

IS ORIGINALISM A FANDOM?

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I. INTRODUCTION

During confirmation hearings for the U.S. Supreme Court in March 2022, Justice Ketanji Brown Jackson briefly remarked upon originalism as a method of constitutional interpretation.¹ What significance should we attribute to a successful nominee of a Democratic president speaking in relatively favorable terms about a judicial philosophy espoused by all three nominees of the Republican predecessor? For some, the moment indicated the victory of originalism.² For others, it demonstrated that originalism has expanded so broadly as to be essentially meaningless.³

Following an unprecedented leak of a full draft opinion in early May, in late June 2022 the Court issued its decision in *Dobbs*

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1. See, e.g., Matthew Anzarouth, *The Misguided Criticism of Judge Ketanji Brown Jackson's Judicial Philosophy*, HARV. POL. REV. (May 10, 2022), <https://harvardpolitics.com/the-misguided-criticism-of-judge-ketanji-brown-jacksons-judicial-philosophy/> (quoting then-Judge Jackson's comments on originalism, as well as other remarks describing her judicial philosophy).

2. See, e.g., Randy E. Barnett, *Ketanji Brown Jackson and the Triumph of Originalism*, WALL ST. J. (Mar. 24, 2022, 6:38 PM), <https://www.wsj.com/articles/ketanji-brown-jackson-and-the-triumph-of-originalism-public-meaning-testimony-hearing-supreme-court-11648151063>; John O. McGinnis, *Entrenching the Culture of Originalism*, LAW & LIBERTY (Mar. 31, 2022), <https://lawliberty.org/entrenching-the-culture-of-originalism/> (“[H]er decision to fly the originalist flag is important. . .”).

3. See, e.g., Conor Casey & Adrian Vermeule, *If Every Judge is an Originalist, Originalism is Meaningless*, WASH. POST (Mar. 25, 2022, 10:54 AM), <https://www.washingtonpost.com/outlook/2022/03/25/if-every-judge-is-an-originalist-originalism-is-meaningless/> (“Against this backdrop, Jackson’s comments this past week are best read as the self-defeating triumph of a vacuous form of originalism.”); Michael C. Dorf, *Does Judge Jackson Have a Judicial Philosophy and if so Is It Originalism?*, VERDICT (Mar. 29, 2022), <https://verdict.justia.com/2022/03/29/does-judge-jackson-have-a-judicial-philosophy-and-if-so-is-it-originalism>; Eric Segall, *Of Judge Jackson, Originalism, and a Tale of Three Scholars*, DORF ON L. (Apr. 4, 2022), <http://www.dorfonlaw.org/2022/04/of-judge-jackson-originalism-and-tale.html>.

v. Jackson Women’s Health, overruling *Roe v. Wade* and *Planned Parenthood v. Casey* and thereby abrogating a constitutional right to abortion regardless of the stage of pregnancy.⁴ For some, the majority opinion by Justice Alito is rightly characterized as originalist due to its significant reliance on a discussion of U.S. legal history in justifying the doctrinal reversal.⁵ For others, the opinion does not reflect originalist methodology in its analysis.⁶

Who is right? How would we go about determining the answer? Is it possible in each instance that *both* perspectives are right?

4. See *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992); *Roe v. Wade*, 410 U.S. 113 (1973). On the leaked draft, see, e.g., Politico Staff, *Read Justice Alito’s Initial Draft Abortion Opinion Which Would Overturn Roe v. Wade*, POLITICO (May 2, 2022, 9:20 PM), <https://www.politico.com/news/2022/05/02/read-justice-alito-initial-abortion-opinion-overturn-roe-v-wade-pdf-00029504>; Adam Liptak, *A Supreme Court in Disarray After an Extraordinary Breach*, N.Y. TIMES (May 3, 2022), <https://www.nytimes.com/2022/05/03/us/politics/supreme-court-leak-roe-v-wade-abortion.html>; Joan Biskupic, *The Inside Story of How John Roberts Failed to Save Abortion Rights*, CNN (July 26, 2022, 7:53 AM), <https://www.cnn.com/2022/07/26/politics/supreme-court-john-roberts-abortion-dobbs/index.html>.

5. See Randy E. Barnette & Lawrence B. Solum, *Originalism After Dobbs, Bruen, and Kennedy: The Role of History and Tradition*, 118 NW. U. L. REV. (forthcoming 2023) (manuscript at 55) (“Perhaps our most important conclusion is that, upon close examination, we find that none of the cases from the October 2021 Supreme Court term represent a radical departure from prior uses of history and tradition by both public meaning originalists and constitutional pluralists.”); see also, e.g., Victoria Nourse, *What SNL Got Right About What’s Wrong with Alito’s Leaked Opinion*, SLATE (May 10, 2022, 4:12 PM), <https://slate.com/news-and-politics/2022/05/what-saturday-night-live-got-right-about-alitos-leaked-draft-opinion.html> (“Alito’s opinion is all about an understanding of the 14th Amendment in 1868, turning the clock back to a day when women could not vote or practice law and legally dissolved into their husbands.”); John O. McGinnis, *A Return to Fundamentals*, CITY J. (May 3, 2022), <https://www.city-journal.org/a-return-to-fundamentals> (“Alito roots his judgment in the words of fundamental law rather than in the Court’s own precedents, privileging the original meaning of our binding charter instead of the Court’s past glosses.”).

6. See, e.g., Eric Segall, *Text, History, and Tradition in the 2021–2022 Term: A Response to Professors Barnett and Solum*, DORF ON L. (Feb. 1, 2023), <http://www.dorfonlaw.org/2023/02/text-history-and-tradition-in-2021-2022.html?m=1> (“Contrary to Professors Barnett and Solum, I think last year’s term both represents a radical departure from prior constitutional decision-making in some important respects but also represents business as usual in other important ways they don’t discuss.”); Michael Smith, *“Business as Usual” For Originalism?*, MICHAEL SMITH’S L. BLOG (Feb. 1, 2023), <https://smithblawg.blogspot.com/2023/02/business-as-usual-for-originalism.html> (“And even with this tunnel vision of original public meaning, Barnett and Solum acknowledge numerous nonoriginalist aspects of the opinions.”); Lawrence Solum (@lsolum), TWITTER (May 6, 2022, 8:16 AM), <https://twitter.com/lsolum/status/1522550847745531904> (“Judge Alito’s draft opinion in *Dobbs* is not an originalist opinion.”); Cass R. Sunstein, *Dobbs and the Travails of Due Process Traditionalism* (Harvard Pub. L. Working Paper, Paper No. 22-14, 2022), <https://ssrn.com/abstract=4145922> (“Rooted in due process traditionalism, the Court’s opinion is not an ‘originalist’ opinion, and it would not be simple to defend it in originalist terms.”).

These two examples are the most recent highly visible controversies over the definition and nature of originalism. In the scholarly literature we can find many more, advancing or critiquing originalism both in theory and in practice. Why would some scholars desiring to defend progressive and inclusive case law seek to recharacterize evolving contemporary norms as a product of historically grounded originalism? How should we conceive of originalism when self-described originalist scholars maintain that their version of theoretical originalism should be dissociated from the methods or analyses put forward in practice by self-identified originalist judges? After decades of numerous iterations of such dilemmas, the traditional parameters of constitutional theory have inspired much debate and attained little consensus about originalism.

From an interdisciplinary perspective provided by the field of fan studies, however, these dynamics quickly come into focus. For at least the past half-century, originalism has played a prominent role in U.S. constitutional theory. For a quite similar length of time, *Star Wars* has been a popular culture phenomenon in the United States. Their respective interpretive communities confront the same challenges. Both involve highly contestable issues of interpretation of an iconic text, including the scope and solidity of its initial meanings and the evolution of the text itself over time. Both wrestle with the influence of distorted historical narratives, nostalgia, and forces resisting more inclusion and pluralism. Both include interpreters seeking to discern a singular objectively provable meaning when the text at issue not only contains numerous generalities and indeterminacies, but also carries a profound emotional, cultural, and personal significance to its interpreters and the broader community in which their interpretive analysis occurs. Consequently, while it may be more intuitive to associate a global media franchise like *Star Wars* with analysis of fandom, the features present in originalism have many significant parallels.

When viewed through the lens of this comparison, we can ask the question: is originalism a fandom?

II. FAN STUDIES AS AN EXPANDING INTERDISCIPLINARY ACADEMIC FIELD

Compared to the academic study of law, which in the United States has been located in a freestanding graduate degree program in law schools for over a century, the academic field of fan studies is a newcomer to the university setting. Scholars conducting research and writing in fan studies do not yet congregate and collaborate in their own departments, instead situating themselves as a specialization within an established field, frequently in areas such as media studies, cultural studies, or literature.⁷ Nevertheless, the importance and scope of fan studies has increased significantly in recent years. The rapid evolution of internet communication, and especially the rise of online communities and social media networks, not only has changed the ways in which fans interact with media franchises and celebrities as well as with each other, but also has reproduced many features of media fandom in other aspects of society and culture.⁸ The insights and implications of fan studies research have ramifications far beyond simply understanding the nature of fan behavior and fan communities for media properties.

The inception of fan studies as a field of academic inquiry is often attributed to the publication in 1992 of the seminal work *Textual Poachers: Television Fans and Participatory Culture* by Professor Henry Jenkins.⁹ Previously, academic study of popular culture had focused on the media industry and its impact on society, discounting the audience as either passive recipients or overly enthusiastic consumers.¹⁰ Jenkins shattered this

7. The Fan Studies Network is a global community of scholars that hosts a blog to report on research and developments in the field and organizes academic conferences on fan studies topics in locations around the world (including the United Kingdom, the United States, and Australia). See Fan Studies Network Front Page, FAN STUD. NETWORK, <https://fanstudies.org> (last visited Aug. 4, 2023); *Fan Studies Network Conferences*, FAN STUD. NETWORK <https://fanstudies.org/fan-studies-network-conferences/> (last visited June 29, 2023).

8. See generally Bolin Jia et. al., *Transformation of Fan Culture Under the Influence of Social Media*, 615 ADVANCES IN SOC. SCI., EDUC. & HUMANITIES RSCH. 2173, 2175 (2021).

9. See, e.g., FANDOM: IDENTITIES AND COMMUNITIES IN A MEDIATED WORLD 3 (Jonathan Gray et al., eds., 2d ed. 2017); MARK DUFFETT, UNDERSTANDING FANDOM: AN INTRODUCTION TO THE STUDY OF MEDIA FAN CULTURE 15–17 (2013); see also HENRY JENKINS, TEXTUAL POACHERS: TELEVISION FANS AND PARTICIPATORY CULTURE (1st ed. 1992; Updated Twentieth Anniversary ed. 2013).

10. See, e.g., FANDOM, *supra* note 9, at 3 (“[C]ritics had previously assumed fans to be uncritical, fawning, and reverential.”); see also JENKINS, *supra* note 9, at vii–viii, xiv–xvii.

perception, conclusively documenting that fans were actively engaged participants in their experience of media entertainment, such as by creating transformative works derived from the object of their fandom.¹¹ A dramatic growth in fan studies research followed, and the field has continued to evolve as scholars from a wide variety of perspectives and backgrounds added their contributions.¹² (It is worth noting that sports fandom also is the subject of academic study, including similarities and differences with media fandom in its approach and conclusions.¹³) The examination of fan-created transformative works remains a prominent aspect of fan studies research, bolstered by the Organization for Transformative Works,¹⁴ which engages in legal advocacy on matters of intellectual property law,¹⁵ hosts the largest fan-controlled repository of fanfiction (the Archive of Our Own¹⁶), and sponsors a wiki of fandom history (Fanlore¹⁷) and a peer-reviewed journal of scholarly writing (*Transformative Works*

11. See, e.g., DUFFETT, *supra* note 9, at 15–17; JENKINS, *supra* note 9, at vii–viii, xiv–xvii.

12. See FANDOM, *supra* note 9, at 2–7 (describing three waves of fan studies research); FANDOM IN COLOR: A COLLECTION OF VOICES (Rukmini Pande ed., 2020); FANDOM AS CLASSROOM PRACTICE: A TEACHING GUIDE (Katherine Anne Howell ed., 2018). Scholars publish numerous articles in the field of fan studies in a wide variety of professional academic journals, both in print and online; the fan studies bibliography maintained by the Organization for Transformative Works contains “about three thousand entries” as of May 2023. See *Fan Studies Bibliography*, FANHACKERS, <https://fanhackers.transformativeworks.org/fanstudiesbibliography/> (last visited June 29, 2023).

13. Compare DUFFETT, *supra* note 9, at 3 (“Although a minority of researchers have studied both topics, in many ways sports fandom and media fandom are very different objects of study.”), with *id.* at 3 (“Because sport has gradually been extended as mass spectacle and its elite players have increasingly taken up the association trappings of stardom, the difference between sports fandom and media fandom has perhaps diminished.”). See also *Routledge Handbook of Sports Fans and Fandom, Description*, ROUTLEDGE, <https://www.routledge.com/Routledge-Handbook-of-Sport-Fans-and-Fandom/Coombs-Osborne/p/book/9780367358310> (last visited Aug. 4, 2023).

14. *What We Believe*, ORG. FOR TRANSFORMATIVE WORKS, https://www.transformativeworks.org/what_we_believe/ (last visited June 29, 2023).

15. *Legal Advocacy*, ORG. FOR TRANSFORMATIVE WORKS, <https://www.transformativeworks.org/legal/> (last visited June 29, 2023) (“The OTW Legal Committee’s mission includes education, assistance, and advocacy.”). In particular, many fan works readily qualify for “fair use” protection against copyright infringement claims. See, e.g., Rebecca Tushnet, *Copyright Law, Fan Practices, and the Rights of the Author*, in FANDOM, *supra* note 9, at 77.

16. See *About the OTW*, ARCHIVE OF OUR OWN, <https://archiveofourown.org/about> (last visited June 29, 2023); see also *Archive of Our Own*, ORG. FOR TRANSFORMATIVE WORKS, https://www.transformativeworks.org/archive_of_our_own/ (last visited June 29, 2023).

17. *Fanlore: About*, FANLORE, <http://fanlore.org/wiki/Fanlore:About> (last visited June 29, 2023); see also *Fanlore*, ORG. FOR TRANSFORMATIVE WORKS, <https://www.transformativeworks.org/fanlore/> (last visited June 29, 2023).

and Cultures¹⁸). Fan works are useful subjects of study on their own merits, but they also function as “pre-constituted audience research, providing evidence of how viewers make sense of texts,” including novels and comic books as well as movies and television shows.¹⁹

Today, fan studies encompasses a wide range of disciplines, including media studies and cultural studies, cinema or film studies, anthropology, sociology, literature, and more, each of which brings a different perspective to the study of fans and fandom—and to the analysis of how fans interact with the object and with each other in fandoms for movies, television, prose fiction, comics, music, and individual celebrities from all of these and beyond.²⁰ Moreover, the reach of fan studies research and its implications for other academic fields, and for interdisciplinary research with a fan studies component, has continued to broaden. Fan studies may provide, for example, a useful analytical tool in understanding recent political phenomena such as the Brexit vote in the U.K. or enthusiastic supporters of politicians like Bernie Sanders and Donald Trump,²¹ and even the politicization of

18. *About the Journal*, TRANSFORMATIVE WORKS & CULTURES, <https://journal.transformativeworks.org/index.php/twc/about> (last visited June 29, 2023); see also *Transformative Works and Culture*, ORG. FOR TRANSFORMATIVE WORKS, <https://www.transformativeworks.org/twac/> (last visited June 29, 2023).

19. JONATHAN GRAY, *SHOW SOLD SEPARATELY: PROMOS, SPOILERS, AND OTHER MEDIA PARATEXTS* 146 (2010).

20. See *A COMPANION TO MEDIA FANDOM AND FAN STUDIES* (Paul Booth, ed., 2018) [*hereinafter* WILEY COMPANION]; *THE ROUTLEDGE COMPANION TO MEDIA FANDOM* (Melissa A. Click & Suzanne Scott, eds., 2018); see also, e.g., *ANTI-FANDOM: DISLIKE AND HATE IN THE DIGITAL AGE* (Melissa A. Click, ed., 2019); RUKMINI PANDE, *SQUEE FROM THE MARGINS: FANDOM AND RACE* (2018); *FANDOM*, *supra* note 9; KRISTINA BUSSE, *FRAMING FAN FICTION: LITERARY AND SOCIAL PRACTICES IN FAN FICTION COMMUNITIES* (2017); *THE FAN FICTION STUDIES READER* (Karen Hellekson & Kristina Busse, eds., 2014); DUFFETT, *supra* note 9.

21. See, e.g., Ashley Hink & Amber Davisson, Editorial in Volume 32: Fandom and Politics, TRANSFORMATIVE WORKS & CULTURES (Mar. 15, 2020), <https://journal.transformativeworks.org/index.php/twc/article/view/1973/2433>; Cornell Sandvoss, *The Politics of Against: Political Participation, Anti-Fandom, and Populism*, in *ANTI-FANDOM*, *supra* note 20, at 125; *ROUTLEDGE COMPANION*, *supra* note 20, at 448 (“How do fan scholars reconcile ourselves with the fact that many of the reactionary nationalist movements over the past few years, especially Brexit and Trumpism, have roots in or strong allegiances to fan cultures and practices[?]”); *POACHING POLITICS: ONLINE COMMUNICATION DURING THE 2016 U.S. PRESIDENTIAL ELECTION* (Paul Booth et al., 2018); see also, e.g., Ann Hornaday, *The Trump Cult Has Obliterated the Line Between Citizenship and Fandom, With Deadly Results*, WASH. POST (Jan. 8, 2021, 2:45 PM), https://www.washingtonpost.com/entertainment/trump-riots-politics-entertainment/2021/01/08/c2e18e22-51b7-11eb-83e3-322644d82356_story.html (discussing violent breach of U.S. Capitol building in Washington, D.C., by Trump supporters on January 6, 2021, which disrupted joint session

wearing face masks during the COVID-19 pandemic.²² Fandom communities can become a locus of political engagement, such as social media activity by fans of Korean pop music, which apparently successfully disrupted the planning for a Trump rally in Tulsa, Oklahoma, during the 2020 presidential campaign.²³ Fan studies research also helps to understand more dangerous and harmful activity, including the manner in which online trolling and harassment techniques in fandom spaces foreshadowed similar techniques being deployed in the arena of politics,²⁴ as well as the commonalities between conspiracy theory communities like QAnon and fan participation in alternate-reality games or live-action roleplaying games.²⁵

of Congress to certify Electoral College results of 2020 presidential election). During her tenure on the U.S. Supreme Court, Justice Ruth Bader Ginsburg garnered a fandom, as well. *See, e.g.*, Megan Garber, *The Ruth Bader Ginsburg Fandom Was Never Frivolous*, THE ATLANTIC (Sep. 18, 2020), <https://www.theatlantic.com/culture/archive/2020/09/ruth-bader-ginsburg-pop-culture/616413/>; Amanda Hess, *The Fandom Around R.B.G. Is Out of Step with Reality*, N.Y. TIMES (Aug. 12, 2020), <https://www.nytimes.com/2020/08/12/magazine/the-fandom-around-rbg-is-out-of-step-with-reality.html>.

22. *See* Amanda Mull, *The Difference Between Feeling Safe and Being Safe*, THE ATLANTIC (Oct. 26, 2020), <https://www.theatlantic.com/health/archive/2020/10/pandemic-safety-america/616858/> (“People who have built a significant portion of their identity around Trump fandom by attending rallies, joining Facebook groups, and buying merchandise likely have a psychological investment in his version of reality that’s too high to consider abandoning; for some of them, losing those beliefs might feel like a fate worse than the coronavirus.”).

23. Olivia Carlisle, *No One Fights QAnon Like the Global Army of K-Pop Superfans*, BLOOMBERG (Oct. 28, 2020, 4:00 AM), <https://www.bloomberg.com/news/features/2020-10-28/bts-k-pop-stans-are-fighting-qanon-and-maga-on-social-media> (“It’s tough to know how many of the 13,000 unused seats were meant for stans who’d asked for tickets with no intention of going, but the emptyish stadium infuriated Trump and came to be seen as a turning point in the presidential campaign. While K-pop stans probably won’t swing the election, their trolling is enough of a cultural force that political consultants have taken notice.”); Kalhan Rosenblatt, *The Year of the Stan: How the Internet’s Super Fans Went from Pop Stars to Politics*, NBC NEWS (Dec. 28, 2020, 4:30 AM), <https://www.nbcnews.com/pop-culture/pop-culture-news/year-stan-how-internet-s-super-fans-went-pop-stars-n1252115>.

See generally ASHLEY HINCK, POLITICS FOR THE LOVE OF FANDOM: FAN-BASED CITIZENSHIP IN A DIGITAL WORLD (2019); POPULAR CULTURE AND THE CIVIC IMAGINATION: CASE STUDIES OF CREATIVE SOCIAL CHANGE (Henry Jenkins et al., eds., 2020).

24. *See, e.g.*, Bethan Jones, *#AskELJames, Ghostbusters, and #Gamergate: Digital Dislike and Damage Control*, in WILEY COMPANION, *supra* note 20, at 415; Katie Wilson, *Red Pillers, Sad Puppies, and Gamergaters: The State of Male Privilege in Internet Fan Communities*, in WILEY COMPANION, *supra* note 20, at 431; *see also* ZOE QUINN, CRASH OVERRIDE: HOW GAMERGATE (NEARLY) DESTROYED MY LIFE, AND HOW WE CAN WIN THE FIGHT AGAINST ONLINE HATE 213–23 (2017).

25. *See* Reed Berkowitz, *A Game Designer’s Analysis of QAnon*, MEDIUM (Sep. 30, 2020), <https://medium.com/curiuserinstitute/a-game-designers-analysis-of-qanon-580972548be5> (“QAnon has often been compared to ARGs and LARPs and rightly so. It uses many of the same gaming mechanisms and rewards. It has a game-like feel to it that is evident to anyone

The relevance of fan studies to legal scholarship potentially could encompass a wide variety of interdisciplinary insights. For purposes of this Article, the subject of consideration is not jurisprudential implications or the nature of the legal profession, but rather an examination of the interpretive community of originalists who developed and sustain originalism as a constitutional theory. Although neither the U.S. Constitution nor the constitutional law precedent generated by the U.S. Supreme Court is a work of entertainment or the product of a media creator, originalism and the originalist interpretive community share many attributes with media fandom as described and analyzed in the field of fan studies—and it is the juxtaposition with the many similarities to the *Star Wars* franchise and fandom which drives home the analytical point.

III. ORIGINALISM AND STAR WARS: TWO CASE STUDIES IN FANDOM

For at least the past half-century, originalism has played a prominent role in U.S. constitutional theory. Scholars have thoroughly chronicled its historical trajectory from the distant past to its rise to public prominence in the 1980s and its academic trajectory from the early proponents to contemporary variations.²⁶ Even in just the past few years, entire books have been written describing and defending a variety of originalist perspectives on constitutional interpretation, as well as numerous law review articles by proponents and critics.²⁷ Needless to say, such a large

who has ever played an ARG, online role-play (RP) or LARP before. The similarities are so striking that it has often been referred to as a LARP or ARG. However this beast is very very different from a game.”); see also GRAY, *supra* note 19, at 200–05 (discussing alternate-reality games).

26. See, e.g., ERIC J. SEGALL, ORIGINALISM AS FAITH (2018); Lawrence B. Solum, *What Is Originalism? The Evolution of Contemporary Originalist Theory*, in THE CHALLENGE OF ORIGINALISM: THEORIES OF CONSTITUTIONAL INTERPRETATION 12 (Grant Huscroft & Bradley W. Miller, eds., 2011); Keith E. Whittington, *The New Originalism*, 2 GEO. J.L. & PUB. POL’Y 599 (2004).

27. See, e.g., ERWIN CHERMERINSKY, WORSE THAN NOTHING: THE DANGEROUS FALLACY OF ORIGINALISM (2022); JOHN O. MCGINNIS & MICHAEL B. RAPPAPORT, ORIGINALISM AND THE GOOD CONSTITUTION (2013); SEGALL, *supra* note 26; LEE J. STRANG, ORIGINALISM’S PROMISE: A NATURAL LAW ACCOUNT OF THE AMERICAN CONSTITUTION (2019); ILAN WURMAN, A DEBT AGAINST THE LIVING: AN INTRODUCTION TO ORIGINALISM (2017); Charles L. Barzun, *Constructing Originalism or: Why Professors Baude and Sachs Should Learn to Stop Worrying and Love Ronald Dworkin*, 105 VA. L. REV. ONLINE 128, 129 (2019); William Baude, *Is Originalism Our Law?*, 115 COLUM. L. REV. 2349, 2349 (2015); William Baude &

body of thought could not, and does not, contain a singular vision of originalism. On the other hand, to have endured for so long as an identifiable constitutional theory, originalism must possess certain distinguishing features which are both shared among its adherents and recognized (and criticized) by its critics.²⁸ For purposes of this Article, I will define originalism at a high level of generality by reference to two identifying features. As a matter of constitutional theory, originalism is a method of interpretation arising from the normative premise that the meaning of a constitutional provision must remain unchanged from its meaning at the time of its adoption. As a matter of constitutional practice, originalism insists that judges engaged in the task of constitutional interpretation are constrained to discerning and applying that meaning. Through both of these features, originalism denies that constitutional interpretation appropriately may take account of other factors such as personal or political or moral values, pragmatic considerations, or (perhaps especially) changed circumstances or values in contemporary American society compared to the time of ratification. The interpretive community of originalists—those who developed, sustain, and advocate originalism in theory and in practice—is broad, deep, and longstanding. Its many participants include law professors and other scholars, judges and lawyers, politicians and public intellectuals, and more.

For a quite similar length of time, *Star Wars* has been a popular culture phenomenon in the United States. At the domestic box office, the first film grossed more than four times as much

Stephen E. Sachs, *Grounding Originalism*, 113 NW. U. L. REV. 1455, 1455 (2019); Curtis A. Bradley & Neil S. Siegel, *Historical Glass, Madisonian Liquidation, and the Originalism Debate*, 106 VA. L. REV. 1, 1–3 (2020); Stephen E. Sachs, *Originalism as a Theory of Legal Change*, 38 HARV. J.L. & PUB. POL'Y 817, 819 (2015); Eric J. Segall, *Originalism Off the Ground: A Response to Professors Baude and Sachs*, 34 CONST. COMMENT. 313, 313 (2019); Eric J. Segall, *The Concession that Dooms Originalism: A Response to Professor Lawrence Solum*, 88 GEO. WASH. L. REV. ARGUENDO 33, 33 (2020); Lawrence B. Solum, *Originalism Versus Living Constitutionalism: The Conceptual Structure of the Great Debate*, 113 NW. U. L. REV. 1243, 1243 (2019).

28. Professor Eric Segall, for example, provides this definition of originalism: “an originalist judge or scholar is someone who believes the following three propositions: (1) the meaning of the constitutional text is fixed at the time of ratification; (2) judges should give that meaning the primary role in constitutional interpretation; and (3) pragmatic modern concerns and consequences are not allowed to trump discoverable original meaning (although adhering to precedent might).” SEGALL, *supra* note 26, at 8–9.

money as the next-highest earners of 1977²⁹ and briefly held the title of highest-grossing movie of all time, until it was surpassed by Stephen Spielberg's 1982 movie *E.T.: The Extra-Terrestrial*. In total, *Star Wars* was nominated for ten Oscars, including Best Picture, and won in six of those categories.³⁰ George Lucas famously retained the merchandising rights to his new franchise when 20th Century Fox executives did not appreciate their value, and the licensing revenue from *Star Wars* intellectual property ultimately far exceeded the box office profits from its films.³¹ By the time Lucas sold Lucasfilm to Disney in 2012, the franchise included six films, *The Clone Wars* animated series, best-selling books and comics with millions of copies in print, videogames and roleplaying games, countless toys and collectibles, and a seemingly infinite variety of consumer products.³² From the beginning, *Star Wars* also had an active and enthusiastic—and sometimes critical—fan community, ranging from children to adults, casual moviegoers to academics, newfound interest to lifelong science fiction buffs, and everything in between. They produced fanzines, fanfiction, fan art, cosplay, fan films, fanvids, and a crowdsourced fan wiki—the Wookieepedia—which was far more extensive and detailed than the internal databases at Lucasfilm itself. The 1977 film by George Lucas was an important achievement in cinema history in its own right, but the *Star Wars* franchise grew into something far bigger—and far more contestable.

And that is where the similarities between originalism and *Star Wars* emerge. Originalism seeks to define and delimit the

29. According to the U.S. domestic receipts recorded by Box Office Mojo, *Star Wars* earned \$195 million during calendar year 1977; the next highest-grossing movies, the adaptation of Peter Benchley's novel *The Deep* and the James Bond film *The Spy Who Loved Me*, made \$47 million and \$45 million, respectively. See *Domestic Box Office for 1977*, IMDBPRO: BOX OFFICE MOJO, https://www.boxofficemojo.com/year/1977/?ref=bo_yl_table_44 (last visited July 9, 2023).

30. See, e.g., Tim Gray, 'Star Wars' in 1977: How the Saga Began with That 'Old Desert Rat' Obi-Wan Kenobi, VARIETY (Dec. 14, 2015, 2:54 PM), <https://variety.com/2015/film/news/star-wars-1977-origins-variety-ads-1201659659/>.

31. See CHRIS TAYLOR, HOW STAR WARS CONQUERED THE UNIVERSE: THE PAST, PRESENT, AND FUTURE OF A MULTI-BILLION DOLLAR FRANCHISE 202–03 (2014) (noting that “[m]ore than \$20 billion of merchandising has been sold over the lifetime of the franchise” as of 2014, prior to the launch of the Sequel Trilogy films and associated products, including Lucasfilm receiving “about \$215 million in licensing revenue in 2012 alone”); see also, e.g., GRAY, *supra* note 19, at 177.

32. See, e.g., TAYLOR, *supra* note 31; DISNEY'S STAR WARS: FORCES OF PRODUCTION, PROMOTION, AND RECEPTION 267 (William Proctor & Richard McCulloch, eds., 2019); STAR WARS AND THE HISTORY OF TRANSMEDIA STORYTELLING 195 (Sean Guynes & Dan Hassler-Forest, eds., 2017); KEN NAPZOK, WHY WE LOVE STAR WARS (2019).

meaning and interpretation of the U.S. Constitution, an iconic document full of important principles as well as indeterminate phrases and imprecise usage. *Star Wars* is an iconic storytelling franchise full of important themes and ideas as well as indeterminate concepts and inconsistent notions, and its fandom has discussed, debated, and fought over the meaning and interpretation of *Star Wars* since its inception. Whatever other life lessons *Star Wars* might teach, the experience of its fandom demonstrates the futility of any effort to impose a singular vision of the “right” way to understand *Star Wars*. Through that lens, we can see that originalism as an interpretive community displays the characteristics of a fandom—one deeply committed to an equally hopelessly doomed quest for certitude.

A. Persistent Fictions About the Foundational Canon

Reverence for the creator of the foundational text. Contrary to the trope of a genius on a pedestal, the reality is that no singular vision guided the text’s creation. An initial canon that, from its inception, was never free from controversy about its meaning. Notwithstanding the significance of this initial canon, the reality that the canon itself has changed over time as new content has been added to the foundational text, altering its meaning as it grew into something beyond its initial scope.

Are we talking about constitutional originalism, or *Star Wars*?

The answer is: Yes. Each of these comparisons is worth examining carefully. The juxtapositions reinforce the extent to which these respective interpretive communities share a common vulnerability: the enduring power of persistent fictions about the foundational canon, which influence both the perspectives of the interpreters and the interpretations they ultimately adopt.

1. “*Thank the Maker!*”³³

When we seek to interpret an important text—legal or theological, literary or cinematic, historical or contemporary, and

33. The protocol droid C-3PO exclaims this phrase several times in the Original Trilogy, beginning with *A New Hope* in 1977. In 1999’s *The Phantom Menace*, Lucas portrayed Threepio as having been constructed, from accumulated spare parts, by Anakin Skywalker as a boy; the droid’s memory is erased at the end of 2005’s *Revenge of the Sith*, however, so the later Threepio fortunately has no idea of his exclamation’s connection to Darth Vader.

many more—one source of relevant information is the identity of its creator. Sometimes this matters for understanding the context of their use of language at the time of creation: a nineteenth century writer referring to “free labor” in the context of the economic rivalry between systems based on wage labor and slave labor reflects a different meaning than a twenty-first century writer without that context, who more likely would think of the phrase as a synonym for “unpaid work,” as distinct from paid work, such as feminist critiques of how society traditionally undervalues childcare and housework.³⁴ It also may matter because their usage is unusual or idiosyncratic, in the way George Lucas refers to Anakin Skywalker’s fall to the dark side as motivated by “greed”—but not in the usual financial sense, instead connoting selfish possessiveness and unwillingness to let go.³⁵ Or insights into the creator may be helpful at a broader level to understand the goals, themes, and desired outcomes included within the text. The men in 1787 who wrote the Constitution did not want to create a new monarchy in the recently independent United States, so Article II should be understood in that light;³⁶ Lucas intended his first *Star*

34. See, e.g., Reva B. Siegel, *Home as Work: The First Woman’s Rights Claims Concerning Wives’ Household Labor, 1850–1880*, 103 YALE L.J. 1073, 1075 (1994) (“This Article examines a nineteenth-century feminist claim that legislatures refused to recognize and historians have since overlooked: the claim that wives were entitled to property rights in their household labor. In exploring the life and demise of this rights discourse, I offer a political history of housework at the dawn of the industrial era, and an account of the earliest feminist politics of women’s work.”); see also CAROLE PATEMAN, *THE SEXUAL CONTRACT* 116–53 (Thirtieth Anniversary ed. 2018) (chapter five, entitled “Wives, Slaves, and Wage Slaves”); MICHAEL J. SANDEL, *DEMOCRACY’S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC PHILOSOPHY* 168–200 (1996) (discussing, in the context of American political philosophy, nineteenth century disputes about free labor, wage labor, and slavery).

35. Lucas articulates this usage of “greed” on the director’s commentary to *Attack of the Clones*. In the scene when Anakin Skywalker’s mother dies in his arms, Lucas explains that, “It feeds into fear of losing things, which feeds into greed, wanting to keep things, wanting to keep his possessions and things that he should be letting go of. His fear of losing her turns to anger at losing her, which ultimately turns to revenge in wiping out the village.” George Lucas, *Director’s Commentary, on STAR WARS: EPISODE II: ATTACK OF THE CLONES* (Lucasfilm Ltd. 2002). In the subsequent scene in which Anakin confesses his crime to Padmé Amidala, Lucas says, “That relationship could’ve stayed there if he’d have been just powerful enough. He’s greedy in that he wants to keep his mother around, he’s greedy in that he wants to become more powerful in order to control things in order to keep the things around that he wants.” *Id.*

36. See, e.g., Richard J. Pierce, Jr., *Saving the Unitary Executive Theory from Those Who Would Distort and Abuse It: A Review of The Unitary Executive by Steven G. Calabresi and Christopher S. Yoo*, 12 U. PA. J. CONST. L. 593, 593–94 (2010) (reviewing STEVEN G. CALABRESI & CHRISTOPHER S. YOO, *THE UNITARY EXECUTIVE: PRESIDENTIAL POWER FROM WASHINGTON TO BUSH* (2008)) (“During the Administration of President George W.

Wars film in 1977, at least in part, as an allegory to criticize U.S. involvement in the Vietnam War.³⁷ Of course, across many fields of study there are many different theories and methodologies of interpreting texts, and they place different degrees of importance or emphasis on the purposes or expectations of the creator.³⁸ For present purposes, it is enough to note that insights gleaned about a text's creator are a frequent feature of an interpretive process.

But *who* is the creator? Even in *Star Wars*, this answer is not nearly as simple as it seems. While American society is deeply invested in its myth of rugged individualism, and the corresponding myth of the lone artistic genius toiling away in seclusion to produce a work of singular brilliance, they are only myths. In the mid-1970s, Lucas went through numerous drafts of his screenplay, soliciting feedback from a variety of trusted sources and making substantial revisions in response.³⁹ In 2013–14, Dark Horse Comics released an eight-issue comic adaptation of one of Lucas' early 1974 drafts, then titled *The Star Wars*, which is fascinating as insight into the creative process⁴⁰—and also a great reminder of the value of constructive criticism, because it could be said to reveal the likelihood that *Star Wars* would not have

Bush, . . . the far-fetched claims of people like John Yoo, Jay Bybee, David Addington, and Alberto Gonzales, that the President is omnipotent in his capacity as Commander-in-Chief . . . often referred to their claims as supported by the unitary executive theory, but their claims are totally unrelated to the real unitary executive theory.”); JACK GOLDSMITH, *THE TERROR PRESIDENCY: LAW AND JUDGMENT INSIDE THE BUSH ADMINISTRATION* 97 (2007) (“[John] Yoo believed that when the Constitution vested the ‘executive power’ in the President, it gave him all of the military powers possessed by the King of England save those expressly given to Congress.”); Lawrence Lessig & Cass R. Sunstein, *The President and the Administration*, 94 COLUM. L. REV. 1, 2 (1994) (“We think that the view that the framers constitutionalized anything like this vision of the [unitary] executive is just plain myth. It is a creation of the twentieth century, not the eighteenth.”).

37. See, e.g., DAN GOLDING, *STAR WARS AFTER LUCAS: A CRITICAL GUIDE TO THE FUTURE OF THE GALAXY* 32–35 (2019).

38. See, e.g., Cornel Sandvoss, *The Death of the Reader? Literary Theory and the Study of Texts in Popular Culture*, in *FANDOM*, *supra* note 9, at 30; see also GRAY, *supra* note 19, at 4–8, 23–26, 107–13 (discussing the “death of the author” and other aspects of literary interpretation theory); G. Alex Sinha, *Original(ism) Sin*, 95 ST. JOHN’S L. REV. 739, 771 (2021) (“Moreover, it is impossible and inappropriate to separate the authors from the text when the authors’ views about their compatriots so heavily influenced the text—both in overt, observable ways, and in unknowable ways through the exclusion of their perspectives.”).

39. See, e.g., LAURENT BOUZEREAU, *STAR WARS: THE ANNOTATED SCREENPLAYS* (1997); J.W. RINZLER, *THE MAKING OF STAR WARS: THE DEFINITIVE STORY BEHIND THE ORIGINAL FILM* (2007).

40. See J.W. RINZLER, *THE STAR WARS DELUXE EDITION* (Dark Horse Books 2014); see also *The Star Wars*, WOOKIIEEPEDIA, https://starwars.fandom.com/wiki/The_Star_Wars (last visited July 9, 2023).

achieved the same heights as a franchise if Lucas had filmed his initial ideas.⁴¹ After the final draft of the screenplay was filmed, it was George's then-wife Marcia Lucas who won the Oscar for Best Editing, reflecting key decisions such as re-cutting the famous trench runs on the Death Star in the movie's climax to maximize the pace and dramatic tension.⁴² And the underlying story is far from the only part of *Star Wars* where the contributions of others are invaluable: it is impossible to imagine *Star Wars* without the visual designs by Ralph McQuarrie, the sound design by Ben Burtt and the musical score by John Williams, and the special effects by John Dykstra, Dennis Muren, Joe Johnston, Phil Tippett, and other key players at the newly founded Industrial Light & Magic.⁴³ Without the marketing plan devised by Ashley Boone, Jr., the movie's ability to reach a mass audience to wide acclaim in a short period of time might not have transpired.⁴⁴ George Lucas may be the creator of *Star Wars* in the spark of imagination sense, but the story and the franchise owe their inception to other key players as well. An interpretation of *Star Wars* focused narrowly on Lucas as the sole creative determinant is likely to be both descriptively inaccurate and normatively affected as a result.

The collective process of creating the Constitution in 1787 is well known, though even in that context the conventional wisdom heavily prioritizes certain contributors over others. Some of this is a function of the historical record: James Madison took extensive notes and preserved them in an organized fashion, Ben Franklin was already famous among his contemporaries, as was George Washington (though he chose mainly to preside rather than advocate), while Thomas Jefferson was away in Paris, so he gets remembered for drafting the Declaration of Independence

41. See, e.g., Graeme McMillan, *The First Draft of Star Wars with Green Alien Han Solo Gets Adapted Into a Comic*, WIRED (May 4, 2013, 6:30 AM), <https://www.wired.com/2013/05/star-wars-first-draft-comic/>; see also RINZLER, *supra* note 39.

42. See TAYLOR, *supra* note 31, at 174.

43. See, e.g., RINZLER, *supra* note 39. The significance of the contributions of Industrial Light & Magic to the success of the *Star Wars* Original Trilogy is emphasized in *Light & Magic*, a six-part documentary series on the company released on the Disney+ streaming service in July 2022. See *StarWars.com Team, Light & Magic Is Here!*, STARWARS.COM (July 27, 2022), <https://www.starwars.com/news/light-magic-is-here>.

44. See Scott Feinberg, *He Was 'Star Wars' 'Secret Weapon, So Why Was He Forgotten?*, THE HOLLYWOOD REP. (Feb. 6, 2020), <https://www.hollywoodreporter.com/features/he-was-star-wars-secret-weapon-why-was-he-forgotten-1275211> ("Ashley Boone Jr., the first black president of a major Hollywood studio, helped make George Lucas' quirky space opera a hit in the 1970's—yet chances are you've never heard of him.").

instead.⁴⁵ Some of it also no doubt reflects the dynamic of any group project, whether in the eighteenth century or the twenty-first, that some participants simply do more of the work than others. Over their weeks of effort, the convention debated numerous proposals and amendments, and the Committee of Style sought to hone the document into a coherent text.⁴⁶ Like the first *Star Wars* movie, the 1787 creation of the Constitution had multiple key contributors, though the ultimate work product was a singular text that then existed independently on its own terms to endure into the future. A constitutional interpretation derived from a narrow focus on the views of one or a few of the Framers, rather than the collective political act of negotiation and compromise as a whole, is likewise foundationally flawed.

2. *“I Am Altering the Deal. Pray I Don’t Alter It Any Further.”*⁴⁷

The creation of a singular initial text, however, does not indicate that its creators shared a singular vision for what the text would accomplish or what the ultimate interpretations of its meaning would comprise. Even setting aside for a moment the inevitable prospect of evolution in the text itself over time, it is simply not the case that either the Constitution nor *Star Wars* ever carried a definitive consensus on its first meaning from its original creators.

In terms of the stories told in his *Star Wars* films, the evidence is clear that George Lucas frequently changed his mind about key ideas or plot points in the Original Trilogy during his creative process. In 1977, Obi-Wan Kenobi was speaking accurately when he told Luke Skywalker that Vader “betrayed and murdered your

45. See, e.g., AKHIL REED AMAR, *AMERICA’S CONSTITUTION: A BIOGRAPHY* (2006); CATHERINE DRINKER BOWEN, *MIRACLE AT PHILADELPHIA: THE STORY OF THE CONSTITUTIONAL CONVENTION MAY – SEPTEMBER 1787* (1986); CLINTON ROSSITER, *1787: THE GRAND CONVENTION* (1987); DAVID O. STEWART, *THE SUMMER OF 1787: THE MEN WHO INVENTED THE CONSTITUTION* (2008).

46. See, e.g., William Michael Treanor, *The Case of the Dishonest Scrivener: Gouverneur Morris and the Creation of the Federalist Constitution*, 120 MICH. L. REV. 1 (2021). A similar situation arose in the drafting of the Bill of Rights. See, e.g., *Ramos v. Louisiana*, 140 S. Ct. 1390, 1400 (2020) (discussing House draft of what became Sixth Amendment right to jury trial in criminal cases, which expressly referred to unanimous verdicts, and Senate draft, which removed it, and concluding that “[t]he truth is that we have little contemporaneous evidence shedding light on why the Senate acted as it did”).

47. Darth Vader offers this warning to Lando Calrissian in *The Empire Strikes Back*, a memorable reminder that the original version of a text often is not the last. See *STAR WARS EPISODE V: THE EMPIRE STRIKES BACK* (Lucasfilm Ltd. 1980).

father,” because Lucas had in mind at that time that Darth Vader and Luke’s father were separate individuals.⁴⁸ Assured of enough profit to make a sequel, Lucas decided while writing *The Empire Strikes Back* that Vader himself would be Luke’s father; Lucas famously addressed his change of mind within the text, having Kenobi tell Luke in *Return of the Jedi* that “what I told you was true, from a certain point of view”—specifically, as a metaphor for Anakin Skywalker’s fall to the dark side.⁴⁹ Similarly, in earlier versions of the story Luke’s sister was a different character than Leia Organa—in 1980, Yoda’s line assuring Kenobi that “there is another” hope for the galaxy if Luke failed did not refer to Leia—but the pursuit of simplicity in storylines and Lucas’ desire to end the story after three films led him to the now-familiar resolution in *Return of the Jedi*.⁵⁰ At times, Lucas has claimed he envisioned his saga as twelve films, or nine, or six.⁵¹ His public statements about various aspects of *Star Wars* sometimes contradict the documentary record, such as from the production process or previous interviews.⁵² Whether this is forgetfulness on Lucas’ part or a desire to portray himself as an artistic genius with a consistent vision, the reality is that the iterative process of making the Original Trilogy films revealed that Lucas modified and adapted his ideas about *Star Wars* in the course of creating the initial canon

48. See, e.g., BOUZEREAU, *supra* note 39, at 217 (“The notion of Vader being Luke’s father first appeared in the second draft” of *The Empire Strikes Back*).

49. See, e.g., *id.* at 268–71 (discussing development of dialogue between Kenobi and Luke over multiple script versions). An additional perspective on interpreting this dialogue arises in the 2022 Disney+ series *Obi-Wan Kenobi*, which takes place in-universe between *Revenge of the Sith* and *A New Hope*, when Darth Vader himself tells Kenobi, “You didn’t kill Anakin, I did.” See *Obi-Wan Kenobi: Part VI* (Disney+ June 22, 2022).

50. See, e.g., Thomas Bacon, *The Original Story of Luke Skywalker’s Sister (Before It Was Retconned To Be Leia)*, SCREENRANT (Feb. 2, 2019), <https://screenrant.com/star-wars-luke-skywalker-sister-leia-retcon/>; Stefan Kyriazis, *Star Wars Darth Vader HUGE Shock in Original Script: This Would Have Changed Everything*, EXPRESS (Jan. 28, 2019, 00:11), <https://www.express.co.uk/entertainment/films/1078697/Star-Wars-Darth-Vader-Skywalker-father-Luke-Leia-Rey-parents-Episode-IX> (quoting first draft screenplay of *The Empire Strikes Back* by Leigh Brackett, in which Luke’s sister is named Nelith); TAYLOR, *supra* note 31, at 262–64; see also J.W. RINZLER, *THE MAKING OF THE EMPIRE STRIKES BACK* 21 (2010) (describing early discussions about character of Luke’s sister).

51. See, e.g., Bacon, *supra* note 50 (nine movies, recounted by producer Gary Kurtz); J.W. Rinzler, *The Long, Winding, and Shapeshifting Trail to Episodes VII, VIII & IX*, STARWARS.COM (Oct. 30, 2012), <https://www.starwars.com/news/the-long-winding-and-shapeshifting-trail-to-episodes-vii-viii-ix> (discussing interviews and documents referring to twelve-movie series); Jennifer Vineyard, *George Lucas Declares ‘Star Wars’ Over After ‘Revenge Of The Sith’: Director Says He Never Intended to Make Nine-Episode Series*, MTV (Sept. 10, 2004, 2:06 PM), <http://www.mtv.com/news/1490890/george-lucas-declares-star-wars-over-after-revenge-of-the-sith/> (six movies, according to Lucas in 2005).

52. Compare, e.g., Rinzler, *supra* note 50, with, e.g., Vineyard, *supra* note 51.

for the franchise. Conflicting interpretations of the films and their ideas in the fan community sometimes arise from differences in the extent to which the competing perspectives recognize and account for, or not, these creative-process realities.

Such evidence about the Constitution is familiar, too. When the 1787 convention concluded its work and submitted the new constitution for ratification, major disputes erupted within the Founding generation—the men only a decade distant from declaring independence and fighting a revolutionary war together to earn it, and only a handful of years removed from the formal peace treaty memorializing their accomplishment⁵³—over fundamental aspects of the charter. Federalists and Anti-Federalists disagreed about the intended written scope and likely future interpretation of issues ranging from federal power and state power, legislative power and executive power, taxation and regulation of interstate commerce, and the absence of express protections for individual liberties.⁵⁴ Although *The Federalist Papers* are the most famous defense of the Constitution as drafted, others supported ratification on different and occasionally contradictory grounds; so too the Anti-Federalists did not speak with a unified voice or share the same apprehensions.⁵⁵ To seek to determine the original meaning of the Commerce Clause or the Take Care Clause or the Necessary & Proper Clause is inextricably limited by the fact that the same people who wrote and ratified the text disagreed, sometimes strenuously, about what it did, would,

53. The Declaration of Independence was signed on July 4, 1776, the Battle of Yorktown ended in October 1781, and the Treaty of Paris was signed in September 1783. The Articles of Confederation, which the new Constitution replaced, had been approved by the Continental Congress in November 1777 with ratification concluding on March 1, 1781. The Philadelphia Convention that drafted the Constitution took place from May to September in 1787. *American History Timeline*, HISTORY ON THE NET, <https://www.historyonthenet.com/america-history-timeline> (last visited Aug. 14, 2023).

54. See, e.g., JOHN P. KAMINSKI & RICHARD LEFFLER, *FEDERALISTS AND ANTIFEDERALISTS: THE DEBATE OVER THE RATIFICATION OF THE CONSTITUTION* (1998); see also Roderick M. Hills, Jr., *Strategic Ambiguity and Article VII's Two-Stage Ratification Process: Why the Framers (Should Have) Decided Not to Decide* (Sept. 17, 2019) (NYU School of Law, Public Law Research Paper No. 19-56) (available at <https://ssrn.com/abstract=3454955>).

55. See, e.g., MICHAEL J. KLARMAN, *THE FRAMER'S COUP: THE MAKING OF THE UNITED STATES CONSTITUTION* 307–10 (2016); Frank I. Michelman, *Michael Klarman's Framers' Coup (and the News from Antifidelity)*, 33 *CONST. COMMENT.* 109, 109 (2018) (reviewing *FRAMER'S COUP*) (“It is also a close and expert study of complexities—ambiguities, accidents, miscalculations, confusions, contradictions and reversals—in the lining up, sometimes sooner, sometimes later, of delegates at Philadelphia behind one or another article of constitutional text, and of state conventions behind the whole shebang.”).

or ought to mean. This creation-process reality means that sometimes the most persuasive conclusion supported by the historical record is that an identifiable original meaning of the text simply does not exist.

3. “Pass On What You Have Learned.”⁵⁶

The fiction of a canon text with a definitive meaning at the time of its origination is exposed not only by the reality that its creation was not guided by a singular vision, but also by the fact that its initial reception never held a uniform or undisputed interpretation. On particular aspects the early years might find consensus, but on other matters conflict and controversy have been an indelible feature of constitutional interpretation, and the *Star Wars* franchise, from the very beginning.

A wide variety of examples are available for the proposition that the men who wrote and ratified the Constitution continued to spar over its proper meaning in the subsequent decades. Many of these interpretive controversies remain relevant today. John Adams participated in the adoption of the First Amendment, ratified in 1791, but by 1798 his administration supported the Alien & Sedition Acts to inhibit his political opponents, even though charges of “seditious libel” against dissidents had been a significant instigator of both the revolt for independence and the claimed necessity for protecting the freedom of speech and press in a Bill of Rights—which was exactly why Adams’ opponents argued at the time that the law was unconstitutional.⁵⁷ Thomas Jefferson believed in narrowly construing the federal government’s limited powers, but from 1801 to 1805 he waged an undeclared naval war against the Barbary Pirates—and in 1803 executed the Louisiana Purchase to dramatically expand the geographic territory of the United States, without clear textual support in either Article I or Article II powers and despite his doubts beforehand and afterward

56. On his deathbed in *Return of the Jedi*, Yoda entrusts the future of the Jedi Order to Luke Skywalker and his new generation. See STAR WARS EPISODE VIII: RETURN OF THE JEDI (Lucasfilm Ltd. 1983).

57. See, e.g., GEOFFREY STONE, PERILOUS TIMES: FREE SPEECH IN WARTIME: FROM THE SEDITION ACT OF 1798 TO THE WAR ON TERRORISM 15–78 (2005); Jud Campbell, *The Invention of First Amendment Federalism*, 97 TEX. L. REV. 517, 542 (2018); David Jenkins, *The Sedition Act of 1798 and the Incorporation of Seditious Libel into First Amendment Jurisprudence*, 45 AM. J. LEGAL HIST. 154 (2001).

about its constitutionality.⁵⁸ Were these two constitutional thinkers turned Presidents nothing more than hypocrites? Or politicians who chose to strike a compromise between normative principles and a perceived pragmatic necessity? Or was the meaning of the Constitution sufficiently open to interpretation—even among its creators—that the answers were, at least to some extent, debatable?

One of the first prominent interpretive disputes under the new Constitution was the debatable constitutionality of First Bank of the United States, an issue which might seem almost quaint in light of today's doctrine (and U.S. economy) but which held eminently serious stakes for its participants.⁵⁹ In 1791, the second year in session for the very First Congress as well as in the first presidential term of George Washington, the legislature passed the Bank Bill advocated by Secretary of the Treasury Alexander Hamilton. No enumerated power in Article I, Section 8, expressly authorized Congress to create a federal bank, but such an entity would have implications for several delineated powers (such as coining money and regulating interstate and foreign commerce) and accordingly arguably fell within the scope of the Necessary & Proper Clause. Reluctant to decide such an important question of constitutional interpretation on his own, Washington solicited legal opinions from three advisors: Hamilton, Secretary of State Jefferson, and Attorney General Edmund Randolph.⁶⁰ Though the

58. See, e.g., Gerhard Casper, *Executive-Congressional Separation of Power During the Presidency of Thomas Jefferson*, 47 STAN. L. REV. 473, 481–82 (1995); Robert Knowles, *The Balance of Forces and the Empire of Liberty: States' Rights and the Louisiana Purchase*, 88 IOWA L. REV. 343, 346 (2003); Robert F. Turner, *State Responsibility and the War on Terror: The Legacy of Thomas Jefferson and the Barbary Pirates*, 4 CHI. J. INT'L L. 121, 121 (2003); see also GERALD LEONARD & SAUL CORNELL, *THE PARTISAN REPUBLIC: DEMOCRACY, EXCLUSION, AND THE FALL OF THE FOUNDERS' CONSTITUTION, 1780S–1830S* (2019). These examples also can be seen as providing support for the conclusion that the Framers, when interpreting and applying the document they wrote, did not engage in originalist constitutional interpretation. See, e.g., Kent Greenfield, *Original Penumbra: Constitutional Interpretation in the First Year of Congress*, 26 CONN. L. REV. 79, 82 (1993).

59. See, e.g., H. JEFFERSON POWELL, *A COMMUNITY BUILT ON WORDS: THE CONSTITUTION IN HISTORY AND POLITICS* 21–30 (2002); H. JEFFERSON POWELL, *THE MORAL TRADITION OF AMERICAN CONSTITUTIONALISM: A THEOLOGICAL INTERPRETATION* 481–82 (1993).

60. See, e.g., H. JEFFERSON POWELL, *LANGUAGES OF POWER: A SOURCEBOOK OF EARLY AMERICAN CONSTITUTIONAL HISTORY* 37–54 (1991) (reprinting Hamilton, Jefferson, and Randolph legal opinions, with commentary and analysis). For the salience of this example to my analysis I am indebted to Professor Jeff Powell, who assigned excerpts from each of these three opinions to my first-year constitutional law section—not simply to share with

latter two, Virginians like Washington, argued for the bill's unconstitutionality, Washington ultimately sided with the New Yorker and signed the bill in February 1791. The controversy highlights a number of significant points: constitutional interpretation does not occur only in U.S. Supreme Court opinions; very smart reasonable people can disagree about fundamental constitutional issues in good faith; the methodologies of constitutional interpretation that we still use, and argue about, today have been present since the inception of U.S. constitutional law; and last but certainly not least, the search for a consensus original meaning of the Constitution is frequently a hopeless endeavor, *especially* on matters of substantial interpretive controversy. If three highly sophisticated constitutional perspectives could produce three different analyses of the interpretive dispute only two years after ratification and four years after drafting, how can we expect the historical record to meaningfully resolve very many of our controversies over 230 years later?

The *Star Wars* franchise has been celebrating the fortieth anniversary of the theatrical release of the Original Trilogy in the period spanning 2017, 2020, and 2023. These commemorations came at an interesting time for the franchise and its fandom, because *The Last Jedi* and *The Rise of Skywalker*, released in 2017 and 2019 respectively, each generated considerably more negative reaction than the first movie in the Sequel Trilogy, *The Force Awakens*, which was released in 2015.⁶¹ In media reporting and in fandom, discussions ensued over whether this combination had created an unprecedented point of conflict for the franchise, or whether it was unlikely to be quantitatively or qualitatively

his students his own intellectual interest in the historical importance of the dispute, but also to demonstrate its ongoing significance to controversies over contemporary interpretive methodologies in constitutional law.

61. The fan studies blog founded by Henry Jenkins hosted a five-part roundtable on *The Last Jedi* and a three-part commentary on *The Rise of Skywalker* shortly after their respective releases, with analysis of the two films and their reception from the perspectives of fan studies scholars. See Henry Jenkins, *The Last Jedi: An Online Roundtable – Part One*, HENRY JENKINS (Feb. 12, 2018), <http://henryjenkins.org/blog/2018/2/11/the-last-jedi-a-round-table-part-one>; Henry Jenkins, *Endings, Beginnings, Transitions: Star Wars in the Disney Era (Part 1 of 3) by William Brooker and William Proctor*, HENRY JENKINS (Jan. 6, 2020), <http://henryjenkins.org/blog/2020/1/6/endings-beginnings-transitions-star-wars-in-the-disney-era-part-1-of-3-by-will-brooker-and-william-proctor>. As a *Star Wars* blogger, I have written critically on the films, as well. See *B.J. Priest: Media Portfolio*, FANGIRL BLOG, <http://fangirlblog.com/contributors/bj-priester-media-portfolio/> (last visited June 29, 2023).

different from the negative reactions in some quarters to the Prequel Trilogy movies.⁶² In much of this recent commentary, it is common to see remarks asserting that, by contrast, a supposedly nearly universal acclaim for all three films in the Original Trilogy has been present since the beginning.⁶³

Forty years later, it can be easy to lose sight of the reality that the meaning, interpretation, and significance of the first three *Star Wars* films was contested and contestable from the start. The general public, of course, attended *Star Wars* in tremendous numbers, including a large amount of repeat viewings. Cinephiles, on the other hand, resented movies like *Star Wars* and *Jaws* for creating the modern blockbuster phenomenon and (allegedly) lessening the audience's interest in paying to attend more cerebral and artistically worthy films.⁶⁴ Film critics generally gave *Star Wars* high marks but found elements to critique as well—as did fans. The lack of diversity in Hollywood is not merely a recent concern; it did not go unremarked at the time that Princess Leia and Lando Calrissian were the only non-white, non-male characters in the Original Trilogy's principal cast.⁶⁵ The shift in tone from *A New Hope's* combination of space Western and space opera to *The Empire Strikes Back's* fairy tale was jarring and unpleasant for those who expected the sequel to follow the conceits of the first film rather than staking out new ground for the franchise instead—not to mention the negative reactions from

62. See, e.g., GOLDING, *supra* note 37, at 192–206; B.J. Priester, *Skywalker at Risk: Serial Storytelling and Brand Value*, FANGIRL BLOG (Feb. 11, 2018), <http://fangirlblog.com/2018/02/skywalker-at-risk-serial-storytelling-and-brand-value/>; B.J. Priester, *We've Been Here Before: Parallels in the Public Narrative on the State of Star Wars*, FANGIRL BLOG (June 4, 2018), <http://fangirlblog.com/2018/06/weve-been-here-before-parallels-in-the-public-narrative-on-the-state-of-star-wars/>; B.J. Priester, *The End of the Skywalker Saga: The Failures of the Rise of Skywalker, Part 5*, FANGIRL BLOG (Jan. 15, 2020), <http://fangirlblog.com/2020/01/the-end-of-the-skywalker-saga-the-failures-of-the-rise-of-skywalker-part-5/>.

63. But see Chris Taylor, *'Last Jedi' Haters Are Nothing New. Plenty of Fans Hated 'Empire Strikes Back' Too*, MASHABLE (Dec. 19, 2017), <https://mashable.com/2017/12/19/last-jedi-empire-strikes-back-haters/> (noting various points of controversy about *The Empire Strikes Back* upon its release in 1980).

64. See, e.g., GOLDING, *supra* note 37, at 24, 28–29.

65. See CAROLYN COCCA, SUPERWOMEN, GENDER, POWER, AND REPRESENTATION 88–92 (2016); GOLDING, *supra* note 37, at 94–96; Matthew Monagle, *The Fight Over Star Wars and Racism in 1977*, FILM SCH. REJECTS (Dec. 14, 2015), <https://filmschoolrejects.com/the-fight-over-star-wars-and-racism-in-1977-828063c65f65/>; see also STAR WARS ON TRIAL: SCIENCE FICTION AND FANTASY WRITERS DEBATE THE MOST POPULAR SCIENCE FICTION FILMS OF ALL TIME 303–40 (Matthew Stover & David Brin, eds., 2006) (debating whether “women in *Star Wars* are portrayed as fundamentally weak”).

those who believed the romance subplot paired Leia with the “wrong” partner from among the two male leads.⁶⁶ Despite Lucas’ intended political message, some critics interpreted the *Star Wars* movies as glorifying war and heroism in combat as a means to end injustice.⁶⁷ The ending of *Return of the Jedi*, with Luke Skywalker throwing aside his lightsaber and triumphing over evil through the power of love rather than violence, earned praise; points of consternation from some critics and fans included the film’s use of a second Death Star, a random interlude for a musical performance by the Max Rebo Band during the rescue mission at Jabba’s Palace, and the prominent involvement of the cuddly Ewoks in defeating the Emperor’s best soldiers in the climactic battle on the forest moon of Endor.⁶⁸ In the first decade of the franchise, *Star Wars* defined and redefined itself over the span of three films, creating a wide variety of touchpoints for critics or fans to conclude that the story had remained true to, or rather departed from, the fundamental features that had—or, depending on one’s point of view, ought to have—established what *Star Wars* is.

4. “*You Can’t Stop the Change, Any More Than You Can Stop the Suns from Setting.*”⁶⁹

As just noted, the foundational canon of *Star Wars* evolved even within the course of the Original Trilogy alone. Each of the three films, for example, further elaborated George Lucas’ ideas for the mystical energy field called the Force, adding new supernatural powers wielded by the characters as well as further insight into the underlying moral philosophy of the Jedi Knights and the contrast between the light side and the dark side. The seemingly implacable villain Darth Vader of *A New Hope* was

66. See, e.g., TAYLOR, *supra* note 31, at 248–51; Taylor, *supra* note 63; cf. COCCA, *supra* note 65, at 104–06 (discussing fan reactions to love triangle dynamic between Leia, Han, and Luke during 1977–1984 period).

67. GOLDING, *supra* note 37, at 24–27; see also STAR WARS ON TRIAL, *supra* note 65, at 81–95 (debating whether “the politics of *Star Wars* are anti-democratic and elitist”).

68. See, e.g., Emmet Asher Perrin, *Ewoks Are Not a Good Enough Reason to Hate on Star Wars: Return of the Jedi*, TOR.COM (Dec. 8, 2015, 2:15 PM), <https://www.tor.com/2015/12/08/ewoks-are-not-a-good-enough-reason-to-hate-on-star-wars-return-of-the-jedi/>; Drew Taylor, *How ‘Return of the Jedi’ Ruined ‘Star Wars’ Forever*, INDIEWIRE (May 24, 2013, 12:00 PM), <https://www.indiewire.com/2013/05/how-return-of-the-jedi-ruined-star-wars-forever-97620/>.

69. This line is spoken by Shmi Skywalker to her son Anakin in *The Phantom Menace* during their farewell, reminding her worried son that change is an inevitable part of life.

revealed in *Return of the Jedi* to be a tragic figure trapped in the horrors of the dark side until his son showed him another path still remained available. After 1983, though, when the trilogy concluded, it became easy to think of the *Star Wars* franchise as defined by the Original Trilogy films in the aggregate, a foundational canon created by synthesizing multiple inputs—the same way theologians seek to reconcile the various books of the Old Testament, fans engage with the entirety of other completed serial stories like *Lord of the Rings* or *Harry Potter*, or constitutional scholars interpret the 1789 Constitution and the 1791 Bill of Rights as something much closer to a singular whole than as two separate and distinct events of constitutional creation.

But it has now been twenty years since that perception of *Star Wars* accurately reflected the foundational canon created by George Lucas. Fans had the sixteen years from 1983 to 1999 to examine the Original Trilogy and form opinions—sometimes very strong opinions—about the nature of *Star Wars* storytelling and its most important themes and messages. Then *The Phantom Menace* arrived, changing *Star Wars* forever. Now we had the Old Republic Senate, though mired in corruption and incompetence; we saw the Jedi Order in its prime, though the wise members of the Council were oblivious to the darkness rising around it. We also heard about more controversial elements such as the taxation of trade routes, a prophesied Chosen One, and the notorious midi-chlorians that make strength in the previously spiritual Force detectable by a scientific test. *Attack of Clones* brought an Anakin/Padmé love story that many found less compelling in dialogue or acting than Han/Leia, a strange backstory for Boba Fett, and a Clone Wars in which the Jedi fought alongside the clone army, rather than against it. *Revenge of the Sith* delivered Anakin Skywalker's fall to the dark side and the duel between Darth Vader and Obi-Wan Kenobi on a lava planet that had long been baked into the backstory nuggets revealed by Lucas,⁷⁰ but the film also seemed to contradict longstanding meanings contained in the Original Trilogy movies. Kenobi's dialogue in *A New Hope* recounted that Vader "helped the Empire hunt down and destroy the Jedi [K]nights," but in *Revenge of the Sith* Vader played only a

70. The novelization of *Return of the Jedi*, for example, includes spectral Obi-Wan Kenobi telling Luke Skywalker that "your father fell into a molten pit" during their fateful duel. See Donald Glut, *Return of the Jedi*, at 80, reprinted in *THE STAR WARS TRILOGY: THE 25TH ANNIVERSARY COLLECTOR'S EDITION* (2002).

small role in the overall execution of Order 66, which took place before the formal declaration of the Empire.⁷¹ In *Return of the Jedi*, Leia told Luke that she had faint memories of her birth mother—“images” and “[f]eelings” because “[s]he died when I was very young”—but in *Revenge of the Sith*, Padmé dies in childbirth after delivering both twins in short succession. Whether one cares a great deal, or only a little, about the Prequel Trilogy creating such alleged inconsistencies in *Star Wars* lore, it is undeniable that the franchise after six films had become something different than it had been prior to 1999. The interpretive analysis and synthesis no longer involved three films, but six.

Lucas made clear in his final contribution to the foundational *Star Wars* canon that he cared little about ensuring consistency with the details, as opposed to the themes and ideas, of his prior work. From 2008 to 2014, Lucasfilm released 125 episodes of *The Clone Wars*, an animated television series created and overseen by Lucas personally, with his protégé Dave Filoni serving as supervising director and showrunner for the duration.⁷² *The Clone Wars* spans over forty hours of storytelling, compared to slightly more than thirteen hours for the six films, giving Lucas an immense canvas to elaborate in far greater detail on his ideas about the Force, the Jedi and the Sith, and the light side and the dark side, as well as on themes including loyalty and duty, friendship and love, selfishness and selflessness, political corruption and corporate greed, and the tragedies of war. In its revisionist history, most significantly *The Clone Wars* revealed that Darth Maul, the Sith Lord bisected by Obi-Wan Kenobi before a seemingly fatal plummet into a bottomless ventilation tunnel, had in fact survived the duel—despite Lucas’ own words explaining that he showed Maul’s fate so starkly so that the

71. More recent stories—including the *Star Wars Rebels* animated series (2014–18), the *Darth Vader: Dark Lord of the Sith* comics (2017–18), and the *Jedi Fallen Order* videogame (2019)—have restored meaning to this implication from *A New Hope* by portraying Darth Vader as the leader of the Inquisitors, who are sinister Imperial agents tasked with locating Jedi survivors for over a decade after Order 66.

72. The first four episodes of *The Clone Wars* were aggregated into a single story that was briefly released in theaters in August 2008 before the series began airing on Cartoon Network that fall. After 108 episodes over five seasons on television, the cancellation of the series was announced in the spring of 2013, a few months after Disney acquired Lucasfilm. An additional 13 episodes already significantly into production were completed and released on Netflix in the spring of 2014. Six years later, in the spring of 2020, Lucasfilm released 12 newly produced episodes on the recently launched Disney+ streaming service, finally completing several key storylines from Lucas’ contributions.

audience would know for sure that he was dead and would not be returning in the next film.⁷³ The principal protagonist for the entire series of *The Clone Wars* is Ahsoka Tano, a young Jedi apprenticed to none other than Anakin Skywalker himself; this created a situation rather difficult to reconcile with her not having been mentioned at all in *Revenge of the Sith*, especially in relation to the Jedi Council refusing to award Anakin the rank of Jedi Master⁷⁴—but the matter did not trouble Lucas. Other instances were comparatively minor, but more frequent.⁷⁵ On many occasions, input from Filoni and the other writers and creators behind *The Clone Wars* helped to polish and refine Lucas' ideas on the way to the final product, something that had not occurred with the Prequel Trilogy films, which Lucas had written and directed with far less contribution from others compared to the Original Trilogy.⁷⁶ Across thirty-five years, the evolving canon George Lucas personally produced frequently benefitted greatly from the contributions of others—and the further evolution of the official franchise canon has continued in the decade since Lucas passed the *Star Wars* torch to new stewards.⁷⁷

73. In the July 1999 issue of *Empire* magazine, Lucas said of Darth Maul, “[I] thought this isn’t going to work because, if people like him enough, they are going to want him to come back and they’re going to assume somehow he gets out of it. So I had to cut him in half to say this guy’s gone, he’s history, he ain’t coming back. I’ll come up with another apprentice.” When Filoni questioned Lucas about how Maul could have survived the incident, Lucas replied, “I don’t know. Figure it out.” See Glenn Greenberg, *You Can’t Keep a Good Sith Down*, in JODY HOUSER, *STAR WARS: AGE OF REPUBLIC: VILLAINS* (Marvel Comics, 2019).

74. See, e.g., Caroline Cao, *How I Learned to Love Ahsoka Tano, the Jedi Pariah Who Wasn’t Supposed to Exist*, SALON (May 4, 2020, 5:54 PM), <https://www.salon.com/2020/05/04/star-wars-clone-wars-ahsoka-tano-jedi-disney-plus/>.

75. For example, when Lucas suggested a plot point involving a starship invisible to scanners, Filoni recalled a line of dialogue in *The Empire Strikes Back* indicating that no ship as small as the *Millennium Falcon* has a cloaking device. Lucas dismissed the issue as insignificant, though when Filoni made a minor dialogue revision to *The Clone Wars* episode to avoid any inconsistency, Lucas accepted it. Filoni related this story during a panel at the *Star Wars* Celebration V convention in Orlando, Florida, in August 2010. See Tricia Barr, *The Clone Wars—It’s Not Just for Kids*, FANGIRL BLOG (Oct. 15, 2010), <http://fangirlblog.com/2010/10/the-clone-wars-its-not-just-for-kids/> (“To his credit, Filoni was able to successfully balance Lucas’ inspirational *Star Wars* muse with respect for the material—and the fans.”).

76. See generally, e.g., TAYLOR, *supra* note 31.

77. Since 2020, Dave Filoni has held the title of Executive Creative Director for *Star Wars* at Lucasfilm. See Tricia Barr, *Lucasfilm’s Evolving Leadership*, FANGIRL BLOG (Sept. 22, 2021), <http://fangirlblog.com/2021/09/lucasfilms-evolving-leadership/> (noting industry media reporting that Filoni’s promotion occurred in summer 2020). Filoni’s public remarks in May 2022 addressing the evolving official canon of *Star Wars* and Lucasfilm’s

The same is true for the foundational canon of American constitutional law: the text of the U.S. Constitution and its evolution over time. Whatever one's view about whether the Supreme Court should follow a historically bound originalist methodology or a more flexible "living constitution" methodology of constitutional interpretation in its judicial decisions, everyone agrees that the meaning of the Constitution changes when formal amendments are proposed and ratified under the terms of Article V. But law is never that simple, especially constitutional law. To say that "the Constitution" has changed does not, by itself, answer the question of *how much* the meaning changed after, for example, 1868 or 1920 or 1964 or 1971 due to the ratification of the Fourteenth, Nineteenth, Twenty-Fourth, or Twenty-Sixth Amendments, respectively. Just as George Lucas' later work made changes varying from hand-waving Leia's faint memories of her mother to flat out undoing the death of Darth Maul, so too the amendments to the Constitution might have small—or very large—ripple effects in how we interpret the canon as a whole after the revision has occurred.

For some questions of constitutional interpretation, the ripples of later amendments may be rather insignificant. Consider, for example, the application of the Fourth Amendment's prohibition on unreasonable searches and seizures to advanced modern technology.⁷⁸ No subsequent amendment directly modifies this provision, and the Court's "incorporation" doctrine under the Fourteenth Amendment has the effect of applying the prohibition to the states in the same manner it applies to federal authorities.⁷⁹ To the extent one takes an originalist approach, it is difficult to

responsibility to maintain fidelity to the ideas and values of George Lucas bear strong resemblance to ideas discussed in originalist and non-originalist constitutional theory. See B.J. Priester, *Dave Filoni Speaks at Star Wars Celebration Anaheim 2022*, FANGIRL BLOG (July 1, 2022), <https://fangirlblog.com/2022/07/dave-filoni-speaks-at-star-wars-celebration-anaheim-2022/> ("It's a tremendous responsibility to do anything with one of George's characters. You have to take care of those characters, to be very careful about everything they say and everything they do . . . I got to work with them to show them what I learned from George. It's helping to tie the tradition together."); *id.* ("Nothing's ever just perfect when it begins. It has to evolve. You do your best, and then you do better, and you learn and you learn. That's true in so many walks of life.").

78. See, e.g., Benjamin J. Priester, *A Warrant Requirement Resurgence? The Fourth Amendment in the Roberts Court*, 93 ST. JOHN'S L. REV. 89, 89 (2019); Benjamin J. Priester, *Five Answers and Three Questions After United States v. Jones (2012), the Fourth Amendment "GPS Case"*, 65 OKLA. L. REV. 491, 493–94 (2013).

79. See generally 1 WAYNE R. LAFAVE ET AL., CRIMINAL PROCEDURE §§ 2.2–2.6 (4th ed. 2015).

imagine any likely salient difference between the historical analogies to 1791 compared to 1868 for situations such as the thermal imager scans of a home in *Kyllo v. United States*, the month-long GPS surveillance of a person's motor vehicle in *Jones v. United States*, or the police inspection of digital data contained on smartphones in *Riley v. California*.⁸⁰ Justice Scalia made no such distinction in his two opinions for the Court in *Kyllo* and *Jones*.⁸¹ Likewise, to the extent one does not follow originalism and instead approaches Fourth Amendment doctrines through the development of modern case law to address contemporary situations and technology, it is unlikely that any other post-1791 amendment to the Constitution would play a meaningful role in deciding the appropriate parameters of law enforcement search and seizure authority under the Fourth Amendment in the first quarter of the twenty-first century.⁸²

In other questions of constitutional interpretation, by contrast, a failure to acknowledge the significance of subsequent amendments can distort the interpretation of the meaning of the Constitution—that is, the *current* version of the Constitution,

80. In each case, the Court held that law enforcement had violated the Fourth Amendment by performing the challenged investigatory action without a search warrant. See *Kyllo v. United States*, 533 U.S. 27, 40 (2001); *United States v. Jones*, 565 U.S. 400, 404 (2012); *Riley v. California*, 573 U.S. 373, 401 (2014). In a subsequent case reaching the same holding regarding the acquisition of cell-site location information to help prove a defendant's presence near the scenes of crimes, see *Carpenter v. United States*, 138 S. Ct. 2206, 2221 (2018), the principal dissenting opinions did not rely on historical analogies or originalist arguments, but rather the fact that the cell-site location information had been acquired from third-party business records after obtaining a statutorily authorized court order. See *id.* at 2226–28 (Kennedy, J., dissenting); *id.* at 2247–57, 2260 (Alito, J., dissenting). Compare *id.* at 2244 (Thomas, J., dissenting) (concluding that originalist interpretation of “their . . . papers” excluded Fourth Amendment protection for business records held by a third party, rather than defendant's own papers), with *id.* at 2267–72 (Gorsuch, J., dissenting) (suggesting that individuals might have a protected Fourth Amendment interest, as “their” papers, in some circumstances involving records in third-party custody, but concluding that defendant in *Carpenter* had failed to preserve this argument).

81. See *Kyllo*, 533 U.S. at 31–35; *Jones*, 565 U.S. at 404–11. In his separate opinion in the GPS case—which also had the support of five justices—Justice Alito, who is not an originalist, in part used a humorous footnote to explain why the comparison to common law search authority was not fruitful. See *Jones*, 565 U.S. at 420 n.3 (Alito, J., concurring) (“But it is almost impossible to think of late-18th-century situations that are analogous to what took place in this case . . . [t]he Court suggests that something like this might have occurred in 1791, but this would have required either a gigantic coach, a very tiny constable, or both—not to mention a constable with incredible fortitude and patience.”).

82. On the Court, such non-originalist analyses include Chief Justice Roberts' opinions for the court in *Riley* and *Carpenter*, dissenting opinions by Justice Kennedy and Justice Alito in *Carpenter*, concurring opinions by Justice Alito and Justice Sotomayor in *Jones*, and Justice Stevens' dissent in *Kyllo*.

taken as a whole with the inclusion and implications of *all* later changes to the canonical text. Interpretations of principles of federalism are especially susceptible to this error. The allocation of power between the states and the federal government was, of course, one of the key controversies at the Philadelphia Convention and in the ratifying debates for the 1789 Constitution.⁸³ Accordingly, the arguments and insights from that period have clear relevance to understanding the federal-state balance. But the Constitution's text, and the inferences drawn from the structure of government the text created, did not remain fixed after 1789.⁸⁴ The Supreme Court has determined, not without dissent and academic controversy, that the Eleventh Amendment, ratified in 1795 to overrule the Court's decision in *Chisholm v. Georgia*, not only bars lawsuits against a state by a citizen of another state, as its text expressly declares, but also includes a broader scope of sovereign immunity that also bars lawsuits against a state by its own citizens.⁸⁵ What about the Fourteenth Amendment, ratified in 1868 in the immediate aftermath of the Civil War, which includes several provisions empowering Congress and the federal government to protect and defend individual rights against state infringement? What about the two amendments ratified in 1913: the Sixteenth Amendment, which confirmed Congress' power to impose direct income taxes in addition to those collected by the states, and the Seventeenth Amendment, which abolished the election of U.S. Senators by the state legislatures and instead provided for direct election by the people of each state under the same voter qualifications as the U.S. House of Representatives?

The Supreme Court's highly controversial 5-4 ruling in *Shelby County v. Holder*, holding unconstitutional the 2006 reauthorization of the Voting Rights Act's preclearance requirements,⁸⁶ highlights the problem. The majority opinion by Chief Justice Roberts relied heavily on arguments that changed circumstances at the state level since the enactment of the initial

83. See *supra* notes 54–55 (citing sources).

84. See Thomas B. Colby, *Originalism and Structural Argument*, 113 NW. U. L. REV. 1297, 1299–1300 (2019).

85. See, e.g., *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 76 (1996); *Alden v. Maine*, 527 U.S. 706, 754 (1999); *Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank*, 527 U.S. 627, 647–48 (1999); *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 91–92 (2000); *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 374 (2001); *Allen v. Cooper*, 140 S. Ct. 994, 1007 (2020).

86. *Shelby County v. Holder*, 570 U.S. 529, 556–57 (2013).

Voting Rights Act of 1965 refuted Congress' conclusion that sufficient evidence supported the need for reauthorization of the preclearance requirements, at least in the absence of corresponding modifications to their scope and applicability.⁸⁷ Ironically, the majority opinion also relied extensively on federalism principles in support of the same conclusion—without recognition that the balance of power between Congress, the federal government, and the people on the one hand, and state authority on the other, *itself* had changed over time due to the ratification of new amendments.⁸⁸ One might think that the fact that the explicit text of four different constitutional amendments—the Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Sixth—gives Congress the power to enact legislation to protect voting rights against state abridgement might carry some significant weight in the federalism calculus.⁸⁹ Instead, like *Star Wars* fans who discount and minimize George Lucas' Prequel Trilogy and *The Clone Wars* and instead lionize only the Original Trilogy, the majority of the Court in *Shelby County* relied on a narrow and unrepresentative perspective on the foundational constitutional canon.

B. The Sources and Effects of Distorted Historical Narratives

Like text, history matters. The question of *how much* it matters in evaluating and resolving present problems is considerably more complicated. On the one hand, giving undue weight to the “dead hand of the past” may leave contemporary law and society ill-equipped to face modern realities while also entrenching the injustices of an earlier era.⁹⁰ On the other hand, the aphorism that “those who cannot remember the past are doomed to repeat it” emphasizes the important role history can

87. See *id.* at 538–41, 542, 545–57; *id.* at 558–59 (Thomas, J., concurring). But see *id.* at 563–66, 573–76, 583–85, 590–93 (Ginsburg, J., dissenting).

88. See Franita Tolson, *Election Law “Federalism” and the Limits of the Antidiscrimination Framework*, 59 WM. & MARY L. REV. 2211, 2214–18 (2018); Franita Tolson, *The Equal Sovereignty Principle as Federalism Sub-Docctrine: A Reassessment of Shelby County v. Holder*, in *CONTROVERSIES IN AMERICAN FEDERALISM AND PUBLIC POLICY* 171 (Christopher P. Banks, ed., 2018); Franita Tolson, *Congressional Authority to Protect Voting Rights After Shelby County and Arizona Inter Tribal*, 13 ELECTION L.J. 322 (2014). Compare *Holder*, 570 U.S. at 557–59 (Thomas, J., concurring), with *Holder*, 570 U.S. at 566–70, 585–87 (Ginsburg, J., dissenting).

89. See *Holder*, 570 U.S. at 567 n.3 (Ginsburg, J., dissenting).

90. See, e.g., DAVID A. STRAUSS, *THE LIVING CONSTITUTION* 99–102 (2010).

play in helping to avoid recurring mistakes.⁹¹ In U.S. constitutional law, there is no serious dispute that consideration of historical sources should comprise at least one part of the interpretive process. Rather, the debate concerns whether we should consult only those sources that can facilitate in discerning the original meaning of a constitutional provision at the time of its ratification—which originalists insist must be dispositive—or instead whether we should examine the entire historical record, including what might be decades or even centuries of post-ratification practice, interpretation, and case law.

The *Star Wars* franchise, too, not only draws heavily from real-world historical events and themes,⁹² but also overtly addresses the weight and influence of history within the story. In the Original Trilogy, the Rebellion seeks to overthrow the tyrannical Empire and restore the Republic, a representative democracy.⁹³ In the Prequel Trilogy, the Jedi Order faces a rising menace that challenges their complacency in assuming an historical evil (the Sith) is gone for good, as well as the current implications of an ancient prophecy. In the Sequel Trilogy, the long shadow of the Clone Wars, the Empire, and the Rebellion's successful insurgency still lingers. The protagonist, Rey, knows the legends of earlier heroes but does not initially understand that she must be the person to take up the mantle of heroism for a new generation; her antagonist, Kylo Ren, murderously resents the familial and theological legacies he has inherited and admonishes Rey to "let the past die," as though renunciation could liberate the future from the past.⁹⁴ Luke Skywalker, the optimistic and earnest young hero of the Original Trilogy turned wizardly mentor to Kylo and Rey (at different times), has become pessimistic and fatalistic: from his study of the Jedi Order's fall as well as his own failed experience at reviving it, Luke explains to Rey his conclusion that "it's time

91. GEORGE SANTAYANA, *THE LIFE OF REASON* (1905).

92. See, e.g., *STAR WARS AND HISTORY* (Nancy R. Reagan & Janice Liedl, eds., 2012).

93. For some critics, this dynamic undermines the interpretation that *Star Wars* promotes progressive values. See GOLDING, *supra* note 37, at 27 (discussing such critiques).

94. See B.J. Priester, *Rey's Heroic Journey in The Force Awakens*, FANGIRL BLOG (Feb. 8, 2016), <http://fangirlblog.com/2016/02/reys-heroic-journey-in-the-force-awakens/>; B.J. Priester, *The Last Jedi and the Hero's Journey—Part One: Rey*, FANGIRL BLOG (Jan. 14, 2018), <http://fangirlblog.com/2018/01/the-last-jedi-and-the-heros-journey-part-one-rey/>; B.J. Priester, *The Last Jedi and the Hero's Journey—Part Four: Kylo Ren*, FANGIRL BLOG (Feb. 6, 2018), <http://fangirlblog.com/2018/02/the-last-jedi-and-the-heros-journey-part-four-kylo-ren/>.

for the Jedi to end.”⁹⁵ Ultimately, however, both Kylo’s and Luke’s perspectives are shown to be tragic and misguided, while Rey realizes that she must learn from both the bad *and* the good in the past, as well as make her own choices, in the course of accepting her role as the future of the Jedi.⁹⁶

If history matters and learning from history is important, then we must be especially careful that the historical narratives we use to guide our present- and future-oriented decision-making are accurate. Both originalism and *Star Wars*, however, serve as excellent interpretive community case studies in how distorted historical narratives arise, why they endure, and the consequences of failing to repudiate them.

1. Deceptive Perspectives About Whose Contributions Mattered (or Should Matter)

As noted above, the originalist perspective on constitutional interpretation frequently is vulnerable to the critique that it places undue emphasis on the 1789 Constitution and 1791 Bill of Rights, and comparatively inadequate attention to subsequent Amendments to the foundational text. Likewise, originalism typically places great importance on the views and values of the Founding generation who wrote and ratified those initial provisions—and attributes far less significance, if any, not only to the intentions and values of the subsequent generations of Americans who respectively adopted the later Amendments, but also to how these later developments altered the meaning of the Constitution as a whole.

In terms of doctrinal impact and prominence in case law and scholarship, the most significant post-Founding alteration to the Constitution was the ratification of the Reconstruction Amendments. The adoption of the Equal Protection Clause required consideration of equality in addition to longstanding

95. See B.J. Priester, *The Last Jedi and the Hero’s Journey—Part Three: Luke Skywalker and the Wizard’s Journey*, FANGIRL BLOG (Jan. 26, 2018), <http://fangirlblog.com/2018/01/the-last-jedi-and-the-heros-journey-part-three-luke/>; Jonah Valdez, *Mark Hamill Says He’s Done with Luke Skywalker in ‘Star Wars’: ‘They Don’t Need Luke’*, L.A. TIMES (June 5, 2023), <https://www.latimes.com/entertainment-arts/movies/story/2023-06-05/mark-hamill-star-wars-luke-skywalker-role>.

96. See GOLDING, *supra* note 37, at 192–98; B.J. Priester, *Mastering Two Worlds: Concluding Rey’s Hero’s Journey in The Rise of Skywalker*, FANGIRL BLOG (Jan. 4, 2020), <http://fangirlblog.com/2020/01/mastering-two-worlds-concluding-reys-heros-journey-in-the-rise-of-skywalker/>.

individual liberty rights, and originalists routinely refer to the Fourteenth Amendment's meaning in 1868 as their lodestar.⁹⁷ As interpreted, the same Amendment's Due Process Clause required the states to comply with the liberty rights protected by the Bill of Rights, as well as the unenumerated rights recognized in Supreme Court precedent, and again opinions relying on originalist analysis often make reference to 1868 as well as 1791.⁹⁸ Some of these originalist analyses examine the statements or writings of key members of Congress, like John Bingham and Thaddeus Stevens, who played crucial roles in the drafting and passage of the Amendments as well as much of the key legislation of the period,⁹⁹ but rarely are they given the prominence accorded to Madison, Hamilton, Adams, or Jefferson, even though the Fourteenth Amendment has more impact today than many of the provisions of the initial Constitution.

97. See, e.g., RANDY E. BARNETT & EVAN D. BERNICK, *THE ORIGINAL MEANING OF THE FOURTEENTH AMENDMENT* (2021); Josh Blackman & Ilya Shapiro, *Keeping Pandora's Box Sealed: Privileges or Immunities, the Constitution in 2020, and Properly Extending the Right to Keep and Bear Arms to the States*, 8 GEO. J.L. & PUB. POL'Y 1, 51–53 (2010) (“Originalism demands that the interpreter select the proper temporal location in which to seek the text’s original public meaning.”); Alan Gura, Ilya Shapiro & Josh Blackman, *The Tell-Tale Privileges or Immunities Clause*, 9 CATO SUP. CT. REV. 163, 196 (2010) (arguing that “the correct timeframe for analyzing the Fourteenth Amendment’s substantive protections is the Reconstruction era”).

98. The Establishment Clause, for example, is a provision of the Bill of Rights where using an historical benchmark of 1868 rather than 1791 may make a significant interpretive difference. See PHILIP HAMBURGER, *SEPARATION OF CHURCH AND STATE* 14–17 (2002) (arguing that original meaning of Establishment Clause did not impose separation of church and state, and that principle rose to prominence in later development of U.S. constitutional law). Compare, e.g., *Wallace v. Jaffree*, 472 U.S. 38, 91–107, 113–14 (1985) (Rehnquist, J., dissenting) (emphasizing Founding-era understandings to argue in favor of non-preferentialist principle of neutrality among religious faiths and against separationist principle prohibiting state aid to religious entities), with, e.g., *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 253–65 (1963) (Brennan, J., concurring) (emphasizing that disestablishment of all official state religions decades before 1868 supported application of separationist principle to state governments). More recently, the Court has disputed the nature, extent, uniformity, and meaning of historical practice relating to public displays of religious monuments on public property. See, e.g., *Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 2067, 2074 (2019); *McCreary County v. Am. Civ. Liberties Union of Ky.*, 545 U.S. 844, 850 (2005); *id.* at 885 (Scalia, J., dissenting); Thomas B. Colby, *A Constitutional Hierarchy of Religions? Justice Scalia, the Ten Commandments, and the Future of the Establishment Clause*, 100 NW. U. L. REV. 1097, 1127 (2006) (asserting that Justice Scalia’s interpretation of the Establishment Clause was “selectively drawing upon the historical record to give the appearance of a historical consensus that did not exist”).

99. See, e.g., *McDonald v. City of Chicago*, 561 U.S. 742, 829–35 (2010) (Thomas, J., concurring in part and concurring in the judgment) (emphasizing Bingham’s role in creation of Fourteenth Amendment for purposes of understanding original meaning of Privileges or Immunities Clause); *City of Boerne v. Flores*, 521 U.S. 507, 520–24 (1997) (discussing Bingham’s role in drafting, then revising, Section Five of Fourteenth Amendment).

And if that is what happens with a frequently cited provision like Section One of the Fourteenth Amendment, it is not hard to imagine why narratives about the Founders predominate over those who contributed to other, less doctrinally impactful changes to the constitutional text. Are the views of the antebellum abolitionists who were validated by the Thirteenth Amendment (and parts of the Fourteenth) relevant only to the interpretation of the particular provisions of its text as ratified, or does their validation mark a broader change in what the United States—and its Constitution—stands for?¹⁰⁰ Are the view of the advocates for women’s suffrage, who waged a battle lasting over seventy years from Seneca Falls until the ratification of the Nineteenth Amendment, only pertinent to a single sentence preventing abridgement of the right to vote on the basis of sex, or do they also justify broader anti-discrimination principles in constitutional law?¹⁰¹ Originalism, like the constitutional law argument in general, is susceptible to focusing on textual and doctrinal silos.

But the larger problem is that originalism, by its very nature, is itself shaped by the biases, prejudices, and agendas—unconscious or conscious—found in the historical record and historical scholarship upon which originalism necessarily relies. Think of the number of biographies readily available about Madison or Jefferson; there is only one major biography of

100. See Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 50, 68–70, 77–79 (2019); see also, e.g., Randy E. Barnett, *Whence Comes Section One? The Abolitionist Origins of the Fourteenth Amendment*, 3 J. LEGAL ANALYSIS 165, 165 (2011); Andrew Koppelman, *Originalism, Abortion, and the Thirteenth Amendment*, 112 COLUM. L. REV. 1917, 1917–18 (2012); Gerard N. Magliocca, *The Cherokee Removal and the Fourteenth Amendment*, 53 DUKE L.J. 875, 875 (2003); David A.J. Richards, *Abolitionist Political and Constructional Theory and the Reconstruction Amendments*, 25 LOY. L.A. L. REV. 1187, 1187 (1992).

101. See, e.g., Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 947, 948 (2002); see also H. Jefferson Powell, *Rules for Originalists*, 73 VA. L. REV. 659, 669–70 (1987) (arguing that 1868 understanding of Equal Protection Clause does not and cannot resolve contemporary questions of applicability of Clause to discrimination on the basis of sex or gender). Compare Steven G. Calabresi & Julia T. Rickert, *Originalism and Sex Discrimination*, 90 TEX. L. REV. 1, 2–3 (2011) (arguing that ratification of Nineteenth Amendment clarified original public meaning of Fourteenth Amendment anti-caste principle, though conceding that, “all the major scholars who have written in the field agree with Justices Scalia and Ginsburg that originalism is incompatible with” such an interpretation), with Josh Blackman, *Originalism at the Right Time?*, 90 TEX. L. REV. See also *id.* at 269–70 (2012) (explaining that such an analytical perspective is not originalism, properly understood, because it assesses meaning at a time other than the provision’s adoption).

Bingham, published by law professor Gerard Magliocca in 2016.¹⁰² Were Bingham, Stevens, and their peers really “Radical” Republicans running roughshod over the Constitution (and President Andrew Johnson) after the Civil War, and who rightfully are discounted as equal Framers of the Constitution compared to the Founding generation—or is their reputation a product of the Redemption revisionist history propagated to bolster a tragically ironic narrative of Southern victimhood concurrent with the resurgence and maintenance of white supremacy through private violence and state-sponsored Jim Crow legal regimes?¹⁰³ Despite the axiom, history is not necessarily written only by the victors. Rather, the history that we know—more accurately, that we think we know—is as much a product of the biases and prejudices that determine whose voices are widely distributed, and therefore heard, as any other factor.

This problem is equally acute in *Star Wars*, both for Lucasfilm as steward of the franchise and for the fans and the fandom who cherish, sustain, and support it. Inaccurate perceptions of who loves *Star Wars* have generated distorted narratives of who *Star Wars* is (or ought to be) made for. The narrower the appeal of *Star Wars* is perceived to be, the more difficult it becomes for Lucasfilm to expand its base of fans—and customers, with their associated revenue required for corporate success.

Too often, *Star Wars* is associated in the public consciousness with two subsets of fans as representatives of the franchise and fandom. One is young boys playing with action figures or other *Star Wars* toys. This perception has its roots in truth, of course: it is undeniable that Kenner action figures—a label coined to avoid the connotation of “dolls” for girls¹⁰⁴—in particular played a significant role in extending the pop culture impact of *Star Wars* well beyond the movie theater.¹⁰⁵ In promotional material for its

102. GERARD N. MAGLIOCCA, *AMERICAN FOUNDING SON: JOHN BINGHAM AND THE INVENTION OF THE FOURTEENTH AMENDMENT* (2016).

103. For recent work addressing and refuting Redemption revisionist history narratives, see, e.g., ADAM H. DOMBY, *THE FALSE CAUSE: FRAUD, FABRICATION, AND WHITE SUPREMACY IN CONFEDERATE MEMORY* (2020); HENRY LOUIS GATES JR., *STONY THE ROAD: RECONSTRUCTION, WHITE SUPREMACY, AND THE RISE OF JIM CROW* (2019); NICOLE MAURANTONIO, *CONFEDERATE EXCEPTIONALISM: CIVIL WAR MYTH AND MEMORY IN THE TWENTY-FIRST CENTURY* (2019); RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2018).

104. See, e.g., Derek Johnson, *Calling “Action” in the GoldieBlox Franchise*, *FLOW J.* (Nov. 26, 2014), <https://www.flowjournal.org/2014/11/calling-action-goldieblox-franchis/>.

105. See, e.g., GRAY, *supra* note 19, at 177–87.

movies and animated television series in the Disney era, multiple directors, writers, and other creatives at Lucasfilm have openly talked about their childhood joy playing with action figures and how their current participation in the franchise draws back to those childhood experiences.¹⁰⁶

The other dominant image is “fanboys”: nerds or geeks who are socially awkward (perhaps still living with their parents), obsessed with *Star Wars* factual minutiae to a degree inaccessible by others, and almost invariably portrayed as or understood to be young straight white men. Undoubtedly such individuals have always existed in *Star Wars* fandom—but hardly in sufficient numbers to sustain a multibillion-dollar global pop culture franchise over four decades. Tracing the origin of the public perception is not a simple task,¹⁰⁷ but several contributing factors are worth noting. In 1994, Kevin Smith’s movie *Clerks* leaned hard into the notion of *Star Wars* fans as social outcasts, debating not only trivia but also moral questions such as the presence of innocent contractors and employees on the Death Star when Luke Skywalker destroyed it.¹⁰⁸ In 1997, the backlash to the changes made by George Lucas in the Special Edition theatrical releases of the Original Trilogy reinforced the idea of detail-obsessed hardcore

106. See, e.g., Mandalit del Barco, *For ‘Last Jedi’ Director, the Journey to ‘Star Wars’ Began With Action Figures*, NPR (Dec. 15, 2017, 5:00 AM), <https://www.npr.org/2017/12/15/570590142/star-wars-action-figures-paved-the-way-for-the-last-jedi-director> (Rian Johnson); James Hibberd, *The Mandalorian Unmasked: ‘We Did Things No Star Wars Fan Has Ever Seen’*, ENT. WKLY. (Sept. 5, 2019, 12:00 PM), <https://ew.com/tv/2019/09/05/inside-the-mandalorian-star-wars/> (Dave Filoni and Jon Favreau); Peter Sciretta, *Gary Whitta on Growing Up with Star Wars, Prequel Disappointment and Writing a Spin-Off*, SLASHFILM (Feb. 23, 2015, 9:00 AM), <https://www.slashfilm.com/536368/gary-whitta-star-wars/>.

107. The difficulty arises partly because the perception is ahistorical and inaccurate: “Any suggestion that women had waited for the arrival of *The Force Awakens* to love *Star Wars* is fantastical at best, and even malicious at worst. . . . women *Star Wars* fans have always existed and have always been part of the core *Star Wars* audience.” GOLDING, *supra* note 37, at 108; see also, e.g., WILL BROOKER, *USING THE FORCE: CREATIVITY, COMMUNITY, AND STAR WARS FANS 199–220* (2002) (chapter nine, entitled “*Star Wars* Chicks”); *infra* note 118.

108. See, e.g., Andrew M. Butler, *Invoking the Holy Trilogy: Star Wars in the Askewniverse*, in *TRANSMEDIA STORYTELLING*, *supra* note 32, at 187; Charles C. Camosy, *Chasing Kevin Smith: Was It Immoral for the Rebel Alliance to Destroy the Death Star II?*, in *THE ULTIMATE STAR WARS AND PHILOSOPHY* 67 (Jason T. Eberl & Kevin S. Decker, eds., 2016); Kevin Smith, *Married to the Force*, in *A GALAXY NOT SO FAR AWAY* 70 (Glenn Kenny, ed., 2002); see also *CLERKS* (Miramax Films 1994).

fanboys.¹⁰⁹ Again with the Prequel Trilogy films, the backlash from some quarters within fandom furthered the perception of narrow-minded *Star Wars* fanboys prone to lengthy detail-ridden tirades to express their negative reactions, in contrast to the general audience, which fueled the box office success of the movies and did not find their flaws to be sufficiently egregious to warrant internet fury.¹¹⁰ Within a few years after the Prequel Trilogy concluded, CBS began to air the sitcom *The Big Bang Theory*,¹¹¹ which ultimately became the number one show on television toward the end of its twelve-season run, and the Weinstein Company distributed the feature film *Fanboys*, a story about a group of friends making a cross-county trip in 1998 to break into Skywalker Ranch so one of them could watch *The Phantom Menace* before he succumbed to terminal cancer.¹¹² By the time Disney acquired Lucasfilm in 2012, these perceptions led Disney to allocate *Star*

109. See, e.g., TAYLOR, *supra* note 31, at 310–17; Germain Lussier, *The Star Wars Special Editions Remain a Crucial Milestone 20 Years Later*, GIZMODO (Jan. 19, 2017), <https://io9.gizmodo.com/the-star-wars-special-editions-remain-a-crucial-milestone-1791313712>. Other criticism of Lucas' changes, however, emphasized the importance of the original versions of the films to cinema history. See, e.g., TAYLOR, *supra* note 31, at 314–15; Brendan Nystedt, *From a Certain Point of View*, CONTINGENT MAG. (Dec. 10, 2019), <https://contingentmagazine.org/2019/12/10/certain-point-of-view/> (“[B]y denying access to the unaltered original cuts, Lucas has left us without critical cultural documents in a modern format.”).

110. See, e.g., BROOKER, *supra* note 107, at 79–99, 239–74; GOLDING, *supra* note 37, at 38–39, 50, 210; TAYLOR, *supra* note 29, at 331, 337–38. The Prequel Trilogy films also received criticism from outside *Star Wars* fandom, such as arguments that they perpetuated harmful tropes or stereotypes. See, e.g., COCCA, *supra* note 65, at 107–13; GOLDING, *supra* note 37, at 96–101; TAYLOR, *supra* note 31, at 306.

111. See, e.g., GEORGE BEAHM, UNRAVELING THE MYSTERIES OF *THE BIG BANG THEORY* (updated edition 2014); ADAM FABERMAN, *THE BIG BANG THEORY: THE OFFICIAL TRIVIA GUIDE* (2015); Neima Jaromi, *How “The Big Bang Theory” Normalized Nerd Culture*, THE NEW YORKER (May 18, 2019), <https://www.newyorker.com/culture/culture-desk/how-the-big-bang-theory-normalized-nerd-culture>; Noel Murray, *The Big Bang Theory is Better at Portraying Geekdom than Haters Admit*, THE VERGE (Aug. 30, 2018, 2:24 PM), <https://www.theverge.com/2018/8/30/17800522/big-bang-theory-canceled-cbs-defense-geek-culture-haters>.

112. *FANBOYS* (Trigger Street Productions 2009). The initial drafts of the movie, along with some later versions and revisions, were written by Ernest Cline, who became better known for his best-selling 2011 novel *Ready Player One*, which was adapted into a 2018 feature film directed by Steven Spielberg. The production of *Fanboys* involved considerable contributions of time, money, costumes and props, and volunteer effort from *Star Wars* fans who became aware of the project through internet fan sites; when Harvey Weinstein meddled in the production, including reshoots and re-cutting the film, fan backlash ultimately led Weinstein to relent and allow the original director, Kyle Newman, to finish for release a final version that was closer to the participants' longstanding intention for the project. See, e.g., Jordan Hoffman, *The Oral History of ‘Fanboys,’ a Love Letter to ‘Star Wars’ Obliterated by the Dark Side of Hollywood*, THRILLIST (Mar. 26, 2018, 1:04 PM), <https://www.thrillist.com/entertainment/nation/oral-history-fanboys-harvey-weinstein>.

Wars toys to the “boys” side of their ledger (while Disney Princesses, for example, fell on the “girls” side) and to compare *Star Wars* to Marvel, another recently added Disney subsidiary, as a niche geek-oriented property.¹¹³

Outside the broader public eye, other inaccurate narratives shaped perceptions of *Star Wars* within the narrower scope of the *Star Wars* fandom itself, as well as the interactions between Lucasfilm as the franchise manager and the fandom as its audience and customers. For many years, the officially sponsored *Star Wars* conventions and magazine, *Star Wars Insider*, placed heavy emphasis on collectors and collecting within fandom, including action figures, trading cards, celebrity autographs, memorabilia, and other items.¹¹⁴ Some of this likely can be attributed to the fact that, for about fifteen years from shortly before the Special Editions to shortly before the Disney merger, the head of Fan Relations at Lucasfilm was Steve Sansweet, whose personal *Star Wars* collection is housed in a non-profit museum and archive cited by the *Guinness Book of World Records* as the largest in the world.¹¹⁵ Similarly, Lucasfilm formed partnerships with several nationwide cosplay organizations, such as the 501st Legion and Rebel Legion, for charity fundraisers and other functions.¹¹⁶ But these organizations limited membership to those individuals with the time and money to create fan-made “screen

113. See, e.g., Marc Graser, ‘*Star Wars*,’ *Marvel to Boost Disney’s Already Dominant Licensing Biz*, VARIETY (June 17, 2013, 11:55 PM), <https://variety.com/2013/biz/news/star-wars-marvel-to-boost-disneys-already-dominant-licensing-biz-1200498150/> (reporting on Disney Consumer Products presentation at Licensing Expo in Las Vegas, Nevada, and noting that “‘*Star Wars*’ and Marvel’s superheroes are especially being turned to as a way to target boys.”); see also COCCA, *supra* note 65, at 90 (quoting George Lucas that “‘*Star Wars*’ was designed for twelve-year-old boys”); GOLDING, *supra* note 37, at 95 (noting that Lucas described *The Phantom Menace* as “a boy movie” in contrast to James Cameron’s *Titanic*, released two years earlier); *id.* at 103 (noting that J.J. Abrams expressed intentions for *The Force Awakens* to appeal to mothers and daughters as well as fathers and sons); *id.* at 108 (noting public controversy over Rey’s lack of prominence in merchandise for *The Force Awakens*, including social media hashtag #WheresRey); Lorna Jewett, *Rey, Mary Sue, and Pasma Too: Feminism and Fan Responses to The Force Awakens Merchandise*, in *DISNEY’S STAR WARS*, *supra* note 32, at 192.

114. See, e.g., Lincoln Geraghty, *Class, Capital, and Collecting in Media Fandom*, in *ROUTLEDGE COMPANION*, *supra* note 20, at 216–19; LINCOLN GERAGHTY, *CULT COLLECTORS* 120–38 (2014).

115. See Clayton Sandell, *Rancho Obi-Wan: This Man Spent Years Building the Largest ‘Star Wars’ Collection in the World*, ABC NEWS (Oct. 23, 2018, 3:58 PM), <https://abcnews.go.com/Entertainment/News/rancho-obi-wan-man-spent-20-years-building/story?id=58695191>; TAYLOR, *supra* note 31, at 197–99; see also STEPHEN SANSWEET, *STAR WARS: FROM CONCEPT TO SCREEN TO COLLECTIBLE* (1992).

116. See, e.g., TAYLOR, *supra* note 31, at 28–35.

accurate” costumes matching those in the *Star Wars* movies, as well as the willingness to navigate the detailed and inconsistently enforced accuracy rules accompanied by hierarchies of leadership and internal politics.¹¹⁷ During the heyday of internet message board discussions prior to the emergence of social media, professional contributors to the *Star Wars* Expanded Universe at Lucasfilm and its licensees were instructed to avoid reading fanfiction or participating in fanfiction communities (predominantly composed of women) due to concerns about copyright claims,¹¹⁸ but they were permitted to engage in discussion of facts, lore, continuity, and retcons in the “nonfiction” areas of fandom discussion (predominantly composed of men).¹¹⁹ Over time, this led professionals to hold distorted perceptions of the fandom experience in engaging with official *Star Wars* material, as well as fan perceptions that the franchise valued praise and constructive criticism only from certain types of fans.¹²⁰ Each of these three examples illustrate how Lucasfilm’s franchise management inadvertently created and perpetuated the message that certain kinds of *Star Wars* fans were more important than others.

In reality, *Star Wars* always has held tremendous mainstream appeal, and its fandom has never been limited to certain favored perceptions. Girls played with *Star Wars* action figures too; in fact, many of the early Kenner advertisements contained considerably more diversity in the children shown than the marketing two decades later.¹²¹ Women wrote for, printed, and distributed the

117. See, e.g., *Condescension, Snobbery, Rankism & Cosplay Bullying in Costume Clubs*, COSTUMING, COSPLAY & COSTUME CLUBS 101 (May 24, 2019), <https://ccc101blog.wordpress.com/2019/05/24/condescension-snobbery-rankism-cosplay-bullying-in-costume-clubs/>.

118. See, e.g., Priester, *We’ve Been Here Before*, *supra* note 62.

119. See Tricia Barr, *Fangirl Speaks Up: The Missing Demographic*, FANGIRL BLOG (Feb. 24, 2011), <http://fangirlblog.com/2011/02/fangirl-speaks-up-fanfic/>. “Retcon is a shortened form of *retroactive continuity* and refers to a literary device in which the form or content of a previously established narrative is changed.” *Words We’re Watching: A Short History of “Retcon”*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/words-at-play/retcon-history-and-meaning> (last visited July 10, 2023).

120. See Barr, *supra* note 119; see also Tricia Barr, *Fangirl Speaks Up: Star Wars Books and Me—Caught in a Bad Romance*, FANGIRL BLOG (Feb. 14, 2011), <http://fangirlblog.com/2011/02/fangirl-speaks-up-star-wars-books-bad-romance/>; Tricia Barr, *Fangirl Speaks Up: Reenergizing the EU Novels*, FANGIRL BLOG (Mar. 19, 2011), <http://fangirlblog.com/2011/03/fangirl-speaks-up-reenergizing-eu-novels/>.

121. See, e.g., John Marcotte, *Vintage Star Wars Commercial Gives Us a New Hope That Gender Barriers Can Fall*, HEROICGIRLS (Nov. 13, 2015), <http://www.heroicgirls.com/>

fanzines of the Original Trilogy era—to the point that one discussion famously asked why the fanzine community had so few male participants.¹²² Countless fans made and enjoyed their own homemade *Star Wars* costumes, without any intention of achieving “screen accuracy,” or actually opened up and played with their toys, rather than preserving them in sealed collectible condition.¹²³ And, it should go without saying, many millions of people who would not self-identify as nerds, geeks, science-fiction aficionados, or fanboys nevertheless love and have loved *Star Wars* from the beginning. Early in the new Disney era of *Star Wars*, Lucasfilm began to push out messaging that “*Star Wars* is for everyone” alongside its new slate of stories with more diverse casts of characters (if not behind-the-scenes creatives) than ever before.¹²⁴ How much the franchise has lived up to this messaging, and how

vintage-star-wars-commercial-gives-us-a-new-hope-that-gender-barriers-can-fall/ (“The commercial is actually striking in that it shows a boy and a girl playing together with the same toys. Toy companies don’t do that very often anymore.”) *cf.*, *e.g.*, Jessica Samachow, *Let Toys Be Toys Compares 1970s Toy Catalogue To Toy Marketing Today*, HUFFINGTON POST (June 7, 2013, 1:32 PM), https://www.huffpost.com/entry/let-toys-be-toys_n_3402972; Elizabeth Sweet, *Guys and Dolls No More?*, N.Y. TIMES (Dec. 21, 2012) <http://www.nytimes.com/2012/12/23/opinion/sunday/gender-based-toy-marketing-returns.html>; Elizabeth Sweet, *Toys Are More Divided by Gender Now than They Were 50 Years Ago*, THE ATLANTIC (Dec. 9, 2014), <https://www.theatlantic.com/business/archive/2014/12/toys-are-more-divided-by-gender-now-than-they-were-50-years-ago/383556/>.

122. See Maggie Nowakowska, *The Incomparable Jundland Wastes*, FANLORE (2001) https://fanlore.org/w/images/b/ba/JundlandWastes-rollup_2009-1.pdf (recounting an extensive history of Original Trilogy era *Star Wars* fanzines); see also, *e.g.*, Tricia Barr, *Fangirls Flying High*, STAR WARS INSIDER #151, at 20–25 (describing *Star Wars* fanzine history related by Maggie Nowakowska); @Fangirl Chat, *Fangirl Chat Episode 17: Interview with Maggie Nowakowska*, YOUTUBE (Aug. 10, 2014), https://www.youtube.com/watch?v=NG1kb4C_Ym0. Nowakowska’s personal collection of fanzine materials is included in the fan works archive of the University of Iowa Libraries. See *Maggie Nowakowska Collection of Star Wars Fan Material*, ARCHIVESPACE AT THE UNIV. OF IOWA, <http://aspace.lib.uiowa.edu/repositories/2/resources/851> (last visited Aug. 14, 2023). Women have been active participants throughout the internet era of *Star Wars* fandom, as well. See, *e.g.*, BROOKER, *supra* note 107, at 199–220 (interviewing women active in online fandom during the late 1990s).

123. The contrast between treating franchise products as collectibles or toys served as the conceit of a well-known episode of *The Big Bang Theory*, which featured a voice cameo by Leonard Nimoy and his iconic *Star Trek* character Spock serving as the personification of Sheldon Cooper’s personal moral conscience. *The Big Bang Theory: The Transporter Malfunction* (CBS television broadcast Mar. 29, 2012).

124. See, *e.g.*, Kristin Baver, *Her Universe Honors “Sisters of the Force” in New Collection at Star Wars Celebration Chicago—Exclusive*, STARWARS.COM (Apr. 3, 2019), <https://www.starwars.com/news/her-universe-star-wars-celebration-chicago-exclusive>; Amy Ratcliffe, *Discussing the Star Wars Publishing Landscape with Lucasfilm’s Michael Siglain*, STARWARS.COM (Oct. 10, 2017), <https://www.starwars.com/news/discussing-the-star-wars-publishing-landscape-with-lucasfilm-michael-siglain>.

much it has changed general public and *Star Wars* fandom perceptions of the franchise, remains a work in progress.

2. *Nostalgia for a Past That Never Was—to Serve Present Objectives*

The human emotion called nostalgia can be challenging to define, and depending on the context it can have a range of connotations. Remembering past events in our own personal lives can reflect fond memories or bittersweet wistfulness. In the field of fan studies, nostalgia has particular relevance for examining how individual fans or a fandom engage with a franchise or serial story over an extended period of time.¹²⁵ Often cited in fan studies scholarship, the late Harvard professor Svetlana Boym described nostalgia as “the repetition of the unrepeatable,” in the sense of seeking to revisit or recapture a past moment, and as “fantasies of the past determined by needs of the present.”¹²⁶ In his 2019 monograph *Star Wars After Lucas*, Dan Golding explains that “the nostalgist necessarily remakes history for the contemporary moment” based on a yearning for an idealized past as an alternative to a disappointing present.¹²⁷ But nostalgia also can be weaponized, in politics or in fandom.¹²⁸ Golding notes that those who advocate for social change—or who offer critical perspectives on media or society, such as feminism, anti-racism, and Marxism—conceive of nostalgia “as a strategy of repression” because it can be used “to empower the present with what has been lost to the past.”¹²⁹ Fan studies founding father Henry Jenkins similarly argued that “for nostalgia to operate, we must in fact forget aspects

125. See, e.g., Lincoln Geraghty, *Nostalgia, Fandom and the Remediation of Children's Culture*, in WILEY COMPANION, *supra* note 20, at 161; GOLDING, *supra* note 37, at 9–16.

126. GOLDING, *supra* note 37, at 15, 190 (quoting SVETLANA BOYM, *THE FUTURE OF NOSTALGIA* xvii, 19 (2001)).

127. *Id.* at 15, 55 (citing Frederic James, *Nostalgia for the Present*, 88 S. ATL. Q. 517 (1989), and quoting CARLY A. KOCUREK, *COIN-OPERATED AMERICANS: REBOOTING BOYHOOD AT THE VIDEO ARCADE* 160 (2015)).

128. *Id.* at 55 (“I use the term *weaponized* nostalgia here, not just because nostalgia is wielded as a tool to appeal to audiences’ emotional drives, but because it is aimed like a weapon, too.”).

129. *Id.* at 13–14; Reva B. Siegel, *Memory Games: Dobbs's Originalism as Anti-Democratic Living Constitutionalism—and Some Pathways for Resistance*, 101 TEX. L. REV. 1127, 1133 (2023) (“Originalism turns to the past in search for authority whose claim on the collective imagination is powerful enough to displace—and ultimately to kill off—rival claims on the collective imagination. Originalism tells stories about ‘We the People’ that have the power to discredit other stories about ‘We the People’—the stories that gave life to decisions of the Warren and Burger Courts.”).

of the actual past and substitute a sentimental myth about how things might have been.”¹³⁰ In both originalist constitutional interpretation and the *Star Wars* franchise, nostalgia ultimately is not about reconnecting authentically with a prior historical moment. Instead, their nostalgias involve asserting claims to dispositive meaning, based on an account of a past that never truly existed, to serve present objectives.

In mainstream news coverage and entertainment media discussions about popular culture, it is common to observe references to a supposed consensus that the Original Trilogy is the best *Star Wars* and that later entries in the franchise were inferior in quality and more controversially received. This conventional wisdom is held and propagated especially by many fans who experienced or grew up with the Original Trilogy as their defining *Star Wars*, who not coincidentally are members of the generations (Boomer and Gen X) which have predominated in the influential positions in news media, film and entertainment criticism, and the entertainment industry generally.¹³¹ These assumptions are often recounted without question, though at times it can be difficult to tell whether that is a result of genuine ignorance about the historical trajectory of *Star Wars* or rather reliance on superficial hyperbole for rhetorical effect. More nuance typically is found in academic publications as well as less formal commentary from scholars, though the generational effect remains present in that field, too.¹³²

Debunking all of the ways this form of *Star Wars* nostalgia is misguided would itself consume an entire article (at least). While the supposed consensus about the superiority of the Original Trilogy may hold something close to true among first-generation Original Trilogy fans, the franchise now has passed through more than half of its existence with other entry points—the Expanded

130. HENRY JENKINS, *THE WOW CLIMAX: TRACING THE EMOTIONAL IMPACT OF POPULAR CULTURE* 157 (2007) (quoted in Geraghty, *supra* note 125, at 162); cf. Doni Gewirtzman, *Glory Days: Popular Constitutionalism, Nostalgia, and the True Nature of Constitutional Culture*, 93 *GEO. L.J.* 897, 902 (2005) (introducing article in part by saying that it “accuses popular constitutionalists of maintaining a nostalgic view of the People that ignores contemporary political trends”).

131. See RYAN LIZARDI, *NOSTALGIC GENERATIONS AND MEDIA: PERCEPTIONS OF TIME AND AVAILABLE MEANING* ix–xi, 17–32, 135–42 (2017).

132. See, e.g., Will Brooker & Dan Hassler-Forest, *Afterword: “You’ll Find I’m Full of Surprises”: The Future of Star Wars*, in *TRANSMEDIA STORYTELLING*, *supra* note 32, at 290 (“I am more of a fan of *Star Wars* than I was between 2005 and 2016, but I also recognize that it isn’t being made entirely for me, and people like me, anymore.”).

Universe, the Prequel Trilogy, *The Clone Wars*, and most recently the Sequel Trilogy and *Star Wars Rebels*—and corresponding favorite stories and characters for those fans who first fell in love with *Star Wars* because of them.¹³³ Moreover, even the Original Trilogy is far from perfect, and often nostalgia for it is hued significantly by a metaphorical pair of rose-colored glasses. Anyone who claims Hayden Christensen’s Anakin Skywalker in *Attack of the Clones* is too petulant and annoying should be assigned to reassess Mark Hamill’s Luke Skywalker based only on rewatching the first ninety minutes of *A New Hope*; anyone who claims the sense of humor in a newer *Star Wars* movie is too silly needs to revisit some of Han Solo’s “jokes” in the Original Trilogy, such as a quip about the odor of a disemboweled Tauntaun on frozen Hoth or his use of the classic slapstick tap-on-one-shoulder-and-run-off-in-the-other-direction diversion during the battle on the forest moon of Endor. It is understandable why fans would hold their favorite parts of *Star Wars* in the highest esteem, but the conclusion that other parts of *Star Wars* fall short of that benchmark is a different kind of claim.

When it relaunched *Star Wars* films in theaters after the Disney acquisition, Lucasfilm leaned heavily on messages of nostalgia aimed at its first-generation fans. Golding notes that marketing and promotion for *The Force Awakens* overtly emphasized the idea of homesickness for the old days, including Han Solo’s line of dialogue in the first teaser trailer, spoken to Chewbacca upon entering the *Millennium Falcon*: “Chewie, we’re home.”¹³⁴ Likewise, the creative team behind *Rogue One* repeatedly referenced the idea that the film, which portrays events in Rebellion in the days directly leading into *A New Hope*, should be based on the Original Trilogy the way fans remembered it, not how it really was, which gave them implicit permission to improve upon the past rather than simply remake it.¹³⁵ Some fans, particularly those who love the Prequel Trilogy or *The Clone Wars*, interpreted this emphasis by Lucasfilm as a not-so-subtle

133. See, e.g., Jamie Greene, *How the Next Generation is Discovering Star Wars*, STARWARS.COM (Feb. 22, 2019), <https://www.starwars.com/news/how-the-next-generation-is-discovering-star-wars>; Ethan Gilsdorf, ‘Star Wars’ Is Different for Different Generations, BOS. GLOBE (Dec. 12, 2015, 2:51 PM), <https://www.bostonglobe.com/arts/2015/12/12/starwarsgenerations/PLDMidc6USG536AfUaPA7N/story.html>.

134. GOLDING, *supra* note 37, at 15–16.

135. *Id.* at 143.

validation of the complaints of the Original Trilogy generation in the hopes of earning back their full loyalty—without adequate consideration of how that message would be received by other fans who do not share that set of feelings and biases about the franchise.¹³⁶

The insight of academic study of nostalgia and fan studies scholarship about fandoms and franchises, though, is to make the fundamental point that nostalgia for a *Star Wars* guided—or governed—by the lodestar of the allegedly superior Original Trilogy does not come from a desire for accuracy in describing the actual past history of the franchise, but rather from the objective of supporting particular claims about its present. Fans who most loudly lionize the Original Trilogy are not doing so to celebrate what they already love, but to impugn something new for failing to meet—or cater to—their expectations. They are, in essence, demanding that the *Star Wars* franchise *not* change to broaden its U.S. or global appeal, welcome new demographics of fans, or even to cultivate new generations of fans by appealing to today’s children rather than the now-grown erstwhile child fans of yesteryear.¹³⁷ When Lucasfilm is perceived as confirming and validating that present agenda, it undermines the rest of the franchise’s messaging that *Star Wars* is for everyone.

The similarities to originalist constitutional interpretation are striking. As discussed in Part III.A., originalism often relies upon a misleading account of the Founding era which elides the disagreement, compromises, and unresolved controversies of the period—with the goal of presenting an apparent consensus original

136. See, e.g., *id.* at 53–55.

137. In late September 2013, a YouTube video titled “4 Rules to Make *Star Wars* Great Again” and framed as an open letter to newly hired Episode VII director J.J. Abrams garnered considerable attention online, and ultimately notice from Abrams himself. See Charlie Jane Anders, *A Beautifully Animated Open Letter to J.J. Abrams About Star Wars*, GIZMODO (Sep. 26, 2013), <https://io9.gizmodo.com/a-beautifully-animated-open-letter-to-j-j-abrams-about-1397273170>; Joseph Rose, *How a Portland Fan Helped J.J. Abrams Save ‘Star Wars’ (Video)*, OR. LIVE (Dec. 16, 2015, 3:25 PM), https://www.oregonlive.com/geek/2015/12/portland_writer_helps_jj_abram.html. But the video also received considerable pushback from those who maintained that its “rules” reflected a narrow and unrepresentative perspective on the franchise’s prior success. See, e.g., Brad Pilcher, *These Four “Rules” Will Not Make STAR WARS Great Again*, COLLIDER (Oct. 12, 2013), <https://collider.com/star-wars-rules-editorial/>; Forest Wickman, *These Rules for the Star Wars Sequels Have It All Wrong*, SLATE (Sep. 30, 2013, 3:42 PM), <https://slate.com/culture/2013/09/4-rules-to-make-star-wars-great-again-video-goes-viral-4-reasons-these-rules-have-it-all-wrong.html>; cf. GRAY, *supra* note 19, at 185 (discussing older fans buying *Star Wars* toys as gifts for children to share franchise with a new generation).

meaning to be given dispositive effect today. And even if it were possible to glean a definitive understanding from among the politically influential white men who wielded power as the Framers of the Constitution and Bill of Rights, that would not be sufficient to answer the objection that today's Americans perhaps should not place too much weight on the views and values of men who held enslaved persons in bondage and denied women most legal rights, among their most egregious character flaws. The Reconstruction Congress compelled the adoption of three constitutional amendments to end slavery and protect civil rights of the Freedmen, yet nevertheless perpetuated ongoing legal and societal discrimination against women and did nothing to end the forced migration and ethnic cleansing of indigenous peoples, which had begun in the antebellum years and continued under the power of the U.S. Army for several more decades. The twentieth century marked a series of major changes to the United States, including the power of organized labor and advocacy for women's suffrage, the Great Depression and the New Deal, and social upheaval to demand desegregation and civil rights, women's equality, and gay rights—and a consistent thread of resistance and backlash to each of these developments, usually accompanied by weaponized nostalgia for an earlier (fictitious) time marked by prosperity and calm (for the non-oppressed).

The distortion of history within the originalist interpretive community occurs not only at a high level of conceptual generality, but also in its application to specific doctrinal disputes of constitutional law. To take a recent example, Professors Mortenson and Bagley have thoroughly documented how the non-delegation doctrine advocated by originalist justices on the Supreme Court is not actually supported by the historical record from the Founding era.¹³⁸ Similarly, Professor Shugerman has catalogued numerous errors in the research and analysis by originalist scholars, including in briefs filed with the Court, relating to the president's removal power.¹³⁹ The account of U.S. history, even U.S. legal history, on which originalists rely is not an authentic one, but rather a narrative tailored to suit the present

138. See Julian Davis Mortenson & Nicholas Bagley, *Delegation at the Founding*, 121 COLUM. L. REV. 277 (2021).

139. See Jed Handelsman Shugerman, *Removal of Context: Blackstone, Limited Monarchy, and the Limits of Unitary Originalism*, 33 YALE J.L. & HUMANS. 125 (2022).

objectives of originalists: contesting constitutional law they oppose.

3. Resentment of Change and Backlash to Increasing Pluralism and Inclusion

The symbiotic relationship between originalist constitutional interpretation and politically conservative organizations and actors in U.S. politics—principally the Republican party of the past forty to fifty years,¹⁴⁰ along with its affiliates and allies¹⁴¹—is not a coincidence. In political philosophy, conservative thinkers and theories advocate for the primacy of traditional practices and values because longstanding endurance demonstrates the strength and quality of those underlying ideas;¹⁴² in the study of political philosophy, the Straussian perspective advocates for closely reading the “great books” by famous philosophers for the same reason: their longstanding prominence vindicates the significance of their insights in a kind of Philosophical Darwinism survival of the fittest.¹⁴³ Consequently, those philosophical positions are suited to politicians who generally oppose rapid major social change and prefer to keep things mostly the way they are, subject to incremental and gradual shifts over time.¹⁴⁴ In the same way, originalism as a theory of constitutional interpretation advances the normative claim that an historical original meaning is dispositive as the current meaning too, and such a perspective is

140. See, e.g., HEATHER COX RICHARDSON, *TO MAKE MEN FREE: A HISTORY OF THE REPUBLICAN PARTY* (2014).

141. See, e.g., ALEX HERTEL-FERNANDEZ, *STATE CAPTURE: HOW CONSERVATIVE ACTIVISTS, BIG BUSINESSES, AND WEALTHY DONORS RESHAPED THE AMERICAN STATES—AND THE NATION* (2019); AMANDA HOLLIS-BRUSKY, *IDEAS WITH CONSEQUENCES: THE FEDERALIST SOCIETY AND THE CONSERVATIVE COUNTERREVOLUTION* (Updated Paperback ed. 2019); KEVIN M. KRUSE & JULIAN E. ZELIZER, *FAULT LINES: A HISTORY OF THE UNITED STATES SINCE 1974* (2019); JILL LEPORE, *THE WHITES OF THEIR EYES: THE TEA PARTY’S REVOLUTION AND THE BATTLE OVER AMERICAN HISTORY* (2011); JANE MAYER, *DARK MONEY: THE HIDDEN HISTORY OF THE BILLIONAIRES BEHIND THE RISE OF THE RADICAL RIGHT* (2016); THEDA SKOCPOL & VANESSA WILLIAMSON, *THE TEA PARTY AND THE REMAKING OF REPUBLICAN CONSERVATISM* (Updated ed. 2016).

142. See, e.g., COREY ROBIN, *THE REACTIONARY MIND: CONSERVATISM FROM EDMUND BURKE TO DONALD TRUMP* (2d ed. 2017); HARVEY C. MANSFIELD, JR., *MANLINESS* (2006).

143. See, e.g., HARVEY C. MANSFIELD, JR., *A STUDENT’S GUIDE TO POLITICAL PHILOSOPHY* (2001); *HISTORY OF POLITICAL PHILOSOPHY* 907–34 (Leo Strauss & Joseph Cropsey, eds., 3d ed. 1987).

144. See, e.g., ROBIN, *supra* note 142; cf. Jamal Greene, *On the Origins of Originalism*, 88 TEX. L. REV. 1, 62 (2009) (contrasting prominence of originalism in constitutional interpretation in United States with its insignificance in similar constitutional systems in Canada and Australia, and presenting six hypotheses regarding difference).

suitable to scholars and judges who oppose modern changes in the judicially constructed doctrines of constitutional law to account for shifts in underlying society. (Admittedly, a small number of scholars have advanced originalist arguments in support of progressive or politically liberal views, but they are idiosyncratic and noticeably atypical in the field.¹⁴⁵) The emphasis that originalism places on altering the meaning of the Constitution only by formal amendment, rather than judicial decision-making, follows from the super-majority hurdles in Article V, which make amending the Constitution difficult.¹⁴⁶ Originalists favor originalism *because of*, not in spite of, the fact that it entrenches historical principles and values—or, more accurately, what originalists believe or claim that history to be—at the expense of present realities.¹⁴⁷

But something deeper is going on than simply a philosophical or conceptual disagreement about the appropriate pace of, and process for, undertaking significant legal change. After all, appeals to historical authority have long been a prominent part of conservative constitutional decisions from the Supreme Court. The brazenly overt racism of Chief Justice Taney's opinion for the Court in *Dred Scott* did not rely simply on white supremacist narratives about biology, culture, religion, and civilization, but also on the provisions of the antebellum Constitution and

145. See, e.g., JACK M. BALKIN, *LIVING ORIGINALISM* (2014); AHKIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* (2000); see also Steven G. Calabresi & Lauren Pope, *Judge Robert H. Bork and Constitutional Change: An Essay on Ollman v. Evans*, 80 U. CHI. L. REV. DIALOGUE 155, 158 (2013) ("Together Professors Amar and Balkin have become the powerful advocates of what might be called the Yale Law School approach of liberal originalism and textualism in constitutional interpretation.").

146. See, e.g., Blackman, *supra* note 101, at 38 (discussing importance of Article V amendments to originalism).

147. See Jamal Greene et al., *Profiling Originalism*, 111 COLUM. L. REV. 356, 356 (2011) ("We conclude that rule of law concerns, support for politically conservative issue positions, and a cultural orientation toward moral traditionalism and libertarianism are all significant predictors of an individual preference for originalism."); Sinha, *supra* note 38, at 774 ("Originalism resolves constitutional questions by casting its eyes back toward a meaning fixed at a time when—especially for the oldest provisions of the Constitution—moral inequality was widely accepted. It therefore carries a propensity . . . to incorporate inequality substantively into the outcomes of constitutional adjudication. For this very reason, many scholars routinely link originalism with substantive inequality in result."); cf., e.g., *Pers. Admin'r v. Feeney*, 442 U.S. 256, 279 (1979) ("Discriminatory purpose,' however, implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker, in this case a state legislature, selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group.").

assertions about the views and beliefs of the original Framers.¹⁴⁸ The Court in *Lochner* did not simply express its disagreement with the economic policy enacted in New York’s labor law protecting bakers, but also emphasized arguments that a freedom of contract constitutionally shielded from state interference could be found in the Constitution.¹⁴⁹ The rise of originalism in constitutional law, however, corresponds with a pervasive and decades-long effort by conservative and reactionary political factions¹⁵⁰ to maximize the use of counter-majoritarian tools—including the malapportionment of the U.S. Senate as exacerbated by the filibuster, gerrymandering and voter suppression, and judicial decisions applying constitutional law¹⁵¹—to obstruct social change that benefits a wide range of historically marginalized groups. The first wave of modern originalism arose after *Brown v. Board of Education* and developed in tandem with “massive resistance” to desegregation.¹⁵² Robert Bork opposed federal public-accommodations civil rights legislation years before he excoriated the Court for its decisions protecting reproductive autonomy against governmental interference, and other cases he derided as repugnant to traditional morality.¹⁵³ Justice Scalia, who

148. *Dred Scott v. Sandford*, 60 U.S. 393, 403–12, 416–19, 425–27, 475, 481–82 (1857); see also SEGALL, *supra* note 26, at 27–29.

149. *Lochner v. New York*, 198 U.S. 45, 53–54, 56–58, 64 (1905). *But see id.* at 74–75 (Harlan, J., dissenting); *id.* at 75 (Holmes, J., dissenting).

150. See, e.g., sources cited *supra* note 141.

151. See, e.g., CAROL ANDERSON, *ONE PERSON, NO VOTE: HOW VOTER SUPPRESSION IS DESTROYING OUR DEMOCRACY* (2018); Gerard N. Magliocca, *Reforming the Filibuster*, 105 NW. U. L. REV. 303, 303–04 (2011); Charles Tiefer & Kathleen Clark, *Deliberation’s Demise: The Rise of One-Party Rule in the Senate*, 24 ROGER WILLIAMS U. L. REV. 46 (2019).

152. See Calvin TerBeek, “Clocks Must Always Be Turned Back”: *Brown v. Board of Education and the Racial Origins of Constitutional Originalism*, 115 AM. POL. SCI. REV. 821, 821 (2021) (“Empirically, the paper shows that the realigning GOP’s originalism grew directly out of political resistance to *Brown v. Board of Education* by conservative governing elites, intellectuals, and activists in the 1950s and 1960s.”); see also e.g., MICHAEL J. KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* (2004); Justin Driver, *Supremacies and the Southern Manifesto*, 92 TEX. L. REV. 1053, 1127 (2014) (quoting J.W. PELTASON, *FIFTY-EIGHT LONELY MEN: SOUTHERN FEDERAL JUDGES AND SCHOOL DESEGREGATION* 206 (1961)); see also NUMAN V. BARTLEY, *THE RISE OF MASSIVE RESISTANCE: RACE AND POLITICS IN THE SOUTH DURING THE 1950’S* (1969); ELIZABETH GILLESPIE MCRAE, *MOTHERS OF MASSIVE RESISTANCE: WHITE WOMEN AND THE POLITICS OF WHITE SUPREMACY* (2018).

153. See, e.g., Robert H. Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L.J. 1, 8–11 (1971); Robert H. Bork, *Civil Rights—A Challenge*, NEW REPUBLIC, Aug. 31, 1963, at 21; TerBeek, *supra* note 152, at 831–32 (discussing Bork); Whittington, *supra* note 25, at 600–03 (discussing Bork’s views and his *Indiana Law Journal* article); DAVID A. KAPLAN, *THE MOST DANGEROUS BRANCH: INSIDE THE SUPREME COURT IN THE AGE OF*

sometimes cited *Dred Scott* in his opinions condemning *Roe v. Wade*,¹⁵⁴ wrote dissenting opinions in *Romer v. Evans*, *Lawrence v. Texas*, *United States v. Windsor*, and *Obergefell v. Hodges* containing passages that rival Taney's in their dehumanizing language and tone.¹⁵⁵ One of Justice Scalia's own former law clerks pointedly described the *Lawrence* dissent as "an angry man railing against a world that was changing around him in ways he found profoundly unsettling."¹⁵⁶ And it is no small irony that Justice Scalia derided the gay rights movement as a "politically powerful minority" seeking to impose its agenda on a majority that rejects their values¹⁵⁷—because that is an accurate description of originalism itself.

The phenomenon of an angry man ranting against change he does not believe in also quite accurately describes much of the online backlash, and sometimes bigotry, in *Star Wars* fandom over the past two decades. As noted above, even the Original Trilogy was not free from negative reactions among fans at the time of its release. Widespread fandom activity on the internet, however, changed the prospects for discontent to make itself heard. Even before social media and the reputational (and financial) incentives to "go viral" exacerbated the dynamic, internet discussions and communities gave disproportionate influence to the loudest, most persistent, or most exaggerated voices rather than to the most reasonable or most widely shared.¹⁵⁸ Thus, angry fans who disliked

TRUMP 68 (paperback ed. 2019) ("In an infamous 1963 article, denouncing pending civil rights legislation, [Bork] wrote that requiring whites to serve blacks at private establishments was 'a principle of unsurpassed ugliness.'").

154. See *Stenberg v. Carhart*, 530 U.S. 914, 953 (2000) (Scalia, J., dissenting); *Planned Parenthood v. Casey*, 505 U.S. 833, 984, 998, 1001–02 (1992) (Scalia, J., dissenting).

155. See *Romer v. Evans*, 517 U.S. 620, 636, 640–43, 644–46, 648–50, 652–63 (1996) (Scalia, J., dissenting); *Lawrence v. Texas*, 539 U.S. 558, 590, 597–98, 602–05 (2003) (Scalia, J., dissenting); *United States v. Windsor*, 570 U.S. 744, 795–98, 800–02 (2013) (Scalia, J., dissenting); *Obergefell v. Hodges*, 135 S. Ct. 2584, 2629–31 (2015) (Scalia, J., dissenting). Referring to *Romer*, David Kaplan writes that "Antonin Scalia's dissent was petulant—even for him." KAPLAN, *supra* note 153, at 321.

156. KAPLAN, *supra* note 153, at 330 (quoting Gil Seinfeld).

157. *Romer*, 517 U.S. at 636, 648 (Scalia, J., dissenting); see also *Locke v. Davey*, 540 U.S. 712, 733 (2004) (Scalia, J., dissenting) (citing *Romer* in bemoaning "a trendy disdain for deep religious convictions" and the Court's "indifference in this case, which involves a form of discrimination to which the Constitution actually speaks," referring to a state law prohibiting use of a taxpayer-funded college scholarship to obtain a degree in devotional theology).

158. See, e.g., Steffen Albrecht, *Whose Voice is Heard in Online Deliberation?: A Study of Participation and Representation in Political Debates on the Internet*, 9 INFO., COMM'N &

the Prequel Trilogy did not simply write opinion pieces expressing their reactions, but rather posted hours-long video diatribes or declared that George Lucas had “ruined my childhood” by apparently somehow retroactively tarnishing the Original Trilogy.¹⁵⁹ Some fans lambasted *The Clone Wars* for catering to children, as though an animated series on Cartoon Network should be produced to suit the *Star Wars* tastes of grown men—the ones, of course, who were themselves children when they first fell in love with *Star Wars* during the Original Trilogy.¹⁶⁰ Foreshadowing worse misogyny to come, others decried *The Clone Wars* for daring to feature a teenage girl as the main protagonist.¹⁶¹ When Lucasfilm announced in 2014 that the Expanded Universe stories would be discontinued and not used as the basis for future *Star Wars* storytelling, some fans reacted with the fury of internet rage, including trolling and harassment, coordinated bombardment of Lucasfilm social media channels, promises to boycott all future *Star Wars* products, and even threats of violence.¹⁶² Bigoted internet messages that arose after the first teaser trailer for the

SOC’Y 62 (2006); Matthew Green, *No Comment! Why More News Sites Are Dumping Their Comment Sections*, KQED (Jan. 24, 2018), <https://www.kqed.org/lowdown/29720/no-comment-why-a-growing-number-of-news-sites-are-dumping-their-comment-sections>; Natalie Meehan, *The Silent Majority: Social Data Isn’t Representative of Everyone*, BRANDWATCH (Nov. 20, 2014), <https://www.brandwatch.com/blog/silent-majority-social-data-isnt-representative-everyone/>.

159. See, e.g., GOLDING, *supra* note 37, at 50; TAYLOR, *supra* note 31, at 360–62.

160. See, e.g., Anthony Breznican, *Is ‘Clone Wars’ Just Kids’ Stuff?*, ABC NEWS (Aug. 16, 2008), <https://abcnews.go.com/Entertainment/Movies/story?id=5589743&page=1> (“Some grown-up ‘Star Wars’ fans have scorched the new movie in online reviews, and many feel that creator George Lucas has abandoned them for the lucrative kiddie market . . . Lucas shrugs at the notion that aiming at kids alienates grown fans.”).

161. See, e.g., SADDIE GENNIS, *How Cyberbullies Motivated Ashley Eckstein to Make the ‘Star Wars’ Fandom More Inclusive*, TV GUIDE (Mar. 29, 2019), <https://www.tvguide.com/news/features/ashley-eckstein-star-wars-her-universe/> (“I definitely had to deal with my fair share of hate and negative comments and definitely cyberbullying when Ahsoka first came out,” Eckstein said. “A lot of people did not like Ahsoka. They thought she was snippy, bratty, annoying, and also they just didn’t expect Anakin Skywalker’s Padawan to be a 14-year-old girl.”).

162. See, e.g., DUNC, *Star Wars Books Shuts down Facebook Page to Spare Fans Movie Spoilers from Disgruntled Legends Backers*, CLUBJADE (Dec. 16, 2015), <https://clubjade.net/star-wars-books-shuts-down-facebook-page-to-spare-fans-movie-spoilers/>; Eric Geller, *Anger Leads To Hate: Inside The Movement to Save the Expanded Universe*, THEFORCE (Oct. 7, 2014, 12:00 PM), http://www.theforce.net/story/front/Anger_Leads_To_Hate_Inside_The_Movement_To_Save_The_Expanded_Universe_160167.asp; Jacob Hall, *‘Star Wars’ Fans Bought a Billboard Demanding the Return of the Expanded Universe*, /FILM (Apr. 20, 2016, 12:00 PM), <https://www.slashfilm.com/star-wars-billboard/>; Chuck Wendig, *An Open Letter to the “Bring Back Legends” Star Wars Fans*, TERRIBLEMINDS (Apr. 16, 2016), <http://terribleminds.com/ramble/2016/04/20/an-open-letter-to-the-bring-back-legends-star-wars-fans/>.

Sequel Trilogy emphasized the diverse principal cast of *The Force Awakens* grew louder and angrier after *The Last Jedi*.¹⁶³

In each of these instances, to be clear, the angry voices comprised a relatively small fraction of the overall *Star Wars* fandom, especially if extended to the general audience and casual consumers of the franchise rather than the deeply engaged hardcore fan community. In addition, at least with regard to the first five years of the Disney era coinciding with the release of the Sequel Trilogy, there is credible evidence that some portion of the most vicious, hateful, and disruptive internet activity was generated by online trolls who exploited the prominence of *Star Wars* as a vector to advance their destructive aspirations¹⁶⁴—but, as with the past, some of it surely arose as organic discontent from actual longstanding *Star Wars* fans. Ever since 1999, and then after 2008 or 2014 or 2015, the *Star Wars* franchise has always been faced with a vocal subset of online fandom who vigorously and stridently object to changes taking place in *Star Wars* storytelling—and in its fandom, as these new stories drew new generations of fans and a more diverse array of fans into the *Star Wars* community, who may value different things than previous fans and accordingly urge Lucasfilm to offer content that suits their interests, as well.¹⁶⁵ Regardless of the numerical specifics, the presence of vitriolic voices in connection with *Star Wars* can have a detrimental effect on the fandom and the franchise, ranging from making some people feel unwelcome or believe that *Star Wars* is not for them, to targeted harassment or trolling that drives people out of a fan

163. See, e.g., Stitch, *Fandom Racism 101: Clocking and Closing the Empathy Gap*, STITCH'S MEDIA MIX (July 6, 2020), <https://stitchmediamix.com/2020/07/06/fandom-racism-101-clocking-and-closing-the-empathy-gap/> (“From the start, John Boyega has been subject to racism in fandom. That is a documented fact of fandom. He was being called racist slurs by people angry that he was a Black Stormtrooper and disrupting their understanding of the troopers.”); Kelly Marie Tran, *I Won't Be Marginalized by Online Harassment*, N.Y. TIMES (Aug. 21, 2018), <https://www.nytimes.com/2018/08/21/movies/kelly-marie-tran.html>.

164. See Jackson Ryan, *No, Half of The Last Jedi Haters Were Not Russian Trolls*, CNET (Oct. 2, 2018, 9:14 PM), <https://www.cnet.com/news/actually-half-of-the-last-jedi-haters-were-not-russian-trolls/>; Angela Watercutter, *Star Wars: The Last Jedi, Russian Trolls, and the Disintegration of Discourse*, WIRED (Oct. 2, 2018, 4:35 PM), <https://www.wired.com/story/star-wars-russian-trolls-study/>; see also WHITNEY PHILIPS, THIS IS WHY WE CAN'T HAVE NICE THINGS: MAPPING THE RELATIONSHIP BETWEEN ONLINE TROLLING AND MAINSTREAM CULTURE (2015).

165. See, e.g., COCCA, *supra* note 65, at 114–15 (noting two instances of backlash to increased diversity within *Star Wars* fandom during 2012–2015 period).

community in which they would like to participate.¹⁶⁶ Even if the historical record of the *Star Wars* franchise repeatedly demonstrates that these vocal fractions are not representative of the fandom as a whole, the visibility attained by those voices nevertheless can hold outsized impact on perceptions of *Star Wars* and what it stands for.

There will also always be those in the *Star Wars* community who are unwilling simply to dislike or disagree with change, and instead resent and grow angry about it to the point of using their voices—or their influence and power—to obstruct the change as much as possible. But if the choice is to allow *Star Wars* as a storytelling franchise and fandom community to evolve and grow, or to keep it static to only a limited version of its stories and fandom, most *Star Wars* fans would gladly accept the former without hesitation.¹⁶⁷ And if that is true for *Star Wars*, why would we not also want it to be true about our political community, and the constitutional law which creates and sustains it?

C. Originalism Displays the Characteristics of a Fan Interpretive Community

The analytical comparisons between the *Star Wars* franchise and originalist constitutional interpretation implicate a number of other aspects of fandom in more subtle ways. As noted in Part II, the field of fan studies is expansive, with a breadth and depth far beyond the scope of this article. Nevertheless, several additional components of fan studies scholarship provide insight on these comparisons and similarities. These concepts and analytical tools further demonstrate some of the ways in which originalism operates as a fandom.

166. See, e.g., HINCK, *supra* note 23, at 144; James Whitbrook, *The Washington Post's Analysis of Star Wars' Toxic Fandom Doesn't Go Deep Enough*, GIZMODO (Sept. 6, 2018), <https://io9.gizmodo.com/the-washington-posts-analysis-of-star-wars-toxic-fandom-1828856645> (discussing Bethany Lacina, *Who Hates Star Wars for Its Newfound Diversity? Here Are the Numbers*, WASH. POST (Sept. 6, 2018), <https://www.washingtonpost.com/news/monkey-cage/wp/2018/09/06/who-hates-star-wars-for-its-newfound-diversity-here-are-the-numbers/>).

167. See, e.g., HINCK, *supra* note 23, at 141–44 (discussing responses to survey of *Star Wars* fans).

1. *Fanon, Fanfiction, and Other Facets of Fandom*

To describe as *complicated* the relationship between media fandom on the one hand, and media canon and its creators on the other, would be an epic understatement. Numerous works of fan studies scholarship explore a wide variety of dynamics, from close analyses of the nature and outputs of fan interpretive communities on their own terms to the ways in which interactions between fandom and media industry can be synergistic, antagonistic, exploitative, and more.¹⁶⁸ Several aspects of this academic research are particularly relevant for purposes of highlighting the similarities between the interpretive communities associated with the *Star Wars* franchise and originalist constitutional interpretation.

The concept of “media paratext” is a helpful analytical tool in understanding fan interpretive communities.¹⁶⁹ The core object of fandom typically is the media text itself, such as a film, television show, or novel series. But fan interpretive communities also rely extensively on the core text’s associated paratexts: other texts and materials which are not part of the core text but which are inextricably interconnected with it. Official paratexts include content such as trailers and promotion, interviews with creators or actors, transmedia storytelling like tie-in books or videogames, and licensed merchandise.¹⁷⁰ Fan-created paratexts encompass materials as varied as spoilers and speculation, transformative works like fanfiction or fan art, and community discussion of the text and its meaning.¹⁷¹ One of the most important conclusions of the fan studies scholarship on media paratexts is that paratexts

168. On fandom and fan interpretive communities, see *infra* notes 170–76 and accompanying text. On exploitative dynamics, see MEL STANFILL, *EXPLOITING FANDOM: HOW THE MEDIA INDUSTRY SEEKS TO MANIPULATE FANS* (2019). On antagonistic dynamics, see *infra* note 190. On synergistic or celebratory dynamics, see Will Brooker, *A Sort of Homecoming: Fan Viewing and Symbolic Pilgrimage*, in *FANDOM*, *supra* note 9, at 157; Anne Gilbert, *Live from Hall H: Fan/Producer Symbiosis at San Diego Comic-Con*, in *FANDOM*, *supra* note 9, at 354; Anne Gilbert, *Conspicuous Convention: Industry Interpellation and Fan Consumption at San Diego Comic-Con*, in *ROUTLEDGE COMPANION*, *supra* note 20, at 319.

169. The groundbreaking scholarly monograph on media paratexts is GRAY, *supra* note 19. I analyze how the concept of media paratext provides powerful analytical insight into constitutional interpretation, and the similarities between originalism and *Star Wars*, in another article. See Benjamin J. Priester, *Media Paratext and Constitutional Interpretation*, 55 CREIGHTON L. REV. 1 (2021).

170. See GRAY, *supra* note 19, at 23–26, 35–46, 79.

171. See *id.* at 119–21, 135–41, 143–61, 173–74.

can create meaning that becomes just as authoritative to the fan community as the text itself.¹⁷²

Especially in the context of ongoing serialized storytelling like the *Star Wars* franchise or television shows, media fandom is constantly engaged in an iterative and interactive negotiation of authority over the interpretation and meaning of the canon.¹⁷³ Perhaps the most widely known example is fanfiction, whether prose or in other formats, in which fans create their own storytelling to enhance, supplement, or replace the canonical narratives.¹⁷⁴ Some fanfiction is truly transformative work in the intellectual property sense:¹⁷⁵ far more than an unauthorized sequel or derivative work, it can subvert or resist the consensus (or intended) interpretation of the canonical text, such as to critique the text (or society) from the perspective of gender or racial injustice or to impute a same-sex romance into a heteronormative text.¹⁷⁶ Such works were a significant part of Henry Jenkins' *Textual Poachers* study of fandom,¹⁷⁷ and continue to be a subject of study to this day.

Another manifestation of negotiated authority is the concept of "fanon," the corpus of fan paratexts that wields comparable influence in the fan interpretive community to the official texts and paratexts.¹⁷⁸ "Fanon is developed by the fan community as an integral part of the process of interpretation of the original text."¹⁷⁹

172. See *id.* at 22, 37–38, 40–42, 45–46, 159–66.

173. See BUSSE, *supra* note 20, at 99–120; Henry Jenkins, *Fandom, Negotiation, and Participatory Culture*, in WILEY COMPANION, *supra* note 20, at 13.

174. See ANNE JAMISON, *FIC: WHY FANFICTION IS TAKING OVER THE WORLD* (2013); see also, e.g., BROOKER, *supra* note 107, at 129–71; BUSSE, *supra* note 20, at 121–26; FAN FICTION STUDIES READER, *supra* note 20, at 1–7; FAN FICTION AND FAN COMMUNITIES IN THE AGE OF THE INTERNET (Karen Helleckson & Kristina Busse, eds., 2006); JENKINS, *supra* note 9, at 158.

175. See, e.g., Tushnet, *supra* note 15.

176. See, e.g., Julie Levin Russo, *The Queer Politics of Femslash*, in ROUTLEDGE COMPANION, *supra* note 20, at 155; FAN FICTION AND FAN COMMUNITIES, *supra* note 174, at 97–170, 189–224, 261–80; FAN FICTION STUDIES READER, *supra* note 20, at 75–129; BUSSE, *supra* note 20, at 57–77, 159–76.

177. See JENKINS, *supra* note 9, at 120–222.

178. See, e.g., DUFFETT, *supra* note 9, at 216–18; Jessica Seymour, *Racebending and Prosumer Fan Art Practices in Harry Potter Fandom*, in WILEY COMPANION, *supra* note 20, at 338 ("Canon' is any element of the story which is officially endorsed by the writers/producers . . . '[f]anon' is any element of the story which fans have agreed upon within the community."); Aja Romano, *Canon, Fanon, Shipping and More: a Glossary of the Tricky Terminology That Makes Up Fan Culture*, VOX (June 7, 2016, 1:00 PM), <https://www.vox.com/2016/6/7/11858680/fandom-glossary-fanfiction-explained>.

179. Mafalda Stasi, *The Toy Soldiers from Leeds: The Slash Palimpsest*, in FAN FICTION AND FAN COMMUNITIES, *supra* note 174, at 121.

The development of fanon is iterative, beginning with the early contributors to the fan interpretive community, such as the initial writers of fanfiction based on a newly released film, television series, or novel. “The influence of these early authors leads to their choices being in turn appropriated by later writers, either because they share the interpretation or because they are not yet completely steeped in the original text and thus take the fanonical elements as canon.”¹⁸⁰ Importantly, while fanon is inspired by the canonical material and functions as an interpretation of it, “[f]anon often creates particular details or character readings even though canon does not fully support it—or, at times, outright contradicts it.”¹⁸¹ Furthermore, segments within fan communities can become echo chambers of self-reinforcing fanon, with those fan interpretations (or misinterpretations) holding primacy against the weight of contrary consensus in the broader interpretive community.¹⁸² “Because everyone *within* the community agrees on these interpretations, they often are not elaborated upon, so that someone reading from *outside* the community quickly may feel that the readings connect little to the source texts.”¹⁸³

In addition, as with the “death of the author” in literary theory, the field of media studies questions the extent to which creators are able to control or police the interpretation of their work by the audience, or if interpretation is inherently bound up with the ideas, background, and perspective the audience-interpreter brings to the text.¹⁸⁴ For example, some fans may point to features like Anakin Skywalker’s immaculate conception and spiritual resurrection as validating a Christian understanding of

180. *Id.*

181. Kristina Busse & Karen Helleckson, *Introduction: Work in Progress, in FAN FICTION AND FAN COMMUNITIES*, *supra* note 174, at 9.

182.

In media studies, an echo chamber is a community, usually one that is online, where the members of that community all have the same interests, values, and beliefs. This group of like-minded individuals talk with one another and share information meant to reinforce those interests, values, and beliefs. Contradictory information is either not shared or is quickly dismissed.

CarrieLynn D. Reinhard, *Echo Chambers and Fandom*, IT’S PLAYING JUST WITH RSCH. (June 9, 2017), <https://playingwithresearch.com/2017/06/09/echo-chambers-and-fandom/>; *see also, e.g.*, CARRIELYNN D. REINHARD, *FRACTURED FANDOMS: CONTENTIOUS COMMUNICATION IN FAN COMMUNITIES* (2018) (discussing, and citing scholarly research regarding, phenomenon of “echo chambers” or “filter bubbles” and corresponding insularity of like-minded communities, especially *id.* at 16, 185–88).

183. BUSSE, *supra* note 20, at 115.

184. *See supra* note 38 and accompanying text.

Star Wars, while fans more familiar with Eastern philosophy (or Lucas' creative process) may emphasize notions from Buddhism and spirituality instead.¹⁸⁵ Golding notes that *Star Wars* often has been perceived as politically malleable, such that both liberals and conservatives can identify features in the texts and paratexts that align with their views, or that they interpret as alignment with contrary values instead.¹⁸⁶ "What's in there?" asks Luke Skywalker in *The Empire Strikes Back*, to which Yoda replies, "Only what you take with you."

But media fandom is not always celebratory. Fan studies scholarship uses the term "anti-fans" to describe individuals whose emotional investment toward the object is negative rather than positive.¹⁸⁷ (Outside the media fandom context, familiar examples would include residents of Boston who are anti-fans of the New York sports teams, or fans of one celebrity who are anti-fans of a rival celebrity.) One recent subject of fan studies research is the phenomenon of "hatewatching," that is, viewing a television series on an ongoing basis for the purpose of criticizing, mocking, or otherwise impugning it.¹⁸⁸ Anti-fans might engage in hatewatching for a variety of reasons, including disappointment with the series as a previously positively engaged fan, analytical grounds such as criticism of the show for perpetuating harmful tropes, low entertainment value or other forms of poor quality, or simply personal distaste.¹⁸⁹ Regardless of the motivation or level of intensity, anti-fans engage in many of the same behaviors as fans.

Similarly, media creative industry must consider fan relations as an important component of their overall brand management

185. MATTHEW BORTOLIN, *THE DHARMA OF STAR WARS* (2005); Julien Fielding, *Beyond Judeo-Christianity: Star Wars and the Great Eastern Religions*, in *SEX, POLITICS, AND RELIGION IN STAR WARS: AN ANTHOLOGY* 25 (Douglas Brode & Leah Deyneka, eds., 2012).

186. GOLDING, *supra* note 37, at 20–29.

187. See Melissa A. Click, *Introduction: Haters Gonna Hate*, in *ANTI-FANDOM*, *supra* note 20, at 1; Jonathan Gray, *How Do I Dislike Thee? Let Me Count the Ways*, in *ANTI-FANDOM*, *supra* note 20, at 25. In the narrower and specific context of 'shipper fandom, see Romano, *supra* note 178, a vernacular usage of "anti" also can be found within intra-fandom discussions. See, e.g., Amanda Steele, *Shipping Discourse: Do Ships Need to Be Unproblematic?*, *THE MARY SUE* (Apr. 15, 2020, 10:09 AM), <https://www.themarysue.com/must-ships-not-be-problematic/>.

188. See Anne Gilbert, *Hatewatch With Me: Anti-Fandom as Social Performance*, in *ANTI-FANDOM*, *supra* note 20, at 62; Louisa Stein, *Dissatisfaction and Glee: On Emotional Range in Fandom and Feels Culture*, in *ANTI-FANDOM*, *supra* note 20, at 81; Rebecca Williams, "Putting the Show Out of Its Misery": *Textual Endings, Anti-Fandom, and the "Rejection Discourse"*, in *ANTI-FANDOM*, *supra* note 20, at 315.

189. See *id.*

plan. When the relationship between industry and fandom goes awry, the resulting “fantagonism” not only impacts the ability to maintain favorable ties with the existing fan community, but also inhibits outreach to prospective new fans, who may be scared off by the bad buzz from within the existing fandom.¹⁹⁰ Despite the considerable favorable reactions to *The Force Awakens* and *Rogue One*, the *Star Wars* franchise has experienced significant fantagonism after *The Last Jedi* and *The Rise of Skywalker* failed to maintain that momentum. Although the reasons for the unexpected surge in fandom discontent are complicated, it is attributable at least in part to creative decisions made in *The Last Jedi* by writer and director Rian Johnson that failed to align with the textual and paratextual expectations of a significant number of *Star Wars* fans.¹⁹¹ If Lucasfilm is not careful in the years ahead, it will have to contend with this newly burgeoning anti-fandom toward at least part of its storytelling series along with managing fan relations for the rest of the franchise.

Each of these aspects of media fandom has analogues in the interpretive community that has grown around originalism. The early originalists were anti-fans of the Warren Court, and most of today’s originalists remain anti-fans of Supreme Court decisions they view as products of a living constitution method of interpretation. Originalism generates fanon that is deemed persuasive within its interpretive community, but which carries little weight outside it. One recent example is the argument that public officials’ oath to support “*this* Constitution” requires an originalist method of interpreting the document. Among originalists, this claim has received extensive discussion and become influential.¹⁹² Among non-originalists, on the other hand,

190. See Derek Johnston, *Fantagonism, Franchising, and Industry Management of Fan Privilege*, in ROUTLEDGE COMPANION, *supra* note 20, at 395; Derek Johnson, *Fantagonism: Factions, Institutions, and Constitutive Hegemonies in Fandom*, in FANDOM, *supra* note 9, at 369.

191. Golding describes *The Last Jedi* as “a challenging piece of filmmaking in the context of the *Star Wars* franchise and its renewal under Disney.” GOLDING, *supra* note 37, at 198; *see id.* at 192–206 (analyzing *The Last Jedi* and discussing reasons for its controversial reception); *see also supra* note 164.

192. See, e.g., Baude, *supra* note 27, at 2394 (2015); Christopher R. Green, *Constitutional Truthmakers*, 32 NOTRE DAME J.L. ETHICS & PUB. POL’Y 497, 523 (2018); Christopher R. Green, “*This Constitution*”: *Constitutional Indexicals as a Basis for Textualist Semi-Originalism*, 84 NOTRE DAME L. REV. 1607, 1607–08 (2009).

it has been roundly discounted as unconvincing.¹⁹³ Whether the oath argument is an accepted fanon of constitutional interpretation, then, depends less on an individual's personal assessment of its persuasiveness in the abstract and much more on whether the particular interpreter is a member (or not) of the originalist interpretive community.

Similarly, the views of the constitutional text and paratext shared by originalists could be accurately described as a fanon of the Constitution and its drafting and ratification. The historical narratives used to justify originalism often read more like a fanfiction of American history than authentic historical inquiry.¹⁹⁴ Not coincidentally, originalist constitutional interpretation locates in the Constitution's text and history those principles and values which originalists seek to validate and not those they seek to repudiate. To be clear, proponents of living constitutionalism or other non-originalist methods of interpretation also seek to justify why the Constitution should be interpreted to include the doctrines and values they favor. The difference with originalism, however, is that it purports to ground its justifications in a particular conception and narrative of the origins of the constitutional text. Like a fan interpretive community for a media franchise, it often seems as though originalism engages much more with its self-reinforcing interpretive community than it does with the canon.

2. The Dark Side: Gatekeeping and Worse

Like the Force, fandom has a dark side. As much as we might like to envision fandom as a community for celebrating what we

193. See, e.g., Erik Encarnacion & Guha Krishnamurthi, *The Oath Doesn't Require Originalist Judges*, 15 HARV. L. & POL'Y REV. 571, 571–72 (2021); Eric J. Segall, *Originalist Fiction as Constitutional Faith*, U. CHI. L. REV. ONLINE (Jan. 6, 2020), <https://lawreviewblog.uchicago.edu/2020/01/06/originalist-fiction-as-constitutional-faith-by-eric-j-segall/> (“Professor Green’s faith in the importance of the oath judges take to uphold ‘this Constitution’ (the one ratified by the people of 1787 as properly amended) reveals little about how constitutional law is made binding on the ground by varied political actors especially the United States Supreme Court. It is originalism as fiction.”); Cass R. Sunstein, *The Debate over Constitutional Originalism Just Got Ugly*, BLOOMBERG (May 15, 2020, 10:00 AM), <https://www.bloomberg.com/view/articles/2020-05-15/is-the-constitution-a-living-document-supreme-court-can-decide>; see also Chris Green, *Is the Oath Argument for Originalism Circular?* (May 11, 2020), <https://originalismblog.typepad.com/the-originalism-blog/2020/05/is-the-oath-argument-for-originalism-circular.html> (responding to counter-arguments).

194. See, e.g., Paul Finkelman, *The Living Constitution and the Second Amendment: Poor History, False Originalism, and a Very Confused Court*, 37 CARDOZO L. REV. 623, 624–25 (2015); Siegel, *supra* note 129, at 1133.

love in a positive spirit, inclusive and welcoming to new fans alongside longstanding ones, reality sometimes disappoints. Exclusionary rhetoric and superiority complexes, among others, always have been a harmful part of fan communities.¹⁹⁵ Fans of color in particular have experienced marginalization and bigotry in fan communities, even the ones that consider themselves supportive of diversity and inclusion.¹⁹⁶ In the age of internet fandom, especially on social media, gatekeeping and bullying have the capacity to become more coordinated and sustained, as well as more visible.¹⁹⁷

In media fandom, including *Star Wars*, much of the impetus for gatekeeping has its roots in a deeper claim about legitimacy: that the “true fans” of a franchise have a superior claim to interpretation and participation in the fandom.¹⁹⁸ Bogus outrage over the supposed infiltration of “fake geek girls” into fan spaces is one prominent example that cuts across franchises and fandoms.¹⁹⁹ The character of Ahsoka Tano received strongly gendered backlash upon her initial introduction in *The Clone Wars* in 2008, but her return for the series’ final seventh season in 2020 and her upcoming eponymous Disney+ series in 2023 have been marked by consistent excitement and acclaim.²⁰⁰ More subtly, fans of Iron Man or Captain America who have read the comics for years may

195. See, e.g., BUSSE, *supra* note 20, at 177–96; REINHARD, *supra* note 182; ANASTASIA SALTER & BRIDGET BLODGETT, TOXIC GEEK MASCULINITY IN MEDIA: SEXISM, TROLLING, AND IDENTITY POLICING (2017).

196. See, e.g., PANDE, SQUEE FROM THE MARGINS, *supra* note 20; FANDOM IN COLOR, *supra* note 12, at 185–96.

197. See Jones, *supra* note 24; REINHARD, *supra* note 182; SALTER & BLODGETT, *supra* note 195; Wilson, *supra* note 24.

198. See, e.g., HINCK, *supra* note 23, at 138, 143–44; REINHARD, *supra* note 182, at 12, 78–79; Swapna Krishna, *The Problem of Gatekeeping in Star Trek Fandom*, SYFYWIRE (Nov. 29, 2017), <https://www.syfy.com/syfywire/the-problem-of-gatekeeping-in-star-trek-fandom> [<https://web.archive.org/web/20171130020601/https://www.syfy.com/syfywire/the-problem-of-gatekeeping-in-star-trek-fandom>] (“The fact is that some people, mainly men, are trying to tell those of us who are enjoying the show [*Star Trek: Discovery*] that we aren’t ‘real fans’ of *Star Trek*. And it just so happens that the bulk of these fans are women and people of color.”).

199. See, e.g., SUZANNE SCOTT, FAKE GEEK GIRLS: FANDOM, GENDER, AND THE CONVERGENCE CULTURE INDUSTRY (2019).

200. See, e.g., David Betancourt, *How ‘The Clone Wars’ Turned Ahsoka Tano into a Legendary Star Wars Character*, WASH. POST (May 4, 2020, 6:00 AM), <https://www.washingtonpost.com/arts-entertainment/2020/05/04/ahsoka-tano-clone-wars-ashley-eckstein-star-wars/> (discussing contrast in fan reactions); Cao, *supra* note 74; Charna Flam, *Everything We Know About ‘Ahsoka,’* VARIETY (Apr. 8, 2023, 3:45 PM), <https://variety.com/2023/tv/news/ahsoka-star-wars-everything-we-know-disney-plus-1235577435/>.

show disdain for fans who have only consumed the Marvel Cinematic Universe films, just as Original Trilogy generation fans may denigrate younger fans whose interest in *Star Wars* arose from the Prequel Trilogy or *The Clone Wars*. With the Sequel Trilogy, fandom has seen a recurrence of the spurious claim that “shippers”—those fans who are primarily invested in the (canon or fanon) romantic relationships between particular characters—are not “true” *Star Wars* fans because they do not care about the franchise in the “right” way.²⁰¹ Yet ‘shippers may engage in bullying and gatekeeping, too, such as trying to shout down good faith legitimate criticism of their interpretation of the characters, whether within the terms of the particular story and broader franchise or from external perspectives such as feminism or anti-racism.²⁰² What all fandom gatekeeping has in common is the objective of controlling the narrative, within fan communities or in public discourse at large, about how to appreciate and interpret the franchise.

The interpretive community constructed to expound and defend originalist constitutional interpretation relies upon a similar claim of legitimacy. As early as 1971—even prior to *Roe v. Wade*—Robert Bork “forcefully rejected any alternative to originalism as illegitimate.”²⁰³ Originalists have long asserted that non-originalist constitutional interpretation is lawless, in the sense that it (supposedly) varies with the subjective values, preferences, and whims of an individual judge rather than relying upon historical evidence or objective neutral principles which (supposedly) constrain the decision-making of originalist judges.²⁰⁴

201. See, e.g., Barr, *Missing Demographic*, *supra* note 119; B.J. Priester, *Resurrecting Legends: Is the Star Wars Reboot Gendered?*, FANGIRL BLOG (Feb. 13, 2017), <http://fangirlblog.com/2017/02/resurrecting-legends-star-wars-reboot-gendered/>; cf. SCOTT, *supra* note 199, at 76–108 (chapter three, entitled “Interrogating the Fake Geek Girl: The Spreadable Misogyny of Contemporary Fan Culture”).

202. See, e.g., @diversehighfantasy, *Racism in the Star Wars fandom: The Tumblr Years*, TUMBLR (Jan. 15, 2020), <https://diversehighfantasy.tumblr.com/post/190278683781/racism-in-the-star-wars-fandom-the-tumblr-years>; Steele, *supra* note 187; *What Fandom Racism Looks Like: The Star Wars Fandom (Part One, Probably)*, STITCH’S MEDIA MIX (Dec. 14, 2019), <https://stitchmediamix.com/2019/12/14/what-fandom-racism-looks-like-the-star-wars-fandom-part-one-probably/>; *What Fandom Racism Looks Like: Weaponized White Womanhood*, STITCH’S MEDIA MIX (Jan. 22, 2020), <https://stitchmediamix.com/2020/01/22/weaponized-white-womanhood/>.

203. Whittington, *supra* note 26, at 600 (citing Bork, *supra* note 153).

204. See, e.g., Siegel, *supra* note 129, at 1134 (“[O]riginalism’s claims on constitutional memory too often present the interpreter’s value judgments about the law as seemingly

Like many of the claims found in media fandom, originalists assert not simply that their interpretation of the canonical text is superior, but that it is *exclusive* as the singular valid interpretation.

Like media fandom, this legitimacy claim is accompanied by professional gatekeeping derived from it. On its own terms, reliance on Federalist Society credentialing and validation from recognized authority figures, such as established originalist judges or academics, may generally seem to lack the outwardly hostile manifestations typical of internet acrimony. But that is not always true, such as the open expressions of skepticism and disdain for the notion that the wisdom acquired from an upbringing and career as a woman of color in diverse communities, or serving as the dean of Harvard Law School, could be equally worthy of making contributions to constitutional interpretation on the U.S. Supreme Court without following originalism.²⁰⁵ In public remarks years later, Justice Sotomayor acknowledged that “When I was being nominated, people said that I wasn’t smart enough to be on

objective and expert claims of historical fact to which the public owes deference. Originalists disdain living constitutionalism yet practice living constitutionalism by expressing contested values as claims about the nation’s history and traditions[.]”); STRAUSS, *supra* note 90, at 45 (“An originalist claims to be following orders. An originalist cannot be influenced by her own judgments about fairness or social policy; to allow that kind of influence is, for an originalist, a lawless act of usurpation.”); CASS R. SUNSTEIN, RADICALS IN ROBES: WHY EXTREME RIGHT-WING COURTS ARE WRONG FOR AMERICA 54 (2005) (describing Judge Douglas Ginsburg, “He writes as if those who reject originalism reject the Constitution itself. They’re lawless.”); Thomas B. Colby & Peter J. Smith, *Living Originalism*, 59 DUKE L.J. 239, 277 (2009) (“The necessary implication of these assertions about originalism’s unique compatibility with law and democracy is that any other approach to constitutional interpretation is effectively lawless and undemocratic.”); *see also* SEGALL, *supra* note 26, at 6, 171, 177; Whittington, *supra* note 26, at 599–603.

205. On Sonia Sotomayor’s confirmation, *see, e.g.*, Pat K. Chew, *Anticipating the Wise Latina Judge*, 91 DENV. U. L. REV. 853 (2014); Kevin R. Johnson, *An Essay on the Nomination and Confirmation of the First Latina Justice on the U.S. Supreme Court: The Assimilation Demand at Work*, 30 CHICANA/O-LATINA/O L. REV. 97, 100–02 (2011); Joel Marrero-Otero, *What Does a Wise Latina Look Like? An Intersectional Analysis of Sonia Sotomayor’s Confirmation to the U.S. Supreme Court*, 30 CHICANA/O-LATINA/O L. REV. 177 (2011); *see also* Tomiko Brown-Nagin, *Identity Matters: The Case of Judge Constance Baker Motley*, 117 COLUM. L. REV. 1691, 1693–94 (2017). On Elena Kagan’s confirmation, *see, e.g.*, SEGALL, *supra* note 26, at 7 (noting Justice Kagan’s statement during her confirmation hearing that “we are all originalists”); Eric J. Segall, *What Elena Kagan Could Have and Should Have Said (and Still Have Been Confirmed)*, 88 WASH. U. L. REV. 535, 541 (2010); Neil J. Kinkopf, *Elena Kagan Can’t Say That: The Sorry State of Public Discourse Regarding Constitutional Interpretation*, 88 WASH. U. L. REV. 543, 544 (2010); Eric J. Segall, *What Elena Kagan Could Have and Should Have Said (and Still Have Been Confirmed): A Reply*, 88 WASH. U. L. REV. 553, 555 (2010).

the Supreme Court. . . . That hurt me. Cut me to the quick.”²⁰⁶ Likewise, Thurgood Marshall devoted decades of his career to litigating constitutional cases to finally bring a doctrinal end to state-sanctioned racial segregation; Ruth Bader Ginsburg similarly played a pivotal role in the constitutional litigation that undermined the doctrinal basis for state-sanctioned discrimination on the basis of sex—yet originalists insist that the constitutional interpretation perspectives applied by Justice Marshall and Justice Ginsburg are illegitimate and lawless, while the legal principles of enslavers like Madison and Jefferson must be carried forward to today’s America. By addressing the gatekeepers on their terms, speaking the talking points of originalism while describing a humble and non-activist personal judicial philosophy, newly confirmed Justice Jackson may have avoided more aggressive gatekeeping by successfully eliding much larger theoretical and normative disagreements with originalists.²⁰⁷ Even subtle gatekeeping can be powerful in its exclusionary message, though, and originalist gatekeeping in the discourse of constitutional interpretation has the same purpose and effect as gatekeeping in media fandoms: an attempt to control the narrative about, and police the boundaries of, the broader constitutional law interpretive community.

These exclusionary and divisive vectors need not go unopposed, however, and fandom often generates overtly counter-gatekeeping dynamics, as well. Individually or in groups, fans can speak out against the gatekeepers, refuting their claims of superiority and validating the inclusion of numerous perspectives.²⁰⁸ In the *Star Wars* franchise, Lucasfilm itself has pushed the talking point that *Star Wars* is for everyone over

206. Jordan S. Rubin, *Sotomayor Recalls Confirmation Attacks as Jackson Vote Nears*, BLOOMBERG L. (Apr. 5, 2022, 8:33 PM), <https://news.bloomberglaw.com/us-law-week/sotomayor-recalls-confirmation-attacks-as-jackson-vote-nears>.

207. See *supra* notes 1–3; The Editorial Board, *Opinion: Republican Excuses for Rejecting Ketanji Brown Jackson Are Absurd*, WASH. POST (Apr. 3, 2022, 8:00 AM), <https://www.washingtonpost.com/opinions/2022/04/03/republican-excuses-rejecting-ketanji-brown-jackson-are-absurd/>.

208. See, e.g., HINCK, *supra* note 23, at 143–44; Christopher Borrelli, *Not ‘Only for White Dudes’ Any More, the ‘Star Wars’ Universe Expands*, CHI. TRIB. (Apr. 14, 2019, 12:55 PM), <https://www.chicagotribune.com/entertainment/movies/ct-ent-star-wars-celebration-overview-0414-story.html>; Kate Gardner, *Viral Tweet About Fandom Gatekeeping Proves We Still Have a Male Geek Problem*, THE MARY SUE (Sep. 23, 2018, 4:34 PM), <https://www.themarysue.com/fandom-gatekeeping-male-geeks/>.

several years.²⁰⁹ Despite its inception in the backlash to cases like *Brown*, *Griswold*, and *Roe v. Wade*, and the continuing dissents by Justices Scalia and Thomas in more recent cases, contemporary self-described originalists have attempted defend these more recent inclusive decisions on originalist grounds, seeking to refute the association of originalism with racism, sexism, and homophobia in the name of upholding traditional values.²¹⁰ Yet the counter-gatekeeping does not always carry the day, especially when the most prominent and visible voices are the ones with the exclusionary message.

3. *The Multiplicity of Fandom Perspectives*

Perhaps the most important point demonstrated by fan studies scholarship, however, is the fundamental reminder that “fans” in the aggregate—or “fandom” as a collective noun—are not singular congregations of like-minded individuals with unitary ideas and uniform perspectives on the object of their fan attention.²¹¹ Whether it is science fiction or space opera fandom, cinema fandom, *Star Wars* fandom, or Luke Skywalker fandom, or any other description broad or narrow, pluralism and divergence of perspective are as much defining features of the fan experience as anything else. Fandoms comprise a multiplicity of people, preferences, values—and interpretations.

Is *Star Wars* a fairy tale? Through an Original Trilogy lens, the description is apt. Or is *Star Wars* a tragedy? The Prequel Trilogy and *The Clone Wars* certainly fit the bill. Is redemption a principal theme of *Star Wars*? Perhaps, if you focus on Darth Vader, Asajj Ventress, and now Kylo Ren—but most villains in *Star Wars* are defeated by the heroes while still evil, including The Emperor a/k/a Darth Sidious (twice), Darth Maul (twice), Count Dooku, General Grievous, Jabba the Hutt, Grand Moff Tarkin, and more.²¹² Another principal theme of *Star Wars* is hope: for entire films, such as *A New Hope*, *Return of the Jedi*, *The Phantom*

209. See *supra* note 124.

210. See *infra* note 222 and accompanying text.

211. See, e.g., DUFFETT, *supra* note 9, at 123–25; GRAY, *supra* note 19; JAMISON, *supra* note 174; ROUTLEDGE COMPANION, *supra* note 20; SCOTT, *supra* note 199; WILEY COMPANION, *supra* note 20.

212. In addition, some villains are finished off by other villains, such as Pre Vizsla (by Maul), Mother Talzin (by Grievous), Director Krennic (by Tarkin), and General Hux (by Allegiant General Pryde).

Menace, and *The Force Awakens*, as well as hopeful endings to the otherwise less optimistic storylines in *The Empire Strikes Back*, *Attack of the Clones*, *Revenge of the Sith*, *Rogue One*, and *The Last Jedi*. Is the ending of *The Rise of Skywalker* hopeful, because Rey and her friends have prevailed and the villains have been defeated, or is it tragic, because Kylo Ren was unable to avoid repeating the cycle of his grandfather's self-sacrificial death—or is it both, at the same time? Moreover, does the Sequel Trilogy as a whole diminish the importance of this theme of hope in *Star Wars* by suggesting that the seemingly happy ending of *Return of the Jedi* was all for naught, both in the personal and familial lives of the Original Trilogy heroes as well as for the galaxy they had apparently saved? Or is it another theme in *Star Wars* jockeying for weight in the story calculus, reminding us that evil is never vanquished forever and that each generation—in *Star Wars* and in real life—must rise to the challenge of facing down the respective menaces and hardships of their own time? Whether one views these questions as empirical, descriptive, or normative is less important than the reality that posing them to a representative cross-section of *Star Wars* fandom would produce a wide range of answers—each of them supportable by the text, paratext, ideas, values, and emotions created by the *Star Wars* franchise over four decades.

And *Star Wars* has interpretive controversy all the way down. To pick one prominent recent example: what is the “correct” interpretation of Luke Skywalker? Fans in 1977, after *A New Hope* alone, had one data point—and a variety of viewpoints on the character. By 1983, after *Return of the Jedi*, Luke was more layered—and also had a clearer destiny, not only to save his father from the dark side but also to “pass on what you have learned” from Obi-Wan and Yoda to rebuild the Jedi Knights that the Emperor and Darth Vader had destroyed. From 1991 to 2013, the paratextual storytelling of the Expanded Universe portrayed one version of that destiny: by the time of the next galaxy-wide war two generations after the Empire's fall, the New Jedi Order had hundreds of Jedi available to defend against the invading army; though many died in that conflict, the Jedi Order endured, able to function under a new Jedi Council without Luke's direct leadership as he confronted the personal crises of his nephew's fall to the dark side, his wife's murder, his niece's destiny to face her brother, and the perilous moral compass of Luke's own son. The Sequel Trilogy films and their associated ancillary storytelling from 2015 to 2019

offered a very different version: Luke only ever assembled a small number of resident students at his training temple, all of whom died in the immediate aftermath of the rise of Kylo Ren, which occurred after Luke personally precipitated the inciting incident in a moment of intense fear at the darkness he sensed already present in his nephew's heart; Luke then only briefly trains a new Jedi apprentice, Rey, before offering one last spark of hope to the galaxy in the form of an act of noble self-sacrifice. In the Expanded Universe, drawing inspiration principally from the Original Trilogy, Luke becomes an aspirational heroic figure, the kind of decades-long Jedi Master his father could have been if things had turned out differently—and Luke remains so even when tragedy, inspired by the Prequel Trilogy, directly touches his family. In the Sequel Trilogy, by contrast, Luke's story becomes a rhyme to Anakin's Shakespearean story arc: both make epically harmful choices, both live with the consequences of those choices for years in isolation, both atone for their mistakes with a final fatal act of repentance.

The *Star Wars* franchise provides no objective means to declare one of these versions of Luke Skywalker to be better than the other, or more correct, or more true to the spirit of *Star Wars* or the intentions of George Lucas. It should come as no surprise, however, that nearly four decades of fan paratext and a quarter century of licensed Expanded Universe paratext had created expectations and interpretations about Luke Skywalker in the *Star Wars* fandom that spawned hashtags and commentary with the theme “Not My Luke” in the aftermath of *The Last Jedi*'s entirely different portrayal of and backstory for the character.²¹³ Yet fans who found the Sequel Trilogy's interpretation of the character and his fate to be compelling are not “wrong” about *Star Wars* in any meaningful sense, either; they simply do not find the storytelling conceits and characterization choices to be as dissonant with the rest of the franchise and its themes.²¹⁴

213. Actor Mark Hamill agreed with the sentiment, though he apologized for saying so in public remarks. See Ron Dicker, *Mark Hamill Rips His Role In 'Last Jedi': 'He's Not My Luke Skywalker'*, HUFFPOST (Dec. 22, 2017, 9:51 AM), https://www.huffpost.com/entry/mark-hamill-last-jedi-luke-skywalker_n_5a3cf644e4b025f99e16864d; Dani Di Placido, *Mark Hamill Shouldn't Have to Apologise for Being Honest*, FORBES (Dec. 28, 2017, 10:20 AM), <https://www.forbes.com/sites/danidiplacido/2017/12/28/mark-hamill-shouldnt-have-to-apologise-for-being-honest/>.

214. See The Bitter Script Reader, *In Defense of Luke Skywalker*, FILM SCH. REJECTS (Jan. 17, 2018), <https://filmschoolrejects.com/defense-of-luke-skywalker-the-last-jedi/>.

Much of the impetus for the rise of originalism in U.S. constitutional theory, as well as the shifting perspectives on originalism propounded by its advocates in recent decades, can be traced to a similar kind of “Not My Constitution” or “Not My Con Law” dynamic. At the same time, the striking divergence of perspectives within originalism itself bears a close resemblance to the multiplicity of interpretations of *Star Wars* among its fandom.

For not quite twenty-five years, Justice Scalia and Justice Thomas served together as the two self-identified originalists on the Supreme Court.²¹⁵ In that time, their perspectives on originalism led them to agree on many issues: willingness to overrule *Miranda* and *Roe v. Wade*, opposition to race-based affirmative action, stringent protection for free speech rights, and renewed importance to the Second Amendment, to name a few prominent examples.²¹⁶ But they also disagreed significantly on the correct originalist analysis of various constitutional issues, sometimes to the point of depriving the Court of a majority opinion supported by five justices.²¹⁷ Under the Sixth Amendment’s

215. Justice Thomas took the oath of office as an associate justice of the U.S. Supreme Court on October 23, 1991. Justice Scalia died on February 13, 2016. Professor Segall devotes a chapter of his book to explaining why the judicial decision-making of both justices is not actually originalist. See SEGALL, *supra* note 26, at 122–40.

216. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570, 572 (2008) (opinion of the Court by Scalia, J., joined by Thomas, J.); *Grutter v. Bollinger*, 539 U.S. 306, 349 (2003) (Thomas, J., concurring in part and dissenting in part, joined by Scalia, J.); *Dickerson v. United States*, 530 U.S. 428, 444 (2000) (Scalia, J., dissenting, joined by Thomas, J.); *Planned Parenthood v. Casey*, 505 U.S. 833, 979 (1992) (Scalia, J., dissenting, joined by Thomas, J., and two other justices); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 379 (1992) (opinion of the Court by Scalia, J., joined by Thomas, J.).

217. Their disagreement had particularly impactful consequences when the Court addressed the question of whether the Sixth Amendment right to jury trial applied to factfinding necessary to impose mandatory minimum sentences. In *Harris v. United States*, which permitted mandatory minimum sentences to be imposed by judicial factfinding by a preponderance of the evidence, Justice Scalia joined Justice Kennedy’s opinion for the Court and Justice Thomas wrote the four-justice dissent. See 536 U.S. 545, 549 (2002). In *Alleyne v. United States*, overruling *Harris* and requiring factfinding for mandatory minimum sentences to be made beyond a reasonable doubt in the jury’s verdict (or admitted in a guilty plea colloquy), Justice Thomas wrote the opinion of the Court and Justice Scalia joined Chief Justice Roberts’ dissent. See 570 U.S. 99, 102 (2013). In each case, non-originalist Justice Breyer wrote an opinion concurring in part and concurring in the judgment to provide the dispositive vote. See 536 U.S. at 569; 570 U.S. at 122. Similarly, Justice Scalia’s idiosyncratic view on the permissible scope of warrantless searches incident to arrest created significant dissonance in the doctrine as applied to searches of automobiles. See *Thornton v. United States*, 541 U.S. 615, 625–32 (2004) (Scalia, J., concurring) (criticizing, among other cases, doctrine adopted in *Chimel v. California*, 395 U.S. 752 (1969)); *Arizona v. Gant*, 556 U.S. 332, 335 (2009) (“[F]ollowing the suggestion in Justice Scalia’s opinion [in *Thornton*], we also conclude that circumstances unique to the automobile context justify a

Confrontation Clause, Justice Scalia persuaded a majority of the Court in 2004 to overrule previous balancing-test precedent and replace it with a bright-line test grounded in the Clause's original meaning—but subsequent decisions made clear that Justice Thomas did not agree with the formulation proffered by Justice Scalia.²¹⁸ Their disagreement was longer-lasting and more impactful concerning the originalist interpretation of the Sixth Amendment's jury trial right as a limitation on the power of a sentencing judge to determine a convicted offender's punishment: though they agreed that the judge was constrained to the maximum penalty determined by the statutory offense of conviction established in the verdict reached by a jury or in a guilty plea, Justice Thomas but not Justice Scalia believed the original meaning of the right also required mandatory minimum sentencing provisions to be established in the verdict, as well.²¹⁹

search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle.”); *id.* at 343 (“Although it does not follow from *Chimel*, we also conclude that circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is ‘reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.’”) (quoting *Thornton*, 541 U.S. at 632); *id.* at 354 (Scalia, J., concurring) (“No other Justice, however, shares my view that application of *Chimel* in this context should be entirely abandoned. It seems to me unacceptable for the Court to come forth with a 4-to-1-to-4 opinion that leaves the governing rule uncertain[;] . . . I therefore join the opinion of the Court.”).

218. See *Crawford v. Washington*, 541 U.S. 36, 68–69 (2004); see also, e.g., *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 329–30 (2009) (Thomas, J., concurring) (explaining doctrinal disagreement with opinion of the Court by Justice Scalia and citing previous concurring opinions for same proposition); *Michigan v. Bryant*, 562 U.S. 344, 379–80 (2011) (Thomas, J., concurring) (agreeing Confrontation Clause was not violated based on this previously articulated doctrinal view); *id.* at 379–95 (Scalia, J., dissenting) (arguing that decision contradicts both the doctrine adopted in *Crawford* and the original meaning of Confrontation Clause).

219. To state the doctrine succinctly, Justice Scalia believed that the maximum penalty established in the verdict facts referred only to increases in the ceiling on the available sentence, while Justice Thomas believes that verdict facts must establish increases to both the ceiling and the floor of the sentencing range. See also *supra* note 217 (discussing *Harris* and *Alleyn*). The full extent of this disagreement, which spanned nearly two decades (and encompassed widespread divergence of views among the other Justices, as well), is thoroughly chronicled and analyzed in my previous articles. See Benjamin J. Priester, Note, *Sentenced for a “Crime” the Government Did Not Prove: Jones v. United States and the Constitutional Limitations on Factfinding by Sentencing Factors Rather Than Elements of the Offense*, 61:4 LAW & CONTEMP. PROBS. 249, 249–51 (1998); Benjamin J. Priester, *Constitutional Formalism and the Meaning of Apprendi v. New Jersey*, 38 AM. CRIM. L. REV. 281, 281–82 (2001); Benjamin J. Priester, *Structuring Sentencing: Apprendi, the Offense of Conviction, and the Limited Role of Constitutional Law*, 79 IND. L.J. 863, 863–67 (2004); Benjamin J. Priester, *The Canine Metaphor and the Future of Sentencing Reform: Dogs, Tails, and the Constitutional Law of Wagging*, 60 SMU. L. REV. 209, 210–13 (2007); Benjamin J. Priester, *Apprendi Land Becomes Bizarro World: “Policy Nullification” and*

As of this writing, the Supreme Court now includes a plurality of four self-identified originalists. Having served over thirty years on the Court, Justice Thomas has new colleagues Justice Gorsuch (succeeding Justice Scalia), Justice Kavanaugh, and Justice Barrett, who took their seats on the Court in April 2017, October 2018, and October 2020, respectively. Although it is still early in their overlapping tenures on the Court, already it is apparent that they do not hold the same perspectives on originalism in general or its application to particular interpretive controversies.²²⁰ Each of the three then-sitting originalist justices wrote opinions in *Ramos v. Louisiana* (2020), describing and applying different approaches to the doctrine of *stare decisis* in constitutional cases²²¹—a critical issue when an originalist analysis points in a contrary direction to the Court’s existing case law on the constitutional law topic in dispute.²²² Despite its promises of increased consistency through constrained judicial decision-making, originalism on the Supreme Court has far from delivered.

And the path of originalism outside the Court demonstrates even more starkly that it is subject to just as many varied

Other Surreal Doctrines in the New Constitutional Law of Sentencing, 51 SANTA CLARA L. REV. 1, 1–5 (2011); Benjamin J. Priestler, *From Jones to Jones: Fifteen Years of Incoherence in the Constitutional Law of Sentencing Factfinding*, 47 U. TOL. L. REV. 413, 413–14 (2016).

220. See, e.g., *Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 2067, 2092 (2019) (Kavanaugh, J., concurring); *id.* at 2094 (Thomas, J., concurring in part); *id.* at 2098 (Gorsuch, J., concurring); *Carpenter v. United States*, 138 S. Ct. 2206, 2236–46 (2018) (Thomas, J., dissenting); *id.* at 2261–74 (Gorsuch, J., dissenting). In the non-unanimous cases decided in the October 2020 Term, Justice Kavanaugh voted in alignment with Justice Thomas (48.8%), less frequently than he did with non-originalist Justice Breyer (53.7%) or Justice Kagan (51.2%), and voted in alignment with Justice Barrett (80.0%) considerably more often than with Justice Gorsuch (56.1%). See *The Statistics*, 135 HARV. L. REV. 491, 494 (2021). In the October 2021 Term, both Justice Kavanaugh and Justice Barrett voted in agreement with non-originalists Chief Justice Roberts and Justice Alito more frequently than they did with originalists Justice Thomas and Justice Gorsuch. See STAT PACK FOR THE SUPREME COURT’S 2021-22 TERM at 15, available at Angie Gou, *As unanimity declines, conservative majority’s power runs deeper than the blockbuster cases*, SCOTUSBLOG (July 1, 2022), <https://www.scotusblog.com/2022/07/as-unanimity-declines-conservative-majoritys-power-runs-deeper-than-the-blockbuster-cases/>.

221. *Ramos v. Louisiana*, 140 S. Ct. 1390, 1405 (2020) (opinion of the Court by Gorsuch, J.) (applying *stare decisis* factors the Court has “traditionally considered” in deciding whether to overrule a precedent); *id.* at 1414 (Kavanaugh, J., concurring) (describing “special justification or strong grounds” required to overrule a constitutional law precedent); *id.* at 1421–22 (Thomas, J., concurring) (urging standard, based on prior opinions, of overruling precedent when it is “demonstrably erroneous”).

222. See, e.g., Amy Coney Barrett, *Originalism and Stare Decisis*, 92 NOTRE DAME L. REV. 1921, 1921–22 (2017); Randy J. Kozel, *Stare Decisis in the Second-Best World*, 103 CALIF. L. REV. 1139, 1147–50 (2015); John O. McGinnis & Michael B. Rappaport, *Reconciling Originalism and Precedent*, 103 NW. U. L. REV. 803, 803–06 (2009).

interpretations and perspectives as the Constitution itself. The trajectory of originalist scholarship has traversed the distance from initial originalists like Bork and Raoul Berger, who forged originalism to repudiate evolving constitutional law like *Brown v. Board of Education* and *Roe v. Wade*, to today's self-proclaimed originalists like Professor Calabresi and Professor Baude, who maintain that thoroughly contemporary decisions like *United States v. Virginia* and *Obergefell v. Hodges* are supportable on (what they label as) originalist grounds.²²³ As Professor Segall thoroughly explains, if a supposedly originalist method in fact produces constitutional interpretations analytically indistinguishable from living constitutionalism, then either the method is not actually originalist or the term originalism has been redefined so as to be meaningless.²²⁴ Similarly, some originalist scholars maintain that deep flaws in originalism in practice on the bench—such as when justices or judges “do originalism wrong” by putting forth inaccurate or insufficiently researched history, or relying upon originalist approaches in some cases but not others—should not be held against originalism as a theory propounded by properly committed originalists.²²⁵

From the perspective provided by fan studies, however, the multiplicity of perspectives within the originalist interpretive community is entirely ordinary. A scholar or judge applying a method of constitutional interpretation supporting evolving constitutional law with a significant historical emphasis can be as much a part of that community as a thinker committed to rigorous historical investigation of public meaning at ratification. A judge or scholar who sometimes relies on “bad history” or who might be characterized as results-oriented, even hypocritical, in an inconsistent reliance on original public meaning can be part of that community, too. The *Star Wars* fandom might wish it could disclaim or eject the bigots, trolls, and others who carry out

223. SEGALL, *supra* note 26, at 57–64 (discussing Bork, Berger, and U.S. Attorney General Edward Meese); *id.* at 93–97, 108–11 (discussing Calabresi and Baude).

224. *Id.* at 81, 83, 90–115, 178, 185.

225. *See, e.g.*, Stephen E. Sachs, *Originalism: Standard and Procedure*, 135 HARV. L. REV. 777, 778 (2022); Eric Segall, *Originalism Diluted*, DORF ON L. (Aug. 18, 2021), <http://www.dorfonlaw.org/2021/08/originalism-diluted.html> (“Professor Sachs’s newest effort to use originalism to describe our actual law does not even attempt to establish that the doctrine has been achievable by judges in the past or could be usefully employed by them in the future. He even says such considerations may be irrelevant when assessing originalism.”).

harmful acts in the name of their vision of the franchise,²²⁶ but they are part of the interpretive community whether we like it or not. Likewise, some originalists seek to reject the association of their version of originalism with the theory or practice of others. If the association persists, it is because the interpretive community of originalists—as conceived by insiders, outsiders, or both—encompasses a wide range of perspectives on originalism.

In his aptly titled book, Professor Segall settles on the description “originalism as faith”—in the sense of articles of faith, accepted as true irrespective of empirical realities—to explain why, if the interpretive methodology has failed to achieve its objectives on and off the Supreme Court, so many people still insist on describing themselves as originalists or asserting that they are applying originalist methods.²²⁷ This Article suggests my alternative analysis of the same phenomenon. The vast majority of self-described *Star Wars* fans will enjoy, even deeply love, the media franchise without ever once having the opportunity to participate in any formal or officially sanctioned aspect of the franchise, as opposed to its fan interpretive communities and external fandom more broadly.

In the same way, understanding originalism as a fandom explains why scholars and judges might attach the label originalist to themselves. Perhaps they are fans of the Founding Fathers or the Radical Republicans; perhaps they are fans of text and history more than abstract normative principles; perhaps they are fans of the doctrinal outcomes reached by originalist judges or scholars. Perhaps they are fans of previous originalists, whether on the bench or in academia; perhaps they are fans of the institution of originalism, as embodied in the interpretive community, which has grown and reinforced its own influence over several decades.²²⁸ Whatever the particular attraction for each self-identified

226. See *supra* notes 163–67 and accompanying text.

227. “The belief that anything other than those values substantially drives the decisions of these life-tenured, governmental officials is nothing more than an overly optimistic, but wholly unrealistic, and ultimately dangerous, article of faith.” SEGALL, *supra* note 26, at 194; *id.* at 1, 12, 61, 170, 179, 183, 191; see also *id.* at 179 (section heading posing question “why pretend originalism matters?”).

228. Cf. *id.* at 83 (“At the same time, however, these academics understood what a powerful political symbol originalism had become, and they did not want to lose that mantle.”); *id.* at 102, 114, 123, 183, 185 (speculating on reasons why individuals seek to label their perspective as originalist).

originalist, just like the highly varied appeal across wide swaths of self-proclaimed *Star Wars* fans, originalism is a fandom.

IV. CONCLUSION

Examined as products of their respective interpretive communities, originalist constitutional interpretation and the *Star Wars* franchise share a considerable number of analytical points of comparison. Both involve highly contestable issues of interpretation of an iconic text, including layers such as the contributions of its multiple creators, the scope and solidity of its initial meanings, and the evolution of the text itself over time. Both involve publicly prominent historical narratives that place disproportionate emphasis on certain individuals and influences, nostalgia for an inauthentic past in service of present objectives, and an undercurrent of backlash against changes that bring more inclusion and pluralism into the interpretive community. Ultimately, both demonstrate, in their own ways, the inevitability of interpretive disagreement and the impossibility of divining a singular objectively provable meaning when the text at issue not only contains numerous generalities and indeterminacies, but also carries a profound emotional, cultural, and personal significance to its interpreters and the broader community in which their interpretive analysis occurs. Consequently, while it may be more intuitive to associate a global media franchise like *Star Wars* with analysis of fandom, the originalist interpretive community also displays the characteristics of a fan interpretive community.

Two important normative conclusions follow from this descriptive similarity. First, we must candidly and overtly acknowledge that the endeavor of interpretation invariably will reach some outcomes that each individual, whether interpreter or observer, will believe to be flawed or erroneous, maybe worse. The U.S. Supreme Court will never decide every single constitutional law case “correctly” in the eyes of every American. The *Star Wars* franchise will always contain plot developments, character arcs, endings and resolutions, and broader themes that some in the audience dislike or despise. In a diverse and pluralistic political community or fandom, disagreement and controversy are unavoidable. It is nothing more than a fiction to suggest that one particular interpretive methodology can somehow put such interpretive disputes to rest.

Second, it is equally imperative to candidly and overtly acknowledge that the interpreters of iconic canonical texts (and associated paratexts) are engaged in the exercise of *judgment* about the text and its meaning. Justices are not mathematicians or chemists accurately calculating results from applicable formulas; storytellers are not logicians or physicians deducing the correct course forward from the available information in front of them. Originalism is doomed to fail in its quest to constrain judges to identifying a single objectively correct interpretation of the Constitution—if that is truly the authentic purpose of originalism. Likewise, originalism is no more a foolproof way to flawlessly interpret the Constitution than reliance on longtime dedicated fans necessarily ensures successful storytelling in *Star Wars*. When viewed through the lens of this comparison, originalism is a fandom.