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Is Relying on Foreign Law Impeachable?

"By what conceivable warrant can nine lawyers presume to be the authoritative conscience of the Nation?" So asked an incredulous Justice Antonin Scalia in dissent to the latest outrage by the U.S. Supreme Court.

Five activist justices (not even nine) imposed their personal social preference on every American voter, state legislator, congressman, and juror. Adding insult to injury, the supremacist five used foreign laws, "international opinion," and even an unratified treaty to rationalize overturning more than 200 years of American law and history!

Justice Anthony Kennedy's majority opinion in *Roper v. Simmons* is a prime example of liberal judges changing our Constitution based on their judge-invented notion that its meaning is *evolving*. He presumed to rewrite the Eighth Amendment.

The murder involved in this case was particularly heinous. Christopher Simmons persuaded a fellow teenager to help him commit a brutal murder after assuring him they could "get away with it" because they were both under age 18.

Simmons met his pal at 2 a.m. and they broke into Shirley Crook's home as she slept. Simmons and his fellow teenager bound her hands, covered her eyes with duct tape, put her in her own minivan, and drove to a state park. There they hogtied her hands and feet together with electrical wire, wrapped her entire face in duct tape, and threw her body from a railroad trestle into the Meramec River. Mrs. Crook drowned helplessly, and her body was found later by fishermen. Showing no remorse, Simmons bragged about his killing to his friends, declaring that he did it "because the bitch seen my face." He confessed quickly after his arrest and even agreed to reenact the crime on video.

A jury of his peers listened to his attorney's argument that his immaturity should reduce his punishment; the jury observed Simmons' demeanor at trial and heard from a slew of witnesses. After an exhaustive trial and full consideration of age as a factor, the jury and judge imposed the death sentence as allowed by Missouri law. Nothing in the text or history of the Eighth Amendment denies Missouri juries and state legislatures the right to make this decision.

The Supreme Court's main argument was the "trend" since 1989 that seven countries (Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, Congo, and China) have banned juvenile capital punishment. To force the United States to follow the lead of those seven countries, Justices Kennedy, Ginsburg, Breyer, Stevens and Souter changed U.S. law and overturned the laws of Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, Texas, Utah and Virginia, all of which allow the death penalty for a 17-year-old who commits a particularly shocking murder. Only four U.S. states have legislated against the juvenile death penalty since 1989 (but none of them was executing juveniles anyway).

The supremacist five claimed that most other countries don't execute 17-year-olds. However, most other countries don't have capital punishment at all, so there is no distinction between 17- and 18-year-olds. Furthermore, most other countries don't allow jury trials or other Bill of Rights guarantees, so who knows if the accused ever gets what we would call a fair trial? Over 90% of jury trials are in the United States, and we certainly don't want to conform to non-jury-trial countries.

The five supremacist justices must think they can dictate evolution of the meaning of treaties as well as of the text of the Constitution. They cited the United Nations Convention on the Rights of the Child, which our Senate year after year has refused to ratify. They also cited the International Covenant on Civil and Political Rights, which we ratified only with a reservation specifically excluding the matter of juvenile capital punishment. The Court accepted *amicus* briefs from Mikhail Gorbachev and from 48 foreign countries.

DC sniper Lee Malvo was 17 during his infamous killing rampage, so now serial killers like him won't have to worry about the death penalty. The terrorists and the vicious Salvadoran gangs will be able to assign 17-year-olds as their hit men so they can "get away with it."

We recall that the Supreme Court ruled in *Planned Parenthood v. Casey* in 1992 that it could not overturn *Roe v. Wade* because that might undermine "the Court's legitimacy."

But in the *Simmons* case, the Court flatly overturned its own decision about juvenile capital punishment in *Stanford v. Kentucky* only 16 years ago.

As Justice Scalia pointed out in dissent, the Court's invocation of foreign law is both contrived and disingenuous. The big majority of countries reject U.S.-style abortion on demand, so the supremacist justices conveniently ignore that "international opinion."

Our runaway judiciary is badly in need of restraint by Congress. A good place to start would be a law declaring it an impeachable offense for justices to rely on foreign law in overriding the U.S. Constitution or congressional or state law.

To Whom Are the Judges Listening?

Globalism doesn't mean just accepting foreign countries' products and people across our borders. Supreme Court justices are manifesting a curious fascination with foreign legal systems.

Speaking at Bill Clinton's alma mater on October 26, 2004, Justice Sandra Day O'Connor told the Georgetown audience that international law "is vital if judges are to faithfully discharge their duties." She was dedicating Georgetown's new international law center.

"International law is a help in our search for a more peaceful world," O'Connor declared in her address. She omitted mentioning that every attempt to use international law and leagues has been an abysmal failure in preventing war. Besides, the U.S. Constitution gives Congress, not the Supreme Court or any international body, the authority to declare war.

The effort to import international law into the United States has nothing to do with preventing war. The purpose is to change our Constitution without obtaining approval of the American people through the amendment process.

In her Georgetown speech, O'Connor bragged that "we operate today under a very large array of international agreements, treaties, organizations." Such language is reminiscent of Bill Clinton's boast to the United Nations that he was pushing the United States into a "web of institutions and arrangements" for "the emerging international system."

In a speech last year, Justice Ruth Bader Ginsburg told the American Constitution Society that "your perspective on constitutional law should encompass the world." On April 1, 2005, she endorsed the practice of consulting foreign and international law.

Supreme Court justices have increasingly cited foreign law to try to undo our death penalty, even though the U.S. Constitution in several places expressly recognizes its legality. However, the justices are very selective about which countries they cite, since executions are common in many countries. Nor do the judges cite stricter abortion laws in other countries as they strike down state and congressional bans on partial-birth abortion.

The Supreme Court's famous 2003 anti-sodomy ruling, *Lawrence v. Texas*, which encouraged the current push toward same-sex marriage licenses, was based on references to the European Court of Human Rights and other foreign sources as examples of "emerging awareness" about sex. But that opinion, written by Justice Anthony Kennedy, conveniently omitted any reference to countries, such as India, where homosexual behavior is a crime meriting imprisonment.

In 2004, the Supreme Court allowed the Commission of the European Communities for the first time in history to present oral argument as a friend of the Court. This foreign governmental body was not even a party in the dispute between Intel and Advanced Micro Devices, yet the justices granted it a special right to argue that is rarely conferred even on American entities.

Section 3331 of Title 5 of the U.S. Code requires high-ranking officers, including Supreme Court justices, to take this oath: "I, ___, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

Violation of this oath should be an impeachable offense. Yet, six of the nine Supreme Court justices are now on record using references to foreign law in their opinions.

Three Supreme Court justices disagree. Most Americans would agree with Justice Antonin Scalia, who wrote that the Court should not "impose foreign moods, fads or fashions on Americans."

It's time for the American people to let the justices, and all future judicial nominees, know that we believe it is their duty to base their decisions on the U.S. Constitution, and that it is a violation of their oath of office to base decisions on foreign decisions or practices.

Liberals Rally Round Judicial Supremacy

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 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 Majority Leader Tom DeLay's speech at the conference of the Judeo-Christian Council for Constitutional Restoration.

The Birch Challenge to Congress

The bottom-line issue in the Terri Schiavo case is the Rule of Judges versus the Rule of Law. The courts purposely humiliated Congress. With the whole world watching, a mere probate judge in Florida thumbed his nose at a congressional subpoena and refused to comply. Then the federal judiciary closed ranks behind him, asserting its independence from and supremacy over not only an act of Congress but also over the life of an innocent and defenseless woman.

Eleventh Circuit Judge Stanley Birch stuck in the knife, asserting that Congress unconstitutionally "invades the province of the judiciary and violates the separation of powers principle." We marvel at the chutzpah of a federal judge charging Congress with violating the separation of powers after we've endured decades of judges legislating from the bench, rewriting our Constitution, distorting our history, assaulting our morals and religious heritage, saving vicious criminals from their just punishment, raising taxes, and inflicting us with foreign laws.

When a man's honor is impugned, he can pretend he didn't hear the insult or he can come out fighting. Congress can't pretend it didn't hear Judge Birch's insult, so Congress must take action to curb the imperial actions of supremacist judges.

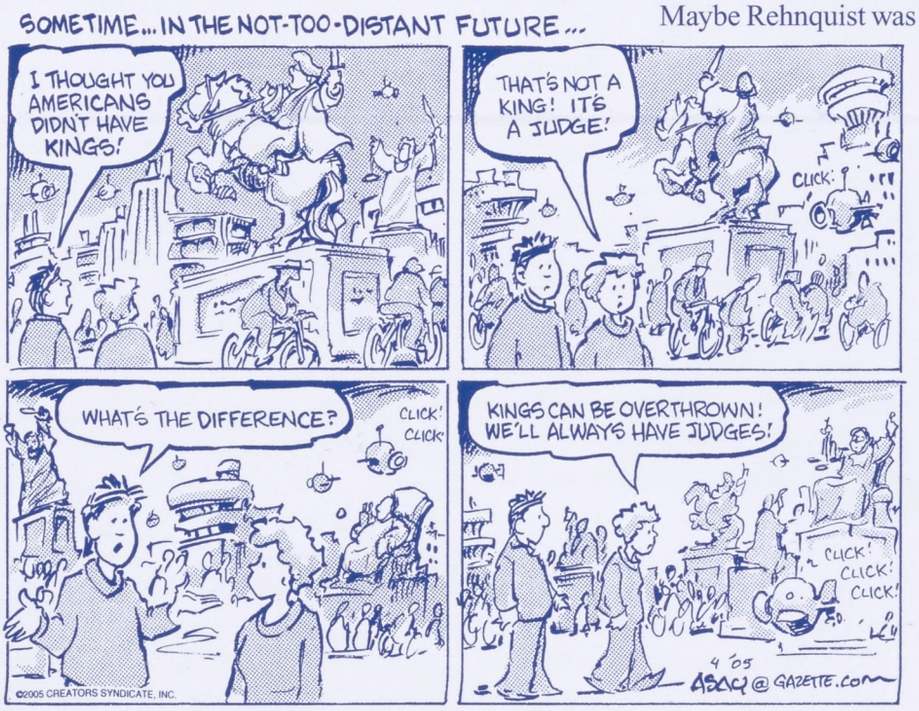
Rep. Patrick McHenry (R-NC) responded that we saw "a state judge completely ignore a congressional committee's subpoena and insult its intent" and "a federal court not only reject, but deride the very law that Congress passed." House Judiciary Committee Chairman James Sensenbrenner (R-WI) said, "Terri's will to live should serve as an inspiration and impetus for action."

Majority Leader Tom DeLay (R-TX) spoke for Americans who uphold the U.S. Constitution when he said, "The Congress of the United States for many, many years has shirked its responsibility to hold the judiciary accountable. No longer."

But Senator Ted Kennedy (D-MA), like most liberals who can't achieve their radical goals legislatively, supports judicial supremacy over Congress, the President, the Florida Governor and the Florida legislature.

The Constitution expressly limits the power of federal judges to what our elected representatives give them. After all, what is the point of having representative government if unelected and unaccountable judges decide everything of significance?

Congress and the President should not pass the buck to judges in black robes and hide behind their skirts when they make outrageous decisions. Here are some ways Congress can start to restore representative government.



Congress should withdraw jurisdiction from the federal courts over the Pledge of Allegiance, the Ten Commandments, and the Defense of Marriage Act. Two bills to do this (the Akin bill and the Hostettler bill) easily passed the House last fall but were ignored by the Senate, and now it is time to make them law.

Congress should withdraw jurisdiction over court challenges to the Boy Scouts of America, which the ACLU is currently trying to ban from public schools. The ACLU is seeking activist judges who will rule it a violation of the First Amendment for the Boy Scouts to pledge allegiance to God and country and commit to keeping themselves "morally straight."

Congress should repeal the 1976 law that permits activist judges to grant lavish attorney's fees to the ACLU when it succeeds in banning the Ten Commandments, the Boy Scouts, or a cross that has existed on public property for decades.

Both Houses of Congress should hold hearings about remedies for supremacist decisions. Congress should bring defiant judges before the American people to answer questions about their rulings that cite foreign law or bypass the U.S. Constitution.

Now that judges embrace forcibly starving someone to death, Congress should use its appropriation power to starve the judicial budget. Let's cut out judges' perks such as travel to international conferences where they pick up mischievous notions about conforming our laws to foreign opinions and United Nations treaties.

Justice Ruth Bader Ginsburg is upset about congressional resolutions to curb the out-of-control judges. She said, "it is disquieting that they have attracted sizable support." But Chief Justice William Rehnquist included this statement in his annual report without any criticism or comment: "There were several bills introduced in the last Congress that would limit the jurisdiction of the federal courts to decide constitutional challenges to certain kinds of government action."

Maybe Rehnquist was reminding Congress of its constitutional powers to constrain the judiciary.

There is another good reason why Congress should narrow federal court jurisdiction: to free the judges to focus on the cases they are trained to decide and which we expect them to decide! U.S. Supreme Court justices now spend so much time worrying about foreign law, expanding abortion rights, opining about homosexuality, extending new venues for pornography, and banning recognition of God that they have little time left to address traditional legal issues.

The Supreme Court has reduced the number of cases that it hears each year to less than 100, a paltry sum given the thousands of important disputes that are presented to it annually. The Court's attempt to act like a legislature has obviously distracted it from its core legal duties. Those who like foreign law should reflect on the fact that the Supreme Court of the Philippines annually handles ten times as many cases as our Supreme Court. Let's do our judges a favor and take away the cases that are wasting so much of their time.

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