John Paul Stevens

Joseph T. Thai*

John Paul Stevens took his seat on the Supreme Court of the United States on December 19, 1975. In three decades as associate justice, Stevens has established himself as a highly independent thinker distinguished for his originality and lack of ideology. A prolific writer, Stevens has produced a wide range of opinions that share a dedication to restrained decision making in the common law tradition of case-by-case adjudication, a deep faith in the judicial exercise of reason and judgment, and a profound commitment to fulfilling the Constitution’s fundamental purposes, including especially its promise of liberty.

Life

Stevens was born on April 20, 1920, in Chicago, Illinois. He grew up in its Hyde Park neighborhood and attended the nearby University of Chicago Laboratory School from grade school through graduation. He pursued his college education at the university as well, where he studied English literature and graduated Phi Beta Kappa in 1941.

A love of Shakespeare inclined Stevens towards graduate school in English and teaching as a career. However, as Stevens began graduate studies at Chicago, a dean of the college who was an undercover recruiter for the Navy encouraged him to take a naval correspondence course on cryptography over the summer of 1941. As a result of this coursework, the Navy offered Stevens a commission as an intelligence officer, and he joined the service on December 6, 1941, the day before the attack of Pearl Harbor. In later years, Stevens would joke that his commission provoked the attack, because it demonstrated the country’s desperation.

Stevens served in the Navy at Pearl Harbor as a code-breaker deciphering intercepted Japanese transmissions, a task which he enjoyed, and which earned him a Bronze Star. During this time, he met a future colleague on the Supreme Court, Byron White, who also was stationed in the Pacific as a naval intelligence officer.

While in the Navy, Stevens received a letter from an older brother asking him to consider a career in law. This older brother, whom Stevens much admired, related from his own experience as a young lawyer the opportunities the profession presented for helping others and serving the public. This appeal won over Stevens, who enrolled at the Northwestern University School of Law after completing his naval service in 1945.

Stevens loved law school and excelled in it. He served as editor-in-chief of the law review, and graduated *magna cum laude* in two years, with the highest grade point average in the history of the law school.

Stevens’ superlative academic performance landed him a Supreme Court clerkship with Justice Wiley Rutledge from 1947-1948. That service left an indelible imprint on the future justice, as discussed below.

Following the clerkship, Stevens began practicing as a litigator in Chicago with an established law firm, and then co-founded his own a few years later. He developed an expertise in antitrust law that earned him national respect and led to his appointment, from 1951-1952, as associate counsel to a congressional subcommittee that investigated monopoly power in professional baseball and other markets, and from 1953-1955, as a member of an Attorney General committee that also studied antitrust issues. In the meantime, joining his earlier interest in teaching with his professional expertise, Stevens taught antitrust law at Northwestern from 1950-1954, and at the University of Chicago Law School from 1955-1958, and he published articles in the field.

Stevens continued his highly successful private practice into the 1960s. His reputation in legal circles for excellence and integrity contributed to his appointment, in 1969, to head an investigation into a bribery scandal on the Illinois Supreme Court. This investigation led to the resignation of two justices of that court, and Stevens’ widely-praised performance led the following year to his appointment by President Richard Nixon to the Seventh Circuit Court of Appeals.

On the Seventh Circuit, Stevens proved extremely capable of mastering the facts and law in the cases that came before him, deciding them without any apparent agenda, and producing opinions of “consistent excellence” in “an astonishing number of areas,” according to an American Bar Association member who evaluated his subsequent nomination to the Supreme Court.

That nomination was suggested upon Justice William Douglas’ retirement by Attorney General Edward Levi, who had supervised Stevens as former dean of Chicago’s law school. President Gerald Ford considered Stevens a natural choice, a nominee whose indisputable merit would help heal divisions in the aftermath of Watergate. On December 17, 1975, the Senate confirmed the President’s choice less than three weeks after it was announced, by a vote of 98-0.

Jurisprudence

Writing prolifically over thirty years as a justice, Stevens has produced an immense body of opinions that has influenced the development of every major area of law to have come before the Court. To understand Stevens’ work and assess its impact, it is perhaps as important if not more so to consider his approach to deciding cases as it is to examine the substance of his decisions. For with Stevens, his method of judging goes far in explaining decades of decisions that resist easy categorization by result or ideology.

Stevens himself has provided what may be the best précis of his methodology. In a 1956 article on Justice Rutledge, Stevens expressed admiration for many of the characteristics of his former boss’ judicial approach that he would later display as a justice. Foremost among these was Rutledge’s “habit of understanding before disagreeing,” which led to his careful scrutiny of
every aspect of a case, and bred long opinions stating all of the considerations that informed and 
qualified his decisions. Relatedly, Stevens underscored Rutledge’s aversion to deciding cases 
broadly based on general principles that fail to account for potential factual and legal distinctions 
between cases. To Stevens, Rutledge’s approach demonstrated both a pragmatic concern against 
deciding theoretical rather than actual controversies, and a great faith in the ability of judges to 
decide individual cases through their judicial faculties of reason and judgment.

Not surprisingly, Stevens’ work on the bench has strongly reflected the characteristics of 
Rutledge’s approach that he most admired. In deciding cases, Stevens has focused on the factual 
and legal circumstances particular to each controversy, evaluated the competing arguments and 
interests at stake, and striven to resolve no more than necessary. Of course, this approach did not 
originate with Rutledge, but falls within an established tradition of common law adjudication 
with such distinguished past practitioners as Justices Louis Brandeis and Oliver Wendell 
Holmes, whom Stevens has praised as “two of our greatest Justices.” It also accords with a 
seasoned trial lawyer’s sensitivity to the significance of facts, as well as with a personality that 
colleagues and former law clerks have described as modest, conscientious, and open-minded.

Stevens’ opinions evaluating free speech claims under the First Amendment provide 
some of the best examples of his methodology at work. In this area, Stevens has eschewed an 
absolutist approach, sometimes favored by the Court, that divides speech into “unprotected” and 
“protected” categories, and that prohibits regulations of protected expression based on content. 
To Stevens, as he wrote in concurrence in R.A.V. v. St. Paul (1992), this all-or-nothing 
framework “sacrifices subtlety for clarity.” Because “the complex reality of expression” cannot 
fit into simple categories, and because “the meaning of any expression and the legitimacy of its 
regulation can only be determined in context,” Stevens instead has utilized a balancing approach 
that assesses and weighs the expressive interests implicated in a particular case against the 
government interests furthered by regulation.

Under this approach, Stevens has approved of several content-based restrictions on 
speech. For example, in Young v. American Mini Theatres (1976), Stevens authored an opinion 
upholding a zoning law limiting the location of adult movie theaters. In his judgment, the 
regulation furthered a considerable government interest in preserving the character of its 
neighborhoods, an interest which overcame countervailing considerations, for “few of us would 
march our sons and daughters off to war to preserve the citizen’s right to see ‘Specified Sexual 
Activities’ exhibited in the theaters of our choice.” In this case, as in FCC. v. Pacifica 
Foundation (1978), which upheld a regulatory order channeling indecent radio broadcasts to 
hours that minimized exposure to children, Stevens emphasized that indecent speech, though of 
lesser social value than political speech, nonetheless deserved some First Amendment protection, 
and that differences in the content of the restricted expression and the character of the restriction 
may warrant a different result. Accordingly, in Reno v. ACLU (1997), Stevens had no difficulty 
striking down a congressional ban on indecent and patently offensive communications on the 
Internet, which in the interest of protecting children cut so broadly into expression among adults 
that Stevens regarded it as “burning the house to roast the pig,” rather than simply removing the 
animal from the parlor.
As these cases illustrate, Stevens’ decisions often do not line up neatly by results, but they do adhere to his vision of the limited role and ultimate responsibilities of judging. His opinions in other areas affirm that his fidelity to this vision is the common thread that runs through his jurisprudence. Thus, in the Fourth Amendment context, Stevens has rejected categorical rules that certain kinds of government actions, such as entry into homes without knocking and announcing to execute warrants for felony drug crimes (*Richards v. Wisconsin* (1997)), are always constitutional, while other kinds of government actions, such as using sense-enhancing technology to detect information regarding the interior of a home (*Kyllo v. United States* (2001)), are always unconstitutional. Rather, Stevens generally has heeded what his *Kyllo* dissent identified as “the tried and true counsel of judicial restraint,” under which it is “far wiser” to limit the questions a court decides to the facts before it, and to leave room for other branches and future courts to grapple with emerging issues, than “to shackle them with prematurely devised constitutional constraints.”

In cases involving statutory construction, Stevens has advocated as well a restrained role for the judiciary. But rather than finding restraint in relying solely on the text of statutes to ascertain their meaning, as his colleague Justice Antonin Scalia has done, Stevens has sought guidance from “every reliable source,” including legislative history. His belief, articulated in his *Circuit City v. Adams* (2001) dissent, is that relying on less leaves a court “uninformed, and hence unconstrained,” and thereby risks an interpretation that may be consistent with a court’s own policy preferences, but inconsistent with the purpose for which a legislature enacted a provision.

From Stevens’ opinions, a theme complimentary to judicial restraint also appears, and that is respect for other branches and levels of government, at least within their proper spheres. For example, Stevens not only has endeavored to give effect to legislative intent in construing statutes, but also has deferred to legislative findings that support the constitutionality of enactments in areas as diverse as civil rights legislation (e.g., *Tennessee v. Lane* (2004)), drug laws (e.g., *Gonzales v. Raich* (2005)), and government takings (e.g., *Kelo v. City of New London* (2005)).

Stevens has accorded such deference partly out of respect for the work of another branch of government, and partly out of recognition of its superior capabilities in studying problems requiring legislation. This recognition of institutional competence also underlay one of Stevens’ most important opinions for the Court, *Chevron v. Natural Resources Defense Council* (1984), a charter for the modern administrative state holding that if a congressional statute is silent or ambiguous on a point which an agency administering it has construed, then a court’s role is not to interpret the statute anew, but to determine whether the gap-filling interpretation of the agency more familiar with the law was reasonable.

Beyond institutional respect and competence, Stevens has held an expansive view of congressional power under the Commerce Clause that has led him to vote consistently to uphold social and economic legislation as constitutionally authorized. As much a nationalist as Chief Justice John Marshall, Stevens has forcefully argued that when the Constitution replaced the Articles of Confederation, it also replaced a loose association of autonomous states with a strong central government that could unify the country politically through leaders directly responsible to
the people, and economically through a commerce power as vast as the reach of the national economy. Stevens’ majority opinions in cases such as *U.S. Term Limits v. Thornton* (1995) and *Raich* represent the triumph of this position. The latter also cabined prior Rehnquist Court decisions limiting the commerce power, and as a result substantially reassured the fount of constitutional authority for federal civil rights laws.

While believing in the supremacy of national power under the Constitution, Stevens nonetheless has treated states, in their respective spheres, as vital partners in the federal system. Thus, in his *Michigan v. Long* (1983) dissent, Stevens urged his colleagues to refrain from reviewing state court decisions that do not clearly rest on federal law, or that appear to provide greater protection of federal rights than the Court might require. To Stevens, those situations do not pose a threat to federal interests warranting Supreme Court intervention, but rather present an opportunity, as envisioned by Brandeis in *New State Ice Co. v. Liebmann* (1932), for states to experiment in democracy by developing state law or expanding federal liberties.

As strong as has been Stevens’ commitment to judicial restraint, he also has obeyed an equally strong sense of duty to “say what the law is” as necessary to decide actual cases. Indeed, it is this sense of duty that has driven Stevens to confront and attempt to effectuate constitutional commands as directly as possible, rather than through the filter of judicially-created rules that he has felt at best may obscure the reasoning for decisions, and at worse may abdicate them.

In support of this mission, Stevens typically has turned to evaluative standards contained in the text of the Constitution itself or, in his view, reflective of its fundamental purposes. For example, Stevens has rejected the Court’s three-tiered scheme for reviewing claims under the Equal Protection Clause of the Fourteenth Amendment. Reminding his colleagues in *Craig v. Boren* (1976) that “[t]here is only one Equal Protection Clause,” Stevens instead has advocated careful reasoning to determine whether the government has acted consistent with the provision’s central point that it “govern impartially.” One significant result of such reasoning has been Stevens’ approval of racial diversity as a non-dispositive factor in university admissions, which made possible the Court’s sanction of a law school affirmative action program in *Grutter v. Bollinger* (2003).

Additionally, in adjudicating claims under the Due Process Clause of the Fifth and Fourteenth Amendments, Stevens has premised his decisions on the fundamental belief that the “liberty” protected by those provisions refers to “one of the cardinal unalienable rights” that the Declaration of Independence considered endowed by the Creator, and that the Constitution charged judges to fathom and protect through the exercise of independent judgment in individual cases. Stevens’ discharge of this duty in three decades of cases has contributed considerably to the development of the substance and scope of “liberty.”

Construing that term in *Bowers v. Hardwick* (1986), Stevens wrote in dissent that the Constitution protects “intimate choices” by persons whether married or unmarried, whether heterosexual or homosexual, an interpretation embraced by the Court in *Lawrence v. Texas* (2003). Construing provisions of the Bill of Rights enforced against the states as components of “liberty,” Stevens’ majority opinion in *Apprendi v. New Jersey* (2000) read the Sixth Amendment right to a jury trial to forbid judge-imposed sentences exceeding the statutory
maximum possible under facts found by a jury beyond a reasonable doubt. This reading led to the invalidation of the United States Sentencing Guidelines in United States v. Booker (2005), and of capital schemes in which a judge makes the finding of aggravating factors required to impose the death penalty in Ring v. Arizona (2002). Also in the death penalty area, Stevens voted in Gregg v. Georgia (1976) to uphold the constitutionality of capital punishment. However, by opinion and vote, he has interpreted the Eighth Amendment’s prohibition against cruel and unusual punishment to ban the execution of juveniles, a position adopted by the Court in Roper v. Simmons (2005); and he has construed the same provision to ban the execution of the mentally retarded, first in dissent and later for a majority in Aktins v. Virginia (2002).

Although Stevens often has emerged as a champion of liberty, consistent with his approach to judging, his support has been neither unequivocal nor uncritical. Nevertheless, there is one cause with which Stevens has consistently sided—keeping the doors of the courts open to uphold the rule of law for litigants large and small. Consequently, his opinion in Clinton v. Jones (1997) held that the plaintiff had “a right to an orderly disposition of her claims” of sexual harassment against the President that outweighed considerations for a stay until his term expired, and his opinion in Rasul v. Bush (2004) held that alleged terrorism detainees at the Guantanamo Bay Naval Base could challenge the legality of their detention in federal court. Notably, in another terrorism case, Rumsfeld v. Padilla (2004), which the Court dismissed on jurisdictional grounds, Stevens argued in dissent that the lower court could review the challenge of an American citizen, captured on American soil, to his indefinite military detention as an “enemy combatant.” Moreover, Stevens argued that review of the executive’s justification for such detention was essential, for “if this Nation is to remain true to the ideals symbolized by its flag, it must not wield the tools of tyrants even to resist an assault by the forces of tyranny.”

In the end, the public at large may best remember Stevens not for the above opinions, but for the famous last words of his dissent in Bush v. Gore (2000), the case which effectively decided a presidential election by ending a recount of votes under the supervision of state court judges. Believing that the majority, without foundation, had endorsed “the most cynical appraisal” of the fairness of judges throughout the nation, Stevens wrote with profound sadness: “Although we may never know with complete certainty the identity of the winner of this year's Presidential election, the identity of the loser is perfectly clear. It is the Nation's confidence in the judge as an impartial guardian of the rule of law.” It is a testament to Stevens’ legacy of judging with independence and integrity that such confidence as remains will long outlast his service on the Court.

References and Further Reading


Cases Cited

Gonzales v. Raich, 125 S. Ct. 2195 (2005).