

Judicial law making and law applying.

- - Do Judges Make Law or Merely Interpret Laws?



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On this understanding, the Time 3 decision did not change a bad law that was made at Time 1, but rather corrected the mistaken assertion of law at Time 1, which never was the law. The judicial veto can also, at times, accomplish legislative purposes in a more-efficient manner than the legislature can achieve them itself. Demorest provides an example of how respect for state court characterizations of prior cases with regard to a federally protected right could work in practice.

Judicial Takings, Judicial Federalism, and Jurisprudence: An Erie Problem

The third approach would be the mischief rule. This vision of the common law carried the day for quite some time in U. Secondly, the nature of the legislation invites legislators to focus on general, or average, results.

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Every inference made and every rule enunciated must be authorized or required by preexisting rules and principles, but precedent transforms that which is authorized or required into that which authorizes and requires. Thus, a regulation affirming that restriction cannot be a taking because it does not interfere with any property right that the owner possessed.

Do judges make law?

Until recently, a judge interpreting a statute was not allowed to consider the speeches, which MPs made when the statute was being debated.

The role of the courts in law making

Three potential concerns with this proposal are worth addressing. Use of the judicial veto can only deny legislators of the laws they want. At that situation binding precedent is followed.

Do judges make law?

See cases cited *supra* note 124.

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