

Mobi Worse Than Nothing: The Dangerous Fallacy of Originalism by Erwin Chemerinsky

Worse Than Nothing: The Dangerous Fallacy of Originalism

By: Erwin Chemerinsky

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Why originalism is a flawed, incoherent, and dangerously ideological method of constitutional interpretationChemerinsky . . . offers a concise, point-by-point refutation of the theory [of originalism]. He argues that it cannot deliver what it promisesand if it could, no one would want what it is selling.David Cole, New York Review of Books Originalism, the view that the meaning of a constitutional provision is fixed when it is adopted, was once the fringe theory of a few extremely conservative legal scholars but is now a well-accepted mode of constitutional interpretation. Three of the Supreme Courts nine justices explicitly embrace the originalist approach, as do increasing numbers of judges in the lower courts. Noted legal scholar Erwin Chemerinsky gives a comprehensive analysis of the problems that make originalism unworkable as a method of constitutional interpretation. He argues that the framers themselves never intended constitutional interpretation to be inflexible and shows how it is often impossible to know what theoriginal intent of any particular provision was. Perhaps worst of all, though its supporters tout it as a politically neutral and objective method, originalist interpretation tends to disappear when its results fail to conform to modern conservative ideology.

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