**Original Meaning:** Justice Oliver Wendell Holmes argued that interpreting what was meant by someone who wrote a law was not trying to "get into his mind" because the issue was "not what this man meant, but what those words would mean in the mouth of a normal speaker of English, using them in the circumstances in which they were used." This is the essential precept of modern Originalism. Justice Scalia, one of the most forceful modern advocates for originalism, defines himself as belonging to the latter category:

"The theory of originalism treats a constitution like a statute, and gives it the meaning that its words were understood to bear at the time they were promulgated. You will sometimes hear it described as the theory of original intent. You will never hear me refer to original intent, because as I say I am first of all a textualist, and secondly an originalist. If you are a textualist, you don't care about the intent, and I don't care if the framers of the Constitution had some secret meaning in mind when they adopted its words. I take the words as they were promulgated to the people of the United States, and what is the fairly understood meaning of those words."

**The Use of Extra-Constitutional Matters:** Originalists are sharply critical of the use of "the evolving standards of decency"—a term which first appeared in *Trop v. Dulles*—and the opinions of courts in foreign countries in Constitutional interpretation. On an originalist interpretation, if the meaning of the Constitution is static, then any *ex post facto* information (such the opinions of the American people, American judges, or the judiciaries of any foreign country) is inherently valueless in interpreting the meaning of the Constitution, and should not form any part of constitutional jurisprudence; the Constitution is then fixed and has procedures defining how it can be changed.

**Living Constitution:** a concept in American constitutional interpretation which claims that the Constitution has a dynamic meaning. The idea is associated with views that contemporaneous society should be taken into account when interpreting key constitutional phrases. While the arguments for the Living Constitution vary, they can generally be broken into two categories. First, the pragmatist view contends that interpreting the Constitution in accordance with long outdated views is often unacceptable as a policy matter, and thus that an evolving interpretation is necessary. The second, relating to intent, contends that the constitutional framers specifically wrote the Constitution in broad and flexible terms to create such a dynamic, "living" document. Opponents of the idea often argue that the Constitution should be changed through the amendment process, and that the theory can be used by judges to inject their personal values into constitutional interpretation.

**Lyons' Non-Originalism:** Adherence to the Constitution requires justification and principles of political morality that are capable of providing such justification might also justify deviation from it. Non-originalism is prepared to consider using extra-constitutional doctrines in constitutional cases. We need extra-constitutional doctrines in constitutional adjudication. Our understanding of the constitution must be informed by reflection on the principles it serves.

**Why this dispute is important:** Reviewing Steven D Smith's book *Law's Quandary*, Justice Scalia applied an originalist formulation to some controversial topics routinely brought before the Court:

"It troubles Smith, but does not at all trouble me—indeed, it pleases me—that giving the words of the Constitution their normal meaning would “expel from the domain of legal issues... most of the constitutional disputes that capture our attention,” such as “Can a macho military educational institution dedicated to what is euphemistically called the ‘adversative’ method admit only men? Is there a right to abortion? Or to the assistance of a physician in ending one’s life?” If we should read English as English, Smith bemoans, “these questions would seemingly all have received the same answer: ‘No law on that one.’ ...That is precisely the answer they should have received: The federal Constitution says nothing on these subjects, which are therefore left to be governed by state law.”

**Judicial Review:** the doctrine in democratic theory under which legislative and executive action is subject to invalidation by the judiciary. Specific courts with judicial review power must annul the acts of the state when it finds them incompatible with a higher authority, such as the terms of a written constitution. Judicial review is an example of the functioning of separation of powers in a modern governmental system (where the judiciary is one of three branches of government).