

The purpose of framing and ratifying a constitution as such is not to set forth the fundamental principles, formal and material, on which the constitution is based. Rather, the purpose of this process is to implement these fundamental principles, or to put them into effect, by means of positive law—at the level, namely, of constituent <sup>or constitutional law,</sup> as distinct from governmental, <sup>or statutory</sup> law.

But to correctly understand and rightly interpret the constituent laws that are the product of this whole process in their “original intent” requires understanding and interpreting them in a twofold context: not only the social, cultural, and political situation in and for which they were framed and ratified; but also, and crucially, the fundamental principles, formal and material that they are intended to implement, or to put into effect, as constituent positive laws.

Applied to the specific case of the Constitution of the United States, this means that the laws it comprises can be correctly understood and rightly interpreted in their “original intent” only in the context of the fundamental principles, formal and material, set forth—not only but preeminently—in the Declaration of Independence. Why does it mean this? Because these are the fundamental principles on which the whole process of framing and ratifying the Constitution as well as its product of constituent laws is in fact based.

By “the fundamental principles, formal and material” here, I mean what I have called elsewhere “a theory of the moral authority of law” in general, or of “the whole process of framing and ratifying constituent law” in particular. Such a theory, I have argued, has two parts, formal and material. The first, formal, or, if you will, “in principle” part consists in a theory as to the logical status of the moral ideas by which the lawmaker must, in the nature of the case, be guided. The second, material, or “in fact” part consists in a theory as to just what these moral ideas should be.

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