The Liberals Rally Round Judicial Supremacy

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April 27, 2005
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A recent small gathering of conservatives who dared to criticize judicial supremacists has caused an outpouring of paranoia among liberals and others who want judges to make the major social and political decisions of our times. The ad hoc group called the Judeo-Christian Council for Constitutional Restoration suddenly became the target of pack journalism.

The judicial supremacists are just plain wrong when they assert that the Rule of Law requires the Supreme Court to be accepted as the final arbiter of constitutional questions. They are actually demanding that the Rule of Judges replace the Rule of Law.

Many people have been fed up with judges for many years and for many different reasons, such as prayer in school, abortion, and capital punishment. What has brought the issue of judicial mischief to a head is the realization that we are not merely dealing with unrelated wrong decisions but with systemic ideological error which proclaims the Rule of Judges rather than the Rule of Law.

The new battle cry of the liberals, who are still smarting from their losses in the last election, is their sanctimonious mantra that we must have an "independent" judiciary. What they really mean is independent from the Constitution so that unelected judges can thumb their noses at our elected representatives in the other two branches of government.

Senator James Jeffords (I-VT), who is just as conflicted about this issue as about which party he belongs to, wants us to respect judges just as we "respect the referee" in competitive sports even when we think he made the wrong call. But the fans would never tolerate a baseball umpire changing the rules of the game by calling a batter out after two strikes.

Likewise, we should not tolerate judges who try to change the rules of our written Constitution by pretending that its meaning is evolving, or that they have discovered new privileges no one else has detected for 200 years, or that our Constitution must be changed to conform to modern trends in foreign law.

The Constitution is clear that it is not judges but "this Constitution, and the laws of the United States which shall be made in pursuance thereof ..." which is "the supreme law of the land; and the judges in every state shall be bound thereby." The Constitution also specifies that every President must take an oath to the Constitution, not to the judges' interpretation of the Constitution.

This is the Rule of Law as our law books have described it for two centuries. When Congressmen reiterate it, they are not being "revolutionary," as some hysterical commentators are claiming.

Majority Leader Tom DeLay is correct in assigning some of the blame to Congress's "constitutional cowardice" in failing to "set the parameters" of the federal courts' jurisdiction. Article III gives Congress the power to decide what kinds of cases the federal courts may hear and not hear, and Congress should do its duty in putting limits on the areas where we don't trust the activist judges, starting with the Pledge of Allegiance, the Ten Commandments, the definition of marriage, and the Boy Scouts.

The liberals falsely claim we need an "independent" judiciary to protect our precious rights. But those who are rallying to defend the courts against any criticism are stuck with the classic judicial supremacy

decision: Dred Scott v. Sanford (1857), wherein the Court mandated slavery in the territories (and thus laid the ground for the Civil War).

Alexander Hamilton in Federalist 78 made clear that the power of judicial review does not "by any means suppose a superiority of the judicial to the legislative power." Instead, our written Constitution is superior to all branches of government, and the judicial branch is merely the agent of the Constitution, not its master.

As explained further in the famous Marbury v. Madison decision, the Constitution is "a rule for the government of courts, as well as the legislature," and "courts, as well as other departments, are bound by that instrument."

Abraham Lincoln had it exactly right in arguing for limiting the impact of the infamous Dred Scott decision. He said it should be binding only on the parties to "that particular case," that it must be "overruled, and never become a precedent for other cases."

Continuing, Lincoln warned: "If the policy of the government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, ... the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal."

Precisely. In repudiating the supremacy of "that eminent tribunal," Lincoln would have felt right at home with the remarks of Majority Leader Tom DeLay at the conference of the Judeo-Christian Council for Constitutional Restoration.