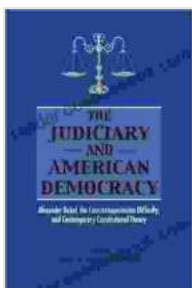


# Alexander Bickel's The Countermajoritarian Difficulty and Contemporary Constitutional Law

Alexander Bickel's 1962 book, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*, is a classic work of American constitutional law. In it, Bickel argues that the Supreme Court is the least dangerous branch of government because it is the least political. The Court, Bickel claims, is insulated from the passions of the day by its life tenure and its lack of direct electoral accountability. This insulation allows the Court to make decisions based on the law, rather than on political expediency.

Bickel's theory of the Court as a countermajoritarian institution has been influential in American constitutional law for decades. However, it has also been challenged by scholars who argue that the Court is not as insulated from politics as Bickel claims. These scholars point to the fact that the Court's justices are appointed by the president and confirmed by the Senate, both of which are political bodies. They also argue that the Court's decisions are often influenced by public opinion and the political climate.



## The Judiciary and American Democracy: Alexander Bickel, the Countermajoritarian Difficulty, and Contemporary Constitutional Theory (SUNY series in American Constitutionalism) by Dan Kovalik

★★★★★ 5 out of 5

Language : English

File size : 1638 KB

Text-to-Speech: Enabled

Screen Reader: Supported

Word Wise : Enabled



In recent years, the debate over Bickel's theory has been reignited by the Supreme Court's decision in *Citizens United v. FEC*. In that case, the Court struck down a law that limited corporate spending in elections. The decision was widely seen as a victory for conservative interests, and it has led to concerns that the Court is becoming more political.

### **Alexander Bickel and the Countermajoritarian Difficulty**

Alexander Bickel was born in New York City in 1924. He graduated from Harvard Law School in 1947, and he clerked for Supreme Court Justice Felix Frankfurter. After clerking for Frankfurter, Bickel taught law at Yale Law School. In 1962, he published *The Least Dangerous Branch*.

In *The Least Dangerous Branch*, Bickel argues that the Supreme Court is the least dangerous branch of government because it is the least political. The Court, Bickel claims, is insulated from the passions of the day by its life tenure and its lack of direct electoral accountability. This insulation allows the Court to make decisions based on the law, rather than on political expediency.

Bickel's theory of the Court as a countermajoritarian institution is based on the idea that the Constitution is a countermajoritarian document. The Constitution, Bickel argues, was designed to protect the rights of minorities from the tyranny of the majority. The Supreme Court, as the guardian of the Constitution, is therefore tasked with protecting the rights of minorities from the majority's will.

Bickel's theory has been influential in American constitutional law for decades. However, it has also been challenged by scholars who argue that the Court is not as insulated from politics as Bickel claims. These scholars point to the fact that the Court's justices are appointed by the president and confirmed by the Senate, both of which are political bodies. They also argue that the Court's decisions are often influenced by public opinion and the political climate.

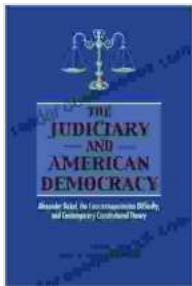
## **The Countermajoritarian Difficulty and Contemporary Constitutional Law**

The debate over Bickel's theory has been reignited by the Supreme Court's decision in *Citizens United v. FEC*. In that case, the Court struck down a law that limited corporate spending in elections. The decision was widely seen as a victory for conservative interests, and it has led to concerns that the Court is becoming more political.

The *Citizens United* decision has raised questions about the future of Bickel's theory. Some scholars argue that the decision shows that the Court is not as insulated from politics as Bickel claims. Others argue that the decision is an aberration, and that the Court will continue to be a countermajoritarian institution.

The debate over Bickel's theory is likely to continue for many years to come. However, there is no doubt that Bickel's work has had a profound impact on American constitutional law. His theory of the Court as a countermajoritarian institution has helped to shape the way that we think about the role of the Court in our democracy.

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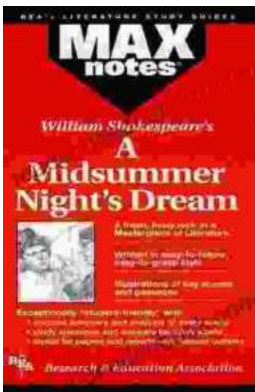
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