



Written by [Selwyn Duke](#) on March 17, 2016

Obama's Supreme Court Pick: Is a "Moderate" Really the Man for the Job?

"The duties of the Senate are set forth in the U.S. Constitution. Nowhere in that document does it say the Senate has a duty to give presidential nominees a vote. It says appointments shall be made with the advice and consent of the Senate. That is very different than saying every nominee receives a vote." The preceding is certainly a view one could take with respect to Obama's Supreme Court (SC) nominee, Judge Merrick Garland (shown). Another view is that the president is "doing his job ... they [Senate Republicans] should do theirs." The first position was taken by liberal Nevada Senator Harry Reid.



The second position was taken by someone he knows well: liberal Nevada senator Harry Reid.

The [first statement](#) was made in 2005 on the Senate floor and dealt with the matter of President George W. Bush's nominees. The second was [made just yesterday](#) and concerned Obama's Garland pick.

Of course, Reid isn't alone in giving voters more than their money's worth (two faces for the price of one), as both Democrats and Republicans have a [history](#) of making contradictory statements on SC nominees. Nonetheless, Reid's first statement was correct; he's also right in saying the senators should do their job. Since their job is to appoint a judge who'll do his job, however, it's important to know what a judge's job is.

Garland, Chief Judge of the United States Court of Appeals for the District of Columbia Circuit, is a Bill Clinton appointee who certainly would be superior to a Hillary Clinton appointee. Yet the terminology used to explain why points to a fundamental problem. It's not just that, as the *Washington Post's* Ed Rogers [wrote](#) Wednesday, if "the Democrats were actually picking *one of their own* as the nominee, they wouldn't choose a 63-year-old white male." (Emphasis added.) (Talk about being discriminatory: Is there now officially no place for white males — at least older ones — in the Democrat Party? Perhaps voters should take note.) It's that the usual term used to describe Garland is "moderate"; this makes him different from the "liberals" Obama chose when the Democrats controlled the Senate and from the "conservative" that was Judge Antonin Scalia, the man whose shoes he hopes to fill.

As for this "moderation," the line is that Garland has ruled "conservatively" on criminal-justice issues. Yet as the *Daily Item* [writes](#), "If confirmed, Garland would be expected to align with the [Court's] more liberal members ... [but] he's earned a reputation as centrist." This is certainly echoed by attorney Jay Michaelson, who clerked for Garland. Characterizing him as a "decent," down-the-middle jurist, Michaelson [laments](#) that the judge will have to endure "GOP Hell" because of the "extremist ideology of today's Republican Party." Now, this could bring to mind Senator Barry Goldwater's famous 1964 line, "Extremism in the defense of liberty is no vice. And let me remind you also that moderation in the



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pursuit of justice is no virtue!" Yet hearing incessant talk of the conservative, the liberal, the moderate, the center, and the left and right, our thinking is dizzyingly being spun in all directions, as we fight for or against Right or Left judges instead of right or wrong principles. And the principle here is that a judge must do his job.

I delved into this in the current issue of *The New American* (March 21) in "The Late Antonin Scalia and the Living Document Lie." Expanding upon Chief Justice John Roberts' statement that a judge's job was just to "call balls and strikes," I wrote, "Imagine baseball as the republic. The rulebook is the constitution, the rule-makers the legislature, the players the people, and the umpires the judges. Obviously, the judges must abide by the rulebook whether they like a given rule or not."

This places our current terminology in perspective. Could you imagine people taking for granted that an umpire's adherence to the rulebook should be influenced by whether he was a "liberal," "conservative," or "moderate"? "How could the umpire call that pitch a strike when it was wildly on the outside?!"

Answer: "Well, he's on the left side and takes a very liberal view of the strike zone."

Or, would it be acceptable if he were a "moderate" umpire and only broke the rules a minority of the time?

Another analogy is to view the Constitution as the contract defining the relationship the feds have with the states, the different branches of government have with one another, and that the people have with the government. This contract defines governmental powers and the people's rights. Imagine, though, you had a business contract with another party, a dispute arose, and your case went to court. You'd expect the judge to enforce the contract provisions, not "interpret" them under a liberal, conservative, or moderate light.

And Judge Garland doesn't claim to disagree. As [Bustle.com reported](#), "If there's one thing Republicans will want (or insist on) in a nominee, it's that they intend to 'follow the law, not make it,'" said the judge. He expressed the same sentiment during his confirmation hearing for the D.C. Circuit in 1995, saying, as [SCOTUSblog.com informs](#), "Federal judges do not have roving commissions to solve societal problems. The role of the court is to apply law to the facts of the case before it ... not to legislate, not to arrogate to itself the executive power, not to hand down advisory opinion on the issues of the day." As *Bustle* also points out, though, the question "is whether he actually believe[s] that, or is it a feint designed to placate the GOP opposition?" Yet there's another question.

No activist judge will admit he's "violating" the Constitution; in fact, he wouldn't even say he was "legislating from the bench." Rather, such judges rationalize (lie to themselves), often stating they're merely "pragmatists," which describes those who view the Constitution as a "living document." To understand what this actually means, however, let's return to the baseball analogy. As I also wrote in the "Living Document Lie" piece:

What if they [the umpires] ... figured that since the people and legislators were too lethargic to actuate their wisdom or too stupid to yield to it, they'd simply "interpret" the rulebook differently? Now maybe it's four strikes before a batter is out; then not 9 but 11 players on the field for "underrepresented" groups; and later, perhaps, a prohibition against curveballs, since confusing spin should be the sole province of fast-talking con men. What would you consider such officials? Misfeasant manipulators? Cheaters?

And would we feel better if, dodging the "cheater" label, these umps-cum-oligarchs said "No, no — we're pragmatists. The rulebook is living, you know"?



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In reality, there are not liberal judges and conservative ones, moderate, pragmatic, centrist, or even originalist ones. There are only two types of judges: good judges and bad judges. Good ones abide by the Constitution. Bad ones don't — period.

What type is Garland? Many are concerned about what they consider his lack of respect for Second Amendment rights, as the *Washington Times* [reported](#) yesterday. Yet there's a deeper matter: While ideology shouldn't come into play when judging a case, judging a judge is a different matter. Today's prevalent moral relativism engenders a mentality that sees rules — be they God's or man's (and the latter shouldn't contradict the former) — as having no objective basis, as merely being a function of the "times." More than [70 percent of American adults today are relativists](#), and this figure is far higher among political moderates and liberals. Consequently and lamentably, it's unlikely that a moderate would not interpret the Constitution to "suit the times," which really means "to suit an agenda."

Lastly note that our political terms — conservative (right), liberal (left), and moderate (center) — denote positions on the political spectrum. But that spectrum is determined by the wider society, making these designations relative (if something is in the center, the question is: the center of what?). And society has changed radically from the time the Constitution was crafted; we now accept statism and a host of other things contrary to the document while claiming that things such as a right to abortion and faux marriage are mandated by it. In fact, economist Dr. Walter Williams has pointed out that approximately two-thirds of the federal budget involves matters that are unconstitutional. Thus, no one believing in constitutional adherence will today be considered a "moderate," but an extremist.

So, yes, the Senate should do its job. This means being "extreme" enough to only confirm good Supreme Court justices and wiping the lipstick off the pig of pragmatism.

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