



Active Liberty: Interpreting Our Democratic Constitution

By Stephen Breyer

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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.

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Editorial Review

From Publishers Weekly

Starred Review. Supreme Court Justice Breyer offers his view of constitutional interpretation at a crucial time, when the Court's future is very much at stake. Breyer himself made the crucial deciding votes recently in the two 10 Commandments cases: he notably split his vote, supporting the display in Texas and opposing the one in Kentucky, a nuanced choice that confounded many and that he explains lucidly here. Breyer works this explanation into a larger look at an important aspect of his judicial philosophy: the need for justices to look at cases in light of how their decisions will promote what he calls "active liberty," the Constitution's aim of promoting participation by citizens in the processes of government. It's an approach that emphasizes "the document's underlying values" and looking broadly at a law's purpose and consequences rather than relying on a rigid overarching theory of judicial interpretation. The justice looks at six areas of law to show how this approach influenced, or might have influenced, high court decisions on free speech, affirmative action, and privacy, among others. For instance, in free speech, Breyer notes that an active-liberty outlook would have led the Court to support campaign finance laws controlling soft-money contributions. He explains how the Court's decision in favor of the University of Michigan law school's affirmative action program supported the participation of minorities in our political system. (Interestingly, he doesn't discuss the Court's simultaneous decision against the university's undergraduate affirmative action program.) Breyer saves his hard ball for the very end: a calm, judicious but powerful attack on the interpretive approach of some of his judicial colleagues, what he calls an "originalist" approach, relying primarily on a close reading of the text of a statute or the Constitution. Anticipating originalists' criticism that only their approach can prevent judicial subjectivity, Breyer forcefully illustrates the many constraints on subjectivity and shows that originalism is not as objective as they claim. Breyer's prose is admirably simple and clear, and his discussion shows a keen legal intellect that espouses broad values rather than narrow theories, and a deep, humane concern with fostering democracy and the well-being of the citizenry. This will be essential reading at a possibly watershed moment for the Supreme Court. *50,000 first printing. (Sept. 17)*

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From [Booklist](#)

An associate justice of the Supreme Court, Breyer proposes a framework for approaching constitutional issues that gives priority to the underlying purposes of the Constitution when engaging such issues. The underlying constitutional value with which he is most concerned is "active liberty," which places emphasis on democratic participation. To a lesser extent, Breyer is concerned with modern liberty, or government intrusion on the rights of individuals. Breyer maintains that the value of participation in a democracy can impact decision-making, and he gives examples in affirmative action, free speech, and federalism. His position contrasts sharply with the strict constructionist approach favored by certain of his more conservative cohorts, who try to limit their focus to the strict language of the Constitution and other statutes. Interestingly, Breyer's approach has much in common with certain conservative values, as the active liberty approach tends to defer to Congress. However, for the purpose of greater citizen participation, he envisions an approach that is adaptive and changes over time. Rather than looking exclusively to the past, Breyer appreciates the need to engage the Constitution as a living document. *Vernon Ford*

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Review

"A brisk, lucid and energetic book, written with conviction and offering a central argument that is at once provocative and appealing. . . . Deserves a place of honor in national debates, now and in the future, about

the role of the Supreme Court in American life.” –*The New Republic*

“An important contribution. *Active Liberty* serves to clarify the stakes in contemporary disputes over the courts, rightly emphasizing areas of common ground alongside those of controversy.” –*The Washington Post Book World*

“Provocative and well-argued. . . . What we need more of, *Active Liberty* insists, is not activist judges but activist citizens.” –*The New York Times*

“*Active Liberty* will likely influence not only public debate but also how lawyers craft their cases.” –*The Wall Street Journal*

Users Review

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Bernadine Williams:

This *Active Liberty: Interpreting Our Democratic Constitution* is great reserve for you because the content that is full of information for you who all always deal with world and possess to make decision every minute. This kind of book reveal it facts accurately using great organize word or we can say no rambling sentences inside it. So if you are read this hurriedly you can have whole info in it. Doesn't mean it only provides straight forward sentences but challenging core information with lovely delivering sentences. Having *Active Liberty: Interpreting Our Democratic Constitution* in your hand like having the world in your arm, details in it is not ridiculous just one. We can say that no guide that offer you world inside ten or fifteen moment right but this guide already do that. So , this really is good reading book. Hey Mr. and Mrs. occupied do you still doubt in which?

Heather Stewart:

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