

TUESDAY TOPICS MARCH 7, 2023 SUMMARY

Dr. Richard Levy, Constitutional Law Professor at the University of Kansas School of Law, was our speaker at the March 7, 2023 Tuesday Topics. Following her announcements, President Carole Jordan introduced Dr. Levy and listed his many accomplishments. Dr. Levy's topic was "How Should We Interpret the Constitution."

Dr. Levy began his presentation by noting that the United States Constitution, written in 1789, is unique among constitutions in that it is short, having only seven articles plus amendments that have been added over the years, and durable. Meant to be adaptable and adjusted over time, the Constitution operates as the law and is superior to other laws (the Power of Judicial Review) and empowers other courts.

Levy explained that the Constitution was written in broad, general language and needs interpretation — for instance, what is meant by liberties, right to privacy as a fundamental liberty (abortion, same-sex marriage), due process, equal protection under the law. Society's understanding of values evolves over time, and courts must give meaning to Constitutional provisions. Methodology matters when interpreting the Constitution.

Two methodologies are the Conceptual Evolution and Originalism. Conceptual Evolution focuses on underlying values. It is more liberal than Originalism, which focuses on what the framers said and the search for understanding of their words. What was the original intent when the Constitution was written? What was the public meaning? What did people in 1789 think the words meant? This is a conservative view. Judges who are Originalists accept what people in 1789 believed the word meant. Levy said this is why today's conservative court would view abortion as not viable while gun rights would be viable. Levy also pointed out that, not everyone voted on the ratification of the Constitution. Only a limited number could vote — white male landowners.

Judges are not historians. They are human beings who, like all humans find it hard to put aside their own biases, previous views and assumptions. Judges who look at the concepts or the core values, study historical documents, the Federalist papers, and practices of earlier court decisions (1790, 1810, etc.) as evidence of meaning. Originalist judges accept what people in 1789 understood the words to mean. In recent years the Court has become increasingly more political. This in turn allows the President and the Senate more opportunities to affect the Court. It is a vicious circle. Dr. Levy worries that as politics becomes more polarized, there will be more shopping for judges.

When Dr. Levy opened it up to questions, one person asked about judicial term limits for judges Levy suggested that we can address the problem by punishing those who are playing fast and loose with the Constitution and remarked that can be said of the Electoral College as well.

Levy was also asked if Justices had researchers and said the Justices rely on the party briefs and Amicus (Friend of the Court) briefs.

Another asked whether the Supreme Court has ethical standards like attorneys. Levy said that although the lower courts do have a Code of Ethics, the Supreme Court members are expected to regulate themselves.

Dr. Levy said public support of the Supreme Court is crucial. We need the Court to make important pronouncements.

NOTE: It is difficult to include in a summary all the important details Dr. Levy included in his presentation. Members who were not present are encouraged to listen to the recording. It was a tremendous learning experience. The recording is available on the Topeka and Shawnee County Public Library website.