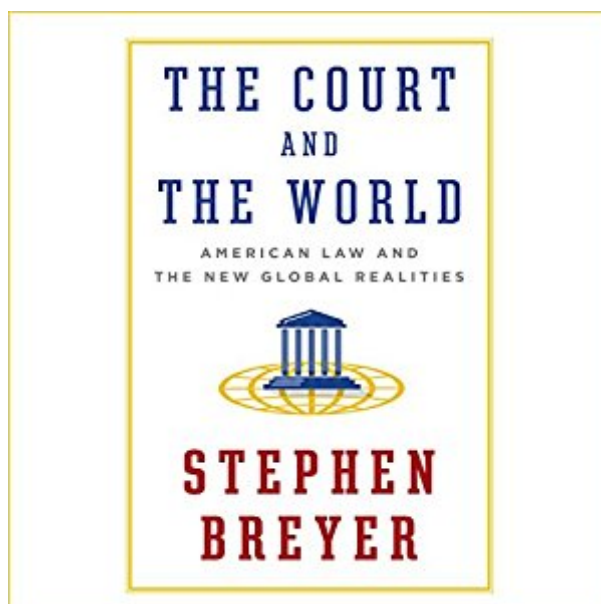


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The Court And The World: American Law And The New Global Realities



Synopsis

A fascinating account of how an increasingly globalized and interdependent world influences the deliberations of America's highest court, by the sitting justice and author of *Making Our Democracy Work* and *Active Liberty*. In this original, far-reaching, and timely book, Justice Stephen Breyer examines the work of SCOTUS in an increasingly interconnected world, a world in which all sorts of public and private activity - from the conduct of national security policy to the conduct of international trade - obliges the Court to consider and understand circumstances beyond America's borders. At a time when ordinary citizens may book international lodging directly through online sites, it has become clear that judicial awareness can no longer stop at the water's edge. To trace how foreign considerations have come to inform the thinking of the Court, Justice Breyer begins with that area of the law in which they have always figured prominently: national security in its Constitutional dimension. How should the Court balance this imperative with others, chiefly the protection of basic liberties, in its review of presidential and congressional actions? He goes on to show how the Court has also been obliged to determine the application of American law in international contexts. What, for instance, is the geographical reach of an American statute concerning securities fraud or an antitrust law? While Americans must necessarily determine their own laws through democratic process, increasingly the smooth operation of American law - and, by extension, the advancement of American interests and values - depends on its working in harmony with that of other jurisdictions. Breyer describes how the aim of cultivating such harmony, as well as the expansion of the rule of law overall, has drawn American jurists into the relatively new role of "constitutional diplomats", a little remarked but increasingly important job for them in this still changing world.

Book Information

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Customer Reviews

I wanted to read Justice Breyer's book for several reasons. I had found his debate appearances with the late Justice Scalia, where they discussed the role of foreign law in construing the Constitution, most interesting. Moreover, talk radio is full of allegations about possible displacement of American law by Sharia law, and I thought Breyer might have some insights on this topic as well. Finally, I had found his two most recent books which I reviewed on to be full of insights and extremely cogent. This new and quite hefty volume (382 pp. including index) is somewhat different. I don't think this work is aimed so centrally at the general reader as the previous volumes. Breyer here is tackling some quite challenging legal issues which can be complex, especially for the general reader. I mention this because while Breyer's masterful prose is again in evidence, at points for those without legal training the book may prove daunting. So while it is not "light bedtime reading," it is cogent and skillfully written. For me the core of the volume is found in the Postscript (pp. 236-246), where Breyer gets into the key issues of the role of foreign law in the domestic legal system, including constitutional interpretation (the very area where he so challenged Scalia). The preceding several hundred pages are designed to prepare the reader to focus on these key issues. Basically, the general theme is as a result of international integration, American courts are facing an increasing amount of foreign legal issues and concepts as they discharge their responsibilities.

Possibly, Breyer has two central points: (1) that the Supreme court especially, and possibly other courts in the U.S. as well, will increasingly need to deal with cases that have foreign and international connections, perhaps because the interested parties come from or have foreign connections, perhaps because the case itself is effected by international situations or has international consequences; and (2) that Justices will increasingly need to be informed about international events, international history, and international law as well as law from other countries. Some additional points that Breyer discusses:- When the security of the nation/state is threatened, do not expect normal law to apply, or at least not to have the strength that it might normally have. Yes, but, surely there is a difference between a time of threat to the existence of the nation or its government, on the one hand, and threats to *some* of its citizens, on the other. In the first case, certainly, we need to mobilize all the citizens and resources of the nation for the purpose of its defence, whereas in the second case, we need police action and, especially the rule of law.-

Foreign affairs are different from domestic ones. The President of the U.S. has broader, stronger powers with respect to foreign affairs than the U.S. Congress, in comparison to the President's and Congress's relative power with respect to domestic affairs.- That an official, for example the President of the U.S. has a power to do something does not automatically imply that this official has the power to *delegate* that power to someone else. For example, the President of the U.S.

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