Active Liberty Interpreting Our Democratic Constitution Stephen G Breyer

Creon's Ghost examines the enduring problem of the relationship between man's law and a "higher" law from the perspective of core humanities texts and through discussion of hotly debated contemporary legal conundrums. Today, such issues as intelligent design in school curricula, same-sex marriage, and faith-based government grants are all examples of the interaction between man's law and some other set of moral principles. As these debates are considered in this book, the author uses texts such as Antigone and Plato's Republic and pairs them with the most important jurisprudence texts of the 20th century to explore different approaches to the contemporary conflict or court ruling under consideration. Creon's Ghost demonstrates that the humanities can both illuminate our understanding of contemporary problems and that "classic" texts can be read alongside jurisprudential texts, thus enriching our understanding of and appreciation for law.

A liberal state is a representative democracy constrained by the rule of law. Richard Posner argues for a conception of the liberal state based on pragmatic theories of government. He views the actions of elected officials as guided by interests rather than by reason and the decisions of judges by discretion rather than by rules. He emphasizes the institutional and material, rather than moral and deliberative, factors in democratic decision making. Posner argues that democracy is best viewed as a competition for power by means of regular elections. Citizens should not be expected to play a significant role in making complex public policy regarding, say, taxes or missile defense. The great advantage of democracy is not that it is the rule of the wise or the good but that it enables stability and orderly succession in government and limits the tendency of rulers to enrich or empower themselves to the disadvantage of the public. Posner's theory steers between political theorists' concept of deliberative democracy on the left and economists' public-choice theory on the right. It makes a significant contribution to the theory of democracy—and to the theory of law as well, by showing that the principles that inform Schumpeterian democratic theory also inform the theory and practice of adjudication. The book argues for law and democracy as twin halves of a pragmatic theory of American government.

The Supreme Court justice defines and examines the legal principles of active liberty and emphasizes its importance in constitutional and statutory interpretation, using examples from the areas of federalism to affirmative action to argue that the Constitution and its tenets may adapt to changing situations and times. Reprint. 35,000 first printing.

A thought-provoking study reveals that legal uses of our personal information by the government and private industry are more widespread and more dangerous to our interests than we would ever suspect, in an incisive analysis of the erosion of privacy in American society.

American Law and the New Global Realities

Justice Breyer's Mandarin Liberty

The Authority of the Court and the Peril of Politics

What Happens When Courts Run Government

The Living Tree

Repairing the Supreme Court Appointments Process

Regulation and Its Reform

A concise history of the long struggle between two fundamentally opposing constitutional traditions, from one of the nation's leading constitutional scholars—a manifesto for renewing our constitutional republic. The Constitution of the United States begins with the words: "We the People." But from the earliest days of the American republic, there have been two competing notions of "the People," which lead to two very different visions of the Constitution. Those who view "We the People" collectively think popular sovereignty resides in the people as a group, which leads them to favor a "democratic" constitution that allows the "will of the people" to be expressed by majority rule. In contrast, those who think popular sovereignty resides in the people as individuals contend that a "republican" constitution is needed to secure the pre-existing inalienable rights of "We the People," each and every one, against abuses by the majority. In Our Republican Constitution, renowned legal scholar Randy E. Barnett tells the fascinating story of how this debate arose shortly after the Revolution, leading to the adoption of a new and innovative "republican" constitution; and how the struggle over slavery led to its completion by a newly formed Republican Party. Yet soon thereafter, progressive academics and activists urged the courts to remake our Republican Constitution into a democratic one by ignoring key passes of its text. Eventually, the courts complied. Drawing from his deep knowledge of constitutional law and history, as well as his experience litigating on behalf of medical marijuana and against Obamacare, Barnett explains why "We the People" would greatly benefit from the renewal of our Republican Constitution, and how this can be accomplished in the courts and the political arena.

It's 13th-century Europe and a young monk, Michael Scot, has been asked by the Holy Roman Emperor to translate the works of Aristotle and recover his "lost" knowledge. The Scot sets to his task, traveling from the Emperor's Italian court to the translation schools of Toledo and from there to the Moorish library of Córdoba. But when the Pope deems the translations heretical, the Scot refuses to desist. So begins a battle for power between Church and State--one that has shaped how we view the world today.

We are all familiar with the image of the immensely clever judge who discerns the best rule of common law for the case at hand. According to U.S. Supreme Court Justice Antonin Scalia, a judge like this can maneuver through earlier cases to achieve the desired aim—"distinguishing one prior case on his left, straight-arming another one on his right, high-stepping away from another precedent about to tackle him from the rear, until (bravo!) he reaches the goal—good law." But is this common-law mindset, which is appropriate in its place, suitable also in statutory and constitutional interpretation? In a witty and trenchant essay, Justice Scalia answers this question with a resounding negative. In exploring the neglected art of statutory interpretation, Scalia urges that judges resist the temptation to use legislative intention and legislative history. In his view, it is incompatible with democratic government to allow the meaning of a statute to be determined by what the judges think the lawgivers meant rather than by what the legislature actually promulgated. Eschewing the judicial lawmaking that is the essence of common law, judges should interpret statutes and regulations by focusing on the text itself. Scalia then extends this principle to constitutional law. He proposes that we abandon the notion of an everchanging Constitution and pay attention to the Constitution's original meaning. Although not subscribing to the "strict constructionism" that would prevent applying the Constitution to modern circumstances, Scalia emphatically rejects the idea that judges can properly "smuggle" in new rights or deny old rights by using the Due Process Clause, for instance. In fact, such judicial discretion might lead to the destruction of the Bill of Rights if a majority of the judges ever wished to reach that most undesirable of goals. This essay is followed by four commentaries by Professors Gordon Wood, Laurence Tribe, Mary Ann Glendon, and Ronald Dworkin, who engage Justice Scalia's ideas about judicial interpretation from varying standpoints. In the spirit of debate, Justice Scalia responds to these critics. Featuring a new foreword that discusses Scalia's impact, jurisprudence, and legacy, this witty and trenchant exchange illuminates the brilliance of one of the most influential legal minds of our time.

The Brethren is the first detailed behind-the-scenes account of the Supreme Court in action. Bob Woodward and Scott Armstrong have pierced its secrecy to give us an unprecedented view of the Chief and Associate Justices—maneuvering, arguing, politicking, compromising, and making decisions that affect every major area of American life.

A History of the U.S. Supreme Court Appointments from Washington to Bush II

Judicialization of Politics and Politicization of the Judiciary

Making Democracy Work

The Soul of the First Amendment

Summary: Active Liberty

How to Excel on Law School Exams

Against the Death Penalty

The nation's most celebrated First Amendment lawyer"explores the American right to free speech in this thoughtful and concise volume" (Publishers Weekly). The right of Americans to voice their beliefs without government approval or oversight is protected under what may well be the most honored and least understood addendum to the US Constitution—the First Amendment. Floyd Abrams, a noted lawyer and award-winning legal scholar specializing in First Amendment issues, examines the degree to which American law protects free speech more often, more intensely, and more controversially than is the case anywhere else in the world, including democratic nations such as Canada and England. In this lively, powerful, and provocative work, the author addresses legal issues from the adoption of the Bill of Rights through recent cases such as Citizens United. He also examines the repeated conflicts between claims of free speech and those of national security occasioned by the publication of classified material such as was contained in the Pentagon Papers and was made public by WikiLeaks and Edward Snowden. "Abrams's engaging and plain-spoken reflections will be of interest to those already steeped in constitutional law as well as young readers curious about the nation's founding ideals . . . For Abrams, one inescapable truth applies across the history of First Amendment disputes. To allow the government to determine whose speech can be regulated . . . is, as [his] fascinating history shows, literally to play with fire."—The Wall Street Journal "He dives into historic and contemporary controversies that test our adherence to these principles, noting, 'Speech is sometimes ugly, outrageous, even dangerous.'"—The Washington Post

This book makes the radical claim that rather than interpreting the Constitution from on high, the Court should be reflecting popular will--or the wishes of the people themselves.

A sitting justice reflects upon the authority of the Supreme CourtÑhow that authority was gained and how measures to restructure the Court could undermine both the Court and the constitutional system of checks and balances that depends on it. A growing chorus of officials and commentators argues that the Supreme Court has become too political. On this view the confirmation process is just an exercise in partisan agenda-setting, and the jurists are no more than Òpoliticians in robesÓÑtheir ostensibly neutral judicial philosophies mere camouflage for conservative or liberal convictions. Stephen Breyer, drawing upon his experience as a Supreme Court justice, sounds a cautionary note. Mindful of the CourtÕs history, he suggests that the judiciaryÕs hard-won authority could be marred by reforms premised on the assumption of ideological bias. Having, as Hamilton observed, Ôno influence over either the sword or the purse,Ó the Court earned its authority by making decisions that have, over time, increased the publicÕs trust. If public trust is now in decline, one part of the solution is to promote better understandings of how the judiciary actually works: how judges adhere to their oaths and how they try to avoid considerations of politics and popularity. Breyer warns that political intervention could itself further erode public trust. Without the publicÕs trust, the Court would no longer be able to act as a check on the other branches of government or as a guarantor of the rule of law, risking serious harm to our constitutional system.

Explains how United States presidents select justices for the Supreme Court, evaluates the performance of each justice, and examines the influence of politics on their selection.

Active Liberty

Law, Pragmatism, and Democracy

The Calculus of Consent

Privacy in Peril

A Short History

Interpreting Our Democratic Constitution

Creon's Ghost Law Justice and the Humanities

This review essay on Justice Breyer's quot;Active Liberty: Interpreting Our Democratic Constitutionquot; considers Justice Breyer's approach to constitutional interpretation within the broader framework of his jurisprudential thought as fashioned over the course of his career in academia, government, and on the bench. The review emphasizes the degree to which Breyer has sought to apply the Legal Process approach to statutory construction, as initially set out by Hart and Sacks to constitutional questions. It provides an intellectual history, linking that Legal Process approach to Progressive and New Deal liberal thought fashioned to serve the modern liberal administrative state. The essay raises the question of whether this quasi-administrative, problem-solving approach to legal questions is, in any meaningful sense, truly constitutional at all. And it considers the relationship between this administrative, purposive, problem-solving vision, and Justice Breyer's enthusiasm for an increasingly transnational consideration of constitutional problems.

This book examines how the judicialization of politics, and the politicization of courts, affect representative democracy, rule of law, and separation of powers. This volume critically assesses the phenomena of judicialization of politics and politicization of the judiciary. It explores the rising impact of courts on key constitutional principles, such as democracy and separation of powers, which is paralleled by increasing criticism of this influence from both liberal and illiberal perspectives. The book also addresses the challenges to rule of law as a principle, preconditioned on independent and powerful courts, which are triggered by both democratic backsliding and the mushrooming of populist constitutionalism and illiberal constitutional regimes. Presenting a wide range of case studies, the book will be a valuable resource for students and academics in constitutional law and political science seeking to understand the increasingly complex relationships between the judiciary, executive and legislature.

As the 21st century dawns, public land policy is entering a new era. This timely book examines the historical, scientific, political, legal, and institutional developments that are changing management priorities and policies - developments that compel us to view the public lands as an integrated ecological entity and a key biodiversity stronghold. Once the background is set, each chapter opens with a specific natural resource controversy, ranging from the Pacific Northwest's spotted owl imbroglio to the struggle over southern Utah's Colorado Plateau country. Robert Keiter uses these case histories to analyse the ideas, forces, and institutions that are both fomenting and retarding change. Although Congress has the final say in how the public domain is managed, the public land agencies, federal courts, and western communities are each playing important roles in the transformation to an ecological management regime. At the same time, a newly emergent and homegrown collaborative process movement has given the public land constituencies a greater role in administering these lands. Arguing that we must integrate the new imperatives of ecosystem science with our devolutionary political tendencies, Keiter outlines a coherent new approach to natural resources policy.

An excellent introduction to judicial politics as a method of analysis, the seventh edition of Judicial Process and Judicial Policymaking focuses on policy in the judicial process. Rather than limiting the text to coverage of the U.S. Supreme Court, G. Alan Tarr examines the judiciary as the third branch of government, and weaves four major premises throughout the text: 1) Courts in the United States have always played an important role in governing and their role has increased in recent decades; 2) Judicial policymaking is a distinctive activity; 3) Courts make policy in a variety of ways; and 4) Courts may be the objects of public policy, as well as creators. New to the Seventh Edition ■ New cases through the end of the Supreme Court's 2018 term. ■ New case studies on the Garland-Gorsuch controversy; plea negotiation (of special relevance to the Trump administration); and the litigation over Obamacare, as well as brief coverage of the Kavanaugh confirmation. ■ Expanded coverage of the crisis in the legal profession, sentencing with attention to the rise of mass incarceration and the issue of race, constitutional interpretation and the rise of "originalism," and same-sex marriage. ■ Updated tables and figures throughout. ■ A new online e-Resource including edited cases, a glossary of terms, and resources for further learning. This text is appropriate for all students of judicial process and policy.

The Partial Constitution

Getting to Maybe

The Anti-Oligarchy Constitution

The Politically Incorrect Guide to the Constitution

Review and Analysis of Stephen Breyer's Book

Reconstructing the Economic Foundations of American Democracy

The Supreme Court Versus the American People

He describes a new and better manner of deliberating about who should serve on the Court - an approach that puts the burden on nominees to show that their judicial philosophies and politics are acceptable to senators and citizens alike. And he makes a new case for the virtue of judicial moderates."

A landmark dissenting opinion arguing against the death penalty Does the death penalty violate the Constitution? In Against the Death Penalty, Justice Stephen G. Breyer argues that it does: that it is carried out unfairly and inconsistently, and thus violates the ban on "cruel and unusual punishments" specified by the Eighth Amendment to the Constitution. "Today's administration of the death penalty," Breyer writes, "involves three fundamental constitutional defects: (1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty's penological purpose. Perhaps as a result, (4) most places within the United States have abandoned its use." This volume contains Breyer's dissent in the case of Glossip v. Gross, which involved an unsuccessful challenge to Oklahoma's use of a lethal-injection drug because it might cause severe pain. Justice Breyer's legal citations have been edited to make them understandable to a general audience, but the text retains the full force of his powerful argument that the time has come for the Supreme Court to revisit the constitutionality of the death penalty. Breyer was joined in his dissent from the bench by Justice Ruth Bader Ginsburg. Their passionate argument has been cited by many legal experts — including fellow Justice Antonin Scalia — as signaling an eventual Court ruling striking down the death penalty. A similar dissent in 1963 by Breyer's mentor, Justice Arthur J. Goldberg, helped set the stage for a later ruling, imposing what turned out to be a four-year moratorium on executions.

A bold call to reclaim an American tradition that argues the Constitution imposes a duty on government to fight oligarchy and ensure broadly shared wealth. Oligarchy is a threat to the American republic. When too much economic and political power is concentrated in too few hands, we risk losing the Òrepublican form of governmentÓ the Constitution requires. Today, courts enforce the Constitution as if it has almost nothing to say about this threat. But as Joseph Fishkin and William Forbath show in this revolutionary retelling of constitutional history, a commitment to prevent oligarchy once stood at the center of a robust tradition in American political and constitutional thought. Fishkin and Forbath demonstrate that reformers, legislators, and even judges working in this Òdemocracy of opportunityÓ tradition understood that the Constitution imposes a duty on legislatures to thwart oligarchy and promote a broad distribution of wealth and political power. These ideas led Jacksonians to fight special economic privileges for the few, Populists to try to break up monopoly power, and Progressives to fight for the constitutional right to form a union. During Reconstruction, Radical Republicans argued in this tradition that racial equality required breaking up the oligarchy of slave power and distributing wealth and opportunity to former slaves and their descendants. President Franklin Roosevelt and the New Dealers built their politics around this tradition, winning the fight against the Òeconomic royalistsÓ and Òindustrial despots.Ó But today, as we enter a new Gilded Age, this tradition in progressive American economic and political thought lies dormant. The Anti-Oligarchy Constitution begins the work of recovering it and exploring its profound implications for our deeply unequal society and badly damaged democracy.

Professors Fischl and Paul explain law school exams in ways no one has before, all with an eye toward improving the reader's performance. The book begins by describing the difference between educational cultures that praise students for "right answers," and the law school culture that rewards nuanced analysis of ambiguous situations in which more than one approach may be correct. Enormous care is devoted to explaining precisely how and why legal analysis frequently produces such perplexing situations. But the authors don't stop with mere description. Instead, Getting to Maybe teaches how to excel on law school exams by showing the reader how legal analysis can be brought to bear on examination problems. The book contains hints on studying and preparation that go well beyond conventional advice. The authors also illustrate how to argue both sides of a legal issue without appearing wishy-washy or indecisive. Above all, the book explains why exam questions may generate feelings of uncertainty or doubt about correct legal outcomes and how the student can turn these feelings to his or her advantage. In sum, although the authors believe that no exam guide can substitute for a firm grasp of substantive material, readers who devote the necessary time to learning the law will find this book an invaluable guide to translating learning into better exam performance. "This book should revolutionize the ordeal of studying for law school exams... Its clear, insightful, fun to read, and right on the money." — Duncan Kennedy, Carter Professor of General Jurisprudence, Harvard Law School "Finally a study aid that takes legal theory seriously... Students who master these lessons will surely write better exams. More importantly, they will also learn to be better lawyers." — Steven L. Winter, Brooklyn Law School "If you can't spot a 'fork in the law' or a 'fork in the facts' in an exam hypothetical, get this book. If you don't know how to play 'Czar of the Universe' on law school exams (or why), get this book. And if you do want to learn how to think like a lawyer—a good one—get this book. It's, quite simply, stone cold brilliant." — Pierre Schlag, University of Colorado School of Law (Law Preview Book Review on The Princeton Review website) Attend a Getting to Maybe seminar! Click here for more information.

Law in America

Administrative Law for Public Managers

Living together as equals in culturally diverse democratic societies

America's Supreme Court

Inside the Supreme Court

Overruling Democracy

Toward Effective Risk Regulation

From renowned political theorist James MacGregor Burns, an incisive critique of the overreaching power of an ideological Supreme Court For decades, Pulitzer Prize-winner James MacGregor Burns has been one of the great masters of the study of power and leadership in America. In Packing the Court, he turns his eye to the U.S. Supreme Court, an institution that he believes has become more powerful, and more partisan, than the founding fathers ever intended. In a compelling and provocative narrative, Burns reveals how the Supreme Court has served as a reactionary force in American politics at critical moments throughout the nation's history, and concludes with a bold proposal to rein in the court's power.

This book will become the bible of regulatory reform. No broad, authoritative treatment of the subject has been available for many years except for Alfred Kahn's Economics of Regulation (197O). And Stephen Breyer's book is not merely a utilitarian analysis or a legal discussion of procedures; it employs the widest possible perspective to survey the full implications of government regulation--economic, legal, administrative, political--while addressing the complex problems of administering regulatory agencies. Only a scholar with Judge Breyer's practical experience as chief counsel to the Senate Judiciary Committee could have accomplished this task. He develops an ingenious original system for classifying regulatory activities according to the kinds of problems that have called for, or have seemed to call for, regulation; he then examines how well or poorly various regulatory regimes remedy these market defects. This enables him to organize an enormous amount of material in a coherent way, and to make significant and useful generalizations about real-world problems. Among the regulatory areas he considers are health and safety; environmental pollution, trucking, airlines, natural gas, public utilities, and telecommunications. He further gives attention to related topics such as cost-of-service ratemaking, safety standards, antitrust, and property rights. Clearly this is a book whose time is here--a veritable how-to-do-it book for administration deregulators, legislators, and the judiciary; and because it is comprehensive and superbly organized, with a wealth of highly detailed examples, it is practical for use in law schools and in courses on economics and political science.

"Published in the US under the title Making our democracy work"--T.p. verso.

"A decision the Court and the Nation will come to regret." Ten years ago, the United States Supreme Court struck down two local school board initiatives meant to reverse extreme racial segregation in public schools. The sharply divided 5-4 decision in Parents Involved in Community Schools v. Seattle School District marked the end of an era of efforts by local authorities to fulfill the promise of racially integrated education envisioned by the Supreme Court in 1954 in Brown v. Board of Education. In a searing landmark dissent, Justice Stephen Breyer warned this was "a decision the Court and the Nation will come to regret." A decade later, the unabated resegregation of America's schools continues to confirm Justice Breyer's fears, as many schools and school districts across the country are more racially segregated today than they were in the late 1960s. Edited and introduced by Justice Breyer's former law clerk—and accompanied by a sobering update on the state of segregated schools in America today—this volume contains the full text of Justice Breyer's most impassioned opinion, a dissent that Justice John Paul Stevens called at the time "eloquent and unanswerable." The cautionary words of Justice Breyer should echo in classrooms across the country and in the hearts and minds of parents and schoolchildren everywhere.

Breaking the Vicious Circle

Securing the Liberty and Sovereignty of We the People

Keeping Faith with the Constitution

The Court and the World

John Adams and the Spirit of Liberty

Popular Constitutionalism and Judicial Review

Active LibertyInterpreting Our Democratic ConstitutionVintage

The must-read summary of Stephen Breyer's book: "Active Liberty: Interpreting Our Democratic Constitution". This complete summary of "Active Liberty" by Stephen Breyer, a liberal-leaning Supreme Court Justice in the United States, outlines the author's argument that the American Constitution should be used as a guide for the application of American principles. He highlights the Constitution must not be rigid but adapt to the needs of society, and that American citizens should have more participation in the shaping of the country's laws, a principle which requires more deference to Congress and judicial modesty. Added-value of this summary: • Save time • Gain understanding of the American Constitution and its implications • Expand your knowledge politics and society To learn more, read "Active Liberty" and discover Breyer's views on active liberty and the role of the Constitution in the modern age.

Throughout America's history, our laws have been a reflection of who we are, of what we value, of who has control. They embody our society's genetic code. In the masterful hands of the subject's greatest living historian, the story of the evolution of our laws serves to lay bare the deciding struggles over power and justice that have shaped this country from its birth pangs to the America is a supreme example of the historian's art, its brevity a testament to the great elegance and wit of its composition.

In the first major work on Adams's political thought in over thirty years, C. Bradley Thompson takes issue with the notion that Adams's thought is irrelevant to the development of American ideas. Focusing on Adams's major writings, Thompson elucidates and reevaluates his political and constitutional thought by interpreting it within the tradition of political philosophy stretching fro Montesquieu. Skillfully blending history and political science, Thompson's work shows how the spirit of liberty animated Adams's life and reestablishes this forgotten Revolutionary as an independent and important thinker.

The Rise of Judicial Power and the Coming Crisis of the Supreme Court

A Matter of Interpretation

The Next Justice

Justices, Presidents, and Senators

Logical Foundations of Constitutional Democracy

Our Republican Constitution

The People Themselves

The Constitution of the United States created a representative republic marked by federalism and the separation of powers. Yet numerous federal judges--led by the Supreme Court--have used the Constitution as a blank check to substitute their own views on hot-button issues such as abortion, capital punishment, and samesex marriage for perfectly constitutional laws enacted by We the People through our elected representatives. Now, The Politically Incorrect Guide to the Constitution shows that there is very little relationship between the Constitution as ratified by the thirteen original states more than two centuries ago and the "constitutional law" imposed upon us since then. Instead of the system of state-level decision makers and elected officials the Constitution was intended to create, judges have given us a highly centralized system in which bureaucrats and appointed--not elected--officials make most of the important policies. In The Politically Incorrect Guide to the Constitution, Professor Kevin Gutzman explains how the Constitution: Was understood by the founders who wrote it and the people who ratified it. Follows the Supreme Court as it uses the fig leaf of the Constitution to cover its naked usurpation of the rights and powers the Constitution explicitly reserves to the states and to the people. Slid from the Constitution's republican federal government, with its very limited powers, to an unrepublican "judgeocracy" with limitless powers. How the Fourteenth Amendment has been twisted to use the Bill of Rights as a check on state power instead of on federal power, as originally intended. The radical inconsistency between "constitutional law" and the rule of law. Contends that the judges who receive the most attention in history books are celebrated for acting against the Constitution rather than for it. As Professor Gutzman shows, constitutional law is supposed to apply the Constitution's plain meaning to prevent judges, presidents, and congresses from overstepping their authority. If we want to return to the founding fathers' vision of the Republic, if we want the Constitution enforced in the way it was explained to the people at the time of its ratification, then we have to overcome the "received wisdom" about what constitutional law is. The Politically Incorrect Guide to the Constitution is an important step in that direction.

This book focuses on the essentials that public managers should know about administrative law—why we have administrative law, the constitutional constraints on public administration, and administrative law's frameworks for rulemaking, adjudication, enforcement, transparency, and judicial and legislative review. Rosenbloom views administrative law from the perspectives of administrative practice, rather than lawyering with an emphasis on how various administrative law provisions promote their underlying goal of improving the fit between public administration and U.S. democratic-constitutionalism. Organized around federal administrative law, the book explains the essentials of administrative law clearly and accurately, in non-technical terms, and with sufficient depth to provide readers with a sophisticated, lasting understanding of the subject matter.

A new Council of Europe reference framework of competences for democratic culture! Contemporary societies within Europe face many challenges, including declining levels of voter turnout in elections, increased distrust of politicians, high levels of hate crime, intolerance and prejudice towards minority ethnic and religious groups, and increasing levels of support for violent extremism. These challenges threaten the legitimacy of democratic institutions and peaceful co-existence within Europe. Formal education is a vital tool that can be used to tackle these challenges. Appropriate educational input and practices can boost democratic engagement, reduce intolerance and prejudice, and decrease support for violent extremism. However, to achieve these goals, educationists need a clear understanding of the democratic competences that should be targeted by the curriculum. This book presents a new conceptual model of the competences which citizens require to participate in democratic culture and live peacefully together with others in culturally diverse societies. The model is the product of intensive work over a two-year period, and has been strongly endorsed in an international consultation with leading educational experts. The book describes the competence model in detail, together with the methods used to develop it. The model provides a robust conceptual foundation for the future development of curricula, pedagogies and assessments in democratic citizenship and human rights education. Its application will enable educational systems to be harnessed effectively for the preparation of students for life as engaged and tolerant democratic citizens. The book forms the first component of a new Council of Europe reference framework of competences for democratic culture. It is vital reading for all educational policy makers and practitioners who work in the fields of education for democratic citizenship, human rights education and intercultural education.

The Supreme Court has recently issued decisions announcing that citizens have neither a constitutional right to vote, nor the right to an education. Conservative judges have continually disavowed claims to any rights not specifically mentioned in the Constitution. In "Overruling Democracy, " celebrated law professor Jamin B. Raskin, argues that we need to develop a whole new set of rights, through amendments or court decisions, that revitalize and protect the democracy of everyday life. Detailing specific cases through interesting narratives, "Overruling Democracy" describes the transgressions of the Supreme Court against the Constitution and the people - and the faulty reasoning behind them -- and lays out the plan for the best way to back a more democratic system.

Democracy by Decree

The Brethren

Competences for democratic culture

The Resegregation of America's Schools

The Supreme Court and Constitutional Democracy

Courts, Politics and Constitutional Law

Federal Courts and the Law - New Edition

A scientific study of the political and economic factors influencing democratic decision making

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.

In this study, W. J. Waluchow argues that debates between defenders and critics of constitutional bills of rights presuppose that constitutions are more or less rigid entities. Within such a conception, constitutions aspire to establish stable, fixed points of agreement and pre-commitment, which defenders consider to be possible and desirable, while critics deem impossible and undesirable. Drawing on reflections about the nature of law, constitutions, the common law, and what it is to be a democratic representative, Waluchow urges a different theory of bills of rights that is flexible and adaptable. Adopting such a theory enables one not only to answer to critics' most serious challenges, but also to appreciate the role that a bill of rights, interpreted and enforced by unelected judges, can sensibly play in a constitutional democracy.

Breaking the Vicious Circle is a tour de force that should be read by everyone who is interested in improving our regulatory processes. Written by a highly respected federal judge, who obviously recognizes the necessity of regulation but perceives its failures and weaknesses as well, it pinpoints the most serious problems and offers a creative solution that would for the first time bring rationality to bear on the vital issue of priorities in our era of limited resources.

Democracy and Liberty

Packing the Court

Breaking the Promise of Brown

A Common Law Theory of Judicial Review

Judicial Process and Judicial Policymaking

Sunstein (jurisprudence, political science, U. of Chicago) asserts that, as it is currently interpreted, the Constitution is biased. He points to two contemporary mistakes: that Constitutional law posits the status quo as neutral and just (which, he argues, is not the case); and that the meaning of the Constitution is increasingly solely within the purview of the Supreme Court (which, he argues, is not what the founders intended.) Annotation copyright by Book News, Inc., Portland, OR

In The Supreme Court and Constitutional Democracy John Agresto traces the development of American judicial power, paying close attention to what he views as the very real threat of judicial supremacy. Agresto examines the role of the judiciary in a democratic society and discusses the proper place of congressional power in constitutional issues. Agresto argues that while the separation of congressional and judicial functions is a fundamental tenet of American government, the present system is not effective in maintaining an appropriate balance of power. He shows that continued judicial expansion, especially into the realm of public policy, might have severe consequences for America's national life and direction, and offers practical recommendations for safeguarding against an increasingly powerful Supreme Court. John Agresto's controversial argument, set in the context of a historical and theoretical inquiry, will be of great interest to scholars and students in political science and law, especially American constitutional law and political theory.

"In this original, far-reaching, and timely book, Justice Stephen Breyer examines the work of the Supreme Court of the United States in an increasingly interconnected world, a world in which all sorts of activity, both public and private--from the conduct of national security policy to the conduct of international trade--obliges the Court to understand and consider circumstances beyond America's borders. It is a world of instant communications, lightning-fast commerce, and shared problems (like public health threats and environmental degradation), and it is one in which the lives of Americans are routinely linked ever more pervasively to those of people in foreign lands. Indeed, at a moment when anyone may engage in direct transactions internationally for services previously bought and sold only locally (lodging, for instance, through online sites), it has become clear that, even in ordinary matters, judicial awareness can no longer stop at the water's edge. To trace

how foreign considerations have come to inform the thinking of the Court, Justice Breyer begins with that area of the law in which they have always figured prominently: national security in its constitutional dimension--how should the Court balance this imperative with others, chiefly the protection of basic liberties, in its review of presidential and congressional actions? He goes on to show that as the world has grown steadily "smaller," the Court's horizons have inevitably expanded: it has been obliged to consider a great many more matters that now cross borders. What is the geographical reach of an American statute concerning, say, securities fraud, antitrust violations, or copyright protections? And in deciding such matters, can the Court interpret American laws so that they might work more efficiently with similar laws in other nations? While Americans must necessarily determine their own laws through democratic process, increasingly, the smooth operation of American law--and, by extension, the advancement of American interests and values--depends on its working in harmony with that of other jurisdictions. Justice Breyer describes how the aim of cultivating such harmony, as well as the expansion of the rule of law overall, with its attendant benefits, has drawn American jurists into the relatively new role of "constitutional diplomats," a little remarked but increasingly important job for them in this fast-changing world."--Publisher's description.

Chief Justice John Marshall argued that a constitution "requires that only its great outlines should be marked [and] its important objects designated." Ours is "intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." In recent years, Marshall's great truths have been challenged by proponents of originalism and strict construction. Such legal thinkers as Supreme Court Justice Antonin Scalia argue that the Constitution must be construed and applied as it was when the Framers wrote it. In Keeping Faith with the Constitution, three legal authorities make the case for Marshall's vision. They describe their approach as "constitutional fidelity"--not to how the Framers would have applied the Constitution, but to the text and principles of the Constitution itself. The original understanding of the text is one source of interpretation, but not the only one; to preserve the meaning and authority of the document, to keep it vital, applications of the Constitution must be shaped by precedent, historical experience, practical consequence, and societal change. The authors range across the history of constitutional interpretation to show how this approach has been the source of our greatest advances, from Brown v. Board of Education to the New Deal, from the Miranda decision to the expansion of women's rights. They delve into the complexities of voting rights, the malapportionment of legislative districts, speech freedoms, civil liberties and the War on Terror, and the evolution of checks and balances. The Constitution's framers could never have imagined DNA, global warming, or even women's equality. Yet these and many more realities shape our lives and outlook. Our Constitution will remain vital into our changing future, the authors write, if judges remain true to this rich tradition of adaptation and fidelity.