

Words Poorly Used #136 — Originalism

These things are backwards. The much lauded American System has been overtaken by processmongers. Process overwhelms purpose.

Let's look at the Fourth Amendment to the Constitution, the fourth of the Bill of Rights. What is the immediate history, in colonial times, that led to the Amendment, and what is its direct purpose? The non-loyalist, non-royalist patriots, who sued for freedom in the lead up to and conduct of the American Revolution, wanted freedom from unreasonable searches and seizures. As a secondary matter, they made the poor choice of wishful thinking about the objectivity of the courts in issuing warrants of reasonable search and seizure. Why on Earth did they believe that courts would be any different here than in England — they were based on the same general model? Warrants were supposed to be a buffer between the innocent-until-proven-guilty and an overzealous ruling class. But in reality, rubber stamp warrants became the norm, quickly. Why did the founders believe that a ruling class here would somehow avoid the inefficiencies of the ruling class there?

So now we have a world in which a warrant is only a hiccup — a temporary protection of a private citizen's freedom. Wasn't the purpose of that original amendment to document the freedom, not the method by which it would be traversed?

Originalism applied to the purpose of a warrant completely misses the purpose of the freedom.

— Kilgore Forelle