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## ■ In my opinion

# Judicial Factivism

These days, just about every news cycle conservative pundit bellyaches about "judicial activism." Two recent examples include the Supreme Court striking down the death penalty for minors and the Terri Schiavo ordeal.

Over and over again, the clarion call of Rush Limbaugh's dittoheads and the Hannitized masses is that the judiciary is overstepping its authority by "writing laws instead of interpreting them." Right wing greats Pat Robertson and Mark Levin have both recently come out with books decrying the role the judiciary has taken upon itself.

It's easy to understand the frustration. Unelected officials with lifetime tenures often have the final say on matters of grave importance. In the two examples I mentioned above, judges are literally making life and death decisions for which they cannot be held accountable.

At the same time, it's hard to take these critiques at face value when one considers the political self-interest of those who are raising them. Republicans control the legislature and the executive. Therefore, it would be in their political best interest to limit the power of the judiciary so that the branches of government they control could exert more influence. Back in the 1940s, FDR had a similar beef with the judiciary because it wouldn't let him run rampant with his socialistic New Deal. So are Republicans really concerned about the role of the judiciary or are they just making rhetoric in their own political best interest? To be perfectly honest, I'm not sure.

For weeks now, I've wanted to write a column on this debate but have been unable to figure out which side of the argument I come down on.

My first stop was, of course, the Constitution. I re-read the Constitution, paying particular attention to Article III, which establishes the power of the judiciary. I drilled the words for nuance, parsing it every which way I



GABE BRADLEY  
THE WRITING ON THE WALL

could. This soon led to frustration, however, because the judiciary is the most vaguely defined of the three branches of government.

Not to be deterred, I turned to "The Federalist" in which Alexander Hamilton comments on the judiciary in Nos. 78-83. But this commentary was mainly concerned about when and where the judiciary would have jurisdiction.

Neither the Constitution nor "The Federalist" specifically define the limits of the judiciary's power to interpret and apply the law. It was this vague understanding of the judiciary that left the door wide open for Marbury vs. Madison, the 1803 Supreme Court case which established the principle of judicial review.

It was in the Marbury case that the Supreme Court took upon itself the power to declare an act of Congress to be a contradiction to the Constitution, and therefore null and void. The Court set itself up as the final arbiter of the Constitution, appropriating a de facto veto that it has wielded for the past 200 years.

When I first learned about the Marbury case in high school, I was told that the Court needed to clarify its role in our system of government because it was so vaguely defined in the Constitution. I accepted it as fact from that day to this. But when I was thinking about the situation this week, the 10th Amendment came vigorously to mind.

"The powers not delegated to the United States by the Constitution or prohibited by it to the States, are reserved to the States respectively, or to

the people."

If something is not specifically provided for in the constitution, then an act of the state governments or the people, represented by Congress, is required to make it law. Because the limits of the judiciary's power to interpret and apply the law is not specifically defined in the Constitution, the power to define these limits belongs to the States or to the people. It's not the judiciary's job to define its own role, it's the job of Congress. So, in a sense, Marbury vs. Madison was unconstitutional.

How's that for a novel concept, eh? Declaring court decisions rather than laws to be unconstitutional.

Seen in this light, it makes sense that judges would not be beholden to the voters because they are not supposed to have a direct impact on the legislative process as are the executive and legislature. Judges are not supposed to make policy decisions. It's their job to interpret the laws that fall under their jurisdiction and to interpret and apply the laws to specific cases, not to put the laws themselves on trial.

Following the 10th Amendment argument, the judiciary has been acting in violation of the Constitution for 200 years. The only problem is, you're never going to be able to prove it in court. Nothing short of a constitutional amendment would put the judiciary back in line. And then we would have 200 years' worth of constitutional law that would be practically worthless. The cost of restoring our judiciary to the original intent of the framers would seem much higher than any potential benefit.

So let the dittoheads gripe and let the Hannitized masses rant. I'm going to be busy looking to the future because it's too late to change the past. What we have may not be perfect and it may not be fair, but it's as close as we're going to get.

gabebradley@dailyemerald.com

## INBOX

### Support wind energy: 'Yes' on Measure 21

College campuses have long been recognized as vehicles for social and political change in our nation. As the public debates global climate change, the looming energy crisis and war in the Middle East, scores of campuses across the nation are taking a stand by buying wind energy.

Wind is a rapidly improving technology that can and should be part of our national energy portfolio. It's clean, renewable and home grown, but it still costs more to buy than coal, oil or gas. However, increased demand for wind energy leads to more wind farms, more investment in wind technology and cheaper wind.

College students across the nation

are taking a stand by paying a couple extra dollars each year for wind energy. You can too. It would cost less than one dollar per student per year to power the EMU with 100 percent wind energy. This week you can show your support for wind energy at the University by voting yes on Ballot Measure 21.

Megan Edgar, Steve Mital and  
Yoko Silk live in Eugene

## OREGON DAILY EMERALD LETTERS POLICY

Letters to the editor and guest commentaries are encouraged, and should be sent to letters@dailyemerald.com or submitted at the Oregon Daily Emerald office, EMU Suite 300. Electronic submissions are preferred. Letters are limited to 250 words, and guest commentaries to 550 words. Authors are limited to one submission per calendar month. Submissions should include phone number and address for verification. The Emerald reserves the right to edit for space, grammar and style. Guest submissions are published at the discretion of the Emerald.

## CORRECTIONS

In "Candidates will meet with students today," published Monday, the Emerald reported University President Dave Frohnmayer announced Vice President for Administration Dan Williams' resignation in a Sept. 28 letter. In fact, he announced Williams' retirement.

The article "University purchases vacant lot by bakery" contained an error in the headline. The University of Oregon Foundation, a separate entity from the University, purchased the lot.

The guest commentary "Stop logging McKenzie River Trail," in Monday's paper, misidentified the author. Yoko Silk was the only author of the guest commentary. The Emerald regrets the errors.

## ■ Editorial

# Complacent voters yield ineffectual government

Wednesday marks the beginning of the ASUO primary elections, and we want to encourage the student body to take a few minutes to log onto DuckWeb to vote. Here are some (just some) of the reasons why all students should vote in the ASUO election:

Let's start with the big stuff, such as the fact that ASUO officials spend most of their time spending your money. More than \$10 million each year. This stack of your cash is collected to the tune of approximately \$184 per term per student and sent to the ASUO coffers. It comes partially from your student fees and goes where these elected officials say it goes.

Does it bother you that OSPIRG, one of the largest student-funded groups on campus (with an approved \$120,074 budget for 2005-06), could make a request to this year's Programs Finance Committee for an additional \$13,000 to fund an environmental advocate (this was denied) while some groups had their stipends dramatically cut? Don't like it? Go vote.

Earlier this year, elected and appointed student officials went on a retreat in Sunriver where they later admitted to drinking alcohol and smoking marijuana. We aren't the moral police, or the real police for that matter, but what we found in a note they left at a guest house, dated Oct. 10, said: "Do you pay incidental fees at the Univ. of Oregon? If so, your money just paid for six people to sleep here for two nights. We got drunk, played taboo, and learned about the finance system, all on your dime. We are some cocky, smooth, motherfuckers." Don't like it? Go vote.

Next year students will lose 400 seats at home football games and 300 seats at men's basketball games because of changes to a contract that the members of the Athletic Department Finance Committee, who you elected last year, negotiated for you. Care about getting a ticket to the Civil War? Go vote.

Enjoying the creaky comforts of an outdated student union building? The elected members of the 15-person EMU Board help designate space in the EMU for student groups, and it advises the professional EMU staff on how to renovate and maintain the building. The same officials allocate funding for services and programs such as the Outdoor Program and Cultural Forum, and events such as the Willamette Valley Folk Festival. Want more space in the EMU for better events on campus? Go vote.

This year when the budget-crippled UO Libraries could no longer support the security needed to keep the building open 24/7 for Dead Week, the library turned to your elected student Senators for the necessary cash. In the face of an impending loss of the service they debated whether it was the University's responsibility to pay. Should students have to dole out money for an academic service with funds meant to support and, in the words of current ASUO Vice President Mena Ravissapour, promote "the physical and cultural development of our University"? Go vote.

With the plethora of important issues (that affect every student at this university) in the hands of these candidates, each and every one of you has no reason not to get out the vote.

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