

College of Business Book Review by Janet Ford

Title:	“Men in Black: How the Supreme Court is Destroying America”
Author:	Mark R. Levin
Publisher:	Regenery Publishing, Inc. (2005)
Length:	276 pages
Price:	\$27.95
Reading time:	3-1/2 hours
Reading rating:	7 (1 = very difficult; 10 = very easy)
Overall rating:	3 (1 = average; 4 = outstanding)

Mark Levin, a conservative radio talk show host, legal scholar, and court watcher, is not the first person to raise an alarm about judicial activism on the part of the United States Supreme Court, but he is probably the most articulate critic I have read lately. Levin asserts that the Supreme Court has extended its authority over virtually all aspects of American life to a degree never contemplated by the founding fathers of our nation. Levin examines several landmark decisions by the Supreme Court in detail to illustrate how the modern Supreme Court has interpreted the Constitution, sometimes in a tortuous and convoluted manner, to create rights and establish legal principles that are far beyond anything that the founding fathers could have imagined.

Some of the landmark decisions Levin discusses include *Roe v. Wade* (recognizing the right to abortion), *Lawrence v. Texas* (recognizing the right of adults to engage in consensual homosexual sodomy), *Grutter v. Bollinger* (recognizing that race may be an appropriate factor to consider in the admissions process of colleges and universities), *Texas v. Johnson* (protecting the right of an individual to burn the American flag), and *Hamdi v. Rumsfeld* (recognizing the right of an American citizen who is being detained as an alleged enemy combatant to challenge his detention). In discussing these and other significant Supreme Court decisions, Levin argues that the Supreme Court has exceeded its constitutional authority, usurped the constitutional authority of the other branches of government, and based decisions on extra-Constitutional sources such as foreign laws, medical practices, and even public opinion.

To correct what he sees as an increasingly alarming trend on the part of the Supreme Court, Levin proposes several solutions. First, Levin suggests amending the Constitution to impose term limits on the justices, arguing that lifetime tenure has allowed numerous justices to remain on the bench long after their mental faculties have become impaired. Levin also suggests a Constitutional amendment that would allow Congress to overturn Supreme Court decisions by a supermajority vote, similar to the process used to override a presidential veto. These amendments, according to Levin, would force the Supreme Court to be more accountable to the citizenry.

Although I share many of Levin’s concerns, I am not sure that increasing the Supreme Court’s political accountability is feasible, and it may even introduce more uncertainty into constitutional law. As a practical matter, anyone who has watched the news during the past week knows that the Supreme Court is not totally insulated from the shifting

winds of national politics. Liberal interest groups actively promote their agenda by attempting to influence judicial appointments, as illustrated by some of the documents included in Levin's appendix to this book. Conservative interest groups surely do the same, but their activity is not as fully addressed by Levin. Placating public opinion would simply provide an additional non-constitutional basis for legal decisions.

As I write this review, the Senate Judiciary Committee confirmation hearings for Samuel Alito, President Bush's nominee for the Supreme Court, have just begun. The legal landscape has changed significantly in the months that this book has been in print: Chief Justice John Roberts, Jr. now occupies the office once held by the late William H. Rehnquist, and Justice Sandra Day O'Connor will retire as soon as a successor can be confirmed. I'm sure Mr. Levin is watching the current political maneuvering closely and will have some insightful commentary on it. I'll be looking and listening for it.

Janet Ford is an assistant professor of Business Law in the College of Business at Western Carolina University. For previously reviewed books visit our Web site at www.wcu.edu/cob/.