



Judicial Power and American Character: Censoring Ourselves in an Anxious Age

Robert F. Nagel

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This original work is an unusual effort to relate modern constitutional politics to the moral character of American culture. Writing in non-technical language, Nagel demonstrates how judicial decisions embody wider social tendencies toward moral evasiveness, privatization, and opportunism. He shows that constitutional interpretation is often used to stifle political disagreement and, ultimately, to censor our own beliefs and traditions.

The discussion ranges over such controversial topics as political correctness on the campus and in the case law, resistance to constitutional rights like abortion, the confirmation hearings of Clarence Thomas and Robert Bork, and judicial decisions on such issues as pornography, flag-burning, gay rights, school prayer, and school desegregation. The analysis crosses conventional political and philosophical lines. Nagel sees fundamental similarities between liberal theorists like Ronald Dworkin and conservatives like Bork. He traces judicial arrogance to the ambitious doctrinalist, William Brennan, but also to the cautious incrementalist, John Marshall Harlan. He describes the highest rituals of legality as re-enactments of the same cultural deficiencies that cause concern for the rule of law, and he suggests that real protection for legal values lies in self-confident politics.

Clearly written and forcefully argued, *Judicial Power and American Character* is an audacious examination of judicial power as an integral part of an increasingly anxious and intolerant culture. It will be of great importance to law professors, lawyers and judges, political scientists, and educated citizens interested in constitutional interpretation, the phenomenon of "political correctness", and the possibility of moral decline.

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