THE SUPREME COURT JUSTICES

Illustrated Biographies, 1789-1995

Second Edition

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The Supreme Court Historical Society

FOREWORD BY

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Foreword

The publication of *The Supreme Court Justices: Illustrated Biographies, 1789–1995* is an important event for the general reader seeking information about the lives of the 106 men and two women who have served on the nation's highest court. The Supreme Court Historical Society, a private nonprofit organization, began developing this manuscript in 1990. It is intended to be an introduction to the lives, careers, and judicial contributions of those who have sat on the Court.

The primary focus of the book is biographical rather than a comprehensive analysis of each justice's jurisprudence. The editors have provided a selected bibliography for those who, after reading the biographies enclosed, wish to study one or more of the justices in greater depth.

Some of the justices portrayed in this volume, such as the great Chief Justice John Marshall, the colorful and quotable Oliver Wendell Holmes, Jr., and the members of the current Court with whom I have the honor to serve, are familiar to the general reader. Others have undeservedly fallen into obscurity and are known only to constitutional law experts and dedicated Supreme Court buffs. A compelling motivation for this project was to make readily available to a broad general audience the story of the justices' private and professional lives and to explore how each contributed to the evolution of the Supreme Court.

Why was the justice selected for appointment by the president? What kind of education and training did the justice have? What were the major constitutional issues faced by the Court during the justice's tenure? This biographical collection attempts to answer these basic questions. It also provides a succinct description of each justice's major opinions and imprint on the Court in terms easily understood by the general reader.

I am delighted that the Supreme Court Historical Society has undertaken this project as part of its mission to expand public awareness and understanding of the Supreme Court of the United States. I also commend Congressional Quarterly Inc. for its part in making this publication available to a wide audience.

WILLIAM H. REHNQUIST
Chief Justice of the United States

Introduction

Who were Joseph Story . . . Samuel F. Miller . . . Joseph P. Bradley . . . Wiley B. Rutledge? Few Americans know them. Yet each of these men was influential, and ultimately decisive, in establishing, shaping, and guaranteeing the freedoms and rule of law under which this nation is now moving into its third century. Of the 108 chief and associate justices who have served on the Supreme Court of the United States, only a relative few can be called to mind by the larger public, and then only fleetingly.

Charles Evans Hughes, for example, is perhaps better known for his narrow defeat by Woodrow Wilson for the presidency in 1916 than for his seventeen years on the high bench, eleven of them as a distinguished chief justice. Others are remembered for their involvement in great and lasting controversies. Roger B. Taney is cited most often for writing the fateful *Dred Scott v. Sandford* decision of 1857, which helped precipitate the Civil War. His twenty-eight years of devoted service are seldom mentioned, although scholars view his tenure as chief justice as a distinguished and responsible continuation of the tradition of his predecessor John Marshall, the great chief justice.

Some, such as Oliver Wendell Holmes, Jr., and Louis Brandeis, are memorable for their dissents. Another, John Marshall Harlan, earned his niche in history with an eloquent dissent in the Court's 1896 decision establishing the "separate but equal" doctrine of racial segregation. In 1954 Chief Justice Earl Warren ensured his place in history with a unanimous opinion outlawing racial segregation in the nation's schools, in effect upholding Harlan's dissent.

Often, the Supreme Court of a particular era is identified by the name of the chief justice: the Marshall Court, the Taft Court, the Warren Court, the Burger Court, the Rehnquist Court. This shorthand may be useful, but it overshadows a basic fact. The Supreme Court is a company of genuine equals. Although the chief justice presides over the Court and its conferences and—when in the majority—has the authority to assign which justice writes the Court's opinion, he is still "first among equals." Emphasis should be placed on the word *equals* rather than *first.* The vote of the most junior member of the nine justices, from the moment he or she takes the oath of office, counts for as much as that of the chief justice.

Who are these 108 people who have had the awesome power to decide what the U.S. Constitution means and what it does not mean, who have overruled acts of Congress when they found them in violation of the Constitution, who have on occasion judged and overruled the decisions of every court in the land, including the supreme courts of the fifty states? Where do they come from? What experiences prepared them for their

task? How did they come to be chosen by the president as one of the nine or, at various times, six, seven, eight, or ten most important interpreters of American law?

Ultimately each question merits 108 answers, one for each justice. Although they may seem remote and magisterial in their black robes, their lives have the mix of reality and dreams, successes and failures, providence and misfortune, war and peace, to which we are all subject. The following pages are neither a history of the Court nor an examination and evaluation of its judicial decisions. They are an effort to chronicle succinctly the lives of those who have played a role in the establishment and growth of the Supreme Court.

They are all unique individuals, ultimately sharing only their commitment to the rule of law under the Constitution. Yet there are some common threads and similarities. Each was trained in the law. President George Washington established this precedent with his eleven appointments to the high bench, the record number for any chief executive. Eager to bring the former disparate colonies closer together, Washington also established a pattern of geographic distribution. His first six appointments were three northerners and three southerners. By the time Washington finished his two terms, nine of the original thirteen states had achieved representation on the Court. By the early nineteenth century, three of the chairs had become identified as the "New England seat," the "New York seat," and the "Virginia-Maryland seat." As Americans became more mobile, and political and philosophical factors became more important than geographical identification, such representation gradually eroded.

In the early days of the nation, most aspiring lawyers prepared for admission to the bar by "reading law" in the office of an established attorney. What they did was a combination of clerkship, independent study, apprenticeship, and, perhaps, feeding a wood stove and sweeping out the office. It is frequently noted that John Marshall was essentially self-taught, attending only one course of law lectures at the College of William and Mary. But many of his associate justices had no college or university training in the law at all. They read law until they were judged qualified for admission to the city, county, or state bar. This practice changed gradually during the early twentieth century, as Harvard, Yale, Columbia, Virginia, and other colleges and universities began offering specialized studies and degrees in law. Of the justices seated in this century, all but eleven earned a degree from a law school. Some worked their way through, and one, Warren Burger, attended a night law school while holding down a full-time job.

A remarkably large number of the justices showed precocious intellectual powers, and many were top students. James Moore Wayne qualified for enrollment in Princeton at the age of thirteen, but his entrance was delayed a year because of his tender years. Edward T. Sanford took two degrees, B.A. and Ph. B., from the University of Tennessee at the age of eighteen. John A. Campbell was admitted to the Georgia bar at the same age, three years before he could vote. Hughes found first grade in a public school boring and confining. He submitted to his parents the "Charles E. Hughes Plan of Study" to continue his education at home. His parents acquiesced, and at the age of eight Hughes was reading Greek. He graduated from a New York City high school at age thirteen, ranking second in his class.

Most justices came from homes where intellectual pursuits were favored and education was an article of faith. Many were the sons of ministers or lawyers, although some were also sons of farmers. More often than not they were born into comfortable circumstances, but William Johnson, who managed a degree from Princeton in 1790, was the son of a blacksmith. John Catron was born into such humble circumstances that not even his date and place of birth are known for

certain, nor where he spent his early childhood. Joseph P. Bradley, oldest of eleven children born to poor farm parents, had become a rural school teacher at the age of sixteen, when a local minister recognized his talents and sponsored his entrance to Rutgers University. Most justices felt called to a law career early, but Samuel F. Miller studied medicine and practiced it for nine years before turning to the bar at the age of thirty-one. He became one of the most accomplished and respected justices of the late nineteenth century. In this century, intellectual prowess is frequently evidenced by brilliance in advanced studies. Phi Beta Kappa, cum laude, magna cum laude, summa cum laude, Rhodes scholar, and head of the class appear repeatedly in the justices' curricula vitae.

Just as they felt called to the law, justices typically also felt called to public service, working through a series of "apprenticeships" in an ascending scale of appointive or elective offices. Many began as a city or county attorney, even as a justice of the peace, and a large number were elected to terms in their state legislatures. They went on to become representatives or senators in Congress, district and circuit judges, judges of the state and federal courts of appeals, judges and chief justices of state supreme courts. Few had as impressive credentials as the first chief justice, John Jay, who served successively as a delegate to the Continental Congress, minister to Spain, chief justice of the New York Supreme Court, and secretary of foreign affairs before he was chosen by President Washington to head the Court. Salmon P. Chase earned his first prominence as an active antislavery Free Soil party member in Ohio and went on to become a U.S. senator, governor of Ohio, and secretary of the Treasury. Willis Van Devanter entered public service as city attorney of Cheyenne, Wyoming, rose to chief justice of the Wyoming Supreme Court, and served seven years on a federal court of appeals before his elevation to the high bench. Only Chief Justice William Howard Taft apprenticed for the Court as president of the United States.

In the twentieth century, more justices have spent their entire careers within the ranks of the legal system. In 1945 Harold H. Burton was the last sitting U.S. senator to take a place on the Court, and in 1953 Chief Justice Earl Warren was the last state governor to do so. Chief Justice William H. Rehnquist is one of four justices who had their first stint at the Court as law clerks immediately after leaving school. Rehnquist served as clerk to Justice Robert H. Jackson in the 1952–1953 term and was appointed to the Court eighteen years later.

Many factors have played a part in the selection of justices. As the country grew and changed, the Court reflected greater diversity. All the justices had been Protestants until 1835, when President Andrew Jackson appointed Roger B. Taney, a Catholic. Although Woodrow Wilson appointed the first Jew, Louis D. Brandeis, to the Court in 1916, it was Benjamin N. Cardozo's appointment in 1932 that apparently established the tradition of a "Jewish seat," which lasted for almost forty years. The first African-American justice, Thurgood Marshall, was appointed by President Lyndon B. Johnson in 1967. The first woman, Sandra Day O'Connor, broke the gender barrier in 1981. Even before her appointment, the Court had dropped the honorific "Mr.," which had been used for almost two centuries, and "Mr. Justice" became simply "Justice" in the Court's reports and documents. The first Italian-American ascended to the high bench in 1986 with the appointment of Antonin Scalia.

Political party membership has always had important weight in the president's selection of nominees to the Court. Yet nine presidents have chosen justices from opposing parties, beginning with President Abraham Lincoln's appointment of Stephen J. Field, a Democrat, in 1863. More recently, the appointments of William J. Brennan, Jr., and Lewis F. Powell, Jr., crossed party

lines. Naturally, presidents look for nominees whose records suggest that they will at least generally support the president's views on how the Constitution should be interpreted. Many times presidents have been disappointed. Appointment to the high bench has often served to liberate justices from some of their earlier, possibly partisan, convictions.

The average tenure of a justice has been just short of sixteen years. The shortest term was that of Thomas Johnson, who had been reluctant to accept the post from his friend George Washington in the first place. William O. Douglas broke a record for longevity on the Court when he resigned in 1975 after thirty-six years and seven months. The previous record was held by Field, who had achieved thirty-four years and nine months when he retired in 1897. Generally, justices have come on the Court in their fifties, with almost all being older than forty. The four exceptions were all in the Court's early years, when William Johnson and Joseph Story were both chosen at age thirty-two, Bushrod Washington at thirty-six, and James Iredell at thirty-eight. The oldest at the time of ascension was Horace Lurton, age sixty-five. (Harlan F. Stone and Hughes were a few years older at the time of their respective elevation and reappointment to the Court as chief justices.)

Aside from the John Marshall Harlan grandfather-grandson relationship, there have been few kinships among the justices. David J. Brewer was Field's nephew, and they sat on the high bench together for nearly six years. Lucius Q. C. Lamar and Joseph Rucker Lamar were cousins.

Unlike the constitutional specifications for election to the presidency or Congress, there are no qualifications for appointment to the Court. There are no age limitations for either appointment or retirement, no residency requirements, no specification even that justices have training or a background in the law. There is no constitutional requirement that justices be native-born, and six of them were not. The Constitution says only that the president shall appoint the members of the Court with the advice and consent of the Senate. They serve "during good Behaviour," and like all civil officers may be removed only "on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

Only once has the House of Representatives brought a bill of impeachment against a justice of the Supreme Court, when it voted to bring Samuel Chase, a radical Federalist, to trial in 1804. Historians agree that there were at least improprieties in his behavior. He was ardent in his pursuit of Republican editors under the notorious Alien and Sedition acts, and he heatedly criticized Thomas Jefferson's administration. However, the Senate failed to convict Chase of "high crimes," and he retained his seat.

No matter how involved in politics they may have been before appointment to the Court, today justices generally refrain from partisan activity or party identification once on the high bench. Such reticence was not the case during the nineteenth century. John McLean furnished perhaps the most egregious example of political activity as a sitting justice. He flirted openly with several political parties during his thirty-two years on the Court, consistently seeking but failing to obtain a bid to run for the presidency.

Indeed, over the decades, the range of acceptable outside activities by justices has become increasingly narrow. In the entryway to the justices' dining room there is a handsome clock that was given to Joseph Story for his service as president of a Massachusetts bank from 1815 to 1837. He was already a justice when he accepted the post, which he held for twenty-two years during his tenure on the Court. Today, occupying such a position would be unthinkable.

Members of the Supreme Court have been prepon-

derantly family men, and most of those who were widowed prematurely later remarried. Brockholst Livingston and Benjamin R. Curtis each married three times, and each had children by all three wives. Only eight of the justices were bachelors when appointed to the Court, and one of them, Horace Gray, changed his status at the age of sixty-one by marrying the daughter of his colleague Stanley Matthews.

Many of the justices had military records, starting with more than half a dozen who served in the Revolution. Chief Justice Marshall was with General Washington at Valley Forge. Several fought in the Civil War, including Lucius Lamar, a Confederate, and Holmes, who was wounded three times in service to the Union. Chief Justice Rehnquist served during World War II, as did Justices Harlan, Brennan, John Paul Stevens, Arthur Goldberg, Potter Stewart, and Byron White.

Scholars and constitutional authorities generally have concluded that the people of the United States have been fortunate in the selection of their Supreme Court justices. Collectively, the justices have established a record of probity, conscientiousness, and devotion to responsible public service. These standards have been crucial to the survival of the Court and of the nation. The Supreme Court, like the entire judicial branch, has no means of enforcing its decisions. Yet it can tell the president and Congress what they may and may not lawfully do. Its rulings are accepted and executed by the legislative, executive, and judicial branches, and indeed by the people. The legal and moral authority of the Court is essential to maintaining a democratic society.

This authority has grown with the years, since 1803 when Marshall first declared an act of Congress unconstitutional and proclaimed, "It is, emphatically, the province and duty of the judicial department to say what the law is." Although the Court has suffered sporadic declines in its standing relative to the other two branches and in the eyes of the people, its ultimate and final authority rarely has been challenged. It is, without doubt, the most powerful judicial body in any democratic nation. When, in 1974, the Court ruled that the president does not have absolute executive privilege of immunity from court demands for evidence in a criminal trial, President Richard Nixon was forced to comply. When, in 1983, the Court struck down in a single decision more than 200 laws enacted by Congress over a period of fifty years, the lawmakers did not contest the ruling.

The power and prestige of the Supreme Court is due in no small measure to the capabilities and integrity of the individuals who have served and shaped it. Although many are rightly impressed by the phenomenal power and attendant responsibilities of the justices, this examination of their lives serves to remind us that behind the black robes they are simply human beings. Justice Robert Jackson once felt compelled to chide his brethren about both their power and their humanity in his memorable admonition: "We are not final because we are infallible, but we are infallible only because we are final."

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