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July 9, 2009: How is the Constitution Interpreted?

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Title: How is the Constitution Interpreted?

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7/9/2009--The Netroots Nation convention is having a session on a progressive vision of church and state. Information about the session is elsewhere on this blog. But the first question a proposal for a new interpretation of any provision of the Constitution must answer is, how should the Constitution be interpreted? Conservatives say that the way to interpret is through history and text. Anything else is "making up" the law rather than interpreting it. Conservatives do not always, or even usually, practice what they preach, (see giving constitutional rights to corporations or protecting advertising under free speech) but that is what they say. Liberals usually oppose that kind of interpretive approach. If one followed it, women and gays would not be protected from discrimination. But in the area of establishment of religion, liberals change course and pretend that the meaning of the Constitution is fixed at the secular state. So, at times, everybody pretends that the Constitution is not a matter of political struggle but has an eternal meaning. But that is not how our system has ever worked. Yet when that is pointed out, we act surprised. Thus, listen to the description of a recent book about the Supreme Court's decision making: "Lucas A. Powe Jr. The Supreme Court and the American Elite, 1789-2008 In this engaging--and disturbing--book, a leading historian of the Court reveals the close fit between its decisions and the nation's politics. ...Lucas Powe shows how virtually every major Supreme Court ruling, however deftly framed in constitutionally terms, suited the wishes of the most powerful politicians of the time." The above is how Powe's publisher describes the book. But how could this information come as a surprise? Constitutional law is another form of politics. What else is new?