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The Tempting of America

Robert Bork thinks that the Supreme Court has tended to interpret the Constitution in an incorrect manner. This wrong approach has manifested itself on many occasions in American history but has been especially prevalent during the tenure of Earl Warren as Chief Justice.

The wrong approach consists of reading too much into the Constitution. Because of the immense power they possess, judges are tempted to enact their own political and moral ideas into the supreme law of the land. The most notorious example of this in American history is the DRED SCOTT case, in which Chief Justice Roger Brooke Taney invalidated the Missouri Compromise of 1820 because he imposed his insistently pro-slavery views on the Constitution.

Bork finds another example of overly loose reading of the Constitution in the ROE v. WADE abortion case. Regardless of how one personally feels about abortion (and Bork himself is not in general opposed to it), the Constitution does not explicitly provide for a right to have abortions. Supporters of free choice in abortions discovered the requisite protection in a supposed right of privacy, as guaranteed by the Fourteenth Amendment. This Bork holds to be arbitrary and irresponsible.

Judges, Bork contends, should read the Constitution as its framers intended it to be read. It is the judges' job to interpret the law, not to make it. Bork's argument will certainly arouse much discussion. Among the points that may be raised against him is that his "original intent" method of reading is just as much a choice as the more liberal analyses which he rejects. The Constitution does not tell us how it should be read. Also, Bork himself sometimes is ready to toss original intent to the winds; he regards the Ninth Amendment as a dead letter.

Bork's portrayal of the Senate's defeat of his nomination to the Supreme Court is moderate and restrained. His dislike of his liberal opponents is clear. He thinks they defeated him by very deliberate distortion.

Sources for Further Study

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