

I. Originalism and the Second Founding

Over the last twenty years or so, conservatives have argued that originalism is the only appropriate way in which to interpret the Constitution. Whatever the merits of this argument, a search of the academic literature would show that such originalism is tilted heavily toward the Founding era. Yet, many of the most contentious legal issues today involve the Civil Rights Amendments, which in many pertinent respects constituted a “Second Founding.”

This panel will set the stage for the remainder of the conference. Panelists will be asked to consider the theory of originalism in light of the idea of a Second (Reconstruction) Founding. Why has so much originalist literature, especially on the political and legal right, failed to focus more closely on the Second Founding? Is there any way in which taking account of the Second Founding ought to alter the *practice* of originalism? Although other panels will address specific aspects of the Second Founding, is there any overall sense of how the Second Founding might alter our understanding of the Constitution? Are there specific questions we should seek to address or consider over the length of the conference? Finally, does the Second Founding call into question the wisdom of originalism as an approach to constitutional interpretation?