Subject: Still no coherent explanation of what legislating from the bench means
Posted by Manualblock on Tue, 01 Nov 2005 01:30:47 GMT
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Great another Scalia; in other words write loud but crappy opinions and do nothing. That I guess is the idea; appoint judges who refuse to rule on anything put before them. Maybe this court can appoint the next president also.

Subject: Re: Still no coherent explanation of what legislating from the bench means
Posted by akhilesh on Tue, 01 Nov 2005 14:52:53 GMT
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HI John,If it's not in the COnstitution, how can SUpreme Court Justices rule on something? THey are only allowed to rule on something in the context of the COnstitution. Legislating from the bench means: interpreting a law WELL beyond its intended scope, so it in effect becomes a new law. THe role of judges is to simply interpret the law as it was intended by its framer, whether the framers in question are our founding fathers or elected legislators.Hope this makes sense to you. -akhilesh

Subject: Re: Still no coherent explanation of what legislating from the bench means
Posted by Manualblock on Tue, 01 Nov 2005 17:58:01 GMT
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I understand your point AK; my position is this: The founding fathers specifically moulded the Constitution to be a fluid; change with the times template for future events beyond what they could percieve at the time. They make that very clear; if one were to read the federalist papers it becomes apparent that was their aim. How could a set of legislation be viable in perpituity? Thats why we call it Interpretation of the law when we act as judicial referees such as the Supreme Court does with every case.How would you rule in the Microsoft Monopoly case using just the Constitution as written without applying any recent descisions?How about right to die; since there was no medical means to determine how close to death people were 200 yrs ago?So; if the court does no interpretation of changing events then what is their purpose except to read the constitution to people?Oh; and let me say; I know you are not a childishly sarcastic individual and I appreciate that, thats why it's a pleasure to talk with you.

Subject: Re: Still no coherent explanation of what legislating from the bench means
Posted by Bob Brines on Tue, 01 Nov 2005 21:52:28 GMT

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Here you have raised an issue where Constitutional liberals an conservatives will never find common. It is a moral issue and different segments of the population have different views.It is clear that the Founding Fathers desired that any issue be settled at the smallest possible political entity. In the case of right-to-die, you are correct that it was not possible to determine the break-point between life and death nor to do anything about it if it were possible three centuries ago and so, there is no mention of right-to-die in the Constitution. Therefore, this issue is assigned to the States by default. It is out of the purvey of the Federal Government. The only way that the U.S. Supreme Court can get involved is if the laws of a given State were incorrectly applied, but not to rule on the merits of the issue itself. To rule on the merits of the case would be a clear example of judicial legislation: Creation of a law that did not exist.Now, you may argue (I'm not suggesting that you are) that some issues are so important that the Federal government has a duty to bring all people into compliance with correct and moral behavior, but was not this the cause of the War of Northern Aggression? I refer you back to my first sentence above.Bob

Subject: Re: Still no coherent explanation of what legislating from the bench means
Posted by Manualblock on Wed, 02 Nov 2005 01:51:20 GMT
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I'll take a chance and assume you are serious; even though I can feel the burn coming. You must explain how you mean war of Northern Aggression; is that a purposefull device to expose a fundamental flaw in court application? The basic tenet of states rights and federal rights establishes a balance.You wouldn't execute someone for a class a misdemeanor in one state and serve a probation in another.In the right to die intervention you must decide if there is an inherent right of privacy which I believe there is expressed in the Constitution.If so then the states sacrifice jurisdiction in order to serve the hierarchical scale of Justice inherent in our system.Concerning the rights and duties of citizens the states cannot abrogate those.Sec 2 Article 9" The Citizens of Each State shall be entitled to all priviledges and immunities of Citizens in the several states."What does that say about Abortion?Amendment 9" The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."Privacy.You are a person who travels from state to state; how is it fair that you become legally liable by virtue of crossing an imaginary line called a border within your own country; a lawbreaker by location.

Subject: Re: Lawbreaker by location. its a way of life
Posted by Bill Martinelli on Wed, 02 Nov 2005 13:36:54 GMT
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MB, that's the way of the land so to speak. 100's of examples of things that are leagal in one state and illeagal in another. For that matter there are examples of things you can do in one county vs.

another county in the same state. Most of these are minor laws, rules and regulations. still there are things left to be governed by the states. Are you saying you would rather this kind of thing did not happen?

Subject: Re: Still no coherent explanation of what legislating from the bench means
Posted by akhilesh on Wed, 02 Nov 2005 14:30:30 GMT
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John wrote:"I understand your point AK; my position is this: The founding fathers specifically moulded the Constitution to be a fluid; change with the times template for future events beyond what they could percieve at the time. "Sure, John. There is a way to alter the constitution. 2/3 majority ratification by all the states. IT has been amended several times. Interpretation of English statements that make up the Constitution should not be such a big deal, at least by reasonable minded people. Just in case some of us are unreasonable and read more into it than was intended by the framers of that particular amendment, The SUpreme COurt exists as the final arbiter of what eac hstatement in teh COnstitution means. "How would you rule in the Microsoft Monopoly case using just the Constitution as written without applying any recent descisions? How about right to die; since there was no medical means to determine how close to death people were 200 yrs ago? "If the Supreme Court cannot clearly use the COnstituion to rule on a cse, they have no business ruling on it. They should either uphold a decision made by a lower federal court, or rule it unconstitutional. Seems quite simple to me. thanks-akhilesh

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Subject: Re: Lawbreaker by location. its a way of life
Posted by Manualblock on Wed, 02 Nov 2005 16:46:05 GMT
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Well thats the real question. Many of the kinds of things you mention are ordinances which; while they are lawfull entities they mainly deal with localised issues that could not really be extended to the rest of the country. States need rights and priviledges to be able to respond to particular issues that affect them individually.The Supreme Court is a body of lawgivers that decides how we as a people should conduct our business according to the set of rules laid down by the Founding Fathers who themselves took their point of veiw from the French Model of Democracy Liberty Equality. That would be the way we know what is rightfully our duties, responsibilities and protections from abuse of power.People seem to forget that the Fathers were deathly afraid of the mis-use of power and it's effects. Thats why there is no written expression by any of them that declares there is even the concept of legislating from the bench. They saw the House and Senate as administrative bodies that conduct the daily business of life in America.The Court is the symbol of their allegience to the concepts that they fought to create in our government; that of protection from the majority for the minority; freedom of expression; fairness of treatment for everyone and the right basically to be left alone by the government as much as possible.This is my personal belief and I'm stickin' to it.(sorry if it sounds like a lecture; it's a personality defect I have.)

Subject: Re: Still no coherent explanation of what legislating from the bench means
Posted by Manualblock on Wed, 02 Nov 2005 19:18:10 GMT
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How can something be considered unconstitutional if it has no reference in the constitution? Would it not have to be addressing a constitutional issue to be "Unconstitutional?" Meaning not allowed by the constitution?That would eliminate most of our body of decided law and bring us back into the 18th century.Thats why it is "Interpreted", no?Isn't that their job; to "interpret the meaning of the constitution" as applied to issues before the law?If you read the document there isn't much there; certainly not anything you could use to finalise any legal position; thats why it is Interpreted.Using that premise black people would still be 3/5ths of a person. Because at the time the Legislatures' wanted it that way.

Subject: Re: Still no coherent explanation of what legislating from the bench means
Posted by akhilesh on Wed, 02 Nov 2005 20:09:48 GMT
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I thnk their job is to see existing legislation, and events, and see if they agree with the meaning of the constitution. So, yes, they need to have a clear understanding of what the target legislation/event is, and what the constituion means. They then rule the legislation/event constituional or not. So, if State A's legislature proposes a law, and the SUpreme COurt rules it unconstituional, then the law is struck down. Similalry, if the Congress passes a law, and it is found ot be unconstitutional, it is struck down. Unconstituional would mean inconsistent with the laws in the constitution. A strict contructionist would interpret the consitution narrowly, while one who "legislates from the bench" would read all sorts of things in the constituion that are not there. I have no idea about the 3/5 of a person, i don't see that in the constitution. -akhilesh

Subject: Maybe an example of legislating from the bench would help..
Posted by Mr Vinyl on Thu, 03 Nov 2005 07:01:15 GMT
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This is the kind of thing that is trying to be avoided.
http://www.cwfa.org/printerfriendly.asp?id=2587&department=cwa&categoryid=misc

Subject: Re: Still no coherent explanation of what legislating from the bench means
Posted by Manualblock on Thu, 03 Nov 2005 07:55:20 GMT
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Were getting sidetracked.There are no specific laws written in the Constitution. Show me one. The template for deciding what constitutes a viable and successful review is founded on the philosophy of the Constitution and Bill of Rights.We are granted a right and the Supreme Court reviews cases to make sure that we have access to that right. Take the Right to Bear Arms; what law is that? Can I carry a rocket launcher? It is not specifically prohibited in the Constitution is it?They look at the situation and see if it conforms to what the framers intended the rights and privledges to be in that case. If the rights of a citizen or entity are not respected pursuint to a legal ruling by a lower court they overturn the ruling. So again I ask:What means legislating from the bench? Thats what they are supposed to do. The case of Roe V Wade is the big trump card the bench guys use to illustrate their point. The Const. and BOR say nothing about medical procedures. But they do say a person has a right to privacy meaning to be in control of their personal destiny. Regardless of how you feel on the issue there must be a standard by which all citizens can judge their right to medical intervention. Be it one way or the other it must be respected for all citizens and not just some in one state and not another. Thats the job of the Supreme Court; to see that the rights of all entities are protected under the Constitutional umbrella.

Subject: Seems a stretch
Posted by akhilesh on Thu, 03 Nov 2005 14:09:57 GMT
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"has a right to privacy meaning to be in control of their personal destiny"What does privacy have to do with control of personal destiny?-akhilesh

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Subject: Re: Seems a stretch
Posted by Manualblock on Thu, 03 Nov 2005 15:11:08 GMT
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The privacy right includes the right to be left alone by the government as much as possible; thereby remaining free to make your life descisions without interference by unrelated parties. Not to be subject to unwarranted intrusions into your personal life is what the right of privacy protects.Thats why you have a right to control your medical treatment in the event of a terrible and terminal illness without some busybodies dictating how you can be treated.We all saw how the Congress rushed to screw with the Terry Schiavo family under pressure from religous wacko's. Thank God there is a higher court to deter that kind of interference. Thats why the court is and should be the last word. Thats what the framers wanted; the court to reign in politicaly motivated extremists in the Legislature like we saw in that case.Right of Privacy. Thank God they thought of it.

Subject: Re: Seems a stretch
Posted by akhilesh on Thu, 03 Nov 2005 19:08:45 GMT
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"The privacy right includes the right to be left alone by the government as much as possible; thereby remaining free to make your life descisions without interference by unrelated parties."John,Where do you infer this right in the COnstitution?-akhilesh

Subject: Re: Seems a stretch
Posted by Manualblock on Thu, 03 Nov 2005 21:50:13 GMT
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Well; my friend, there is of course a very well established right of privacy extending from constitutional precepts established in the law dating back to the founding. The stare' descisis is well established in that regard.Now you ask where in the constitution this right originates.In the original document there was no Bill of Rights simply because the fathers did not see a need explaining that the Const. itself provided those rights enumerated in the BOR.However some of the original founders felt there might be a mis-understanding down the road so they all agreed to draft and ratify a Bill of Rights and that is what we see now in the smithsonian.Now while the main body of the Constitution spells out what the Government may do and what it must do; the Bill of Rights spells out what the Government MAY NOT DO.It can't search or seize your property without due processIt cannot hold you in prison without trialIt can't enact laws abridging the freedom of speech/religion/or the right to bear arms.And various other prohibitions on Government activity are spelled out.The Ninth and Tenth amendmendts were enacted to make sure there was absolutely no mis-understanding concerning the LIMITED power of the government granted by the Constitution.Amendmendt IX The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.Amendment X The powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively or TO THE PEOPLE.Now where is the right to privacy? It is clearly in those two amendmendts and the Bill of Rights.The Government has no power to tell people what to do except in areas specifically authorised in the Constitution.You can't find the right to privacy spelled out in the Constitution? You can't find a right to be married spelled out either; or any other personal right. But that doesn't mean it isn't there.

Subject: Re: Seems a stretch
Posted by akhilesh on Fri, 04 Nov 2005 17:53:48 GMT
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So, you are OK then with the right to buy a rocket launcher and keep it in your home, and fire it on your propoerty?That seems to be clearly implied in your post. -akhilesh

Subject: Re: Seems a stretch
Posted by Manualblock on Fri, 04 Nov 2005 19:30:39 GMT
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No my freind; I am clearly in favor of the Supreme Court deciding whether my neighbor can have a rocket launcher. Since the court is composed of supposedly wise and learned jurists then of course that would be prohibited. But in some states where the gun lobby is very powerfull that might be allowed by legislative permission.That permission to own weapons like that is the government allowing; under pressure of lobbiests and special interests the right to trample on my rights as a citizen to be safe in my home.Some would call that"Legislating from the bench." I call it reasoned examination of the law.Thats the privacy right in action. Not to be allowed by law to do something stupid like own a rocket launcher and thereby trample on my rights to be safe.Not to allow the government to read all of my personal coorespondence on my computor without my knowledge.Thats my point.So I still don't see and no one either here or in the media has given a coherent answer to the question of what exactly is legislating from the bench.