

Shaping Constitutional Values

ELECTED GOVERNMENT,

THE SUPREME COURT,

AND THE ABORTION DEBATE

NEAL DEVINS

Shaping Constitutional Values Elected Government The Supreme Court And The Abortion Debate

Bruce Peabody



Shaping Constitutional Values Elected Government The Supreme Court And The Abortion Debate:

Shaping Constitutional Values Neal Devins, 1996 In the more than twenty years since *Roe v Wade* the executive and legislative branches of government have pursued a staggering number of initiatives relating to abortion In this groundbreaking study legal scholar Neal Devins shows how the Supreme Court elected government and private citizens together help to shape what the Constitution means Central to his study is the question of how the Court and elected government influence each other In addition to the abortion debate Devins examines conflicts over federalism race religion and separation of powers These constitutional disputes Devins contends can be as constructive as they are inevitable Without an ongoing dynamic that allows each side to win some of the time Devins concludes the Constitution would be less enduring

Defending Congress and the Constitution Louis Fisher, 2011-09-07 The culmination of four decades of research and service on behalf of Congress Louis Fisher's latest work is a fitting capstone to a remarkable career as scholar and writer and presents his most articulate passionate and persuasive defense yet of Congress as an institution Our nation's leading authority on the separation of powers Fisher offers a lucid primer on our nation's government and its executive legislative and judicial branches while vigorously advocating a robust reassertion of Congress's rightful role within that system Drawing on a wide range of legislation Supreme Court rulings and presidential decisions Fisher illuminates the contentious contest among the three major branches for power and control of government presents a panorama of American history and touches on issues as wide ranging as federalism religious freedom and national security policy Fisher is especially critical of the stereotypical view of the Supreme Court's decisions as possessing a kind of effectiveness and absolute finality that transcends the efforts and powers of Congress Indeed he argues that Congress as much or more than the judiciary has had a major positive impact on protecting individual rights in this country while the judiciary has fallen short in such areas as child labor regulation and compulsory flag salute or has attempted to settle a constitutional issue only to have it fester for years breeding anger and resentment until the political process forces the courts rethink their views He highlights legislative accomplishments in many areas often in the face of judicial opposition and obstruction but also chides Congress for not protecting its key prerogatives over the power of the purse and going to war In yielding to other branches Fishers warns lawmakers fail to represent their constituents and cripple the very system of checks and balances the Framers counted on to limit the destructive capacity of government His book offers a wealth of forceful insights and provides an important reminder of and guide to how our government should really work

The American Supreme Court Robert G. McCloskey, 2010-07-15 Celebrating its fiftieth anniversary Robert McCloskey's classic work on the Supreme Court's role in constructing the U S Constitution has introduced generations of students to the workings of our nation's highest court For this new fifth edition Sanford Levinson extends McCloskey's magisterial treatment to address the Court's most recent decisions As in prior editions McCloskey's original text remains unchanged In his historical interpretation he argues that the strength of the Court

has always been its sensitivity to the changing political scene as well as its reluctance to stray too far from the main currents of public sentiments In two revised chapters Levinson shows how McCloskey's approach continues to illuminate developments since 2005 including the Court's decisions in cases arising out of the War on Terror which range from issues of civil liberty to tests of executive power He also discusses the Court's skepticism regarding campaign finance regulation its affirmation of the right to bear arms and the increasingly important nomination and confirmation process of Supreme Court justices including that of the first Hispanic justice Sonia Sotomayor The best and most concise account of the Supreme Court and its place in American politics McCloskey's wonderfully readable book is an essential guide to the past present and future prospects of this institution

On the Supreme Court Louis Fisher, 2016-01-08 *On the Supreme Court* places the Supreme Court in a rich historical and political context demonstrating how its interpretations of statutes and the Constitution are necessarily shared with the elected branches the 50 states and the general public It explains why the Court exercises judicial review not judicial supremacy It demonstrates that contrary to popular opinion the Court does not supply the final or exclusive word on the Constitution In an era of tectonic changes *On the Supreme Court* offers a fresh perspective on this mainstay institution from a scholar with unique insights as a Constitutional specialist as well as a Congressional researcher

Key features of the text

A Matter of Dispute Christopher J. Peters, 2011-01-19 Law often purports to require people including government officials to act in ways they think are morally wrong or harmful What is it about law that can justify such a claim In *A Matter of Dispute* Morality Democracy and Law Christopher J Peters offers an answer to this question one that illuminates the unique appeal of democratic government the peculiar structure of adversary adjudication and the contested legitimacy of constitutional judicial review Peters contends that law should be viewed primarily as a device for avoiding or resolving disputes a function that implies certain core properties of authoritative legal procedures Those properties competence and impartiality give democracy its advantage over other forms of government They also underwrite the adversary nature of common law adjudication and the duties and constraints of democratic judges And they ground a defense of constitutionalism and judicial review against persistent objections that those practices are counter majoritarian and thus nondemocratic This work canvasses fundamental problems within the diverse disciplines of legal philosophy democratic theory philosophy of adjudication and public law theory and suggests a unified approach to unraveling them It also addresses practical questions of law and government in a way that should appeal to anyone interested in the complex and often troubled relationship among morality democracy and the rule of law Written for specialists and non specialists alike *A Matter of Dispute* explains why each of us individually and all of us collectively have reason to obey the law why democracy truly is a system of government under law

The Democratic Constitution, 2nd Edition Neal Devins, Louis Fisher, 2015-09-01 Constitutional law is clearly shaped by judicial actors But who else contributes Scholars in the past have recognized that the legislative branch plays a significant role in determining structural issues such as separation of powers

and federalism but stopped there claiming that only courts had the independence and expertise to safeguard individual and minority rights In this readable and engaging narrative the authors identify the nuts and bolts of the national dialogue and relate succinct examples of how elected officials and the general public often dominate the Supreme Court in defining the Constitution s meaning Making use of case studies on race privacy federalism war powers speech and religion Devins and Fisher demonstrate how elected officials uphold individual rights in such areas as religious liberty and free speech as well as and often better than the courts This fascinating debunking of judicial supremacy argues that nonjudicial contributions to constitutional interpretation make the Constitution more stable more consistent with constitutional principles and more protective of individual and minority rights

Congress, the Court, and the Constitution United States. Congress. House. Committee on the Judiciary. Subcommittee on the Constitution,1999 *Originalism, Federalism, and the American Constitutional Enterprise* Edward A. Purcell,2007-12-28 In this lively historical examination of American federalism a leading scholar in the field refutes the widely accepted notion that the founding fathers carefully crafted a constitutional balance of power between the states and the federal government Edward A Purcell Jr bases his argument on close analysis of the Constitution s original structure and the ways that structure both induced and accommodated changes over the centuries There was no clear agreement among the founding fathers regarding the true nature of American federalism Purcell contends nor was there a consensus on correct lines dividing state and national authority Furthermore even had there been some true original understanding the elastic and dynamic nature of the constitutional structure would have made it impossible for subsequent generations to maintain any original or permanent balance The author traces the evolution of federalism through the centuries focusing particularly on shifting interpretations founded on political interests He concludes with insights into current issues of federal power and a discussion of the grounds on which legitimate decisions about federal and state power should rest

Doctors and Demonstrators Drew Halfmann,2011-07-15 Since Roe v Wade abortion has continued to be a divisive political issue in the United States In contrast it has remained primarily a medical issue in Britain and Canada despite the countries shared heritage Doctors and Demonstrators looks beyond simplistic cultural or religious explanations to find out why abortion politics and policies differ so dramatically in these otherwise similar countries Drew Halfmann argues that political institutions are the key In the United States federalism judicial review and a private health care system contributed to the public definition of abortion as an individual right rather than a medical necessity Meanwhile Halfmann explains the porous structure of American political parties gave pro choice and pro life groups the opportunity to move the issue onto the political agenda A groundbreaking study of the complex legal and political factors behind the evolution of abortion policy Doctors and Demonstrators will be vital for anyone trying to understand this contentious issue

The Madisonian Constitution George Thomas,2008-06-18 Publisher Description **Constitutional Self-Government** Christopher L. EISGRUBER,Christopher L Eisgruber,2009-06-30 Most of us regard the Constitution as the

foundation of American democracy How then are we to understand the restrictions that it imposes on legislatures and voters Why for example does the Constitution allow unelected judges to exercise so much power And why is this centuries old document so difficult to amend In short how can we call ourselves a democracy when we are bound by an entrenched and sometimes counter majoritarian constitution In *Constitutional Self Government* Christopher Eisgruber focuses directly on the Constitution s seemingly undemocratic features Whereas other scholars have tried to reconcile these features with majority rule or simply acknowledged them as necessary limits on democracy Eisgruber argues that constitutionalism is best regarded not as a constraint upon self government but as a crucial ingredient in a complex non majoritarian form of democracy In an original and provocative argument he contends that legislatures and elections provide only an incomplete representation of the people and he claims that the Supreme Court should be regarded as another of the institutions able to speak for Americans about justice At a pivotal moment of worldwide interest in judicial review and renewed national controversy over the Supreme Court s role in politics *Constitutional Self Government* ingeniously locates the Constitution s value in its capacity to sustain an array of institutions that render self government meaningful for a large and diverse people *The Encyclopedia of American Law* David A. Schultz, 2014-05-14 There s an old saying Ignorance of the law is no excuse for breaking it Yet for most people **The Politics of Judicial Independence** Bruce Peabody, 2011 2011 Winner of the Selection for Professional Reading List of the U S Marine Corps The judiciary in the United States has been subject in recent years to increasingly vocal aggressive criticism by media members activists and public officials at the federal state and local level This collection probes whether these attacks as well as proposals for reform represent threats to judicial independence or the normal even healthy operation of our political system In addressing this central question the volume integrates new scholarship current events and the perennial concerns of political science and law The contributors policy experts established and emerging scholars and attorneys provide varied scholarly viewpoints and assess the issue of judicial independence from the diverging perspectives of Congress the presidency and public opinion Through a diverse range of methodologies the chapters explore the interactions and tensions among these three interests and the courts and discuss how these conflicts are expressed and competing interests accommodated In doing so they ponder whether the U S courts are indeed experiencing anything new and whether anti judicial rhetoric affords fresh insights Case studies from Israel the United Kingdom and Australia provide a comparative view of judicial controversy in other democratic nations A unique assessment of the rise of criticism aimed at the judiciary in the United States *The Politics of Judicial Independence* is a well organized and engagingly written text designed especially for students Instructors of judicial process and judicial policymaking will find the book along with the materials and resources on its accompanying website readily adaptable for classroom use *Constitutional Deliberation in Congress* J. Mitchell Pickerill, 2004-05-17 Analyzes the impact of the Supreme Court s constitutional decisions and its judicial review of statutes on lawmaking in Congress **Ruth Bader**

Ginsburg Jane Sherron de Hart, 2020-04-28 NATIONAL BESTSELLER A vivid account of a remarkable life The Washington Post In this comprehensive revelatory biography fifteen years of interviews and research in the making historian Jane Sherron De Hart explores the central experiences that crucially shaped Ginsburg's passion for justice her advocacy for gender equality and her meticulous jurisprudence At the heart of her story and abiding beliefs is her Jewish background specifically the concept of tikkun olam the Hebrew injunction to repair the world with its profound meaning for a young girl who grew up during the Holocaust and World War II Ruth's journey begins with her mother who died tragically young but whose intellect inspired her daughter's feminism It stretches from Ruth's days as a baton twirler at Brooklyn's James Madison High School to Cornell University to Harvard and Columbia Law Schools to becoming one of the first female law professors in the country and having to fight for equal pay and hide her second pregnancy to avoid losing her job to becoming the director of the ACLU's Women's Rights Project and arguing momentous anti sex discrimination cases before the U S Supreme Court All this even before being nominated in 1993 to become the second woman on the Court where her crucial decisions and dissents are still making history Intimately personally told this biography offers unprecedented insight into a pioneering life and legal career whose profound mark on American jurisprudence American society and our American character and spirit will reverberate deep into the twenty first century and beyond REVISED AND UPDATED WITH A NEW AFTERWORD

Redefining Equality Neal Devins, Davison M. Douglas, 1998 These essays present an array of views about the meaning of equality and provide perspectives on the on going debates about it The collection presents a range of opinions and insights that speak to America's ability to define and deal with the politics of equality Judicial Review of National Security David Scharia, 2015 In recent years countries around the world introduced numerous national security programs and military campaigns Despite the complex legal questions they raise very few of these measures have been the subject of rigorous judicial review Nevertheless the absence of real time review has had an enormous effect on human rights rule of law and on national security The Supreme Court of Israel provides an excellent case study of a different approach which allows judges to assess military action in real time and to issue non binding results of their evaluation This raises the question How was the Court actually able to uphold this challenge In Judicial Review of National Security David Scharia explains how the Supreme Court of Israel developed unconventional judicial review tools and practices that allowed it to provide judicial guidance to the Executive in real time In this book he argues that courts could play a much more dominant role in reviewing national security and demonstrates the importance of intensive real time inter branch dialogue with the Executive as a tool used by the Israeli Court to provide such review This book aims to show that if one Supreme Court was able to provide rigorous judicial review of national security in real time then we should reconsider the conventional wisdom regarding the limits of judicial review of national security

Supreme Court Justices Timothy L. Hall, 2001 Presents an alphabetical listing of Supreme Court justices with a short biography on each person Judicial Review in New Democracies Tom

Ginsburg, 2003-07-23 New democracies around the world have adopted constitutional courts to oversee the operation of democratic politics. Where does judicial power come from? how does it develop in the early stages of democratic liberalization and what political conditions support its expansion? This book answers these questions through an examination of three constitutional courts in Asia: Taiwan, Korea, and Mongolia. In a region that has traditionally viewed law as a tool of authoritarian rulers, constitutional courts in these three societies are becoming a real constraint on government. In contrast with conventional culturalist accounts, this book argues that the design and functioning of constitutional review are largely a function of politics and interests. Judicial review, the power of judges to rule an act of a legislature or national leader unconstitutional, is a solution to the problem of uncertainty in constitutional design. By providing insurance to prospective electoral losers, judicial review can facilitate democracy.

Making Policy, Making Law Mark Carlton Miller, Jeb Barnes, 2004 This volume proposes a new way of understanding the policymaking process in the United States by examining the complex interactions among the three branches of government: executive, legislative, and judicial. Collectively across the chapters, a central theme emerges: that the U.S. Constitution has created a policymaking process characterized by ongoing interaction among competing institutions with overlapping responsibilities and different constituencies, one in which no branch plays a single static part. At different times and under various conditions, all governing institutions have a distinct role in making policy as well as in enforcing and legitimizing it. This concept overthrows the classic theories of the separation of powers and of policymaking and implementation, specifically the principal agent theory in which Congress and the presidency are the principals who create laws, and the bureaucracy and the courts are the agents who implement the laws if they are constitutional. The book opens by introducing the concept of adversarial legalism, which proposes that the American mindset of frequent legal challenges to legislation by political opponents and special interests creates a policymaking process different from and more complicated than other parliamentary democracies. The chapters then examine in depth the dynamics among the branches, primarily at the national level but also considering state and local policymaking. Originally conceived of as a textbook, because no book exists that looks at the interplay of all three branches, it should also have significant impact on scholarship about national lawmaking, national politics, and constitutional law. Intro, conclusion, and Dodd's review all give good summaries.

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