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REVISITING THE FRIED CHICKEN RECIPE

Zachary B. Pohlman*

ABSTRACT

Twenty-five years ago, Gary Lawson introduced us to legal theory's tastiest analogy. He told us about a late-eighteenth-century recipe for making fried chicken and how we ought to interpret it. Lawson's pithy essay has much to be praised. Yet, even twenty-five years later, there remains more to be said about legal theory's most famous recipe. In particular, there remains much more to be said about the recipe's author, a person (or, perhaps, group of people) whom Lawson does not discuss. Lawson's analysis of the recipe leads him to an "obvious" conclusion: the recipe's meaning is its original public meaning. If we consider those who wrote the recipe and their joint act of recipe-writing, however, I question whether that conclusion remains so obvious. This Essay takes a closer look at the chefs who wrote the fried chicken recipe and their act of recipe-writing that produced it. I argue that the meaning of the fried chicken recipe is not its original public meaning but is rather the meaning the chefs intended the recipe to have, even on Lawson's own terms.

INTRODUCTION

Twenty-five years ago, Gary Lawson introduced us to legal theory's tastiest analogy.¹ Lawson asked us to suppose that we found an old document that was produced in the late-eighteenth century in an area known as Philadelphia. The document, he told us, listed quantities of items, such as "one 2 1/2 pound chicken," "1/4 cup of flour," "one teaspoon of salt," "plenty of lard for frying," and "pepper to taste," and it included instructions like "combine the one teaspoon of salt with the 1/4 cup of flour," "add pepper to taste to the salt and flour mixture," "coat the chicken with the flour," and "fry the coated chicken in hot lard until golden brown."² Perhaps stating the obvious, Lawson

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1 Gary Lawson, *On Reading Recipes . . . and Constitutions*, 85 GEO. L.J. 1823 (1997).

2 *Id.* at 1825.

confirmed that the document “appears to be a late-eighteenth-century recipe for preparing fried chicken.”³

So the document is a recipe—but what does it mean? Lawson supposes that our general knowledge of recipes would lead us to conclude that this recipe is a set of instructions addressed to human observers who, if they follow the instructions, will produce fried chicken. In understanding what the recipe means, then, Lawson submits that “the meaning of a recipe is its public meaning—the meaning that it would have to the audience to which the document addresses itself.”⁴ It follows, Lawson argues, that if the document spoke to an audience at a particular place and time, its meaning should be drawn from that point.⁵ He therefore concludes that the “presumptive meaning of a recipe is its original public meaning.”⁶

Of course, that the recipe means today what it originally meant to the public at a particular place and time does not mean that discovering that original meaning will be simple. It also doesn’t mean it will be difficult. As Lawson notes, “[s]ome of the recipe’s instructions are very clear and very specific,” like the instruction to “combine the one teaspoon of salt with the 1/4 cup of flour.”⁷ Others are “very clear but imprecise,” like the instruction to “add pepper to taste.”⁸ Still other instructions are “neither clear nor precise,” as when the recipe says to “fry the coated chicken in hot lard until golden brown.”⁹ Lawson points out that it is not clear whether the chicken or the oil is supposed to be golden brown, but that reflecting on the “evident purpose” of the recipe leads to the conclusion “that the chicken is the proper object of attention.”¹⁰ But that doesn’t end the inquiry: What does it mean, for example, to be “golden brown”? Or, on a different note, what should we make of the fact that 1/4 cup of flour is simply not enough flour (whatever “flour” means¹¹) to coat a 2 1/2 pound chicken? May a cook interpreting the recipe add more flour? Interpretive problems like these, Lawson says, are endemic to understanding what recipes mean.

3 *Id.*

4 *Id.* at 1826.

5 *See id.*

6 *Id.*

7 *Id.* at 1827.

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.* (“Does ‘flour’ refer to a specific product made from specific grains using a specific process, or does it include essentially any powdered grain product?”).

Such problems also pervade the interpretation of constitutions.¹² “The Constitution of the United States is a recipe,” Lawson tells us—“a recipe for a particular form of government.”¹³ Because the Constitution is a “recipe of sorts that is clearly addressed to an external audience,” the Constitution’s meaning, like the recipe’s meaning, is its original public meaning.¹⁴ Lawson’s main point is that nonoriginalist theories of constitutional interpretation blur the distinction between constitutional *interpretation* and constitutional *adjudication*.¹⁵ In Lawson’s words, “a theory of interpretation allows us to determine what the Constitution truly means, while a theory of adjudication allows us to determine what role, if any, the Constitution’s meaning should play in particular decisions.”¹⁶

Lawson then considers how various poultry-preparers might blur the distinction. One could understand the correct interpretation of the recipe to be the one that leads to the best fried chicken.¹⁷ Lawson argues that this gets things backward: one needs “to know what the recipe means in order to judge whether it is successful as a recipe.”¹⁸ Or consider an interpretive approach that looks to how cooks over time have interpreted the recipe, even if more recent interpretations depart from the recipe’s plain meaning—for example, if modern cooks substitute rosemary for pepper because modern consumers prefer rosemary.¹⁹ Lawson responds that such cooks “are not *interpreting* the original recipe, but rather they are *amending* it.”²⁰ Lastly, consider a cook who determines that the object of the recipe is tasty fried chicken, and on the basis of that object she reads “add pepper to taste” to mean “add seasonings, such as pepper, to taste.”²¹ If we suppose that the recipe has a formal amendment process, Lawson argues that broadening the language to accord with the recipe’s apparent purpose

12 The arguments advanced in this Essay apply also to statutory interpretation, though I present them in terms of constitutional interpretation only.

13 Lawson, *supra* note 1, at 1833.

14 *Id.* at 1834.

15 See *id.* at 1823; see also Gary Lawson, *Equivocal Originalism*, 27 TEX. REV. L. & POL. (forthcoming 2022) (manuscript at 17).

16 Lawson, *supra* note 1, at 1824.

17 See *id.* at 1828 (first citing RONALD DWORKIN, FREEDOM’S LAW 38 (1996); and then citing RONALD DWORKIN, LAW’S EMPIRE 53–56, 225–28 (1986)).

18 *Id.*

19 See *id.* at 1829–30 (citing David A. Strauss, *Common Law Constitutional Interpretation*, 63 U. CHI. L. REV. 877, 883–88 (1996)).

20 *Id.* at 1830.

21 See *id.* at 1830–31; *cf. id.* at 1831 (first citing Akhil Reed Amar, *The Consent of the Governed: Constitutional Amendment Outside Article V*, 94 COLUM. L. REV. 457, 487–94 (1994); and then citing Akhil Reed Amar, *Philadelphia Revisited: Amending the Constitution Outside Article V*, 55 U. CHI. L. REV. 1043, 1050–61 (1988)).

involves “*substituting* a new recipe rather than *interpreting* the old one.”²²

In each situation, the nonoriginalist interpretive approaches conflate the question “what should the cook do?” with “what does the recipe mean?” Maybe following the recipe will produce bad chicken; maybe it won’t. As Lawson puts it, “[i]nterpretation must precede evaluation, not vice versa.”²³ Indeed, “one would think that the decision whether to follow the old recipe would depend, at least in part, on what the old recipe in fact means.”²⁴

Lawson’s pithy essay has much to be praised. It shows, for one, the importance of analytically separating interpretation from adjudication when discussing interpretive theory. It also presents a concise and cogent argument for public meaning originalism of the variety that the judiciary has since overwhelmingly embraced.²⁵ Like the 235-year-old recipe itself, Lawson’s essay, now twenty-five years old, has endured the test of time and remains a staple of the constitutional theory literature.²⁶

Yet, even twenty-five years later, there remains more to be said about legal theory’s most famous recipe. In particular, there remains much more to be said about the recipe’s *author*, a person (or, perhaps, group of people) whom Lawson does not discuss. Lawson’s analysis of the recipe leads him to an “obvious” conclusion: the recipe’s meaning is its original public meaning.²⁷ If we consider those who wrote the recipe and their joint act of recipe-writing, however, I question whether that conclusion remains so obvious, even on Lawson’s own account.

I. ON CHEFS

Though we don’t know who exactly wrote the fried chicken recipe, we do know that someone wrote it. Recipes, including recipes that

22 *Id.* at 1831.

23 *Id.* at 1828.

24 *Id.* at 1832.

25 See, e.g., Larry Kramer, *Two (More) Problems with Originalism*, 31 HARV. J.L. & PUB. POL’Y 907, 911 (2008) (“Public meaning originalism is the prevalent version of originalism today, which makes sense given the way it responds to the critiques of both original understanding originalism and original intent originalism.”).

26 See, e.g., Stephen E. Sachs, *Originalism and Its Discontents* ii (2022) (syllabus), <https://www.stevesachs.com/syllabi/originalism.pdf> [<https://perma.cc/HLQ2-3655>]; Keith E. Whittington, *Constitutional Originalism* 5 (2020) (syllabus), https://scholar.princeton.edu/sites/default/files/kewhitt/files/constitutional_originalism_syllabus.pdf [<https://perma.cc/L8V4-HAH2>].

27 Lawson, *supra* note 1, at 1826.

originated in late-eighteenth century Philadelphia, do not self-generate. The recipe therefore had an author. Though Lawson himself doesn't mention it, let's presume that the fried chicken recipe in fact had multiple authors. We will call them chefs. These chefs wrote the fried chicken recipe.

One can only imagine how the recipe in its final form came to be. Before writing the recipe down, the chefs most likely thought about how best to cook fried chicken, and I'm sure they debated it amongst themselves. The chefs invariably drew upon their prior knowledge of how to prepare fried food, and chicken in particular, knowledge they likely acquired from both cookbooks and their various past experiences in the kitchen. Having contemplated the best course of action, perhaps they drew up some draft recipes. This would allow them to debate the recipe's particularities: Is 1/4 cup of flour sufficient? Does the recipe work only on 2 1/2 pound chickens? And when they couldn't agree, perhaps the chefs came to a compromise. Some may have preferred specifying that a teaspoon of pepper should be added, while others may have rejected the addition of pepper at all. "Add pepper to taste," while neither camp's ideal, satisfied each side enough to allow the recipe writing to continue. Then, when at last the fried chicken recipe produced the best fried chicken the chefs thought possible given their differences of opinion (even if it didn't produce an absolutely perfect fried chicken), they wrote that recipe down.

This account is a predictable and commonsense origin story for the fried chicken recipe, one that I do not think Lawson would contest. Yet by simply acknowledging that the recipe came from somewhere—indeed, from a collection of some *ones*—one can begin to see the problems with Lawson's authorless telling. Lawson says, for example, that recipes "speak to an audience at the time of their creation and draw their meaning from that point."²⁸ Elsewhere he echoes this sentiment, saying that "recipes present themselves to the world of human observers as communications of a particular kind, just as buildings or trees present themselves to the world of human observers as entities of a particular kind."²⁹ In one sense, Lawson is obviously correct: recipes are communications of a particular kind distinct from other forms of communication. That observation, plain as it is, remains unaffected in light of the recipe's origins. But his statements here and throughout the essay raise a distinct problem nonetheless.

28 *Id.*

29 *Id.*

Recipes do not “speak” nor do they “present themselves to the world of human observers.” Recipes are inanimate objects; they do not present themselves to humans or anything else.³⁰ In Lawson’s own account, at first glance the recipe “appear[ed] to be written in English,” presumably by the humans who wrote it.³¹ It is more accurate to say, then, that certain human beings—call them chefs—present recipes to the world of human observers. It is the chefs who are doing the speaking, not the recipes themselves. Unlike a recipe, which cannot form an intention (let alone act on one), chefs can both form intentions and communicate those intentions to others. The recipe is merely their mode of communicating their intentions. So Lawson is correct in that a recipe is a “communication of a particular kind.” But his mistake is “to conceive of communication as an object apart from a communicator.”³² In other words, if there were no chefs, there would be no communication—and thus no recipe. A recipe without an author would be “nonsense.”³³

Yet Lawson seems implicitly to grasp the need for the recipe to come from an author. Recall that on his account, the “*presumptive* meaning of a recipe is its original public meaning.”³⁴ As Lawson explains, the “meaning is merely presumptive because if there is good reason to think that a particular recipe was designed only for private rather than public consumption, then one must take account of both its original public meaning and its original private meaning to its intended audience.”³⁵ The passive voice masks an important but unspoken assumption in Lawson’s argument for public meaning originalism.³⁶ He says that the recipe *was designed*. This raises the question, “by whom?” He says that the recipe has an *intended audience*. This raises the question, “whose intentions?” It is a fairly uncontroversial claim that recipes neither design themselves nor form intentions. We are thus left to conclude that the recipe was designed by human beings

30 See Larry Alexander & Saikrishna Prakash, “*Is That English You’re Speaking?*” *Why Intention Free Interpretation Is an Impossibility*, 41 SAN DIEGO L. REV. 967, 974–76 (2004).

31 Lawson, *supra* note 1, at 1825.

32 Richard Ekins, *Objects of Interpretation*, 32 CONST. COMMENT. 1, 5 (2017).

33 Cf. STEVEN D. SMITH, LAW’S QUANDARY 11–12 (2007).

34 Lawson, *supra* note 1, at 1826 (emphasis added).

35 *Id.*

36 Lawson repeatedly uses the passive voice when referring to the recipe. See, e.g., *id.* (“We know that *recipes are frequently . . . designed* to be read by persons other than the authors.” (emphasis added)); *id.* (“And because *every document is created* at a particular moment in space and time, documents ordinarily, though not invariably, speak to an audience at the time of their creation and draw their meaning from that point.” (emphasis added)); *id.* n.13 (“*Some recipes might be constructed* only for the author or for a very small group of persons well known to the author.” (emphasis added)).

and that it is those human beings' intentions with which we are concerned. These human beings, of course, are our chefs.

Lawson contends that a recipe's original public meaning should take priority over any private meanings it may have *unless the recipe was designed for private consumption*.³⁷ This caveat—reasonable as it is—lies in tension with Lawson's claim that the "presumptive meaning of a recipe is its original public meaning."³⁸ On Lawson's own account, that a recipe means what it originally meant to the public is contingent, not necessary. To interpret a recipe is not *necessarily* to discover its original public meaning, even if interpreting a recipe *often* means discovering its original public meaning. Even on Lawson's view, before an interpreter asks what the original public meaning of a recipe is, he must first make a distinct analytical inquiry. The interpreter must first ask whether "there is good reason to think that a particular recipe was designed only for private rather than public consumption."³⁹ Only when the interpreter is satisfied that the recipe was designed for a public audience may he proceed to determine what the recipe's original public meaning is.⁴⁰

We can bring Lawson's masked premise to the fore if we state his conclusion in the active voice: the meaning of a recipe is its original public meaning *if the chefs designed the recipe for public consumption*. Thus, even though Lawson jumps straight to original public meaning to determine the recipe's meaning,⁴¹ it is entirely possible that the chefs did not design the recipe for public consumption.⁴² If that were the case, then the recipe's private meaning—not its public meaning—would determine the recipe's meaning. It cannot be the case that any recipe's

37 Larry Solum, a leading originalist theorist, takes the same approach (with respect to constitutions rather than recipes, that is). Lawrence B. Solum, *The Public Meaning Thesis: An Originalist Theory of Constitutional Meaning*, 101 B.U. L. REV. 1953, 1974, 1982 (2021) ("Who were the intended readers of the constitutional text? . . . To make out the case that the intended audience of the constitutional text consists solely of persons learned in the law, one would need to argue that the Framers did not intend to communicate to the public and to officials who were not legally trained. But this seems very unlikely.").

38 Lawson, *supra* note 1, at 1826.

39 *Id.*

40 In more technical terms, only once the interpreter is convinced that the Framers' "second-order communicative intention," whether implicit or explicit, is for the interpreter to give the text its original public meaning should the interpreter do so. See Solum, *supra* note 37, at 1994–95; see also Lawrence B. Solum, *Themes from Fallon on Constitutional Theory*, 18 GEO. J.L. & PUB. POL'Y 287, 305–06 (2020).

41 "[A]ll indications are that this recipe presents itself to the world as a public document." Lawson, *supra* note 1, at 1827.

42 Lawson imagines, for example, that "[s]ome recipes might be constructed only for the author or for a very small group of persons well known to the author." *Id.* at 1826 n.13.

meaning “just is” its original public meaning if not every recipe’s meaning is its original public meaning.⁴³

To interpret a recipe using Lawson’s framework, then, an interpreter must first determine whether the chefs designed the recipe for public or private consumption. Lawson anticipates where this inquiry leads when he alludes to the recipe’s “intended audience.” As we’ve already seen, though, the “intended audience” is not that of the recipe but of the recipe’s designers—the chefs. The first step in interpreting a recipe, therefore, is to determine who the chefs intended the recipe’s audience to be. We might call this the analytical priority of authorial intentions. One cannot discern the meaning of a recipe without first considering the intent of the chefs who wrote it.⁴⁴

We can see the analytical priority of authorial intentions on display in one other aspect of Lawson’s theory as well. Let’s assume, along with Lawson, that the fried chicken recipe “presents itself to the world as a public document.”⁴⁵ (Of course, to be more precise we might assume that the chefs who wrote the fried chicken recipe intended it to be a public document.) Lawson then argues that the recipe’s meaning is its *original* public meaning rather than its *present-day* public meaning.⁴⁶ Again, however, Lawson arrives at this conclusion while bracketing the recipe’s authors and anthropomorphizing recipes themselves. In his words, “because every document is created at a particular moment in space and time, documents ordinarily, though not invariably,

43 See Cass R. Sunstein, *There Is Nothing That Interpretation Just Is*, 30 CONST. COMMENT. 193, 195 n.14 (2015) (citing Lawson, *supra* note 1). See generally DONALD L. DRAKEMAN, *THE HOLLOW CORE OF CONSTITUTIONAL THEORY: WHY WE NEED THE FRAMERS* (2020).

44 In a reply to this Essay, John Vlahoplus suggests that recipes ought to be interpreted “regardless of public meaning or the intent of the author of any particular recipe.” John Vlahoplus, *Living Recipes . . . and Constitutions*, 98 NOTRE DAME L. REV. REFLECTION (forthcoming 2023) (manuscript at 3). Yet the primary recipe upon which Vlahoplus relies shows that the “living” approach to interpreting it was intended by the recipe’s authors themselves: “When we give extensive directions in this book, *our intention* is to explain how the recipe works, not to dictate an exact, right way. . . . There is no secret outside of trusting your own sensibilities.” *Id.* at 2 (emphasis added) (quoting DEBORAH MADISON & EDWARD ESPE BROWN, *THE GREENS COOKBOOK* xix (1987)). A cook who thus “trust[s] [his] own sensibilities” in following the recipe would faithfully interpret the recipe in accordance with the intent of its framers. *Id.* (quoting MADISON & BROWN, *supra* note 44, at xix). Put another way, just as Lawson arrives at public meaning originalism by first considering the Framers’ intent, so too Vlahoplus arrives at living constitutionalism by first considering the Framers’ intent. In any event, Vlahoplus’s example does not support living constitutionalism because, unlike his example recipe, the American Constitution contains no *ex ante* general interpretive rules that dictate a living interpretive approach.

45 Lawson, *supra* note 1, at 1827.

46 See *id.* For a sophisticated defense of “contemporary meaning textualism” in constitutional interpretation, see Frederick Schauer, *Unoriginal Textualism*, 90 GEO. WASH. L. REV. 825 (2022).

speak to an audience at the time of their creation and draw their meaning from that point.”⁴⁷ Lawson supposes that a document might not “speak” to a contemporary audience but might instead be “addressed exclusively to a future audience.”⁴⁸

Like his argument for public as opposed to private meaning, Lawson’s case for original over nonoriginal meaning includes a fatal caveat. Just because recipes *ordinarily* draw their meaning from the point at which they “speak” does not mean that recipes *always* do so. A recipe addressed to a future audience, Lawson tells us, does not. Thus, the meaning of a recipe is not necessarily its original public meaning; it is only contingently so. Moreover, recipes *qua* recipes do not address themselves to any particular temporal audience. Chefs do that.⁴⁹ To determine whether chefs are speaking (via recipe) to their contemporary public or to some future public, the interpreter must inquire as to the chefs’ intent. Only after the interpreter has determined that the chefs intended to speak to a contemporary audience rather than a future one can the interpreter draw the recipe’s public meaning “from that point.” As with Lawson’s argument for *public* meaning originalism, therefore, his argument for *original* public meaning includes a largely masked first step: look to the chefs’ intent. Once again, Lawson’s own interpretive approach confirms the analytical priority of authorial intentions.

But perhaps authorial intent has priority not only in an analytical, chronological sense, but also in a deeper, foundational sense. Without the chefs, there would be no recipe. A recipe is not a “text floating free in the world.”⁵⁰ It instead comes from the chefs’ intentional recipe-making act. At the recipe-writing convention, the chefs came up with a plan to cook the best fried chicken. They communicated that plan to others through the words of the recipe.⁵¹ Cooks, as readers seeking to follow that plan, should follow the plan that the chefs actually decided upon. This means that a cook reading—that is, “interpreting”—the recipe should seek to infer the meaning the chefs intended to convey.⁵² In other words, the chefs’ intended meaning *is* the

47 Lawson, *supra* note 1, at 1826.

48 *Id.* at 1826 n.14.

49 Consider, for example, a chef who writes a recipe for apple pie that is not to be followed for at least five years, when the apple tree she just planted will start to produce fruit.

50 Ekins, *supra* note 32, at 1.

51 In technical terms, “the plan” itself is the chefs’ “first-order communicative intention” because the plan is the communicative content the chefs intended to convey via the recipe. See Solum, *supra* note 37, at 1994.

52 See Ekins, *supra* note 32, at 5.

meaning of the recipe.⁵³ Sure, some texts more clearly communicate their authors' intended meaning than others. The most successful communications are those in which the audience easily recognizes the meaning the speaker intended.⁵⁴ But the point remains this: interpretation "just is" discovering a text's authorially intended meaning.

This account stacks up against the various other modes of "interpretation" that Lawson discusses in a way similar to Lawson's public meaning originalism. It is wrong to construe a recipe to produce the best fried chicken because we still need to know what the recipe means—i.e., how the chefs intended chicken to be fried—before we can evaluate whether the chefs' directions for cooking fried chicken were good ones. Likewise, cooks over time who substitute rosemary for pepper do not "interpret" the recipe because they are not loyal to the chefs' plan, which specifically called for pepper. And lastly, if the chefs intended to allow future chefs (or perhaps cooks or even patrons) to change the recipe, and the authoring chefs specified how to change the recipe in the original recipe itself, any attempts to change the recipe not following those steps would involve "*substituting* a new recipe rather than *interpreting* the old one."⁵⁵

In light of the similarities between public meaning originalism and chefs' intent originalism, Lawson's fundamental insight remains intact: "It is one thing to know what the old recipe means; it is another thing altogether to decide whether one ought to follow the old recipe."⁵⁶ Lawson then, albeit briefly, goes through a number of possible reasons that someone might choose to follow the original meaning of

53 See Larry Alexander, *Originalism, the Why and the What*, 82 *FORDHAM L. REV.* 539, 540 (2013) ("The meaning of the norm that the legislative person or body has chosen and communicated symbolically is the meaning that person or body intends those symbols to communicate." (emphasis omitted)).

54 See Ekins, *supra* note 32, at 3.

55 Lawson, *supra* note 1, at 1831. Vlahoplus admits that "[I]iving theories [of interpretation] allow cooks flexibility, but not unlimited flexibility. At some point their actions amend rather than follow a recipe." Vlahoplus, *supra* note 44, at 6. But if the possibility of living theories of interpretation means that "[e]ach living theorist must articulate and justify the limits of their theory," then it is not clear how any approach to determining legal meaning that labels itself "interpretation" would fail to count as such. *Id.* Take Vlahoplus's own theory as an example. He argues that the Constitution's age requirements to hold office "do[] not dictate an exact right way to determine eligibility," and would in some cases exclude someone older than thirty-five from becoming President. Vlahoplus, *supra* note 44, at 12; see U.S. CONST. art. II, § 1, cl. 5. A theory of "interpretation" that can justify ignoring unambiguous textual commands plainly is not interpretation, even under the most capacious of definitions. See Sunstein, *supra* note 43, at 193 ("It is true that some imaginable practices cannot count as interpretation at all. If judges do not show fidelity to authoritative texts, they cannot claim to be interpreting them.").

56 Lawson, *supra* note 1, at 1832.

the recipe, even if that person thinks the recipe is flawed. Those include the fact that the recipe is old and could provide useful insight into the problems of modern cooking,⁵⁷ the idea that the authors of the recipe were very wise chefs and that their judgments should be followed even today,⁵⁸ and the need for social coordination and settlement on one recipe.⁵⁹ Lawson concludes that the “bare fact” that eighteenth-century chefs agreed upon the recipe “has no normative force for present day cooks” to follow the recipe.⁶⁰ If we think that recipes merely “present themselves to the world of human observers,”⁶¹ then Lawson is surely correct. I would have no more reason to follow the recipe than I would have to follow marks in the desert sand forming words that the wind had fortuitously arranged.⁶²

But if we acknowledge that recipes come from chefs who authored the recipe in an intentional recipe-making act, then there is one more good reason to follow the recipe they wrote and not something else.⁶³ The writing of the recipe sprang from the chefs’ intense deliberation about the best way to cook fried chicken. Any number of potential fried chicken recipes would have been reasonable,⁶⁴ yet they chose this particular recipe. Assuming their chosen recipe produces fried chicken that surpasses some threshold level of what counts as “good” fried chicken, we should respect the chefs’ adoption of *this* recipe.⁶⁵ Rather than allow individual cooks to make ad hoc, potentially haphazard adjustments to the recipe, there is good reason to defer to the chefs’ “deliberate adoption” of the fried chicken recipe as is.⁶⁶ We need a fried chicken recipe, and the chefs already settled upon what that recipe is. This doesn’t mean it’s wrong to question the recipe; we

57 *Id.* (citing Michael C. Dorf, *Integrating Normative and Descriptive Constitutional Theory: The Case of Original Meaning*, 85 GEO. L.J. 1765, 1801–03 (1997)).

58 *Id.* (citing Dorf, *supra* note 57, at 1803–05).

59 *Id.* at 1832–33; *see, e.g.*, Alexander, *supra* note 53, at 539–40.

60 Lawson, *supra* note 1, at 1833 (emphasis omitted).

61 *Id.* at 1826.

62 *See* SMITH, *supra* note 33, at 108–09.

63 *Cf.* THOMAS AQUINAS, *SUMMA THEOLOGIAE* II-I, Q. 90 art. 4, at 208 (Fathers of the Eng. Dominican Province trans., 2d rev. ed. 1920) (c. 1270), <https://www.newadvent.org/summa/> [<https://perma.cc/RU7Q-Z567>] (defining “law” as “an ordinance of reason for the common good, made by him who has care of the community, and promulgated”).

64 *Cf.* Jeffrey A. Pojanowski, *Why Should Anyone Be an Originalist?*, 31 DIRITTO PUBBLICO COMPARATO ED EUROPEO ONLINE 583, 586 (2017) (“Within the range of reasonableness—and as a matter of humility, any one person might want to be generous in defining that range—there are many permutations of acceptance constitutions.”).

65 For one argument defending the legitimate moral authority of the original meaning of the Constitution on the basis of popular sovereignty, *see* J. Joel Alica, *The Moral Authority of Original Meaning*, 98 NOTRE DAME L. REV. 1 (2022).

66 Ekins, *supra* note 32, at 23.

must merely respect the chefs' decision before we decide whether to change what they settled upon.⁶⁷ If later cooks decide that the recipe needs to be updated, then chefs today must take "subsequent deliberate action" to update the recipe in accordance with its formal amendment procedures.⁶⁸ But until that happens, we would lose the benefit of having a fried chicken recipe if we ignored what the chefs intended to communicate in the recipe in the first place.

II. ON FRAMERS

I agree with Gary Lawson that the "Constitution of the United States is a recipe—a recipe for a particular form of government."⁶⁹ I disagree that it "aims at certain ends."⁷⁰ The Framers of the Constitution aimed at certain ends. They designed a government—a plan—to achieve those ends. The Constitution is the plan the Framers communicated to us. Interpreters should thus seek to understand the plan upon which the Framers settled. In other words, because the Constitution is "a deliberate lawmaking act" its "intended meaning . . . is to be upheld."⁷¹

The Constitution means today what the Framers intended it to mean. That does not mean discovering that meaning—the "original" one—will be simple. It also doesn't mean it will be difficult. Difficulty "will typically arise in cases where what appears to be the originally intended meaning of a law has an unforeseen application that is at odds with the purpose behind the law."⁷² But difficulty in interpreting the Constitution in such cases does not mean that intentionalist interpretation is incorrect. It simply means that legal interpretation is sometimes difficult.

That the meaning of the Constitution is its authorially intended meaning tells interpreters what the object of interpretation is. It does

67 Cf. Pojanowski, *supra* note 64, at 586–87 ("Were the constitution's legal norms treated as merely good advice, a polity would not enjoy the moral benefits that positive law exists to provide in the first place. This does not mean people should not seek to change their constitutions Rather, one should respect the (morally acceptable) constitution until it is changed by the means provided for by its framing. . . . If one does not seek to identify and treat the original law of the constitution as binding, one imperils the moral benefits constitutionalism exists to offer the polity. We are back to square one, adrift in a sea of competing, unentrenched norms.")

68 Ekins, *supra* note 32, at 9.

69 Lawson, *supra* note 1, at 1833.

70 *Id.*

71 Ekins, *supra* note 32, at 22. The same, of course, could be said of a statute. *Supra* note 12.

72 Alexander, *supra* note 53, at 542.

not tell interpreters how to discover or apply it in any particular case.⁷³ Perhaps interpreters should scour Farrand's Records, *The Federalist* and *Antifederalist*, personal letters, and individual speeches in the search for original intent. Perhaps—in the service of finding the original intended meaning—they shouldn't.⁷⁴ Perhaps, to take another example, the original meaning should give way to long-settled precedent—perhaps it shouldn't. I save consideration of such second-order questions of adjudication (as opposed to interpretation) for another day.⁷⁵ For now, the point remains a simple one: the meaning of the Constitution just is what the Framers intended it to mean.

⁷³ See generally Stephen E. Sachs, *Originalism: Standard and Procedure*, 135 HARV. L. REV. 777 (2022).

⁷⁴ Cf. ADRIAN VERMEULE, JUDGING UNDER UNCERTAINTY: AN INSTITUTIONAL THEORY OF LEGAL INTERPRETATION 82 (2006) (arguing that an intentionalist might agree to a rule excluding legislative history “because, on particular empirical premises, the rule would minimize both erroneous determinations of legislative intent and the costs of litigation”); Caleb Nelson, *A Response to Professor Manning*, 91 VA. L. REV. 451, 460 (2005) (“[T]extualists are skeptical of judges’ abilities to reach accurate determinations of collective semantic intentions by investigating the actual intentions of individual members of Congress. But this skepticism does not mean that interpreters must abandon any concern for collective semantic intentions. While conceding that ontological certainty about those intentions is impossible, skeptics could plausibly believe that judicial outcomes will better match whatever collective semantic intentions actually existed if judges consistently use the relatively rule-like interpretive conventions associated with textualism than if they use the more holistic methods associated with modern-day intentionalism.”).

⁷⁵ Cf. ADRIAN VERMEULE, COMMON GOOD CONSTITUTIONALISM: RECOVERING THE CLASSICAL LEGAL TRADITION 215 n.292 (2022) (criticizing natural lawyers who defend originalism of any stripe on the ground that they have offered only a theory of interpretation as opposed to a theory of adjudication); Jeffrey A. Pojanowski & Kevin C. Walsh, *Recovering Classical Legal Constitutionalism: A Critique of Professor Vermeule's New Theory*, 98 NOTRE DAME L. REV. 403, 453 (2022) (book review) (“A theory of law plays a crucial, anchoring role in determining what makes easy cases easy, hard cases hard, and which arguments are more probable when cases are close.”).