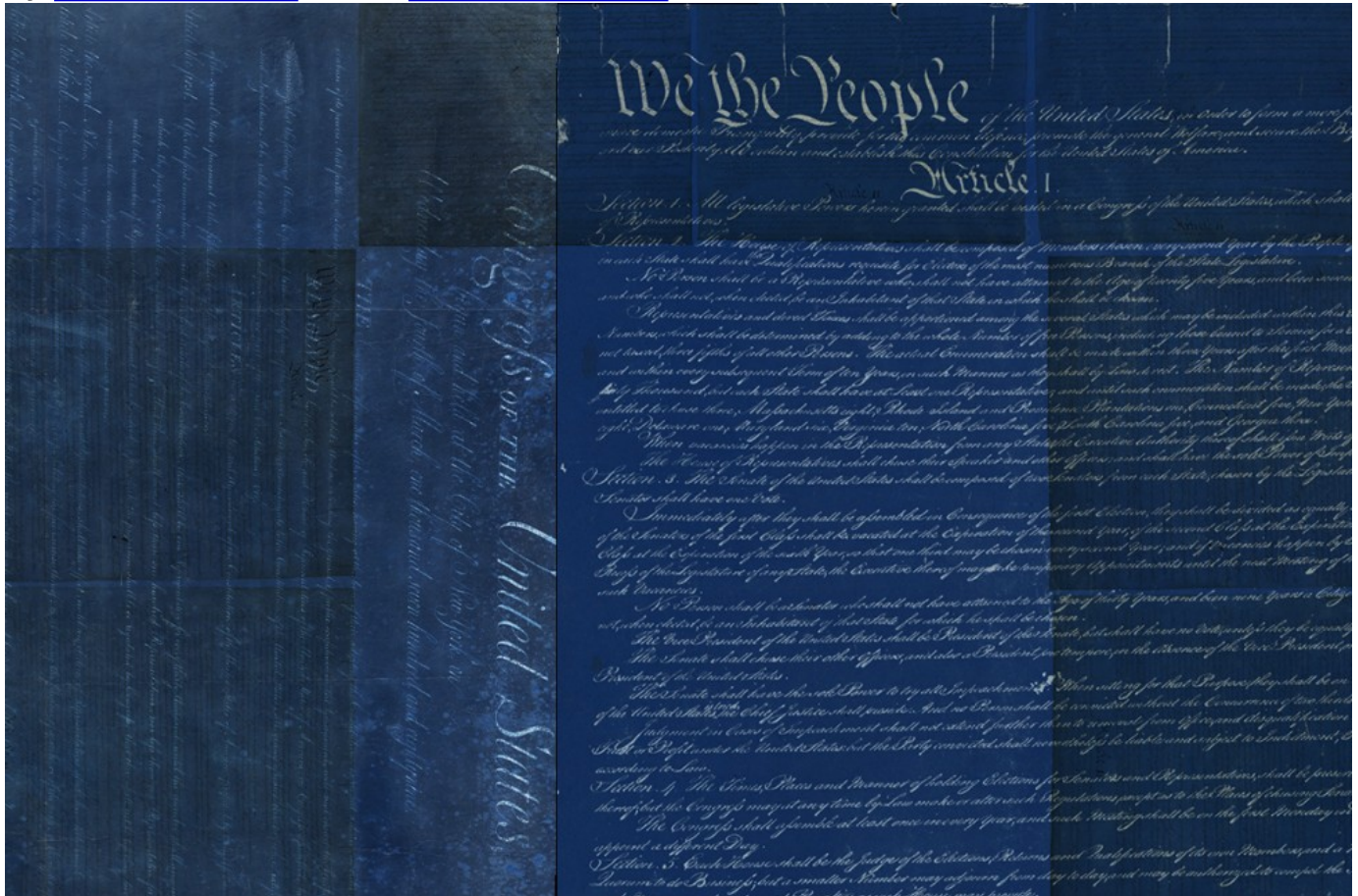


Concretizing the word

## Judicial originalism is biblical literalism's younger cousin.

by [Peter W. Marty](#) in the [August 10, 2022](#) issue



(Source images: US Library of Congress)

The owners of Possibility Custom Homes in Magnolia, Texas, are proud of the foundational role they believe God's Word has played in their lives. They're so proud of it that, for more than a decade now, they've been encasing a Bible in the foundation of every new home they build. It's the kind of foundation they believe every family deserves. As concrete pours over the chute of the mixing truck into the foundation form boards, a laborer steps forward with a soft-cover Bible in hand, leans over, and submerges the book into the moist aggregate. Embedding the

written text in hardening concrete is a pretty sure way to mummify it permanently.

Biblical literalists, who in some circles are called fundamentalists or inerrantists, may be able to appreciate this unique form of concretizing the Word more than others of us. They're known to revere the Bible as much as the message within it. Their version of faith celebrates the factual accuracy of every verse, fixating on the text as something of a frozen body of ancient knowledge. Literalists like to insist on one reading for all time. As far as they're concerned, the text is settled, closed, and beyond interpretation.

Judicial originalism, I would argue, is something of a younger cousin to biblical literalism. Adherents to the originalist doctrine expect jurists to follow the exact words of the Constitution, the meaning of which they believe was locked into place (or concretized) at the time they were written. Antonin Scalia, who championed the modern surge of originalism as much as anyone, liked to say that the Constitution is about "rigidifying things." Even though there's no way to determine precisely what every phrase of the Constitution originally meant, given the complicated political debates that informed them, originalists assume that the words of the framers had settled meanings.

Critics of the originalist project find it absurd to give exclusive place to text over context. They believe the framers of the Constitution themselves would be astonished to find this almost godly devotion to their every utterance. The architects of our republic were complicated individuals, after all; brilliant and visionary on the one hand, yet weak and flawed on the other.

We should applaud those who critique a rigid or static view of the written text and prize its intentionally broad and open-ended language. They know that the great principles of the Constitution, along with its very specific rules, require interpretation for our dynamic and evolving society. They cry out at the literalism of various Supreme Court justices (such as the late Hugo Black, who famously objected to busing because he couldn't find the word *bus* in the Constitution). They wince at the brash inconsistency of originalists on the court who recently voted to expand the right of states to regulate abortion while restricting the right of states to regulate guns.

Unfortunately, like the Bible, the Constitution doesn't provide a method for interpreting itself. And yet, we have no choice but to interpret. The nature of

language is such that no word communicates just one idea or meaning in every context where it's used. "Nobody's reading is final or inerrant," writes Walter Brueggemann about scripture. "All biblical interpretation is inescapably provisional and inevitably disputatious."

If only more originalists in our day could appropriate the idea of theologian Karl Barth for their own Constitutional work. "I take the Bible far too seriously," said Barth, "to take it literally."

*A version of this article appears in the print edition under the title "Foundational texts."*