

## History of the Ninth Amendment 8.12.21

### Natural Law Verses Constitutional Originalism

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Various legal theorists talk about how the text of the Constitution should be construed only as it was understood during the times preceding, and leading up to, the Confederation of States that formed the first Constitution, fought a revolution, founded and ratified the Constitution and its Amendments.

Some people, ignorantly or intentionally, use the false theoretical basis to erroneously claim terms like “judicial activism” and “creating new rights” that are not found in the text of the Constitution. This theory claims that there is no constitutionally protected right to many things they despise such as marriage, health care, housing, food, etc., none of which are the responsibility of the government. Rather they are freedoms reserved to the people to pursue for themselves and not the force of government either way.

It is the individual right to pursue happiness that does not directly harm others. Thus we have politically aligned camps with each trying to force their agenda on the people, all the while stealing more and more freedom with thousands upon thousands of new laws every year putting all the people in debt and bankrupting the country in the process, devolving into a dictatorial police state much like the one we fought against in the revolution. Only individual freedom made America great and keeps it great.

The core error in the theory of “Textual Originalism” is the idea that individual rights are things that are created by the Constitution and its Bill of Rights. Once accepting that falsehood as your basis, a bias is created which will cause a person to conclude that any rights not explicitly enumerated in the text of the Constitution and Bill of Rights do not exist. However, that is not at all what the Constitution says, nor what the Founders intended according to their writings preceding and during the process making the theory an illogical and false narrative. The Founders were students of the Enlightenment movement which was mostly influenced by Dr. Emanuel Swedenborg, who inspired John Wesley to found the Methodist Church and also John Locke whom the founders were devoted to his teachings in forming the principles of spirit and letter of the American government. Locke deeply believed in a natural law origin for individual rights. The Founders considered individual rights arising from natural law prior to, and independent of any government, insisting any government that did not respect and defer to the natural rights of individuals, to be illegitimate and was to be overthrown. Their view and intent regarding natural rights is embodied in the most memorable line of the Declaration of Independence:

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

Notice the words “among these” being used when speaking about unalienable rights. These rights are those rights and exist independently of any government.

Individual rights are to be respected and held supreme by any government, This prepending of the words “among these” is a core arguments during the drafting and ratification of the Constitution and its Bill of Rights. It eliminates any argument of existence or non-existence of any particular unalienable natural right as it eliminates any dependency upon enumeration for a right to exist in any founding

document. These words: “among these” was specifically used to clarify and emphasize there are other unalienable rights besides those mentioned in enumeration (numbered).

At the Constitutional Convention it was James Madison who argued most adamantly against the inclusion of any Bill of Rights in the proposed Constitution. He felt that enumeration of particular individual rights was a dangerous problem waiting to happen. The enumeration of any could and would be misconstrued as being exclusive, and thus allow illegitimate action by the various governing bodies including Federal and States upon the unalienable natural rights of the individual and resulted in no Bill of Rights in the Constitution as presented for ratification. It was only during the ratification process in order to assuage fears that unlisted rights would be disregarded by governing bodies and especially the Federal Government. Thus Madison supported the enumeration in the Bill of Rights and formed the Ninth Amendment to make it totally clear that individual rights were not limited by enumeration nor the Federal or the State government. This brought all current office holders and the expected future ones in attendance into agreement giving us our Bill of Rights as the Article Amendments, enumerating some natural rights, but also not surprisingly, at the insistence of Madison, making it abundantly clear in the Ninth Amendment, that any enumeration does not invalidate or deny any rights that are not enumerated:

The preposing fallacy of Textual Originalism that individual rights only arise out of the enumerated rights is an unfounded and utterly false view that would only be upheld by willful ignorance, historically and constitutionally, by any person, politician, lawyer, or judge thus alienating the rights of the people in direct opposition to the Supreme Law of the Land.

“The enumeration in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people.”

"Rights are like muscles, use them or lose them." – RLG