what it says, that the necessary militia be well regulated, but not by the national government. To determine the meaning of the Constitution, one must start with the words of the Constitution itself. If the meaning is plain, that meaning controls. To ascertain the meaning of the term "well regulated" as it was used in the Second Amendment, it is necessary to begin with the purpose of the Second Amendment itself. What Was the Purpose of the Second Amendment? The overriding purpose of the Framers in guaranteeing the right of the people to keep and bear arms was as a check on the standing army, which the Constitution gave the Congress the power to "raise and support. As civil rulers, not having their duty to the people duly before them, may attempt to tyrannize, and as the military forces which must be occasionally raised to defend our country, might pervert their power to the injury of their fellow citizens, the people are confirmed by the next article in their right to keep and bear their private arms. Thus, the well-regulated militia that is necessary to the security of a free state was a militia that might someday fight against a standing army raised and supported by a tyrannical national government. Obviously, for that reason, the Framers did not say "A Militia well regulated by the Congress, being necessary to the security of a free State. To secure ratification of the Constitution, the Federalists, urging passage of the Constitution by the States had committed themselves to the addition of the Bill of Rights, to serve as "further guards for private rights. It would be incongruous to suppose or suggest the Bill of Rights, including the Second Amendment, which were proscriptions on the powers of the national government, simultaneously acted as a grant of power to the national government. Similarly, as to the term "well regulated," it would make no sense to suggest this referred to a grant of "regulation" power to the government national or state , when the entire purpose of the Bill of Rights was to both declare individual rights and tell the national government where the scope of its enumerated powers ended. Who is Included in the Term Militia? In keeping with the intent and purpose of the Bill of Rights, both of declaring individual rights and prescribing the powers of the national government, the use and meaning of the term "Militia" in the Second Amendment, which needs to be "well regulated," helps explain what "well regulated" meant. When the Constitution was ratified, the Framers unanimously believed that the "militia" included all of the people capable of bearing arms. George Mason, one of the Virginians who refused to sign the Constitution because it lacked a Bill of Rights, said: They consist now of the whole people. By contrast, nowhere is to be found a contemporaneous definition of the militia, by any of the Framers, as anything other than the "whole body of the people. Supreme Court confirmed this view, finding that the right to keep and bear arms was an individual right held by the "people," -- a "term of art employed in select parts of the Constitution," specifically the Preamble and the First, Second, Fourth, Ninth and Tenth Amendments. Thus, the term "well regulated" ought to be considered in the context of the noun it modifies, the people themselves, the militia s. What Does the Term Regulate Imply? The above analysis leads us finally to the term "well regulated. Were they commonly used to refer to a governmental bureaucracy as we know it today, with countless rules and regulations and inspectors, or something quite different? We begin this analysis by examining how the term "regulate" was used elsewhere in the Constitution. In every other instance where the term "regulate" is used, or regulations are referred to, the Constitution specifies who is to do the regulating and what is being "regulated. Thus, the Framers chose not to explicitly define who, or what, would regulate the militias, nor what such regulation would consist of, nor how the regulation was to be accomplished. There is no doubt the Framers understood that the term "militia" had multiple meanings. First, the Framers understood all of the people to be part of the unorganized militia. The unorganized militia members, "the people," had the right to keep and bear arms. They could, individually, or in concert, "well regulate" themselves; that is, they could train to shoot accurately and to learn the basics of military tactics. This interpretation is in keeping with English usage of the time, which included within the meaning of the verb "regulate" the concept of self- regulation or self-control as it

does still to this day. The "well regula[tion]" of the militia set forth in the Second Amendment was apart from that control over the militia exercised by Congress and the President, which extended only to that part of the militia called into actual service of the Union. Thus, "well regula[tion]" referred to something else. As we have seen, the Framers understood that "well regulated" militias, that is, armed citizens, ready to form militias that would be well trained, self-regulated and disciplined, would pose no threat to their fellow citizens, but would, indeed, help to "insure domestic Tranquility" and "provide for the common defense.

Chapter 4 : Stephen P. Halbrook: The Right to Keep and Bear Arms

All these issues were resolved by compromise and consensus -- the very democratic principles that many conservatives and libertarians seek to nullify by appealing to the intentions of the Founders. After the Convention, intense debate occurred in the press about the ratification of the proposed constitution.

Power and who gets to exercise it. Tea Party adherents and many conservative Republicans argue that the federal government has vastly exceeded limits that the Founders built into the U. Constitution, seizing authority over individuals and private businesses. Specifically, conservatives say the federal government had no constitutional authority to bail out private banks and auto companies with taxpayer dollars, or to adopt a sweeping heath-care-reform law that will eventually require some Americans to purchase insurance. Is this a new fight? In the Progressive Era of the early s, government attempts to improve labor conditions sparked a debate on laissez-faire economics not unlike the one raging in Washington today. In the s, the Republican U. Solicitor General James Beck warned that because of the erosion of traditional morals and personal liberty, "The Constitution is in graver danger today than at any other time in the history of America. They were embroiled in many of the same debates that rage today. The original 13 states were organized under very libertarian principles in the Articles of Confederation, in which each state was sovereign. The central government was charged with national defense, but was unable to impose taxes, and had little authority to regulate commerce or disputes among the states. In fact, many states produced their own currencies, creating economic chaos. In order to "anticipate and prevent disastrous contingencies," George Washington wrote to John Jay in , something had to be done. The result was a constitutional convention to create a new blueprint for a more powerful central government. Some early Americans were alarmed. Patrick Henry, a leading figure in the American Revolution, declared that he "smelt a rat. What did the convention produce? A brilliant document, but one that was nonetheless forged out of "a bundle of compromises and a mosaic of second choices," as the late Cornell University historian Clinton Rossiter described it. To mollify the fears that large, populous states would dominate federal power, for example, small states were given the same representation in the Senate as much larger states. Slave states were allowed to count each slave as three fifths of a free man in calculating their representation in the House of Representatives, even though slaves were denied the right to vote. Despite lots of horse-trading and vague language, the Constitution was fully ratified only after a bitter, three-year national argument. Rhode Island initially rejected it, and Massachusetts and Virginia, the political and intellectual poles of , both ratified it by narrow margins. Is the resulting document clear? As with the Bible, different readers can find different meanings in the same text. The Second Amendment clearly guarantees "the right of the people to keep and bear arms" but also says the "militia" can be "well-regulated. The Commerce Clause gives the government the right to regulate commerce that crosses state borders, and another clause states that Congress has authority "to make all Laws which shall be necessary and proper" for the functioning of the nation. Liberals argue that the Founders inserted this ambiguous language purposely, to make the Constitution an elastic and "living" document whose basic principles can be interpreted in a contemporary context. Which side is right? Even the Supreme Court, the final arbiter of constitutional meaning, cannot make up its mind about the proper limits of federal power. Child-labor prohibitions were ruled unconstitutional by the Supreme Court in , but upheld in In the end, it seems fair to conclude that even great legal minds read their own political preferences into the Constitution. But a smaller number of conservative critics argue that the trouble actually began in the late s.

Chapter 5 : What the Founders thought about impeachment and the President - National Constitution Cent

The Case for Original Intent Jamal Greene ABSTRACT This Article seeks to situate the constitutional culture's heavy reliance on the Convention debates within an academic environment that is generally hos-.*

Schempp This case involved yet another voluntary activity by students: At issue was a Pennsylvania policy which stated: Participation in the opening exercises. The student reading the verses from the Bible may select the passages and read from any version he chooses. There are no prefatory statements, no questions asked or solicited, no comments or explanations made and no interpretations given at or during the exercises. The students and parents are advised that the student may absent himself from the classroom or, should he elect to remain, not participate in the exercises. It was voluntary; it was student-led; no sectarian instruction or comments were permitted. However, the facts of the case disprove this assertion: Roger and Donna [two of the Schempp children] testified that they had never protested to their teachers or other persons of authority in the school system concerning the practices of which they now complain [in this lawsuit]. In fact, on occasion, Donna herself had volunteered to read the Bible. However, when this case finally reached the Supreme Court, these facts, presented in the District Court, were ignored. Another argument raised then and still raised today is that the school setting is no place for religious activities; if such activities are to occur it should be at home-or in a private school. Justice Stewart, in his dissent, pointed out the constitutional fallacy of such arguments; Freedom only for the rich? It might be argued here that parents who wanted their children to be exposed to religious influences in school could But the consideration which renders this contention too facile [simplistic] to be determinative [a factor] has already been recognized by the Court: Religion only for the home? It might also be argued that parents who want their children exposed to religious influences can adequately fulfill that wish off school property and outside school time. With all its surface persuasiveness, however, this argument seriously misconceives the basic constitutional justification for permitting the exercises at issue in these cases. Viewed in this light, permission of such exercises for those who want them is necessary if the schools are truly to be neutral in the matter of religion. And a refusal to permit religious exercises thus is seen, not as the realization of state neutrality, but rather as the establishment of a religion of secularism. Those who tell you your religion should be "private" are attempting to make their religion the basis for public and political power over you. Your leaders want you in school because we want to teach you the things that are most important for you to know in order to become a fully human productive citizen of this great nation. What is the first lesson students learn in secular schools? God, religion, and morality are not very important. They realize the implications of not making the Bible our foundational school textbook. We can begin to see that it is not just that arguments against Christianity in public schools are fallacious. There are compelling social reasons for making Christianity the foundation of everything that is taught in school, and the Framers of the Constitution understood these reasons. The Founding Fathers correctly believed that " religion, morality and knowledge " should be taught in public schools. They believed that morality could not be taught without religion, and that without morality, our nation would crumble. Supreme Court declared that morality could not be taught in government-operated schools without the New Testament. Our entire system of government was based on religion and morality Or as the Founders often spoke of them, " piety and virtue. The great enemy of the salvation of man, in my opinion, never invented a more effectual means of extirpating [extinguishing] Christianity from the world than by persuading mankind that it was improper to read the Bible at schools.

Chapter 6 : Government in the Sunshine Act - Wikipedia

The legislative history of those provisions contains no indication of a congressional intent to impair the original exclusivity of this Court's jurisdiction under the Expediting Act. Pp. U. S.

When the Second Continental Congress convened in Philadelphia in , it was far from clear that the delegates would pass a resolution to separate from Great Britain. To persuade them, someone needed to articulate why the Americans were breaking away. Although Jefferson disputed his account, John Adams later recalled that he had persuaded Jefferson to write the draft because Jefferson had the fewest enemies in Congress and was the best writer. Jefferson would have gotten the job anywayâ€"he was elected chair of the committee. Jefferson had 17 days to produce the document and reportedly wrote a draft in a day or two. The Declaration of Independence has three parts. It has a preamble, which later became the most famous part of the document but at the time was largely ignored. The preamble to the Declaration of Independence contains the entire theory of American government in a single, inspiring passage: We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. When Jefferson wrote the preamble, it was largely an afterthought. Why is it so important today? It captured perfectly the essence of the ideals that would eventually define the United States. How could Jefferson write this at a time that he and other Founders who signed the Declaration owned slaves? The document was an expression of an ideal. In his personal conduct, Jefferson violated it. At the Seneca Falls Convention in , when supporters of gaining greater rights for women met, they, too, used the Declaration of Independence as a guide for drafting their Declaration of Sentiments. Their efforts to achieve equal suffrage culminated in in the ratification of the 19th Amendment, which granted women the right to vote. And during the civil rights movement in the s, Dr. Martin Luther King, Jr. This note was a promise that all menâ€"yes, black men as well as white menâ€"would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness. Like the other Founders, he was steeped in the political philosophy of the Enlightenment, in philosophers such as John Locke, Jean-Jacques Burlamaqui, Francis Hutcheson, and Montesquieu. All of them believed that people have certain unalienable and inherent rights that come from God, not government, or come simply from being human. They also believed that when people form governments, they give those governments control over certain natural rights to ensure the safety and security of other rights. Jefferson, George Mason and the other Founders frequently spoke of the same set of rights as being natural and unalienable. Writs of assistance, for example, authorized customs officers in a search for stolen goods, without specifying either the goods to be seized or the houses to be searched. As the actual vote on independence approached, a few colonies were issuing their own declarations of independence and bills of rights. It was an advertisement about why the colonists were breaking away from England. Recent Constitution Daily History Stories.

Chapter 7 : THE RELEVANCE OF THE FRAMERS' INTENT

"High Crimes and Misdemeanors": Recovering the Intentions of the Founders Gary L. McDowell Introduction The most interesting and important question involved in the constitu-.*

California Cooperative Canneries, U. There, in rejecting the argument that an appeal lay to the court of appeals from an order denying a motion to intervene in a Government civil antitrust case, the Court stated: Thus, Congress limited the right of review to an appeal from the decree which disposed of all matters. And a decade and a half later, in Allen Calculators v. National Cash Register Co. United States Alkali Export Assn. United States, U. This final clause is susceptible of two plausible constructions that yield opposite results in cases subject to the Expediting Act. But direct review may not be had when the interlocutory order is entered, since there is no "final judgment," the predicate of an appeal under the Expediting Act. Therefore, were the final clause construed as directed only at the present availability of review in this Court, it would not, on its face, bar an interlocutory appeal. However, the function of the Revisers of the Code was generally limited to that of consolidation and codification. We find no such clear expression here. As is usually true of questions of statutory construction, the issue is not totally free from doubt. Section h provides in relevant part: The Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order. It suggests that "civil action" must be read as an all-inclusive phrase that covers, inter alia, Government civil antitrust cases. Universal Interpretive Shuttle Corp. We have been unable to discern any such intention. Many cases which are filed in the Federal district courts require the district judge to entertain motions at an early stage in the proceedings which, if determined, against the plaintiff, result in a final order which would then be appealable to the circuit courts of appeals of the United States. Section a provides for an appeal as a matter of right from a number of specified types of interlocutory orders -- in particular, interlocutory orders granting or denying injunctions. Greater importance obviously was attached to those Page U. Both the Court and various individual Members have, on occasion, commented that, "[w]hatever may have been the wisdom of the Expediting Act in providing direct appeals in antitrust cases at the time of its enactment in , time has proven it unsatisfactory," for "[d]irect appeals not only place a great burden on the Court, but also deprive us of the valuable assistance of the Courts of Appeals. Further, in light of the present size of our docket, direct review "seldom results in much expedition," since we normally must examine the entire record and resolve all questions, however unsubstantial. On the contrary, we remain convinced that, under present circumstances, the Expediting Act fails to hasten substantially the final disposition of important antitrust actions while it unjustifiably burdens this Court with inadequately sifted records and with cases that could be disposed of by review in the courts of appeals. Uniformity in the interpretation and administration of the antitrust laws continues to be an important consideration. But such uniformity could be adequately ensured by the availability of review in this Court on certiorari of cases involving issues of general importance -- together with the "[l]imited expediting of such cases, under the discretion of this Court," Ford Motor Co. United States, supra, at U. The simple fact is that "[t]he legal issues in most [Government] civil antitrust cases are no longer so novel or unsettled as to make them especially appropriate for initial appellate consideration by this Court, as compared with those in a variety of other areas of federal law," Brown Shoe Co. By definition, the issue will be a substantial one, and, where the appellate decision is questionable, it would be necessary to decide whether to grant certiorari, which might require the Court to consider a particular case, on two separate occasions, [Footnote 45] or to deny certiorari, which might mean allowing the district court to proceed to final judgment on an erroneous basis. Given the potential waste of limited judicial resources -- those either of this Court or of the district court -- associated with each choice, neither can be considered attractive. Finally, in emphasizing the value of the screening function that court of appeals review would provide in Expediting Act cases, we have consistently focused upon the lengthy records and complex factual issues common to such cases. But these latter questions can be properly decided only after full development of the evidence, and it is therefore doubtful, at best, that interlocutory appeals would aid this Court in dealing with them on final review. Here, however, the decision of the court of appeals

on the interlocutory order would essentially be only an advisory opinion to the district court, since the issue would usually be open to relitigation on appeal of the final judgment to this Court. The exclusive nature of Page U. Despite our interest in a restructuring of our jurisdiction under the Expediting Act, we are neither willing nor able to adopt the ungainly half-measure offered by the petitioner in this case.

Chapter 8 : The Intentions of the Founders | racedaydvl.com

Like the other Founders, he was steeped in the political philosophy of the Enlightenment, in philosophers such as John Locke, Jean-Jacques Burlamaqui, Francis Hutcheson, and Montesquieu. All of them believed that people have certain unalienable and inherent rights that come from God, not government, or come simply from being human.

Coat of Arms of John Marshall. John Marshall was born on September 24, in a log cabin in Germantown , [2] a rural community on the Virginia frontier, close to present-day near Midland , Fauquier County. In the mids, the Marshalls moved west to the present-day site of Markham, Virginia. Despite her ancestry, Mary was shunned by the Randolph family because her mother had eloped with a Scottish minister. From a young age, Marshall was noted for his good humor and black eyes, which were "strong and penetrating, beaming with intelligence and good nature". He was my only intelligent companion; and was both a watchful parent and an affectionate friend. After he was furloughed in , Marshall began attending the College of William and Mary. With the backing of his influential father-in-law, Marshall was elected to the Council of State , becoming the youngest individual up to that point to serve on the council. In , he purchased the law practice of his cousin, Edmund Randolph , after the latter was elected Governor of Virginia. Marshall gained a reputation as a talented attorney practicing in the state capital of Richmond , and he took on a wide array of cases. He represented the heirs of Lord Fairfax in Hite v. Fairfax , an important case involving a large tract of land in the Northern Neck of Virginia. Marshall was elected to the Virginia Ratifying Convention , where he worked with James Madison to convince other delegates to ratify the new constitution. Though the nomination was confirmed by the Senate, Marshall declined the position, instead choosing to focus on his own law practice. Like most other Federalists, Marshall favored neutrality in foreign affairs, high tariffs , a strong executive, and a standing military. Hylton , a case involving the validity of a Virginia law that provided for the confiscation of debts owed to British subjects. Hylton "elicited great admiration at the time of its delivery, and enlarged the circle of his reputation" despite his defeat in the case. After Adams took office, France refused to meet with American envoys and began attacking American ships. In April , Congress passed a resolution demanding that the administration reveal the contents of the correspondence. Marshall published a letter to a local newspaper stating his belief that the laws would likely "create, unnecessarily, discontents and jealousies at a time when our very existence as a nation may depend on our union. He quickly emerged as a leader of the moderate faction of Federalists in Congress. Marshall was confirmed by the Senate on May 13 and took office on June 6, Adams fired Secretary of State Timothy Pickering, a Hamilton supporter, after Pickering tried to undermine peace negotiations with France. The position of Secretary of State also held a wide array of domestic responsibilities, including the deliverance of commissions of federal appointments and supervision of the construction of Washington, D. The Midnight Judges Act made sweeping changes to the federal judiciary, including a reduction in the number of Justices from six to five upon the next vacancy in the court so as to deny Jefferson an appointment until two vacancies occurred. Adams nominated former Chief Justice John Jay to once again lead the Supreme Court, but Jay rejected the appointment, partly due to his frustration at the relative lack of power possessed by the judicial branch of the federal government. According to New Jersey Senator Jonathan Dayton , the Senate finally relented "lest another not so qualified, and more disgusting to the Bench, should be substituted, and because it appeared that this gentleman [Marshall] was not privy to his own nomination". Most legal disputes were resolved in state, rather than federal courts. The Court had issued just 63 decisions in its first decades, few of which had made a significant impact, and it had never struck down a federal or state law. The Marshall Court would issue more than decisions, about half of which were written by Marshall himself. Previously, each Justice would author a separate opinion known as a seriatim opinion as was done in the Virginia Supreme Court of his day and is still done today in the United Kingdom and Australia. Under Marshall, however, the Supreme Court adopted the practice of handing down a single majority opinion of the Court, allowing it to present a clear rule. Six months of the year the justices were doing circuit duty in the various states. When the Court was in session in Washington, the justices boarded together in the same rooming house, avoided outside socializing, and discussed each case intently

among themselves. Decisions were quickly made, usually in a matter of days. The justices did not have clerks, so they listened closely to the oral arguments, and decided among themselves what the decision should be. His influence on learned men of the law came from the charismatic force of his personality and his ability to seize upon the key elements of a case and make highly persuasive arguments. In that caseâ€" Ogden v. Saunders in â€"Marshall set forth his general principles of constitutional interpretation: After the Court came to a decision, he would usually write it up himself. Often he asked Justice Joseph Story , a renowned legal scholar, to do the chores of locating the precedents, saying, "There, Story; that is the law of this case; now go and find the authorities. Presidency of Thomas Jefferson Marbury v. After coming to power, the Jefferson administration refused to deliver about half of these outstanding commissions, effectively preventing those individuals from receiving their appointments even though the Senate had confirmed their nominations. Though the position of justice of the peace was a relatively powerless and low-paying office, one individual whose commission was not delivered, William Marbury , decided to mount a legal challenge against the Jefferson administration. Seeking to have his judicial commission delivered, Marbury filed suit against the sitting Secretary of State, James Madison. The Supreme Court agreed to hear the case of Marbury v. Madison in its term. Madison, though the defendant, James Madison, refused to appear. Because that portion of the Judiciary Act of was unconstitutional, the Court held that it did not have original jurisdiction over the case even while simultaneously holding that Madison had violated the law. As Marshall put it, "it is emphatically the province and duty of the judicial department to say what the law is. Many Democratic-Republicans saw the impeachment as a way to intimidate federal judges, many of whom were members of the Federalist Party. Burr conspiracy Vice President Aaron Burr was not renominated by his party in the presidential election and his term as vice president ended in After leaving office, Burr traveled to the western United States, where he may have entertained plans to establish an independent republic from Mexican or American territories. Marshall required Jefferson to turn over his correspondence with General James Wilkinson ; Jefferson decided to release the documents, but argued that he was not compelled to do so under the doctrine of executive privilege. Peck[edit] Further information: Yazoo land scandal In , the state of Georgia had sold much of its western lands to a speculative land company, which then resold much of that land to other speculators, termed "New Yazooists. Jefferson tried to arrange a compromise by having the federal government purchase the land from Georgia and compensate the New Yazooists, but Congressman John Randolph defeated the compensation bill. The issue remained unresolved, and a case involving the land finally reached the Supreme Court through the case of Fletcher v. Peck was the first case in which the Supreme Court ruled a state law unconstitutional, though in the Court had voided a state law as conflicting with the combination of the Constitution together with a treaty. Maryland[edit] The text of the McCulloch v. In that case, the state of Maryland challenged the constitutionality of the national bank and asserted that it had the right to tax the national bank. Southerners, including Virginia judge Spencer Roane , attacked the decision as an overreach of federal power. Bank of the United States , the Court ordered a state official to return seized funds to the national bank. The Osborn established that the Eleventh Amendment does not grant state officials sovereign immunity when they resist a federal court order. Virginia[edit] Congress established a lottery in the District of Columbia in , and in two individuals were convicted in Virginia for violating a state law that prohibited selling out-of-state lottery tickets. Virginia established that the Supreme Court could hear appeals from state courts in criminal lawsuits. Ogden[edit] In , Robert R. Livingston and Robert Fulton secured a monopoly from the state of New York for the navigation of steamboats in state waters. Gibbons continued to operate steamboats in New York after receiving a federal license to operate steamboats in the waters of any state. In response, Ogden won a judgment in state court that ordered Gibbons to cease operations in the state. Gibbons appealed to the Supreme Court, which heard the case of Gibbons v. After Georgia passed a law that voided Cherokee laws and denied several rights to the Native Americans, former Attorney General William Wirt sought an injunction to prevent Georgia from exercising sovereignty over the Cherokee. The Supreme Court heard the resulting case of Cherokee Nation v. Georgia, a group of white missionaries living with the Cherokee were arrested by the state of Georgia. They did so on the basis of an state law that prohibited white men from living on Native American land without a state license. Among those arrested was Samuel

Worcester , who, after being convicted of violating the state law, challenged the constitutionality of the law in federal court. The arrest of the missionaries became a key issue in the presidential election , and one of the presidential candidates, William Wirt, served as the attorney for the missionaries. The situation was finally resolved when the Jackson administration privately convinced Governor Wilson Lumpkin to pardon the missionaries. The Charming Betsy principle holds that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains. Woodward , the Court held that the protections of the Contract Clause apply to private corporations. Saunders , the only constitutional case in which Marshall wrote a dissenting opinion, the Court upheld a state law that allowed individuals to file bankruptcy. In his dissenting opinion, Marshall argued that the state bankruptcy law violated the Contract Clause. Baltimore , the Court held that the Bill of Rights was intended to apply only to the federal government, and not to the states. Authorship of Washington biography[edit] After his appointment to the Supreme Court, Marshall began working on a biography of George Washington. He did so at the request of his close friend, Associate Justice Bushrod Washington, who had inherited the papers of his uncle. The first two volumes, published in , were poorly-received and seen by many as an attack on the Democratic-Republican Party. In he wrote, "I have at length completed an abridgment of the Life of Washington for the use of schools. I have endeavored to compress it as much as possible. After striking out every thing which in my judgment could be properly excluded the volume will contain at least pages. The following year, Marshall was a delegate to the state constitutional convention of â€”30 , where he was again joined by fellow American statesman and loyal Virginians, James Madison and James Monroe , although all were quite old by that time Madison was 78, Monroe 71, and Marshall That December, his wife Polly died in Richmond. John Marshall Son of Thomas and Mary Marshall was born the 24th of September Intermarried with Mary Willis Ambler the 3rd of January Departed this life the 6th day of July [] Marshall was among the last remaining Founding Fathers a group poetically called the " Last of the Romans " , [] and was also the last surviving Cabinet member from the John Adams administration. He had reservations about large-scale emancipation, in part because he feared that a large number of free blacks might rise up in revolution. Marshall instead favored sending free blacks to Africa , and he founded the Virginia chapter of the American Colonization Society to further that goal. They had 10 children; six of whom survived to adulthood.

Chapter 9 : The constitution: What the Founders intended

The Founders and some of Hamilton's audience were familiar with the concept from English law and several state constitutions had impeachment provisions for "maladministration," a term Madison objected to and which caused Mason to add "high crimes and misdemeanors" to the clause as its replacement.

Not unlike many young adults, some young adults who have lived in foster care need additional support and resources for a period of time after reaching 18 years of age. Was living in licensed care on his or her 18th birthday or is currently living in licensed care; or was at least 16 years of age and was adopted from foster care or placed with a court-approved dependency guardian after spending at least 6 months in licensed care within the 12 months immediately preceding such placement or adoption; 2. Spent at least 6 months in licensed care before reaching his or her 18th birthday; 3. Earned a standard high school diploma pursuant to s. Has been admitted for enrollment as a full-time student or its equivalent in an eligible postsecondary educational institution as provided in s. A student may enroll part-time if he or she has a recognized disability or is faced with another challenge or circumstance that would prevent full-time attendance. A student needing to enroll part-time for any reason other than having a recognized disability must get approval from his or her academic advisor; 5. Has reached 18 years of age but is not yet 23 years of age; 6. Signed an agreement to allow the department and the community-based care lead agency access to school records. For a young adult who does not remain in foster care and is attending a postsecondary school as provided in s. For a young adult who remains in foster care, is attending a postsecondary school, as provided in s. This takes the place of the payment provided for in s. For a young adult who remains in foster care, but temporarily resides away from a licensed foster home for purposes of attending a postsecondary school as provided in s. For a young adult who remains in foster care, is attending a postsecondary school as provided in s. For a young adult who remains in foster care, but temporarily resides away from a licensed group home for purposes of attending a postsecondary school as provided in s. This takes the place of a negotiated room and board rate. The amount of the award may be disregarded for purposes of determining the eligibility for, or the amount of, any other federal or federally supported assistance. A young adult is eligible to receive financial assistance during the months when enrolled in a postsecondary educational institution. Has chosen not to remain in foster care and is attending a postsecondary school as provided in s. Has remained in foster care under s. Community-based care lead agencies or other contracted providers are prohibited from charging a fee associated with administering the Road-to-Independence payments. The department must advertise the availability of the stipend and must provide notification of the criteria and application procedures for the stipend to children and young adults leaving, or who were formerly in, foster care; caregivers; case managers; guidance and family services counselors; principals or other relevant school administrators; and guardians ad litem. If the award recipient transfers from one eligible institution to another and continues to meet eligibility requirements, the award shall be transferred with the recipient. The department, or an agency under contract with the department, shall evaluate each Road-to-Independence award for renewal eligibility on an annual basis. In order to be eligible for a renewal award for the subsequent year, the young adult must: Be enrolled for or have completed the number of hours, or the equivalent, to be considered a full-time student under subparagraph a 4. Funds may be terminated during the interim between an award and the evaluation for a renewal award if the department, or an agency under contract with the department, determines that the award recipient is no longer enrolled in an educational institution as described in subparagraph a 4. The department, or an agency under contract with the department, shall notify a recipient who is terminated and inform the recipient of his or her right to appeal. An award recipient who does not qualify for a renewal award or who chooses not to renew the award may apply for reinstatement. An application for reinstatement must be made before the young adult reaches 23 years of age. In order to be eligible for reinstatement, the young adult must meet the eligibility criteria and the criteria for award renewal for the program. Not in foster care. Temporarily not receiving financial assistance under subsection 2 to pursue postsecondary education. Mental health services and substance abuse counseling. Life skills classes, including credit management and preventive health activities.

Job and career skills training. Temporary financial assistance for necessities, including, but not limited to, education supplies, transportation expenses, security deposits for rent and utilities, furnishings, household goods, and other basic living expenses. Financial literacy skills training pursuant to s. The specific services to be provided under this paragraph shall be determined by an assessment of the young adult and may be provided by the community-based care provider or through referrals in the community. The decision of the department constitutes final agency action and is reviewable by the court as provided in s. The report must include: For the purposes of the first report, any rules adopted or proposed under this section must be included. The advisory council shall keep the department informed of problems being experienced with the services, barriers to the effective and efficient integration of services and support across systems, and successes that the system of services has achieved. The department shall consider, but is not required to implement, the recommendations of the advisory council. The membership of the advisory council must include, at a minimum, representatives from the headquarters and regional offices of the Department of Children and Families, community-based care lead agencies, the Department of Juvenile Justice, the Department of Economic Opportunity, the Department of Education, the Agency for Health Care Administration, the State Youth Advisory Board, CareerSource Florida, Inc. The secretary shall determine the length of the term to be served by each member appointed to the advisory council, which may not exceed 4 years. The advisory council shall be afforded access to all appropriate data from the department, each community-based care lead agency, and other relevant agencies in order to accomplish the tasks set forth in this section. The data collected may not include any information that would identify a specific child or young adult. The council shall assess and report on the most effective method of assisting these young adults to complete high school or its equivalent by examining the practices of other states. Such property continues to be subject to applicable federal laws. Former paragraph 3 a and subsection 10 were also amended by s. As amended by s. The department shall provide such children and young adults with opportunities to participate in life skills activities in their foster families and communities which are reasonable and appropriate for their respective ages or for any special needs they may have and shall provide them with services to build life skills and increase their ability to live independently and become self-sufficient. To support the provision of opportunities for participation in age-appropriate life skills activities, the department shall: Develop a list of age-appropriate activities and responsibilities to be offered to all children involved in independent living transition services and their foster parents. Provide training for staff and foster parents to address the issues of older children in foster care in transitioning to adulthood, which shall include information on high school completion, grant applications, vocational school opportunities, supporting education and employment opportunities, and opportunities to participate in appropriate daily activities. Establish the authority of foster parents, family foster homes, residential child-caring agencies, or other authorized caregivers to approve participation in age-appropriate activities of children in their care according to a reasonable and prudent parent standard. Foster parents, family foster homes, residential child-caring agencies, or other authorized caregivers employing the reasonable and prudent parent standard in their decisionmaking shall not be held responsible under administrative rules or laws pertaining to state licensure or have their licensure status in any manner jeopardized as a result of the actions of a child engaged in the approved age-appropriate activities. Provide opportunities for older children in foster care to interact with mentors. Develop and implement procedures for older children to directly access and manage the personal allowance they receive from the department in order to learn responsibility and participate in age-appropriate life skills activities to the extent feasible. Make a good faith effort to fully explain, prior to execution of any signature, if required, any document, report, form, or other record, whether written or electronic, presented to a child or young adult pursuant to this chapter and allow for the recipient to ask any appropriate questions necessary to fully understand the document. It shall be the responsibility of the person presenting the document to the child or young adult to comply with this subparagraph. The rules must provide caregivers with as much flexibility as possible to enable the children in their care to participate in normal life experiences and must reflect the considerations listed in s. The department shall engage in appropriate planning to prevent, to the extent possible, a reduction in awards after issuance. The department shall adopt rules to govern the payments and conditions related to payments for

services to youth or young adults provided under this section.