Difference between judicial activism and judicial restraint

Law

Political Science Political science as a discipline is advantageous for several reasons one of them being the fact that it makes it easy for those who study it to understand the various systems of justice in different parts of the world. In an attempt to ascertain that passion for justice is maintained and that difficult legal situations are managed satisfactorily in the face of all the concerned parties, political science has brought forth several aspects including judicial activism and judicial restraint. This essay aims to provide more insight on some of the differences that exist between judicial activism and judicial restraint. Similarly, it aims to use specific examples in shedding more light on which between the two ideologies should the US Supreme Court embrace.

For starters, the basis on which the two ideologies are based is different. Judicial activism is founded on the principle that the Supreme Court, as well as the judges of other lower courts, have the authority to interpret and re-interpret some of the laws entrenched within the constitution, to take into consideration the opinions held by the judges in matters of the contemporary society (Lowi et. al, 2012). Judicial restraint, on the other hand, prohibits such, and believes that the Supreme Court, as well as judges of lower courts, should refer to the constitution of the Federal Government or the respective states in coming up with judgments. In addition, judicial restrains prevents the judges from referring to their own philosophies when making decisions. Another difference between the practices is the fact that there is a shift in policymaking. This is because judges normally assume the role of independent policy makers in the case of judicial activism. Implying that they become independent trustees of the constitution on behalf of the

community. This sharply contrasts judicial restraint, which prohibits the judges from being policy makers, as they are only allowed to make their decisions hinged on what is entrenched in both the constitution and the laws of the land.

In Judicial restraint, the Supreme Court as well as the judges from other lower courts occasionally construe to the constitution in a manner that the policies placed by the Federal Government and the state governments are always taken into consideration (Lowi et. al, 2012). This implies that the decisions arrived at by the judges should acknowledge the limits of power of those in authority. Judicial activism, on the other hand, does not recognize the limits of power. This is majorly because the judges tend to construe the Constitution based on their own philosophies, which is a practice that many a times results to interpretive fidelity.

I believe the US Supreme Court should embrace judicial restraint rather than judicial activism. This is majorly because in as much as we subject the judges of our land to quality and inclusive training, decisions should normally be arrived on based on what is entrenched in the Constitution. In addition, judicial activism, which allows judges to arrive at decisions based on their own perceptions may result in laws being manipulated to satisfy the interests of given individuals. In additional, an unconstitutional practice, which if left unattended to, would render our constitution useless with time.

An example of a case where judicial restraint was duly practiced was District of Columbia vs. Heller case, which was decided in 2008 after a nine-year duration (Lowi Ginsberg, Shepsle, & Ansolabehere, 2012). The matter of contention in the case was whether the D. C code, which barred the

registration of handguns, should even apply to individuals who are not affiliated with any militia but are interested in owning a gun. After much deliberations, the court voted 5-4 in favor of Heller.

Reference

Lowi, T. J. (2012). American government: Power and purpose. New York: W. W. Norton & Co.