

Active Liberty Interpreting Our Democratic Constitution

Stephen G Breyer

Active LibertyThe Democratic ConstitutionThe Democratic ConstitutionMaking Our Democracy WorkTyranny Talk Threatens Our Spirituality and Our DemocracyWorking a Democratic ConstitutionThe Presidents and the PeopleThe Constitution and the Conduct of American Foreign PolicyThe History of Democracy Considered as a Party Name and as a Political OrganizationThe National ReviewDemocracyDebates and Proceedings of the Constitutional Convention of the State of IllinoisProceedings ... Annual Meeting of the Bar Association of the State of KansasThe Harvard University CatalogueThe Republican MagazineThe National ReviewCongressional RecordOfficial Report of the Proceedings and Debates of the Third Constitutional Convention of OhioNational 4-H Club NewsThe Congressional Globe Stephen Breyer Brian E. Butler Neal Devins Stephen Breyer Janet C. Lindeman, PhD Granville Austin Corey Brettschneider David Gray Adler Jonathan Norcross James Hervey Hyslop Illinois. Constitutional Convention Bar Association of the State of Kansas Harvard University Ohio. Constitutional Convention United States. Congress

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a brilliant new approach to the constitution and courts of the united states by supreme court justice stephen breyer for justice breyer the constitution s primary role is to preserve and encourage what he calls active liberty citizen participation in shaping government and its laws as this book argues promoting active liberty requires judicial modesty and deference to congress it also means recognizing the changing needs and demands of the populace indeed the constitution s lasting brilliance is that its principles may be adapted to

cope with unanticipated situations and breyer makes a powerful case against treating it as a static guide intended for a world that is dead and gone using contemporary examples from federalism to privacy to affirmative action this is a vital contribution to the ongoing debate over the role and power of our courts

the supreme court is seen today as the ultimate arbiter of the constitution once the court has spoken it is the duty of the citizens and their elected officials to abide by its decisions but the conception of the supreme court as the final interpreter of constitutional law took hold only relatively recently drawing on the pragmatic ideals characterized by charles sanders peirce john dewey charles sabel and richard posner brian e butler shows how this conception is inherently problematic for a healthy democracy butler offers an alternative democratic conception of constitutional law democratic experimentalism and applies it in a thorough reconstruction of supreme court cases across the centuries such as brown v board of education citizens united v federal election commission lucas v south carolina coastal council and lochner v new york in contrast to the traditional tools and conceptions of legal analysis that see the law as a formally unique and separate type of practice democratic experimentalism combines democratic aims and experimental practice butler also suggests other directions jurisprudential roles could take for example adjudication could be performed by primary stakeholders with better information ultimately butler argues persuasively for a move away from the current absolute centrality of courts toward a system of justice that emphasizes local rule and democratic choice

constitutional law is clearly shaped by judicial actors but who else contributes scholars in the past have recognized that the legislative branch plays a significant role in determining structural issues such as separation of powers and federalism but stopped there claiming that only courts had the independence and expertise to safeguard individual and minority rights in this readable and engaging narrative the authors identify the nuts and bolts of the national dialogue and relate succinct examples of how elected officials and the general public often dominate the supreme court in defining the constitution s meaning making use of case studies on race privacy federalism war powers speech and religion devins and fisher demonstrate how elected officials uphold individual rights in such areas as religious liberty and free speech as well as and often better than the courts this fascinating debunking of judicial supremacy argues that nonjudicial contributions to constitutional interpretation make the constitution more stable more consistent with constitutional principles and more protective of individual and minority rights

the supreme court is one of the most extraordinary institutions in our system of government charged with the responsibility of interpreting the constitution the nine unelected justices of the court have the awesome power to strike down laws enacted by our elected representatives why does the public accept the court s decisions as legitimate and follow them even when those decisions are highly unpopular what must the court do to maintain the public s faith how can the court help make our democracy work these are the questions that justice stephen breyer tackles in this groundbreaking book today we assume that when the court rules the public will obey but breyer declares that we cannot take the public s confidence in the court for granted

he reminds us that at various moments in our history the court's decisions were disobeyed or ignored and through investigations of past cases concerning the Cherokee Indians, slavery, and *Brown v. Board of Education* he brilliantly captures the steps and the missteps the court took on the road to establishing its legitimacy as the guardian of the constitution. Justice Breyer discusses what the court must do going forward to maintain that public confidence and argues for interpreting the constitution in a way that works in practice. He forcefully rejects competing approaches that look exclusively to the constitution's text or to the eighteenth-century views of the framers. Instead, he advocates a pragmatic approach that applies unchanging constitutional values to ever-changing circumstances, an approach that will best demonstrate to the public that the constitution continues to serve us well. The court, he believes, must also respect the roles that other actors such as the president, congress, administrative agencies, and the states play in our democracy, and he emphasizes the court's obligation to build cooperative relationships with them. Finally, Justice Breyer examines the court's recent decisions concerning the detainees held at Guantánamo Bay, contrasting these decisions with rulings concerning the internment of Japanese Americans during World War II. He uses these cases to show how the court can promote workable government by respecting the roles of other constitutional actors without compromising constitutional principles. *Making Our Democracy Work* is a tour de force of history and philosophy, offering an original approach to interpreting the constitution that judges, lawyers, and scholars will look to for many years to come. It further establishes Justice Breyer as one of the court's greatest intellectuals and a leading legal voice of our time.

Janet C. Lindeman, PhD, a psychologist with a spiritual background, explores tyranny and how it affects people. A short and important look at tyranny and the problems brought on by those ideas.

Austin's magnum opus tells the very human story of how the social, political, and day-to-day realities of the Indian people have been reflected in and directed the course of constitutional reforms since 1950.

Winner of the American Bar Association's 2025 Silver Gavel Award, *American Presidents* has often pushed the boundaries established for them by the constitution. This is the inspirational history of the people who pushed back. Imagine an American president who imprisoned critics, spread a culture of white supremacy, and tried to upend the law so that he could commit crimes with impunity. In this propulsive and eminently readable history, constitutional law and political science professor Corey Brettschneider provides a thoroughly researched account of assaults on democracy by not one such president but five. John Adams waged war on the national press of the early republic; overseeing numerous prosecutions of his critics in the lead up to the Civil War, James Buchanan colluded with the Supreme Court to deny constitutional personhood to African Americans; a decade later, Andrew Johnson urged violence against his political opponents as he sought to guarantee a white supremacist republic after the Civil War. In the 1910s, Woodrow Wilson modernized, popularized, and nationalized Jim Crow laws. In the 1970s, Richard Nixon committed criminal acts that flowed from his corrupt ideas about presidential power. Through their actions, these presidents illuminated the trip wires that can damage or even destroy our democracy. Corey Brettschneider shows that these presidents didn't

t have the last word citizen movements brought the united states back from the precipice by appealing to a democratic understanding of the constitution and pressuring subsequent reform minded presidents to realize the promise of we the people this is a book about citizens frederick douglass ida b wells daniel ellis and more who fought back against presidential abuses of power their examples give us hope about the possibilities of restoring a fragile democracy

in this provocative and readable volume eleven leading constitutional authorities challenge business as usual in american foreign policymaking for far too long they contend americans have acquiesced to presidential claims to sweeping executive powers in foreign affairs thanks to imperial minded presidents a weak willed congress and neglectful scholars these authors forcefully argue that the president is not the supreme crafter of foreign policy and that congress must provide more than a rubber stamp for the president s agenda unilateral presidential control of foreign relations they warn can pose a grave threat to our nation s welfare and is simply without constitutional warrant combining constitutional theory with keen historical insights these authors illuminate the roots of presidential abuse of executive power and remind us of the past and potential costs of such disregard for our unique system of checks and balances an essential guide for all concerned citizens and members of congress this volume should help revive a proper understanding of this crucial dimension of american democracy

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