READ THE NATURE OF SUPREME COURT POWER FREE

The Nature of Supreme Court Power

Few institutions in the world are credited with initiating and confounding political change on the scale of the United States Supreme Court. The Court is uniquely positioned to enhance or inhibit political reform, enshrine or dismantle social inequalities, and expand or suppress individual rights. Yet despite claims of victory from judicial activists and complaints of undemocratic lawmaking from the Court's critics, numerous studies of the Court assert that it wields little real power. This book examines the nature of Supreme Court power by identifying conditions under which the Court is successful at altering the behavior of state and private actors. Employing a series of longitudinal studies that use quantitative measures of behavior outcomes across a wide range of issue areas, it develops and supports a new theory of Supreme Court power.

The Nature of Supreme Court Power

\"This book offers a comprehensive theory of Supreme Court power, identifying conditions under which the Court is successful at altering the behavior of state and private actors. Matthew E.K. Hall depicts the Court as a powerful institution, capable of exerting significant influence over social change\"--Provided by publisher.

Judicial Review and Judicial Power in the Supreme Court

Available as a single volume or as part of the 10 volume set Supreme Court in American Society

Judicial Review and the Law of the Constitution

In this book, the author presents a new interpretation of the origin of judicial review. She traces the development of judicial review from American independence through the tenure of John Marshall as Chief Justice, showing that Marshall's role was far more innovative and decisive than has yet been recognized. According to the author all support for judicial review before Marshall contemplated a fundamentally different practice from that which we know today. Marshall did not simply reinforce or extend ideas already accepted but, in superficially minor and disguised ways, effected a radical transformation in the nature of the constitution and the judicial relationship to it.

Emergency Powers and the Courts in India and Pakistan

The fundamental premise of this study is that where Constitutions, such as that of India and Pakistan, articulate legal norms which limit the scope of the executive power to derogate from individual rights during states of emergency, there must likewise exist an effective control mechanism to ensure that the Executive acts within the scope of that power. Viewed from this perspective, the judicial power to interpret the Constitution imposes upon the Court the constitutional duty to provide adequate safeguards against the abuse of state power affecting individual rights. This power remains available notwithstanding the presumed or purported ouster of judicial review. The concept of judicial review as a source of control is examined in the light of the experience of Pakistan and India during periods of constitutional emergency. The divergent approaches of the Courts in these countries, in litigation concerning emergency powers and individual rights, are explained in terms of divergent views that these Courts have adopted with respect to the nature of judicial

review.

The United States Supreme Court

The US Supreme Court is arguably the most controversial institution in the American political system. Decisions on such 'hot-button' issues as abortion, race equality, the death penalty and gay marriage have sharply divided the Court, politicians and public opinion. Some say that the Justices are merely politicians in judicial robes, while others insist that the Court simply does its best to interpret the Constitution for a society that differs drastically from the late eighteenth century when it was written. All those studying or simply interested in American politics must therefore get to grips with the nature, power and role of the Supreme Court in American politics. This book provides a comprehensive and balanced account, written and organised in an accessible style. It assumes no prior knowledge of the Court or constitutional law, and will help readers to gain a full appreciation of this much-criticised and important institution.

The Supreme Court and the Idea of Constitutionalism

In this volume distinguished constitutional scholars aim to move debate over the Supreme Court beyond the soundbites that divide us to fundamental questions about the nature of constitutionalism.

Extending Rights' Reach

Constitutional rights protect individuals against government overreaching, but that is not all they do. In different ways and to different degrees, constitutional rights also regulate legal relations among private parties in most legal systems. Rights can have not only a vertical effect, within the hierarchical relationship between citizen and state, but also a horizontal one, on the citizen-to-citizen relationships otherwise governed by private law. In every constitutional system with judicially enforceable constitutional rights, courts must make choices about whether, when, and how to give those rights horizontal effect. This book is about how different courts make those choices, and about the consequences that they have. The doctrines that courts build to manage the horizontal effect of rights speak to the most fundamental issues that constitutional systems address, about the nature of rights and of constitutionalism itself. These doctrines can also entrench or enhance judicial power, but in very different ways depending on the legal system. This book offers three case studies, of Germany, the United States, and Canada. For each, it offers a detailed account of the horizontal effect jurisprudence of its apex court-not in isolation, but as a central feature of a broader account of that country's constitutional development. The case studies show how the choices courts make about horizontal rights reflect existing normative and political realities and, over time, help to shape new ones.

Judges, politics and the Irish Constitution

This volume brings together academics and judges to consider ideas and arguments flowing from the often complex relationships between law and politics, adjudication and policy-making, and the judicial and political branches of government. Contributors explore numerous themes, including the nature and extent of judicial power, the European Court of Human Rights decision in O'Keeffe v Ireland, the process of appointing judges and judicial representation, judicial power and political processes. Contrasting judicial and academic perspectives are provided on the role of the European Court of Human Rights and the nature of exhausting domestic remedies, including a contribution from the late Mr. Justice Adrian Hardiman. The role of specific judges, social and political disputes and case law are examined and socio-economic rights, the rule of law and electoral processes are all addressed.

The Supreme Court in American Politics

For decades political scientists studying the Court have adopted behavioral approaches and focused on the

relatively narrow question of how the justices' policy preferences influence their voting behavior. This emphasis has illuminated important aspects of Supreme Court politics, but it has also left unaddressed many other important questions about this unique and fascinating institution. Drawing on \"the new institutionalism\" in the social sciences, the distinguished contributors to this volume attempt to fill this gap by exploring a variety of topics, including the Court's institutional development and its relationship to broader political contexts such as party regimes, electoral systems, social movements, social change, legal precedents, political identities, and historically evolving economic structures. The book's initial chapters examine the nature of the Court's distinctive norms as well as the development of its institutional powers and practice. A second section relates the development of Supreme Court politics to the historical development of other political institutions and social movements. Concluding chapters explore how its decision making in particular areas of law or periods of time is influenced by—and influences—its socio-political milieu. These contributions offer provocative insights regarding the Court's role in maintaining or disrupting political and economic structures, as well as social structures and identities tied to ideology, class, race, gender, and sexual orientation. The Supreme Court in American Politics shows how we can develop an enriched understanding of this institution, and open up exciting new areas of research by placing it in the broader context of politics in the United States.

Judicial Review: Process, Powers and Problems

Discusses Upendra Baxi's role as an Indian jurist and how his contributions have shaped our understanding of legal jurisprudence.

Brandeis and the Progressive Constitution

During the twentieth century, and particularly between the 1930s and 1950s, ideas about the nature of constitutional government, the legitimacy of judicial lawmaking, and the proper role of the federal courts evolved and shifted. This book focuses on Supreme Court justice Louis D. Brandeis and his opinion in the 1938 landmark case Erie Railroad Co. v. Tompkins, which resulted in a significant relocation of power from federal to state courts. Distinguished legal historian Edward A. Purcell, Jr., shows how the Erie case provides a window on the legal, political, and ideological battles over the federal courts in the New Deal era. Purcell also offers an in-depth study of Brandeis's constitutional jurisprudence and evolving legal views. Examining the social origins and intended significance of the Erie decision, Purcell concludes that the case was a product of early twentieth-century progressivism. The author explores Brandeis's personal values and political purposes and argues that the justice was an exemplar of neither \"judicial restraint\" nor \"neutral principles,\" despite his later reputation. In an analysis of the continual reconceptions of both Brandeis and Erie by new generations of judges and scholars in the twentieth century, Purcell also illuminates how individual perspectives and social pressures combined to drive the law's evolution.

The Doctrine of Judicial Review

This book, first published in 1914, contains five historical essays. Three of them are on the concept of judicial review, which is defined as the power of a court to review and invalidate unlawful acts by the legislative and executive branches of government. One chapter addresses the historical controversy over states' rights. Another concerns the Pelatiah Webster Myth the notion that the US Constitution was the work of a single person.In \"Marbury v. Madison and the Doctrine of Judicial Review,\" Edward S. Corwin analyzes the legal source of the power of the Supreme Court to review acts of Congress. \"We, the People\" examines the rights of states in relation to secession and nullification. \"The Pelatiah Webster Myth\" demolishes Hannis Taylor's thesis that Webster was the \"secret\" author of the constitution. \"The Dred Scott Decision\" considers Chief Justice Taney's argument concerning Scott's title to citizenship under the Constitution. \"Some Possibilities in the Way of Treaty-Making\" discusses how the US Constitution relates to international treaties.Matthew J. Franck's new introduction to this centennial edition situates Corwin's career in the history of judicial review both as a concept and as a political reality.

Popular Government and the Supreme Court

With quiet eloquence, Lane Sunderland argues that we must reclaim the fundamental principles of the Constitution if we are to restore democratic government to its proper role in American life. For far too long, he contends, the popular will has been held in check by an overly powerful Supreme Court using non-constitutional principles to make policy and promote its own political agendas. His work shows why this has diminished American democracy and what we can do to revive it. Sunderland presents a strong, thoughtful challenge to the constitutional theories promoted by Ronald Dworkin, Archibald Cox, Richard Epstein, Michael Perry, John Hart Ely, Robert Bork, Philip Kurland, Laurence Tribe, Mark Tushnet, and Catharine MacKinnon—an enormously diverse group united by an apparent belief in judicial supremacy. Their theories, he demonstrates, undermine the democratic foundations of the Constitution and the power of the majority to resolve for itself important questions of justice. Central to this enterprise is Sunderland's reconsideration of The Federalist as the first, most reliable, and most profound commentary on the Constitution. \"The Federalist,\" he states, \"is crucial because it explains the underlying theory of the Constitution as a whole, a theory that gives meaning to its particular provisions.\" In addition, Sunderland reexamines the Declaration of Independence and the work of Hobbes, Locke, and Montesquieu, in order to better define the nature and limits of their influence on the Framers. His reading of these works in conjunction with The Federalist shows just how far afield contemporary commentators have strayed. Sunderland deliberately echoes and amplifies Madison's wisdom in Federalist No. 10 that the object of the Constitution is \"to secure the public good and private rights . . . and at the same time to preserve the spirit and form of popular government.\" To attain that object, he persuasively argues, requires that the judiciary acknowledge and enforce the constitutional limitations upon its own powers. In an era loudly proclaiming the return of popular government, majority rule, and the \"will of the people,\" that argument is especially relevant and appealing.

Raw Judicial Power?

Published here with a new chapter covering judgements from 1993 to 1995, Raw judicial power? is established as the definitive analysis of the powerful forces shaping the United States Supreme Court today. Robert J. McKeever analyses the approach of the Court to the most pressing contemporary social issues, such as capital punishment, abortion, race and affirmative action, gender equality and religion, sex and politics. He shows how social policy initiatives in the US have often come from the judicial rather than the legislative branch of government, leading to charges that the Supreme Court has been exercising 'raw judicial power'. He examines the policy decisions the Court has made, and argues that the Court has increasingly jettisoned traditional notions of constitutional interpretation in order to tackle the conflicts in contemporary American society. Students of American politics, constitutional law and social policy will all find this book invaluable.

The U.S. Supreme Court and the Judicial Review of Congress

This book examines, from a behavioral perspective, the U.S. Supreme Court's exercise of the power of judicial review over Congress across two hundred years of the Court's history, testing the major competing theories in political science - the attitudinal model and the strategic approach - through systematic empirical analysis. Exploring the major trends in the Court's use of this power over time, the book examines a broad range of questions concerning the countermajoritarian nature of this power, and provides an analysis of each of the individual justices' behavior along several dimensions of the power, such as the use of judicial review to protect minority rights against majority intrusion. The book concludes that the Court has shown a high level of deference to Congress, with notable historic highs and lows, and generally that the exercise of the power has been less countermajoritarian than is usually assumed. Its analyses find the strongest level of support for the attitudinal approach to judicial decision making, but also concludes that strategic concerns cannot be dismissed, especially for the more recent Courts.

The Limits of Judicial Power

Lasser examines in detail four periods during which the Court was widely charged with overstepping its constitutional power: the late 1850s, with the Dred Scott case and its aftermath; the Reconstruction era; the New Deal era; and the years of the Warren and Burger Courts after 1954. His thorough analysis of the most controversial decisions convincingly demonstrates that the Court has much more power to withstand political reprisal than is commonly assumed. Originally published in 1988. A UNC Press Enduring Edition -- UNC Press Enduring Editions use the latest in digital technology to make available again books from our distinguished backlist that were previously out of print. These editions are published unaltered from the original, and are presented in affordable paperback formats, bringing readers both historical and cultural value.

What Justices Want

Examines how personality traits shape the behavior of US Supreme Court justices, proposing a new theory of judicial behavior.

Great Cases in Constitutional Law

Slavery, segregation, abortion, workers' rights, the power of the courts. These issues have been at the heart of the greatest constitutional controversies in American history. And in this concise and thought-provoking volume, some of today's most distinguished legal scholars and commentators explain for a general audience how five landmark Supreme Court cases centered on those controversies shaped the country's destiny and continue to affect us even now. The book is a profound exploration of the Supreme Court's importance to America's social and political life. It is also, as many of the contributors show, an intriguing reflection of what some have seen as an important trend in legal scholarship away from an uncritical belief in the essentially benign nature of judicial power. Robert George opens with an illuminating survey of the themes that unite and divide the five cases. Other contributors then examine each case in detail through a lively commentary-and-response format. Mark Tushnet and Jeremy Waldron exchange views on Marbury v. Madison, the pivotal 1803 case that established the power of the courts to invalidate legislation. Cass Sunstein and James McPherson discuss Dred Scott v. Sandford (1857), the notorious case that confirmed the rights of slaveowners, declared that black people could not be American citizens, and is often seen as a cause of the Civil War. Hadley Arkes and Donald Drakeman explore the legacy of Lochner v. New York (1905), a case that ushered in decades of judicial hostility to social welfare laws. Earl Maltz and Walter Murphy assess Brown v. Topeka Board of Education (1954), the famous case that ended racial segregation in public schools. Finally, Jean Bethke Elshtain and George Will tackle Roe v. Wade (1973), still a flashpoint a quarter of a century later in the debate over abortion. While some of the contributors show sympathy for strong judicial interventions on social issues, many across the ideological spectrum are sharply critical of judicial activism. A compelling introduction to the greatest cases in U.S. constitutional law, this is also an enlightening glimpse of the state of the art in American legal scholarship.

A Distinct Judicial Power

A Distinct Judicial Power: The Origins of an Independent Judiciary, 1606-1787, by Scott Douglas Gerber, provides the first comprehensive critical analysis of the origins of judicial independence in the United States. Part I examines the political theory of an independent judiciary. Gerber begins chapter 1 by tracing the intellectual origins of a distinct judicial power from Aristotle's theory of a mixed constitution to John Adams's modifications of Montesquieu. Chapter 2 describes the debates during the framing and ratification of the federal Constitution regarding the independence of the federal judiciary. Part II, the bulk of the book, chronicles how each of the original thirteen states and their colonial antecedents treated their respective judiciaries. This portion, presented in thirteen separate chapters, brings together a wealth of information (charters, instructions, statutes, etc.) about the judicial power between 1606 and 1787, and sometimes

beyond. Part III, the concluding segment, explores the influence the colonial and early state experiences had on the federal model that followed and on the nature of the regime itself. It explains how the political theory of an independent judiciary examined in Part I, and the various experiences of the original thirteen states and their colonial antecedents chronicled in Part II, culminated in Article III of the U.S. Constitution. It also explains how the principle of judicial independence embodied by Article III made the doctrine of judicial review possible, and committed that doctrine to the protection of individual rights.

The Supreme Court and the Constitution

A thorough analysis of the early history and development of judicial review, this book by a preeminent scholar ranks among the most cited and highly regarded texts on law and government.

The American Judiciary

\"This is the sixth of a set of eight volumes entitled 'The American State Series,' Professor W. W. Willoughby, of Johns Hopkins University, is the editor, and he states that the aim of the series is to describe the actual conditions and to suggest the various constitutional and administrative problems which exist in the government of this country and to make manifest the essential considerations involved in their settlement. Each volume is to be complete in itself and the set is to constitute a logical whole. The volumes refer respectively to the American Constitutional System, City Government, Party Organization, the Executive, the Legislature, the Judiciary, the Territories and Colonies, and to Local Government. \"Each volume is written by a different author, and the writer of the present volume is Simeon E. Baldwin, Associate Justice of the Supreme Court of Errors of Connecticut and Professor of Constitutional Law in Yale University. This volume, like the others, is intended primarily for use in schools and colleges and for the informational of the general reader and citizen. It was not written with any special intention of satisfying any demand felt by the legal profession. The practicing lawyer is already familiar with most of this information it contains. The law student will find it of value in presenting a summary of the present condition of the machinery of the courts of this country.\" -The American Law Register (1898-1907) CONTENTS CASES CITED. I. THE NATURE AND SCOPE OF THE JUDICIAL POWER IN THE UNITED STATES. II. THE ORGANIZATION AND PRACTICAL WORKING OF AMERICAN COURTS. PART I, CHAPTER I. ENGLISH ORIGIN AND EARLY DEVELOPMENT OF THE AMERICAN JUDICIARY. II. THE SEPARATION OF THE JUDICIAL POWER FROM THE LEGISLATIVE AND EXECUTIVE IN AMERICAN CONSTITUTIONS. III. THE RELATIONS OF THE JUDICIARY TO THE POLITICAL DEPARTMENTS OF GOVERNMENT. IV. THE FORCE OF JUDICIAL PRECEDENTS. V. THE JUDICIAL POWER OF DEVELOPING UNWRITTEN LAW. VI. THE JUDICIAL POWER OF INTERPRETING AND DEVELOPING WRITTEN LAW. VII. THE JUDICIAL POWER OF DECLARING WHAT HAS THE FORM OF LAW NOT TO BE LAW. PART II VIII. THE ORGANIZATION OF THE COURTS OF THE STATES. IX. THE ORGANIZATION OF THE COURTS OF THE UNITED STATES. X. RELATIONS OF THE STATE JUDICIARY TO THE UNITED STATES, AND OF THE UNITED STATES JUDICIARY TO THE STATES. XI. RELATIONS BETWEEN THE COURTS OF DIFFERENT STATES. XII. TRIAL BY JURY. XIII. FORMALITIES IN JUDICIAL PROCEDURE. XIV. TRIAL COURTS FOR CIVIL CAUSES. XV. PROBATE COURTS. XVI. BANKRUPTCY AND INSOLVENCY COURTS. XVII. CRIMINAL PROCEDURE. XVIII. THE EXERCISE OF JUDICIAL FUNCTIONS OUT OF COURT. XIX. APPELLATE COURTS. XX. THE ENFORCEMENT OF JUDGMENTS AND PUNISHMENT OF CONTEMPTS OF COURT. XXI. JUDICIAL PROCEEDINGS IN TERRITORIES SUBJECT TO MARTIAL LAW. XXII. APPOINTMENT, TENURE OF OFFICE AND COMPENSATION OF JUDGES. XXIII. THE CHARACTER OF THE BAR AND ITS RELATIONS TO THE BENCH. XXIV. THE LAW'S DELAYS. XXV. THE ATTITUDE OF THE PEOPLE TOWARDS THE JUDICIARY.

A General View of the Origin and Nature of the Constitution and Government of the United States

Seminar paper from the year 2012 in the subject Politics - International Politics - Region: USA, grade: 84%, Birkbeck, University of London (University of London), course: American Politics, language: English, abstract: The US Supreme Court bears the incredible responsibility for deciding the constitutional validity of cases by judging the merits of each against the Constitution. Given the context in which the Constitution was written and its often ambiguous language, the task facing the nine Justices is not simple and the Court's activities not without controversy. The influence of the Court has generated swathes of literature concerning how the Constitution is applied and how effective those applications have been in shaping public policy. There can be little doubt that the Supreme Court is both powerful and political and has had a major impact on American society. Indeed, it was the Court that ruled racial segregation in schools to be unconstitutional (Brown v. Board of Education 1954); guaranteed the rights to counsel and due process (Gideon v. Wainwright 1963); established the constitutional right of abortion (Roe v. Wade 1973); and famously, or perhaps infamously, halted the Florida recount, effectively awarding the presidency to George W. Bush (Bush v. Gore 2000). This essay takes the notion that the Court is both political and powerful as given but explores whether it is too political and too powerful, to the degree that its decisions have a detrimental impact on the functioning of US democracy. In considering this issue, one needs to consider outcomes (how the Court has actually shaped public policy). This essay will focus on three policy areas where the Court has made landmark decisions (abortion, civil rights, and gun control) and explains that while the Court is, by its nature, highly political and also powerful, it does not operate in a vacuum and its influence on society in constrained by the separation of powers, the federal nature of politics, and public opinion. Supreme Court functions Before turning to the Supreme Court's influence on public policy, it is worth understanding what the Court is intended for. Article III of the Constitution states that 'the judicial power of the United States shall be vested in one supreme court'. This role manifests itself in two judicial review functions: (i) statutory interpretation; and (ii) constitutional interpretation of legislation. [...]

Is the Supreme Court too political and too powerful?

Robert H. Jackson, published this book while serving as Attorney General of the United States. In it, Jackson traces the rise and fall of the influence of the Supreme Court of the United States, of its changes in make-up, in numbers, of its reversal of itself, of the dangers of judicial supremacy, when it closed its eyes to \"\"peaceful and democratic conciliation of our social and economic conflicts\"\". He then examines the response--President Franklin Roosevelt's 1937 effort to resist judicial expansionism through \"Court-packing\" legislation.

The Struggle for Judicial Supremacy

American society has undergone a revolution within a revolution. Until the 1960s, America was a liberal country in the traditional sense of legislative and executive checks and balances. Since then, the Supreme Court has taken on the role of the protector of individual rights against the will of the majority by creating, in a series of decisions, new rights for criminal defendants, atheists, homosexuals, illegal aliens, and others. Repeatedly, on a variety of cases, the Court has overturned the actions of local police or state laws under which local officials are acting. The result, according to Quirk and Birdwell, is freedom for the lawless and oppression for the law abiding. 'Judicial Dictatorship' challenges the status quo, arguing that in many respects the Supreme Court has assumed authority far beyond the original intent of the Founding Fathers. In order to avoid abuse of power, the three branches of the American government were designed to operate under a system of checks and balances. However, this balance has been upset. The Supreme Court has become the ultimate arbiter in the legal system through exercise of the doctrine of judicial review, which allows the court to invalidate any state or federal law it considers inconsistent with the constitution. Supporters of judicial review believe that there has to be a final arbiter of constitutional interpretation, and the Judiciary is the most suitable choice. Opponents, Thomas Jefferson and Abraham Lincoln among them, believed that judicial review assumes the judicial branch is above the other branches, a result the Constitution did not intend. The democratic paradox is that the majority in America agreed to limit its own power. Jefferson believed that the will of the majority must always prevail. His faith in the common man led him to advocate a weak national

government, one that derived its power from the people. Alexander Hamilton, often Jefferson's adversary, lacking such faith, feared \"the amazing violence and turbulence of the democratic spirit.\" This led him to believe in a strong national government, a social and economic aristocracy, and finally, judicial review. This conflict has yet to be resolved. 'Judicial Dictatorship' discusses the issue of who will decide if government has gone beyond its proper powers. That issue, in turn, depends on whether the Jeffersonian or Hamiltonian view of the nature of the person prevails. In challenging customary ideological alignments of conservative and liberal doctrine, 'Judicial Dictatorship' will be of interest to students and professionals in law, political scientists, and those interested in U.S. history.

Marbury V. Madison and Judicial Review

There are three general models of Supreme Court decision making: the legal model, the attitudinal model and the strategic model. But each is somewhat incomplete. This book advances an integrated model of Supreme Court decision making that incorporates variables from each of the three models. In examining the modern Supreme Court, since Brown v. Board of Education, the book argues that decisions are a function of the sincere preferences of the justices, the nature of precedent, and the development of the particular issue, as well as separation of powers and the potential constraints posed by the president and Congress. To test this model, the authors examine all full, signed civil liberties and economic cases decisions in the 1953–2000 period. Decision Making by the Modern Supreme Court argues, and the results confirm, that judicial decision making is more nuanced than the attitudinal or legal models have argued in the past.

Judicial Dictatorship

In this famous treatise, a Supreme Court Justice describes the conscious and unconscious processes by which a judge decides a case. He discusses the sources of information to which he appeals for guidance and analyzes the contribution that considerations of precedent, logical consistency, custom, social welfare, and standards of justice and morals have in shaping his decisions.

Decision Making by the Modern Supreme Court

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.

The Nature of the Judicial Process

\"The U.S. Supreme Court: A Very Short Introduction draws on the Court's history and its written and unwritten rules to show how it operates in the twenty-first century. Today's Supreme Court, housed in a majestic building on Capitol Hill, bears little resemblance to the institution launched by the Framers of the Constitution and was originally seen as the weakest of the three branches of government. Over the next 200 years, the Court put the independence the Framers gave it to use and now largely defines itself, exercising so much power over how Americans live that some have begun to question whether the Court has gone too far. How do cases reach the Supreme Court? What features have other courts around the world taken from the Supreme Court, and what have they left?\"--

The Supreme Court and Constitutional Democracy

In recent years, there has been a substantial increase in concern for the rule of law. Not only have there been a multitude of articles and books on the essence, nature, scope and limitation of the law, but citizens, elected officials, law enforcement officers and the judiciary have all been actively engaged in this debate. Thus, the concept of the rule of law is as multifaceted and contested as it’s ever been, and this book explores the essence of that concept, including its core principles, its rules, and the necessity of defining, or even redefining, the basic concept. Law, Liberty, and the Rule of Law offers timely and unique insights on numerous themes relevant to the rule of law. It discusses in detail the proper scope and limitations of adjudication and legislation, including the challenges not only of limiting legislative and executive power via judicial review but also of restraining active judicial lawmaking while simultaneously guaranteeing an independent judiciary interested in maintaining a balance of power. It also addresses the relationship not only between the rule of law, human rights and separation of powers but also the rule of law, constitutionalism and democracy.

The U. S. Supreme Court: a Very Short Introduction

Benjamin Nathan Cardozo has often been held up as one of the leading Supreme Court Justices in history, despite serving a mere six years on the high court (1932-38). Prior to this tenure, he served on the New York Court of Appeals, one of the principal courts of the nation, particularly during his time, from 1913-1932. Cardozo's opinions on interstate commerce, conflict of laws between federal and state, and congressional powr are still required reading not only for law school students, but also for those engaged in understanding the general manner in which Constitutional law is developed and regarded. This book, first published in 1921, is a series of four lectures by then Judge Cardozo outlining his method of judicial process. The first lecture lays out a philosophical method. He explores the implications of Constitutional priority as well as the principle of stare decisis. 'Stare decisis is at least the everyday working rule of our law.' Cardozo is well aware of judicial power, be it in the Supreme Court or the lower courts. 'Every judgment has generative power, ' he wrote, 'it begets in its own image.' However, precedent is not all powerful, and a good dose of reason and logic must be present in decision making. In his second lecture, Cardozo looks at the issues of history (apart from precedent and particular case law), tradition and sociology in the judicial process. These all speak to the way in which society influences and shapes what kinds of judicial decisions and processes are needed. The third lecture develops this further, even going so far as to have the subtitle 'The Judge as Legislator.' This goes to the heart of one of the principles heavily in debate in the current Supreme Court and lower court selections. However, this kind of 'judicial activitism' is not the sole province of one political side or the other. Cardozo writes, 'sometimes the conservatism of judges has threatened for an interval to rob the legislation of its efficacy.' However, in speaking of the role of judge as legislator, Cardozo states, 'he legislates only between gaps. He fills the open spaces in the law. How far he may go without traveling beyond the walls of the interstices cannot be staked out for him upon a chart.' Cardozo argues that this is far from a new way of thinking, and that this is precisely how the great tradition of the common law developed. Late in the third and throughout the fourth lecture, Cardozo looks at the issue of the subconscious or unconscious development of law and process for judges. This happens in legislation, too, Cardozo argues - when laws are examined in judicial settings, their dissection often reveals unintended and unknown aspects. The same must be true for the judicial process. Cardozo reasserts the principle of following precedent in a practical sense, and argues that that judicial process, being a human one, is bound by certain situations, but that the process as a whole is self-correcting. 'The eccentricities of judges balance one another.... Out of the attrition of diverse minds there is beaten something which has a constancy and uniformity and average value greater than its component elements.' Cardozo's philosophy and thinking on the nature of the judicial process may not be to everyone's liking, but it has a strong place and influence in modern American judicial practice, and is presented in terms clear enough to make interesting reading even for those outside the legal profession.

Court Over Constitution

Classic Books Library presents this brand new edition of “The Federalist Papers”, a collection of separate essays and articles compiled in 1788 by Alexander Hamilton. Following the United States Declaration of Independence in 1776, the governing doctrines and policies of the States lacked cohesion. “The Federalist”, as it was previously known, was constructed by American statesman Alexander Hamilton, and was intended to catalyse the ratification of the United States Constitution. Hamilton recruited fellow statesmen James Madison Jr., and John Jay to write papers for the compendium, and the three are known as some of the Founding Fathers of the United States. Alexander Hamilton (c. 1755–1804) was an American lawyer, journalist and highly influential government official. He also served as a Senior Officer in the Army between 1799-1800 and founded the Federalist Party, the system that governed the nation’s finances. His contributions to the Constitution and leadership made a significant and lasting impact on the early development of the nation of the United States.

Law, Liberty, and the Rule of Law

Annotated text examines the legitimacy of judicial review.

The Nature of the Judicial Process

This book shows that constitutional courts exercise direct and indirect power on political branches through decision-making. The first face of judicial power is characterized by courts directing political actors to implement judicial decisions in specific ways. The second face leads political actors to anticipate judicial review and draft policies accordingly. The judicial–political interaction originating from both faces is herein formally modeled. A cross-European comparison of pre-conditions of judicial power shows that the German Federal Constitutional Court is a well-suited representative case for a quantitative assessment of judicial power. Multinomial logistic regressions show that the court uses directives when evasion of decisions is costly while accounting for the government’s ability to implement decisions. Causal analyses of the second face of judicial power show that bills exposed to legal signals are drafted accounting for the court. These findings re-shape our understanding of judicialization and shed light on a silent form of judicialization.

The Federalist Papers

The appointment of a Supreme Court Justice is an infrequent event of major significance in American politics. Each appointment is important because of the enormous judicial power the Supreme Court exercises as the highest appellate court in the federal judiciary. Appointments are infrequent, as a vacancy on the nine member Court may occur only once or twice, or never at all, during a particular President's years in office. Under the Constitution, Justices on the Supreme Court receive lifetime appointments. Such job security in the government has been conferred solely on judges and, by constitutional design, helps insure the Court's independence from the President and Congress. The procedure for appointing a Justice is provided for by the Constitution in only a few words. The \"Appointments Clause\" (Article II, Section 2, clause 2) states that the President \"shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Judges of the Spreme Court.\" The process of appointing Justices has undergone changes over two centuries, but its most basic feature -- the sharing of power between the President and Senate -- has remained unchanged: To receive lifetime appointment to the Court, a candidate must first be nominated by the President and then confirmed by the Senate. Although not mentioned in the Constitution, an important role is played midway in the process (after the President selects, but before the Senate considers) by the Senate Judiciary Committee. On rare occasions, Presidents also have made Court appointments without the Senate's consent, when the Senate was in recess. Such \"recess appointments,\" however, were temporary, with their terms expiring at the end of the Senate's next session. The last recess appointments to the Court, made in the 1950s, were controversial, because they bypassed the Senate and its \"advice and consent\" role. The appointment of a Justice might or might not proceed smoothly. Since the appointment of the first Justices in 1789, the Senate has confirmed 120 Supreme Court nominations out of 154 received. Of the 34 unsuccessful nominations, 11 were rejected in Senate roll-call votes, while nearly all of the rest, in the face of committee or Senate

opposition to the nominee or the President, were withdrawn by the President or were postponed, tabled, or never voted on by the Senate. Over more than two centuries, a recurring theme in the Supreme Court appointment process has been the assumed need for excellence in a nominee. However, politics also has played an important role in Supreme Court appointments. The political nature of the appointment process becomes especially apparent when a President submits a nominee with controversial views, there are sharp partisan or ideological differences between the President and the Senate, or the outcome of important constitutional issues before the Court is seen to be at stake.

Congress V. the Supreme Court

This major history of judicial review, revised to include the Rehnquist court, shows how modern courts have used their power to create new \"rights with fateful political consequences.\" Originally published by Basic Books.

The Two Faces of Judicial Power

Supreme Court Appointment Process