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Justice Stephen Breyer on the Future of the Supreme Court

The case for a judiciary better suited to our interconnected world



Justice Stephen Breyer argues for a Supreme Court that considers the world beyond America's borders. ILLUSTRATION:KOOSEN/SHUTTERSTOCK

By

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THIS SUPREME COURT must increasingly consider the world beyond our national frontiers. It must consider that world in determining the reach of an American statute, say that governs antitrust behavior by companies, or copyright protections, or liability for human-rights abuses. It must consider that world in interpreting the meaning of a treaty, to which the United States is a party but that may regulate conduct in countries very far away. And it must sometimes consider that world in determining the meaning of the U.S. constitution, which often seeks to balance individual liberties with the demands of [national security](#).

Why is it so important that American courts meet these challenges and address these legal questions? The simplest answer is that they cannot be avoided. Our world is increasingly interdependent, and questions about the overseas application of American law, the meaning and enforceability of treaties and international rule makings, and how our constitution should apply in the modern age, cannot be avoided. The increasingly international nature of so many routine transactions, from car and home rentals to major financial investments, along with instantaneous communications and the increased global flow of individuals—all these new realities give rise to legal questions affecting not just foreigners but Americans as well. There is no Supreme Court of the World to answer those questions for us. Yet to answer them

ourselves requires information and understanding that often lie outside our borders. We no longer have the luxury of operating solely within the confines of our own country, as if the only law that mattered were our own.

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If that answer is too simplistic, perhaps a more satisfying one begins with the observation that the interdependent world of which we are part is characterized by a fragile international economy, increased environmental risks, insecurity and in some places anarchy, fanaticism and terrorism. Little wonder that in many countries cynicism abounds about the efficacy and honesty of government and its institutions. If there is any hope of solving such complex problems, which belong to no one nation, the effort will have to be a collective one.

We Americans have an essential contribution to make to that effort. And it is a contribution strongly tied to who we are, in that who we are has much to do with the nature of our government. As a lawyer and judge, I see our government as a kind of experiment in which Americans have long engaged. At a time when democracy was to be found nowhere else in the world, Thomas Jefferson described the experimental hypothesis generally when he wrote that we Americans thought it “self-evident, that all men are created equal,” that “they are endowed by their Creator with certain unalienable rights,” that “among these are life, liberty and the pursuit of happiness,” and that “to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.” The Founders filled in the details when they created a constitutional system. The experiment continued.

It is vital that our court meet the legal challenges that interdependence creates for the sake of our nation’s defining experiment: to show that our system, far from being a hindrance, is perfectly well equipped to meet them. If in addition to sustaining a strong economy and a well-educated workforce, and holding together a highly diverse nation, our system can also help to address the world’s common problems, our example will continue to be influential. But the world will follow someone’s example if not ours. Failing to lend our voice, we may find ourselves not so well served by, or happy with, the results.

The interdependence of today's world, as it has become manifest in our court's docket, poses considerable challenges for our judiciary. To meet those challenges is vital to our struggle to build a humane, democratic and just society. It is the need to maintain a rule of law that should spur us on, jurists and citizens, at home and abroad, to understand those challenges and to work at meeting them together.



Stephen Breyer

*Stephen Breyer is a U.S Supreme Court Justice. This excerpt is adapted from the conclusion of Justice Breyer's new book, *The Court and the World* (Knopf 2015).*