



Active Liberty: Interpreting a Democratic Constitution (Clarendon Law Lectures)

Stephen G. Breyer

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What role should courts play in a modern democracy? How should fundamental provisions of a democratic constitution be interpreted? These questions have divided constitutional theorists and those responsible for interpreting and applying constitutional law including, notoriously, the current U.S. Supreme Court. Justice Breyer is the most prominent liberal voice in the Supreme Court, this book distils his experience of interpreting the U.S. constitution and outlines a general liberal theory of the role of constitutional courts. Breyer argues that the primary role of a democratic constitution is to preserve and encourage 'Active Liberty': citizen participation in shaping government and its laws. The book argues that promoting active liberty requires judicial modesty and deference to legislative bodies; it also requires the recognition of the changing needs and demands of the populace. Breyer makes a powerful case against treating constitutions as a static guide for a world that has passed into history. Throughout the book, active liberty is employed as a foundational concept to illuminate the interpretation of key constitutional questions, and recent Supreme Court controversies, such as the scope of free speech and racial equality protection. For this revised, international edition of the book, Justice Breyer extends his discussion of democratic theory to examine topical questions in European constitutional law, including the legitimacy of the European Union, religious freedom under the European Convention on Human Rights.

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