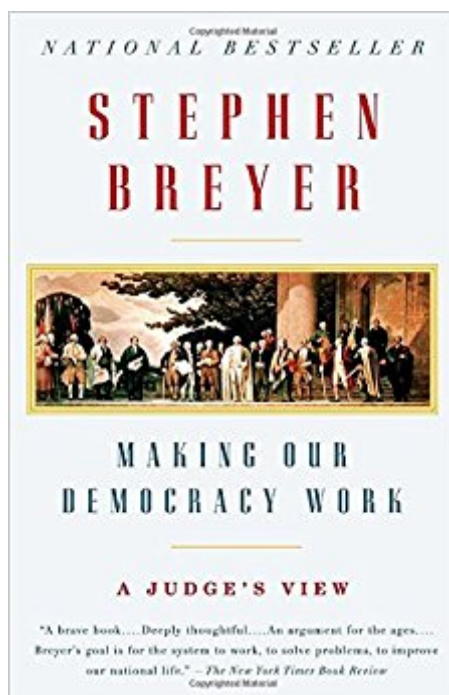


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# Making Our Democracy Work: A Judge's View



## Synopsis

Charged with the responsibility of interpreting the Constitution, the Supreme Court has the awesome power to strike down laws enacted by our elected representatives. Why does the public accept the Court's decisions as legitimate and follow them, even when those decisions are highly unpopular? What must the Court do to maintain the public's faith? How can it help make our democracy work? In this groundbreaking book, Justice Stephen Breyer tackles these questions and more, offering an original approach to interpreting the Constitution that judges, lawyers, and scholars will look to for many years to come.

## Book Information

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## Customer Reviews

Starred Review. Justice Breyer (Active Liberty) looks at how the Supreme Court evolved historically and defined its role largely in relation to the willingness of the public to embrace its decisions. Readers may be surprised to learn that in many democracies, parliaments are not bound to accept decisions by their court; similarly, the U.S. Constitution doesn't give the Supreme Court final say. Breyer tells the story of President Jackson's grudging acceptance of a Court decision protecting the treaty rights of the Cherokee nation, only to seize their land using Federal troops. In the Dred Scott decision, the pro-slavery Court violated the right of Free states to outlaw slavery. And in Brown vs. the Kansas Board of Education, President Eisenhower used the Army to back up Court decisions against segregated education. Breyer discusses recent Court decisions in favor of rights for Guantanamo detainees and examines the limitations of a President's power as

Commander-in-Chief, even in wartime, contrasting this to the failure of the Court, Congress, and President Roosevelt over internment camps during WWII. An accomplished writer, Justice Breyer's absorbing stories offer insight into how a democracy works, and sometimes fails. (Sept.) (c) Copyright PWxyz, LLC. All rights reserved. --This text refers to the Hardcover edition.

Justice Breyer was appointed to the Supreme Court in 1994 (and, of course, he serves for life, as mandated by the Constitution). His book partners well with Jeffrey Toobin's well-received *The Nine* (2007), which is an account of the politics and personalities of the current Supreme Court. Breyer projects a larger context, supplying both historical and judicial background to give the nonspecialist a generalized picture of how the Supreme Court works. He explains the Court's role in ensuring a workable democracy, in guaranteeing that the Constitution works in practice and in the real world. Certainly an interesting aspect of this greatly informative book is Breyer's look back over the history of the republic to see how the public—and even the U.S. president—has accepted Court decisions. (It is not readily imaginable, to be sure, but, nevertheless, it is dramatically illustrated here that such acceptance was a principle that was not easy to plant within social and political consciousnesses.) Breyer is emphatic that “at the end of the day, the public's confidence is what permits the Court to ensure a Constitution that is more than words on paper.” A book for all citizens. --Brad Hooper --This text refers to the Hardcover edition.

Any book by a Supreme Court justice is worth reading, this book is not an exception. The case discussions are at a law school constitutional law class level. In this sense, this part of the book is not new for lawyers, but non-lawyers will find it enlightening. Where the book excels is the rich detail that surrounds cases. That detail helps to understand what justices who employed the pragmatic approach would have considered. After reading sections such as the pragmatic approach vs. the originalism approach, I felt the book was incomplete; I needed to get a more complete view. The book's last paragraph suggests that was Justice Breyer's intent when it states "The stories this book sets forth are told from the point of view of one judge", "I hope they lead others to study and ponder their lessons about our constitutional history." If the book gave a more balanced view, not necessitating further research on my part, I would have given it another star, perhaps I am being too grudging with the 5th star. Suggestion for reading this book. Look over the appendices first, because: \* The text of the book doesn't mention there are photos in the back. \* The back contains a well written explanation of how the Supreme Court works. \* All the footnotes, really endnotes, are in

the back of the book; in legal writing much can be gained by reading the footnotes.

This book is a continuation of the dialogue Justice Breyer began in his previous work "Active Liberty." There, he argued that the Court should implement greater participation of citizens in their government. Although he touched at points upon the originalist/literalist approach to interpretation favored by Justices Scalia and Thomas, in his typical polite and reasonable fashion he preferred to explain his approach rather than lob grenades at their dedication to text and originalism. This book too is polite and reasonable, but aims to look at a wider and more fundamental issue--how can the Court contribute to making a "workable democracy" by applying enduring constitutional values to ever-changing circumstances. The short answer in this pragmatic-oriented book, is for the Court to build productive relationships with other governing institutions, as it protects individual rights and searches for the values underlying the Constitution. In short, Breyer is again arguing for what might be termed a greater degree of "judicial modesty" which facilitates better governance. Breyer first discusses the concept of judicial review, where it came from in *Marbury v. Madison*, and how history demonstrates (in the Cherokee removal, *Dred Scott*, and the Little Rock desegregation cases) how dependent the Court is upon ephemeral public support. Breyer is unique in his ability to explain historical and legal concepts in terms that the general reader can assimilate--a rare talent indeed. Basically, Breyer concludes, as long as the Court's opinions are "principled, reasoned, transparent and informative" it will hold public support. Once again, I was disappointed that his discussion of the *Bush v. Gore* case is highly polite and reasonable and does not, I am sure, reflect the intra-Court dynamics involved in that sad episode. One of the most masterful sections of the book is where the Justice discusses why he thinks originalism, reliance upon text, and founders' history are not determinative in interpreting the Constitution or statutes. As usual, he is polite and positive, but he makes his point well. Rather, reliance upon purpose and consequences constitute a superior approach. So, how should the Court proceed to build cooperative relationships? Breyer devotes individual chapters to answering this question as relates to Congress and statutes ("reasonable" interpretation), the executive branch and administrative agencies (recognize its greater expertise than courts), and the states and federalism (like Justice Brandeis, recognize the benefits of state and local experimentation and defer strongly). Two the best chapters in the book, for both the general reader and those better versed in the issues, address how the Court should deal with lower federal courts, and why precedent is important and when it should be followed (the current Court majority might find this discussion particularly illuminating). The final section of the book deals with concepts such as permanent values, proportionality, "core elements," and "workable reality." These

are somewhat intangible concepts, and Breyer's discussion may encourage some to embrace originalism, history and text as somewhat more substantial interpretative guidelines. He uses the Court's recent decisions in the Second Amendment and Guantanamo prison cases, as well as the 1940's Japanese relocation cases, to explore these concepts. It is quite interesting to peek into the mind of a sitting Justice (as it was with "Active Liberty") to see how he perceives the Court's role. This dimension is as helpful to the experienced student of the Court as it is to the average citizen. The book runs some 254 pages including notes, and contains some illustrations and an appendix designed to quickly educate the general reader about the Court and how it works. Although sometimes Breyer seems to be "up in the clouds" as he tackles ephemeral concepts, there is no question that this is one of the rare books that really opens up the reader's mind to new concepts and considerations.

### Mandatory read in Trump era

Excellent work by Justice Breyer. This book offers a concise and effective background of judicial review, a colorful history of the Supreme Court's establishment and struggle for supremacy, and an insightful judicial view into some of the most monumental Supreme Court cases. This is a must read if you have any interest in the legal system and the American legal heritage at all.

Stephen Breyer presents a comprehensive history of the Constitution and beginning of our nation with the debates surrounding some of the elements of the Constitution by our founding fathers during the administration of President Washington through to today. He describes how the importance of the court system evolved over time, especially the unique role of the Supreme Court. The areas of law that the Supreme Court reviews are outlined with different chapters discussing each area, provides examples and reasoning behind both the majority decision and dissenting viewpoint giving validity to both. It is highly readable with explanations provided in layman's terms. A must read for all who are interested or desire to learn the importance and workings of our highest court.

This is a very informative overview of how the federal court system and the Supreme Court function in our democracy, and how they relate to the legislative and executive branches. It would be very valuable reading for anyone who is concerned about how our government works and how to improve our democracy.

Excellent insight into how the Supreme Court works. Very well written.

A fascinating look at Supreme Court cases from Marbury Vs. Madison to Citizens United and Heller. In addition to his analysis of landmark decisions, Justice Breyer provides a thoughtful discussion of approaches to judicial making.

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