The American Doctrine Of Judicial Supremacy

#Judicial supremacy #American legal doctrine #Judicial review #US constitutional law #Supreme Court power

The American Doctrine of Judicial Supremacy refers to the principle where the judicial branch, particularly the U.S. Supreme Court, holds the ultimate authority to interpret the Constitution and declare legislative or executive actions unconstitutional. This fundamental concept, solidified through landmark cases, ensures that the judiciary acts as a crucial check on governmental power, upholding the rule of law and safeguarding constitutional principles within the United States.

The American Doctrine of Judicial Supremacy

This historic book may have numerous typos and missing text. Purchasers can usually download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1914 edition. Excerpt: ... Burgess, Political Science and Consti- tutional Law, quoted, 194, 195, 198- 199. Burr, Aaron, trial of, and resulting breach between Jefferson and Mar- shall, 219-220. Burton v. United States, criticism of decision in, 320-321. Byrne s. Stewart, case of, 76, 117-119, 192. C Calder v. Bull, case of, 163-164, 287; opinion of Justice Chase in, 289. California, recall of judges in, 341. Calvin's case, 30. Campbell v. Hall, case of, 68. Canada, judicial supremacy in, 6; dis- tinction between judicial supremacy in United States and, 7-8. Cannon, James, plan for Council of Censors attributed to, 126 n. Canon law courts, limitations placed on temporal legislation by, 21-22. Charles River Bridge case, 255-257. Chase, Justice, opinion of, in Whitting- ton r. Polk, 106-108; opinion in Calder v. Bull, 163, 289; impeachment of, 215-216. Chicago, Milwaukee A St. Paul Ry. Co. v. Minnesota, case of, 299-302. Chipman, Memoirs of Thomas Chitten- den, cited, 130. Cicero, distinction drawn by, between natural law and written law, 19. City of New York t>. Miln, case of, 252. Clark, Judge James, impeachment of, in Kentucky, 232-233. Clark, Lindley D., cited on labor laws declared unconstitutional, 331. Clark, Chief Justice Walter, address by, cited, 143; on Supreme Court's usurpation of power to declare acts of Congress unconstitutional, 336- 337. Cohens r. Virginia, case of, 224. Coke, theory of supremacy of common law courts held by, 25-34, 51; weight attached to doctrine of, by American colonies, 61-53, 71, 72; growth of doctrine in United States, 120. Cole, Justice, quoted, 293. Collins, History of Kentucky, cited, 233. Colonial precedents for American dootrine of judicial supremacy, 63-73. Colorado, recall of judges in, 342; recall of judicial...

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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.

The American Doctrine of Judicial Supremacy

This book makes the radical claim that rather than interpreting the Constitution from on high, the Court should be reflecting popular will--or the wishes of the people themselves.

The American Doctrine of Judicial Supremacy

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 Struggle for Judicial Supremacy

Should the Supreme Court have the last word when it comes to interpreting the Constitution? The justices on the Supreme Court certainly seem to think so--and their critics say that this position threatens democracy. But Keith Whittington argues that the Court's justices have not simply seized power and circumvented politics. The justices have had power thrust upon them--by politicians, for the benefit of politicians. In this sweeping political history of judicial supremacy in America, Whittington shows that presidents and political leaders of all stripes have worked to put the Court on a pedestal and have encouraged its justices to accept the role of ultimate interpreters of the Constitution. Whittington examines why presidents have often found judicial supremacy to be in their best interest, why they have rarely assumed responsibility for interpreting the Constitution, and why constitutional leadership has often been passed to the courts. The unprecedented assertiveness of the Rehnquist Court in striking down acts of Congress is only the most recent example of a development that began with the founding generation itself. Presidential bids for constitutional leadership have been rare, but reflect the temporary political advantage in doing so. Far more often, presidents have cooperated in increasing the Court's power and encouraging its activism. Challenging the conventional wisdom that judges have usurped democracy, Whittington shows that judicial supremacy is the product of democratic politics.

The Doctrine of Judicial Review

The role of the United States Supreme Court has been deeply controversial throughout American history. Should the Court undertake the task of guarding a wide variety of controversial and often unenumerated rights? Or should it confine itself to enforcing specific constitutional provisions, leaving other issues (even those of rights) to the democratic process? That Eminent Tribunal brings together a distinguished group of legal scholars and political scientists who argue that the Court's power has exceeded its appropriate bounds, and that sound republican principles require greater limits on that power. They reach this conclusion by an interesting variety of paths, and despite varied political convictions. Some of the essays debate the explicit claims to constitutional authority laid out by

the Supreme Court itself in Planned Parenthood v. Casey and similar cases, and others focus on the defenses of judicial authority found commonly in legal scholarship (e.g., the allegedly superior moral reasoning of judges, or judges' supposed track record of superior political decision making). The authors find these arguments wanting and contend that the principles of republicanism and the contemporary form of judicial review exercised by the Supreme Court are fundamentally incompatible. The contributors include Hadley Arkes, Gerard V. Bradley, George Liebmann, Michael McConnell, Robert F. Nagel, Jack Wade Nowlin, Steven D. Smith, Jeremy Waldron, Keith E. Whittington, Christopher Wolfe, and Michael P. Zuckert.

The Doctrine of Judicial Supremacy

Publisher Description

Judicial Supremacy and the Inferior Courts in the American Colonies

Sunstein (jurisprudence, political science, U. of Chicago) asserts that, as it is currently interpreted, the Constitution is biased. He points to two contemporary mistakes: that Constitutional law posits the status quo as neutral and just (which, he argues, is not the case); and that the meaning of the Constitution is increasingly solely within the purview of the Supreme Court (which, he argues, is not what the founders intended.) Annotation copyright by Book News, Inc., Portland, OR

The People Themselves

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The Relation of the Judiciary to the Constitution

In A Doubtful and Perilous Experiment: Advisory Opinions, State Constitutions, and Judicial Supremacy, author Mel A. Topf provides readers with a comprehensive treatment of the history, concept, jurisprudence and controversies relating to state Supreme Court advisory opinions. A Doubtful and Perilous Experiment is the only comprehensive treatment of the history and controversies, the law and theories about state supreme court advisory opinions. This is a significant area of state constitutional law that has no parallel in federal law (which bars advisory opinions from federal courts). Though just ten states have adopted such advisory opinions (many others have debated but rejected them), they have been implicated in major issues regarding American judicial power. The book explains the-so far unexplained-first appearance of advisory authority in 1780, and address the persistent aura of illegitimacy that has always shadowed this authority. The frequent attacks on the legitimacy of advisory opinions have been triggered by their clash with basic doctrines of our legal system, including separation of powers, due process, judicial review, judicial independence, and judicial supremacy. A Doubtful and Perilous Experiment shows how law of state supreme court advisory opinions in fact arose in response to the attacks, resulting in an elaborate jurisprudence of advisory opinions centering on a remarkable but not entirely successful attempt to justify when the justices will advise and when they will not. The book tells the story of attempts to defend advisory authority, including several attempts to amend the U.S. Constitution to require the Supreme Court to issues them. It tells the story also of the uneasy relation between advisory opinions and judicial review as well as the expansion of judicial power.

The Supreme Court and Constitutional Democracy

A sitting justice reflects upon the authority of the Supreme CourtÑhow that authority was gained and how measures to restructure the Court could undermine both the Court and the constitutional system of checks and balances that depends on it. A growing chorus of officials and commentators argues that the Supreme Court has become too political. On this view the confirmation process is just an exercise in partisan agenda-setting, and the jurists are no more than Òpoliticians in robesÓÑtheir ostensibly neutral judicial philosophies mere camouflage for conservative or liberal convictions. Stephen Breyer, drawing upon his experience as a Supreme Court justice, sounds a cautionary note. Mindful of the CourtÕs history, he suggests that the judiciaryÕs hard-won authority could be marred by reforms premised on the assumption of ideological bias. Having, as Hamilton observed, Òno influence over either the sword or the purse,Ó the Court earned its authority by making decisions that have, over time, increased the publicÕs trust. If public trust is now in decline, one part of the solution is to promote better understandings of how the judiciary actually works: how judges adhere to their oaths and how

they try to avoid considerations of politics and popularity. Breyer warns that political intervention could itself further erode public trust. Without the publicÕs trust, the Court would no longer be able to act as a check on the other branches of government or as a guarantor of the rule of law, risking serious harm to our constitutional system.

Political Foundations of Judicial Supremacy

"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: "

That Eminent Tribunal

The Framers of the American Constitution took special pains to ensure that the governing principles of the republic were insulated from the reach of simple majorities. Only super-majoritarian amendments could modify these fundamental constitutional dictates. The Framers established a judicial branch shielded from direct majoritarian political accountability to protect and enforce these constitutional limits. Paradoxically, only a counter-majoritarian judicial branch could ensure the continued vitality of our representational form of government. This important lesson of the paradox of American democracy has been challenged and often ignored by office holders and legal scholars. Judicial Independence and the American Constitution provocatively defends the centrality of these special protections of judicial independence. Martin H. Redish explains how the nation's system of counter-majoritarian constitutionalism cannot survive absent the vesting of final powers of constitutional interpretation and enforcement in the one branch of government expressly protected by the Constitution from direct political accountability: the judicial branch. He uncovers how the current framework of American constitutional law has been unwisely allowed to threaten or undermine these core precepts of judicial independence.

Power of Congress to Nullify Supreme Court Decisions

From Brown v. Board of Education to Roe v. Wade to Bush v. Gore, the Supreme Court has, over the past fifty years, assumed an increasingly controversial place in American national political life. As the recurring struggles over nominations to the Court illustrate, few questions today divide our political community more profoundly than those concerning the Court's proper role as protector of liberties and guardian of the Constitution. If the nation is today in the midst of a "culture war," the contest over the Supreme Court is certainly one of its principal battlefields. In this volume, distinguished constitutional scholars aim to move debate beyond the sound bites that divide the opposing parties to more fundamental discussions about the nature of constitutionalism. Toward this end, the volume includes chapters on the philosophical and historical origins of the idea of constitutionalism; on theories of constitutionalism in American history in particular; on the practices of constitutionalism around the globe; and on the parallel emergence of—and the persistent tensions between—constitutionalism and democracy throughout the modern world. In democracies, the primary point of having a constitution is to place some matters beyond politics and partisan contest. And yet it seems equally clear that constitutionalism of this kind results in a struggle over the meaning or proper interpretation of the constitution, a struggle that is itself deeply political. Although the volume represents a variety of viewpoints and approaches, this struggle, which is the central paradox of constitutionalism, is the ultimate theme of all the essays.

The Struggle for Judicial Supremacy

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.

The Origin and Scope of the American Doctrine of Constitutional Law

In offering a general account of the Court as department head, Pfander takes up such important debates in the federal courts' literature as Congress's power to strip the federal courts of jurisdiction to review state court decisions, its authority to assign decision-making authority to state courts, and much more.

Political Foundations of Judicial Supremacy

"For over a century, Congress's power to enforce the Fourteenth Amendment's guarantee of "the equal protection of the laws" has presented judges and scholars with a puzzle. What does it mean for Congress to "enforce" such a wide-ranging, open-ended provision when the Supreme Court has insisted on its own superiority in interpreting the Fourteenth Amendment? In Enforcing the Equal Protection Clause, William D. Araiza offers a unique understanding of Congress's enforcement power and its relationship to the Court's claim to supremacy when interpreting the Constitution. Drawing on the history of American thinking about equality in the decades before and after the Civil War, Araiza argues that congressional enforcement and judicial supremacy can co-exist, but only if the Court limits its role to ensuring that enforcement legislation reasonably promotes the core meaning of the Equal Protection Clause. Much of the Court's equal protection jurisprudence stops short of stating such core meaning, thus leaving Congress free (subject to appropriate judicial checks) to enforce the full scope of the constitutional guarantee. Araiza's thesis reconciles the Supreme Court's ultimate role in interpreting the Constitution with Congress's superior capacity to transform the Fourteenth Amendment's majestic principles into living reality. The Fourteenth Amendment's Enforcement Clause raises difficult issues of separation of powers, federalism, and constitutional rights. Araiza illuminates each of these in this scholarly, timely work that is both intellectually rigorous but also accessible to non-specialist readers."--Publisher's description.

The Partial Constitution

In a remarkably innovative reconstruction of constitutional history, Robert Burt traces the controversy over judicial supremacy back to the founding fathers. Also drawing extensively on Lincoln's conception of political equality, Burt argues convincingly that judicial supremacy and majority rule are both inconsistent with the egalitarian democratic ideal. The first fully articulated presentation of the Constitution as a communally interpreted document in which the Supreme Court plays an important but not predominant role, The Constitution in Conflict has dramatic implications for both the theory and the practice of constitutional law.

Judicial Review and Judicial Power in the Supreme Court

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.

A Doubtful and Perilous Experiment

Stephen Gardbaum proposes and examines a new way of protecting rights in a democracy.

The Authority of the Court and the Peril of Politics

"American constitutional historians and lawyers generally assume that the current doctrine of judicial supremacy not only has always been the rule of constitutional law but was the original intent of the framers of both the federal and state constitutions. This study disproves the validity of that assumption for state constitutionalism by concentrating on the law of New Hampshire - representative of the law in other jurisdictions - between the years 1789 and 1818. This study shows that the reality for the early republic was both judicial dependence and legislative supremacy." "Despite an attempt to subordinate the judiciary to the will of the citizenry, as represented by the state legislature, Reid finds that judges managed to maintain their autonomy, subject only to the dictates of the law."--BOOK JACKET.

On the Supreme Court

This book explores the development of both the civil law conception of the Legal State and the common law conception of the Rule of Law. It examines the philosophical and historical background of both concepts, as well as the problem of the interrelation between the two doctrines. The book brings together twenty-five leading scholars from around the world and provides both general and specific jurisdictional perspectives of the issue in both contemporary and historical settings. The Rule of Law is a legal doctrine the meaning of which can only be fully appreciated in the context of both the common law and the European civil law tradition of the Legal State (Rechtsstaat). The Rule of Law and the Legal State are fundamental safeguards of human dignity and of the legitimacy of the state and the authority of state prescriptions.

Judicial Independence and the American Constitution

"When we think of constitutional law, we invariably think of the United States Supreme Court and the federal court system. Yet much of our constitutional law is not made at the federal level. In 51 Imperfect Solutions, U.S. Court of Appeals Judge Jeffrey S. Sutton argues that American Constitutional Law should account for the role of the state courts and state constitutions, together with the federal courts and the federal constitution, in protecting individual liberties. The book tells four stories that arise in four different areas of constitutional law: equal protection; criminal procedure; privacy; and free speech and free exercise of religion. Traditional accounts of these bedrock debates about the relationship of the individual to the state focus on decisions of the United States Supreme Court. But these explanations tell just part of the story. The book corrects this omission by looking at each issue-and some others as well-through the lens of many constitutions, not one constitution; of many courts, not one court; and of all American judges, not federal or state judges. Taken together, the stories reveal a remarkably complex, nuanced, ever-changing federalist system, one that ought to make lawyers and litigants pause before reflexively assuming that the United States Supreme Court alone has all of the answers to the most vexing constitutional questions. If there is a central conviction of the book, it's that an underappreciation of state constitutional law has hurt state and federal law and has undermined the appropriate balance

between state and federal courts in protecting individual liberty. In trying to correct this imbalance, the book also offers several ideas for reform." -- Publisher's website.

The Development of the American Doctrine of Jurisdiction of Courts Over States

A multifaceted approach to The Federalist that covers both its historical value and its continuing political relevance.

The Supreme Court and the Idea of Constitutionalism

This book argues that the Supreme Court performs two functions. The first is to identify the Constitution's idealized "meaning." The second is to develop tests and doctrines to realize that meaning in practice. Bridging the gap between the two--implementing the Constitution--requires moral vision, but also practical wisdom and common sense, ingenuity, and occasionally a willingness to make compromises. In emphasizing the Court's responsibility to make practical judgments, "Implementing the Constitution" takes issue with the two positions that have dominated recent debates about the Court's proper role. Constitutional "originalists" maintain that the Court's essential function is to identify the "original understanding" of constitutional language and then apply it deductively to current problems. This position is both unwise and unworkable, the book argues. It also critiques well-known accounts according to which the Court is concerned almost exclusively with matters of moral and constitutional principle. "Implementing the Constitution" bridges the worlds of constitutional theory, political theory, and constitutional practice. It illuminates the Supreme Court's decision of actual cases and its development of well-known doctrines. It is a doctrinal study that yields jurisprudential insights and a contribution to constitutional theory that is closely tied to actual judicial practice.

Judicial Supremacy

Arguably no political principle has been more central than the separation of powers to the evolution of constitutional governance in Western democracies. In the definitive work on the subject, M. J. C. Vile traces the history of the doctrine from its rise during the English Civil War, through its development in the eighteenth century - when it was indispensable to the founders of the American republic - through subsequent political thought and constitution-making in Britain, France, and the United States. The author concludes with an examination of criticisms of the doctrine by both behavioralists and centralizers - and with "A Model of a Theory of Constitutionalism."

Popular Government and the Supreme Court

One Supreme Court