

CONSTITUTIONAL CONVERSATIONS

HOW TO THINK AND TALK LIKE A CONSTITUTIONAL SCHOLAR

As you read, interpret, and cite the documents in the *Interactive Constitution*, it is important to think about how the Constitution expands or limits the power of government. This is how Constitutional Scholars read, interpret, and cite the Constitution. But how can you do this? Here are some tips to help:

1. As you read the essays pay close attention to how the scholars express their ideas. Look for common words and terms they use when writing about the Constitution.
2. Try to separate your political views (what *should* be done—a question of policy) from constitutional views (what *can* be done—a question about the Constitution).
 - a. Policy question: Should the public school principal search a student’s locker?
 - b. Constitutional question: Does the Fourth Amendment restrict the power of a government employee from searching a student’s locker?
3. Ways to interpret the Constitution:
(Adapted from StreetLaw, landmarkcases.org/en/Page/430/Interpreting_the_Constitution)

When the courts must decide a case, the meaning of the laws in question is not always clear. The Fourteenth Amendment, which guarantees equal protection of the laws, has been particularly difficult to interpret over the years because of the ambiguous nature of the concept of equality. Does treating people equally mean treating them exactly the same? Or are there circumstances when equal treatment sometimes requires different treatment? The courts have come to different conclusions at different points in history and in different cases.

Judges use their reasoning skills to decide what particular laws mean when they rule on cases. Different judges sometimes use different reasoning skills to interpret the Constitution, meaning that judges do not always agree on the meaning of the Constitution. There are six widely accepted methods of interpretation that shed some light on the meaning of the Constitution.

Historical Interpretation	A judge looks to the historical context of when a given provision was drafted and ratified to shed light on its meaning.
Textual Interpretation	A judge looks to the meaning of the words in the Constitution, relying on common understandings of what the words meant at the time the provision was added.
Structural Interpretation	A judge infers structural rules (power relationships between institutions, for instance) from the relationships specifically outlined in the Constitution.
Doctrinal Interpretation	A judge applies rules established by precedents.
Ethical Interpretation	A judge looks to the American ethos (constitutional traditions, laws, and practices).
Prudential Interpretation	A judge seeks to balance the costs and benefits of a particular ruling, including its consequences and any concerns about the limits of judicial power and competence.

4. As you read the essays, try to determine the type of reasoning and interpretation the constitutional scholars use in their writings.

