

A Conversation with Former United States Attorney General Edwin Meese, III

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THE ELDER STATESMAN SERIES
INAUGURAL INTERVIEW: A CONVERSATION
WITH FORMER UNITED STATES ATTORNEY
GENERAL EDWIN MEESE, III*

DANIEL D. EHRLICH*

Dan Ehrlich: First of all, I would like to thank you for being willing to talk with the University of St. Thomas Journal of Law and Public Policy. I would like to conduct this interview in two different parts. First, I would like to hear your thoughts and memories concerning President Reagan. Second, let's speak about originalism. Let's start with a little bit about your background with President Reagan in California and then in D.C. When did you first meet him and how did you come to work for him?

General Meese: Well, it's kind of interesting. I first met him in December of 1966 when he was forming his staff. He had been elected Governor of California but had not yet taken office. I had done some work in the state legislature representing all the District Attorneys, Chiefs of Police and Sheriffs of California in the early 1960s. One of the state senators remembered me from my work in the state legislature and recommended me to President Reagan for a position that became known as the Legal Affairs Secretary. In that position my responsibility was to be the liaison between the Governor's office, the law enforcement community, the judiciary, the Attorney General's Office and the legal profession. I also handled all internal legal matters in the Governor's office. The Attorney General of the state, of course, is the state's chief legal officer, but the Legal Affairs Secretary essentially acts more like in-house counsel. So, that's how I went up—I never met him, never campaigned, had never been involved in partisan politics. I went to Sacramento, California to meet him. After a half-hour of conversation he offered me the job and I accepted on the spot. I was so impressed with him—both in terms of how much he

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knew about subjects I was quite familiar with and also how much our ideas happened to mesh, particularly with criminal justice issues.

Dan: What did you find to be the most striking thing about then-Governor Reagan?

General Meese: One of the most striking things was how much he knew about a lot of things that were important to the Governorship. Second, when other people, such as myself, gave him information, he could assimilate that information rather quickly, work that in with his own ideas and come up with some very good policy decisions. He had a very good ability to make policy decisions. He was always interested in a maximum amount of information. He would always say, "The more information I get, the better the decisions are." He didn't want to have to make hard and fast decisions. He had a lot of important principles on which he decided things, but he was always looking for information as to how those principles affected specific situations.

Dan: One of the most enduring legacies left by President Reagan seems to be the heightened interest by the public-at-large in the judiciary and the proper role of judges. Do you see this as part of something that President Reagan actively cultivated and pursued, or is it more of an inevitable response to Chief Justices Warren and Berger?

General Meese: No. I think it really was something that President Reagan was very much interested in from the start of his Governorship. Reagan's predecessor had appointed a lot of what some people referred to in those days as "hacks" and "cronies" to judgeships. That was a major issue in the campaign in 1966, and so Ronald Reagan was determined when he came to office to appoint excellent judges for California. I happened to work with President Reagan on developing a system of evaluation where he would select three to five people from each county that he felt he could count on, such as a senior judge in the county, a newspaper editor or the president of the local bar association. They never met as a group so they didn't know each others' rating. In addition to the evaluation of these three to five people, President Reagan had the ratings of the state bar. He considered both of these to create a matrix for each of the candidates for a judgeship. Each individual would rate the candidates, President Reagan would look at those ratings and on that basis he would select the most qualified people for the judgeships. As a result, both Democrats and Republicans regarded him as having appointed some of the best judges in the history of California.

Then, of course, President Reagan was a great believer in the Founders' wisdom and in the uniqueness of the Constitution. So one of the things President Reagan was very keen on when he came into the

presidency was to appoint constitutionally-faithful judges. President Reagan was very much concerned about judicial activism, which occurs when judges substitute their own political ideas, partisan views or policy preferences for what the Constitution actually says, what the law is and what the statutes actually read. So, President Reagan was interested in appointing those kinds of judges who would, in fact, apply the law rather than try to usurp certain functions of the legislature and make the law.

Dan: It is interesting that President Reagan was so concerned about judicial activism so early on, even in California.

General Meese: Yes, he was very much concerned, even as a Governor, about the courts improperly intervening. Sometimes that occurred in the state of California and so that gave him even more reason to be concerned about constitutional issues.

Dan: What was the extent of your role in California? Were you actively involved with then-Governor Reagan in figuring out the system for appointments in California?

General Meese: Yes. As Legal Affairs Secretary in the first year I developed for President Reagan the system of judicial nominee evaluations. I and other members of the staff assisted President Reagan in the selection process.

Dan: Did you come into your work with President Reagan with an interest in the Founders and the Constitution? And did you find that over the course of your personal and working relationship with President Reagan there was an interplay between the two of you or did you tend to mesh on many of those issues?

General Meese: Well, I think we had a pretty close agreement on all of the issues that were involved. I think our overall concern was with judicial activism as judges were encroaching on legitimate actions of the peoples' representatives—whether the representatives were legislators or executive officials. That militated against judicial activism as far as we were concerned. So from a state level you could see, from time to time, federal judges stepping out of their judicial role and exercising either quasi-legislative or quasi-executive functions.

Dan: It seems like nowadays citing to Reagan or talking about Reagan is something that everyone is doing. It's the fad, if you will. The people that loathed him the most some years ago now, all of a sudden, are happy to cite him for whatever notion they seem to be putting forward. How accurate do you think that is? Is it sort of a mixed bag?

General Meese: Here is an article out of *Newsweek*, of all the liberal magazines in an issue of the 12th of May 2008, and the headline is: "The Left Starts to Rethink Reagan." The article talks about how, in this case, they interviewed one of the leftist, very liberal-leaning historians and asked him about how, to liberal historians and even some people you classify as leftists, Ronald Reagan is looking better and better. I think that it is true that many of the people who have written favorable books about Ronald Reagan in the last ten years have been liberal writers—Richard Reeves, for example, or Doug Brinkley, who was selected to edit Ronald Reagan's diaries. It is fairly typical of academia until you actually study Ronald Reagan and find that he was far different from what liberals traditionally think. So, I think that the more the objective, or even only slightly prejudiced people, look at Ronald Reagan's record, the more they appreciate what he stood for and what he was capable of doing.

Dan: Do you think it is partly due to the additional private diaries, letters, and materials available? Or is it just a passage of time? Or is it a combination?

General Meese: I think it's a combination. First of all, seeing what actually happened and what he accomplished and the fact that he actually did succeed is important. President Reagan was, in fact, a transformational president in terms of how people thought about government, judges, the economy, the military, and foreign policy, and then you have the accomplishments themselves. Number one is the tremendous change in the economy from an economy that was in shambles at the end of the 1970s to the longest period of peacetime growth in the history of the country. In terms of world affairs, the United States was deemed not to be a reliable ally by our friends nor a forceful, credible opponent by our adversaries. By 1989, we had restored our position as a world leader—the Cold War with the Soviet Union was just about won and the Soviet Union was on its way to implosion. This is a far different condition of the world, let alone the United States, from where we were at the end of the 1970s.

Dan: Do you think that with the passage of time these historians and commentators are projecting onto Reagan some of their own ideas as well?

General Meese: I don't know if that is true because many liberals continue to say they disagree with him on some of the basic principles, but they can't say what in fact happened. In so many ways it's kind of begrudging praise, or they are convinced by facts and by the results rather than by necessarily agreeing with him on some of the basic beliefs that he had.

Dan: Do you think there are aspects of Reagan's presidency that have been overlooked? Looking ahead fifty or one hundred years, will they be writing the same things then as they are now, or are these historians missing certain points that are important?

General Meese: I think most of the history of Ronald Reagan has been pretty well explored. There probably will be additional nuances but my understanding is there have been over seven hundred books written about Ronald Reagan in this country and elsewhere. So, it's hard to say that he hasn't been well-covered over a period beginning from before the presidency, where there were a few books written, to during the presidency, where there were a few more, to then post-presidency, when there have been a lot of books written and books that continue to be written. Every year there are two or three new books, or more, that come out. I think it is true that as people read his diaries, for example, and read the letters which have been published—Ronald Reagan wrote something like ten thousand letters during his lifetime, and a reasonable sample of those go all the way back to age eleven—honest historians will find that the idea that he was somehow speaking the lines written by others or adopting policies thought out by others is not the case. When they see his actual thinking in his own handwriting at dates and times that pre-date his becoming president, they realize these are his own ideas and they have to give him more credit than they were willing to back in the 1980s.

Dan: Moving on a little bit into originalism and your American Bar Association (ABA) speech in 1985 and your Tulane speech in 1986—at that time those were some pretty groundbreaking ideas. What was your foundation for those ideas or out of what did they grow?

General Meese: Well, first of all, it grew out of Ronald Reagan's own feelings for the administration. He set the basic principles and objectives for every aspect of the government, not in some grandiose plan, but he would give his views as issues would come up. When it came to legal and constitutional issues, he clearly sought constitutional fidelity, which would, today, probably equate with originalism: the original meaning of the words of the Constitution as they were understood by those people that drafted and ratified them. The application of those principles to modern times comes through elected officials, the Congress and the Executive, rather than being

changed or modified by the courts according to the thinking of the judges or Justices themselves. So, I think that was his approach and it was well-known. I, of course, had been in the White House for four years and had discussed those things frequently with him. As issues would come up we would discuss them in cabinet meetings. Everybody pretty well knew what his views were on that, and they happened to coincide with mine.

Having previously spent a lot of time on these issues in the White House, when I became Attorney General it was very easy to develop a jurisprudence of originalism as the basis for our policies within the Department of Justice. Additionally, while I was Attorney General there was a heavy intellectual component in the Department. We had a lot of seminars for our top people and middle managers on legal subjects. We brought in resource people from the outside because I wanted the Justice Department to be a stimulating experience for the people that were there. There was also a constant dynamism in terms of dealing with the law—where everybody knew what the law was, but also looked to the Constitution for guidance in problem-solving, not only in terms of selecting judges but also in terms of handling issues in a way that perpetuates the principles of the Founders.

We wanted to move away from the judicial activism of the 1950s, 60s and 70s, decrease government power and spending, and reduce the oppression of government that had taken place during and since the 1930s. At times it was particularly acute. There was a necessary increase during the 1930s and during World War II, but it did not diminish substantially after the war. Then it reinserted itself in the so-called “Great Society” of Lyndon Johnson. Rather than reigning back government expansion and bringing government back within its constitutional framework, President Nixon’s administration accepted all these new federal government powers but just thought they could do it better. It wasn’t really until Ronald Reagan came along that someone wanted to halt the expansion of government and restore it to its constitutional basis.

Dan: So, what’s the backstory on these speeches—were they shots across the bow?

General Meese: No. The 1985 ABA annual meeting happened to be an unusual meeting that was only held every couple of decades or so. Thus, it was very well-attended. In talking over that speech with members of my staff we decided that this ought to be a substantive speech on something that was important to the administration, rather than just the “welcome to Washington” type speech that was often given by high-profile public officials. That was where the idea developed to lay down a marker on what the jurisprudence of this administration would be in terms of constitutional issues. That’s why the speech was based on constitutionalism.

Once that speech was given two things happened. First, it got a considerable reaction at the time because people in the federal government hadn't been speaking that way before. Second, just a few months after that, Justice Brennan spoke and refuted some of these ideas. As a result, two very different views of the Constitution and the Court's role were put into the public arena. The Federalist Society at the time reprinted both speeches and got them out before the public. This attracted more attention and sparked a public argument.

I think if my speech had simply been given, had not been spread and was not rebutted, it probably would have gone on the shelf like most ABA speeches, never to be heard from again. Instead, we now had a controversy that was played up in the press. So, when it came time to give a speech I went back into this whole subject and talked about the difference between the Constitution and constitutional law. That, of course, can enrage some of the liberals. I think the *New York Times* claimed that I somehow lost my head. Specifically, they were baffled when I said that Supreme Court decisions were not part of the supreme law of the land. Well, it's very clear that the Constitution defines the supreme law of the land as the Constitution, statutes enacted under it, and treaties made and ratified by the Senate. So, I explained in the speech that the Constitution could only be changed by an amendment, that statutes can only be changed by Congress, and that treaties can be withdrawn by the President. Courts can't change or overrule something unless it doesn't agree with the Constitution. However, they can change constitutional law decisions made by the Court itself. That's the difference between the supreme law of the land, which can only be changed by the people acting through their representatives, and constitutional law, which is changeable at will by the Supreme Court.

Dan: And the reactions were pretty vigorous. But it seems like that was sort of a watershed moment for originalism ideas.

General Meese: Yes, I think several things came together at the time. First, you had a lot of lawyers and judges in the country who were fed up by the judicial activism that was taking place in the so-called "Warren Court," and it lingered over as judicial activists continued to have a majority on the Supreme Court on into the 1970s. So, you had a lot of people who were unhappy with the activism in the legal profession. There were even a few—just a few—academics or law school professors who had done some writing on the subject. Second, we had a President who felt strongly about this who also had the ability to communicate and speak to the public. For example, at the inauguration of Chief Justice Rehnquist and Justice Scalia in 1986, he gave a very impassioned speech about the importance of constitutional fidelity and of avoiding judicial activism, or achieving judicial restraint, as I think he called it at the time. Also, the Federalist Society developed in the

1980s, fostering a body of law school opinion in students, writers, law reviews, and faculty members. Although they were relatively small in number, there was now legitimate legal professional opinion to back up the idea of originalism. All of this came together in the latter part of the 1980s.

Dan: As someone who has recently completed law school, the Federalist Society was there the whole time. We've had a few professors who were involved with the Federalist Society and certainly many practicing attorneys, as well. What was it like prior to that, other than, I'm assuming, lonely?

General Meese: Well, it was very lonely. As I said, the Federalist Society was just getting started in the mid-1980s. In many ways it was the controversy over originalism that provided a cause célèbre for the Federalist Society. It became a topic of discussion and debate in law schools and so that all kind of worked together to give this a prominence that it might not have otherwise had.

But, it was lonely starting out. Particularly, the ordinary news media lacked comprehension of these concepts. They didn't understand what the issues were and why there was such a big battle over them. So, it had other applications in terms of the power of government—big government. I think that added to the intrigue of some in the news media.

Dan: Justice Scalia has put forth the idea that bad originalism is still originalism and holds forth the promise of future redemption. Assuming every Justice at least pretends to look to the Constitution as the basis for their decision, would you say we're all originalists now?

General Meese: I'm not sure you can say that of everybody, but I think that there is no question that originalism is now accepted by most law schools as a legitimate doctrine even though some professors may not agree with it. But, at least it has been legitimized as an acceptable point of view. The whole discussion of this topic has brought a lot of people back to looking at the Constitution, as well as constitutional decisions and the reasoning, or lack thereof, behind those decisions.

Dan: What do you think some of the most important changes in constitutional jurisprudence have been because of originalism?

General Meese: First of all, in the law schools there has been a recognition of this genuine debate, and I think that part of this is due to the fact that you had the appointment of Chief Justice Rehnquist and Justice Scalia. And, also, you have the writings of Judge Bork and many of the Courts of

Appeals judges. This began to raise the consciousness in the legal profession and the academic community to, you might say, an increasing crescendo of attention and legitimacy of originalism.

Dan: It seems that law and the legal profession seem to have escaped some of the absurd excesses that are seen in modern social sciences and liberal arts—I don't know how much of that is related to originalism and the conservative movement within the scholarship—or maybe we're just lagging behind?

General Meese: For one thing, I think lawyers are trained or educated in law schools to rely more on facts, reasoning and logical analysis of issues. So, I think there is a kind of built-in foundation for thinking now. But, we have had some pretty wacky people within the legal profession and pretty wacky ideas from time to time. The Critical Legal Studies movement was one of these aberrations. But, I think the fact that originalism, reading the Constitution and constitutional studies were occurring at the same time as Critical Legal Studies provided a legitimate and a more attractive alternative. Ultimately, I think it triumphed over the Critical Legal Studies ideas and some of these other wacky things. In this triumph, I think you can't underestimate the influence the Federalist Society has had as an organized body of thinking. The key to its success was that it was not trying to indoctrinate students, but rather to make students and faculty members think. The key to its activity was debate. It utilized this concept of the marketplace of ideas to see which of the best ideas were going to win. And, as a result, you had a much more stable, much more practical and a much more constitutionally-oriented body of thinking that came out of the 1980s, and particularly the 1990s, and now into the current decade.

Dan: Do you feel the same way that President Reagan did about the future—that “the best is yet to come?”

General Meese: I think so, but I think one of the great challenges of the future for people who believe in the Constitution and for judges and lawyers that are constitutionally-oriented is that we have had an erosion of the limited government aspects of the Constitution and this has accompanied a return to the Constitution. So, while I would say that today there is a better chance of court decisions being constitutional, at the same time we've had a vast expansion of the power of government. So, there are still real challenges to maintaining a constitutionally inspired form of government as opposed to a government that would fulfill the worst fears of the anti-federalists of the 1780s and 1790s. I think that's probably the biggest challenge today. One of the things that concerns me is this tipping point idea: that as government is expanded, more and more people are

dependent on it for benefits, for various things they desire. And then it is harder and harder to restrain the tendency in Congress to expand government and to give more benefits. You also have a very unfair, and I think immoral, method of paying for the government, where the people at the top of the earning scale are paying a much higher percentage of the total tax burden, which is also disproportionate to their share of the earnings. The result is that it is easier for demigods in Congress to raise taxes or to introduce schemes and redistribute income. I think that is one of the great challenges that needs to have protection by those that do believe in the Constitution itself, and, in particular, the spirited government that was the guiding force for the Founders.

Dan: One of the things that would seemingly help is the idea of departmentalism, whereby the President and Senators and Representatives each realize their own individual duty to look at the Constitution.

General Meese: Yes.

Dan: But, do you think it is realistic to hope for that? There seems to be a real lack of seriousness by the Executive Branch, and even more so by Congress, evinced in the attitude that “we’ll pass this bill and if it’s not constitutional the Supreme Court will tell us.”

General Meese: I think there has been that lack of seriousness to some extent. Well, there have been two things. First, you’re right that there has been an abdication by Congress, and on some occasions by the Executive Branch, in fulfilling their responsibility to interpret the Constitution in its original form. If they did they would refrain from expanding the power of government beyond its normal constitutional strength. Second, I think there is an easy tendency to allow the expansion of government. This is particularly true in the Executive Branch, sometimes justified by bad Supreme Court decisions, for example, against *Wickard v. Filburn*,¹ and sometimes because the Court is intimidated by an expansive Executive, as in some of the 1930s decisions. So, I think on the one hand you have the abdication. On the other hand, you have kind of an easy acquiescence into this growth of government beyond what the Constitution really would provide.

Dan: What then do you see as the way forward? Is there a path out of the morass?

1. 317 U.S. 111 (1942).

General Meese: Well, I think the problem is this expansive view of the Constitution beyond what it really says. And I think one of the causes or factors is the nature of the law school faculties. Many who like this expansive idea are very Liberal in their political orientation. I think the converse of that is the importance of working in law schools to try to change those points of view. There needs to be law professors willing to speak out against expanding government and against violating the spirit as well as the letter of the Constitution. I think some of that is now happening. We now have, I would say, more law schools where the overall viewpoints of the faculty are more constitutionally-oriented than we've had over the last forty or fifty years. So, that's a plus. I mention again the Federalist Society because it's a force in being. But, you also have other groups that are growing. You have freedom-based public interest law organizations around the country that are carrying this battle. You have a lot of political groups. You have groups that aren't strictly lawyers or litigant groups but are interested in public law and the philosophy of law. And we have these policy organizations and advocacy organizations. So, I think that there is a growing body of thinking that is a counter-force to the continuing expansion of government.

Dan: What do you think of the jurisprudence of the Court right now?

General Meese: I think the Court has moved slightly back toward the Constitution over the last few years. In general, the Court has been more likely, since the mid-1980s, to rule in a constitutionally-faithful manner than it was before. But, of course, there is a long way to go. So, I think the Court has traveled somewhat more toward a constitutionally-oriented point of view. I do think that will probably continue, but it will depend to a great extent on the appointees to the Court in the immediate future because it is likely over the next five years that there will be a number of changes on the Court just because of the age of the members. So, the favorable trend toward constitutional fidelity, which has been exhibited particularly over the last twenty years, could be abruptly halted or even reversed if you didn't have judges appointed who were faithful to the Constitution.

Dan: It seems like President Reagan's influence is still being felt in the judiciary in that Justices Roberts and Alito cut their teeth at the Department of Justice; that whole milieu that you discussed earlier.

General Meese: Yes. I think there are a lot of people who served in the Department of Justice and served in the White House during the 1980s who are now leaders in the profession and also judges who are now leaders in the judiciary. I think that's been a favorable development. I also think the pattern that Ronald Reagan started was continued by his successor George

H. W. Bush and has been continued, specifically, by George W. Bush with excellent appointees. I think, as a result, that has moved the courts generally in the right direction over time even though there have been appointments in between by other presidents that have not followed the same pattern.

Dan: On a more specific note, what do you think is the possibility of reversing some of these decisions? *Roe*,² for a classic example.

General Meese: One of the great controversies right now is the battle between restoring the Constitution and following a precedent, even a bad precedent. In other words, following cases that were wrongfully decided. There has been a certain amount of writing, and I think there will be more, on when cases should be overruled. When should Supreme Court decisions be overruled? Now, if you take something like *Plessey v. Ferguson*,³ where it took sixty-some odd years to essentially overrule it in *Brown v. Board of Education*⁴—that took a long time. However, I think that it would be improper to allow judges to reverse decisions easily. If *stare decisis* were to be abandoned we would lack predictability and certainty in what the law is, which would make it difficult for judges, lawyers, clients, and citizens.

But, I think there are some cases that should just be overruled. In the literature there are various tests to determine when something should be overruled. You know if it clearly has worked out. You know if it is wrong and is not working out in practice—if it has caused more problems and resulted in pursuing large-scale litigation because of the differences in ruling on all those issues. There are some cases like that. I think *Roe* happens to be one of those. I always have found *Roe* to be interesting because when compared to another case, physician-assisted suicide, it's the same issue. It has to do with death, but at opposite ends of the scale of life—one prior to birth and the other at the time of death. It's interesting, first of all, I think most people would agree, as did most scholars at the time of *Roe*, that on the basis of the Constitution it could not be justified. When they talked about "emanations" and "penumbras" you knew they are making it up. I will compare the two cases. In *Roe* they looked to the Constitution and when there was nothing there to guide them, they made something up in order to justify their decision. As a result, there has been trouble ever since. There has been repeated legislation. There have been repeated cases before the Court. There has been societal turmoil not just because of the sensitive subject matter, but because the Court took away from the people a major moral decision. Before that time it was handled

2. 410 U.S. 113 (1973).

3. 163 U.S. 537 (1896).

4. 347 U.S. 483 (1954).

quite well by the states. Some states did it one way and some states did it another; but in any event, the people knew that it was a moral decision they could make through their elected representatives. When the Court usurped the powers of the states and the legislative power and arrogated the issue as a federal matter so that there was a one-size-fits-all solution for the entire United States, they took this moral issue away. I think that's one of the reasons why the people feel that it's illegitimate. That was one way they handled *Roe*—the abortion decision.

By contrast, in the physician-assisted suicide case they looked at the same Constitution and found out there was nothing there. Instead of making something up, they said there was nothing in the Constitution and left that issue to the states and to the peoples' elected representatives. As a result, Oregon does it one way and other states do it other ways. It's not more or less of a moral issue, but it is now within the hands of the people. So, you don't have the turmoil. You don't have the marches. You don't have all the additional legislation, additional litigation and additional cases having to be decided by the Court. I think that contrast between the two cases shows, by getting back to *stare decisis*, which are the cases that should be overruled, like the situation with *Roe* where it was wrongly decided in the first place and hasn't worked out in practice. I think that's where the changes should be made. On the other hand there are some other things to consider, like the incorporation doctrine. I think that was also intellectually suspect, and yet the incorporation doctrine has been so deeply embedded into our jurisprudence. It would be very difficult to change that decision now, almost a century later.

Dan: Professor Michael Stokes Paulsen has a tongue-in-cheek article, published just recently, on *stare decisis* and precedent suggesting that, in a quite circular fashion, the Court's current test for whether a case should be overruled would counsel for overruling the Court's current test.. It suggests that precedent does pose a bit of a difficulty.

General Meese: That's why, I think, in general, precedent and *stare decisis* should hold except in exceptional cases where there is a certain criteria met, such as those that I talked about. I think it's a good topic for a lot of discussion within the legal and academic professions.

Dan: From an originalist perspective, do you think *stare decisis* seems to act as an extra-constitutional gloss? Would that be an originalist sort of issue or is it one of those things that at this point, for societal harmony, we just live with?

General Meese: Well, I think from an originalist standpoint the best way to solve the problem is to get it right the first time, to adhere to the Constitution in the first place and not have confusion as there was in *Roe*, *Reynolds v. Sims*,⁵ and some of these other terrible decisions, including the so-called “one man, one vote” cases. I used to have my list of the six worst cases, of which *Roe* and *Reynolds* are examples. I’ve had to expand it to twelve now because of *Kelo*⁶ and some of the others. I think you have to look at the importance of stability, certainty, and predictability in the law. Therefore, there has to be some sort of a balance so that you don’t have a lot of turmoil. To avoid constant turmoil in the law from an originalist perspective, as I said, is to get it right the first time. However, there may be a case that has clearly been wrongfully decided, and it continues to cause major difficulties, such as *Roe*. If that’s the case, then maybe it’s better to go ahead and overrule it. In the absence of that I think the courts need to go slow. This is a part of the general concept of judicial restraint, which is a principle of constitutionalism. So, it is, in a sense, kind of a balancing act between the two concepts of situational versus absolute constitutional purity.

Dan: Thank you so much for your comments.

5. 377 U.S. 533 (1964).

6. 545 U.S. 469 (2005).