

*Understanding the Constitution: Chapter Ten*  
**Modern Interpretations of the Constitution, Part 1**

1. What two ways do the authors identify as being used by judges to expand the constitution?

2. Which of the following is *not* an attribute of the Common Law:

- a) It was based on the Bible
- b) It was adopted by the American colonies from England
- c) It was viewed as an absolute standard upon which to base other laws
- d) It could be changed by whoever was the ruling authority

3. Name three differences between the Common Law and statutory law?

4. "Under statutory law, legislators and judges decide what is best for Americans based on their own personal preferences."

True or false?

5. Which one of the following is a crime based on statutory law, not Common Law:

- a) Drug possession
- b) Kidnapping
- c) Robbery

6. Which of the following statements best describes what "judicial review" is?

- a) Judicial review is a legal doctrine that means the judicial branch may examine federal and state laws to determine if they are constitutional.
- b) Judicial review occurs when the Supreme Court examines the action of the President to determine if they were constitutional.
- c) Judicial review is a procedure by which member of Congress examine the behavior of federal judges to see if they are deserving of impeachment.

7. In what decision did the Supreme Court first exercise the power of judicial review?

8. What are the three philosophical approaches to interpreting the Constitution?

9. What three areas of litigation (lawsuits) have been affected by the Supreme Court's expansion of the Commerce Clause?

10. At the time the book was published (2006), the authors wrote that only a "small minority [of judges] use the strict construction or historic approach to interpret the Constitution." Do you think the American judiciary has changed at all in the last 15 years? Why or why not? Answer after reading the article from commentator Steve Flowers attached to your assignment.

Presidential historians and most astute national political observers and chroniclers have concluded that the most profound legacy a president can achieve is the appointment of United States Supreme Court Justices. Presidents serve four-year terms. Justices serve for a lifetime.

The Supreme Court of the United States is the ultimate final word on law and public policy in the United States. After they are appointed by the president and confirmed by the U.S. Senate, they are impregnable to political whims or influence. They are sovereign and omnipotent. They are treated royally and usually serve on the high tribunal for over two decades or more.

Therefore, whether you like Donald J. Trump or not, he has a legacy. Most presidents are fortunate if they are able to name one justice to the court. Trump, over his four-year term appointed and had confirmed three. If you are a conservative Republican, this feat by President Trump makes him one of the most bulwark conservative presidents in history. He has cemented his legacy forever and changed the judicial philosophy of the court for the next generation.

Trump's three appointments are not only well qualified, polished, distinguished, moderate conservatives, they are also young. Justice Neil Gorsuch is 53. He replaced Justice Anthony Kennedy who retired. Justice Brett Kavanaugh is 55. He replaced arch conservative Justice Anton Scalia. The most consequential appointment by President Trump is the appointment and confirmation of Justice Amy Coney Barrett. She is only 48 and a solid conservative.

Trump's appointment of Judge Amy Barrett is truly historical. This appointment changed the entire ideology of the court to a solidly six-to-three conservative majority. Barrett's appointment is the most pivotal block in Trump's rebuilding of the Court. In the Gorsuch and Kavanaugh appointments you replaced conservatives with conservatives. In Barrett, you are replacing a woman with a woman, but more importantly you are replacing one of the most liberal justices in history with potentially one of the most conservative. In addition, at 48 Barrett will preside for the next three decades as will probably Gorsuch and Kavanaugh.

Along with these three conservative justices to the Supreme Court, President Donald Trump has been able to appoint nearly 300 federal judges to the lower federal courts throughout America. Trump could not have accomplished this generational change of the court without the advice and consent of a Republican majority United States Senate.

The Republican conservative stamp is also indelibly planted on the federal courts in Alabama. Senator Richard Shelby, in congruence with the Trump administration, has completely reshaped Alabama's federal judiciary with very young, extremely qualified, conservative judges.

Speaking of our United States Senators, our Senior Senator Richard Shelby was granted the omnipotent power to select all of our new, young, conservative judges throughout all of our districts – southern, middle and northern – not only because of his power, prestige and seniority, but also because he was our only Republican senator.

Our Junior U.S. Senate Seat has been held by a national liberal Democrat Doug Jones for the past three years. During his tenure, he toed the Democratic Senate line and wore that hat as the

pawn and clone of the Democratic leadership in the Senate. Chuck Schumer told Jones to vote against Judges Brett Kavanaugh and Amy Barrett only because they were conservative Republican appointees.

His refusal to even meet with Justice Amy Barrett showed a total lack of class and southern civility and gentlemanly manners. It was also revealed to me that he was angling to appease his liberal Democratic brethren in order to be Joe Biden's Attorney General. Yes, folks, you heard me right. Do not be surprised if Doug Jones is not the next Attorney General of the United State in the Biden Administration.

The bottom line is if you are a conservative American, Donald J. Trump has a profound legacy in presidential history with three conservative appointments to the United States Supreme Court.

See you next week.



## **Steve Flowers**

Alabama's premier columnist and commentator, Steve has analyzed Alabama politics for national television audiences on CBS, PBS, ABC and the British Broadcasting Network. Steve has been an up close participant and observer of the Alabama political scene for more than 50 years and is generally considered the ultimate authority on Alabama politics and Alabama political history.