

The American Supreme Court (The Chicago History of American Civilization)

Robert G. McCloskey

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Robert G. McCloskey : The American Supreme Court (The Chicago History of American Civilization) before purchasing it in order to gage whether or not it would be worth my time, and all praised The American Supreme Court (The Chicago History of American Civilization):

0 of 0 people found the following review helpful. Review by Steven Burda on The American Supreme CourtBy Steven BurdaMy name is Steven Burda and I purchased this for myself to read and learn from. Thank you. Great item to have.0 of 0 people found the following review helpful. Great ConditionBy VTReceived this item in a few days later and in great condition!A present for my brother's birthday and one of his needed books to read.7 of 7 people found the following review helpful. A concise history of (the top of) the "least dangerous branch"By estudiantThere are a surprising number of ways to approach and review this book, given that its original length was only 160 pages, give or take. True, Sanford Levinson, Robert McCloskey's disciple while a graduate student at Harvard University, has added approximately 100 pages to his mentor's text, covering the 45 years of constitutional jurisprudence that has developed since the book's original publication. Even at 260 pages, though, you'd think more narrative would be required adequately to tell the full story of one of the three co-equal branches of the federal government.The length of the book, I would argue, is both its strength and its weakness. First for the weakness. I believe the book loses some explanatory power by neglecting the development of internal doctrinal developments in the Supreme Court, purely as a matter of constitutional law. For example, G. Edward White in *The Constitution and the New Deal* and Barry Cushman in

Rethinking the New Deal Court (both of which I highly recommend, by the way) have put forth compelling (though not water-tight) arguments that stress the development of constitutional law over decades as a way of understanding legal change in the 1920s and 1930s. Also, McCloskey, outside of his treatment of John Marshall (which is really, really adulatory) does not show how different justices have brought personal proclivities or intellectual strengths and weaknesses to bear on their efforts to change, or maintain, the law. There is no discussion of the often fascinating game of coalition building in the Supreme Court, except the passing mention of such giants in this regard as Joseph Story, Felix Frankfurter or William Brennan. But to a certain extent this is merely criticizing McCloskey and Levinson for writing a book they never intended. For what it purports to accomplish this book does an excellent job, all the more so for its brevity. The prose clearly and succinctly anchors the Supreme Court as a political institution struggling to maintain its institutional place in the American government and its voice in the construction of public policy. The authors argue this has been done most effectively when the Court decides cases within general political parameters deemed acceptable by the majority of Americans. It is not, therefore, usually a counter-majoritarian institution. The Court has failed, conversely, and cost itself valuable institutional and political capital, when it oversteps those parameters. The most notorious examples of the latter include the Dred Scott decision, the series of holdings from 1934 to 1936 when it categorically shut off President Roosevelt's attempt at socio-economic reform, and the Bush-Gore litigation of 2000. The Court has been more successful when it cogently articulates its adherence to the Constitution's "fundamental law" as ultimately compatible with a given political era's view of popular will. Thus, for example, the gradual development in the first three generations of the nation's history of the power of judicial review, the federal government's power over the states, and the protection of private property all fit within the acceptable political interests and values of the time. The nation's majority, after all, (pace, Sean Wilentz) wanted the Supreme Court to discern objectively the Constitution's fundamental law, and desired a strong national economy to spread the benefits of market capitalism. Or so McCloskey and Levinson argue. This is a great book for political scientists and legal historians and lay readers interested in the interface between law and politics. It puts the kabosh to tiresome, relentless arguments that the Court can, or should, separate itself from politics. Everyone loves judicial review so long as their ox is not GORED (pun intended). McCloskey and Levinson make a great point that judicial review (and sovereignty?) is needed for a healthy democracy, PROVIDED the Court behaves responsibly and within the consensus of a specific era's interests and concerns.

In the more than thirty years since its original publication, *The American Supreme Court* has introduced several generations of students to the workings of the highest court of the United States. Now Sanford Levinson brings this classic work up-to-date, ensuring its continued relevance for decades to come. In this historical interpretation of the Supreme Court's role in constructing the United States Constitution, McCloskey contends that the strength of the Court has always been in its sensitivity to the changing political scene and in its reluctance to stray too far from the main currents of public sentiments. Because of the essential ambiguity of the Constitution, McCloskey argues, the Court has always been an active branch of government. Leaving McCloskey's original text unchanged, Levinson has added two new chapters covering the developments of the past thirty years, a coda, a revised chronology, and a totally new bibliographic essay. Also included is a new preface by Daniel J. Boorstin.

From the Inside Flap: First published more than four decades ago, 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. Sanford Levinson brings this new edition into the twenty-first century, revising the last two chapters, which cover the events of the past forty years, and updating the book's preface, coda, chronology, and bibliographical essay. As in the second edition, 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 new chapters, Levinson discusses the Court's more recent role, especially during the 1960s, as protector of the civil rights and liberties of minorities. He updates as well the Court's continuing role as monitor of the welfare state, looking at the litigation following the 1996 changes in welfare policy by Congress and the President. Also covered in this new edition are the recent Court decisions on federalism, which perhaps portend an enhanced role for the court as the "umpire" of the federal system; the clash between Congress and the Court over the scope of the required accommodation by government of religious conduct; and the Court's role in the impeachment of President Clinton. Wonderfully readable and concisely written, McCloskey's book is an essential guide to the past, present, and future prospects of America's highest court.