

Leading Matters Los Angeles
January 24, 2009
Session Notes

Three Views of the U.S. Constitution and the U.S. Supreme Court

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Kathleen Sullivan

In this country we have a separation of powers. Congress and the Supreme Court provide oversight. It's a horizontal separation of powers, and it's messy, with some overlap.

Executive branch privileges are historical, but the current claims of unbridled executive discretion are not historical.

Interpretations of the commander-in-chief clause are that it is intended for when Congress is not in session.

In the Declaration of Independence, the writers did not want the executive branch to be legislating. The legislative branch is designed to constrain the executive branch. Who will constrain executive powers? The courts were originally designed to.

Larry Kramer

It's scary that court decisions can hinge on one person. Constraint lies with the people: The public, ultimately, is charged with the 2008 election. As Madison noted, the people are the best protector.

The courts are not the only ones to interpret the law. People are the ultimate interpreters—the government produces the debate.

Majority rule is a fundamental principle.

The Federalist Papers increase the size of the government and make government complicated, as all levels are accountable to the people. The courts aren't even mentioned.

A bicameral system is designed to start things, not block them. It forces debate back to the public. There's something seriously wrong when presidential choices are made based on whom the candidates would pick for the Supreme Court.

Lawrence Lessig

How do we preserve the framers' meaning in the current context? "Reading" changes across context. Both the left and the right are making up limits about power.