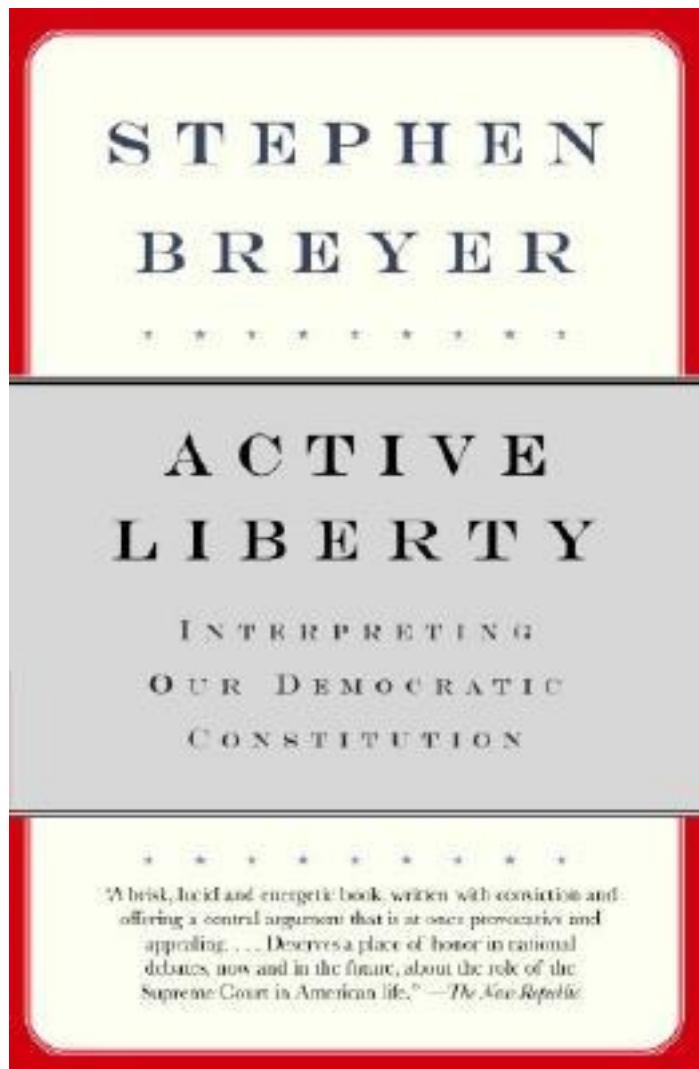


# Active Liberty



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著者:Stephen Breyer

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This book, based on the Tanner lectures on Human Values that Justice Stephen Breyer delivered at Harvard University in November 2004, defines the term “active liberty” as a sharing of the nation’s sovereign authority with its citizens. Regarding the Constitution as a guide for the application of basic American principles to a living and changing society rather than as an arsenal of rigid legal means for binding and restricting it, Justice Breyer argues that the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems.

Giving us examples of this approach in the areas of free speech, federalism, privacy, affirmative action, statutory interpretation, and administrative law, Justice Breyer states that courts should take greater account of the Constitution’s democratic nature when they interpret constitutional and statutory texts. He also insists that the people, through participation in community life, can and must develop the experience necessary to govern their own affairs. His distinctive contribution to the federalism debate is his claim that deference to congressional power can actually promote democratic participation rather than thwart it. He argues convincingly that although Congress is not perfect, it has done a better job than either the executive or judicial branches at balancing the conflicting views of citizens across the nation, especially during times of national crisis. With a fine appreciation for complexity, Breyer reminds all Americans that Congress, rather than the courts, is the place to resolve policy disputes.

Active Liberty is a declaration of the first importance, made by a judge often regarded as one of the court’s most brilliant members.

作者介绍:

Stephen G. Breyer is an associate justice of the United States Supreme Court, where he has served since 1994. He was educated at Stanford University, was a Marshall Scholar at Magdalen College, Oxford, and received his LL.B. from Harvard Law School. He was a clerk for Supreme Court Justice Arthur J. Goldberg of the U.S. Supreme Court from 1964 to 1965. He has been a professor of law at Harvard and a professor at the Kennedy School of Government. He has also been a visiting professor at the College of Law, Sydney, Australia, and at the University of Rome. He is a fellow of the American Academy of Arts and Sciences, and a member of the American Law Institute and the American Bar Association. Prior to his appointment to the Supreme Court he served as judge and later as chief judge of the U.S. Court of Appeals for the First Circuit. His published works include *The Federal Power Commission and the Regulation of Energy* (with Paul MacAvoy, 1974); *Regulation and Its Reform* (1982); and *Breaking the Vicious Circle: Toward Effective Risk Regulation* (1993).

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## 评论

布雷耶大法官提倡用注重立法目的和法律后果的方式来解释法律，以此保障公民的个人权利。一个启示：维持香港的繁荣与稳定可否是基本法的目的，是否能够成为考量双非孕妇产子等关于一系列关于居港权案件的出发点？以此为前提，综合考虑相关的法律规定和政策，将核心价值具体化，而不是仅仅纠缠于基本法的文字表述，法院仍旧能以法治的名义保持自身独立性，同时还可避免内地和香港不同法系之间的摩擦。这或许是一个值得努力的方向。

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一篇强调根据立法本意而非字词解读来判决的重要性的essay，结构清晰，易懂，举例非常经典。关于隐私，关于联邦制，关于言论自由与第一修正案，关于行政法积极自由？后记link. warren court …真的有一个人叫learned hand why delegated democracy don't work?(like Athens?) Because they create conflicting policies that reflects shifting public opinion. CASE:Pennsylvania 选举人团 普莱西案

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