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William H. Rehnquist: The Supreme Court: How It Was, How It Is, 1998

William H. Rehnquist (1924–) was appointed to the Supreme Court by President Nixon in 1972 and was elevated to Chief Justice by President Reagan in 1986. Rehnquist has been a strong proponent of "judicial restraint," arguing that the courts should not interfere with the other branches of government. In his book, *The Supreme Court: How It Was, How It Is*, Rehnquist explains his views of the role of the Supreme Court in the United States government.

The role of the Supreme Court is to uphold those claims of individual liberty against the government that it finds are well founded in the Constitution, and to reject other claims of individual liberty against the government that it concludes are not well founded. Its role is no more to exclusively uphold the claims of the individual than it is to exclusively uphold the claims of the government: It must hold the constitutional balance true between these claims. And if it finds the scales evenly balanced, the long-standing "presumption of constitutionality" to which every law enacted by Congress or a state or local government is entitled means that the person who seeks to have the law held unconstitutional has failed to carry his burden of proof on the question.

It has always seemed to me that this presumption of constitutionality makes eminent good sense. If the Supreme Court wrongly decides that a law enacted by Congress is constitutional, it has made a mistake, but the result of its mistake is only to leave the nation with a law duly enacted by the popularly chosen members of the House of Representatives and the Senate and signed into law by the popularly chosen president. But if the Supreme Court wrongly decides that a law enacted by Congress is not constitutional, it has made a mistake of considerably greater consequence; it has struck down a law duly enacted by the popularly elected branches of government not because of any principle in the Constitution, but because of the individual views of desirable policy held by a majority of the nine justices at that time. Every time a claim of constitutional right is asserted by an individual or a group against a legislative act, the principle of majority rule and self-government is placed on one side of the judicial scale, and the principle of the individual right is placed on the other side of the scale. The function of the Supreme Court is, indeed, to hold the balance true between these weights in the scale, and not consciously elevate one at the expense of the other.…

William Rehnquist is sworn in as Chief Justice.

Questions for Discussion

1. What does Justice Rehnquist mean by his assertion that every law is entitled to a "presumption of constitutionality"? Does this principle make it harder or easier to overturn laws?
2. According to Rehnquist, what two principles must be weighed against each other when an individual or group questions a law's constitutionality?