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A Context for Class Discussion Of Constitutional Interpretation

by John Anthony Maltese, Johns Hopkins University

In a speech before the American Bar Association in July of 1985, Attorney General Edwin Meese III tersely proclaimed: "Far too many of the (Supreme Court's) opinions, on the whole, have been more policy choices than articulations of long-term constitutional principle." Speaking in reaction to the recent Supreme Court ruling that struck down an Alabama law for a "moment of silence" in public schools, Meese argued that the Court's interpretation of the Fourteenth Amendment as "demanding a strict neutrality between religion and irreligion would have struck the founding generation as bizarre." The Court, he concluded, should follow a constitutional "jurisprudence of original intention." (Meese: 1985)

Attorney General Meese's remarks prompted public dissents from two Justices of the Supreme Court: William J. Brennan, Jr. and John Paul Stevens. In a speech at Georgetown University in October 1985, Justice Brennan argued that a jurisprudence of original intention is "little more than arrogance cloaked as humility. It is arrogant to pretend that from our vantage we can gauge accurately the intent of the Framers on application of principle to specific, contemporary questions." He concluded: "We current Justices read the Constitution in the only way we can: as Twentieth Century Americans." (Brennan: 1985a, pp. 4 and 7)

This debate over the nature of constitutional interpretation provides an excellent framework for classroom study of an enduring issue in American constitutionalism. In its simplest terms, the debate reflects an age-old problem: where does one draw the boundary between "law" and "politics"? On another level, the debate revolves around issues of hermeneutics. Do judges make law or discover it?

Ascertaining meaning, as Alexander Hamilton wrote in *Federalist* No. 78, is the basic principle of constitutional interpretation. The problem to be posed to students is *how* one ascertains the meaning of the Constitution. Is it derived solely from the text of the document? Do influences apart from the text affect meaning? Should they? Is it even possible to extract only one *true* meaning of the text? Does one reside there in the first place?

Justice Brennan has, quite correctly, labeled the recent exchange as "a debate about how to read the text, about constraints on what is legitimate interpretation." (Brennan: 1985a, p.4) Indeed, many scholars have noted the close parallels between adjudication and literary interpretation. Both are expressly concerned with understanding the meaning of written texts, and both must deal with the notion of original intention. To use standard terminology, the debate may be seen as a contest between "interpretivism" and "noninterpretivism." (Grey: 1975; Ely: 1980)

The current debate may be placed within the context of this long-standing scholarly dispute. This dispute is complex. Many labels have been used to describe it, and various scholars have staked roughly analogous positions for quite different reasons. To structure this dispute in its simplest terms for students, it is helpful to construct a continuum. At some risk of oversimplification, the pure "interpretivist" position would appear at one end of the continuum. This position holds that meaning is found in the text of the Constitution, and nothing but the text. It subscribes to the notion that law is a body of fixed and predetermined rules. As such, the function of Supreme Court Justices in constitutional interpretation is solely expository.

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Futurism in Policy Analysis

by E. Clarke Ross
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Michael Genovese's summer 1985 article, "Politics and Science Fiction Films," is an excellent introduction to the broader topic of futurism and forecasting as methods of public policy analysis. These methods can be an interesting and challenging aspect of a graduate public administration course in public policy analysis.

"The future does not simply happen. We create it. We can choose our future."¹ Accepting this assumption, I have integrated futures studies and forecasting into the Troy State University European Region graduate public administration course, "Policy and Decision Making in Government." The course is a required component of a master's degree program offered under contract with the U.S. Air Force European Command. I have taught the course seven times, at bases in England, Turkey, Spain, Germany, and the Netherlands. Though there are enlisted personnel and civilians enrolled in the program, the typical student is a young officer desiring a graduate degree to increase public administration skills and promotion opportunities. This article suggests ways to incorporate futures studies into policy analysis and offers a methodologically weak but interesting insight into the confidence and outlook of our air defense forces leadership in Europe.

The TSU Policy Analysis Syllabus
TSU's policy analysis course examines the nature and elements of the policy process in American government. Emphasis is placed on the use, scope, purpose, approaches, and usefulness of policy analysis. The course surveys the various types of policy analysis and the methods they employ; generates an understanding of how policy analysis is done in the environment of our nation's capital; exposes students to

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