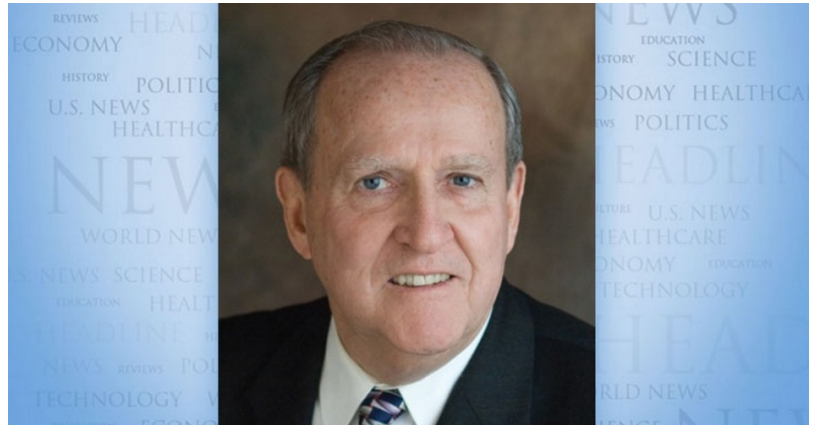




## Scalia: The Passing of the Supreme Court's "Originalist"

The sudden passing of Supreme Court Justice Antonin Scalia evoked praise for his work from conservatives and, after perfunctory condolences directed to his family, dark words for his "originalism" from liberals. Many Americans who are unfamiliar with that term can be helped to understand its meaning by understanding [Scalia's disdain for considering the U.S. Constitution a "living" document](#) subject to current whims and trends. He always believed that it was a hard and fast contract to be considered inviolate by all who had solemnly sworn to abide by it.



Advocates of the "living" document thesis claim that modern trends and attitudes should be considered part of the Constitution even if there is no portion of its language supporting their position. Those who insist that the Constitution cannot be altered or ignored at whim, or have new thinking added to it without an amendment, have become fewer in number. The lack of understanding among many Americans about the Constitution has allowed liberals to get away with what they claim because of their insistence that the Constitution lives. And like any other entity that lives, they say it grows naturally.

In reality, however, the Constitution is very much like a contract between the people and their government. Neither side has the authority to unilaterally change its terms. Change is permitted when both sides — in this case the government and the people — formally use the amendment process. But if a carpenter and a homeowner agree about a porch being added to the rear of the home, the carpenter cannot decide to omit building the agreed-upon steps to the backyard. Nor can the homeowner change the agreed-upon fee for the man's work.

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Justice Scalia always held that the terms of a contract (the Constitution in this case) must be honored by government officials. He found no permission for government to sanction abortion, or forbid private ownership of guns, or change the definition of marriage, or a great deal more. He frequently stated that lawmakers and judges should honor the wording of the document as it was understood when created or amended. He was an "originalist." As such, he could point to the attitude of Thomas Jefferson who stated in 1801:

The Constitution on which our Union rests shall be administered by me according to the safe and honest meaning contemplated by the plain understanding of the people of the United States at the time of its adoption, a meaning found in the explanations of those who advocated it, not those who opposed it.

When a later need arose to restate his attitude, Jefferson stated:

On every question of construction, [let us] carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning can



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be squeezed out of the text, or invented against it, conform to the probable one in which it was passed.

Though the term wasn't in use during Jefferson's time, he was an originalist. The steps to the backyard that were part of his mythical porch were noted in the agreement he and the carpenter had signed. There was no power for the carpenter to omit the steps or for Jefferson to alter the agreed-upon payment for the man's work.

In like manner, the government and the people should similarly honor the contract known as the U.S. Constitution. This was the thinking employed by Antonin Scalia. We can only hope that whoever takes his place on the high court will, as he did, delight in being labeled an "originalist."

*John F. McManus is president emeritus of [The John Birch Society](#). This column appeared originally at the [insideJBS blog](#) and is reprinted here with permission.*



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