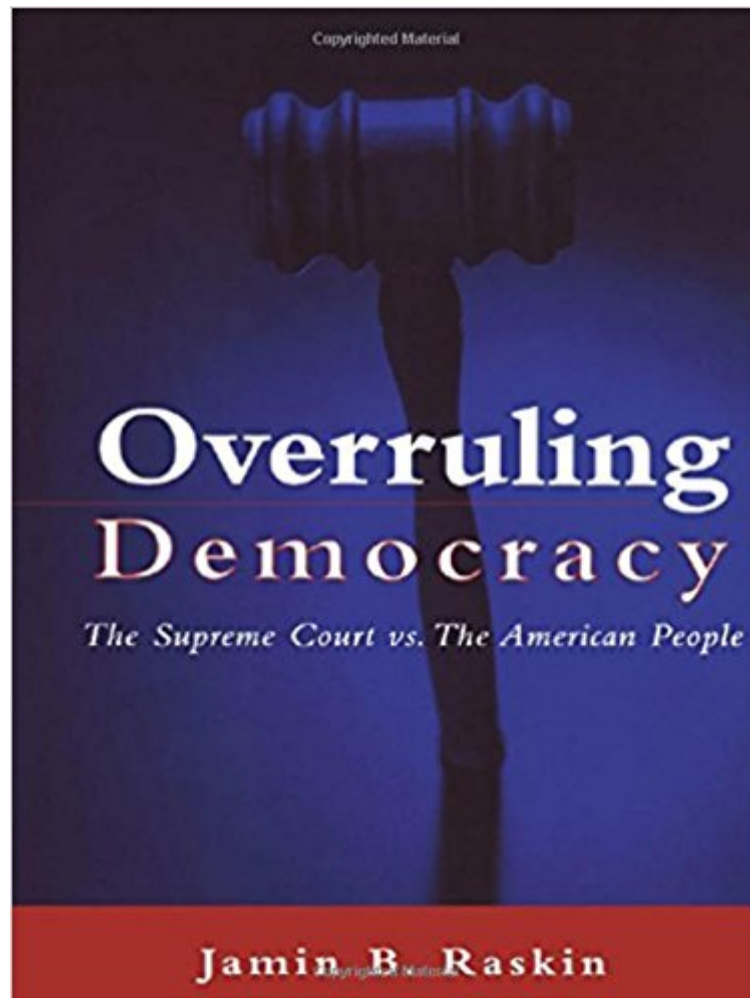




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Overruling Democracy: The Supreme Court Versus The American People



Synopsis

The Supreme Court has recently issued decisions announcing that citizens have neither a constitutional right to vote, nor the right to an education. Conservative judges have continually disavowed claims to any rights not specifically mentioned in the Constitution. In "Overruling Democracy," celebrated law professor Jamin B. Raskin, argues that we need to develop a whole new set of rights, through amendments or court decisions, that revitalize and protect the democracy of everyday life. Detailing specific cases through interesting narratives, "Overruling Democracy" describes the transgressions of the Supreme Court against the Constitution and the people - and the faulty reasoning behind them -- and lays out the plan for the best way to back a more democratic system.

Book Information

Hardcover: 312 pages

Publisher: Routledge; 1 edition (February 14, 2003)

Language: English

ISBN-10: 0415934397

ISBN-13: 978-0415934398

Product Dimensions: 0.8 x 6.2 x 9 inches

Shipping Weight: 1.2 pounds (View shipping rates and policies)

Average Customer Review: 4.2 out of 5 stars 8 customer reviews

Best Sellers Rank: #649,188 in Books (See Top 100 in Books) #258 in [Books > Politics & Social Sciences > Politics & Government > United States > Judicial Branch](#) #407 in [Books > Law > Rules & Procedures > Courts](#) #466 in [Books > Politics & Social Sciences > Politics & Government > Political Science > Constitutions](#)

Customer Reviews

Constitutional scholar Raskin uses the Bush versus Gore decision declaring Bush president as a reflection of both the continuing momentum of a rightward swing and the antidemocratic thrust of the U.S. Supreme Court. The use of the equal protection clause of the Constitution, designed to protect the newly freed slaves, as a basis for protecting Bush is symbolic of the inverse practices of the Supreme Court. States' rights, strict constructionism, original intent--these theories associated with the rightist ideologies fell under the political need to ensure that the "right" president was elected. This rightward shift is the consequence of a successful strategy to appoint conservative judges to the federal bench and has resulted in the denial of constitutional rights to an education and to public

debate and a narrowing of privacy rights. Raskin argues that conservative jurists have taken an activist posture against popular democracy. In addition to challenging the propriety of this conservative judicial activism, Raskin articulates a plan for counterbalancing that activism. A worthy read. Vernon Ford

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This book is very interesting and thought provoking. It certainly provides an intricate and complex discussion of the author's concept of a progressive populist democracy and of the role of the Supreme Court in that vision. -- Mark C. Miller, *The Law and Politics Review*, Vol. 13 No. 8

Jamin Raskin brilliantly shows how political and legislative democracy are being scandalously curtailed and undermined by the Supreme Court, which has become law unto itself. Not a counsel of despair, *Overruling Democracy* also explains how we the people--with a little courage--can reclaim our democracy. -- Robert Kuttner, co-editor, *The American Prospect*

American democracy thrives because people like Jamin Raskin, an eloquent, thoughtful and provocative small-d democrat, insist on reminding us of our aspirations to equality and rule by the people. You may disagree with some of his ideas, as I do, and still come away refreshed and even electrified. The old issue was liberal judicial activism. The new issue is a conservative judicial activism that could constrain the ability of the democratic branches of our government to solve public problems. For liberals, Raskin says, 'it is time to let go of any lingering nostalgic enchantment with the Supreme Court.' He's right. -- E.J. Dionne, author of *Why Americans Hate Politics* and *They Only Look Dead: Why Progressives Will Dominate the Next Political Era*

Jamin Raskin is in the forefront of progressive academics who bring specialized knowledge to bear on the large pressing issues of the day in a language that is broadly accessible. In *Overruling Democracy* he offers a critique of American law and politics that is impassioned yet thoughtful, polemical yet informative. -- Randall Kennedy, Professor, Harvard Law School

Jamin Raskin offers a passionate vision of the Supreme Court as the guardian of participatory democracy in America. Even those who take a more restrained view of the role of judges will benefit from his powerful arguments and moral fervor.-- Jeffrey Rosen, Legal Affairs Editor, *The New Republic*

This brilliantly argued and meticulously researched book both alarms and inspires. Raskin shows how the Supreme Court has used its own perverse version of judicial activism to attack our fundamental constitutional rights - and he offers a vision for how to restore democracy to America. *Overruling Democracy* belongs on the reading list of anyone who takes citizenship seriously. -- Barbara Ehrenreich, author of *Nickel and Dimed*

A brilliant exploration of how the Supreme Court has subverted democratic principles with its decisions in areas ranging from campaign finance to redistricting to the right to vote. -- Erwin Chemerinsky, Professor, University of

Southern California Law SchoolA gripping book about the Supreme Court's assault on the political rights of the people. This book is required reading for every citizen who cares about the fate of our democracy. -- John Sweeney, President of the AFL-CIORaskin's groundbreaking suggestions for a democratic political reform movement provide the reader with a brighter vision for the future of the American governmental system. -- Congressman John Conyers, (D-Michigan), Democratic leader on the House Judiciary CommitteeThis provocative lawyer's brief challenges the ways in which constitutional decision making impedes participatory democracy in the United States...A smart, thorough, and proudly partisan plea for participatory democracy in the United States. -- Political Science Quarterly

I am waiting my turn to read the book. My husband, the Supreme Court buff, finds it fascinating and sings the praises of Jamin Raskin.

A worthy attempt to tell the story of how Supreme Court Justices are overturning democracy, but as a thesis it is not well executed.

In 2000, the US Supreme Court ruled in *Bush v. Gore*, "The individual citizen has no federal constitutional right to vote for electors for the President of the United States ..." 125 nations' constitutions explicitly guarantee all citizens the right to vote; 15 don't, including the USA and Saudi Arabia. In 2000, Al Gore won 500,000 more votes than Bush, but lost in the electoral college. Raskin therefore proposes abolishing the electoral college, since it contradicts the will of the people. He urges direct national majority rule for presidential elections. The Court called off a state's counting of ballots in a presidential election, for the first time in US history, choosing the president. Of 100 million votes cast in 2000, 4-6 million were never counted. It had earlier found, "The Equal Protection Clause does not protect the right of all citizens to vote, but rather the right of all qualified citizens to vote", robbing all 570,000 Washingtonians of the right to vote in congressional elections. Also, 1.4 million freed ex-offenders are unjustly disenfranchised, most for life. The Court cannot disqualify, for example, women or blacks, but it can, it would seem, disqualify all women and all men, or all blacks and all whites. 3.8 million US citizens living in Puerto Rico, American Samoa, the Virgin Islands and Guam cannot vote in presidential or congressional elections. In all Latin America, only Puerto Rico has not even the pretence of democracy. As US Justice Brennan said in *Texas v. Johnson*, which upheld the right of dissenters to burn the US flag as a protest, "If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression

of an idea simply because society finds the idea itself offensive or disagreeable."No government official can prescribe what is orthodox in politics, religion or any other matter of opinion. In a democracy, public opinion should control authority, not vice versa. The Supreme Court has ruled that there is no right to education. The Constitution should say that all children have the right to an equal public education for democratic citizenship. The Court upholds the suppression of all political parties but the Republicans and the Democrats. It upholds laws that discriminate against third parties by keeping their candidates off the ballot, out of debates and off the media. It lets the Commission on Presidential Debates govern the corporation-funded two-party debates on the public airwaves. This is a private corporation set up by the Republicans and Democrats, comprising five Republicans and five Democrats. Corporate subsidies to pay for these two-candidate debates are illegal business contributions to the two candidates. Raskin writes, "Today, the property rights of corporations are far more powerful than the political rights of the people." Currently, US employers interfere grossly in workplace decisions about unionisation. But employers should have no right to intervene in sovereign democratic elections among employees. The corporate ideology is that the private corporate sector is the realm of freedom and public power the realm of tyranny. But laissez faire isn't fair. Corporations want to be private with respect to profit, accountability and decision-making, but public with respect to risk and loss. If the state is indeed the enemy of freedom, then libertarians should be anarchists. Libertarians deny that public power can serve the cause of freedom, yet they want a strong state - public power - to enforce the rights of private and corporate property. The corporation is a subordinate body with no constitutional standing outside of the individual rights of the people involved in it. It is not a democratic citizen, and should have no political rights under the Constitution. In 1907, Congress passed the Tillman Act which banned corporate contributions in federal election campaigns. Yet Enron's directors famously put \$6 million into election campaigns to promote 'de-regulation', that is, to buy themselves freedom from democratic accountability. Shareholders invest their money in companies for economic reasons, not to have others put it to partisan political uses. Individual executives and directors can spend their own money, but should not be allowed to use corporate treasury money as well. No corporation should have the right to spend money in any elections. Raskin opposes private funding of election campaigns, but this doesn't mean that the public should be made to fund election campaigns. The American people already give hundreds of millions of their tax dollars in public subsidies to Democratic and Republican presidential campaigns. Parties are voluntary bodies: if they can't raise the cash they want, this just proves that they are unpopular, it does not mean that we should therefore all be made to fund them! Raskin sums up that the Supreme Court opposes democracy, promotes political

exclusion and social injustice. He concludes that the American people need to reassert their sovereignty.

Senator Raskin's book is more relevant today, and could include a new chapter or two (Citizens' United; Shelby County v Holder). Raskin's conclusion --that we must "rewrite the Constitution in order to re-write American Democracy"-- is right on. We must have a Constitution - a rule of law-based on humans, not property.

A set of essays that try to improve on the liberal mantra of trusting the courts to expand rights. Some essays are preaching to the converted- that is, they are unlikely to persuade anybody to the right of Raskin. But there are some essays I really liked. I especially liked Chapters 5 and 6 (in which Raskin shows how government has impaired democracy by keeping third parties off the ballot and out of debates, and criticizes judicial deference to the two-party duopoly) and Chapter 9 (in which he criticizes attempts to amend the Constitution to prohibit flag-burning, pointing out (a) that an anti-desecration law might actually encourage people to burn flags to get publicity, and (b) that an anti-desecration law that allows nonpolitical destruction of used flags but outlaws flag burning by political extremists is essentially thought control, in that it would prohibit flag burning only by people with political messages to convey). Other chapters are much more touchy-feely. For example, in Chapter 7, Raskin defends school busing on the grounds that racially integrated schools make society more "democratic"- but parents hardly feel like part of a democracy if unelected judges are telling their children where to go to school. Raskin proposes an amendment providing: "All children in the United States have a right to receive an equal public education for democratic citizenship." But the uncertainty of the concept of "equality" would give judges carte blanche to dictate virtually any conceivable policy. "Democracy" is a vague concept; some people see democracy as majority rule, others see democracy as at least partially about liberty or equality. On issues dealing purely with the former, Raskin's book is excellent. On issues dealing with possible conflicts between these meanings of democracy, Raskin understandably has more difficulty.

Raskin does an excellent job in showing how the Supreme Court has slowly eroded our individual rights guaranteed under the Constitution of the United States. It is frightening that most people don't even realize what is actually going on in our government. The only flaw in Raskin's book is that he doesn't show how the average citizen can get involved in stopping this erosion of our Constitution or to get involved with his idea of Constitutional Convention to change and improve this great

document.

Jamin Raskin is one of the most brilliant constitutional scholars of our time. His arguments are as bullet-proof as they are engaging. It's a must read for anyone interested in the Supreme Court.

This book is extremely useful ammunition for all of us who argue with smug right-wingers. Raskin gets down to the nitty-gritty of what happened in Florida, and what's been happening for 30 years on the Supreme Court. Get this guy on the Supreme Court, already!

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