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2011

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Recommended Citation

Stephen Durden, *I Am Textualism*, 59 Clev. St. L. Rev. 431 (2011)

available at <https://engagedscholarship.csuohio.edu/clevstlrev/vol59/iss3/8>

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I AM TEXTUALISM

STEPHEN DURDEN*

Though I am free and belong to no one, I have made myself a slave to everyone, or, at least, to as many as I can, in order to win as many as I can. To the Literalists, I am the literal definition of words, so as to win those Literalists, to bring them into my flock. To them I am Literal Textualism. To the Original Intentionalist, I am the hopes and dreams of the now very dead, as those hopes and dreams became the words of a handful of people meeting in secret to draft the Constitution. To them, I am Original Intent Textualism. To the Original Meaningist, I am the defined (public) meaning of words as set forth in dictionaries written by persons working alone in attics or in asylums creating meanings from unknown sources. To those that use dictionaries and Ougi boards and diaries and private letters from the long dead to another of the long dead, I am Original Meaning Textualism. I seek to become, all things to all people so that by all possible means I can bring them into the flock. I do this for the sake of the Constitution; I do this for the sake of the various High Priest(esse)s of the Constitution so that the world will see them as leaders of followers. Nay, I do this to provide a cloak, a pretense, of objectivity to those who wish me to hide their individual selves, their personal predilections. For I am Textualism.

My disciples, Textualists of different stripes and colors, write in my name. They spread my word, which, to my disciples, is The Word of the Constitution. I am not merely a methodology for interpreting the Constitution; I am not merely a rational approach to use along with other forms of reasoning for interpreting the Constitution; I am not merely one of many tools for the High Priest(esse)s of the Constitution; most important, I am not merely a human creation used by people (Senators, Representatives, Presidents, candidates, judges, justices, professors and other politicians) to interpret another human creation, i.e., the Constitution. I am a cloak, a cloak of freedom from humanness. I hide interpreters of the Constitution behind a cloak of purported objectivity. I hide personal predilections. For I am Textualism.

As my disciples spread my word, what is to them, The Word, they seek to convert readers into believers. They seek these converts perhaps for themselves, for their posterity, for their pocket books, or, perhaps, for their goal of publishing in an important law review. Perhaps, my disciples seek to prove worthy of appointment or election. Whatever their personal goal, as they seek converts, simultaneously, they aid me to become something new or aid me to bring into my flock someone new, continuing my mission to become all things to all people. Whatever my disciples create out of me, in whatever way they modify, transmogrify, or transform me, they

* Professor of Law, Florida Coastal School of Law. I would like to thank Professor Laurence Tribe, whom I have never met, for inspiring me to never stop seeking to understand the sublime brilliance (not necessarily perfection) of the Constitution and for inspiring me to remind all who will heed my words that the Constitution remains one of the most significant and important documents in the evolution of human societies.

act, always in my name. As my disciples embrace me, I envelop them. For I am Textualism.

My disciples choose different paths to strengthen me. Some merely embrace me or urge belief in me, thereby spreading my name through the reeds of law review articles or television shows, bringing me new followers through publication of my name. Sometimes their public embrace of me brings me followers, because some of my disciples already have followers. Some disciples create or invent new or rephrased justifications for my existence, in their way seeking to prove my existence or my value or my validity. With each such effort, I become something new for someone new, in order to become all things to all people. For I am Textualism.

My disciples often seek to explain or demonstrate my true form, my pure form or my truer or purer form. In so doing, they criticize or even attack other of my disciples. In seeking to support their personal (and often well-reasoned) view of my true(r) or pure(r) form, they show, or seek to show, the flaws of another of my forms. Each disciple who redefines me, helps me to become another thing for another person. The disagreements among my disciples only strengthen me, for the competing ideas never dismiss me, they do not attack me; the disagreements, instead seek to create, what in their minds, is an improved me. As one disciple attacks another disciple, the attacking disciple seeks to win believers in me as they create me in their preferred image. The more the attacking disciple invests her or his spirit, the stronger the attacking disciple believes in her or his vision of my true form. And, the attacking disciple may, perhaps, win over the defending disciple, showing, convincing, the defending disciple that the defending disciple's vision of me is a false me. More likely, however, the defending disciple simply retrenches, recommits to her or his vision of my true form. This competition creates more committed disciples. This competition strengthens me. The different visions of me fall within my plan for becoming all things to all people. This is the Textualist Conundrum---for me to be all things to all textualists, and yet, at the same time for me to be a cloak of objectivity, a cloak eliminates personal predilections. This is the Textualist Difficulty—for my disciple to create a purer vision of me without that vision being the personal vision of my disciple. Yet, the Conundrum and the Difficulty do not weaken me, for they do not lessen the fervor of my believers. The Conundrum and the Difficulty do not eliminate my growth, for I grow with each new believer, because believers want to pretend that their vision of the Constitution belongs to them and not to me. I need not be true to my purported purpose of eliminating personal predilections. For I am Textualism.

I began as a word, ten letters in a particular order, never before put in that order. Now, I am The Word, at least to my disciples. I began as an idea. Now, I embrace innumerable ideas. I began without meaning. Now, I have uncountable meanings, each of which a disciple gave to me. To each such disciple, I am The Word of the Constitution, in perfect form, the form each has given or accepted for me. As the number of my perfect forms grows, as my disciples define and redefine me, the less meaning I have, the less defined I become. My purpose, however, remains. My disciples will continue to look to me, as long as they need me, as long as they seek to hide behind my protective cloak of objectivity. For I am Textualism.

Until every person seeking to interpret the Constitution recognizes that constitutional interpretation is a quintessentially human endeavor, based on human assumptions and human reasoning, I will remain to protect those who seek to hide their predilections, their personal choices. I will continue to change as time passes. My form will continue to change to meet the needs of those who seek my cloak of

objectivity and seek to redefine and improve me. I am a human invention created to pretend that constitutional interpretation is not a human endeavor. I am what each disciple wants. I am what each disciple needs. I am ten letters in a particular order available for any disciple, for use by any disciple, for definition by any disciple. I am all things to all my disciples. For I am Textualism.