

Assignment: Law 1 – U.S. Constitution article

Read the *L.A. Times* article appearing on September 2, 2018, of the Sunday edition by Michael Long, entitled “Justice Thurgood Marshall’s answer to the originalists.”

This is an article discussing Thurgood Marshall’s speech delivered in Maui, Hawaii, on the bicentennial celebration of the U.S. Constitution.

Write a one page to 1 ½ page opinion of this article and what it means to you; or, in the alternative, research the 14th amendment to the U.S. Constitution and discuss due process of law and what it means to you.

Justice Thurgood Marshall's answer to the originalists

SEPT 2, 2018
L.A. TIMES

By Michael Long

WHENEVER a Supreme Court seat must be filled, we're confronted with a fundamental battle over the meaning of the Constitution: Is it a living document, or can it only be plumbed for the founders' "original intent"? The so-called originalists have loudly praised President Trump's nomination of Judge Brett Kavanaugh to replace Justice Anthony M. Kennedy. Their cheers, of course, signal a nominee they expect to tip the court in favor of their ideology.

It's instructive before the confirmation hearings begin to hear from one of the most effective and articulate warriors on the other side: Justice Thurgood Marshall, legendary civil rights attorney and the first black justice on the high court.

In Marshall's opinion, the Founding Fathers weren't all that astute, and neither was the Constitution they penned in 1787. Marshall delivered that opinion, controversial in its time, during the nation's bicentennial celebration of the historic document at a conference of attorneys on Maui, Hawaii, in May 1987. His less than laudatory words stood in contrast to the praise for the Constitution offered earlier that year by President Reagan and retired Chief Justice Warren E. Burger.



ORIGINAL
INTENT

For Black
Justice

spirit

Reagan had used his State of the Union speech to laud the Constitution as "the impassioned and inspired vehicle by which we travel through history," and Burger, chair of the constitutional bicentennial commission, had described the document as "the best thing of its kind that was ever put together."

Marshall's words were also at odds with those expressed by conservative jurists such as Atty. Gen. Edwin Meese III, for whom "original intent" was sacrosanct.

"I do not believe that the meaning of the Constitution was forever 'fixed' at the Philadelphia Convention," Marshall told the lawyers in Hawaii. "Nor do I find the wisdom, foresight and sense of justice exhibited by the framers particularly profound."

Marshall was critical of the men who wrote the Constitution because he saw their original intent as favoring a government that advanced slavery and prevented blacks and women from exercising the right to vote. The Constitution was thus "defective from the start," he said, "requiring several amendments, a civil war, and momentous social transformation to attain the system of constitutional government, and its respect for the individual freedoms and human rights, we hold as fundamental today."

Two hundred years after its writing, Marshall saw America's founding document as obsolete. "While the union survived the Civil War, the Constitution did not," he said. "In its place arose a new, more promising basis for justice, the 14th Amendment, ensuring protection of the life, liberty and property of all persons against deprivations with-

The Constitution advanced slavery, making it 'defective from the start.'

out due process, and guaranteeing equal protection of the laws."

The 14th Amendment gave rise to a form of justice that the Founding Fathers had never envisioned, never intended. The framers "could not have imagined, nor would they have accepted, that the document they were drafting would one day be construed by a Supreme Court to which had been appointed a woman and the descendant of an African slave."

Marshall left no doubt about his belief that originalists were wrong-headed in their insistence on a purely textual interpretation of the Constitution and strict adherence to the motives at play in the late 18th century.

Calling for a "sensitive under-

standing of the Constitution's inherent defects," Marshall invited his audience on Maui to "see that the true miracle was not the birth of the Constitution, but its life, a life nurtured through two turbulent centuries of our own making, and a life embodying much good fortune that was not."

Marshall was targeting anyone who would make gods of the Founding Fathers. That group has proliferated in the years since he delivered his bicentennial address, and they are celebrating Kavanaugh's nomination.

If Kavanaugh is confirmed, as expected, those who consider originalism an extreme view will have a battle on their hands to ensure that the Constitution lives and evolves in a way that advances rights never imagined by its framers. Let's call it honoring Marshall's original intent.

MICHAEL LONG is editor of "Marshalling Justice: The Early Civil Rights Letters of Thurgood Marshall."

WES BAUSMITH Los Angeles Times

Blacks & women

14th A

Root Cause
of life, liberty
or prop. w/o due
process