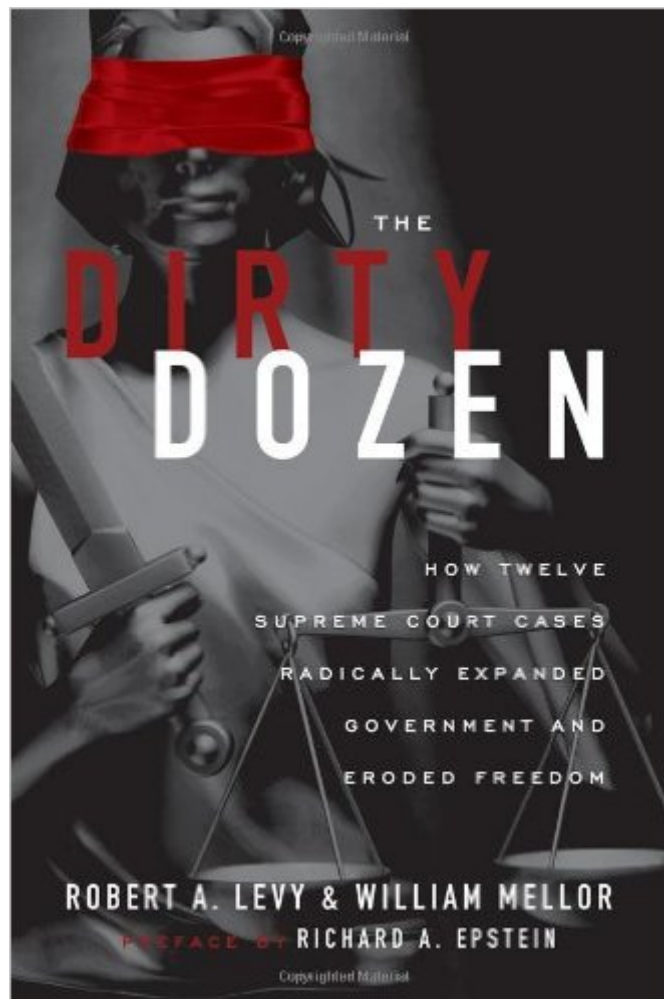


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The Dirty Dozen: How Twelve Supreme Court Cases Radically Expanded Government And Eroded Freedom, With A New Preface



Synopsis

The Founding Fathers wanted the judicial branch to serve as a check on the power of the legislative and executive, and gave the Supreme Court the responsibility of interpreting the Constitution in a way that would safeguard individual freedoms. Sadly, the Supreme Court has handed down many destructive decisions on cases you probably never learned about in school. In *The Dirty Dozen*, two distinguished legal scholars shed light on the twelve worst cases, which allowed government to interfere in your private contractual agreements; curtail your rights to criticize or support political candidates; arrest and imprison you indefinitely, without filing charges; seize your private property, without compensation, when someone uses the property for criminal activityâ even if you don't know about it!

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"Regrettably, the [Supreme] court has too often taken the plain wording of the Constitution and interpreted it to mean exactly the opposite of what the Founding Fathers intended. By that process the Court profoundly altered the American legal, political, and economic landscape." So begins Richard Epstein's forward to this truly remarkable book. The authors, Robert Levy, of the Cato Institute, and William Mellor, of the Institute of Justice, have chosen twelve Supreme Court cases they believe "changed the course of American history". The book is not written solely for lawyers. In fact, it is written for the citizen concerned with the expansion of government at the expense of individual freedom. The tragedy of this book is that it will be read by so few people when it should be

read by every citizen, regardless of political persuasion, who is concerned the fate of the United States. These twelve cases are considered by the authors to be the worst decisions of the Supreme Court of the modern era. In most cases, they also list a runner-up. Events move quickly, so it is quite likely that the authors would add *Boumediene v. Bush*, the incredible decision that grants a variety of rights to terrorists. Personally I think that *Boumediene* will vie with *Dred Scott* as being the most lunkheaded decision ever made by the Court. *U.S. v. Miller*, 1939 case about the Second Amendment, has been resolved by the very recent decision in *District of Columbia v. Heller*. (One can see how endangered the Constitution is by the 5-4 vote of the Court in *Heller*.) The authors (unsurprisingly) relate each of the cases to a specific topic.

THE DIRTY DOZEN is an unremarkable and somewhat superficial survey of twelve of the worst Supreme Court decisions of the modern era. It is written from a libertarian perspective and primarily for a non-lawyer audience. The book is organized into twelve chapters, with each chapter covering one of the titular cases. The first four chapters are devoted to cases which expanded government power, while the latter eight deal with cases posited as eroding individual freedoms. Each chapter, in turn, is divided into four sections which detail the constitutional issue in the case, the facts, the Court's holding, and the implications of its decision. The main shortcoming of the book is that it is written for readers already inclined to agree with it and will probably not persuade many others. It is not the authors' conclusions that are generally problematic, but rather their lack of adequate argumentation in support of them. They continually assume a premise and criticize the Court for departing from it, but don't do the work of actually establishing the premise itself. For instance, the authors being libertarians, much is made of the modern Court's failure to protect economic rights such as the claimed right to earn an honest living. The right to earn an honest living, however, is not a right enumerated in the Constitution; if it exists, it exists as an unenumerated right. The authors point to the Ninth Amendment, which states that the enumeration of some rights should not be read to deny the existence of unenumerated ones, but the Ninth Amendment is not itself a substantive source of unenumerated rights. It only stands for the proposition that unenumerated rights exist; it does not tell us anything about their content.

I believe you and every American interested in our freedoms and the Supreme Court should read this book. The authors, Robert Levy and William Mellor, pick 12 Supreme Court cases they believe were poorly decided and had detrimental consequences to our society. Each of these cases is given its own chapter and often includes another case as a "dishonorable mention" that they may also

reference. Now, we are far too deferential to the Supreme Court and even the Federal Courts. We allow them to "correct society" through rulings that are really super-legislation. This is not in the Constitution and is bad for our society. It allows the legislative branch to avoid its responsibilities, and plants undemocratic sentiments in the hearts and minds of the citizenry. But this is my point of view. Richard Epstein gives a very nice introduction and goes over his views on the cases selected. While he mostly agrees with the authors, he offers up some disagreements and explains why. This helps the reader start his or her critical thinking as they work through the book. Yes, it is written for the general public, but it is reading you will want to read and argue with in your own mind to come to your own conclusions. The book is in two parts. The first talks about cases that have led to the expansion of government. Chapter 1 uses *Helvering v Davis* (1937) and *U.S. v Butler* (1936) to discuss the misuse of the general welfare clause. Chapter 2 uses *Wickard v. Filburn* (1942) and *Gonzales v. Raich* (2005) to demonstrate the abuse of the clause about regulating interstate commerce. Chapter 3 looks at rescinding private contracts with the 1934 case *Home Building & Loan Association v. Blaisdell* and the 1935 case *Gold Clause Cases*.

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