

[Ebook pdf] America's Prophets: How Judicial Activism Makes America Great

America's Prophets: How Judicial Activism Makes America Great

David R. Dow

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David R. Dow : America's Prophets: How Judicial Activism Makes America Great before purchasing it in order to gage whether or not it would be worth my time, and all praised America's Prophets: How Judicial Activism Makes America Great:

1 of 1 people found the following review helpful. A short treatise arguing for judicial activism By PhredBack in 2009 when this book was published, and still in print. The term 'judicial activism' was code for liberal judges ruling in favor of liberal causes. Now that we have very conservative Supreme Court and the likelihood that it will remain so, this term seems to have lost its sting. Be this as it may, David R. Dow, Distinguished Professor at the University of Houston Law Center and visiting Professor of History at Rice University lays out a case in favor of judicial activism. He builds his case on a biblical division of legal power. He identifies the biblical judges as the priests who adjudicated disputes. The prophets were those who interpreted the words and by extension the will of God. He gives the examples first of Rabbi Hillel famous summation of the old testament as being "Thou shalt not do unto others, that which you would not have done to yourself". He then quotes Jesus as having restarted this principle, except in a positive formula "Do unto others as you would have done to you." The special relevancy of these statements is that they encode a directive not to be found in any explicit biblical quotation. That is both formulas represent interpretations rather than strict readings. He then opines that American Judges have the particular duty of stating when the rule of the majority has, or is likely to become the dictatorship of the majority. The older term he cites is the problem of the "tyranny of the majority". This term is a quote from James Madison's Federalist Paper No 10. Clearly the importance of these sources is to make the case directly to the so called Christian Right, that judicial activism has both biblical precedence and the support of the founding fathers of the US Constitution. Having rooted the case for judicial activism in both holy precept and in the intentions of the authors of the Constitution, Row then specifies as the normal routine of Judges to be to: rule on the facts of a case identify the judicial principals that apply to a case then use interpretations to apply the legal principals to the facts and thereby render the decision. That is, it is not only is it biblically and constitutionally correct for a judge to interpret the law, it is normal practice. All of this takes about 20 pages. The remaining 150 pages list Dow's favorite activist judges and particular cases. For Dow's purposes, judicial activism "rises" with *Griswald vs Connecticut*, the 1963 decision that first encoded America's "Right to Privacy". In rounding out his wish list for prophetic /activist judges Row makes his arguments for the liberal view on Race, Religion, Same Sex Marriage, Abortion and Euthanasia. In depending on liberal causes and liberal preferences in these issues, Row exposes his entire argument as being driven by the political left. Herein lays the trap. To a degree the history of America is the struggle to enfranchise all of its citizens and to insure that all individuals are equal before the law. The future of America court decisions is going to be the balance of power between citizens and corporations. In this struggle decisions like *Citizens United*, which extended the political influence of corporations over the elective process is barely a footnote. In a world where the privacy protected in *Griswald vs Connecticut* applies only to government. The internet at once ends privacy and empowers corporations to control what had been the private employee conversation. Specifically the free speech of employees as practiced in social media can and is made subject to the supervision and dictates of employers. Courts have been and will continue to rule on what "free market" means in an environment where corporations control access to the information needed to make free market decisions and are, allowed lie, confuse and misdirect any open discussion of the information needed to make such decisions. Even the existing decision to expand the right of eminent domain to allow for commercial rights to supersede some private property rights portend fundamental shifts in the relative rights of citizens versus corporations. Is it too soon to note that the word 'Corporation' does not exist in the Constitution. I am not sure that Professor Row wants the prophets of judicial activism to be as powerful when the inspiration is in favor of corporate power. This is the real problem of our court system. As long as "our side" Right or Left, wins what are in the moment, critical decisions, it is for the other side to argue that the system is "broken" or that judges are legislating from the bench. In the play 1776, Ben Franklin is supposed to have said: "A rebellion is always legal in the first person, such as "our rebellion." It is only in the third person - "their rebellion" - that it becomes illegal." Professor Row strongly believes that in first person; "our judicial activism is prophetic and divine" It is unclear that he has the same appreciation for 'Their judicial activism' In terms of style the book is generally readable and accessible to a general reader. It is brief, yet dense, with substantial content. I cannot believe it will sway conservative opinion, but it does provide some interesting points.

0 of 2 people found the following review helpful. Somewhat nice, but my copy seemed to be missing the chapter.... By D.L. Jenkins... on the impeachment methodology should the "Prophets" fail to argue, rule or hold progressively sufficient to our liking or in such a manner as to cause us to FEEL as if they were being prophetic.

America's Prophets: How Judicial Activism Makes America Great fills a major void in the popular literature by providing a thorough definition and historical account of judicial activism and by arguing that it is a method of prophetic adjudication which is essential to preserving American values. Dow confounds the allegation of the Christian right that judicial activism is legally and morally unsound by tracing the roots of American judicial activism to the methods of legal and moral interpretation developed by the prophets of the Hebrew Bible. He claims that Isaiah, Amos, and Jesus are archetypal activist judges and, conversely, that modern activist judges are America's prophets. Dow argues that judicial restraint is a priestly method of adjudication and that it, not judicial activism, is the legally and morally unsound method. Race and gender discrimination, separation of church and state, privacy rights, and same-sex marriage are all issues that have divided our nation and required judicial intervention. Every time the courts

address a hot-button issue and strike down entrenched bias or bigotry, critics accuse the justices of being judicial activists, whose decisions promote their personal biases and flout constitutional principles. This term, despite its widespread currency as a pejorative, has never been rigorously defined. Critics of judicial activism properly point out that when judges overturn laws that enforce popular norms they thwart the will of the majority. But Dow argues that so-called activist judges uphold two other American legal values that are as deeply embedded in American legal culture as majoritarianism: liberty and equality. He challenges the notion that judicial activism is unprincipled, and he provides a vocabulary and historical context for defending progressive decisions.

About the Author DAVID R. DOW is University Distinguished Professor at the University of Houston Law Center and Visiting Professor of History at Rice University. His areas of expertise include contracts, constitutional law, and death penalty law. He has handled more than fifty appeals, including 25 death penalty appeals. He earned his J.D. from Yale University, where he was an editor on the Yale Law Journal. He is the author of three books, including *Executed on a Technicality* (2005) and *Machinery of Death* (2002), and more than one hundred book chapters and professional articles. His essays and editorials on abortion, polygamy, gay marriage, affirmative action, separation of church and state, biblical law, and judicial activism have appeared in *The New York Times*, *The Washington Post*, *The Christian Science Monitor*, *The Progressive*, *The Houston Chronicle*, and *The Dallas Morning News*.