

Where the Supreme Court Went Off Course

The United States Supreme Court was created under Article III, Section 1 of the Constitution and the Judiciary Act of 1789.

This Act organized the Supreme Court, the federal circuit courts and the federal district courts. The United States Supreme Court consists of the Chief Justice and eight associate justices. At its discretion, and within certain guidelines established by Congress, the Supreme Court hears a limited number of the cases it is asked to decide during the year. Those cases usually involve important questions about the Constitution or federal law.

United States district courts are trial courts of the federal court system, with jurisdiction to hear both civil and criminal matters. There are 94 federal judicial districts, including at least one district in each state, the District of Columbia and Puerto Rico.

These 94 U.S. judicial districts are organized into 12 regional circuits, each of which has a United States Court of Appeals—which hears cases from the district courts located within its circuit.

Balance of Power Overpowered

When first created, the judicial branch was by far the weakest and most timid of the three branches, restraining itself from strongly upholding and deciding controversial issues. However, in 1801, in *Marbury v. Madison*, Chief Justice John Marshall asserted that the doctrine of judicial review permitted the Court to review the constitutionality of congressional legislation.

In his 34 years on the court, Chief Justice Marshall succeeded

in strengthening the central government and making the Judiciary branch (in some respects) the strongest branch of the national government.

America's founders considered the rule of law essential to the safekeeping of social order and civil liberties. The rule of law holds that if our relationships with the state are governed by laws passed democratically, rather than by the whims of one or more powerful individuals, we are less likely to fall victim to authoritarian rule.

The rule of law calls for both individuals and the government to submit to the law's supremacy. By doing this, the founders formed another protective layer over individual rights and liberties: no one was above the law.

However, we see today that the rule of law is being eroded by individuals—with the consent of some of the judiciary.

Judicial Activism and Its Dangers

In the last sixty years, many federal judges have subscribed to an activist mentality—believing they have the power to tax and make laws based upon their own personal political/philosophical beliefs, regardless of whether they line up with the Constitution.

Many judges today have little regard for the Constitution—the foundation of our laws—and feel it is their job to change laws to agree with their personal beliefs or opinions.

Thomas Jefferson voiced his concern regarding the judicial branch and what they might do in a letter to a friend, writing: *"The Constitution... is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please."* He was a man with great insight into human nature, for today its meaning has become marred.

The Constitution makes it clear the powers to tax and make

laws are duties of the Congress and not the courts. However, many special interest groups in this country have legislative goals not aligned with citizens' interests (for instance, new regulations that raise a family's everyday expenses). Congress would not pass such unpopular policies, rightly fearing the results of the next election.

Because of this, many special interest groups use the courts to make laws and change public policy—clearly a violation of the separation of powers.

“Positive Rights” and the Personal Stakes

Our Constitution, particularly the first ten amendments known as the Bill of Rights, defines individual rights in terms of what the government *cannot* do to you. These are sometimes referred to as “negative rights.”

Those who have been using judicial activism are eroding the negative rights—which protect us *from* the government—into “positive rights,” wherein the Constitution is used to define what government *must do* on your behalf.

These would be “rights” to housing, education, food, clothing, jobs, health care or same-sex marriage. To pay for all these new *positive rights* the state must obtain resources from other citizens (usually via taxation), or in some cases impede on their Constitutionally protected rights.

Thomas Jefferson noted, *“On every question of construction, carry ourselves back to the time when the Constitution was adopted, recollect the spirit manifested in the debates, and instead of trying what meaning may be squeezed out of the text, or invented against it, conform to the probable one in which it was passed.”*

In other words, judges should not invent ideas from the Constitution that simply are not there, but should adhere to the spirit in which the Constitution was originally written.

Every opinion made by the court inventing rights—or redefining words entirely from what is written in law—has far-reaching consequences.

Abortion and same-sex marriage are life issues. The first ends a created life, while the second is antithetical to life being created. God felt so strongly about marriage that it was the first covenant He created—for the explicit purpose of procreation in a family unit, which He ordained to be fruitful and multiply.

Only a man and a woman can reproduce life. Children are the chief reason government is involved in marriage. Without knowledge of and commitment to God's Word, mankind is easily led astray—God's creation lost to selfishness.

Even if you do not sit on a federal court, I see a relevant personal application here. The Constitution is the highest law for America, just as the Bible is the book of God's law for Christian believers.

It makes me wonder: do I make decisions in a similar way, without regard for God's Word and not realizing I am doing so?

It's a question to consider as we pray for America's judges—that the Lord would grant them wisdom in every decision, and that they would uphold (rather than rewrite) the laws of this land.

Carol Sewell is the Founder of Generation to Generation, dedicated to teaching the foundational principles upon which America was founded. Reprinted with permission from Bound4LIFE International