

• THE MYTH OF THE •
**IMPERIAL
JUDICIARY**

Why the Right Is Wrong
about the Courts

Mark Kozlowski

WITH A FOREWORD BY
ANTHONY LEWIS

The Myth Of The Imperial Judiciary Why The Right Is Wrong About The Courts

**Virginia A. Hettinger, Stefanie A.
Lindquist, Wendy L. Martinek**



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The Myth of the Imperial Judiciary Mark Kozlowski, 2003-02-10 Featuring a foreword by Anthony Lewis this book evaluates the role of the court system in our democracy and considers the claims that it has become too powerful

The Myth of the Imperial Judiciary Mark Kozlowski, 2006-01-01 Few institutions have become as ferociously fought over in democratic politics as the courts While political criticism of judges in this country goes back to its inception today's intensely ideological assault is nearly unprecedented Spend any amount of time among the writings of contemporary right wing critics of judicial power and you are virtually assured of seeing repeated complaints about the imperial judiciary American conservatives contend not only that judicial power has expanded dangerously in recent decades but that liberal judges now willfully write their policy preferences into law They raise alarms that American courts possess a degree of power incompatible with the functioning of a democratic polity The Myth of the Imperial Judiciary explores the anti judicial ideological trend of the American right refuting these claims and taking a realistic look at the role of courts in our democracy to show that conservatives have a highly unrealistic conception of their power Kozlowski first assesses the validity of the conservative view of the Founders intent arguing that courts have played an assertive role in our politics since their establishment He then considers contemporary judicial powers to show that conservatives have greatly overstated the extent to which the expansion of rights which has occurred has worked solely to the benefit of liberals Kozlowski reveals the ways in which the claims of those on the right are often either unsupported or simply wrong He concludes that American courts far from imperiling our democracy or our moral fabric stand as a bulwark against the abuse of legislative power acting forcefully as they have always done to give meaning to constitutional promises

Law as a Means to an End Brian Z. Tamanaha, 2006-10-02 The contemporary US legal culture is marked by ubiquitous battles among various groups attempting to seize control of the law and wield it against others in pursuit of their particular agenda This battle takes place in administrative legislative and judicial arenas at both the state and federal levels This book identifies the underlying source of these battles in the spread of the instrumental view of law the idea that law is purely a means to an end in a context of sharp disagreement over the social good It traces the rise of the instrumental view of law in the course of the past two centuries then demonstrates the pervasiveness of this view of law and its implications within the contemporary legal culture and ends by showing the various ways in which seeing law in purely instrumental terms threatens to corrode the rule of law

Losing Twice Emily M. Calhoun, 2011-04-06 Constitutional losers represent a thorny and longstanding problem in American constitutional law Here Emily Calhoun draws upon conflict resolution theory political theory and Habermasian discourse theory to argue that in such cases the Court must work harder to avoid inflicting unnecessary harm on Constitutional losers

Courts without Borders Tonya L. Putnam, 2016-08-04 Courts without Borders is the first book to examine the politics of judicial extraterritoriality with a focus on the world's chief practitioner the United States For much of

the post World War II era the United States has been a frequent yet selective regulator of activities outside its territory and US federal courts are often on the front line in deciding the extraterritorial reach of US law At stake in these jurisdiction battles is the ability to bring the regulatory power of the United States to bear on transnational disputes in ways that other states frequently dislike both in principle and in practice This volume proposes a general theory of domestic court behavior to explain variation in extraterritorial enforcement of US law emphasizing how the strategic behavior of private actors is important to mobilizing courts and in directing their activities

The Judicial Branch Kermit L. Hall, 2005 Presents a collection of essays that provide an examination of the judicial branch of the American government including its history its impact and its future

Justice Robert H. Jackson's Unpublished Opinion in Brown v. Board David M. O'Brien, 2017-11-17

Brown v Board of Education is widely recognized as one of the US Supreme Court's most important decisions in the twentieth century Robert H Jackson an associate justice on the case is generally considered one of the Court's most gifted writers Though much has been written about Brown citing the writing and remarks of the justices who participated in the 1954 decision comparatively little has been said about Jackson or his unpublished opinion which is sometimes even mistakenly taken as a dissenting opinion This book visits Brown v Board of Education from Jackson's perspective and in doing so offers a reinterpretation of the justice's thinking and of the Supreme Court's decision making in a ruling that continues to reverberate through the nation's politics and public life Weaving together judicial biography legal history and judicial politics Justice Robert H Jackson's Unpublished Opinion in Brown v Board provides a nuanced look at constitutional interpretation and the intersection of law and politics from inside the mind of a justice within the context of a Court deciding a seminal case Through an analysis of six drafts of Jackson's unpublished concurring opinion David M O'Brien explores the justice's evolving thoughts on relevant issues at critical moments in the case His retelling of Brown presents a new view of longstanding arguments confronted by Jackson and the other justices over original intent versus a living Constitution the role of the Court and social change and justice in American political life The book includes the final draft of Jackson's unpublished opinion as well as the Warren Court's opinions in Brown and in *Bolling v Sharpe* for comparison along with a timeline of developments and decision making leading to the Court's landmark ruling

Judicial Review and American Conservatism Robert Daniel Rubin, 2017-03-20 The Christian Right of the 1980s forged its political identity largely in response to what it perceived as liberal judicial activism Robert Daniel Rubin tells this story as it played out in Mobile Alabama There a community conflict pitted a group of conservative evangelicals a sympathetic federal judge and a handful of conservative intellectuals against a religious agnostic opposed to prayer in schools and a school system accused of promoting a religion called secular humanism The twists in the Mobile conflict speak to the changes and continuities that marked the relationship of 1980s religious conservatism to democracy the courts and the Constitution By alternately focusing its gaze on the local conflict and related events in Washington DC this book weaves a captivating narrative Historians political scientists and constitutional lawyers

will find in Rubin's study a challenging new perspective on the history of the Christian Right in the United States

Constitutionalism and Liberty Anthony D. Bartl, Jordan T. Cash, 2024-11-25 *Constitutionalism and Liberty* Essays in Honor of David K. Nichols explores the relationship between liberty and constitutionalism in American politics and political theory and is organized around the question of how human liberty is preserved and advanced while empowering government to have the necessary authority to effectively govern society. The essays themselves are divided into three areas reflecting the breadth and diversity of David K. Nichols's scholarship. The first assesses how we should understand separation of powers and checks and balances in the American constitutional system. The second area treats different aspects of American legal practice and jurisprudence including the powers and role of the American judiciary philosophically and institutionally as well as questions of administrative power, civil rights, parental rights, and symbolic speech. The final section examines a range of issues in political philosophy and theory including two chapters on the intersection of political theory with literature and art. The array of subjects covered by these chapters is a testament to the broad influence of Nichols' teaching and scholarship and to the widening interest in aspects of American politics, constitutional law, and political theory that cross traditional barriers in political science.

Judging on a Collegial Court Virginia A. Hettinger, Stefanie A. Lindquist, Wendy L. Martinek, 2006. Focusing on the behavioral aspects of disagreement within a panel and between the levels of the federal judicial hierarchy, the authors reveal the impact of individual attitudes or preferences on judicial decision making and hence on political divisions in the broader society.

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