

Mark Tushnet

WE THE PEOPLE
TAKING THE
CONSTITUTION
AWAY FROM
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Taking The Constitution Away From The Courts

Liying Dong



Taking The Constitution Away From The Courts:

Taking the Constitution Away from the Courts Mark Tushnet, 2000-08-13 Content Description Includes bibliographical references and index **Taking the Constitution Away from the Courts** ,2001 Here a leading scholar in constitutional law Mark Tushnet challenges hallowed American traditions of judicial review and judicial supremacy which allow U S judges to invalidate unconstitutional governmental actions Many people particularly liberals have warm and fuzzy feelings about judicial review They are nervous about what might happen to unprotected constitutional provisions in the chaotic worlds of practical politics and everyday life By examining a wide range of situations involving constitutional rights Tushnet vigorously encourages us all to take responsibility for protecting our liberties Guarding them is not the preserve of judges he maintains but a commitment of the citizenry to define itself as We the People of the United States The Constitution belongs to us collectively as we act in political dialogue with each other whether in the street in the voting booth or in the legislature as representatives of others Tushnet urges that we create a populist constitutional law in which judicial declarations deserve no special consideration But he warns that in so doing we must pursue reasonable interpretations of the thin Constitution The fundamental American principles embodied in the Declaration of Independence and the Preamble to the Constitution A populist Constitution he maintains will be more effective than a document exclusively protected by the courts Tushnet believes for example that the serious problems of the communist scare of the 1950s were aggravated when Senator Joseph McCarthy s opponents were lulled into inaction believing that the judicial branch would step in and declare McCarthy s actions unconstitutional Instead of fulfilling the expectations the Court allowed McCarthy to continue his crusade until it was ended Tushnet points out that in this context and in many others errors occurred because of the existence of judicial review neither the People nor their representatives felt empowered to enforce the Constitution because they mistakenly counted on the courts to do so Tushnet s clarion call for a new kind of constitutional law will be essential reading for constitutional law experts political scientists and others interested in how and if the freedoms of the American Republic can survive into the twenty first century **Taking the Constitution Away from the Courts** Mark Tushnet, 2000-07-24 Here a leading scholar in constitutional law Mark Tushnet challenges hallowed American traditions of judicial review and judicial supremacy which allow U S judges to invalidate unconstitutional governmental actions Many people particularly liberals have warm and fuzzy feelings about judicial review They are nervous about what might happen to unprotected constitutional provisions in the chaotic worlds of practical politics and everyday life By examining a wide range of situations involving constitutional rights Tushnet vigorously encourages us all to take responsibility for protecting our liberties Guarding them is not the preserve of judges he maintains but a commitment of the citizenry to define itself as We the People of the United States The Constitution belongs to us collectively as we act in political dialogue with each other whether in the street in the voting booth or in the legislature as representatives of others Tushnet urges that we create a populist constitutional law in which judicial

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Securing Constitutional Democracy James E. Fleming, 2006-10-02 Famously described by Louis Brandeis as the most comprehensive of rights and the right most valued by civilized men the right of privacy or autonomy is more embattled during modern times than any other Debate over its meaning scope and constitutional status is so widespread that it all but defines the post 1960s era of constitutional interpretation Conservative Robert Bork called it a loose canon in the law while feminist Catharine MacKinnon attacked it as the right of men to be left alone to oppress women Can a right with such prominent critics from across the political spectrum be grounded in constitutional law In this book James Fleming responds to these controversies by arguing that the right to privacy or autonomy should be grounded in a theory of securing constitutional democracy His framework seeks to secure the basic liberties that are preconditions for deliberative democracy to allow citizens to deliberate about the institutions and policies of their government as well as deliberative autonomy to enable citizens to deliberate about the conduct of their own lives Together Fleming shows these two preconditions can afford everyone the status of free and equal citizenship in our morally pluralistic constitutional democracy

Constitutional Interpretation Sotirios A. Barber, James E. Fleming, 2007-06-27 Ronald Dworkin famously argued that fidelity in interpreting the Constitution as written calls for a fusion of constitutional law and moral philosophy Barber and Fleming take up that call arguing for a philosophic approach to constitutional interpretation In doing so they systematically critique the competing approaches textualism consensualism originalism structuralism doctrinalism minimalism and pragmatism that aim and claim to avoid a philosophic approach

Constitutional Interpretation The Basic Questions illustrates that these approaches cannot avoid philosophic reflection and choice in interpreting the Constitution Barber and Fleming contend that fidelity in constitutional interpretation requires a fusion of philosophic and other approaches properly understood Within such a fusion interpreters would begin to think of text

consensus intentions structures and doctrines not as alternatives to but as sites of philosophic reflection about the best understanding of our constitutional commitments

Constitutional Interpretation: The Basic Questions examines the fundamental inquiries that arise in interpreting constitutional law. In doing so, the authors survey the controversial and intriguing questions that have stirred constitutional debate in the United States for over two centuries, such as how and for what ends should governmental institutions and powers be arranged, what does the Constitution mean under general circumstances, and how should it be interpreted during concrete controversies, and finally how do we decide what our constitution means and who ultimately decides its meaning.

University of Chicago Law Review: Volume 81, Number 3 - Summer 2014 University of Chicago Law Review, 2014-09-19. The third issue of 2014 features three articles from recognized legal scholars as well as extensive student research. Contents include:

- Articles Following Lower Court Precedent by Aaron Andrew P. Bruhl
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- Intellectual Property versus Prizes: Reframing the Debate by Benjamin N. Roin
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- Let's Be Reasonable: Controlling Self-Help Discovery in False Claims Act Suits by Stephen M. Payne
- A Dispute Over Bona Fide Disputes in Involuntary Bankruptcy Proceedings by Steven J. Winkelman

The University of Chicago Law Review first appeared in 1933, thirty-one years after the Law School offered its first classes. Since then, the Law Review has continued to serve as a forum for the expression of ideas of leading professors, judges, and practitioners, as well as students, and as a training ground for University of Chicago Law School students who serve as its editors and contribute Comments and other research. Principal articles and essays are authored by accomplished legal and economics scholars. Quality ebook formatting includes active TOC, linked notes, active URLs in notes, and all the charts, tables, and formulae found in the original print version.

Judicial Activism at the European Court of Justice Bruno de Witte, Elise Muir, Mark Dawson, 2013-01-01. This well-constructed and well-written collection fills a gap in the scholarship. It offers a rounded and plausible picture of the Court's role in Europe, engaging with the complexity of the law without losing sight of the bigger political picture. Well-contextualised, critical but nuanced discussions of the role of rights, economics, science, and institutions, and of the important particularities of EU adjudication, will make this volume unmissable for those interested in the political role of the Court of Justice of the EU. Gareth Davies, VU University of Amsterdam, The Netherlands. This book delves into the rationale, components of, and responses to accusations of judicial activism at the European Court of Justice. Detailed chapters from academics, practitioners, and stakeholders bring

diverse perspectives on a range of factors from access rules to institutional design and to substantive functions influencing the European Court's political role. Each of the contributing authors invites the reader to approach the debate on the role of the Court in terms of a constantly evolving set of interactions between the EU judiciary, the European and national political spheres as well as a multitude of other actors vested in competing legitimacy claims. The book questions the political role of the Court as much as it stresses the opportunities and corresponding responsibilities that the Court's case law offers to independent observers, political institutions and civil society organisations. *Judicial Activism at the European Court of Justice* will appeal to researchers and graduate students as well as to EU and national officials.

Democracy and Constitutions

Allan C. Hutchinson, 2021-06-01. As things stand, a commitment to weak democracy and strong constitutionalism ensures that a range of elite groups, actors and institutions—political, economic, intellectual and legal—hold considerable sway over constitutional matters, leaving less room for the participation of ordinary people. With the continued primacy of liberal constitutionalism, constitutional law has come to represent and facilitate the centrality of judicial power and authority. In *Democracy and Constitutions*, Allan C. Hutchinson warns against this deference to a legal elite on questions of constitutional meaning. For Hutchinson, an over-reliance on constitutional law and a lack of attention to democratic politics keeps people from influencing the moral and political character of society; it saps civic energies and relegates ordinary people to the sidelines. Engaging and provocative, *Democracy and Constitutions* charts a course away from the elitism of the present and toward a more democratic future, one that re-balances society's commitment to both democracy and constitutions. Advocating for a strong democracy and weak constitutionalism, this book places ordinary people at the institutional heart of government and politics, arguing that such a re-calibration is better for democracy and for society.

Law's Allure

Gordon Silverstein, 2009-02-09. *Law's Allure* explains how, when and why America's reliance on legal rules and judicial decisions shapes, constrains, saves and sometimes even kills politics.

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