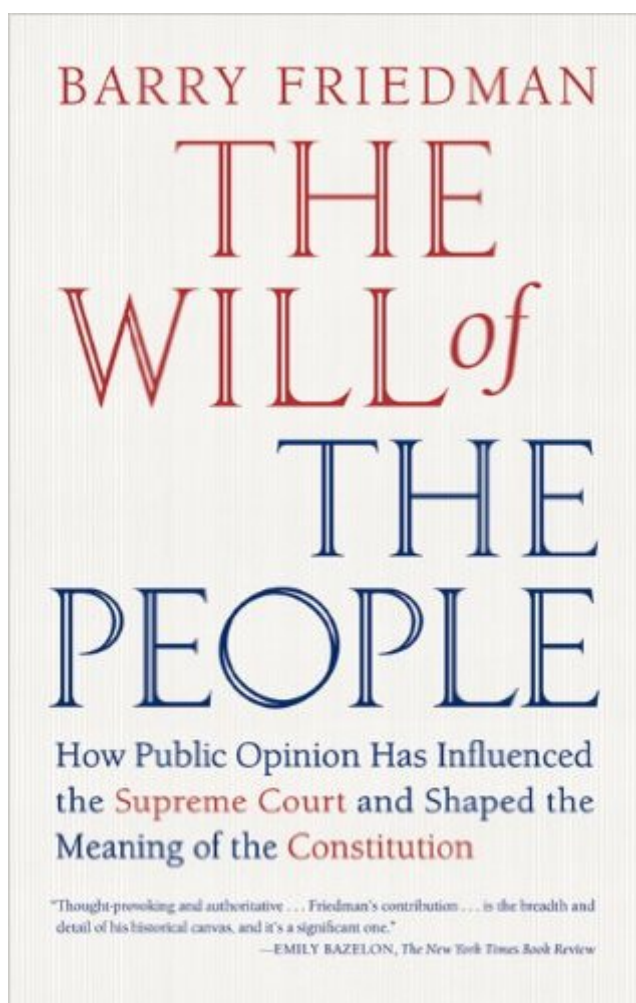


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The Will Of The People: How Public Opinion Has Influenced The Supreme Court And Shaped The Meaning Of The Constitution



Synopsis

In recent years, the justices of the Supreme Court have ruled definitively on such issues as abortion, school prayer, and military tribunals in the war on terror. They decided one of American history's most contested presidential elections. Yet for all their power, the justices never face election, and hold their offices for life. This combination of influence and apparent unaccountability has led many to complain that there is something illegitimate—even undemocratic—about judicial authority. In *The Will of the People*, Barry Friedman challenges that claim by showing that the Court has always been subject to a higher power: the American public. Judicial positions have been abolished, the justices' jurisdiction has been stripped, the Court has been packed, and unpopular decisions have been defied. For at least the past sixty years, the justices have made sure that their decisions do not stray too far from public opinion. Friedman's pathbreaking account of the relationship between popular opinion and the Supreme Court—from the Declaration of Independence to the end of the Rehnquist Court in 2005—details how the American people came to accept their most controversial institution and, in so doing, shaped the meaning of the Constitution.

Book Information

Paperback: 624 pages

Publisher: Farrar, Straus and Giroux; First Edition edition (August 17, 2010)

Language: English

ISBN-10: 0374532370

ISBN-13: 978-0374532376

ASIN: B005B1E26Q

Product Dimensions: 5.5 x 1.6 x 8.3 inches

Shipping Weight: 1.6 pounds (View shipping rates and policies)

Average Customer Review: 4.3 out of 5 stars [See all reviews](#) (7 customer reviews)

Best Sellers Rank: #597,256 in Books (See Top 100 in Books) #220 in [Books > Politics & Social Sciences > Politics & Government > United States > Judicial Branch](#) #319 in [Books > Law > Rules & Procedures > Courts](#) #420 in [Books > Textbooks > Law > Constitutional Law](#)

Customer Reviews

Barry Friedman brings happy news: the anti-democratic nature of judicial review is "radically overstated" (9) because the Court's "decisions tend to converge with the considered judgment of the American people" (14). In fact, the American people have "tailored" (9) the Court to suit its needs as it has "come to understand what it wanted" from the Court (11).

Consequently, the Court's opinions tend to find support in the latest Gallup poll • (14). Anyone reading this will have one response: Lochner. What about the Lochner Era, when the Court mowed down dozens of laws? Friedman actually begins the book at the tail end of the Lochner Era, in 1937, with FDR having just asked Congress to allow him to pack the Court with new Justices. Of course, starting in 1937 tends to foreshorten the Lochner Era so that it seems like a mere personal dispute between FDR and the Supreme Court, when, in fact, Lochner Era activism stretched from 1897 (or even 1887) all the way to 1937. In other words, for fifty years (yes, HALF A CENTURY!) the Supreme Court shot down democratically passed laws "you know, the kind of laws that represent the considered judgment of the American people." Yet the Court didn't care. Boom. Boom. Boom. Boom. Boom. Down they went. How does Friedman explain away the Lochner Era? How does he show that the Court was ultimately responsive to public opinion? Not very convincingly, I must say. He breaks the Lochner Era up into two parts, the better to tackle the job.

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