American Constitutional Law and History

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Second Edition

Michael S. Ariens
Professor of Law, St. Mary's University School of Law

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For my students

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Preface to Second Edition

The Supreme Court has issued a number of important decisions since the publication of the first edition. To avoid simply adding more to the book, I have taken a number of cases excerpted in the first edition and made them note cases. I have also worked to minimize in length many principal cases, though I continue to believe it is in the interests of students of Constitutional Law to wrestle with the detailed arguments of the opinions of the majority and dissenters. I have also tried to offer thorough but succinct explanations of the course of the Court's decisions, which has resulted in re-writing a number of the Afterwords. In addition, I have added several more Timelines for the sake of clarity, and included some more tables and charts for those students who, like me, appreciate an occasional visual depiction of the law.

Constitutional Law courses must teach more than doctrine. I remain a true believer in the power of teaching students how to recognize, examine, and dissect the recurring types of legal arguments made in Supreme Court opinions to persuade the reader. I also believe it is crucial for students to better appreciate the influence of American history on the Court's work and decisions, particularly to understand formalism and realism, and their successors. Further, students understand the crooked course of Constitutional Law when they are given repeated exposure to the six generally accepted modes of constitutional interpretation.

Because I believe the approach taken in the first edition offers a number of benefits for students, particularly 1L students, I have maintained the same approach: this book is not a compendium, it is designed for students to learn some of the same lessons in a number of different chapters, it includes an Afterword rather than Notes and Comments, it emphasizes the authors of the cases and their jurisprudential views, and it avoids citing secondary authorities in the text.

Thanks to my wife Renée for again helping me complete this project. Thanks again also to Maria Vega for getting the book in printable shape. Thanks to my Constitutional Law students, whose questions, comments, thoughts and ideas have made me think often and hard about communicating this difficult material to them. Thanks to my research assistants Dorian Ojemen, Stephanie Green, Mitchell Gonzales and Sumner Macdaniel for their work in getting the second edition ready for publication. They regularly demonstrated why they will make great lawyers, and why I am blessed to teach at St. Mary's University School of Law. All errors are my responsibility.

Michael Ariens
March 2016

Preface

In addition to teaching doctrine, this book has a threefold purpose: (1) it explains through repeated examples how a judge tries to persuade the reader that his or her opinion (whether majority, concurring, or dissenting) more accurately reflects the meaning of the Constitution than a competing opinion; (2) it assesses the manner in which American history has informed and affected the development of American constitutional law; and (3) it highlights and evaluates the impact of legal thought, particularly legal formalism and legal realism, on Supreme Court decision making. As a result, the excerpted cases are edited for their doctrinal point and for two other reasons: (a) to demonstrate how the excerpted opinions attempt to persuade the reader that the particular vision expressed in the opinion is more true to the text of the Constitution, its history and structure, earlier Supreme Court precedent, elite and popular consensus and the purposes of the Constitution than a contrasting opinion, and (b) how realism and formalism, as well as the presumed "legacy" of those two jurisprudential approaches, affect the ways in which the justices decide cases.

When Supreme Court justices write their opinions, they regularly use recurring types of reasoning. The Justices attempt to persuade the reader by using (1) reasoning by analogy; (2) syllogistic reasoning; (3) narrower or broader level of generality arguments; and (4) arguments of "rhetoric," including (a) the appeal to authority, also known as the "famous dead person" argument, (b) the argument of subsequent consequences, also known as the claim of speculation or the "slippery slope" argument, (c) the appeal to passion, and (d) "flipping" the adversary's argument, that is, turning one party's argument in such a way as to favor the other party's position. Some forms of reasoning predominate in different areas of constitutional law (*e.g.*, members of the Supreme Court regularly use competing and varying levels of generality in substantive due process cases, and use reasoning by analogy in free speech cases, and make "rhetorical" arguments in federalism cases). These same forms of reasoning are given again and again in opinions. This book is structured to make students proficient at naming, applying, and critiquing each of these types of reasoning.

This book also offers a "long view" of constitutional law. Given the contested and often unstable nature of constitutional law doctrine, it is crucial for students to understand not only *what* the Court concluded, but *how* the Court as a historical matter reached this point. For example, it is important for students to understand that the 1787 Constitution was written in significant part in reaction to the Articles of Confederation. Thus, I include the Articles to let students compare it with the Constitution. Another example is the Court's free speech decision in *Dennis v. United States* (1951), excerpted in Chapter 8.B.1. The opinions in *Dennis* are enigmatic without understanding the *Dennis* Court's (1) reaction to its post-World War I free speech jurisprudence, (2) the rise of Nazi Germany and World War II, (3) the onset of the Cold War, the Korean Conflict and the testing by the Soviet Union of a nuclear bomb, and (4) the cultural and legal impact of the trials of the Rosenbergs for conspiracy to commit espionage and of Alger Hiss for perjury. The Court's subsequent free speech cases are best understood in light of the reaction to its

decision in *Dennis*. To give students a sketch of American history, the book provides a modest *Timeline of Events in American Legal and Political History*. In order to provide a more particular historical focus, a number of specific *Timelines* are included before opinions to provide a context for understanding those cases.

Some constitutional law doctrine is rule-based, while other doctrine is standards-based. Crafting rules echoes historical legal formalism, while adopting standards echoes historical legal realism. All judges are aware of the history and impact of both legal formalism and legal realism in American legal thought. No judge will claim to be solely a formalist or a realist, though most judges prefer one jurisprudential approach to the other, and neither legal formalism nor legal realism should be understood as reflective of a judge's political conservatism or liberalism. Judges now largely use formalism and realism as techniques to craft doctrine. The means that most judges will adopt rules (a more formalistic approach) in some areas of constitutional law and standards (a more realistic approach) in other doctrinal areas. To understand how and why judges oscillate between rules and standards, a student needs to understand the history of legal formalism and legal realism.

This book is not intended to serve as a compendium, but as a survey of the Constitution as interpreted by the Supreme Court. Instead of citing secondary authorities in the text, students may look at a *Bibliography* with citations to important secondary works in constitutional law. In addition, students are given an "Afterword" rather than "Notes and Comments." The *Afterword* provides both an assessment of the excerpted case and a summary of any significant changes generated by the excerpted case. The *Afterword* reinforces the need for students to understand how the different premises of the majority and dissenting opinions bring forth different analytical approaches.

Unlike other areas of American law, it is important to understand not only what the Court decided, but who wrote the opinion of the Court (as well as who wrote any dissenting opinion). Thus, students should consult the brief biographies of important Supreme Court justices.

Finally, American Constitutional Law and History includes a number of decision trees and tables intended to give the student a better visual sense of constitutional law doctrine. For example, students can look at the rather complicated decision tree that attempts to encapsulate free speech jurisprudence. That general free speech decision tree is then broken down into component parts as the student moves through the various free speech issues decided by the Court.

Thanks to my wife Renée for reading much of the book and spotting a number of infelicities and errors. Thanks also to my research assistants, Aaron Culp, Buddy Parsons, Gregory Roberts, and Lauren Valkenaar, for reading and re-reading the manuscript. Thanks to Maria Vega for getting the book in printable shape. Finally, thanks to my Constitutional Law students, whose thoughts and ideas helped shape the structure and content of the book. All remaining errors are my responsibility. If you have thoughts about how to improve the book, please e-mail me at: mariens@stmarytx.edu.

Michael Ariens
January 2012

Articles of Confederation

[The English colonies in America declared their independence in July 1776 when the Continental Congress approved the Declaration of Independence. The Continental Congress then proposed Articles of Confederation. The Articles of Confederation were agreed upon by the Continental Congress on November 15, 1777. Because they were articles of confederation, it was necessary for each of the thirteen states to ratify the Articles. As a result, the Articles of Confederation did not become binding upon the states until March 1, 1781. In the meantime, as the Revolutionary War progressed, the Continental Congress raised money, undertook diplomatic efforts, and aided the military cause.]

PREAMBLE

To all to whom these Presents shall come, we the undersigned Delegates of the states affixed to our Names send greeting.

Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the Year of our Lord One Thousand Seven Hundred and Seventy seven, and in the Second Year of the Independence of America, agree to certain articles of Confederation and perpetual Union between the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, in the words following, viz:

Articles of Confederation and perpetual Union between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

ARTICLE I. The Style of this Confederacy shall be "The United States of America."

ARTICLE II. Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.

ARTICLE III. The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ARTICLE IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this Union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall

not extend so far as to prevent the removal of property imported into any state, to any other state, of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any state, on the property of the United States, or either of them.

If any person guilty of, or charged with, treason, felony, or other high misdemeanor in any state, shall flee from justice, and be found in any of the United States, he shall, upon demand of the Governor or executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offense.

Full faith and credit shall be given in each of these states to the records, acts, and judicial proceedings of the courts and magistrates of every other state.

ARTICLE V. For the most convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislatures of each state shall direct, to meet in Congress on the first *Monday* in *November*, in every year, with a power reserved to each state to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No state shall be represented in Congress by less than two, nor more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees or emolument of any kind.

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress, and the members of Congress shall be protected in their persons from arrests or imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

ARTICLE VI. No state, without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King, Prince or State; nor shall any person holding any office of profit or trust under the United States, or any of them, accept any present, emolument, office or title of any kind whatever from any King, Prince or foreign State; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any King, Prince or State, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessel of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any state in time of peace, except such number only, as in the judgement of the United States in

Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of filed pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No state shall engage in any war without the consent of the United States in Congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay till the United States in Congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the Kingdom or State and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

ARTICLE VII. When land forces are raised by any state for the common defence, all officers of or under the rank of colonel, shall be appointed by the legislature of each state respectively, by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

ARTICLE VIII. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all land within each state, granted or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled.

ARTICLE IX. The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article — of sending and receiving ambassadors — entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever — of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated — of granting letters of marque and reprisal in times of peace — appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other causes whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition

to Congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each state, and the secretary of Congress shall strike in behalf of such party absent or refusing; and the judgement and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgement, which shall in like manner be final and decisive, the judgement or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgement, shall take an oath to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, 'well and truly to hear and determine the matter in question, according to the best of his judgement, without favor, affection or hope of reward': provided also, that no state shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states — fixing the standards of weights and measures throughout the United States — regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any state within its own limits be not infringed or violated — establishing or regulating post offices from one state to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office — appointing all officers of the land forces, in the service of the United States, excepting regimental officers — appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States — making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated '*A committee of the states*,' and to consist of one delegate from each state; and to appoint such other committees and civil officers

as may be necessary for managing the general affairs of the United States under their direction — to appoint one of their members to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses — to borrow money, or emit bills on the credit of the United States, transmitting every half-year to the respective states an account of the sums of money so borrowed or emitted — to build and equip a navy — to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men and cloath, arm and equip them in a solid-like manner, at the expense of the United States; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled. But if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of each state, unless the legislature of such state shall judge that such extra number cannot be safely spread out in the same, in which case they shall raise, officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

The United States in Congress assembled shall never engage in a war, nor grant letters of marque or reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of the majority of the United States in Congress assembled.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgement require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the journal, when it is desired by any delegates of a state, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

ARTICLE X. The committee of the states, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of the nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the Congress of the United States assembled be requisite.

ARTICLE XI. Canada acceding to this confederation, and adjoining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union;

but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

ARTICLE XII. All bills of credit emitted, monies borrowed, and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

ARTICLE XIII. Every state shall abide by the determination of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every state.

And Whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know Ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the united States in congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the States we respectively represent, and that the union shall be perpetual.

The Constitution of the United States

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and the third class at the expiration of the sixth year, so that

one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time: and no person

holding any office under the United States, shall be a member of either House during his continuance in office.

Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto Law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state,

or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected, as follows:

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each state having one vote; A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President

of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4. The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article III

Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

Article IV

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. New states may be admitted by the Congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

Article V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight

hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Article VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Article VII

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven and of the independence of the United States of America the twelfth.

Amendment I (1791)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived

of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Amendment XI (1798)

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Amendment XII (1804)

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President

whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XIII (1865)

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV (1868)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV (1870)

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XVI (1913)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census of enumeration.

Amendment XVII (1913)

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

Amendment XVIII (1919)

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Amendment XIX (1920)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX (1933)

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a

President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission.

Amendment XXI (1933)

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

Amendment XXII (1951)

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission to the states by the Congress.

Amendment XXIII (1961)

Section 1. The District constituting the seat of government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXIV (1964)

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXV (1967)

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Amendment XXVI (1971)

Section 1. The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

Amendment XXVII (1992)

No law varying the compensation for the services of the Senators and Representatives shall take effect until an election of Representatives shall have intervened.

Timeline of Events in American Legal and Political History

The following is a modest timeline of events in American history. It is no substitute for the many books surveying American history, much less the specialized monographs illuminating particular historical events. It may, however, place in some context the history of the Supreme Court.

1565 — First European settlement of North America occurs in St. Augustine, Florida.

1584 — Sir Walter Raleigh discovers land he names Virginia, after the English virgin queen, Elizabeth.

1587 — Virginia Dare is born, first English child born in current United States.

1607 — Colony at Jamestown, Virginia established.

1619 — First assembly in Virginia sits. Virginia House of Burgesses has little power. First African slaves imported to colony.

1620 — Pilgrims arrive in new world, off course. Mayflower compact is signed.

1624 — Dutch settle New Amsterdam (New York).

1629–30 — Massachusetts Bay Company is organized and Massachusetts Bay Colony and city of Boston are founded.

1633–34 — Maryland is settled as a Roman Catholic colony.

1636 — Connecticut founded.

1644 — Roger Williams, a religious seeker whose views on religious toleration are revived more than a century later, is granted a patent for Rhode Island and Providence Plantations.

1649 — Maryland passes Toleration Act, which grants religious toleration to all Christians, including Roman Catholics. English King Charles I is beheaded.

1653 — Puritan Oliver Cromwell becomes Lord Protector in England. In 1657, Cromwell will refuse title of "king."

1658 — Cromwell dies.

1660 — Charles II is invited to return to England as King. He is crowned the next year, and reigns until his death in 1685.

1664 — English take control of New Amsterdam, changing name to New York.

1673 — French explorers Marquette and Joliet travel the Mississippi River.

1675 — William Penn, a Quaker, obtains rights to what will become Pennsylvania.

1677 — Penn and others publish "the Laws, Concessions and Agreements," which includes provisions protecting religious conscience and trial by jury.

1682–83 — Penn publishes a "Frame for Government," which includes a type of representative government.

1683 — Colonists from New York and parts of New England draft a Charter of Liberties, which requires those who are taxed to consent to such taxation. King James II of England declare Charter invalid in 1686.

1685 — James II, a Roman Catholic, succeeds Charles II as King.

1688–89 — James II is removed from the throne, and replaced by the Protestants William and Mary, in what the English call the Glorious Revolution.

1689 — William and Mary issue the Declaration of Rights. They also reissue charters to American colonies.

1692 — Salem (Massachusetts) witch trials take place. Before the hysteria ends, 20 people are killed. Five years later, many of those involved apologize for their actions.

1712 — Slaves rebel in New York. After rebellion is halted, 21 slaves are executed.

1732 — Benjamin Franklin begins publishing his *Poor Richard's Almanac*. The first public stagecoach begins operations in New Jersey.

1733 — The last of the original colonies, Georgia, is settled by Englishmen.

1733–35 — John Peter Zenger, a printer, begins printing the *New York Weekly Journal*. The *Journal* is highly critical of the government of Governor William Cosby. In 1734, Zenger is jailed on charges of seditious libel. He is acquitted after his lawyer, Andrew Hamilton, argues to the jury that contrary to common law of seditious libel, truthful statements should not be considered a crime.

1734 — New England minister Jonathan Edwards gives sermons that stir a religious fervor in New England. Whether Edwards is the source of what becomes known as the Great Awakening (later known as the First Great Awakening) is debatable, but a revival in religious feeling continues for several decades. An Englishman named George Whitefield becomes the most popular preacher during the Great Awakening. Whitefield traveled about the colonies beginning in Georgia in 1738, and began preaching in New England in 1740. His sermons immediately generated an increase in religious fervor.

1738 — New Jersey separates from New York's colonial governance.

1754 — The French and Indian War begins. Wars ends in 1763. Benjamin Franklin proposes a "Plan of the Union," to join all colonies other than Georgia under a president.

1760 — English King George III is crowned King.

1762 — Leading colonial thinker James Otis of Massachusetts writes "A Vindication of the Conduct of the House of Representatives," which asserts colonial powers and rights under the unwritten English constitution.

1763 — The Treaty of Paris ends the French and Indian War. France cedes much of its territory in the New World to England. Patrick Henry defends the colony of Virginia against a cleric who claims he has not been paid in tobacco as promised to him. In Two Penny Act, Virginia colonial legislature changed manner of paying clergy in fashion disadvantageous to clergy. Henry wins the case with stirring rhetoric invoking ideas of the consent of the governed.

1764 — Sugar Act is passed in England. The act is designed to raise money to pay for the costs of the French and Indian War, among other costs accrued as England becomes the dominant colonial power. Although the Sugar Act actually reduces the rate of taxation, the Sugar Act is to be strictly enforced, unlike earlier tariffs.

1765 — Stamp Act adopted by Parliament. The act places a fee on all legal documents, deeds, newspapers and other printed matter. It affects a broad swath of colonists, including lawyers, ministers and other leaders of the colonial communities. The act is strongly resisted by colonists, who force those appointed as Stamp Act collectors to resign. From this resistance comes the slogan, "No taxation without representation."

1766 — The Stamp Act is repealed, but a Declaratory Act, making colonists subject to laws passed by the English Parliament, is passed.

1767 — The Townshend Act is passed, taxing materials like tea.

1768 — English troops are sent to Boston, raising fears of a "standing army," that is, an army that would remain in place enforcing the dictates of the King.

1770 — The Townshend Act is repealed, except for the duty on tea. The same day, March 5, the Boston Massacre takes place. Three persons, including an escaped slave named Crispus Attucks, are killed.

1773 — The Boston Tea Party occurs, a reaction against an English effort to allow the British East India Company to monopolize the tea market in the colonies.

1774 — In reaction to the Boston Tea Party, Parliament passes the Coercive Acts, which attempt to strip political authority from colonists in Massachusetts. In September, the First Continental Congress meets in Philadelphia.

1775 — Battles of Concord and Lexington take place. Second Continental Congress meets. George III declares the colonists in rebellion.

1776 — Independence from England is declared (the vote is on July 2). The Declaration of Independence is largely written by Thomas Jefferson, who borrows liberally from others. The Revolutionary War, or the War of Independence, intensifies.

1777 — The Articles of Confederation are proposed. They will become effective only after ratification by all thirteen colonies.

1781 — Maryland becomes the last state to ratify the Articles of Confederation. The English surrender at Yorktown.

1783–84 — Treaty of Paris, ending the war between England and the United States, is negotiated, agreed to and ratified.

1785 — Ordinance of 1785, which surveys and reserves western lands, is passed by the United States in Congress assembled, the only branch of government created by the Articles.

1786 — Shay's Rebellion strikes western Massachusetts.

1787 — Delegates from twelve states (Rhode Island declines to send any delegates) gather in Philadelphia to amend the Articles of Confederation. Instead, they draft a Constitution which will become the basic governing document of the United States of America upon ratification by nine states. Congress adopts the Northwest Ordinance, which encourages settlement of the western frontier.

1788 — New Hampshire becomes the ninth state to ratify the Constitution, thus making it effective. However, the Constitution is practically made effective when

New York becomes the eleventh state to ratify the Constitution, by a convention vote of 30–27. (The Federalist Papers, authored largely by James Madison and Alexander Hamilton, are written as propaganda pieces to convince New Yorkers to urge their delegates to ratify the Constitution.)

1789 — George Washington is inaugurated as the first President of the United States. At the end of the summer, the First Congress sends the Bill of Rights (twelve in all) to the states for ratification.

1791 — Ten of the twelve proposed Bill of Rights are ratified (an eleventh is ratified in 1992).

1794 — Whiskey Rebellion occurs. Opposition by farmers to tax on liquor requires militia of about 13,000 to quell rebellion. Jay's Treaty signed.

1797 — John Adams, a New Englander (Massachusetts), becomes second President. Though elected Vice President, Thomas Jefferson refuses to serve in the Adams administration. XYZ Affair occurs. French minister Talleyrand requests a bribe, which Americans refuse to offer. Tensions between French and Americans increase, leading to Quasi-War with France the following year.

1798 — Supreme Court decides *Calder v. Bull*. Alien and Sedition Acts (four in total) passed, which in part criminalize truthful speech that undermines federal government. Virginia and Kentucky Resolutions (authored by James Madison and Thomas Jefferson, respectively) condemn Alien and Sedition Acts. Eleventh Amendment, which bars citizens from suing states, is formally incorporated into Constitution.

1799 — John Fries, leader of Fries' Rebellion in Pennsylvania, is arrested. After he is convicted and sentenced to die, Adams pardons him.

1800 — Political parties explicitly form in presidential election year. Republicans (who eventually become the Democratic Party) support the Virginian Thomas Jefferson, who defeats the Federalist Party (a political party that died several decades later) candidate and incumbent President John Adams. Most historians believe the nation was closely divided between the two parties, although no popular vote totals exist.

1801 — Jefferson is not elected President by the Electoral College because he and Aaron Burr, Jefferson's Vice President running mate from New York, each receive 73 electoral votes. (This leads to the ratification in 1804 of the Twelfth Amendment, which requires electors to vote separately for President and Vice President.) On the 36th vote, the House of Representatives elects Jefferson. During this time, lame duck President John Adams nominates sitting Secretary of State John Marshall as Chief Justice, and William Marbury as a local justice of the peace.

1802 — Congress adopts Judiciary Act of 1802, which repeals Act of 1801. The 1802 Act reinstates circuit riding by members of Supreme Court and abolishes circuit court judgeships created by 1801 Act. Court holds 1802 Act constitutional in *Stuart v. Laird* (1803).

1803–04 — Louisiana Purchase completed.

1803 — Marshall writes the opinion for the Court in *Marbury v. Madison* establishes the Court's power of judicial review — the duty to say what the law is, including the duty to assess the constitutionality of congressional legislation.

1804 — Lewis and Clark head for the westward end of the American continent. Senate convicts impeached federal judge John Pickering, removing him from office.

Aaron Burr loses race for governor of New York, and also kills Alexander Hamilton in a duel.

1805 — Jefferson is inaugurated President for second term. Lewis and Clark reach Pacific Ocean.

1806–07 — Aaron Burr is arrested and charged with treason. In trial presided over by John Marshall, Burr is acquitted.

1808 — By an Act of Congress, the importation of slaves is prohibited.

1809 — Another Virginian, James Madison, succeeds Jefferson as President.

1810 — Supreme Court decides *Fletcher v. Peck*, a case concerning the Yazoo land fraud in Georgia. Case raises issues of the nature of judicial review, incorporation of natural law into the Constitution, and the contracts clause of the Constitution.

1812 — United States declares war on Great Britain, despite British efforts to defuse trade disagreements.

1813 — Madison is re-inaugurated.

1814 — British exact revenge in the War of 1812, burning the White House.

1815 — War of 1812 ends, with the British largely victorious in battle. However, Andrew Jackson wins Battle of New Orleans after War has formally ended, becomes a hero, and fourteen years later, President.

1816 — James Monroe becomes the third consecutive Virginian elected President.

1819 — Panic takes place, depressing the economy. Supreme Court decides cases of *Dartmouth College v. Woodward*, *Sturges v. Crowninshield*, and *McCulloch v. Maryland*.

1820 — Missouri Compromise, which prohibits slavery north of 36°, 30' latitude (Missouri excepted), is passed by Congress, thus averting the first crisis over the "peculiar institution," slavery. Monroe wins re-election.

1824–25 — John Quincy Adams, the son of John Adams, becomes the sixth President of the United States. No one wins electoral vote. Popular vote won by Andrew Jackson. Adams wins presidency in the House of Representatives with assistance of Henry Clay, one of the four presidential candidates.

1826 — On July 4, exactly 50 years after Declaration of Independence issued, John Adams and Thomas Jefferson die. Once political enemies, they are avid correspondents in retirement.

1829 — Andrew Jackson, a Republican-Democrat, is inaugurated after defeating Adams. After his inaugural speech, he invites his supporters to the White House, who joined him, leaving "proper" Washington agasp.

1831 — Nat Turner, a slave in Virginia, slays his owner and owner's family, and begins the "Turner Rebellion." After two months, Turner is captured, tried and hung. Southerners use the Turner Rebellion to justify passing laws restricting a slaveholder's right to manumit (free) his slaves, barring gatherings of more than ten slaves, prohibiting slaves from learning to read, and other laws making more severe the institution of slavery.

1833 — After Jackson is re-elected, South Carolinians, led by Senator John C. Calhoun, claim authority as a state to "nullify" any federal law with which it disagrees. The Nullification Doctrine is the most serious effort concerning "states' rights," for it

suggests that the Constitution is not an agreement of "We, the People," but an agreement among "We, the States."

1837 — Almost like clockwork every 18–20 years, the United States undergoes another Panic. It lasts for over three years.

1844 — First telegraph message sent: "WHAT HATH GOD WROUGHT."

1845 — Texas enters Union despite protest from some politicians in free states.

1846 — Mexican-American War begins, in part due to annexation of Texas into United States.

1848 — Mexican-American War ends. The resulting Treaty of Guadalupe Hidalgo (1850) annexes to the United States from Mexico parts of Texas, New Mexico, Arizona, Nevada and Utah.

1849 — Gold is found in California.

1850 — After several sessions of Congress fail to "resolve" the crisis of slavery, the Compromise of 1850 is passed. Among other things, laws ban the sale of slaves in the District of Columbia but permit owning of slaves in the District, settle the boundary of Texas and create the Fugitive Slave Act.

1854 — Kansas-Nebraska Act adopted by Congress. Act declares legality of slavery in these Territories will be determined by popular vote. This leads to "Bloody Kansas," in which both pro- and anti-slavery groups (John Brown is the most famous of the latter) kill opponents and bystanders. The pro-slavery group is slightly more ruthless than the anti-slavery group, and eventually manages to wrest control of the Kansas Territory's government.

1850s — The Presidents (including James Buchanan, our only bachelor President) and Congress attempt to avoid the slavery issue.

1857 — *Dred Scott v. Sandford* is decided by the Supreme Court, and publicly issued several days after Buchanan's inauguration. Chief Justice Roger Taney holds the Missouri Compromise of 1820 unconstitutional on Fifth Amendment due process grounds, for the Compromise interferes with a person's right to property (the slave). This is only the second time an Act of Congress has been held unconstitutional by the Supreme Court. Panic of 1857 occurs.

1858 — Abraham Lincoln and Stephen Douglas engage in their famous series of debates in Illinois while running for Senator. Lincoln is a member of the newly-formed Republican Party, and Douglas is the sitting Democratic Senator.

1859 — John Brown's raid of the Federal arsenal at Harper's Ferry, Virginia (now West Virginia) takes place. Brown is captured and hung. Oil is discovered in Titusville, Pennsylvania.

1860 — Lincoln is elected President with 43% of the popular vote, but with just under 60% of the electoral vote. He carries all northern states but one. Douglas finishes second in the popular vote, but last (out of four candidates) in electoral votes, winning neither southern, nor northern states.

1861 — One month after Lincoln is sworn in as President, the first shot is fired on Fort Sumter, South Carolina. The Civil War begins.

1862 — Between July and September, Lincoln decides to issue the Emancipation Proclamation, which by decree "frees" all the slaves in Confederate states. The Emancipation Proclamation, issued in September, is made effective January 1, 1863.

1863 — Battle of Gettysburg, Pennsylvania, takes place on July 1–3, and changes the course of the Civil War. On July 4, Vicksburg, Mississippi, falls to Union General Ulysses S. Grant, giving the Union control of Mississippi River.

1864 — Lincoln is re-nominated, and wins the general election against George McClellan, former commanding general of the Union Army.

1865 — On April 9, Confederate General Robert E. Lee surrenders to Union General Ulysses S. Grant at Appomattox. The Civil War ends. Five days later, Lincoln is shot by John Wilkes Booth, and dies early the next morning. Vice President Andrew Johnson becomes President. In January, Congress sends to the states for ratification the Thirteenth Amendment, which abolishes slavery and any involuntary servitude. Amendment is ratified in December.

1866–67 — Radical Republicans take control of Congress, and ignore President Andrew Johnson, a Democrat who wants to return the southern states quickly to full participatory status. Instead, Congress imposes Congressional Reconstruction of the south in place of Presidential Reconstruction. First Civil Rights Act is passed over Johnson's veto, the first time major legislation is adopted over a presidential veto. Fourteenth Amendment is sent to the states for ratification. Amendment overrules *Dred Scott*. Seward's Folly, the purchase of Alaska for $7.2 million, is completed.

1868 — Andrew Johnson is impeached by the House of Representatives. Senate acquits Johnson at trial. Fourteenth Amendment is ratified, after southern states are told they must ratify to rejoin the Union. Republican Ulysses S. Grant is elected President.

1869 — Fifteenth Amendment is proposed by Congress and sent to states for ratification. Reconstructed southern states must ratify amendment as a condition to returning to the Union. Judiciary Act sets number of Supreme Court Justices at nine, which has been the case ever since. First transcontinental railroad completed.

1870 — Fifteenth Amendment ratified.

1871 — Congress adopts Ku Klux Klan Act, which successfully limits Klan as a terrorist force for a short period of time. Act is later declared unconstitutional.

1872 — Grant is re-elected.

1873 — Supreme Court decides *The Slaughter-House Cases*, largely nullifying the Privileges or Immunities Clause of the 14th Amendment. Another Panic strikes, lasting nearly five years.

1874 — Democrats take control of House in off-year elections.

1875 — Lame duck Republican Congress passes Civil Rights Act of 1875, which is declared unconstitutional in 1883 in *The Civil Rights Cases*.

1876–77 — Democratic Presidential candidate Samuel J. Tilden has a slight popular majority over Republican Rutherford B. Hayes, and needs one more vote to win electoral college. Three states (South Carolina, Florida, and Louisiana) send in competing vote counts. An electoral commission is created, consisting of 5 Democrats, 5 Republicans, and 5 members of the Supreme Court. By an 8–7 vote, Commission concludes returns for Hayes from disputed states are official tally of results.

1877 — Reconstruction ends after Hayes is inaugurated. Labor unrest and crackdowns against striking laborers begin. The United States is becoming an industrialized

society, and an immigrant society as well. First large labor strike occurs, which ends when Hayes sends in federal troops.

1881 — James Garfield inaugurated President. Less than four months later he is shot by Charles Guiteau. Garfield dies and Chester A. Arthur becomes President.

1884 — Grover Cleveland is elected President, first Democrat elected to the office since Buchanan.

1886 — Haymarket Square riot occurs in Chicago over labor conditions. The American Federation of Labor (AFL) is organized.

1887 — First administrative agency of the federal government, the Interstate Commerce Commission, is created.

1890 — Sherman Antitrust Act adopted. "Jim Crow" laws legally segregating blacks and whites are passed about this time by several southern states.

1893 — Another Panic strikes. Grover Cleveland is inaugurated, winning the presidency four years after losing it. Chicago Exposition takes place.

1895 — Supreme Court, in three decisions, indicates its fear of the masses. The Court's decisions suggest that efforts by state legislatures attempting to "redistribute" property will be subject to constitutional challenge in court.

1898 — Supreme Court decides *Plessy v. Ferguson*, which upholds "separate but equal" treatment of blacks against an Equal Protection challenge. Spanish-American War begins.

1901 — Teddy Roosevelt becomes youngest President after William McKinley is assassinated.

1903 — Wright brothers fly a plane near Kitty Hawk, North Carolina.

1905 — The Court decides *Lochner v. New York*. This decade sees millions of immigrants, many from southern and eastern Europe, arrive in the United States.

1908 — Court decides *Muller v. Oregon*, which seems contradictory to *Lochner*. The author of a brief in *Muller* is Louis D. Brandeis, who in 1916 becomes the first Jewish Justice on the Supreme Court. Henry Ford begins selling Model T, first affordable car. William Howard Taft, the only man to serve both as President and as a Supreme Court Justice, is elected President.

1909 — W. E. B. Du Bois founds National Association for the Advancement of Colored People (NAACP). Sixteenth Amendment, permitting federal government to adopt an income tax, is proposed. Amendment is ratified in 1913. First wireless message sent.

1912 — Teddy Roosevelt runs for President as nominee of Bull Moose Party. Roosevelt and Taft split Republican vote, and Woodrow Wilson wins the presidency, first Democratic President since Grover Cleveland in 1892.

1913 — Both the Sixteenth and Seventeenth Amendments are ratified. The former allows the federal government to enact a law taxing income, which overrules a Supreme Court decision from 1895. The latter Amendment requires direct election of Senators by the people.

1914 — Archduke Ferdinand of the Austro-Hungarian Empire is shot and killed in the Balkans. World War I begins.

1916 — In campaign for re-election, Woodrow Wilson uses slogan "He kept us out of war." Wilson re-elected.

1917 — Wilson re-inaugurated. United States enters World War I. Communists take control of Russia, and begin consolidation of different lands as the Soviet Union.

1918 — The War to End All Wars (or the Great War) ends, and Germany is treated poorly in the Treaty of Versailles. This embitters many Germans, including an Austrian-German and former soldier named Adolf Hitler.

1919 — Eighteenth Amendment, which ushers in prohibition, is ratified. Prohibition will go into effect in 1920. Experiment to prohibit the distillation, transportation and consumption of liquor fails. Eighteenth Amendment repealed by Twenty-first Amendment, ratified in 1933. Nineteenth Amendment, granting women the right to vote, is sent to the states for ratification. Wilson suffers a stroke, and is largely incapacitated physically for remainder of term in office. The Supreme Court decides its first free speech cases in this year and in 1920, in which it upholds laws restricting political speech.

1920 — First Red Scare takes place. The United States government in general, and Attorney General A. Mitchell Palmer in particular, claim thousands of Communists are in the United States, and must be rooted out. Italian immigrants Sacco and Vanzetti arrested and charged with robbery and murder. Case remains controversial even today. The Nineteenth Amendment is ratified. Warren G. Harding is elected President.

1920s — Decade is later known as the Roaring Twenties. For the first time in American history, more Americans live in cities than in rural areas.

1923 — Harding dies. He is succeeded by his Vice President "Silent" Calvin Coolidge. Coolidge wins election in 1924. Supreme Court holds minimum wage law unconstitutional in *Adkins v. Children's Hospital*. Case will be reversed in 1937.

1927 — Charles Lindbergh flies the Spirit of St. Louis across the Atlantic Ocean.

1928 — Herbert Hoover is elected on the promise of "a chicken in every pot, a car in every garage."

1929 — In October, stock market crashes. Great Depression begins, though not apparently due to crash. It will last until the United States enters World War II in late 1941.

1933 — Franklin Delano Roosevelt (FDR), a distant cousin of Teddy, is inaugurated as President. Although FDR campaigns on a platform of balancing the budget, his first act, in what is later called his First Hundred Days, is to close banks (temporarily), to engage in deficit spending and to commence what is called the New Deal. Hitler becomes Chancellor of Germany, and the Bundestag gives him nearly unlimited power.

1936 — Supreme Court holds unconstitutional another aspect of the New Deal, and also holds unconstitutional a state minimum wage law. FDR is reelected in a landslide.

1937 — Inauguration is moved from March to January 20th by constitutional amendment. Two weeks after re-inauguration, FDR announces his Court Reorganization Plan. In late March and again in April and May, the Supreme Court (consisting of the same nine members) holds constitutional acts that a year ago it held unconstitutional. This is the "switch in time that saved nine." The Court Reorganization Plan dies in Congress, but given a retirement on the Court, FDR finally nominates someone to the Supreme Court. He chooses Hugo Black, a Senator from Alabama and a devoted supporter of the New Deal.

1939 — World War II begins when Germany invades Poland, and pursuant to an agreement, Great Britain defends Poland and declares war against Germany.

1941 — On December 7, the Japanese bomb Pearl Harbor. The next day, the United States declares war against Japan. Germany declares war on United States.

1944 — D-Day, the Allied invasion of the French beaches of Normandy, takes place on June 6.

1945 — At the end of April, Hitler commits suicide. Shortly before then, FDR dies, and is succeeded by Harry S. Truman. In August, the United States drops two atomic bombs, the first on Hiroshima, and two days later, on Nagasaki. Shortly thereafter, the Japanese surrender, ending World War II.

1946 — Cold War begins between erstwhile allies, the United States and the Soviet Union, as does the Second Red Scare.

1948 — China falls to the Communists. Truman surprisingly defeats Thomas Dewey in the presidential race. Whittaker Chambers claims that Alger Hiss, a former aide to FDR, is a Communist. Hiss denies allegation under oath, and is eventually charged with perjury. First trial results in a hung jury (8–4 for conviction). In early 1950, at second trial, Hiss is convicted.

1949 — On September 22, 1949, the Soviet Union explodes an atomic bomb. The North Atlantic Treaty Organization (NATO) treaty becomes law. Chinese Communists take over mainland China.

1950 — Wisconsin Senator Joe McCarthy claims to have a list of Communists who worked in the State Department. McCarthy repeats charges, but offers no list. Korean police action (the United States does not declare war, but action is authorized by the United Nations) begins. Fighting ends in 1953, though North and South Korea remain formally at war.

1951 — Julius and Ethel Rosenberg, alleged spies for the Soviet Union, are convicted and sentenced to death. They are executed in 1953.

1952 — Republican Party drafts Dwight D. Eisenhower, commander of the Allied Forces in World War II, as its presidential nominee. Eisenhower easily defeats Adlai Stevenson.

1954 — Supreme Court decides *Brown v. Board of Education*, holding separate but equal is inherently unequal in public education. The next year, Court will hold that all segregated schools must be desegregated "with all deliberate speed." Second Red Scare ends when Joe McCarthy's "investigations" sputter to a halt.

1955 — Too tired and unwilling to move to the back of the bus so a white man could sit in her seat, Rosa Parks is arrested for violating Montgomery, Alabama laws requiring the separate seating of blacks and whites. A young minister named Martin Luther King, Jr., leads a boycott of the Montgomery transportation system.

1956 — Eisenhower wins re-election, again defeating Stevenson.

1957 — Governor Orval Faubus refuses to integrate Little Rock (Arkansas) Central High School. Eisenhower eventually calls in Army troops to escort nine black students to the school. Martin Luther King, Jr. organizes Southern Christian Leadership Conference (SCLC).

1958 — In *Cooper v. Aaron*, Court holds Faubus's actions violate Constitution. This is the Court's first opinion concerning issue of race since *Brown II* in 1955.

1960 — John F. Kennedy (JFK) is elected President, youngest elected President in American history. He defeats Richard Nixon, Eisenhower's Vice-President, in a close election. A minor conflict in Asia, which Eisenhower counseled was not America's war, will become the Vietnam War.

1961 — Freedom Riders, young civil rights advocates, begin riding buses in order to confront Jim Crow segregation. Televised images show a number of peaceful advocates being brutally beaten. The issue of civil rights becomes front page news. Berlin Wall constructed.

1962 — Cuban Missile crisis between the United States and the Soviet Union occurs. United States demands Soviet Union not deliver missiles to Cuba. It then blockades Cuban waters (which, under international law, is an act of war), which heats up the Cold War. Soviet ships return home.

1963 — Kennedy is assassinated in Dallas by Lee Harvey Oswald. Lyndon Baines Johnson (LBJ) becomes President.

1964 — First major civil rights bill since Reconstruction is enacted. A southern congressman facetiously suggests that the civil rights bill prohibit discrimination against women. To his surprise, this provision is added, and Civil Rights Act passes.

1965 — Voting Rights Act adopted.

1967 — Thurgood Marshall, attorney who argued *Brown* as counsel for NAACP, confirmed as first Negro (his preferred term) Justice of the Supreme Court.

1968 — Martin Luther King, Jr. and Robert F. Kennedy are both assassinated. LBJ decides not to run for re-election. Riots tear apart a number of cities. Democratic Party convention in Chicago becomes emblematic of the appearance that the United States is tearing itself apart. Hubert Humphrey wins the Democratic Party nomination for the Presidency. Richard Nixon is Republican Party nominee. Nixon wins a close election. Chief Justice Earl Warren sends a letter of resignation to LBJ, agreeing to resign upon the appointment of his successor. LBJ nominates Abe Fortas to replace Warren, and Homer Thornberry to take Fortas's seat as an Associate Justice. Fortas will withdraw after concerns about his extrajudicial activities are raised. He resigns from the Court in 1969.

1969 — Nixon is inaugurated President. He nominates Warren Burger to replace Earl Warren as Chief Justice of the United States, and (eventually) Harry Blackmun to replace Fortas.

1972 — Burglars enter Democratic National Committee headquarters in the Watergate apartment/office complex in the Foggy Bottom section of Washington, D.C. They are apprehended by police after a security guard notices tape on a door latch. Nixon is re-elected overwhelmingly, gaining nearly 60% of the vote against George McGovern. Supreme Court holds death penalty is unconstitutional.

1973 — United States leaves Vietnam. *Roe v. Wade* is decided. Oil crisis causes long lines for gasoline.

1974 — Nixon resigns the Presidency as a result of Watergate affair. Gerald Ford, named Vice President after the resignation of Spiro T. Agnew (after Agnew was indicted for and later convicted of bribery), becomes President. Ford pardons Nixon. Rioting occurs in South Boston after school busing to integrate schools commences.

1976 — Jimmy Carter defeats Gerald Ford in election for President. Supreme Court holds modified death penalty laws constitutional, reversing earlier decision.

1977 — Gary Gilmore is first inmate executed since Court allows states to reinstate death penalty. United Farm Workers, led by Cesar Chavez, signs agreement with Teamsters Union.

1978 — In *Regents of the University of California v. Bakke*, Supreme Court holds racial quotas in education impermissible, but affirmative action is constitutionally acceptable in field of higher education.

1979 — Iranians take Americans hostage in Tehran. They are not released until after Ronald Reagan becomes President in 1981. Inflation reaches highest rate since 1946.

1980 — Ronald Reagan defeats Jimmy Carter in the presidential race.

1981 — Reagan is shot, less than three months after inauguration. Sandra Day O'Connor is successfully nominated to the Supreme Court, becoming its first female justice.

1985 — Reagan begins his second term as President.

1986 — Chief Justice Warren Burger retires. Reagan nominates Justice William Rehnquist to replace Burger, and Antonin Scalia to take the Associate Justice seat vacated by Rehnquist. After a bitter debate in the Senate concerning Rehnquist's record as an Associate Justice, and his record as a law clerk and attorney, he is confirmed. Scalia, first Italian-American justice, is confirmed 98–0.

1987 — Dow Jones Industrial Average falls over 500 points in one day. Robert Bork is nominated to the Supreme Court by President Reagan after the retirement of Lewis Powell. Bork nomination becomes extremely contentious, which results in the coining of a new verb ("to bork") by those supporting his nomination. Senate rejects Bork's nomination. After aborted nomination of former Harvard Law School professor Douglas Ginsberg (for allegedly smoking marijuana in the company of students while at Harvard), Anthony Kennedy, a judge in the Ninth Circuit Court of Appeals, is nominated and confirmed.

1989 — Berlin Wall comes down, and the Cold War ends. George H. W. Bush succeeds Reagan as President.

1990 — David Souter, a so-called "stealth" candidate, is nominated to the Supreme Court to replace Justice William Brennan.

1991 — President Bush nominates Clarence Thomas to the Supreme Court to replace retired Justice Thurgood Marshall. Thomas is the second black American nominated to the Court. His confirmation hearing becomes a battleground, particularly after Anita Hill accuses him of sexual harassment. Thomas wins confirmation by a vote of 52–48.

1993 — Bill Clinton is inaugurated President. After the resignation of Byron White, Clinton nominates Ruth Bader Ginsburg to the Court, making her the second female justice.

1994 — Clinton nominates Stephen Breyer to succeed Harry Blackmun on the Supreme Court. In the off-year election, Republicans win a majority of the seats in the House of Representatives, making it the majority party in the House for the first time in four decades.

1995 — Internet becomes much more accessible to ordinary Americans, sparking an Internet and "dot.com" boom. Federal government shuts down due to a political contest of wills between President Clinton and the Republican majority in Congress.

1996 — Clinton becomes the first Democrat to be re-elected since FDR in 1936 (and subsequently).

1998 — Clinton is impeached on two counts.

1999 — Clinton is acquitted of charges by the Senate.

2000 — Stock market crashes. The NASDAQ falls from over 5,000 to less than 2,000. The dot.com boom becomes a bust.

2000–01 — In the Presidential election of 2000, George W. Bush and Al Gore end up in a statistical dead heat, with Gore nationally winning slightly more votes than Bush, but with neither obtaining a majority. Presidential contest does not end on election night, for the outcome in Florida is too close to call. The media first call the vote in Florida for Gore, then for Bush, and then leave it undecided. By an extraordinarily thin margin, varying between 300 and 1800 votes, it appears that Bush has won more votes in Florida than Gore, though many ballots are disputed. Litigation over the counting and disallowing of votes ensues. Twice the Supreme Court of the United States overturns decisions made by the Florida Supreme Court requiring a recount, and second time Court holds in *Bush v. Gore* that Florida Supreme Court's method of counting ballots violates Equal Protection Clause of Fourteenth Amendment. Gore concedes, and Bush is sworn in as the 43rd President in January 2001.

2001 — Terrorists from a group known as al Qaeda commandeer four passenger jets in the United States. Two of the jets are intentionally crashed into the World Trade Center towers, which collapse on national television, and another crashes into the Pentagon. Passengers in the fourth plane learn of the other hijackings and fight back, causing plane to crash in a Pennsylvania field. Nearly 3,000 persons die in attacks. The United States attacks the Taliban and the al Qaeda network in Afghanistan, and President Bush declares a war on terror.

2002 — NASDAQ bottoms out at slightly above 1,000. United States is in a recession, and the debate begins whether it began at the end of the Clinton administration or the beginning of the Bush administration.

2003 — Supreme Court overrules *Bowers v. Hardwick* (1986) in *Lawrence v. Texas*. The Court also revisits its *Bakke* (1978) decision, which allowed use of affirmative action in higher education. In *Grutter v. Bollinger*, the Court holds constitutional the use of race in admissions decisions to the University of Michigan law school, on the ground that race was just one of many factors used to determine whom to admit. In the companion case, *Gratz v. Bollinger*, it declares unconstitutional the particular use of race in undergraduate admissions at the University of Michigan. The swing vote is Justice O'Connor. Her opinion in *Grutter* suggests that affirmative action end in 25 years; *Bakke* itself was decided 25 years earlier, and *Brown* was decided 24 years before *Bakke*.

2003 — Congress adopts resolution to invade Iraq. United States sends troops to Iraq and deposes Saddam Hussein, but finds no weapons of mass destruction. Hussein captured in December. Economy heats up, but critics claim that it is a "jobless" recovery, for unemployment is still about 6% at the end of the year. Dow Jones Industrial Average reaches 10,000 for the first time in several years, and NASDAQ reaches 2,000 at the end of the year.

2004 — George W. Bush reelected President.

2005 — Sandra Day O'Connor announces resignation upon confirmation of successor. President Bush nominates John Roberts. In early September, before confirmation hearings on Roberts, Chief Justice William H. Rehnquist dies. Bush nominates Roberts to succeed Rehnquist. Roberts confirmed.

2006 — President Bush nominates Harriet Miers to succeed Sandra Day O'Connor as Associate Justice. After backlash, Miers declines nomination. Bush nominates Samuel Alito. Alito confirmed. Housing market busts, after boom years. Dow Jones Industrial Average reaches new all-time high. Democrats take control of both Houses of Congress in off-year election.

2008 — Barack Obama wins presidential election, becoming first black President. Great Recession begins in full force. Lehman Brothers investment bank files for bankruptcy after finding itself unable to obtain credit. Largest bankruptcy in American history, following massive bankruptcies of Enron, WorldCom and others earlier in the decade.

2009 — Economic stimulus package adopted by Congress. Unemployment peaks at over 10% and underemployment is over 17%. Great Recession officially ends in June 2009. "Tea Party" organizes in part to oppose expansive federal government, including increase in federal spending. Justice Sonia Sotomayor, first Hispanic (Puerto Rican) Justice, nominated and confirmed to Supreme Court.

2010 — Patient Protection and Affordable Care Act health care bill (dubbed "ObamaCare" by opponents) adopted by Congress. Financial regulation law (known as Dodd-Frank) also adopted. Each bill is complex and massive in length. Midterm elections see largest swing in House since 1948, with Republicans gaining majority. Justice Elena Kagan nominated and confirmed to Supreme Court.

2011 — Arab spring leads to regime change in several North African countries, and unrest in other Middle Eastern nations. American troops leave Iraq. Financial crisis in Europe, as Greece nearly defaults on its debt. Italy's debt load later becomes a threat to continued existence of euro and to financial stability in Europe. Osama bin Laden killed in Pakistan in U.S. military operation.

2012 — President Obama re-elected. Republicans retain control of House and Democrats retain control of Senate. Supreme Court upholds constitutionality of Affordable Care Act. Chief Justice Roberts holds Act constitutional not on commerce clause grounds, but because Act is justified based on Congress's power to tax.

2014 — Republicans gain majority in Senate.

2015 — Court holds unconstitutional laws banning marriage by persons of the same gender. Terrorist attacks in France early and late in year as well as in California tied to Islamic State (ISIL or ISIS).

2016 — Justice Antonin Scalia dies.

Biographies of Selected Justices of the Supreme Court

The following are short biographies of some of the more influential members of the Supreme Court. I have written biographies of each of the Justices and posted them on my website, http://www.michaelariens.com/ConLaw/justices/list.htm, if you do not find a particular justice listed below.

SAMUEL ALITO (1950–) — Samuel Alito was born on April 1, 1950 in New Jersey. He attended Princeton University, from which he received a bachelor's degree in 1972, and obtained a J.D. from Yale Law School. After clerking for a federal judge, Alito worked as a federal prosecutor in New Jersey. He joined the Solicitor General's Office after the election of Ronald Reagan, and after four years there, spent two years with the Office of the Attorney General. In 1990, Alito was appointed to the United States Court of Appeals for the Third Circuit. After the death of Chief Justice William Rehnquist on September 3, 2005, President George W. Bush decided to nominate John Roberts to replace Rehnquist instead of Sandra Day O'Connor. Bush initially nominated Harriet Miers, a longtime confidante and Secretary to President Bush, to replace O'Connor. An uproar from conservative groups led Miers to withdraw from consideration. Bush then nominated Alito. During the confirmation fight, Alito was attacked by a number of liberal interest groups as too conservative to replace the centrist O'Connor. However, an agreement by the Group of 14, 7 Republicans and 7 Democrats in the Senate to refuse to filibuster unless "extraordinary circumstances" exist, means those opposed to Alito's nomination lack sufficient votes to defeat Alito's nomination by filibuster. Massachusetts Senators Ted Kennedy and John Kerry fail in their attempt to filibuster the nomination, and Alito was confirmed as the 110th Supreme Court Justice on January 30, 2006.

Alito is a Roman Catholic. He is married and the father of two children.

HUGO BLACK (1886–1971) — Hugo Black was born on February 27, 1886, in Harlan, Alabama, the youngest of eight children. After attending a medical school for a year at age 17, Black learned law in a two-year undergraduate program at the University of Alabama. An intelligent and ambitious man, Black moved to Birmingham, Alabama, and became a successful trial lawyer, handling both civil (including personal injury matters) and criminal cases. Black was elected prosecutor for Jefferson County in 1914, and remained in office until 1917, when the United States entered World War I. Black enlisted in the Army, was commissioned a captain, and remained in the United States throughout the war. In 1921, he married Josephine Foster. They had three children, and were married thirty years when she died. Black married Elizabeth Seay in 1957, and they remained married until his death in 1971. Black ran for the United States Senate in 1926, and was elected in part with the support of the Ku Klux Klan, of which he had been a member. Black was a fiery populist in the Senate, and upon

Franklin Delano Roosevelt's election in 1932, became one of FDR's most fervent New Deal supporters in the Senate.

During the Senate's debate on FDR's court-reorganization plan in 1937, Justice Willis Van Devanter retired. FDR appointed Black, a fervent supporter of the failed plan, to replace Van Devanter. Based on the custom of senatorial courtesy, Black was confirmed nearly immediately. After confirmation, but before he took his seat on the Court, the news of Black's former membership in the Ku Klux Klan was made public. Black survived the furor, and remained on the Court for the remainder of his life.

Black had a positivistic, largely formalistic understanding of the Constitution, a consequence of his distaste for the actions of the pre-1937 Court. Black detested substantive due process. Black believed substantive due process was impermissible whether used to protect economic or noneconomic interests. Thus, the shift in focus from the former before 1937 to the latter beginning in the 1940s was irrelevant. In addition to his disdain for substantive due process, Black was an absolutist and literalist in interpreting the Constitution. For Black, the Due Process Clause of the Fourteenth Amendment incorporated all of the rights in the Bill of Rights, making them applicable to state as well as federal action. This approach is called "total incorporation." Further, Black saw rights such as the right of free speech as an absolute, not as a right to be balanced against other governmental interests.

Black retired from the Court on September 17, 1971, and died eight days later, on September 25, 1971. He served on the Court for 34 years and 1 month.

He married to Josephine Foster in 1921. They were the parents of two sons and a daughter. Thirty years later, Josephine died. Black married his wife Elizabeth in 1956.

HARRY BLACKMUN (1908–1999)—Harry Blackmun was born in Illinois on November 12, 1908. Blackmun was raised in St. Paul, Minnesota, and graduated from Harvard College and Law School. He then returned to Minnesota to practice law. In 1950, Blackmun became general counsel to the Mayo Clinic, where he remained until he was appointed to the United States Court of Appeals for the Eighth Circuit in 1959. In 1970, he was nominated to the Supreme Court by Richard Nixon. Blackmun was Nixon's third choice to the seat vacated by Abe Fortas. Blackmun was initially dubbed one of the "Minnesota Twins," for he and fellow Minnesotan Chief Justice Warren Burger, nominated shortly before Blackmun, voted alike in most cases early in their careers at the Court. Blackmun and Burger eventually moved toward different jurisprudential approaches, and Blackmun became increasingly more solicitous to individual rights claims. As time passed, Blackmun joined more often with the Court's "liberal" wing than its "conservative" wing despite being nominated by Richard Nixon, who campaigned on the promise of nominating "strict constructionists" of the Constitution. Blackmun will always be remembered as the author of *Roe v. Wade* (1973). The Court, in a 7–2 vote, held that states violated the right to privacy, as embedded in the Due Process Clause of the Fourteenth Amendment, in greatly limiting or banning abortions. Blackmun spent much of the summer of 1972 at the Mayo Clinic's library, undertaking research regarding the issue of abortion. Blackmun is also known for his libertarian stance concerning commercial speech, which until the 1970s had enjoyed little if any constitutional protection. The first case in which the Court held unconstitutional a state regulation of commercial speech concerned the advertising for sale of pharmaceuticals in Virginia. The opinion is phrased almost exclusively in terms of individual choice and autonomy.

Blackmun left the Court in August 1994. He married Dorothy E. Clark in 1941. They were the parents of three daughters. He died on March 4, 1999.

JOSEPH BRADLEY (1813–1892)—Joseph Bradley was born in upstate New York on March 14, 1813. His father was a farmer, and Bradley was the oldest of 11 children. Bradley read law after graduating from Rutgers College, and began practicing law in New Jersey. Bradley was appointed to the Supreme Court in 1870 by Ulysses S. Grant. One of his first votes was to declare constitutional the Legal Tender Act, which declared lawful the repayment of debts in greenbacks rather than in gold. Creditors feared repayment in greenbacks because they believed that paper money would not hold its nominal value. This case overturned an 1870 decision holding the Act unconstitutional. This quick change of mind by the Court was possible only because both Bradley and William Strong had joined the Court. In 1873, Bradley dissented in *The Slaughter-House Cases*. He objected to the Court's decision to interpret the privileges or immunities clause of the 14th Amendment narrowly, and his dissent, along with the dissent of Justice Field, augured the rise of substantive due process later in the nineteenth century.

Bradley played a decisive role in the disputed presidential election of 1876. The Republican candidate, Rutherford B. Hayes, received fewer popular votes than the Democratic candidate, Samuel J. Tilden. Tilden was one electoral vote from a majority, but the reconstruction states of Florida, South Carolina and Louisiana all sent in dueling electoral votes. Two sets of returns were sent to the House of Representatives from those states, and the Democratic majority in the House at first refused to go into joint session with the Republican Senate to conduct the electoral vote count. The problem for the Democrats was that the Twelfth Amendment appeared to permit a Republican, the Vice President (the President of the Senate), to count the electoral votes. Congress decided to appoint, through the adoption of an act, an Electoral Commission to resolve the disputed electoral votes. The Commission consisted of 10 Congressmen, evenly divided between the parties, and five Supreme Court justices. Four of the justices were to pick the fifth justice. It was understood by the Democrats that the fifth justice to be picked would be Justice David Davis of Illinois, professedly independent, but whose former Republican leanings had disappeared in his desire to become President. On January 17, 1877, Davis was nominated by Illinois Republicans to run against the Democratic candidate for Senator in Illinois. After some Democrats in the Illinois legislature joined Republicans to make Davis a Senator, he refused to become the fifteenth member of the Electoral Commission. The justices then picked Bradley, an independent Republican. Bradley decided that the Commission (and the Congress) had no authority to look behind the electoral ballots sent in by the states, and therefore the Republican ballots sent in by the still-Reconstructed states of South Carolina, Louisiana and Florida were to be counted.

In 1883, Bradley wrote the Court's decision in *The Civil Rights Cases*, in which the Court held that the Civil Rights Act of 1875, adopted pursuant to Congress's claim of power under § 5 of the Fourteenth Amendment, was unconstitutional. Bradley's opinion noted that the Fourteenth Amendment applied only to state action, and held that the Act regulated private conduct, which made it unconstitutional as beyond Congress's power. This decision effectively ended any judicial enforcement of Reconstruction, which was already politically dead by then. Bradley died in early January 1892.

He married Mary Hornblower, the daughter of the Chief Justice of the New Jersey Supreme Court.

LOUIS D. BRANDEIS (1856–1941)—One of the most celebrated Justices in the history of the Supreme Court, Louis Dembitz Brandeis was born in Louisville, Kentucky, in November 1856. Brandeis's father Adolf emigrated from Bohemia to the United States in 1848, the year of European revolutions. Brandeis's mother Frederika emigrated shortly thereafter.

At 19, Brandeis entered Harvard Law School. Harvard was radically changing the form and content of legal education, in large part through Dean Christopher Columbus Langdell's "socratic" method of teaching law. Langdell adopted the socratic method because of his belief that law was a science. This radical approach had not succeeded when Brandeis entered Harvard; indeed, it might have been considered a failure at that time. Brandeis, however, greatly enjoyed his time at Harvard Law School, even spending an extra (third) year there pursuing graduate law work. After law school, Brandeis began practicing law in Saint Louis, but returned within a year to Boston, where he practiced law with his classmate Samuel Warren. Brandeis was an extraordinarily successful lawyer. As a frugal spender and successful investor, he was also able to achieve financial independence at a relatively young age, which meant he was not financially dependent on wealthy clients to the exclusion of those clients whose legal issues interested him. Brandeis was a progressive reformer who was interested in freeing government from corruption, making democratic government a reality, and using the law to protect the powerless from the powerful. Beginning in the 1890s, Brandeis used his knowledge of law to represent the public interest in a number of controversial cases. He often did so without any compensation. In 1907, Brandeis's sister-in-law Josephine Goldmark, along with Florence Kelley, head of the National Consumers' League, met with Brandeis to ask him to defend Oregon's maximum hour law for women. In *Lochner v. New York* (1905), the Court had held that a maximum hour law in the bakery industry violated the Due Process Clause of the Fourteenth Amendment. Brandeis agreed to defend Oregon's law, and produced what is now called a "Brandeis brief." The brief consisted of a couple of pages stating the test of the law's constitutionality. The remainder of the brief, over 100 pages, consisted of data supporting the legislature's conclusion that the law was constitutional because it was a "reasonable" regulation. A unanimous Court upheld the Oregon law in *Muller v. Oregon* (1908), although it did so by focusing on the limitation of the law to the protection of women from overzealous employers.

In addition to his legal reform work, Brandeis was a committed Zionist. Zionism was the effort to create a Jewish state in Palestine. Brandeis was not a religiously observant Jew, but believed deeply in the cause of Zionism, and is considered one of the most important leaders in its history.

In 1916, Brandeis was nominated to the Supreme Court by Democratic President Woodrow Wilson. Brandeis was the first Jew nominated to the Court. His confirmation hearings were controversial. Beginning in February 1916, a five-man subcommittee of the Senate Judiciary Committee heard testimony concerning Brandeis's "fitness" to the office of Associate Justice. For example, former President William Howard Taft signed a letter along with six former presidents of the American Bar Association urging rejection of Brandeis's nomination on grounds that Brandeis was unfit. (Taft and Brandeis served together on the Court from 1921–1930.) The president of Harvard University joined a letter adopted by other Boston Brahmins urging rejection of the nomination. At this time, the nominee himself did not testify, so Brandeis was heard only through the testimony of others. In early April, the subcommittee voted 3–2 to approve the nomination, splitting on party lines. In late May, after substantial politicking

by the Wilson Administration, Brandeis's nomination was forwarded to the Senate by the Judiciary Committee, again by a party line vote of 10–8. On June 1, by a vote of 47–22, Brandeis was confirmed by the Senate. He was 59 years old.

Brandeis remained on the Court for nearly 23 years, retiring in early 1939. He remained a reformer. His constitutional outlook was progressive, anti-monopolist and anti-big business, in favor of small government and state experimentation. His dissents during much of his tenure in the Court endeared him to progressives, and later, New Deal liberals who were upset with the reactionary opinions of the Court during this time. Although they differed greatly in their philosophical views, Brandeis's dissents were often paired with those of fellow dissenter Oliver Wendell Holmes, Jr.

In March 1891, Brandeis married Alice Goldmark, with whom he had two daughters. He retired from the Court on February 13, 1939, and died on October 5, 1941.

WILLIAM J. BRENNAN, JR. (1906–1997)—William J. Brennan, Jr., was born on April 25, 1906 in Newark, New Jersey. His parents, William Sr., and Agnes (McDermott) Brennan emigrated from Ireland to the United States in the late nineteenth century. William Jr. was the second of their eight children. He graduated from the University of Pennsylvania in 1928, and from Harvard Law School in 1931. From 1931 until 1949, Brennan practiced labor law in his hometown, except for four years of military service as an Army Judge Advocate General (JAG) officer during World War II. In 1949, Brennan was appointed to the New Jersey Superior Court. After a year, he was appointed to the Appellate Division of the Superior Court. In 1952, he was named to the New Jersey Supreme Court. Brennan was nominated to the Court by President Dwight D. Eisenhower on September 30, 1956, shortly before the 1956 presidential election. Brennan was nominated for several reasons: the Court's so-called "Catholic" seat had been vacant since the death of Frank Murphy in 1949, and Eisenhower had suggested to Francis Cardinal Spellman, a prominent Catholic cleric, that he would appoint a Catholic to the next available seat. In addition, the Republican Eisenhower wanted to demonstrate his ability to transcend political partisanship during the presidential campaign by appointing a Democrat. Brennan fit both criteria. But Eisenhower's third criterion was that his nominee be conservative, which Brennan decidedly was not.

Brennan was an affable, likable man who regularly forged temporary alliances with other Justices in order to obtain a majority. Although Brennan came to the Court shortly after the Court had decided its two *Brown v. Board of Education* decisions, his appointment was crucial in creating what became known as the Warren Court. Brennan is credited with writing the Court's *per curiam* opinion in *Cooper v. Aaron* (1958), which concerned the refusal of Arkansas Governor Orval Faubus to integrate Little Rock Central High School. In that opinion, the Court held unconstitutional Faubus's actions, and broadly and controversially declared that "the federal judiciary is supreme in the exposition of the law of the Constitution." Despite the efforts of Justice Brennan and several other members of the Court, it wasn't until 1962, when Felix Frankfurter was replaced by Arthur Goldberg, that the liberal members of the Warren Court had a solid five-person majority. By this time, Brennan was an extraordinarily influential member of that bloc. Brennan worked well with Chief Justice Warren, and with his fellow Justices. His writing style at this time rarely invoked absolutes. By "balancing" the competing interests of the government and the individual, Brennan's opinions made him appear more centrist than he probably was. In 1963, the Court began in earnest its constitutional criminal procedure revolution. In *Gideon v. Wainwright* (1963), it held unconstitutional Florida's law denying Clarence Gideon a lawyer when

the punishment could include imprisonment, thus overruling *Betts v. Brady*. In *Malloy v. Hogan* (1964), the Court held the self-incrimination privilege applicable to states, and in 1966 decided *Miranda v. Arizona*, which required police to warn a suspect of the consequences of any confession. These cases completed much of the "incorporation" of the first eight amendments to the Bill of Rights into the Due Process Clause of the Fourteenth Amendment, and Justice Brennan was an influential member of the Court during this time. At the same time the Court re-shaped the religion clause of the First Amendment. In *Engel v. Vitale* (1962) and *Abington v. Schempp* (1963), the Court held state-sponsored prayer in public schools violated the Nonestablishment Clause. The Court also altered the interpretation of the Free Exercise Clause in *Sherbert v. Verner* (1963), holding that a state cannot interfere with a person's free exercise of religion without showing a compelling interest. Justice Brennan was influential in changing this doctrine.

In 1969, even after Earl Warren was succeeded as Chief Justice by the more conservative Warren Burger, Justice Brennan remained a powerful member of the Court. In the early 1970s, the Court held capital punishment unconstitutional (*Furman v. Georgia*, 1972), and declared within the right of privacy the right to choose whether to have an abortion (*Roe v. Wade*, 1973). But the Court later upheld revised death penalty statutes (*Gregg v. Georgia*, 1976), and revised (but did not reverse) its decision in *Roe*. By the late 1970s, and continuing until his retirement, Brennan was less often in the majority, and became known for his vociferous dissents. Even during this period, Brennan remained an intellectual leader and one of the most influential Justices in the history of the Supreme Court.

Brennan believed in a living Constitution. In 1986 he wrote, "Current Justices read the Constitution in the only way that we can: as twentieth-century Americans." Brennan believed it was impossible for Justices to read the Constitution as it was originally intended. His view of constitutional interpretation led Republicans to appoint originalists to the Supreme Court, including Justice Antonin Scalia. This debate continues today.

Brennan remained on the Court for 34 years, and authored over 1,300 opinions. Brennan married Marjorie Leonard in 1928. They had three children. After her death in 1982, Brennan married Mary Fowler in 1983. He died on July 24, 1997.

DAVID BREWER (1837–1910) — David Brewer, the son of Christian missionaries, was born in what is present-day Turkey in January 1837. His maternal uncles David Dudley Field and Stephen Field were famous lawyers, the latter of whom was a member of the Supreme Court when Brewer joined it. Brewer moved to Kansas shortly before the Civil War to practice law after graduating from Yale Law School. Brewer was a judge for the last forty years of his life, first in the Supreme Court of Kansas, then as a federal circuit court judge, and, beginning in 1890, in the Supreme Court. Brewer was a devout Christian, penning an opinion in 1892 in which he stated that the United States was a Christian nation. As a matter of judicial philosophy, Brewer believed that the Court had a duty to limit unreasonable interferences with "liberty of contract." In 1892, in *Budd v. New York*, a majority of the Court reaffirmed the Court's decision in *Munn v. Illinois* (1877), holding constitutional New York's law regulating rates charged by grain elevators. Brewer dissented, noting "the paternal theory of government is to me odious." Two years later, in *Reagan v. Farmers' Loan and Trust Co.* (1894), Brewer held impermissible a rate regulation of the Texas Railroad Commission because the investors were denied a return on their money, a decision thus limited the effect of *Munn*. He joined the majority's opinion in *Lochner v. New York* (1905), which held unconstitutional New York's maximum hour law, but wrote

the Court's unanimous opinion sustaining Oregon's maximum hour law for women in *Muller v. Oregon* (1908). The distinction between the cases was the difference in physical capabilities between the sexes. Brewer wrote the Court's opinion in *In re Debs* (1895), which allowed a federal injunction to issue against striking employees, thus crippling the labor movement for years. Unlike most members of the Court, Brewer was solicitous of the claims made by Chinese claimants to the federal courts, and to claims made by deported Japanese aliens. Like many lawyers and judges of the late nineteenth century, Brewer feared "mobocracy," and believed the courts had a duty to limit the excesses of majority rule through the exercise of judicial review.

Brewer married Louise Landon in 1861. After her death, he married Emma Mott in 1901. He died on March 28, 1910, still a member of the Supreme Court.

STEPHEN BREYER (1938–)—Stephen Breyer was born in San Francisco on August 15, 1938. His father Irving was a lawyer and his mother Anne was active in political affairs. Breyer attended Stanford University, graduating in 1959. He then attended Oxford University, where he obtained a second bachelor's degree and earned first class honours. He returned to the United States to attend Harvard Law School, from which he graduated in 1964. Breyer clerked for Justice Arthur Goldberg in 1964–65, worked in the Department of Justice, and returned to Harvard Law School to teach.

In 1980, Breyer was nominated to the United States Court of Appeals for the First Circuit. In 1994, after the retirement of Justice Harry Blackmun, President Bill Clinton nominated Breyer to the Court. He won confirmation handily.

In fall 2001, Breyer gave the James Madison lecture at New York University. In the lecture, he explicated his theory of constitutional interpretation. Breyer stated that he believed in "an approach to constitutional interpretation that places considerable weight upon consequences—consequences valued in terms of basic constitutional purposes. It disavows a contrary constitutional approach, a more 'legalistic' approach that places too much weight upon language, history, tradition, and precedent alone while understating the importance of consequences." Breyer noted that all judges use text, history, precedent and tradition, but judging was not to be limited to those tools. Consequences counted as well. The purpose of this type of constitutional interpretation was to facilitate the active participation by people in government. He stated, "[W]hen judges interpret the constitution, they should place greater emphasis upon the 'ancient liberty,' i.e., the people's right to 'an active and constant participation in collective power.' I believe that increased emphasis upon this active liberty will lead to better constitutional law, a law that will promote governmental solutions consistent with individual dignity and community need." He later expanded on these ideas in his book, ACTIVE LIBERTY (2006).

Breyer married Joanna Hare in 1967. They are the parents of three children.

WARREN BURGER (1907–1995)—Warren Burger was born in St. Paul, Minnesota, on September 17, 1907. He was one of seven children, and made his way through college (two years at the University of Minnesota) and law school (St. Paul College of Law, now the Mitchell Hamline School of Law) by working as an insurance salesman.

After law school, Burger practiced law in St. Paul for over twenty years. Burger became active in Republican politics in Minnesota during this time, and managed the failed presidential bids of Harold Stassen in 1948 and 1952. After Dwight D. Eisenhower became President in 1953, Burger became an assistant attorney general in the Department of Justice. In 1956, Burger was appointed to the United States Court of Appeals for the District of Columbia Circuit.

Lame duck Democratic President Lyndon Baines Johnson nominated Associate Justice Abe Fortas to replace Earl Warren as Chief Justice in 1968. It failed. Newly elected President Richard Nixon, a Republican, fulfilled a promise to appoint Supreme Court Justices who were "strict constructionists" of the Constitution by nominating Burger. Burger was confirmed in mid-1969, and remained Chief Justice until his retirement in June 1986.

The Burger Court issued as many important decisions as the Warren Court, including *Lemon v. Kurtzman* (1971) (Nonestablishment Clause), *Roe v. Wade* (1973) (abortion and the right to privacy), *Miller v. California* (1973) (defining obscenity), *United States v. Nixon* (1974) (presidential powers), *Craig v. Boren* (1976) (gender discrimination), and *Regents of the University of California v. Bakke* (1978) (affirmative action).

Burger was Chief Justice at a time when the Court was often closely divided. During his tenure as Chief Justice, about 20% of decided cases were by a bare (usually 5–4) majority. He came across poorly in The Brethren, a skin-deep tell-all book about the Court by reporters Bob Woodward and Scott Armstrong. He was castigated for assigning opinions even when he was dissenting (the Court's tradition is that the senior justice in the majority assigns the opinion). Burger was a tireless promoter of judicial reform, including promoting a national court of appeals and working to increase the competence of lawyers trying cases in federal court.

Burger retired from the Court in 1986. He married Elvera Stromberg in 1933. They had two children. Burger died on June 25, 1995.

BENJAMIN N. CARDOZO (1870–1938)—Benjamin Nathan Cardozo was born in New York City on May 24, 1870, the son of Albert and Rebecca (Nathan) Cardozo. He and his sister Emily were twins. Cardozo's ancestors were Sephardic Jews who immigrated to the American colonies in the 1740s and 1750s from the Iberian peninsula via the Netherlands and England. Shortly after Cardozo was born, his father Albert, a judge, was implicated in a judicial corruption scandal sparked by the Erie Railway takeover wars, and resigned. His mother died in 1879, and Benjamin was raised during much of his childhood by his older sister Nell. At age 15, Cardozo entered Columbia University. Four years later, he matriculated at Columbia University Law School. Cardozo not only wanted to enter a profession that could materially aid himself and his siblings, he also hoped to restore the family name. After two years, Cardozo left Columbia to practice law. He entered the legal profession without obtaining his law degree, which was then unnecessary.

From 1891–1914, Benjamin Cardozo practiced law in New York City. He practiced with his brother Albert ("Allie") Cardozo, Jr., until Allie's death in 1909. He lived at the family's home with his brother and his sisters Nell, Lizzie, and Emily.

In the November 1913 elections, Cardozo was narrowly elected to the New York Supreme Court, a trial court, and the same court on which his father had served. Cardozo took office on January 5, 1914. Cardozo was appointed to a seat on the Court of Appeals, New York's highest appellate court, in 1917 and was elected to the seat later that year. He was the first Jew to serve on the Court of Appeals. Cardozo remained on the Court of Appeals until 1932, becoming Chief Judge on January 1, 1927. His tenure was marked by a number of original rulings, in tort and contract law in particular. In 1921, Cardozo gave the Storrs lectures at Yale, later published as The Nature of the Judicial Process. This book enhanced greatly Cardozo's reputation, and it remains valuable today for the light it throws on how judges engage in the process of judging.

In early 1932, Justice Oliver Wendell Holmes resigned from the Supreme Court. Cardozo, then 61, was nominated by President Herbert Hoover to the Court. Less than two weeks later, the Senate unanimously approved Cardozo's nomination.

FDR's New Deal (and state equivalents) were before the Court beginning in 1934, and the Court was deeply divided at this time. Cardozo, Louis D. Brandeis and Harlan Fiske Stone were considered the members of the "progressive" faction of the Court. Four members, Pierce Butler, James McReynolds, George Sutherland, and Willis Van Devanter, were considered as the "reactionary" faction of the Court. (Years later, they were dubbed the "Four Horsemen.") Owen Roberts and Chief Justice Charles Evans Hughes were considered the swing votes. Although this division of the members of the Court is misleading in some important respects, it is also relatively clear that the New Deal cases brought to the Court deepened and sharpened this divide. After FDR's re-election in 1936, and after the announcement of his Court-packing plan in early February 1937, the Court appeared to engage in the "switch in time that saved nine."

As a Justice, Cardozo was mindful of context, of the necessity of balancing competing interests, and deeply imbued with an understanding of the Court's role in constitutional government. He was a masterful writer, although his elliptical statements have been criticized by some scholars.

In late 1937, Cardozo suffered a heart attack, and in early 1938, he suffered a stroke. He died on July 9, 1938. He was a lifelong bachelor.

SALMON P. CHASE (1808–1873) — Salmon Chase was born on January 13, 1808, in New Hampshire. Chase was the eighth child of Ithamar and Janette (Ralston) Chase. In August 1817, after a disastrous experience in business that left him nearly bankrupt, Ithamar Chase died from a stroke. Three years later, Salmon Chase moved to Ohio to study at a boy's school at which his Uncle Philander, a bishop in the Episcopalian church, was in charge. He returned to New Hampshire at age 15, and in 1824 entered Dartmouth College. Chase made his way to Washington, D.C., and after teaching for a while, read law with William Wirt, then Attorney General under President John Quincy Adams. He then left for Cincinnati. In 1834, he married Catherine ("Kitty") Garniss, with whom he had a child, Catherine Jane. Less than a month after their child's birth, Kitty died. In September 1839, Chase married Eliza Ann ("Lizzie") Smith. Chase and Lizzie had three children, two of whom died in infancy. Catherine Jane died in 1840. Lizzie died in September 1845. Chase married his third wife, Sarah Belle Dunlop Ludlow, in November 1846. He and Belle had two children, one of whom died in infancy. Belle died in 1852. Chase did not remarry.

Chase joined the anti-slavery movement in the late 1830s, largely for moral reasons. Chase was an Episcopalian who detested nativism and racism, and who for the rest of his life would pursue the cause of equal rights. He was also vain, overweeningly ambitious, and, in the end, his biographer states, "a tragic figure." Chase was a Whig, a Liberty Party and Free Soil Party member, a Democrat, and finally a Republican. He served in the United States Senate from 1849–55, where he unsuccessfully opposed the Compromise of 1850, and was governor of Ohio from 1855–61, at a time of extraordinary tension as the United States neared the Civil War. Chase lost the Republican presidential nomination to Abraham Lincoln in 1860, and was named Secretary of Treasury after Lincoln's election. Chase was a capable Secretary, particularly given the importance of monetary issues in the conduct of the Civil War, but was not a loyal

cabinet member. Chase had little confidence in Lincoln's ability to manage the War, and began to campaign for nomination to the Presidency in 1864. Relations between Lincoln and Chase deteriorated for this and other reasons, and when Chase tendered his resignation in mid-1864, Lincoln accepted it.

On October 12, 1864, Chief Justice Roger Brooke Taney died. It appears that Lincoln had decided to appoint Chase, who both desired a position in the Supreme Court as a respite from politics, and who believed that he could run a Presidential campaign from there. Chase found the office of Chief Justice monotonous and tedious. He also realized that although Chief Justice, he had only one of the ten (1863), then one of the seven (1866) and then one of the nine (1869) votes that counted.

Chase's most important opinions were in the *Legal Tender Cases* (1870), *Ex parte McCardle* (1869), and *Texas v. White* (1869). In the first case, Chase wrote that the Legal Tender Act, which made greenbacks (those bills that we are now so familiar with) legal tender for the payment of debts and taxes, was unconstitutional because it violated the Due Process Clause of the Fifth Amendment and was contrary to the spirit of the Constitution. Chase's opinion was reversed in a 4–3 vote a year later, after President Ulysses S. Grant appointed William Strong and Joseph Bradley to the Court. In *Ex parte McCardle*, the Court held constitutional Congress's decision to strip the Court of the jurisdiction to hear McCardle's case. McCardle was tried in a military court for inciting insurrection pursuant to the Reconstruction Act of 1867. McCardle argued that, because the civil courts were open, a military trial of a civilian was unconstitutional, a conclusion that would have greatly affected Reconstruction. In *Texas v. White*, released the same day as *McCardle*, the Court held that secession was constitutionally impermissible, which meant no southern state left the United States during the Civil War.

In 1870, Chase suffered a stroke. When he returned to the Court in 1871, he was gaunt and sickly. He suffered another stroke in spring 1873, and died on May 7, 1873.

SAMUEL CHASE (1741–1811)—Samuel Chase was born in Maryland on April 17, 1741. At 18, he moved to Annapolis to read law. Chase was an early supporter of independence from England. He signed the Declaration of Independence, was the principal draftsman of Maryland's 1776 constitution, and participated in the War of Independence. Chase was also involved in an attempt to corner the flour market in 1778, during the War. He did so while a member of the Continental Congress at a time when the Congress was authorizing the purchase of flour for revolutionary troops. Chase lost his seat, and much of his reputation. Alexander Hamilton, who intensely disliked Chase, stated that Chase had "the peculiar privilege of being universally despised." Chase was an Anti-Federalist at the time of the framing and ratification of the Constitution. At some point shortly thereafter, Chase reversed course and became a staunch supporter of the exercise of federal power and a believer in a structured and differentiated political and social order. Democracy was seen by Chase as a "mobocracy." One explanation for Chase's shift in thinking is that Chase feared revolution, for the radicalism of the French Revolution and the French Terror struck Chase and many others as a harbinger of events to come in the United States. Additionally, in 1794, in western Pennsylvania, the Whiskey Rebellion occurred. The Rebellion was a result of the federal government's effort to collect excise taxes on whiskey distilled in western Pennsylvania, a tax that was despised. The Whiskey Rebellion ended only after Washington sent about 13,000 federal troops to the area.

During the late 1780s and early 1790s, Chase served in the Maryland judiciary in a number of posts. George Washington nominated Chase to succeed the Virginian John Blair on the Court in 1796. Washington left no written record why Chase was nominated. Chase's first written opinion was in *Calder v. Bull* (1798). *Calder* concerned the propriety of an act of the Connecticut legislature overturning a decision of the Connecticut judiciary. The issue before the Court was whether the act violated the Ex Post Facto Clause of the Constitution. The members of the Court agreed that the clause applied only to criminal cases. They disagreed, however, concerning the authority of the judiciary to declare void acts that violated "principles of natural justice." In Chase's view, any law that violated those principles was void, even if it did not violate a textual provision of the Constitution. In contrast, Justice James Iredell believed the "ideas of natural justice are regulated by no fixed standard." Consequently, the Court was limited to declaring void only those acts that were contrary to the text of the Constitution.

Chase is best known, however, as the only Supreme Court Justice to be impeached. After federal judge John Pickering of New Hampshire was impeached and convicted in 1804, Chase was impeached by the House of Representatives, pursuant to a quiet request by President Thomas Jefferson. Chase was impeached for his conduct in several "political" trials and his intemperate remarks to a Baltimore grand jury while riding circuit. In early February 1805, he was tried in the Senate. The prosecutor was John Randolph, a distant cousin of Jefferson and John Marshall. Randolph was an extremely partisan Republican (predecessors to today's Democratic Party). Of the 34 senators, 25 were Jeffersonian-Republicans. If the Senators voted along party lines, Chase would be convicted. Between the time the Articles of Impeachment were presented to the Senate and the trial, Randolph assailed Jefferson's attempted compromise of the Yazoo land fraud. Republicans disaffected with Jefferson's efforts to settle the scandal joined with the nine Federalists to block the two-thirds vote necessary to convict Chase. No more than 19 votes were garnered for any of the eight Articles of impeachment.

One conclusion drawn from the acquittal of Chase is the independence of the Judiciary from legislative interference, for no other Supreme Court Justice has been impeached. Whether that conclusion was reached at the time of the acquittal is the subject of considerable debate. Some scholars argue that Chase's behavior was known to be so different from that of Marshall and other Federalist judges that Marshall and others were in no danger of impeachment from the Republican Congress. Others argue that Chase's acquittal was attributable to intervening political events, not a consensus concerning judicial independence. Probably the most important consequence of Chase's impeachment was the eventual understanding that members of the Judiciary were expected to withdraw from the hubbub of partisan politics to the cloister of the judicial chambers, although that injunction has been breached by a number of Justices.

Chase married Ann Baldwin in May 1762. They were the parents of seven children, four of whom lived to adulthood. In 1784, eight years after Ann's death, Chase married Hannah Kilty, with whom he had two daughters.

Chase remained on the Court until his death in 1811, at age 70.

BENJAMIN CURTIS (1809–1874)—Benjamin Curtis was born November 4, 1809 in Massachusetts. He graduated from Harvard College in 1829, and from the law school three years later. Curtis then practiced law in Boston for nearly twenty years. He was nominated to the Supreme Court by President Millard Fillmore in 1851, and

he remained on the Court for six years. Curtis is best known for his opinions in two cases: *Cooley v. Board of Wardens* (1852), and *Dred Scott v. Sandford* (1857). In *Cooley*, the issue was whether the states could regulate aspects of commerce, or whether the exclusive jurisdiction to regulate commerce resided in Congress. Curtis concluded that the federal government enjoyed exclusive power to regulate commerce only when the object of regulation required national uniformity. In all other cases, states were permitted to regulate commerce. In *Dred Scott*, Curtis dissented from the Supreme Court's holding that the Court lacked subject matter jurisdiction because Dred Scott was not a citizen of the United States, and from the Court's dictum that the Missouri Compromise of 1820 was unconstitutional. Curtis resigned in dismay and disgust from the Court after *Dred Scott*.

Curtis was only 47 when he resigned from the Court. He returned to the practice of law in Boston after resigning, and acted as defense counsel to Andrew Johnson during Johnson's impeachment trial in 1868. Curtis was thrice married, and was the father of 12 children.

WILLIAM O. DOUGLAS (1898–1980)—William O. Douglas was born in Maine, Minnesota, on October 16, 1898, and raised in Washington state. When he was three, he contracted polio, and his mother, Julia Bickford, daily massaged his legs for several hours until Douglas was able to walk again. His father, William, was a Presbyterian minister who died from complications after surgery when William O. Douglas was six. Douglas was academically gifted, and received a scholarship to Whitman College, graduating in 1920. Douglas taught school for two years, and then traveled to New York City, where he attended Columbia Law School. He was a very good student at Columbia, but felt slighted because he failed to secure a clerkship with Supreme Court Justice Harlan Fiske Stone, a former Columbia Law School professor and dean. After a brief time working at a large New York law firm, and following a quick sojourn back to Washington, Douglas returned to Columbia as a professor. In 1928, he moved to Yale Law School, where he remained for six years. Douglas, like many others of his generation, was captivated by FDR's New Deal, and left Yale formally in 1934 to work for the Securities and Exchange Commission (SEC). Its chairman was Joseph P. Kennedy, the father of President John F. Kennedy. When Kennedy left the SEC in 1936, he managed Douglas's nomination as a member of the SEC. Within a year and a half, Douglas was named its chairman. After the retirement of Louis D. Brandeis in 1939, Douglas's loyalty led FDR to nominate Douglas to the Court. He was forty years old, one of the youngest appointees ever to the Court.

Douglas served on the Court longer than any other Justice, 36 years and 7 months. On December 31, 1974, Douglas suffered a massive stroke while vacationing. Although he remained determined to return to full health and stay on the Court, Douglas's ill health caused him to retire on November 18, 1975.

Douglas was strongly libertarian in his opinions, distrustful of establishments of all types, and considered himself a voice for the voiceless and powerless. Along with Justice Hugo Black, he was an absolutist on the Bill of Rights. He was well versed in corporate law, his specialty as a law professor. He wrote his opinions quickly, which sometimes meant they were poorly crafted. He treated his law clerks poorly, and was always in search of money and women.

Douglas was married four times. He married Mildred Riddle while in law school. They had two children, Mildred and William Jr. He divorced her in 1954. That same year, Douglas married Mercedes Hester, from whom he was divorced in 1963. His

marriage to Joan Martin lasted from 1963 to 1966 and also ended in divorce. His last marriage was to Cathleen Heffernan in 1966. Douglas died on January 19, 1980.

STEPHEN FIELD (1816–1899)—Stephen Field was born in Connecticut on November 4, 1816. He was the son of David Dudley Field, a Congregationalist minister, and Submit Dickinson. As a teen, Field lived in Asia Minor (now Turkey) with his sister and her husband. He entered Williams College at 17, from which he graduated four years later. He then read law in the office of his older brother, also named David Dudley Field, in 1837. Field practiced law with David Dudley Field until 1848. (David Dudley Field was a prominent antebellum legal reformer, whose major effort work was a revision of New York's law of civil procedure, which is known as the "Field Code.") Field moved to California in 1849 during its Gold Rush. California became an American state in 1850 as part of the Compromise of 1850. Field was elected to the new state legislature, and, borrowing from his brother, successfully urged the adoption of the Field Code. Field was defeated in his run for the state Senate in 1851, and returned to the practice of law. In 1857, Field was elected to the Supreme Court of California, where he remained until he was appointed to the Supreme Court by Abraham Lincoln in 1863, after Congress added a 10th seat to the Court.

In 1873, Field dissented in *The Slaughter-House Cases*, urging the Court protect private property through an expansive interpretation of the Privileges or Immunities and Due Process Clauses of the Fourteenth Amendment. In *Munn v. Illinois* (1877), Field dissented from the Court's holding that property "affected with a public interest" could be subject to price regulation. Field believed the Court should exercise its power to limit the ability of the states to regulate a person's use of property.

During his last years on the Court, Field served with his nephew, David Brewer. Field was determined to serve more years on the Court than John Marshall's 33 years, and so refused to quit the Court even though he was not performing his share of the Court's work, and even though he was asked by other members of the Court to resign. After eclipsing Marshall's length of service, Field resigned in 1897. He returned to religion in his last years, and died in April 1899, at age 82.

Field married Virginia Swearingen on June 2, 1859. They had no children.

ABE FORTAS (1910–1982)—Abe Fortas was born in Memphis, Tennessee, on June 19, 1910. His parents, Woolfe (later William) and Rachel (Berzansky) Fortas, were born in Russia and Lithuania, respectively. The Fortases were part of the massive immigration to the United States of Jews and Catholics from Eastern and Southern Europe during the late nineteenth and early twentieth centuries. Fortas's parents settled in Memphis because some family was already there. Fortas was raised as an Orthodox Jew in Memphis, although as an adult he was not religious. Fortas studied hard, and obtained a scholarship to attend Southwestern College in Memphis, where he excelled both academically and socially. In 1930, Fortas entered Yale Law School. Fortas finished second in his class, and was the editor-in-chief of the *Yale Law Journal*. In 1933, although appointed to the Yale Law School faculty as a teaching fellow, he moved to Washington and worked in the Department of Agriculture with the legal realist Jerome Frank. During much of the remainder of the decade, Fortas alternated between Yale and Washington. He left Yale permanently for a position in the Department of the Interior, where he eventually was named undersecretary. In January 1946, Fortas entered the private practice of law with Thurman Arnold, a former Yale Law School professor, legal realist par excellence and New Dealer. They were joined shortly thereafter

by Paul Porter, and the firm of Arnold, Fortas and Porter was created. It is known today as Arnold & Porter.

Lyndon Baines Johnson (LBJ) ran for Senator from Texas in 1948. His opponent in the Democratic primary (then a one party state, contested elections occurred in primaries, not the general election), Coke Stevenson, had been a popular governor of Texas. Neither gained a majority in the primary, requiring a runoff election. LBJ had appeared to win the runoff by 87 votes. Charges of voting fraud in south Texas led Stevenson to obtain an injunction preventing LBJ's name from appearing on the ballot for the general election, pending a hearing. Although a number of lawyers were involved in determining LBJ's strategy, it was Fortas who managed the litigation and succeeded in having the injunction overturned. Thereafter, LBJ viewed Fortas as the best lawyer in America, and their relationship became stronger during the 1950s and 1960s. In 1965, LBJ maneuvered to place Fortas on the Supreme Court. He nominated Justice Arthur Goldberg to become Ambassador to the United Nations. Goldberg's resignation gave him a seat to fill. Fortas initially declined the nomination because he was concerned about his personal financial situation. But LBJ told Fortas he was going to nominate him, and Fortas reluctantly accepted the appointment.

Fortas's appointment in 1965 ensured the continuation of the Court's liberal majority. Between 1965 and 1969, the Court decided a number of cases expanding the protections of individual rights in criminal procedure, privacy and juvenile rights cases. Fortas's general view of judging was to find legal authority to support the conclusion to which he was predisposed. This "realist" approach to jurisprudence was one of the reasons why Fortas and Justice Hugo Black found themselves at odds with one another.

During his time on the Court, Fortas continued to advise LBJ on political matters, both foreign and domestic. In June 1968, Chief Justice Earl Warren had Fortas arrange an appointment at the White House, at which time Warren announced his retirement, effective upon the confirmation of his successor. On June 26, 1968, LBJ nominated Fortas as Chief Justice. To Fortas's seat, LBJ nominated a friend from Texas, Homer Thornberry. In July, Fortas erred, appearing before the Senate Judiciary Committee despite the fact that no sitting Justice had ever done so. During those hearings, Fortas lied to the Committee. The Senate recessed without voting on the nomination. When Senator Robert Griffin learned in September that Fortas had accepted $15,000 to give some summer school lectures at American University's law school, money that had been raised by Fortas's former partners and clients, the nomination was in trouble. In early October, after a vote to end the filibuster on the nomination failed, Fortas asked that his nomination be withdrawn. By 1969, further revelations led Fortas to resign from the Court. A convicted financier named Louis Wolfson had agreed to pay Fortas $20,000 per year for the remainder of his life, an amount that continued until the death of his wife if Fortas died before she did. Fortas received the first check in January 1966, after joining the Court, and though he returned it in December, Fortas's actions were condemned as ethically improper.

After resigning from the Court, Fortas was rebuffed in his attempt to rejoin the law firm he had helped create, although his wife remained a partner in the firm. In 1970, he started another law firm. He practiced law until his death. Fortas was both extraordinarily intelligent and politically savvy. He was a great lawyer, and a complex man of many masks.

In 1935, Fortas married Carol Agger. They did not have any children. Fortas died on April 5, 1982.

FELIX FRANKFURTER (1882–1965) — Felix Frankfurter was born in Vienna, Austria, in 1882. His family immigrated to the United States in 1894. Although Frankfurter knew no English when his family settled in New York, his intellectual brilliance and ambition took him to the City College of New York, where he completed a program combining part of high school and all of college. Frankfurter graduated first in the class of 1906 at Harvard Law School. After a short time in private practice, Frankfurter worked for three years as an Assistant United States Attorney in New York under Henry Stimson. When Stimson was appointed Secretary of War, Frankfurter moved to Washington, D.C. and joined the War Department as a legal counsel. In 1914, Frankfurter joined the faculty of the Harvard Law School, where he remained until his appointment to the Supreme Court in 1939.

Frankfurter was a political progressive, and intensely interested in politics. During his time at Harvard, Frankfurter did not shy away from public affairs. From 1916–18, President Woodrow Wilson used Frankfurter to investigate a growing number of labor disputes and controversies. One of the most controversial cases of the 1920s was the criminal conviction of two Italian immigrants (and anarchists), Sacco and Vanzetti, on charges of murder in a payroll robbery in Massachusetts. Critics of the trial, including Frankfurter, argued the trial was unfair due to public hysteria. Frankfurter was often vilified as a "red" during this time, and some Harvard alumni demanded his firing. Frankfurter also occasionally made arguments before the Supreme Court in cases in which progressive ideals were at issue. Frankfurter wrote a number of scholarly works, but was better known as a contributor of essays and articles to *The New Republic*, a magazine founded by like-minded progressives. Justices Oliver Wendell Holmes, Jr. and Louis D. Brandeis delegated to Frankfurter the appointment of their "secretaries," later called law clerks. These secretaries were invariably Frankfurter's brightest students, many of whom later worked in the federal government during the New Deal administration of Franklin D. Roosevelt. Frankfurter himself flattered and courted FDR, and visited the White House often. His influence on FDR, who listened to the opinions of many different advisers, both in and out of government, is difficult to discern, but when FDR was given the opportunity to remake the Supreme Court between 1937–41, Frankfurter became the third of FDR's eight appointees to the Court.

Frankfurter was appointed to the seat held by Justice Benjamin N. Cardozo, a seat that had also been occupied by Justice Holmes and Justice Joseph Story. Frankfurter was only the third Jewish Justice appointed to the Supreme Court (following Cardozo and Brandeis). The appointment of Frankfurter and other political liberals and progressives, many believed, would transform the Court. It didn't. Frankfurter was a political liberal who disparaged legal formalism and who believed in judicial restraint. In Frankfurter's view, Justices Hugo Black and William O. Douglas too regularly adapted their principles to reach a politically palatable result. The seeds of the divisions between Black and Douglas, on the one hand, and Frankfurter on the other, may have been sown in the first flag salute case, *Minersville School District v. Gobitis* (1940). The Court, in an opinion by Frankfurter, concluded that a public school was permitted to expel a student who refused, for religious reasons, to salute the American flag. Only Justice Stone dissented. Within a year, it appeared to Frankfurter that Black and Douglas were planning on reversing *Gobitis* for political rather than legal reasons. To Frankfurter, this was anathema. When the Court overruled *Gobitis* in 1943 in *West*

Virginia Board of Education v. Barnette, the relationship between these politically progressive Justices fractured.

During the 1950s and early 1960s, Frankfurter's vision of judicial restraint appeared increasingly out of step with a majority of the Court. In 1962, Frankfurter suffered a stroke. He retired from the Court that year, after 23 years. Frankfurter died in 1965. He was survived by his wife, Marion A. Denman, the daughter of a Presbyterian minister. They were married by Cardozo in December 1919. They did not have any children.

MELVILLE FULLER (1833–1910)—Melville Fuller was born in Maine on February 11, 1833. Fuller's parents divorced when he was a child, and he was raised by his maternal grandfather, then the Chief Justice of the Maine Supreme Judicial Court. Fuller graduated from Bowdoin College, attended Harvard Law School briefly, and read law in the offices of his uncles. Fuller moved to Chicago in the mid-1850s. Fuller remained in Chicago practicing law until he was somewhat surprisingly nominated as Chief Justice of the United States in spring 1888. Fuller was a well-known lawyer, and was apparently nominated in large part to aid the chances of President Grover Cleveland and Illinois Democrats in that state in the 1888 elections. Despite this, Cleveland lost both the vote in Illinois and the election.

Fuller was largely opposed to governmental efforts to regulate business and property. For progressives and populists, Fuller's 1895 opinions in *United States v. E.C. Knight Co.* (holding impermissible use of Sherman Anti-trust Act to a sugar manufacturing monopoly on grounds that manufacture and commerce are distinctly separate aspects of business) and in *Pollock v. Farmers' Loan & Trust Co.* (declaring unconstitutional as a direct tax income tax act of 1894) were anathema.

In 1858, Fuller married, but his wife died six years later. In 1866, he married again, a marriage that was financially advantageous. Fuller died on July 4, 1910.

RUTH BADER GINSBURG (1933–)—Ruth Bader Ginsburg was born in Brooklyn, New York, on March 15, 1933. She is the younger of two children born to Nathan and Celia (Amster) Bader. Her older sister died when Ruth was a young child. Ginsburg finished first in her class at Cornell University. She then married her husband Martin, also a Cornell graduate. After he completed his military service obligation, Martin returned to Harvard Law School, where he had completed one year. Ruth also entered Harvard Law School then. Women were few in number at Harvard in the mid-1950s, and instructors occasionally took delight in applying the "Socratic" method to female students. Ginsburg became a member of the *Harvard Law Review* in her second year. Martin, a year ahead of Ruth, took a job with a law firm in New York. Ruth transferred to Columbia Law School, and was invited to join the *Columbia Law Review*, making her the only Justice to be a member of two prestigious law reviews as a student. Her law degree is from Columbia, despite the fact that she spent just one year there.

Ginsburg was a law clerk and a research associate at Columbia before becoming a professor at Rutgers (Newark) Law School in 1963. She began working on sex (now gender) discrimination cases. In 1972, she returned to her alma mater, continuing her advocacy. In 1980, Ginsburg was nominated to the United States Court of Appeals for the District of Columbia Circuit.

In 1993, President Bill Clinton nominated Ginsburg to replace the retiring Byron White. She was the second woman appointed to the Court, and the first Jewish Justice to be appointed since the resignation of Abe Fortas in 1969.

As a Justice, Ginsburg has created something akin to strict scrutiny in gender discrimination cases in which women are treated differently than men (*United States v.*

Virginia, 1996). In Nonestablishment Clause cases, she has revived the argument of "separationism." She is in general not inclined to broad pronouncements of law, and is a careful writer.

Ginsburg married in 1954. Her husband died in 2010. They are the parents of two children.

ARTHUR GOLDBERG (1908–1990)—Arthur Goldberg was born in Chicago, Illinois, on August 8, 1908. Goldberg was the son of Russian immigrant parents, and the youngest of their eight children. In 1929, he graduated from Northwestern University Law School. Goldberg was a prominent labor lawyer who was responsible for the merger of the American Federation of Labor (AFL) and the Congress of Industrial Organization (CIO) into the AFL-CIO in 1955. Goldberg was named Secretary of Labor by President John F. Kennedy in 1961. After the retirement of Justice Felix Frankfurter in 1962, Goldberg was appointed to the Court by Kennedy. It was Goldberg's appointment to the Court that allowed the formation of the "Warren Court" as it is understood historically, for Goldberg became a reliable fifth vote for the Court's "progressive" or "liberal" opinions. His most well-known opinion was in the right to privacy case of *Griswold v. Connecticut* (1965).

After just three years on the Court, Goldberg resigned to become the United States representative to the United Nations. He resigned after President Lyndon Baines Johnson used some of his legendary persuasive power on Goldberg. LBJ wanted to appoint his friend and confidante Abe Fortas to the Court, and created an opening on the Court to do so.

Goldberg resigned from his position as UN representative in 1968. He worked for human rights causes for the remaining 22 years of his life. Goldberg died in 1990. Goldberg married Dorothy Kurgans in 1931.

JOHN MARSHALL HARLAN (1833–1911)—John Marshall Harlan (sometimes called the first Justice Harlan, to distinguish him from his namesake grandson who also served on the Court) was born in Kentucky on June 1, 1833. Harlan was raised in comfortable circumstances, and his family was a slaveholding family. Although Harlan later turned against the institution of slavery, he briefly owned slaves as a young man. Harlan's father was a lawyer and active in Kentucky Whig politics. In 1850, Harlan graduated from Centre College. He then spent two years studying law at Transylvania University. He returned to his father's law office to complete his law studies and became a member of the Kentucky bar in 1853. When the Civil War began, Kentucky remained in the Union, although it was a slave state. Harlan joined the United States Army as a lieutenant colonel. Harlan remained in the Army until his father's death in 1863. Harlan became Kentucky Attorney General in 1864, and campaigned for George McClellan against Abraham Lincoln in the presidential election of that year. He was twice the unsuccessful Republican candidate for Governor of Kentucky, in 1871 and 1875. In 1876, Benjamin Bristow, Harlan's law partner, ran for the Republican presidential nomination, and Harlan led the Kentucky delegation at the convention. Kentucky's switch to Rutherford B. Hayes cemented Hayes's nomination.

The presidential election of 1876 was hotly disputed, and during the events that eventually led to the electoral victory of Hayes, Justice David Davis resigned to become a Senator from Illinois. Hayes wanted to appoint a southerner, and Harlan fit the bill. He was forty-four years old.

Harlan's legacy is found in his dissents. He dissented in *The Civil Rights Cases* (1883), which, as suggested by his wife Malvina, was written by the same pen Roger

Brooke Taney used to write *Dred Scott*. He also dissented in *Plessy v. Ferguson* (1896), which included prescient assessments about history's judgment of the case. Harlan's dissents in *Lochner v. New York* (1905) and in the *Income Tax Cases* (1895) were subsequently vindicated. But Harlan was not a precursor of the twentieth century liberal. Harlan left a very mixed legacy on substantive due process, writing the Court's opinion in another reviled case, *Adair v. United States* (1908) (holding unconstitutional a "yellow dog" contractual provision, which barred interstate railroads from conditioning employment on agreement by the worker not to join a union).

Harlan was a very religious man, and scholars have persuasively argued that Harlan's Presbyterian faith explains his jurisprudence well.

Harlan served on the Court for slightly less than 34 years, one of the longest tenures in the history of the Court. Harlan was married to Malvina Shanklin in 1856. They were the parents of six children. He died on October 14, 1911.

JOHN MARSHALL HARLAN (1899–1971)—John Marshall (John M.) Harlan was born in Chicago, Illinois, on May 20, 1899, the grandson of the first Justice John Marshall Harlan, and the son of John Maynard Harlan, a lawyer and minor Chicago politician. He graduated from Princeton University in 1920, and then attended Oxford University as a Rhodes Scholar. Harlan moved to New York City, and spent one year at New York Law School, during which time he completed two years of work. He became a member of the New York bar in 1924. After a short time in private practice, his mentor, Emory Buckner, was appointed United States Attorney for the Southern District of New York. Harlan followed Buckner to the U.S. Attorney's office. He then returned to the private practice of law in New York.

Harlan was in his early 40s when the United States entered World War II, but volunteered for military duty and was appointed to an important position with the Army Air Corps (now the Air Force) in England, where he again distinguished himself.

Harlan returned to private practice after the war, and in January 1954, Harlan was nominated to the Second Circuit Court of Appeals. He remained on the court for about a year when he was nominated to the Supreme Court by President Eisenhower to succeed Robert H. Jackson.

Harlan is best known as the dissenter in the Warren Court. In general, Harlan believed that judges are not the best guarantors of individual liberty. Instead, judges should be restrained in their constitutional decision-making, and remain respectful of the ways in which federalism, separation of powers, and the political process generally protect individual freedom. Harlan was a principled man who believed in making decisions based on "neutral principles." In many respects, Harlan's notion of judicial restraint paralleled that of Felix Frankfurter, with whom he was often unfavorably compared in the past. However, Harlan did not always believe the political process was the best guarantor of individual rights. In *Poe v. Ullman* (1961), Harlan dissented from the Court's dismissal of the case on standing grounds, and argued that Connecticut's law prohibiting a married couple from using contraceptives was unconstitutional. His opinion laid the groundwork for the Court's decision in *Griswold v. Connecticut* (1965), holding the law unconstitutional.

In 1928, Harlan married Ethel Andrews, and they had a daughter. He died on December 29, 1971.

OLIVER WENDELL HOLMES, JR. (1841–1935)—Oliver Wendell Holmes, Jr. was born on March 8, 1841, in Boston, Massachusetts, the eldest of three children. His

father, after whom he was named, was a medical doctor and writer who helped found *The Atlantic Monthly*. His mother, Amelia Jackson, was an abolitionist, and Massachusetts then was the home of abolitionism. As an adult, Holmes was tall and handsome, and wore a military mustache. Holmes had a difficult relationship with his father. He was his mother's favorite child, and obtained his confidence from her.

Wendell, as he was called, attended Harvard College beginning in 1857. Shortly before he graduated, the Civil War began. Holmes left Harvard to join the Twentieth Massachusetts Regiment when the Civil War broke out. Because the Regiment did not fight before graduation, Holmes completed his exams and graduated in uniform. Holmes was wounded three times in the Civil War, most seriously in October 1861 at Ball's Bluff (in the chest). His experiences in the Civil War greatly affected his view of life. Before the War, Holmes had joined a Christian society at Harvard, and was a supporter of the abolitionist cause. After the War, he was an agnostic skeptical about human claims of progress. After his three-year military commitment ended, Holmes returned to Boston. He graduated from the Harvard Law School and joined the Massachusetts bar in 1867. As a lawyer he wrote articles for the *American Law Review* and revised Chancellor James Kent's Commentaries on American Law. Holmes believed a man had to earn his reputation before he turned 40, or he would not make it at all. Shortly before his 40th birthday, he was invited to give the Lowell Lectures. The book published as a result of those lectures was The Common Law, which brought him the acclaim he had long desired. Shortly thereafter, Holmes accepted a teaching position at Harvard Law School, but in the middle of his first term, he accepted an appointment to the Massachusetts Supreme Judicial Court, where he remained a Justice until 1902.

Theodore Roosevelt nominated Holmes to the Supreme Court because he thought Holmes was trustworthy on the issue of taxation of those in the colonies (gained as a result of the Spanish-American War of 1898), and because Roosevelt knew well Holmes's stock speech glorifying war. Roosevelt later viewed the appointment of Holmes as the major mistake of his presidency because he and Holmes disagreed vehemently about the value and interpretation of the Sherman Antitrust Act. Holmes remained on the court for 29 years, retiring at 90 from the Supreme Court after a visit from Chief Justice Charles Evans Hughes. He died three years later, on March 4, 1935.

Holmes' jurisprudence is the wellspring for much of current American views about jurisprudence. Holmes (1) tuned everyone to a social view of law—"The life of the law has not been logic, it has been experience"; (2) was perceived to advocate judicial restraint when conservative judicial activism was denounced by progressives; (3) advanced the idea of law as prediction, thus leading to the is/ought of legal realism; (4) urged a view of law from the perspective of a bad man; and (5) argued for a thoroughgoing positivism (and opposition to moral language in law).

Holmes was a complete skeptic about natural law and rights and a believer in Social Darwinism. Holmes's dissent in *Lochner v. New York* (1905) was offered as an erroneous example of Holmes's progressivism. This effort was both led and inspired by Felix Frankfurter. It wasn't until the 1960s that a revised assessment of Holmes occurred. Professor Albert Alschuler has written a book emphasizing the dark side of Holmes' jurisprudence, which may best be exemplified by his opinion in *Buck v. Bell* (1927), which upheld Virginia's sterilization of those declared mentally retarded, and in which he wrote, "Three generations of imbeciles are enough."

Holmes was an exceptional writer of pithy statements ("A word is but the skin of a living thought"; and "The fourteenth amendment does not enact Mr. Herbert Spencer's

Social Statics," among others), and together with his physical appearance, extraordinarily long life, stoicism, devotion to duty, lionization among successive generations, and lack of apparent ethnic prejudice (in an era of rampant anti-semitism) made him an iconic judicial figure to many mid-twenieth century legal scholars.

In addition to his Civil War experiences, his marriage and family life profoundly affected his view of life. Holmes lived at home until he married his schoolmaster's daughter, Fanny Dixwell, in 1872. They remained married until her death in 1929. He and his wife did not have any children, possibly as a result of an illness she suffered from very shortly after they were married. In the late 1890s, Holmes was involved in an unconsummated (?) affair with a married woman, Lady (Clare) Castletown.

CHARLES EVANS HUGHES (1862–1948)—Charles Evans Hughes was born in New York State on April 11, 1862. His father was a minister who moved to the United States from England. His mother's family had lived in America from the colonial period. Hughes was a precocious and intelligent child who was educated at home until he attended college at Madison University (now Colgate University) and at Brown University. Hughes then excelled at Columbia Law School. He worked for Walter S. Carter, whose ability to find and hone talented lawyers made his law firm the well-spring of many New York law firms. Hughes married Carter's daughter, Antoinette. Stress at work caused Hughes to leave the practice of law in the early 1890s to teach law at Cornell, but he returned after two years for monetary reasons and because of his loyalty to his father-in-law. Hughes became a well-known lawyer to the public through his efforts in 1905 in investigating the pricing by companies of gas utility rates, and later that year, in investigating self-dealing and corrupt financial practices in the insurance industry (the Armstrong Committee). Hughes's reputation as an honest, thorough and fair-minded lawyer led to his nomination in 1906 as the Republican gubernatorial candidate in New York. He was elected Governor, and was in office from 1907–10, when he was appointed to the Supreme Court as an Associate Justice. Hughes wrote the Court's opinion in *Bailey v. Alabama* (1910), which held unconstitutional an Alabama statute that permitted peonage, and the opinion in *The Shreveport Rate Cases* (1914), which upheld a federal regulation of intrastate commerce on the ground that such commerce affected interstate commerce. He dissented in *Coppage v. Kansas* (1915), in which the Court held unconstitutional a law prohibiting an employer from conditioning employment on an employee's promise not to join a union (the yellow-dog contract). In 1916, Hughes resigned from the Court to accept the Republican nomination as its presidential candidate. The incumbent, Woodrow Wilson, defeated Hughes. Hughes then returned to the private practice of law. In 1921, he was appointed Secretary of State by Warren G. Harding, where he remained until 1925. Later that decade, he was a judge of the Permanent Court of Arbitration and the Permanent Court of International Justice.

In 1930, after the death of Chief Justice William Howard Taft, President Herbert Hoover nominated Hughes to the Court as Chief Justice. Hughes was Chief Justice of a fractious, controversial Court. Hughes was a progressive on issues of race, and during the Great Depression, was often supportive of New Deal and state New Deal-type legislation. But he and the other members of the Court enraged FDR when the Court unanimously held that several New Deal acts were unconstitutional on "Black Monday," May 27, 1935. In several other cases concerning the New Deal, Hughes was both in the majority holding laws unconstitutional, and in the minority urging their constitutionality. FDR was re-elected in 1936, and tried to "solve" the problem of a recalcitrant Court by urging Congress to "reorganize" it by adding one justice for

every justice who had reached the age of 70 and who had not resigned. During the debate, which FDR's opponents dubbed a "court-packing" plan, Hughes sent a letter to the Senate Judiciary Committee signed by Hughes, Justice Brandeis and Justice Van Devanter, stating that the Court was up-to-date on its work. During this Constitutional Crisis of 1937, Hughes wrote the Court's opinions in *West Coast Hotel v. Parrish* and *NLRB v. Jones & Laughlin Steel*, both of which strongly suggested all (or nearly all) New Deal measures would be held constitutional. Hughes left the Court in mid-1941. He died on August 27, 1948.

JAMES IREDELL (1751–1799)—James Iredell was born and raised in England. At age seventeen, he emigrated from England to North Carolina. Iredell read law under Samuel Johnston, later a governor of North Carolina. In 1773, Iredell married Johnston's daughter Hannah, with whom he had three children. Iredell began practicing law in North Carolina at age 19. He fervently supported revolution, and later urged North Carolina to ratify the Constitution.

Iredell held a number of political and judicial posts in North Carolina, including serving as its attorney general. George Washington nominated Iredell to the Supreme Court in early 1790, and the Senate confirmed him two days later. In *Chisholm v. Georgia* (1793), the Court held that a state may be sued in federal court. Iredell dissented. The reaction against *Chisholm* led to its reversal by the adoption of the Eleventh Amendment in 1798. Iredell's most important opinion was in *Calder v. Bull* (1798). The issue was whether an act of the Connecticut legislature overturning a judicial decision violated the Constitution because it was an ex post facto law, which states were forbidden to enact. The Court held that the Ex Post Facto Clause applied to criminal cases only, making the legislature's action constitutional. More importantly, *Calder* raised the issue whether "principles of natural justice" constituted law. In Iredell's view, only those actions by a state that explicitly violated a textual provision of the Constitution could be declared void. This positivistic understanding of the authority of the judiciary differed greatly from that taken by Justice Samuel Chase. In subsequent constitutional history, the Court has explicitly adopted Iredell's approach, but has implicitly smuggled in Chase's views on a number of occasions.

In October 1799, shortly after turning 45, Iredell died.

ROBERT H. JACKSON (1892–1954)—Robert Houghwout Jackson was born on February 13, 1892 in Pennsylvania, and spent his childhood in upstate New York when he was young. After high school, Jackson attended Albany Law School for a year. He then returned to Jamestown, New York to clerk in a lawyer's office and read for the bar. He became a member of the bar in New York in 1913. Jackson was the epitome of the dedicated, savvy "country lawyer," a lawyer who can master all types of cases. After Franklin Delano Roosevelt (FDR) became Governor of New York in the late 1920s, Jackson worked informally with him. In early 1934, Jackson left the private practice of law to work in the Roosevelt administration in Washington. In 1938, Jackson was appointed Solicitor General of the United States, who acts as the administration's voice before the Supreme Court. In 1940, FDR appointed Attorney General Frank Murphy to the Court, and appointed Jackson to replace Murphy. In 1941, Jackson was nominated to the Supreme Court seat vacated by Harlan Fiske Stone when Stone replaced Charles Evans Hughes as Chief Justice.

Like many New Dealers, Jackson was a strong proponent of nationalism. Early in his tenure on the Court, he wrote the Court's opinion in *Wickard v. Filburn* (1942), which laid to rest for over half a century any claim that Congress had acted beyond

its commerce clause power. Shortly thereafter, Jackson wrote one of the most ringing opinions on individual freedom in *West Virginia Board of Education v. Barnette* (1943), which held impermissible expulsion of a student from public school for refusing to salute the American flag and say the Pledge of Allegiance.

In 1945, President Harry S Truman asked Jackson to serve as the United States' chief prosecutor at the Nuremberg War Trials following World War II. (Jackson remained on the Court during this time.) Jackson's experience in Germany was unsatisfying. While Jackson was in Germany, Chief Justice Stone died. Jackson believed FDR had promised to nominate him to Chief Justice when the seat opened. But FDR was dead, and Truman was inundated by supporters of both Jackson and Hugo Black. Some evidence exists suggesting both Jackson and Black were attempting to influence Truman by threatening to resign if the other was chosen, and eventually Truman nominated Fred Vinson. From Germany, Jackson exploded, publicizing the fact that Black had failed to recuse himself in a case involving Black's former law partner (the *Jewell Ridge* case), which resulted in a decision favoring the interests of the client of that former law partner. Although the feud between Jackson and Black later subsided, the event stained the Court's reputation.

Jackson was a consummate and uncommonly intelligent writer. His opinions sing. From his opinion in *Barnette* comes his most famous statement: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion."

He married Irene Gerhardt in 1916. Jackson died on October 9, 1954.

ELENA KAGAN (1960–)—Elena Kagan was born on April 28, 1960, in New York City to Gloria Gittelman Kagan and Robert Kagan. She received her bachelor's degree from Princeton University, a master's from Oxford University and graduated from Harvard Law School in 1986. She worked as a a judicial clerk for Judge Abner Mikva of the United States Court of Appeals for the District of Columbia Circuit and Supreme Court Justice Thurgood Marshall. After two years at a Washington, D.C., law firm she was hired at the University of Chicago Law School. In 1995, she began serving as Associate White House Counsel to President Bill Clinton. She remained a White House advisor through mid-1999. Kagan was a visiting professor at Harvard Law School in 1999, and in 2001 was named a professor of law. Two years later she became the first female dean of Harvard Law School. In 2009 she was confirmed as Solicitor General. The next year she became the Court's 112th Justice and its fourth female justice.

Kagan is the first Justice since William H. Rehnquist to serve on the Court without previous judicial experience.

Kagan has never married and has no children.

ANTHONY KENNEDY (1936–)—Anthony Kennedy was born in Sacramento, California, on July 23, 1936, the son of Anthony and Gladys (McLeod) Kennedy. Kennedy's father was a lawyer. Kennedy graduated in 1958 from Stanford University and from Harvard Law School in 1961. He practiced law in San Francisco before returning to Sacramento. In 1976, Kennedy was confirmed as a judge of the United States Court of Appeals for the Ninth Circuit.

In 1987, Lewis Powell retired from the Court. President Ronald Reagan nominated Robert H. Bork to replace Powell. The previous year, Warren Burger had retired, and Reagan promoted William H. Rehnquist to Chief Justice and nominated Antonin Scalia to take the Associate Justice seat held by Rehnquist. The battle in the Senate

was bruising, but was a mere skirmish compared with the Bork nomination. For conservatives, the Senate's rejection of Bork to the Court was evidence that nominations had gone beyond questions of competence to politicization. For liberals, the rejection of Bork was necessary if the Court was to remain within the "mainstream" of constitutional law jurisprudence, for Justice Powell had long been a crucial swing vote on the Court. After the rejection of Bork, Reagan nominated Judge Douglas Ginsberg to the Court. This Ginsberg nomination failed after Ginsberg admitted smoking marijuana while he was a Harvard Law School professor. The third time was a charm. Kennedy was given a thorough screening by the Senate Judiciary Committee, but was easily confirmed.

As a Justice, Kennedy swings between "moderate" and "conservative" positions on the Court. He has generally voted to declare affirmative action unconstitutional, and has voted to establish some judicial limits on Congressional actions based on the Commerce Clause power. He usually interprets the Free Speech Clause broadly, and the Nonestablishment Clause narrowly. Kennedy often writes concurring opinions even when he joins the majority opinion. Generally, Kennedy's opinions are competent and understandable but not memorable.

He married Mary Davis in 1963. They are the parents of three children.

JOHN MARSHALL (1755–1835)—John Marshall was born in a frontier town in what became Fauquier County, Virginia, on September 24, 1755. He was the oldest of 15 children of Thomas Marshall and Mary Randolph Keith Marshall. Marshall's father was a successful surveyor and land agent who owned more than 200,000 acres at the time of his death. In the spring of 1775, the 19-year-old Marshall became a lieutenant in a militia company in Fauquier County. Marshall participated in several battles of the Revolutionary War as an infantry officer, was at Valley Forge with Washington during the winter of 1777–78, and eventually was promoted to captain and given the title "general" in the Virginia militia. In 1780, he met his future wife, Mary (Polly) Ambler, and began his law studies at William and Mary. These law lectures lasted a little over two months, and in August 1780, Marshall became a member of the Virginia bar.

In addition to practicing law and speculating in land, Marshall was a member of Virginia's Council of State and its House of Burgesses during the 1780s. He also served as a delegate to Virginia's ratifying convention in 1788 supporting ratification of the Constitution. In 1797, Marshall agreed to represent the United States in negotiations with the French, who believed that American neutrality between France and Great Britain appeared to favor the British. The resulting XYZ affair inflamed anti-French opinion in the Federalist Party. In May 1800, Marshall was nominated and confirmed to two separate cabinet positions (War and State), both without his knowledge. Marshall accepted the second position.

President John Adams ran for re-election in 1800, once again against Thomas Jefferson. In mid-December, the votes of South Carolina's electors gave Jefferson and his Vice Presidential candidate, Aaron Burr, a majority of the electoral votes. But because Jefferson and Burr achieved the same number of electoral votes, the presidential election of 1800 was sent to the House of Representatives, which votes by state. (Jefferson was elected on the 36th ballot in the House.) On January 20, 1801, John Adams nominated Marshall as Chief Justice. Marshall was confirmed and received the commission to the office of Chief Justice on February 4th, while remaining Adams's Secretary of State.

Marshall's most famous decision is *Marbury v. Madison* (1803), in which he established the doctrine of judicial review of Acts of Congress, a power he never again exercised. Marshall's important nationalistic interpretations (*see, e.g.*, *McCulloch v. Maryland* (1819)) of the Constitution established a broad understanding of federal powers. His tenure also helped make the Supreme Court a co-equal branch of the federal government in fact as well as in theory. Marshall served for over 34 years, until his death in 1835. He was the dominant judicial figure of the first third of the 19th century. He established the "opinion of the Court," which meant that the Justices did not give their opinions individually (called *seriatim* opinions), and fostered a collegiality among the members of the Court resulting in the suppression by other Justices of their dissenting views. Marshall officially dissented in a constitutional case only once. He wrote 574 opinions during his term in office. The rest of his colleagues' opinions during that time, whether majority, concurring or dissenting, total 573 opinions.

Marshall died on July 6, 1835, in Philadelphia. His last words, according to Justice Joseph Story, were a prayer for the Union. Two days later, the Liberty Bell was rung to mourn his passing. It cracked, and has never rung again.

Marshall was married in January 1783. He and his wife Polly had eight children, five of whom reached adulthood.

THURGOOD MARSHALL (1908–1993)—Thoroughgood ("Thurgood") Marshall was born in Baltimore, Maryland, on July 2, 1908, and was the younger of two sons of William and Norma Marshall. His father William was a railroad porter and later steward at a whites-only country club. His mother was a public school teacher for over 25 years. As a young man, Marshall was a "hellion," his biographer Carl Rowan wrote. After high school, Marshall followed his brother William to Lincoln University in Oxford, Pennsylvania. He graduated in 1930. He and his wife Vivien ("Buster") Marshall discussed his options, and decided he would attend law school. Marshall was denied admission to the University of Maryland Law School because he was a Negro (his term). Marshall attended and graduated from Howard University Law School. Marshall's mother Norma pawned her wedding and engagement rings to pay his tuition.

At Howard, Marshall was mentored by Charles Hamilton Houston, a distinguished lawyer. Marshall graduated from Howard in 1933, as the Great Depression reached its nadir. He opened his own law office in Baltimore, and the next year represented the Baltimore chapter of the NAACP. Marshall arranged for Donald Murray to apply to the University of Maryland Law School. When Murray's application was denied, Marshall sued on his behalf on equal protection grounds. Houston tried the case with Marshall's assistance. They won.

In October 1936, Houston arranged for the NAACP to hire Marshall to its national staff. Marshall remained counsel to the NAACP for 25 years. Houston, Marshall and the NAACP crafted a strategy of attacking Jim Crow laws by demanding states comply with the "equal" aspect of the "separate but equal" doctrine of *Plessy v. Ferguson* (1896). After establishing the inequality faced by Negroes in America, the NAACP began a direct attack on "separate but equal" in 1945. The culmination of this effort was *Brown v. Board of Education* (1954), which Marshall argued to the Supreme Court, and which overruled *Plessy*.

In 1961, Marshall was nominated to the United States Court of Appeals for the Second Circuit by President John F. Kennedy. Although southern Democrats initially refused to hold hearings concerning his nomination, he was confirmed and remained

on that court for four years. In 1965, President Lyndon Baines Johnson convinced Marshall to leave the Court (and its lifetime appointment) to become Solicitor General, the chief government lawyer to the Supreme Court. Marshall remained Solicitor General until 1967. In October 1966, LBJ made Ramsey Clark, a 39-year-old then-deputy attorney general, his acting Attorney General, and Clark was subsequently confirmed. Ramsey Clark's father, Tom Clark, was then a Supreme Court Justice. As LBJ expected, Tom Clark resigned from the Supreme Court to avoid a conflict of interest because his son was the chief law enforcement officer of the executive branch. LBJ wanted to "desegregate" the Court, and nominated Marshall to replace Clark.

Thurgood Marshall was a member of the Court until retiring in 1991, serving on the Court for twenty-five Terms. He began when the Warren Court was at its peak, and gradually his opinions were more often dissenting than opinions of the Court. Marshall was a New Deal liberal who believed strongly in the broad exercise of national power. He was a vociferous proponent of claims of equality. He and William Brennan were categorically opposed to the death penalty, and both favored claims of noneconomic substantive due process.

Marshall married Buster in 1929. She died on February 11, 1955. He married Cecilia ("Cissy") Suyat on December 17, 1955. They had two sons, Thurgood Jr. ("Goody") and John. Marshall died on January 24, 1993.

JAMES McREYNOLDS (1862–1946) — James McReynolds was born in Kentucky on February 3, 1862. After graduating from Vanderbilt University, McReynolds studied law at the University of Virginia, graduating in 1884. McReynolds worked for Tennessee Senator Howell Jackson, later a Supreme Court Justice, and subsequently established a successful law practice in Nashville. He moved to Washington, D.C. in 1903 to serve as an assistant attorney general. Four years later, he left government service to practice law in New York. President Woodrow Wilson named McReynolds Attorney General in 1913. In 1916, Wilson nominated McReynolds to the Court. McReynolds was a notorious anti-Semite and racist. As a Justice, he firmly believed in laissez-faire economic theory, a theory he believed was enshrined in the Constitution. He was one of the "Four Horsemen" accused of trying to sabotage New Deal legislation passed during the Great Depression. McReynolds retired from the Court in 1941. McReynolds never married. He died on August 24, 1946.

SAMUEL MILLER (1816–1890) — Samuel Miller was born in Richmond, Kentucky, on April 5, 1816, the son of Frederick and Patsy (Freeman) Miller. Miller graduated in 1838 from Transylvania University with a medical degree. He practiced medicine for a decade, and then studied law on his own. He became a member of the Kentucky bar in 1847. Although not an abolitionist, Miller was strongly opposed to slavery. As the slavery issued became more heated in the late 1840s, Miller decided to move to Iowa. Miller, a Republican, supported Lincoln's presidential bid in 1860, and was nominated to the Court in 1862, after the outbreak of the Civil War.

Miller is most well known for his opinion in *The Slaughter-House Cases*, which narrowly interpreted the Privileges or Immunities Clause of the Fourteenth Amendment. He apparently did so in order to limit the transfer of power from the states to the federal government. A broad interpretation of the Clause would have allowed a citizen of a state, disappointed with a law of that state, to sue in federal court. Miller believed this was too great a change in federalism, for a contrary decision would have allowed federal courts to intervene in state matters much more often than before the Civil War.

Miller married Lucy Ballinger in 1839. After her death in 1854, Miller married Elizabeth Winter Reeves in 1857. He died on October 13, 1890.

SANDRA DAY O'CONNOR (1930–)—Sandra Day O'Connor was born March 26, 1930, in El Paso, Texas. Her parents, Harry A. and Ada Mae (Wilkey) Day, were ranchers in Arizona. O'Connor received her undergraduate (1950) and law (1952) degrees from Stanford University. O'Connor spent a year as a deputy county attorney in San Mateo, California. O'Connor then worked in Germany as a civilian attorney for the Army when her husband John was stationed there. They moved to the Phoenix area in 1956. In the 1960s, O'Connor worked for the Arizona attorney general's office, and in 1969 became a Republican state Senator, filling an unexpired term. She won election to the Arizona Senate in 1972, and became majority leader. In 1974, O'Connor was elected a trial court judge in Arizona. In 1979, she was appointed to the Arizona Court of Appeals.

After the retirement of Potter Stewart in 1981, President Ronald Reagan nominated O'Connor, fulfilling a campaign promise to nominate a woman. She was confirmed in September 1981.

Justice O'Connor was a pivotal member of the Court. As a justice, she often was a decisive vote between two philosophically divided camps. Her opinions were competent and thorough, though not compelling. She jealously guarded the Court's power in her opinions. She was in the vanguard in structuring judicially enforceable boundaries regarding federal action involving the states. In affirmative action cases, Justice O'Connor focused on a fact-intensive inquiry that attempted to use the "compelling state interest" test as more than a label.

She retired from the Court in late January 2006 after the confirmation of her successor, Samuel Alito. She married John O'Connor, also a lawyer, in 1952. They had three sons.

LEWIS F. POWELL (1907–1998)—Lewis F. Powell, Jr., was born on November 19, 1907, in Virginia, the son of Lewis F. and Mary (Gwathmey) Powell. He was the oldest of four children. Powell obtained his bachelor's (1929) and law (1931) degrees from Washington and Lee University. He then obtained an advanced law degree from Harvard University in 1932.

Powell practiced law in Richmond, Virginia. During World War II, Powell served as an intelligence officer for the Army's nascent air force.

In the mid-1950s, when some Virginia politicians proclaimed "massive resistance" to the Supreme Court's decisions in *Brown v. Board of Education* (1954 and 1955), Powell emerged as a political conservative who opposed such actions. In 1959, the Richmond public schools were integrated, during the time Powell was chairman of the school board.

Powell was apparently asked several times by President Richard Nixon to serve on the Court. He finally agreed to do so, and in 1971 Powell left the private practice of law after he was nominated to take the seat formerly held by Hugo Black.

Powell was a centrist whose vote was often crucial on a regularly divided Court. For example, in *Bakke v. University of California* (1978), four members of the Court determined that California's quota system of affirmative action violated Title VI of the Civil Rights Act of 1964, and four members of the Court concluded that the California program violated neither Title VI, nor the Equal Protection Clause of the Constitution. Justice Powell attempted to split the "affirmative action baby," holding

that the specific program was unconstitutional, but also declaring that race may be used as a factor in the school's admissions process.

Powell retired from the Court in 1987. He continued to serve as a visiting judge on the United States Court of Appeals for the Fourth Circuit until 1997. He died on August 25, 1998. Powell married Josephine Rucker in 1936. They were the parents of four children.

WILLIAM H. REHNQUIST (1924–2005)—William H. Rehnquist was born on October 1, 1924, in Milwaukee, Wisconsin, the son of William B. and Margery (Peck) Rehnquist. He grew up in Shorewood, Wisconsin, a Milwaukee suburb. Rehnquist served in World War II with the Army Air Corps. He received bachelor's and master's degrees from Stanford University in 1948. After obtaining a master's degreee from Harvard University in 1950, Rehnquist returned to Stanford to attend its law school, graduating in 1952.

After clerking for Justice Robert H. Jackson from February 1952 through June 1953, Rehnquist moved to Phoenix, Arizona, to practice law. He remained in Phoenix for 16 years. In 1969, after the election of President Richard Nixon, Rehnquist became a lawyer in the Office of Legal Counsel, where he remained for two years. Within a week in September 1971, Justices Hugo Black and John Marshall Harlan retired. President Nixon had another chance to nominate a Southerner after failing to do so in 1969, and to add a judicial (and political) conservative. Nixon nominated Lewis F. Powell of Richmond, Virginia to replace Black, and Rehnquist to replace Harlan. Rehnquist was questioned at Senate Judiciary Committee hearings about a memorandum he had written for Justice Jackson concerning the then-pending case of *Brown v. Board of Education* (1954). The memorandum concluded that "separate but equal" was the correct constitutional standard. At his hearings, Rehnquist testified that the memo did not reflect his views, but the views of Justice Jackson, to be used at the conference of the Justices at which *Brown* would be discussed. His testimony was disputed by others, but the flap subsided, and Rehnquist was confirmed.

As an Associate Justice, Rehnquist was not afraid to write a lone dissent, and was nicknamed the "Lone Ranger." In general, Rehnquist considered the Warren Court (and Burger Court, in several respects) too "activist" in its decisionmaking, and urged greater judicial "restraint." He was active in policing the boundary between federal and state power, one that the Court had avoided since the Constitutional Crisis of 1937.

Chief Justice Warren Burger retired in 1986. President Ronald Reagan nominated Rehnquist to take Burger's seat, and Antonin Scalia to take Rehnquist's seat as Associate Justice. The issue of Rehnquist's judicial philosophy and opinions were discussed, along with the disputed *Brown* memorandum. The Senate confirmed his appointment.

Chief Justice Rehnquist authored several popular histories of the Supreme Court. He married Natalie Cornell in 1953. She died in 1991. He died on September 3, 2005. They were the parents of three children.

JOHN ROBERTS (1955–)—John Roberts was born on January 27, 1955, in Buffalo, New York. He grew up in Indiana, and attended college and law school at Harvard, graduating in 1976 and 1979, respectively. Roberts clerked for Judge Henry Friendly in the Second Circuit and for Chief Justice William H. Rehnquist. He then worked in the Department of Justice and in the White House Counsel's office until 1986, when he entered private practice. He returned to government practice after the election of George H. W. Bush as President to work as Deputy Solicitor General. In 1993, Roberts

returned to private practice. In 2003, Roberts was nominated to the United States Court of Appeals for the District of Columbia Circuit. President George W. Bush nominated Roberts to the Supreme Court after Justice Sandra Day O'Connor announced her retirement. After the death of Chief Justice Rehnquist on September 3, President Bush decided to nominate Roberts to replace the Chief Justice. In part because he was viewed as no more "conservative" than Chief Justice Rehnquist, the Senate voted 78–22 to confirm him. He took his seat on the Court on September 29, 2005.

Roberts, a Roman Catholic, is married and is the father of two children.

OWEN ROBERTS (1875–1955)—Owen Roberts was born on May 2, 1875, in Pennsylvania. He graduated from the University of Pennsylvania in 1898 with a bachelor of laws degree. He practiced law in Philadelphia, both in private practice and as an assistant district attorney. Roberts came to national attention when he was appointed to investigate the Teapot Dome scandal in 1924. In 1930, President Herbert Hoover nominated Roberts to the Court after the death of Edward Sanford. Roberts remained on the Court until his resignation in 1945.

Roberts is best known as the justice whose apparent change in views of the Commerce Clause and Due Process Clause of the Fourteenth Amendment became known as the "switch in time that saved nine." Franklin Delano Roosevelt (FDR) was re-elected in 1936, and he announced on February 5, 1937 his plan to "reorganize" the Court in order to assist it in catching up with its workload. Critics called FDR's plan a court-packing plan. On March 29, 1937, the Court issued its opinion in *West Coast Hotel v. Parrish*, which upheld the State of Washington's minimum wage law against a Due Process Clause challenge, and overruled the Court's decision in a minimum wage case decided only ten months earlier. On April 12, 1937, the Court upheld the National Labor Relations Act in *NLRB v. Jones & Laughlin Steel* on Commerce Clause grounds, contrary to cases earlier interpreting the Commerce Clause, and on May 24th, the Court upheld the Social Security Act as permissible through the Spending Clause, again contrary to an earlier case written by Roberts. In each case the vote by the same Supreme Court membership was 5–4, and in each case Justice Roberts silently joined the majority. Whether Roberts "switched" as a result of FDR's plan is unlikely ever to be answered satisfactorily. The "switch" did result in the rejection of FDR's plan in the Senate.

ANTONIN SCALIA (1936–2016)—Antonin ("Nino") Scalia was born in Trenton, New Jersey, on March 11, 1936, the only child of Eugene and Catherine (Panaro) Scalia. Eugene Scalia emigrated from Sicily and taught Romance languages at Brooklyn College. Scalia was educated at both public and Catholic schools during his childhood. He attended Georgetown University, graduating as valedictorian in 1957. Scalia graduated from Harvard Law School in 1960. Between 1961 and 1967, Scalia worked in a Cleveland law firm. He then accepted an offer to teach at the University of Virginia Law School. In 1971, he joined the Nixon administration. He remained a member of the executive branch until the end of Gerald Ford's presidency in January 1977. He then taught at the University of Chicago Law School.

In 1982, President Ronald Reagan appointed Scalia to the United States Court of Appeals for the District of Columbia Circuit. Four years later, after the retirement of Chief Justice Warren Burger, Reagan nominated Associate Justice William Rehnquist to replace Burger, and Scalia to take Rehnquist's seat. Scalia is the first Italian-American to serve on the Court.

In his nearly thirty years on the Court, Scalia was outspoken about limiting the Court's discretion to "find" rights implied from its text, particularly the right to privacy. In criminal procedure cases, Scalia was not conservative in a political sense. He wrote the Court's opinion declaring unconstitutional the use of infrared heat sensors to determine whether marijuana was being grown in enclosed houses, and strongly supported claims by defendants they have been denied the right to confront witnesses against them. Several Scalia opinions upheld free speech claims against state laws, including a Minnesota "hate crime" law and a law limiting the speech of judicial candidates. He also joined the majority holding flag burning as a sign of political protest is protected by the First Amendment and that a corporation's political speech is protected. He strongly supported takings claims by individuals against states. Scalia was most interested in separation of powers issues, and generally supported the revival of a doctrine placing limits on Congress's actions justified by reference to the Commerce Clause. Scalia favored judicial interpretation wedded to the text of the Constitution, going so far as to consult dictionaries of the time to ascertain the meaning of that text. His "textualist" (not "originalist" in the sense that he was uninterested in divining the intent of the framers) view of constitutional interpretation does not equate to a strong belief in judicial restraint. He stated his views on this subject in a book titled A Matter of Interpretation. He is also the co-author of Reading Law: The Interpretation of Legal Texts (2012) (with Garner).

Scalia was noted for his sarcastic, witty, intellectually demanding and occasionally biting comments and questions during oral argument. He was a colorful and incisive writer of judicial opinions, and one whose candid and rhetorically combative statements offended some and pleased others.

Scalia married Maureen McCarthy in 1960. He was a lifelong practicing Roman Catholic. They are the parents of nine children. Scalia died in February 2016.

SONIA SOTOMAYOR (1954–)—Sonia Sotomayor was born in the Bronx in New York City. Her father died when she was nine, and she and her brother were raised by their mother. After graduating from Princeton University in 1976 she immediately entered Yale Law School, from which she graduated in 1979. Sotomayor spent five years working as an Assistant District Attorney in New York City, after which she entered private practice. Sotomayor became a federal district judge in the United States District Court for the Southern District of New York in 1992. In 1998 she was confirmed as a judge on the United States Court of Appeals for the Second Circuit. She was nominated to the Supreme Court in 2009 by President Barack Obama after the retirement of David Souter, becoming the first Hispanic (she is of Puerto Rican ancestry) and third female Associate Justice.

Sotomayor is divorced and has no children.

DAVID SOUTER (1939–)—David Souter was born in Melrose, Massachusetts, on September 17, 1939. After graduating from Harvard University in 1961, Souter spent two years in England as a Rhodes Scholar, obtaining a second bachelor's degree from Oxford. He then returned to Harvard to attend its law school, graduating in 1966. After two years in private practice in New Hampshire, Souter became a New Hampshire Assistant Attorney General. He remained in the Attorney General's office for the next ten years, including as Attorney General during his final two years. From 1978 to 1983, Souter served as a New Hampshire superior court judge. He then spent seven years as a justice of the New Hampshire Supreme Court. In 1990, Souter was appointed

to the United States Court of Appeals for the First Circuit. That same year, after the retirement of Justice William Brennan, Souter was nominated to the Supreme Court. After the tremendous fight involving President Reagan's nomination of Robert Bork in 1987, then-President George H. W. Bush sought a conservative nominee who would not cause the same kind of political firestorm. This led some to denounce Souter as a "stealth" candidate (referring to a military plane known as the Stealth Fighter). Souter's candidacy was successful in part because there was little paper trail linking him to controversial issues.

As a Justice, Souter was strongly inclined to a "separationist" interpretation of the Nonestablishment Clause, and strongly supported the right to privacy. He opposed the Court's re-institution of judicial limits to acts of Congress justified based on the Commerce Clause in *United States v. Lopez* (1995).

Justice Souter retired from the Court in 2009. He is a lifelong bachelor.

JOHN PAUL STEVENS (1920–)—John Paul Stevens was born in Chicago, Illinois, on April 20, 1920, the son of Ernest and Elizabeth (Street) Stevens. Shortly after graduating from the University of Chicago in 1941, Stevens served in World War II as a junior naval officer. After returning from service, Stevens attended Northwestern University's law school. After graduation, he served as a law clerk to Justice Wiley Rutledge. He practiced law in Chicago for three years before returning to Washington, this time to work for Congress as a lawyer to the House Judiciary Committee. After a year, Stevens returned to Illinois and the private practice of law.

In 1969, Stevens was appointed the chief investigator of a commission created to determine whether two Illinois Supreme Court judges had taken a bribe for their vote in a case. Stevens was able to prove that the judges had engaged in misconduct, and both resigned. The investigation propelled him to prominence and then to judicial office. Stevens became a member of the United States Court of Appeals for the Seventh Circuit in 1970. In 1975, Gerald Ford nominated Stevens to the Court after the retirement of William O. Douglas.

Stevens's jurisprudence is difficult to categorize. Today, he is known for his support of affirmative action, but in the first affirmative action case, *Regents of the University of California v. Bakke* (1978), Stevens excoriated the concept of affirmative action, analogizing it in one footnote to Nazi identification laws. He has generally supported privacy rights claims, but joined the plurality in the 5–4 decision in *Michael H. v. Gerald D.* (1989), in which the Court rejected the claim of a putative father that the presumption that a child born during a marriage is the product of the union. Michael H. claimed he was the father of a child, Victoria D., and California's law prohibited him from proving it because she was married to Gerald D. when she gave birth. Stevens is idiosyncratic in many of his views, and his opinions, although often brief and relatively easy to read, have not usually influenced his colleagues. He retired from the Court in 2010.

Stevens married Elizabeth Sheeren in 1942. They are the parents of four children. They divorced in 1979. He married Maryan Mulholland Simon in 1980.

POTTER STEWART (1915–1985)—Potter Stewart was born on January 23, 1915, in Cincinnati, Ohio. Stewart was the son of James Garfield and Harriett (Potter) Stewart. Stewart graduated from Yale University in 1937, and spent the next year at Cambridge University on a fellowship. He returned to the United States to attend law school at Yale, graduating in 1941. Stewart joined the navy as an officer. He earned several commendations for his service.

After the War, Stewart returned to Cincinnati to practice law. In 1954, President Eisenhower nominated Stewart to the United States Court of Appeals for the Sixth Circuit. After the retirement of Justice Harold Burton in 1958, Eisenhower nominated the 43-year-old Stewart to the Court.

Stewart joined what is known historically as the Warren Court, and remained on the Court through most of the so-called Burger Court era. As a moderate (and sometimes jurisprudential conservative) on a generally liberal Court during his first decade (1958–69), Stewart often found himself in the minority, although his record was supportive of civil rights claims. In his last fifteen years on the Court, he was often a swing vote on a regularly divided Burger Court. Stewart's opinions were well written, to the point, and jurisprudentially incremental.

Stewart dissented in *Griswold v. Connecticut* (1965), concluding the state law barring the purchase of contraceptives "an uncommonly silly law," but constitutional nonetheless because of his doubts about the existence of an implied right of privacy. In *Roe v. Wade* (1973), Stewart concurred, on the grounds that the right of privacy existed, but suggested that the Court remedy its substantive due process jurisprudence, which failed to note the relation between economic and noneconomic rights as protections from encroachment by the state.

Somewhat unfortunately, Stewart may best be known for his statement in *Jacobellis v. Ohio* (1964), an obscenity case, that "I know it when I see it," in determining whether a film is obscene. This statement was ridiculed by many, but spoke a truth about the difficulty of articulating why one film was obscene, and thus unprotected by the First Amendment, and why another was merely pornographic, which meant it was protected speech. Stewart accepted this difficulty in articulating this distinction, but continued to believed such a distinction existed.

Stewart married Mary Ann Bertles in 1943. They had three children. He resigned from the Court in 1981. He died on December 7, 1985.

HARLAN FISKE STONE (1872–1946)—Harlan Fiske Stone was born in New Hampshire on October 11, 1872. After being expelled from Massachusetts Agricultural College, Stone enrolled at Amherst, where he excelled socially, athletically and academically. He graduated in 1894. Stone graduated from Columbia Law School in 1898. Almost immediately after graduation, Columbia hired him as a professor. In 1910, Stone was named Dean of the Columbia Law School, and served in that capacity until 1923, when he became head of litigation at the New York law firm of Sullivan and Cromwell. In 1924, Stone, a progressive Republican, was named Attorney General by President Calvin Coolidge. The next year Coolidge nominated Stone to the Supreme Court.

Stone quickly became one of the dissenters on the Court. During FDR's first presidential term, Stone usually voted to sustain New Deal legislation, and when the Court was split, Stone was often in the minority. When the Court "switched" in 1937, Stone found himself in the majority. In 1938, footnote 4 of Stone's opinion in *United States v. Carolene Products* suggested a two-tiered standard of review of legislation, a model eventually followed in part by the Court.

In 1941, as an offering to the Republican Party, FDR decided to promote Stone from Associate Justice to Chief Justice after the retirement of Charles Evans Hughes. Stone remained Chief Justice until his death on April 22, 1946.

As a Chief Justice, Stone found himself with a fractious Court. Although most of its members had been appointed by FDR, they were often at odds. The members of

the Court possessed strong personalities and several intensely disliked each other. Stone did a poor job of managing these strong personalities.

In 1899, Stone married Agnes Harvey. They had two sons.

JOSEPH STORY (1779–1845)—Joseph Story was born in Marblehead, Massachusetts, on September 18, 1779. In 1801, Story became a member of the bar. Story served as a member of the lower house in the Massachusetts legislature from 1805–11, and in Congress as a Democratic-Republican Congressman in 1808–09. In 1810, President James Madison nominated as Associate Justice the 32-year-old Story, but only after Madison's first three choices declined the nomination. Story remained a member of the Court until his death on September 10, 1845. Although appointed as a Democratic-Republican, Story's views were largely consistent with those of the broad nationalist view of the Federalist Chief Justice, John Marshall. The first important opinion delivered by Story was *Martin v. Hunter's Lessee* (1816). With Marshall recusing himself because of his interest in the litigation, Story upheld the constitutionality of Section 25 of the Judiciary Act of 1789, which permitted the Supreme Court to review the opinions of state courts on federal law. One of Story's most important opinions was in *Swift v. Tyson* (1842). In *Swift*, Story held that parties to civil litigation in federal court would use general common law rather than the law existing in the state or states in which the dispute arose. This case dramatically expanded federal court jurisdiction. Story was the Dane Professor of Law at Harvard University, and is credited with popularizing the teaching of law in a university setting. He also wrote nine Commentaries on the law, including the three-volume Commentaries on The Constitution, a text still occasionally cited by the Court.

Story married Mary Story on December 9, 1804. She died six months later. He married Sarah Wetmore in August 1808. Five of their children died in childhood. His son William Wetmore Story wrote a biography of his father. Story died peacefully, a devout Unitarian.

WILLIAM HOWARD TAFT (1857–1930)—William Howard Taft was born in Cincinnati, Ohio, on September 15, 1857. Both his father and his grandfather were eminent judges. After graduating in 1878 from Yale University, Taft attended the law school at the University of Cincinnati. He began practicing law in Ohio in 1880. By 1887, Taft was a superior court judge. In 1889, Taft was appointed Solicitor General of the United States and, three years later, to the United States Court of Appeals for the Sixth Circuit. In 1900, Taft was appointed to the Philippine Commission, created after the Spanish-American War of 1898 led to the cession of the Philippines to the United States by Spain. Taft remained in the Philippines for four years, eventually serving as Governor General. In 1909, Taft became President. He was unsuccessful, and lost the 1912 election to Woodrow Wilson, in part because former President Teddy Roosevelt ran as a third party candidate.

After his defeat in 1912, Taft taught law at Yale. In 1921, President William Harding nominated Taft to the position of Chief Justice. Taft is the only person to serve as both President and as a Justice of the Supreme Court.

Taft was a politically and jurisprudentially conservative judge interested in protecting private property rights, although he believed constitutional some regulations challenged as violations of the Due Process clause (*see, e.g.*, his dissents in the minimum wage case of *Adkins* (1923) and in *Charles Wolff Packing Co.* (1923), a case regulating property "affected with a public interest"). He strongly protected the president's exercise of power in *Myers v. United States* (1926). Taft was an extraordinarily able judicial ad-

ministrator whose lobbying led to the passage of the Judiciary Act of 1925. This Act granted to the Court an extraordinary discretion to determine its caseload.

Taft resigned from the Court due to illness in February 1930. He died a month later, on March 8, 1930.

Taft married Helen Herren in June 1886. They were the parents of three children.

ROGER BROOKE TANEY (1777–1864)—Roger Brooke Taney (pronounced Tawnee) was born in Calvert County, Maryland, on March 17, 1777. His family consisted of tobacco planters who favored adoption of the Constitution. Taney practiced law in Frederick, Maryland, and entered politics in his 20s. Until 1821, when he left the Maryland Senate, Taney was a Federalist. He then joined the Democratic Party. Between 1826–31, Taney was the Maryland attorney general. He then was appointed Attorney General of the United States, a position he kept for two years. Taney received a recess appointment as Secretary of the Treasury, and aided Jackson in removing funds from the Second Bank of the United States, causing it to collapse, as Jackson intended. When the Senate reconvened, it refused to confirm Taney's nomination, and Taney returned to the practice of law in Maryland. After the death of Justice Gabriel Duvall, Jackson nominated Taney. The Senate rejected the nomination. When John Marshall died in July 1835, Jackson nominated Taney to replace Marshall. The Senate confirmed his nomination on March 15, 1836.

Taney is best remembered for his opinion in *Dred Scott v. Sandford* (1857), released only days after the inauguration of President James Buchanan. For only the second time in American history, an act of Congress was held unconstitutional by the Supreme Court. Taney first concluded that the Court lacked jurisdiction to hear the *Case* because Dred Scott, a slave, was not a citizen of the United States. Taney concluded that when Congress declared slavery impermissible north of a line of 36°, 30' latitude (Missouri excepted), it acted beyond its constitutional power. Thus, the Missouri Compromise of 1820 was unconstitutional. Instead of settling the issue of slavery, *Dred Scott* merely caused slavery to take precedence over all other political issues. Taney is also known for his work on shaping commerce clause doctrine and his opinion in the *Charles River Bridge Case* (1837) limiting the breadth of the doctrine of vested rights. He futilely excoriated Lincoln's conduct of the Civil War, claiming in *Ex parte Merryman* (1861) that Lincoln had unlawfully suspended the writ of habeas corpus, a decision Lincoln simply ignored.

Taney was Chief Justice for 28 years, and during his final years was poverty-stricken. Taney was the first Roman Catholic on the Supreme Court. He married Ann Key, the niece of Francis Scott Key, in 1806. They had seven children, six daughters and a son who died in infancy. Ann died in 1855. Taney died on October 12, 1864.

CLARENCE THOMAS (1948–)—Clarence Thomas was born in Savannah, Georgia, on June 23, 1948. Thomas's father abandoned his family when Clarence was young. Until age seven, Clarence was raised by his mother, Leola Williams. When she remarried, Thomas and his brother were sent to Pin Point, Georgia, and raised by his maternal grandfather, Myers Anderson. Clarence Thomas was raised as a Roman Catholic, and his grandfather urged him to become a priest. Thomas spent time at seminaries during high school and immediately thereafter.

Thomas attended the College of the Holy Cross in Massachusetts. At Holy Cross, Thomas was considered a radical and black power devotee. He was a Black Panther supporter (not a member), and helped create the Black Student Union at Holy Cross. After graduating with honors from Holy Cross in 1971, Thomas studied at Yale Law

School, graduating in 1974. Thomas, who was married by then, was apparently a loner at law school.

Thomas's first law job was in the Missouri Attorney General's office. After nearly three years in that office, Thomas worked for Monsanto Corporation for two years. John Danforth, who as Missouri Attorney General hired Thomas, won election to the Senate in 1976. He asked Thomas to work as his legislative aide. After the election of Ronald Reagan as President in 1980, Thomas joined the Department of Education as an assistant secretary in charge of civil rights issues. Very shortly thereafter, Thomas became the chair of the Equal Employment Opportunity Commission (EEOC), where he remained until 1990, when President George Bush nominated him to the United States Court of Appeals for the District of Columbia Circuit.

In 1991, after the retirement of Justice Thurgood Marshall, President George H. W. Bush nominated the 43-year-old Thomas to the Court. Many expected Marshall's successor would be African-American, and that turned out to be the case. Thomas's appointment was met with trepidation by those who admired Marshall, because Thomas and Marshall held very different jurisprudential views, and very different views concerning the Court's role in society.

Thomas's nomination became contentious and bitter. A former assistant of Thomas's in the EEOC, Anita Hill, testified that Thomas had sexually harassed her when she worked with him. Hill's testimony occurred after Thomas had completed his testimony. He took the extraordinary step of testifying again before the Committee, denied sexually harassing Hill and declared he was the subject of a "high-tech lynching." The debate about the Thomas nomination polarized both Washington and much of the country. Thomas was confirmed by a vote of 52–48.

During oral argument, Thomas rarely speaks. His opinions are textualist and originalist. For example, Thomas wrote separately in *United States v. Lopez* (1995), urging the Court return its Commerce Clause jurisprudence to "the original understanding of the Commerce Clause." He has also challenged the received wisdom that the Clause applies to state as well as federal action. Thomas is less concerned with the doctrine of *stare decisis* than other Justices on the Court.

Thomas married Kate Ambush in 1971. They are the parents of one child. They divorced in 1984. He married Virginia Lamp in 1987. He is a Roman Catholic.

FRED VINSON (1890–1953)—Fred Vinson was born in Kentucky on January 22, 1890. He received his law degree from Centre College, and entered private practice in Kentucky. After serving as a district attorney, Vinson served in the House from 1925–29 and 1931–37. In 1937, Vinson was appointed to the United States Court of Appeals for the District of Columbia Circuit. After six years on the Court, Vinson took a position in the executive branch. After FDR's death in 1945, President Harry S Truman appointed Vinson Secretary of the Treasury. When Chief Justice Harlan Fiske Stone died in mid-1946, Truman nominated Vinson in an attempt to resolve the personal backbiting and disputes among the Justices.

As Chief Justice, Vinson nearly always supported governmental action against constitutional challenges. In race relations cases, Vinson wrote the Court's opinion in *Shelley v. Kraemer* (1948), which held the judicial enforcement of a racially restrictive covenant in the sale of a home was held state action, but was the only dissenter in *Barrows v. Jackson* (1953), which held that a person who violated a racially restrictive covenant could not be sued for damages. He also wrote the Court's opinions in *Sweatt v. Painter* (1951) and *McLaurin v. Oklahoma State Regents* (1951), which held the

higher education systems in Texas and Oklahoma violated the separate but equal standard of *Plessy v. Ferguson* (1896), and ordered admission of the black plaintiffs to the previously all-white schools. When *Brown v. Board of Education* was argued in the Court in 1952, Vinson may have been opposed to overruling *Plessy* in the field of education.

Vinson died on September 8, 1953.

EARL WARREN (1891–1974)—Earl Warren was born on March 19, 1891 in Los Angeles, California, the son of Matt and Christine (Hernlund) Warren. Warren's father was a longtime employee of the Southern Pacific Railroad, who lost his job with the railroad for a time after joining the failed Pullman Strike of 1894. Matt Warren was murdered in 1938. The killer was never found.

Warren received his undergraduate (1912) and law degrees (1914) from the University of California. Warren worked as counsel to an oil company and spent several years in private practice before eventually (he was twice rejected) joining the Army as an officer when the United States entered World War I in spring 1917. After the War ended, he served as counsel to the California legislature, in the Oakland city attorney's office, and as a deputy district attorney in Alameda County. In 1925, Warren was appointed Alameda County District Attorney, where he remained through 1938. In 1938, he won election as California Attorney General, and four years later was elected Governor.

When Dwight D. Eisenhower ran for the Republican nomination for President in 1952, he obtained Warren's support after promising Warren the first open seat on the Court. Fred Vinson died in September 1953. Eisenhower believed this promise did not include nomination as Chief Justice, Warren disagreed. At the end of September 1953, with Congress out of session, Warren was given a recess appointment to the Court. He was confirmed by the Senate on March 1, 1954.

Warren's first major test, one that would define his work on the Court, was *Brown v. Board of Education* (1954, 1955). The Court had heard arguments in *Brown* in December 1952. It was badly divided on whether segregation by race of public school students was constitutional. The Court ordered re-argument in June 1953. After re-argument in December 1953, the new Chief Justice spent several months forging a unanimous decision in *Brown* declaring "separate but equal" unconstitutional in the field of public education.

The Warren Court that is remembered today is the 1963–69 Court, in which a solid bloc of five liberals created the revolution in constitutional criminal procedure, and which aided the civil rights movement as much as possible. Earl Warren became well known as a "liberal" Supreme Court justice, so much so that national politics revolved in part on one's position concerning the Court's decisions during this time. Warren was a decisive, amiable and tough-minded leader of a fractious group, and he imprinted his political and legal views on nearly all of the Court's decisions in this six year period. The decisions of the Warren Court were criticized by Republican nominee Richard Nixon during the 1968 presidential election campaign. Those who opposed some of these decisions called for judges to engage in judicial "restraint," a cry that is now used by members of both major political parties and by liberals and conservatives, depending on the case at issue. In the summer of 1968, Warren announced his retirement upon the appointment of his successor.

Warren married Nina Palmquist Meyers, a widow, in 1925. They were the parents of six children, including her child by her first husband. Warren died on July 9, 1974.

BYRON WHITE (1917–2002)—Byron White was born in Fort Collins, Colorado, on June 8, 1917. He was intelligent, a gifted athlete, very disciplined, and a hard worker. He attended the University of Colorado on a scholarship. He graduated valedictorian of his college class, and was an All-America running back and winner of the Heisman Trophy, signifying his status as the nation's best college football player. He was given the nickname "Whizzer" in college, a name he despised. During the 1938 football season White led all players in the National Football League in rushing as a member of the Pittsburgh Pirates (now Steelers). In January 1939, White left for Oxford University to study law as a Rhodes Scholar. Before completing his studies, World War II erupted, and White returned to the United States to study law at Yale University. White returned to the NFL in fall 1940, this time as a running back for the Detroit Lions. He attended Yale in spring 1941, and returned for a final professional football season in fall 1941. White was then commissioned in the Naval reserve after the United States entered World War II. He remained in the Navy until September 1945, when he returned to Yale Law School to complete his degree. After graduation he served as a law clerk to Chief Justice Fred Vinson.

White moved to Denver to practice law. In 1960, he supported John F. Kennedy's (JFK) campaign for President. White and Kennedy had met in Europe in 1939, and White co-authored a Navy report examining the sinking of Kennedy's PT boat (PT 109) during World War II. Kennedy appointed White deputy attorney general. In April 1962, after the retirement of Charles Whittaker, JFK made Byron White his first nominee to the Supreme Court.

White's record as a Justice is not easily pigeonholed. He strongly supported civil rights claims during his early years on the Court, and was a nationalist, not a strong believer in federalism. In affirmative action cases Justice White largely upheld federal efforts regarding affirmative action (see *Fullilove v. Klutznick* (1980)), but was skeptical about state and local affirmative action plans. In constitutional criminal procedure cases, White usually but not always sided with the exercise of power by the government. For example, he dissented in *Miranda v. Arizona* (1966). White narrowly interpreted Free Press Clause claims, thus inviting media enmity. He was skeptical of the Court's broad interpretation of the Nonestablishment Clause, and was opposed to the Court's invocation of substantive due process in cases such as *Roe v. Wade* (1973), in which he was one of two dissenters, and *Bowers v. Hardwick* (1986), in which he wrote the majority opinion permitting states to criminalize same-sex sodomy. He distrusted the expansive exercise of judicial power in favor of the exercise of power by the legislature. His biographer notes that he distrusted academics and intellectuals, and was opposed to strong notions of ideology on the part of members of the Court.

White remained on the Court for 31 years, retiring in 1993 after the election of Bill Clinton. In 2001, White moved back to Colorado. He died on April 16, 2002. White married Marion Lloyd Stearns in June 1946. They had two children.