This study seeks to describe and evaluate the Constitution's implicit normative structure. The first part of the argument distinguishes the Constitution's intention from the subjective intentions of the framers and teases out the implications of this distinction for uncovering the Constitution's moral meaning. This distinction indicates rejecting the standard method of the intellectual historian, which aims to classify the Constitution as classical, modern or positivist based upon an examination and classification of the most important writings of the framers. Instead, if we want to ascertain the Constitution's intended moral meaning, then we should apply a logical method known as inference to the best explanation. To apply this methodology, I tease out possible Constitutional presuppositions concerning the nature of sovereignty, the common good, natural law and natural rights and use inference to the best explanation to identify the best possible presupposition in each of these areas. The argument reveals that the Constitution presupposes a constrained popular sovereign. Constrained popular sovereignty in turn entails a real common good. The Constitution presupposes that the common good is also thick and teleological. However, while the common good specifies the content of morality, it does not impose obligations upon human persons unless it is prescribed. The natural law provides this prescription. Because the Constitution is prescriptive, it seeks to obligate individuals. But the obligation of human law presupposes a source of obligation external to human law and normative for it. The Constitution therefore presupposes a natural law to which human law must conform to receive what binding power it has. I argue that the Constitution presupposes that this law is promulgated through non-instrumental reason. Moreover, the presupposition of a moral law together with constrained popular sovereignty entails that this law is known at least to most. Finally, moral obligation entails moral right. Because the Constitution presupposes obligations antecedent to human law, it also presupposes rights antecedent to human law. I conclude with the argument that the moral framework just outlined is in fact a good one.
They drafted constitutions precisely because they knew that they and their successors would need constant reminders of the principles that they held dear and of the foundational agreements that they had struck. As constitutional interpreters, we are required to reason from the principles that they laid down, not to take their word for the particular applications that should be made of those principles. There are several interrelated justifications for a jurisprudence of originalism. Originalism is implicit in the design of a written constitution. The adoption of a written constitution is justified by the desire to fix certain principles and raise them over others as having special weight. (Fiske & Linville 1980). The IAT—the most well-known test of implicit attitudes—is a reaction time measure. In a standard IAT, the subject attempts to sort words or pictures into categories as fast as possible while making as few errors as possible. In the images below, the correct answers would be left, right, left, right. One version of the generic belief interpretation claims that implicit biases are better understood as cognitive “schemas” than as evaluative attitudes. Schemas are clusters of culturally shared concepts and beliefs. More precisely, schemas are abstract knowledge structures that specify the defining features and attributes of a target (Fiske & Linville 1980). This study seeks to describe and evaluate the Constitution’s implicit normative structure. The first part of the argument distinguishes the Constitution’s intention from the subjective intentions of the framers and teases out the implications of this distinction for uncovering the Constitution’s moral meaning. Instead, if we want to ascertain the Constitution’s intended moral meaning, then we should apply a logical method known as inference to the best explanation. To apply this methodology, I tease out possible Constitutional presuppositions concerning the nature of sovereignty, the common good, natural law and natural rights and use inference to the best explanation to identify the best possible presupposition in each of these areas.