

## RECONSTRUCTING RIGHTS

Judges often behave in surprising ways when they reinterpret laws and constitutions. Contrary to existing expectations, judges regularly abandon their own established interpretations in favor of new understandings. In *Reconstructing Rights*, Stephan Stohler offers a new theory of judicial behavior which demonstrates that judges do not act alone. Instead, Stohler shows that judges work in a deliberative fashion with aligned partisans in the elected branches to articulate evolving interpretations of major statutes and constitutions. *Reconstructing Rights* draws on legislative debates, legal briefs, and hundreds of judicial opinions issued from high courts in India, South Africa, and the United States in the area of discrimination and affirmative action. These materials demonstrate judges' willingness to provide interpretative leadership. But they also demonstrate how judges relinquish their leadership roles when their aligned counterparts disagree. This pattern of behavior indicates that judges do not exercise exclusive authority over constitutional interpretation. Rather, that task is subject to greater democratic influence than is often acknowledged.

**Stephan Stohler** is Assistant Professor at University at Albany, State University of New York. His research and teaching interests are in the areas of public law and comparative politics, with a particular focus on the politics of constitutional interpretation.

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# Reconstructing Rights

COURTS, PARTIES, AND EQUALITY RIGHTS  
IN INDIA, SOUTH AFRICA, AND THE  
UNITED STATES

STEPHAN STOHLER

*University at Albany, State University of New York*



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For Mom and Dad

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Abbreviations

<b>ACLU</b>	American Civil Liberties Union
<b>ANC</b>	African National Congress
<b>BJP</b>	Bharatiya Janata Party
<b>CORE</b>	Congress of Racial Equality
<b>DP</b>	Democratic Party
<b>EEA</b>	Employment Equity Act
<b>EEOA</b>	Equal Employment Opportunity Act
<b>EEOC</b>	Equal Employment Opportunity Commission
<b>FCC</b>	Federal Communications Commission
<b>FEP</b>	Fair employment practices
<b>FF</b>	Freedom Front
<b>GEAR</b>	Growth, Employment, and Redistribution
<b>GNU</b>	Government of National Unity
<b>HSRC</b>	Human Sciences Research Council
<b>JD</b>	Janata Dal
<b>JSC</b>	Judicial Service Commission
<b>LDF</b>	Legal defense fund
<b>MBEs</b>	Minority business enterprises
<b>MPNP</b>	Multi-party negotiation process
<b>NAACP</b>	National Association for the Advancement of Colored People
<b>NJAC</b>	National Judicial Appointments Commission
<b>NP</b>	National Party
<b>OBC</b>	Other Backward Classes
<b>PAAS</b>	Patidar Anamat Andolan Samiti
<b>RDP</b>	Reconstruction and Development Program
<b>RSS</b>	Rashtriya Swayamsevak Sangh
<b>SACP</b>	South African Communist Party

<b>SALC</b>	South African Law Commission
<b>SAPS</b>	South African Police Services
<b>SCs</b>	Scheduled castes
<b>STs</b>	Scheduled tribes
<b>UDF</b>	United Democratic Front
<b>UP</b>	Uttar Pradesh
<b>VHP</b>	Vishwa Hindu Parishad
<b>VRA</b>	Voting Rights Act of 1965