



The Myth of the Imperial Judiciary: Why the Right is Wrong about the Courts

Mark Kozlowski

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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.

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