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MONDAY, AUGUST 29, 2005

John Roberts: Will He Be Just As "Bad" As Liberals?

by Michael in New York on [8/29/2005 11:33:00 PM](#)

Kurt Andersen of New York magazine writes about Supreme Court nominee John Roberts and says liberals like him have to hope Roberts shows more restraint when he's on the top court than liberals ever did. Andersden confuses Roberts' comment that Roe v Wade was "settled law," apparently not realizing Roberts has already made clear that attitude -- appropriate for an appellate judge -- does not apply to a Supreme Court justice. He also says this:

Since the pro-choice position is one of the defining and unquestionable articles of faith for liberals, most of us don't realize that the Supreme Court's constitutional logic in Roe v. Wade is considered very iffy by many (maybe most) mainstream legal scholars, including liberal gods like Lawrence Tribe and Cass Sunstein. Yet for better or worse, it is settled law; to overturn it now would be a radical act of judicial hubris, socially disruptive in the extreme.

In other words, now that the era of activist liberal judicial hegemony is over, we **liberals have to hope that Roberts and Bush's other appointees really are devoted to judicial restraint—the way liberals were not, back in the day.**

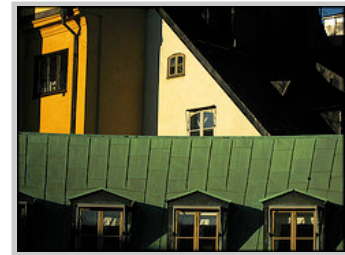
Andersen goes on to compare how racists used the filibuster to fight civil rights legislation and now liberals use it to fight bad nominees. And how the far right's demands for "states rights" are now echoed by the left.

Where to begin? Even many lay people know that Roe v Wade is considered a legally muddled, messy decision. It wouldn't be the first and the fact that it was tackling a muddy, messy ethical issue just might have something to do with it. And the "states rights" comments by the left are usually jibes pointing out the hypocrisy of the far right who abandon that "principle" when it proves inconvenient. They are not embracing that idea, just showing how Republicans cynically tossed it away.

But what really bothers me is the moral equivalency here -- what conservatives would term the "relativism" of Andersen's argument. It's all "judicial activism" to Andersen -- whether you're trying to keep ten percent of the population as second class citizens or ensure they have the right to vote. Whether you're recognizing certain basic civil rights that all Americans deserve or trying to DENY them those rights, it's all the same to him. So when the left was expanding the American Dream to more and more Americans, it was engaging in the same practices as the right does when it tried to turn that dream into a nightmare.

So spreading rights to more and more people is the same as curtailing those rights. Under Andersen's twisted logic, there's no difference between the North and the South during the Civil War -- sure, the Southerners were trying to tear this country apart and the Northerners were trying to hold it together, but they were all using the same tactics to accomplish their goals. But the truth is that the judges who ended segregation in the schools, ended the "right" of states to throw gay people into jail and so on weren't being "judicial activists." They were recognizing the basic rights that all American have always deserved but were often denied. Throwing those people

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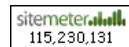
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